

OCLC ONLINE COMPUTER LIBRARY CENTER, INCORPORATED  
Special Meeting of the Trustee Members  
April 22, 2002

The Trustee Members of OCLC Online Computer Library Center, Incorporated, in accordance with Article VI, Section D of the Code of Regulations of OCLC Online Computer Library Center, Incorporated, convened at 9:00 a.m., April 22, 2002, at 6600 Frantz Road, Dublin, Ohio. Dr. Crowe presided, and Mr. Houfek kept the records of the meeting.

Trustee Members Present

Bradley E. Baker  
William J. Crowe  
Christine Deschamps  
Nancy L. Eaton  
Ralph K. Frasier  
Maurice Glicksman  
Barbara Gubbin  
Victoria Hanawalt  
Jay Jordan  
Myer Kutz  
David P. Lauer  
Sharon J. Rogers  
Jane N. Ryland  
Thomas W. Shaughnessy  
Lizabeth A. Wilson

Trustees Absent:

None

Also, present for all or portions of the meeting:

Meg Bellinger, Vice President, Digital & Preservation Resources  
Cathy De Rosa, Vice President, Corporate Marketing  
Lorcan Dempsey, Vice President, Office of Research  
James T. Houfek, Vice President, General Counsel, and Secretary  
Gary R. Houk, Vice President, Metadata and Content Management Services  
Fred Lauber, Vice President, Information Technology  
Donald J. Muccino, Executive Vice President & Chief Operating Officer  
George Needham, Vice President, Member Services  
Rick J. Schwieterman, Vice President, Finance & Human Resources and Treasurer  
Phyllis B. Spies, Vice President, Worldwide Library Services  
Richard Van Orden, Program Director, Members Council

Upon motion duly made and seconded, the Trustee Members unanimously approved the minutes of their November 12, 2001 meeting.

Dr. Crowe then introduced the following resolution. Following discussion and, upon motion duly made and seconded, the following resolution was unanimously approved:



**APPENDIX 1**  
**REPORT OF THE AD HOC COMMITTEE ON MEMBERSHIP**

*Introduction*

Since its founding in 1967, OCLC has grown from an intrastate network of 54 college and university libraries in Ohio to an international cooperative linking more than 40,000 libraries of all types in 82 countries. Resource sharing has been the guiding principle of OCLC membership since its founding. Member libraries and OCLC cooperatively build and maintain WorldCat, an online union catalog of bibliographic information that supports cataloging, interlibrary loan and reference services. In operation since 1971, WorldCat now contains more than 48 million records and 800 million location listings and annually grows by over two million records contributed by member libraries.

From 1967 to 1977, governance of OCLC resided with the libraries in Ohio. In 1977, OCLC's present governance structure was adopted, which extended membership to libraries outside the state of Ohio. The current structure of General Members (libraries and other institutions that agree to contribute all of their current cataloging to WorldCat), Members Council members (networks and service centers), and the Board of Trustees, provides libraries with an institutionalized role in governing the cooperative whereby General Members elect Members Council delegates, who in turn elect six members of the 15-member OCLC Board of Trustees. Currently, the apportionment of delegates is based on contribution of cataloging information to WorldCat and interlibrary loan activity. Until quite recently, technical barriers limited cataloging contribution to roman-alphabet characters, narrowing the utility of the service to libraries using other alphabets or character sets. Only about a quarter of the libraries participating in the OCLC cooperative presently qualify as members.

In December 1999, the OCLC Board of Trustees appointed the Advisory Council on Strategic Directions and OCLC Governance, chaired by Trustee Nancy Eaton and assisted by consultants from the firm of Arthur D. Little, to review this structure. The Council suggested that the definitions of membership and contribution be broadened to allow more participation in the governance of the cooperative.

*Charge to Committee*

The Board implemented the Advisory Council's recommendation by creating the Ad Hoc Membership Committee in March 2001. This resolution gave the Committee the following charge.

The charge of the Ad Hoc Membership Committee shall be as determined by the President of the Users/Members Council and the Chair of the OCLC Board of Trustees from time to time, and initially shall be to make recommendations to the OCLC Board of Trustees and the Users/Members Council in the following areas:

- The definitions of "membership" in OCLC.
- The definition of "contribution" to OCLC in the context of an environment of networked information resources and in light of OCLC's strategy to extend the cooperative. This may include new means and methods of sharing intellectual content, new sources of this intellectual content and resource sharing beyond traditional interlibrary loan.
- A new formula (algorithm) for allocating representation on Users/Members Council. This would include recommendations for the appropriate size of the Users/Members Council, the cycle for recalculation, the elements to be included in the formula, and the weighting of those elements.

- A structure, such as a Standing Committee on Membership, for keeping membership and contribution definitions and the allocation formula current.

### *Process*

OCLC Board Chair William Crowe and 2000-2001 Members Council President Larry Alford appointed the following Ad Hoc Committee in consultation with RONDAC:

- Mary-Alice Lynch, Executive Director, Nylink (Chair)
- Larry Alford, Deputy University Librarian, University of North Carolina - Chapel Hill
- Maurice Glicksman, Professor of Engineering (Research) and Provost Emeritus, Division of Engineering, Brown University,
- Victoria Hanawalt, College Librarian, Reed College
- Ian Mowat, Librarian, Edinburgh University
- Kristin Senecal, Librarian, Dickinson College
- William Crowe, Spencer Librarian, Kenneth Spencer Research Library, The University of Kansas, and OCLC Board of Trustees Chair, ex officio, non-voting
- Jerry Stephens, Librarian and Director, Mervyn H. Sterne Library, University of Alabama - Birmingham and 2001-2002 Members Council President, ex officio, non-voting
- George Needham, Vice President, Member Services, OCLC, ex officio, non-voting
- Richard Van Orden, Members Council Program Director, staff liaison

Between June and November 2001, the Ad Hoc Committee on Membership met five times. The Committee reported to the Board of Trustees at its June, September, and November 2001 meetings, and to the Members Council in October. The Committee also stayed in close contact with the Members Council's Task Force on Principles of Membership, meeting together at the ALA Conference in June, and overlapping e-mail discussion lists.

The Ad Hoc Committee met with key OCLC managers in the areas of cataloging and metadata, discovery and fulfillment, extended WorldCat development, worldwide library services, and financial management. With figures from OCLC's Market Research and Analysis unit, the Committee developed and analyzed eleven variations on the current delegate allocation formula, to study how changes would affect representation.

A Preliminary Report was prepared and distributed to Members Council, RONDAC, and the OCLC Board of Trustees in November 2001. Members Council representatives were asked for their initial reaction to the report, and members of the Ad Hoc Committee met with boards or advisory committees of ten networks, one OCLC service center, and with librarians in the UK and South Africa. The purpose of these meetings was to seek member reaction and input regarding the Committee's draft recommendations.

