

## **Digital Commonwealth of Massachusetts By-Laws**

### **Section 1: Introduction and General Provisions**

The name of this organization shall be the Digital Commonwealth of Massachusetts, herein to be referred to as the Digital Commonwealth.

### **Section 2: Statement of Purpose**

The purpose of the Digital Commonwealth is twofold:

1. Promote the creation of digital library resources by libraries and other cultural organizations in the Commonwealth of Massachusetts
2. Provide public access to these resources

Building accessible collections enables Digital Commonwealth members to make their unique assets available to the widest range of researchers, scholars, students, and the general public.

To achieve these goals, the Digital Commonwealth shall provide

- Web portal access to digital library collections in the Commonwealth of Massachusetts
- A repository for digital collections created by member organizations
- Guidance and instruction on applying appropriate technologies used in the production of digital library resources

### **Section 3: Membership**

#### **Section 3.1 Membership Types**

The Digital Commonwealth has two types of members:

- Institutional Members
- Consortium (Group Sponsoring) Organization Members

#### **Section 3.1.1 Membership Requirements**

Institutional and Consortium (Group Sponsoring) Organization Members must meet the following criteria or else be granted eligibility by the Board of Directors:

1. Member must be a cultural institution (or a group of cultural institutions)
2. Member must be located primarily in Massachusetts
3. Member must sign a membership agreement
4. Member must pay the current membership fee (see section 3.2)

### **Section 3.1.2 Member Benefits**

Institutional and Consortium Members are eligible for the following:

- To have metadata harvested for inclusion in the central index when member metadata is in a compatible standard format.
- Listing in the online membership directory of the Digital Commonwealth.
- To select a representative eligible to vote in the Council of Members elections.
- To select representatives eligible to run for and hold Board of Directors positions.
- To select representatives eligible to sit on a Digital Commonwealth Committee.
- Support and training provided by the Digital Commonwealth.

Institutions that are members of a Digital Commonwealth Consortium Member are eligible for the following membership benefits:

- To have metadata harvested for inclusion in the central index as part of their Consortium Organization collection.
- Selected support and training provided by the Digital Commonwealth to Consortium Organizations for allocation to its members.

Participation on the Board of Directors or a Digital Commonwealth Committee is available to Institutions that are members of a Digital Commonwealth Consortium Member either through their Consortium as Consortium representatives or by joining the Digital Commonwealth as an Institutional Member.

### **Section 3.2 Membership Fees**

Membership fees are determined by a vote of the Board of Directors. The current fee structure is posted on the Digital Commonwealth Web Portal.

Membership fees do not include costs of contracted services, e.g., image and metadata creation, processing, or storage. Contracted services are performed by a separate agreement between institutions and contractors.

Digital Commonwealth's hosted Repository service is an optional service offered to members and subject to separate agreements.

## **Section 4: Council of Members**

### **Section 4.1 Composition of Council of Members**

There shall be a Council of Members which shall be comprised of one designated representative from each eligible member organization.

#### **Section 4.2 Powers and Rights**

The Council of Members, by majority vote except where noted, shall have the right to approve Board of Directors officers of the organization as provided in Section 6. The Council shall also have the right to approve and revise the Plan of Service and the Annual Budget for funding approval.

#### **Section 4.3 Meetings**

The Council of Members shall hold annual meetings and may elect the time and place for other meetings. Meetings of the Council may be called by a written request of ten percent of the Council, the President of the Board of Directors of the organization, or by a majority of the Board of Directors members then in office, by giving written notice (including electronic notice) of the date, time, place, and purpose of such meeting to the Council of Members at least thirty (30) days in advance of such meeting.

#### **Section 4.4 Quorum and Action at Meetings**

Ten (10) percent of the Council of Members shall constitute a quorum for the transaction of business at any meeting of the Council. At any meeting of the members at which a quorum is present, the vote of a majority of those present shall decide any matter, unless a different vote is specified by the guidelines.

#### **Section 4.5 Action without a Meeting**

Any action required or permitted to be taken at any Council of Members meeting may be taken without a meeting if a statement of approval of specific action is signed electronically or in writing by a quorum of the members. Such consent, which may be signed in counterparts (i.e., by each member), shall have the same force and effect as a vote of the Council of Members.

### **Section 5: Board of Directors**

The Board of Directors represents the Council of Members on all matters pertaining to Digital Commonwealth. The Board of Directors presents a plan of service to the membership at the annual meeting of the Council of Members. The Board of Directors makes policy, budget, vendor, personnel, and service decisions consistent with the approved Plan of Service and By-Laws.

The Board of Directors is composed of ten (10) elected voting members, five of whom shall serve as Officers and five as Directors of the Digital Commonwealth (see Section 6). In addition, up to five (5) ex-officio voting members may serve on the Board of Directors. Board of Directors members serve two year terms. The President and Vice-President will serve three-year terms. Terms will be staggered, so that no more than five (5) terms will expire in a given year.

Agencies providing contracted services and or financial support to Digital Commonwealth may be nominated and elected as ex-officio members by the Board of Directors. Four ex-officio member positions are reserved for representatives of the following organizations:

- a. Boston Public Library (BPL)
- b. Massachusetts Board of Library Commissioners (MBLC)
- c. Massachusetts School Library Association (MSLA)
- d. Massachusetts Library System (MLS)

Vacancies on the board of directors shall exist on the death, resignation, or removal of any director. Vacancies on the board will be filled after election by and approval of a majority of the remaining members of the board. As much as possible, effort will be made by the Board of Directors to solicit representation from the different types of member institutions: public, academic, school and special libraries; historical societies, museums, and other cultural institutions. The Board of Directors represents the diverse geography and varying size of participating institutions.

### **Section 5.1: Regular and Special Meetings**

Regular meetings of directors shall be held monthly at a place designated by the president of the Board. Special meetings of the board of directors may be called by the president, the vice president, the secretary, or by any two directors of the board. Such meetings shall be held at a place designated by the person or persons calling the special meeting.

### **Section 5.2: Quorum for Meetings**

A quorum shall consist of a majority of the members of the board of directors. Except as otherwise provided under the articles of incorporation, these bylaws, or provisions of law, no business shall be considered by the board at any meeting at which the required quorum is not present, and the only motion which the chair shall entertain at such meeting is a motion to adjourn.

### **Section 5.3: Majority Action as Board Action**

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors, unless the articles of incorporation, these bylaws, or provisions of law require a greater percentage or different voting rules for approval of a matter by the board.

### **Section 5.4: Committees**

The Board of Directors may form and dissolve committees and Task Forces as needed. Committees are established to address long-term issues. Any committee shall consist of at least three people who are affiliated with Digital Commonwealth member institutions; committees may include additional member representatives and non-member volunteers. Task forces may be convened by the Board of Directors to consider specific issues for a designated period of time. Inasmuch as possible, all Committees and Task Force appointments shall reflect the diversity of the institutional participants of the Digital Commonwealth.

## **Section 6: Officers**

The President, Past-President, Vice-President/President-Elect, Secretary, Treasurer of the Board of Directors will serve as officers of the Digital Commonwealth. The Board of Directors shall appoint initial officers and when vacancies occur between Council of Members meetings. Such other officers as may be deemed necessary may be recommended by the Board of Directors and approved by Membership at its annual meeting.

2a.The role of the President is to issue calls, establish agendas, and preside over Board of Directors and Council of Member meetings. In addition, the President ensures effective representation for Digital Commonwealth in other meetings and activities as appropriate. The President signs all bonds, contracts, and other instruments authorized by the Board of Directors and/or Council of Members.

2b.The role of the Past-President is to serve on the Board of Directors and assist with governance transition and leadership duties.

2c.The role of the Vice-President is to perform the duties of the President in the absence of the President and shall assist in the discharge of its leadership duties.

2d.The role of the Secretary is to record minutes of meetings of the Board of Directors and the Council of Members and to maintain all records of Digital Commonwealth activities.

2e.The role of the Treasurer is to oversee the Digital Commonwealth financial accountant and provide a financial report for monthly Board of Directors meetings and the annual Council of Members meeting.