Following the network and service center meetings, the Ad Hoc Committee met again during the ALA Midwinter Conference in New Orleans in January 2002 to review feedback and to refine the Preliminary Report. Members Council discussed the penultimate report and recommendations at its February 2002 meeting prior to the Ad Hoc Committee on Membership submitting a final report to the Board of Trustees and to Members Council.

The Board, after receiving the report at its February 2002 meeting, will consider these recommendations, take action in April, and then forward any resolutions proposing amendments to the Articles of Incorporation and the Code of Regulations to Members Council for consideration at the May meeting.

### *Challenge*

The recommendations of the Ad Hoc Committee on Membership should provide a framework for the future growth and development of OCLC by encouraging effective and inclusive governance by expanding definitions of membership and contribution. OCLC has embarked upon an ambitious strategy of expanding the cooperative, defined broadly as “Weaving libraries into the Web, and weaving the Web into libraries.” The Ad Hoc Committee recommendations support this strategy and recognize in OCLC membership and governance new opportunities for collaborative activity throughout the world among libraries, art and other museums, archives, historical societies, and other organizations that create and manage information objects.

The Ad Hoc Committee on Membership decided early in its deliberations that its report should provide stability while facilitating regular review of the membership and governance process of the cooperative. The report should avoid tying membership or governance issues to specific technology, products, or platforms. Most importantly, the recommendations of the Committee should clearly protect and enhance the value of the central asset of the cooperative, WorldCat.

### *Recommendations*

The Committee offers the following recommendations to the Board of Trustees and Members Council. Please note that the order presented here differs from the order of the topics as presented in the charge. While the Committee strongly supports these recommendations, it also believes that ongoing review is the key to keeping OCLC’s governance structure relevant over the long term. Therefore, the recommendations and this report begin with the process by which this structure can be reviewed and revised in the future.

### *Ongoing Review*

**The Ad Hoc Committee on Membership recommends that the Board and Council establish a Standing Joint Committee on Membership in the Code of Regulations and the Members Council Bylaws.** The Standing Joint Committee will be composed of three trustees, three Members Council delegates, and a representative of the executive directors or managers of the “Members Council Members” (networks and service centers) as voting members, and the Vice President, Member Services (or his/her designee) as a non-voting, ex-officio member. The Trustees and Members Council committee members will be appointed in accordance with the procedures of the respective bodies for appointing committees. The representative of the Members Council Members (networks and service centers) will be elected by the executive directors or managers of those organizations. The Ad Hoc Committee recommends strongly that the appointing officers of each group cooperatively consider continuity of membership on the Standing Joint Committee, geographic diversity, and OCLC experience in making their appointments. Terms of office would be one year, running from September 1 to August 31.<sup>1</sup> Standing Joint Committee members would not be limited to a single term. The Standing Joint Committee will elect its own Chair.

**The Ad Hoc Committee on Membership recommends that the Standing Joint Committee be given the following charge:**

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<sup>1</sup> Members Council, the Board of Trustees, and the Regional OCLC Networks Directors Advisory Committee (RONDAC) each have different calendars, and there is no compelling reason to recommend synchronizing them. The September through August time frame allows Members Council, the initiating body for change under these proposals, to match the work of the Standing Joint Committee with its other committee work during the year.

The Standing Joint Committee will meet at least once a year to determine if there are any new products, services, or cooperative initiatives that should be recognized as contribution, or if there are any such products or services that should no longer be so recognized. The Standing Joint Committee will report the results of this review to the Board of Trustees and Members Council annually. The Standing Joint Committee is also charged with reviewing the definitions of “membership” and “contribution,” including levels of relationship, within the OCLC cooperative as often as necessary but at least once every five years.

**The Ad Hoc Committee on Membership recommends that the Standing Joint Committee on Membership adopt the following procedures:**

- The Standing Joint Committee must approve any recommendations by a simple majority vote with a quorum of at least four members present and voting. If changes are approved, the recommendations are submitted to Members Council for consideration. (If changes to the OCLC Code of Regulations are recommended, they must be submitted to the Board of Trustees for initial consideration and follow the amendment process provided in the Code of Regulations.)
- Members Council considers recommendations of the Standing Joint Committee through normal procedures. However, if any action includes a change to the “Membership and Contribution Protocols,” (see page 7 for a description of this document) such action must be passed by a 2/3 majority of Council present and voting. If such approval is forthcoming, the changes are recommended to the Board of Trustees.
- The Board of Trustees considers the resolution from the Members Council. The Board may approve the resolution by a 2/3 vote, or it may reject the resolution. If the Board approves the resolution, it takes effect as specified in the resolution. The Board may also amend the resolution by a 2/3 vote and send the amended resolution back to the Members Council for reconsideration.
- If the Board sends the resolution back to Members Council, the Council may accept the amendment(s) by a 2/3 vote, or it may reject the amendment(s). If it accepts the amendments, the resolution takes effect as specified. If it rejects the amendments, the resolution is no longer available for further revision. However, nothing in this policy shall prevent a new resolution addressing such issues from being introduced by the Standing Joint Committee.

### *Definition of Contribution*

**The Ad Hoc Committee on Membership recommends that OCLC define contribution as intellectual resources provided and shared by libraries and other institutions through the products and services of OCLC and its affiliates for the benefit of the members of the cooperative.**

This definition is intended to allow maximum flexibility to future iterations of Members Council and the Board of Trustees as the world of shared information evolves. How this definition will be applied is discussed below.

Until we fully understand how bibliographic databases that are not under contractual relationship with OCLC or its designated affiliates can be integrated into the collaborative effectively, **the Ad Hoc Committee on Membership recommends that participation in such databases not be counted as contribution for membership purposes within the cooperative.** This would include regional or national bibliographic databases that are not incorporated into WorldCat or an affiliated database managed by an OCLC-affiliated organization and available to

all members of the cooperative. However, this is an issue that will need to be reviewed regularly and expansively by future Standing Joint Committees on Membership.

### *Definition of Membership*

**The Ad Hoc Committee on Membership recommends that OCLC define three levels of relationship:**

Governing Members are those institutions that fully embrace the OCLC values of commitment to collaboration through contribution of intellectual content and in resource sharing. This commitment is manifested by these institutions' contractual agreement to contribute metadata, including their current cataloging and holdings as described in "OCLC WorldCat Principles of Cooperation," to an OCLC-affiliated database, in order to make such information available to and for the benefit of all members of the cooperative.