## **Section 7: Management of Operations**

The role of the Board of Directors is to focus on policy and planning for the Digital Commonwealth. The Board of Directors may select a contracting agency to oversee the management of the Digital Commonwealth under the direction of the Board or its designee. The contracting agency would have authority on all matters relative to the operation of the Digital Commonwealth, except as specifically reserved to the Board of Directors or the Council of Members.

## **Section 8: Contracts**

The Board of Directors shall have the sole authority to enter into consensual, binding contracts on behalf of the Digital Commonwealth and its Council of Members. The Board of Directors must review and approve basic contract terms and approve the contract before it is executed.

A Board of Directors member who is in any way, directly or indirectly, interested in a contract or proposed contract shall disclose his or her interest at a meeting of the Board of Directors.

The Board of Directors shall be responsible for all contracts that have been authorized and approved by the Board of Directors, including agreements made with its employees. The Board of Directors shall authorize the President or Board of Directors to sign contracts. The contracting agency will manage all contracts according to the advice of the Board of Directors.

## **Section 9: Books and Records**

The Digital Commonwealth shall keep at the principal office of the organization correct and complete books and records of account; minutes of the proceedings of the Board of Directors; and a register of the names and addresses of the Directors of the organization. Any director, or agent or attorney thereof may inspect all books and records of the Digital Commonwealth, for any proper purpose at any reasonable time.

## **Section 10: Conflict of Interest Policy**

The purpose of the conflict of interest policy is to protect Digital Commonwealth's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

### **Section 10.1: Definitions:**

#### **1. Interested Person**

Any director, principal officer, or member of a committee with Board of Directors delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

#### **2. Financial Interest**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

**Section 10.2: Procedures:**

**1. Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with Board of Directors delegated powers considering the proposed transaction or arrangement.

**2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board of Directors or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

**3. Procedures for Addressing the Conflict of Interest**

- a. An interested person may make a presentation at the Board of Directors or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the Board of Directors or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the Board of Directors or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Directors or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

**4. Violations of the Conflicts of Interest Policy**

- a. If the Board of Directors or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board of Directors or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Section 10.3: Records of the Proceedings:**

The minutes of the Board of Directors and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board of Directors' or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### **Section 10.4: Compensation**

- a. A voting member of the Board of Directors who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### **Section 10.5: Annual Statements**

Each director, principal officer and member of a committee with Board of Directors delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

#### **Section 10.6: Periodic Reviews**

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.



### **Section 10.7: Use of Outside Experts**

When conducting the periodic reviews as provided for in Section 10.6, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of Directors of its responsibility for ensuring periodic reviews are conducted.

### **Section 11: Indemnification**

Any director or officer who is involved in litigation by reason of his or her position as a director or officer of Digital Commonwealth shall be indemnified and held harmless by the corporation to the fullest extent authorized by law as it now exists or may subsequently be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide indemnification rights).

### **Section 12: Dissolution**

In the event of the dissolution of the organization, the assets shall be applied and distributed as follows:

All liabilities and obligations shall be paid, satisfied and discharged, or adequate provision shall be made therefore. Assets not held upon a condition requiring return, transfer, or conveyance to any other organization or individual shall be distributed, transferred, or conveyed, in trust or otherwise, to charitable and educational organization, organized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, of a similar or like nature to this organization, as determined by the Board of Directors.

Disposition of Digital Commonwealth repository assets is covered in the agreements governing these contracted services.

### **Section 13: Amending By-laws**

These By-Laws (guidelines) may be amended at any meeting of the Council of Members by a two-thirds vote provided that the amendment has been submitted with the call for the meeting. Alternatively, amendments may be ratified by the Council of Members through a mailed or electronic ballot in which at least half of the Council members return ballots, and two-thirds of those voting approve the amendment. The Board of Directors may also amend these By-Laws (guidelines) by a two-thirds vote at any meeting of the Board of Directors, provided that the proposed amendment has been submitted with the notice of the meeting. The Board of Directors shall give written notice of such amendments to the Council of Members before the next meeting of members. Any amendment adopted by the Board of Directors shall be valid only until acted upon by the members at the next regular meeting or by mail/electronic ballot.