Examples in the current structure of OCLC would include all institutions that have current member contracts with OCLC or the US regional networks to contribute their current cataloging to WorldCat via batchload or online cataloging. Once the linking of the WorldCat and Pica databases is complete, allowing all members to see and use all content in both databases, contribution to Pica's database would fulfill this membership requirement.

Differential pricing is a mechanism for supporting the principles of membership and for encouraging full contribution and participation. While it is not in the purview of the Ad Hoc Committee on Membership to tie membership and governance to pricing, **the Committee strongly recommends that, in light of the substantial contribution Governing Members make to the cooperative, that these members receive the best prices on all OCLC products and services.**

Members also embrace the OCLC values of commitment to collaboration through contribution of intellectual content and in resource sharing. Their commitment is manifested in their contractual agreement to contribute to cooperative products or services of OCLC and/or its affiliates, but they may not necessarily contribute all of their current cataloging to an OCLC-affiliated database.

Institutions that only contribute a portion of their holdings to WorldCat would qualify for this member level. A museum may qualify for this membership level by providing metadata or access to its digitized collections. As OCLC introduces new services and initiatives, this member level might also be gained by participation in a cooperative reference service; contributing limited resources (such as a special collection or a single format of materials) to WorldCat or the digital co-op; or contributing authority files or thesauri.

**The Ad Hoc Committee on Membership recommends that Members receive pricing of their purchases of OCLC products and services that recognizes the value of their agreements to contribute within these guidelines.**

Participants are those institutions that use OCLC products and services without any responsibility to return any intellectual contribution to the cooperative. While the financial contribution made by these institutions is important to OCLC, financial contribution alone does not qualify one for membership.

Today, such institutions would include those whose OCLC relationship is limited to participation in a Group Access Capability (GAC) arrangement without submitting holdings information to WorldCat, those that license the FirstSearch service, purchase Forest Press publications, contract with Preservation Resources for services which aren't then shared with the cooperative, or PiCarta subscribers.

Recognizing that participants seek only to buy OCLC products and services and that they make no representation of contributing shared intellectual content to build the cooperative, **the Ad Hoc Committee on Membership recommends that these institutions receive less favorable pricing in comparison to governing members or members.**

The examples listed in each relationship category are intended to be illustrative, not comprehensive or definitive.

These membership levels refer to libraries, museums, archives, historical societies, professional associations, and other groups that contribute to or use the intellectual resources of the cooperative. “Members Council Members” are defined in the OCLC Code of Regulations as the networks and service centers that contract with OCLC to provide OCLC services to member institutions.

Members Council delegates may come from Governing Member or Member institutions, but only Governing Member institutions may vote in elections to Members Council. All elected delegates would be full voting members of the Members Council itself. The Members Council may elect any of its delegates to the Board of Trustees.

#### *Delegate Allocation Formula*

To ensure continuity of presence among the networks and libraries that developed OCLC to its current level, and to accomplish the goal of encouraging the growing participation and contribution of international institutions in the shared activity of the collaborative, **the Ad Hoc Committee on Membership recommends a new formula for allocating delegates to networks and service centers for Members Council:**

- Increase the number of delegates on Members Council to 66, regardless of the method of selection.
- Change the basis for delegate allocation. Currently, delegates are allocated on the basis of a weighted formula of contributions to and deletions from WorldCat and interlibrary loans supplied (75%) and number of active members (25%). **The Ad Hoc Committee recommends that this be changed to a count of all activity completed by governing members and members (not by participants) over the past three years.** Contribution of intellectual content, initially including cataloging and lending activities, will be weighted in a 2-to-1 ratio to other types of activity. The Standing Joint Committee will review whether other forms of intellectual contribution qualify for the higher weighting as these services are made available by OCLC. The list of activities to be included in this new formula will be included in the “Membership and Contributions Protocols,” which is described below. This allocation formula will need to be phased in as the statistics can be collected by OCLC.
- Lower the minimum activity for a Members Council Member to qualify for a delegate from the current 0.5% of the total qualified weighted activity to 0.25%.
- Continue the transitional international delegates through 2007. The terms of the current delegates end at the conclusion of the May 2004 Members Council meeting. Charge the Standing Joint Committee with developing recommendations by January 2004 on how to allocate these six delegates to the various countries and regions outside the US participating in OCLC. This second transition period, September 2004 to May 2007, will allow for the full implementation of OCLC’s global strategies and plans. In the event that an area already represented by a transitional delegate earns one or more regular delegates through increased contribution and activity during the second transition period, one or more transitional delegates from the area will be designated as an allocated delegate of the service

center for the remainder of his/her/their three-year term. In this case, the allocation of regular delegates would be recalculated based on the current number of regular delegates, with the total number of both transitional and regular delegates to equal 66.

- Through May 2007, allocate delegates to Members Council as follows:
  - Delegates allocated according to the amount of activity each generates within the cooperative..... 60
  - Delegates representing countries or regions outside the US, to be allocated on a formula proposed by the Standing Joint Committee and approved by the Members Council and the Board..... 6
  - Total Members Council delegates ..... 66

In this approach, all sixteen US regional networks, OCLC Western Service Center, and the OCLC service centers in Canada; Europe, the Middle East, and Africa; and Asia Pacific qualify for allocated delegates on Members Council. Under the .25% threshold, OCLC Latin America does not qualify at this time. Additionally, six countries or regions from outside the US will also have representatives. If any combination of Members Council Members (networks or service centers) merges, the three-year cumulative activity of the pre-existing units will be combined to determine the representation of the merged entity.

**The Ad Hoc Committee on Membership recommends that the Board and Council take action to remove the algorithm from the OCLC Code of Regulations and the Members Council Bylaws.** Instead, include language in the OCLC Code of Regulations and the Members Council bylaws that refers to the “Membership and Contribution Protocols.” This document encompasses the Ad Hoc Committee’s recommendations and lists the OCLC products and services that qualify as contribution for membership purposes and as activity for delegate allocation purposes under these recommendations. The Standing Joint Committee on Membership will be charged with reviewing the “Membership and Contribution Protocols” document annually to ensure its currency and relevance. Changes in the Protocols will require approval by the OCLC Board of Trustees and Members Council as outlined above in the section “Ongoing Review.”

The Ad Hoc Committee on Membership sat as the initial Standing Joint Committee on Membership to prepare the attached first iteration of the Protocols (Appendix). **The Ad Hoc Committee on Membership recommends that the Board of Trustees and the Members Council approve the adoption of the first iteration of “The Membership and Contribution Protocols.” The Protocols, including the decreased threshold for participation by networks and service centers and the new methods for counting activity and for allocating delegates for US networks and OCLC service centers, would take effect July 1, 2002.** OCLC’s Market Research and Analysis unit and the Member Services Division will work closely with the network and service center directors to ensure that the proper forms of activity are being counted and weighted properly as the transition is implemented.

## APPENDIX

### MEMBERSHIP AND CONTRIBUTIONS PROTOCOLS

As recommended by the Ad Hoc Committee on Membership, February 2002

#### MEMBERSHIP

An institution may choose one of three relationships with the OCLC cooperative:

- Governing Members are those institutions that fully embrace the OCLC values of commitment to collaboration through contribution of intellectual content and in resource sharing. This commitment is manifested by these institutions' contractual agreement to contribute metadata, including their current cataloging and holdings as described in "OCLC WorldCat Principles of Cooperation," to an OCLC-affiliated database, in order to make such information available to and for the benefit of all members of the cooperative.

Contribution to WorldCat is the basis of "Governing Member" status in OCLC. Once the linking of the WorldCat and Pica databases is complete, allowing all members to see and use all content in both databases, contribution to Pica's database would fulfill this membership requirement.

- Members also embrace the OCLC values of commitment to collaboration through contribution of intellectual content and in resource sharing. Their commitment is manifested in their contractual agreement to contribute to cooperative products or services of OCLC and/or its affiliates, but they may not necessarily contribute all of their current cataloging to an OCLC-affiliated database.

Institutions qualify for "Member" status in OCLC by contractually agreeing to be involved in one or more cooperative programs or services of OCLC. These would include "Partial Users" under OCLC's previous rules, as well as ILL only (lending) participants.

- Participants are those institutions that use OCLC products and services without any responsibility to return any intellectual contribution to the cooperative. While the financial contribution made by these institutions is important to OCLC, financial contribution alone does not qualify one for membership.

These membership levels refer to libraries, museums, archives, historical societies, professional associations, and other groups that contribute to or use the intellectual resources of the cooperative. "Members Council Members" are defined in the OCLC Code of Regulations as the networks and service centers that contract with OCLC to provide OCLC services to member institutions.

Members Council delegates may come from Governing Member or Member institutions, but only Governing Member institutions may vote in elections to Members Council. All elected delegates would be full voting members of the Members Council itself. The Members Council may elect any of its delegates to the Board of Trustees.

## CONTRIBUTION

For purposes of this document, “contribution” is defined as intellectual resources provided and shared by libraries and other institutions through the products and services of OCLC and its affiliates for the benefit of the members of the cooperative. The activities listed below are included in this definition:

- 1.) Adding records, content, and holdings, regardless of format or platform of entry
  - Original cataloging
  - Adding local holdings information
  - Union listing
  - Materials submitted for archiving and made available to all members and participants of the cooperative through Digital and Preservation Resources
- 2.) Maintaining records and holdings regardless of platform of entry
  - Enhance
  - Database enrichment
  - Minimal level upgrades
  - Deletion of holdings information
- 3.) Resource sharing (interlibrary loans provided)
- 4.) Contribution of authority files or thesauri

## WEIGHTING OF INTELLECTUAL CONTENT

In recognition of the importance of keeping WorldCat a relevant, current tool for the benefit of the members of the cooperative, contribution of intellectual content, initially including cataloging and lending activities, will be weighted in a 2-to-1 ratio to other types of activity. The Standing Joint Committee will review whether other forms of intellectual contribution qualify for the higher weighting as these services are made available by OCLC.

## DELEGATE ALLOCATION

Delegates will be allocated to the Members Council Members (the networks and service centers, as defined in the OCLC Code of Regulations and the Members Council Bylaws) on the basis of a count of all transactions by Governing Members or Members represented by each Member Council Member over the past three years.

## DELEGATE ALLOCATION FORMULA

There shall be sixty-six (66) total votes (and delegates) in the Members Council. The number of votes (and delegates) to which each Members Council Member shall be entitled, from time to time, shall be determined by means of the following formula.

$$V = \frac{t}{T} \times N$$

Where “V” represents the number of votes to which a Members Council Member will be entitled; and

Where “T” represents the number of transactions, weighted according to the standards established in the most recently approved statement of Membership and Contribution Protocols by all Governing Members and Members over the most recently completed three (3) fiscal years of the Corporation; and

Where “t” represents the subset of “T” that is accounted for by the Governing Members and Members represented by each Members Council Member (network or service center) during that same three year period; and

Where “N” represents the total number of elected delegates on Members Council.

At the adoption of this document, N equals 60. The remaining six (6) votes (and delegates) will represent the six (6) nations or regions, other than the United States of America, allocated according to the method adopted by Members Council and the Board of Trustees in May 2001. The Standing Joint Committee will recommend by January 2004 how these six delegates will be allocated to the various countries and regions outside the US participating in OCLC for a second transition period, September 2004 to May 2007. This will allow for the full implementation of OCLC’s global strategies and plans. Such recommendations will require action by the Board of Trustees and the Members Council, as outlined in the OCLC Code of Regulations. In the event that an area already represented by a transitional delegate earns one or more regular delegates through increased contribution and activity during the second transition period, one or more transitional delegates from the area will be designated as an allocated delegate of the service center for the remainder of his/her/their three-year term. In this case, the allocation of regular delegates would be recalculated based on the current number of regular delegates, with the total number of both transitional and regular delegates to equal 66.

OCLC will begin counting transactions under these new rules at the beginning of FY 2002-2003. The results of these transactions will be reported to the networks and service centers in December 2003 to manage their elections in the winter or spring of 2004. The first Members Council to be seated under the new rules will take office in the fall, 2004.

**CERTIFICATION**

Approved by the OCLC Members Council on \_\_\_\_\_, 200\_\_.

Approved by the OCLC Board of Trustees on \_\_\_\_\_, 200\_\_.

Effective July 1, 200\_\_.

((Draft 6-040402))

Revised \_\_, 2002

**AMENDED ARTICLES OF INCORPORATION**

**OF**

**OCLC ONLINE COMPUTER LIBRARY CENTER, INC.**

- FIRST The name of the corporation shall be OCLC ONLINE COMPUTER LIBRARY CENTER, INC. (the “Corporation”).
- SECOND The place in this State where the principal office of the Corporation is to be located is in the City of Dublin, Franklin County, Ohio.
- THIRD The purpose or purposes for which the Corporation is formed are to establish, maintain and operate a computerized library network and to promote the evolution of library use, of libraries themselves, and of librarianship, and to provide processes and products for the benefit of library users and libraries, including such objectives as increasing availability of library resources to individual library patrons and reducing the rate of rise of library per-unit costs, all for the fundamental public purpose of furthering ease of access to and use of the ever-expanding body of worldwide scientific, literary and educational knowledge and information.
- FOURTH The affairs of the Corporation shall be managed by the Board of Trustees. The qualifications of the Trustees, together with their terms of office, manner of election, removal, change of number, filling of vacancies and of newly-created trusteeships, powers, duties and liabilities, shall, except as otherwise provided in these Articles, or by the laws of the State of Ohio, be as prescribed by the Code of Regulations.
- FIFTH There shall be four classes of members of the Corporation and they shall be Governing Members, Members, Members Council Members and Trustee Members. The voting powers of each class of members shall be only as defined in the Code of Regulations.
- SIXTH There shall be a Members Council which shall be that body as defined in the Code of Regulations.
- SEVENTH These Articles may be amended at any business meeting of the Trustee Members called for that purpose provided that notice of the proposed amendment(s) has been sent to the Trustee Members at least ten (10) days prior to said meeting. A two-thirds (2/3) vote of all of the authorized number of Trustee Members of the Corporation is required for approval, and the proposed amendment(s) must be ratified by a majority vote of delegates to the Members Council present at a meeting called for that purpose at which a quorum is present.
- EIGHTH The duration of the Corporation shall be perpetual.
- NINTH No part of the earnings, dues or receipts of the Corporation shall inure to the benefit of or be distributed to its members, trustees, officers or other private persons, except only that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and expenses incurred and

to make payments or distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of, or in opposition to, any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States internal revenue law) (the "Code") or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

TENTH Upon the dissolution of the Corporation, the Board of Trustees shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations as are described in Section 170(c)(1) or (2) of the Code, as the Board of Trustees shall determine. Any of such assets not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

ELEVENTH These Articles supersede all prior Articles or Amended Articles.

(Draft 7-041502)

Revised \_\_\_\_\_, 2002

**APPENDIX 3  
CODE OF REGULATIONS  
OCLC ONLINE COMPUTER LIBRARY CENTER, INC.**

**ARTICLE I  
NAME AND LOCATION OF CORPORATION**

The name of this Corporation is OCLC ONLINE COMPUTER LIBRARY CENTER, INC.  
Its principal office will be located in the City of Dublin, Franklin County, Ohio.

**ARTICLE II  
DEFINITIONS**

As used in this Code of Regulations, the word "Corporation" means this Corporation, that is to say, OCLC ONLINE COMPUTER LIBRARY CENTER, INC., and the word "Trustees" and the terms "Board of Trustees" and "Board," unless the context otherwise indicates, means the Trustees of said Corporation provided for by law and by the Articles of Incorporation.

**ARTICLE III  
PURPOSE**

The purpose or purposes for which this Corporation is formed are to establish, maintain and operate a computerized library network and to promote the evolution of library use, of libraries themselves, and of librarianship, and to provide processes and products for the benefit of library users and libraries, including such objectives as increasing availability of library resources to individual library patrons and reducing the rate of rise of library per-unit costs, all for the fundamental public purpose of furthering ease of access to and use of the ever-expanding body of worldwide scientific, literary and educational knowledge and information.

#### **ARTICLE IV GOVERNING MEMBERS, MEMBERS AND PARTICIPANTS**

A. Definition. The Governing Members, Members and Participants shall be defined by the terms of the *Membership and Contributions Protocols* as developed and distributed by the Standing Joint Committee on Membership from time to time, as approved by the Members Council and the Board of Trustees.

B. Voting Rights. The voting rights of the Governing Members shall be limited to the right to vote for the selection of delegates to the Members Council provided in Article V, Section D(2), under rules determined by the Members Council. Neither Members nor Participants shall be entitled to vote for the selection of delegates to the Members Council.

C. Committees. Persons affiliated with Governing Members and Members are eligible for appointment by the Board of Trustees and by the Members Council to serve on the respective committees thereof.

#### **ARTICLE V MEMBERS COUNCIL AND MEMBERS COUNCIL MEMBERS**

A. Purpose. Members Council shall: (i) serve to reflect and articulate the various interests of the Governing Members and Members; (ii) advise the Board of Trustees and OCLC management of emerging, critical issues that require OCLC tracking, planning, or other responses so that OCLC's own strategic planning is informed by this input; (iii) provide feedback to the Board and OCLC management on OCLC's strategic directions; and (iv) be empowered to elect six (6) Trustees to the Board of Trustees.

B. Membership. Members Council Members shall be those entities which meet the requirements described in the *Membership and Contributions Protocols*, as developed and distributed by the Standing Joint Committee on Membership from time to time, as approved by the Members Council and the Board of Trustees. Such Members Council Members shall elect their delegates to the Members Council pursuant to, governed by and following the procedures contained in the *Membership and Contributions Protocols*. Members Council

Membership is available for international as well as U.S.-based entities serving Governing Members and Members.

C. Meetings.

(1) Place of Meetings. Meetings of the Members Council shall be held at any suitable place convenient to them as may be designated by the Members Council.

(2) Time of Meetings. The Members Council shall hold an annual meeting, regular meetings and special meetings as shall be determined by the Members Council.

(3) Notice of Meetings. At least ten (10) days in advance thereof, the Program Director of the Members Council shall give notice of any meeting to each delegate to the Members Council by any reasonable means, including, but not limited to, personal delivery, telegram, telecopy, electronic mail transmission, or United States regular mail, express mail or courier service with postage or fees prepaid, and need not specify the purposes of the meeting. If an amendment to the Articles of Incorporation or this Code of Regulations is proposed, such proposals must be transmitted to the delegates at least ten (10) days before the meeting at which the proposals are to be discussed, whether they accompany the initial notice of the meeting, or are attached to a supplemental notice. Notice of any meeting given by personal delivery, telegram, telecopy, electronic mail transmission, or United States regular mail, express mail or courier service with postage or fees prepaid shall be considered given if mailed or otherwise sent or delivered to the delegate to the Members Council in accordance with his or her personal information specified in the records of the Corporation. The giving of notice shall be deemed to be waived by any delegate to the Members Council who shall attend and participate in such meeting, other than to protest the lack of proper notice at or prior to such meeting, and may be waived, in writing, by any delegate to the Members Council either before, at or after such meeting. Such writing shall be filed with or entered upon the records of the meeting.

(4) Quorum and Voting. The presence at any meeting of fifty percent (50%) of the delegates to the Members Council shall constitute a quorum; matters properly before the Members Council shall be decided by majority vote of the Council delegates present at a meeting at which a quorum is present.

(5) Adjourned Meetings. If any meeting of the Members Council cannot transact business because a quorum is not present, the delegates present may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

D. Representation By Delegates.

(1) Qualifications. Members Council Members shall be represented on the Members Council by delegates. The delegates shall be members of the governing boards, or professional employees, including librarians, of the Members Council Members; or members of the governing boards, or professional employees, including librarians, of the constituent Governing Members or Members thereof. No more than one administrative officer or other professional employee of any Members Council Member is eligible to be chosen as a delegate. All delegates must be authorized to act on behalf of the Members Council Member.

(2) Selection. The delegates of each Members Council Member shall be nominated and elected, removed and replaced by those Governing Members of the Corporation that are affiliated with that Members Council Member. In the absence of requirements of the Members Council to the contrary, each Members Council Member shall promulgate rules through which said nomination, election, selection, appointment, removal and replacement shall be accomplished so long as the rules do not conflict with the Articles of Incorporation, this Code of Regulations or the procedures established from time to time by the Standing Joint Committee on Membership, as approved by the Members Council and the Board of Trustees.

(3) Number of Delegates. The number and distribution of delegates among each Member of the Members Council shall be the same as the number of votes to

which the Members of the Members Council are entitled. Voting by alternate delegates and/or by proxy shall be permitted, subject to rules promulgated by the Members Council for those purposes.

(4) Voting Rights. At any meeting of the Members Council, each delegate shall be entitled to cast one (1) vote in person or by proxy on each matter properly submitted to the Members Council for vote, consent, waiver, release or other action.

(5) Costs. Costs and expenses of the Members Council and expenses of delegates shall be paid by the Corporation upon such total budgeted amounts as are determined by the Board of Trustees.

E. Committees. The Members Council shall create such committees as it deems necessary or desirable to carry out its purposes. It shall appoint thereto persons serving as delegates on the Members Council, and may appoint other persons affiliated with a Governing Member or Member which does not have a person serving as a delegate to the Members Council.

F. Officers. The Members Council shall create such offices and elect such officers to conduct the business of the Members Council as it shall deem appropriate.

## **ARTICLE VI TRUSTEE MEMBER**

A. Definition. The Trustee Members of the Corporation are defined as the members of the Board of Trustees.

B. Voting Rights. At any meeting of the Trustee Members, each Trustee Member shall be entitled to one (1) vote on each matter properly submitted to them for their vote, consent, waiver, release or other action.

C. Powers of Trustee Members. The Trustee Members shall vote upon election and removal of Trustees, amendments to the Articles of Incorporation and this Code of Regulations, as hereinafter provided, and shall have and may exercise all other membership

powers and rights not expressly granted or reserved to the other classes of members by the Articles of Incorporation or this Code of Regulations. Notwithstanding any language herein to the contrary, the powers of the Trustee Members to vote upon the election of Trustees, shall not apply to those Trustees elected by the Members Council, as provided elsewhere in this Code of Regulations. The Trustee Members power of removal of Trustees however, shall apply to all Trustees, whether elected by the Trustee Members or the Members Council.

D. Meetings. The Trustee Members shall hold an annual meeting and shall hold such other meetings as may be necessary.

(1) The time and place of the annual meeting shall be as determined from time to time by resolution of the Trustee Members. Special meetings may be called and their time and place set by the same persons as provided for special Board of Trustees meetings in Article VII, Section I(3).

(2) The quorum for such meetings and the vote and procedures shall be the same as set forth respecting Trustees in Article VII, Section I(6), except as otherwise provided in the Articles of Incorporation or this Code of Regulations.

(3) Notice of meetings shall be provided by the Secretary to each Trustee Member at least ten (10) days prior to the date thereof in accordance with the provisions for providing notice to the Board of Trustees in Article VII, Section I(4).

(4) Trustee Members may attend and participate in any meeting through any communications equipment if all persons participating can communicate with each other.

## **ARTICLE VII BOARD OF TRUSTEES**

A. Number. The Board of Trustees shall be comprised of fifteen (15) members, and the Founder Trustee provided for in this Article VII, Section C, who is also a member of the Board of Trustees.

B. Qualifications. Eight (8) Trustees, hereinafter referred to as the "Eight," shall be persons elected by the Trustee Members from varying disciplines and community

interests. Five (5) of the "Eight" shall be selected from among categories such as the following: an executive officer of a large corporation; an individual experienced in banking and finance; an individual with background or present service in government, national, state or local; an economist; an accountant with experience in taxation and business enterprise; an attorney with experience in corporation law; an individual with experience in electronic computer science or industry; an individual with experience in communications technology; an individual with marketing and distribution knowledge; and other individuals with comparable knowledge and experience.

Three (3) Trustees of the "Eight" shall be members of the library profession.

Six (6) Trustees, hereinafter referred to as the "Six," shall be elected by the Members Council, as provided herein, and shall be persons serving as delegates to the Members Council when elected.

One (1) Trustee shall be the Founder Trustee as provided in this Article VII, Section C.

The President of the Corporation, shall be a Trustee and serve upon the Board of Trustees by reason of his/her office and shall be equal in status to all other Trustees for all purposes, including voting and determination of quorum.

No more than two (2) Trustees shall be administrative officers or other professional employees of a Members Council Member.

C. Founder Trustee. At such time as the successor to the Corporation's founder and first President and Executive Director is appointed and succeeds to the Office of President, the then departing founder and first President and Executive Director shall become permanent Founder Trustee of the Corporation and shall be, as such, a member of the Board of Trustees. This Trustee position shall be reserved to the person and continue for the life of said founder and first President and Executive Director, and shall carry with it Trustee and Trustee

Member voting rights for a period of three (3) years from its effective date, subject to renewal thereafter at the pleasure of the Trustee Members.

D. Election and Term of Office.

(1) Terms. Each of the "Eight" shall be elected to a four-year term by a majority vote of the Trustee Members present at an annual meeting at which a quorum is present.

Each of the "Six" shall be elected to a six-year term by vote of the Members Council, and shall be that candidate receiving the greatest number of votes.

The President shall serve upon the Board of Trustees by reason of and during his/her term of office.

Each Trustee shall hold office until his/her successor has been qualified, elected and has commenced his/her term.

There shall be no successor to the Founder Trustee.

(2) Limitation on Consecutive Terms. Trustees of the "Six" may not serve more than two (2) consecutive terms of six (6) years each, and Trustees of the "Eight" may not serve more than three (3) consecutive terms of four (4) years each.

(3) Nomination and Election. Nominations for and election of the "Eight" shall take place at the annual meeting of the Trustee Members except when the Trustee Members may be filling unexpired terms.

Nominations for and election of the "Six" shall take place at the annual meeting of the Members Council except when the Members Council or the Trustee Members may be filling unexpired terms.

E. Governing Powers. The Board of Trustees shall have all the powers and duties necessary or appropriate for the administration of the affairs of this Corporation and may do all such acts and things as are not reserved or prohibited by law or by the Articles of Incorporation or by this Code of Regulations.

F. Vacancies. The Trustee Members by majority vote of Trustee Members present at a meeting at which a quorum is present shall appoint a successor to fill the unexpired term of a Trustee. An appointee to the term of the "Six" Trustees shall serve only until the Members Council meets and elects a successor to fill the unexpired term.

G. Removal of Trustee. At any annual or special meeting duly called, any one (1) or more of the Trustees on the Board of Trustees may be removed for cause by a vote of two-thirds (2/3) of Trustee Members present at such meeting at which a quorum is present.

H. Compensation. Compensation as determined by the Board of Trustees, may be paid to Trustees for their services in their capacity as Trustees. Trustees may be reimbursed for actual expenses incurred by them in the performance of their duties.

I. Meetings.

(1) Annual Meeting. The Board of Trustees shall meet annually as determined by the Board of Trustees, after the annual meeting of the Trustee Members, to conduct such business of the Corporation as may come before it.

(2) Regular Meetings. Regular meetings of the Board of Trustees may be held at such time and place as shall be determined, from time to time, by resolution of the Board of Trustees. Notice of regular meetings of the Board of Trustees shall be given by the Secretary to each Trustee at least ten (10) days prior to the day named for such meeting.

(3) Special Meetings. A special meeting of the Board of Trustees may be called at any time by the Chair, a Vice Chair, or three (3) or more of the Trustees, to be held at the time and place designated by the person(s) calling the meeting. Notice of special meetings of the Board of Trustees shall be given by the Secretary to each Trustee at least three (3) days prior to the day named for such meeting.

(4) Notice. Any notice referred to in this Article VII, Section I, may be given by any reasonable means, including, but not limited to, personal delivery, telegram, telecopy, electronic mail transmission, or United States regular mail, express mail or courier

service with postage or fees prepaid, and need not specify the purposes of the meeting, except that if an amendment to the Articles of Incorporation or this Code of Regulations is proposed, said notice shall indicate such purpose and a copy of such proposed amendment shall accompany said notice. Notice of any meeting given by personal delivery, telegram, telecopy, electronic mail transmission, or United States regular mail, express mail or courier service with postage or fees prepaid shall be considered given if mailed or otherwise sent or delivered to the Trustee in accordance with the Trustee's personal information specified in the records of the Corporation. The giving of notice shall be deemed to be waived by any Trustee who shall attend and participate in such meeting, other than to protest the lack of proper notice at or prior to such meeting, and may be waived, in writing, by any Trustee either before, at or after such meeting. Such writing shall be filed with or entered upon the records of the meeting.

(5) Location. Any meetings may be held at such place or places as the Board of Trustees may determine.

(6) Quorum and Vote. At all meetings of the Board of Trustees, a majority of the Trustees shall constitute a quorum for the transaction of business. The acts or votes of the majority of the Trustees present at a meeting at which a quorum is present shall be sufficient to constitute the act or vote of the Board of Trustees as a whole, except where a larger number of votes is required by law, the Articles of Incorporation, or this Code of Regulations. If, at any meeting of the Board of Trustees, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

(7) Attendance and Participation at Meetings. Trustees may attend and participate in any meeting of the Board of Trustees through any communications equipment if all persons participating can communicate with each other.

J. Committees. The Board of Trustees may create such committees as it deems necessary and desirable.

## **ARTICLE VIII OFFICERS**

A. Powers and Terms. The officers of the Corporation shall consist of a Chair of the Board of Trustees, a Vice Chair or Vice Chairs of the Board of Trustees, a President, a Secretary and a Treasurer.

The Chair, the Vice Chair or Vice Chairs and the President shall be elected by the Board of Trustees at a meeting of the Board called for that purpose or at the annual meeting. Each shall serve for that term set by the Board and until his/her successor is elected and qualified. Each may succeed him or herself, but except for the President, may serve no more than four (4) consecutive years' service in one (1) office.

The Secretary and Treasurer shall also have such terms and succession as determined by the Board of Trustees.

The Board of Trustees may appoint an Assistant Secretary, an Assistant Treasurer, and such other officers as in their judgment may be necessary.

The Chair, Vice Chair or Vice Chairs, the President, the Secretary and the Treasurer of the Corporation shall have such powers and duties as are normally incident to such offices, or as are designated by the Board.

B. Removal. Upon an affirmative vote of a majority of the Board of Trustees present at a meeting at which a quorum is present, any officer may be removed for cause after notice, and his/her successor shall be elected at any regular meeting of the Board, or at any special meeting called for that purpose. The Secretary shall notify the officer sought to be removed no less than three (3) days before this meeting by personal delivery, telegram, telecopy, electronic mail transmission or United States mail, express mail or courier service with postage or fees prepaid shall be considered given if mailed or otherwise sent or delivered to the officer in accordance with the officer's personal information specified in the records of the Corporation.

**ARTICLE IX  
NEGOTIABLE INSTRUMENTS, CONTRACTS, ETC.**

A. All checks, drafts, bills of exchange, notes or other instruments or orders for the payment of money shall be signed in the name of the Corporation or, if made payable to the Corporation, may be endorsed for deposit to the credit of the Corporation, by such officer or officers, person or persons, as the Board of Trustees may from time to time designate by resolution.

B. The Board of Trustees may authorize any officer or officers, agent or agents, in the name of and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts, and other obligations or instruments; such authority may be general or confined to specific instances.

**ARTICLE X  
INDEMNIFICATION AND INSURANCE**

A. Mandatory Indemnification. The Corporation shall indemnify any officer or Trustee of the Corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action threatened or instituted by or in the right of the Corporation), by reason of the fact that he or she is or was a Trustee, officer, employee, agent or volunteer of the Corporation, or is or was serving at the request of the Corporation as a director, trustee, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), partnership, joint venture, trust or other enterprise, against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. A person

claiming indemnification under this Article X, Section A shall be presumed, in respect of any act or omission giving rise to such claim for indemnification, to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal matter, to have had no reasonable cause to believe his or her conduct was unlawful, and the termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, rebut such presumption.

B. Court-Approved Indemnification. Anything contained in this Code of Regulations or elsewhere to the contrary notwithstanding:

(1) the Corporation shall not indemnify any officer or Trustee of the Corporation who was a party to any completed action or suit instituted by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a Trustee, officer, employee, agent or volunteer of the Corporation, or is or was serving at the request of the Corporation as a director, trustee, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), partnership, joint venture, trust or other enterprise, in respect of any claim, issue or matter asserted in such action or suit as to which he or she shall have been adjudged to be liable for acting with reckless disregard for the best interests of the Corporation or misconduct (other than negligence) in the performance of his or her duties to the Corporation unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio, or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances of the case, he or she is fairly and reasonably entitled to such indemnity as such Court of Common Pleas or such other court shall deem proper; and

(2) the Corporation shall promptly make any such unpaid indemnification as is determined by a court to be proper as contemplated by this Article X, Section B.

C. Indemnification for Expenses. Anything contained in this Code of Regulations or elsewhere to the contrary notwithstanding, to the extent that an officer or Trustee of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article X, Section A, or in defense of any claim, issue or matter therein, he or she shall be promptly indemnified by the Corporation against expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) actually and reasonably incurred by him or her in connection therewith.

D. Determination Required. Any indemnification required under this Article X, Section A and not precluded under this Article X, Section B shall be made by the Corporation only upon a determination that such indemnification of the officer or Trustee is proper under the circumstances because he or she has met the applicable standard of conduct set forth in this Article X, Section A. Such determination may be made only:

(1) by a majority vote of a quorum of the Trustees of the Corporation who were not and are not parties to, or threatened with, any such action, suit or proceeding;

(2) if such a quorum is not obtainable or if a majority of a quorum of disinterested Trustees so directs, in a written opinion by independent legal counsel other than an attorney retained previously by the Corporation, or a firm having associated with it an attorney, who has been retained by or who has performed services for the Corporation, or any person to be indemnified, within the past five (5) years; or

(3) by the Court of Common Pleas of Franklin County, Ohio or (if the Corporation is a party thereto) the court in which such action, suit or proceeding was brought, if any.

Any such determination may be made by a court under this Article X, Section D(3) at any time (including, without limitation, any time before, during or after the time when any such determination may be requested of, be under consideration by or have been denied or disregarded by the disinterested Trustees under this Article X, Section D(1) or by

independent legal counsel under this Article X, Section D(2)). No decision for any reason to make any determination required under this Article X, Section D, and no decision for any reason to deny any such determination, by the disinterested Trustees under this Article X, Section D(1) or by independent legal counsel under this Article X, Section D(2) shall be evidence in rebuttal of the presumption recited in this Article X, Section A. Any determination made by the disinterested Trustees under this Article X, Section D(1) or by independent legal counsel under this Article X, Section D(2) to make indemnification in respect of any claim, issue or matter asserted in an action or suit threatened or brought by or in the right of the Corporation shall be promptly communicated to the person who threatened or brought such action or suit, and within ten (10) days after receipt of such notification such person shall have the right to petition the Court of Common Pleas of Franklin County, Ohio, or the court in which such action or suit was brought, if any, to review the reasonableness of such determination.

E. Advances for Expenses. Expenses (including, without limitation, attorneys' fees, filing fees, court reporters' fees and transcript costs) incurred in defending any action, suit or proceeding referred to in this Article X, Section A shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding to or on behalf of the officer or Trustee promptly as such expenses are incurred by him or her, but only if such officer or Trustee shall first agree, in writing, to repay all amounts so paid in respect of any claim, issue or other matter asserted in such action, suit or proceeding in defense of which he or she shall not have been successful on the merits or otherwise:

(1) if it shall ultimately be determined as provided in this Article X, Section D that he or she is not entitled to be indemnified by the Corporation as provided under this Article X, Section A; or

(2) if, in respect of any claim, issue or other matter asserted by or in the right of the Corporation in such action or suit, he or she shall have been adjudged to be liable for

acting with reckless disregard for the best interests of the Corporation or misconduct (other than negligence) in the performance of his or her duties to the Corporation, unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio, or the court in which such action or suit was brought, shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances, he or she is fairly and reasonably entitled to all or part of such indemnification.

F. Article X Not Exclusive. The indemnification provided by this Article X shall not be exclusive of, and shall be in addition to, any other rights to which any person seeking indemnification may be entitled under the Articles of Incorporation or this Code of Regulations or any agreement, vote of disinterested Trustees, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an officer or Trustee of the Corporation and shall inure to the benefit of the heirs, executors, and administrators of such person.

G. Insurance. The Corporation may purchase and maintain insurance or furnish similar protection, including but not limited to trust funds, letters of credit or self-insurance, on behalf of any person who is or was a Trustee, officer, employee, agent or volunteer of the Corporation, or is or was serving at the request of the Corporation as a director, trustee, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit or for profit), partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the obligation or the power to indemnify him or her against such liability under the provisions of this Article X. Insurance may be purchased from or maintained with a person in which the Corporation has a financial interest.

H. Certain Definitions. For purposes of this Article X, and as examples and not by way of limitation:

(1) A person claiming indemnification under this Article X shall be deemed to have been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article X, Section A, or in defense of any claim, issue or other matter therein, if such action, suit or proceeding shall be terminated as to such person, with or without prejudice, without the entry of a judgment or order against him or her, without a conviction of him or her, without the imposition of a fine upon him or her and without his or her payment or agreement to pay any amount in settlement thereof (whether or not any such termination is based upon a judicial or other determination of the lack of merit of the claims made against him or her or otherwise results in a vindication of him or her);

(2) References to an "other enterprise" shall include employee benefit plans; references to a "fine" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a Trustee, officer, employee, agent or volunteer of the Corporation which imposes duties on, or involves services by, such Trustee, officer, employee, agent or volunteer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" within the meaning of that term as used in this Article X;

(3) The term "volunteer" shall mean a Trustee, officer or agent of the Corporation, or another person associated with the Corporation, who (i) performs services for or on behalf of, and under the authority or auspices of, the Corporation, and (ii) does not receive compensation, either directly or indirectly, for performing those services. Compensation does not include (i) actual and necessary expenses that are incurred by the volunteer in connection with the services performed for the Corporation and that are reimbursed to the volunteer or otherwise paid; (ii) insurance premiums paid on behalf of the volunteer and amounts paid,

advanced or reimbursed pursuant to this Article X, Section 1702.12(E) of the Ohio Revised Code or any indemnification agreement, resolution or similar arrangement; or (iii) modest perquisites.

I. Venue. Any action, suit or proceeding to determine a claim for indemnification under this Article X may be maintained by the person claiming such indemnification, or by the Corporation, in the Court of Common Pleas of Franklin County, Ohio. The Corporation and (by claiming such indemnification) each such person consent to the exercise of jurisdiction over its or his or her person by the Court of Common Pleas of Franklin County, Ohio, in any such action, suit or proceeding.

#### **ARTICLE XI** **AMENDMENTS**

Except as otherwise required by law, this Code of Regulations may be amended by the Trustee Members at any meeting called for that purpose, provided that the Secretary shall have given to each of the Trustee Members notice of the meeting and a draft of the proposed amendment at least ten (10) days prior to such meeting. Any amendment adopted by the Trustee Members shall require an affirmative vote of two-thirds (2/3) of all of the authorized number of Trustee Members of the Corporation at a duly constituted meeting, and must be ratified by a majority vote of the delegate members of the Members Council present at a meeting called for that purpose at which a quorum is present.