

CERTIFICATE OF INCORPORATION
OF
INTERNATIONAL CONFERENCE OF SYMPHONY
AND OPERA MUSICIANS, INC.

(Under Section 402 of the Not-for-Profit Corporation Law of the State of New York)

Each of the undersigned, being a natural person of at least eighteen years of age and acting as an incorporator of the corporation hereby being formed under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), certifies that:

FIRST: The name of the corporation is:

INTERNATIONAL CONFERENCE OF SYMPHONY AND OPERA MUSICIANS, INC.

SECOND: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

THIRD: The type of corporation which the corporation shall be under Section 201 of the NPCL is Type A.

FOURTH: (a) The corporation is organized, and shall be operated exclusively for, the promotion of the welfare of, and the betterment of the livelihood of, the orchestral performer. In furtherance of the foregoing, the corporation shall have the power and authority

(i) to represent, promote, protect, and advocate the interests of orchestras and of their future, current, and retired musicians;

(ii) to assist and support orchestras, labor organizations, arts organizations, educational and scientific institutions, and others in their respective efforts to better the lives of professional musicians and serve the art of music;

(iii) to collaborate with other organizations to further the interests of the corporation and its members; and

(iv) to exercise all of the powers conferred upon corporations by the NPCL, subject to any limitations contained herein or in the NPCL.

(b) Nothing herein shall authorize or empower the corporation to (i) directly or indirectly engage in, or include among its purposes, any of the activities mentioned in Section 404 of the NPCL, or (ii) engage in any act or practice prohibited by Section 340 of the General Business Law or other antimonopoly or antitrust statute of the State of New York.

FIFTH: The office of the corporation is to be located in the County of New York, State of New York.

SIXTH: The name and the address of each of the initial directors of the corporation are as follows:

<u>Name</u>	<u>Address</u>
David R. Angus	284 Castlebar Road Rochester, New York 14610
Robert Levine	7680 North Longview Drive Glendale, Wisconsin 53209-1862
Lucinda Lewis	4 West 31 st Street New York, New York 10001
Marsha Schweitzer	905 Spencer Street #404 Honolulu, Hawaii 96822
Stephanie Tretick	3979 Boulevard Drive Pittsburgh, Pennsylvania 15217-2619

SEVENTH: The duration of the corporation is to be perpetual.

EIGHTH: The Secretary of State is designated as the agent of the corporation upon whom process against the corporation may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the corporation served upon him is: c/o RubinBaum LP, 30 Rockefeller Plaza, New York, New York 10112, Attention: Stephen L. Solomon.

NINTH: The conditions of membership in the corporation, if any, shall be established in the bylaws of the corporation.

TENTH: Except to the extent, if any, permitted by the NPCL, no part of the assets, income, profits or net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, if any, trustees, if any, directors or officers.

ELEVENTH: Upon the dissolution of the corporation, the Executive Committee of the corporation shall, after paying or making provisions for the payment of all liabilities of the corporation, distribute all of the assets of the corporation to one or more corporations or other organizations engaged in activities substantially similar to those of the corporation subject, if so required by applicable law, to the approval of a Justice of the Supreme Court of the State of New York.

Subscribed and affirmed by the undersigned as true under the penalties of perjury on September 8, 2000.

Incorporator's signature:	Daniel Besdin
Incorporator's address:	c/o RubinBaum LLP 30 Rockefeller Plaza New York, New York 10112

**BYLAWS OF THE
INTERNATIONAL CONFERENCE OF SYMPHONY
AND OPERA MUSICIANS, INC.**

ARTICLE I - NAME

The name of this organization shall be the International Conference of Symphony and Opera Musicians, Inc. ("ICSOM").

ARTICLE II - PURPOSE

The purpose of ICSOM shall be as set forth in the Certificate of Incorporation of ICSOM.

ARTICLE III - MEMBERSHIP

Section 1. The following orchestras shall be known as charter members: Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Detroit, Indianapolis, Los Angeles, Metropolitan Opera, Minnesota, New York, Philadelphia, Pittsburgh, Rochester, San Francisco, St. Louis, and National (Washington DC).

Section 2.(a) In order to be eligible for membership, a non-member orchestra must be composed of at least 60 full-time members, a majority of whom are members of the American Federation of Musicians of the United States and Canada ("AFM"), and each of whose guaranteed minimum annual wage from playing in that orchestra is at least \$25,000.

Section 2.(b) Application for membership from an eligible orchestra shall be submitted to the Membership Committee in writing and only after said orchestra has ratified these bylaws and a majority of its members have consented to the application for membership.

Section 2.(c) If the Membership Committee approves the application, it shall notify the applying orchestra, which shall be required to send a delegate to the next Annual Conference, where the application shall be presented to delegates for approval.

Section 2.(d) In the event an orchestra fails to meet the criteria enumerated in Section 2.(a), it may nevertheless make application to the Membership Committee. If it demonstrates to the satisfaction of the Membership Committee why it should be admitted, the Membership Committee may approve such an application and recommend admittance to ICSOM.

Section 2.(e) If a member orchestra should encounter circumstances that cause the orchestra undue hardship in paying its annual dues, that orchestra may apply to the Governing Board for a grant of suspended status. An orchestra granted such status need not pay dues to ICSOM, but shall continue to be carried as a member orchestra, receive *Senza Sordino*, be entitled to send a non-voting representative to the Annual Conference, and be listed in the ICSOM Directory. For good and sufficient cause, the Governing Board may withdraw such status at the next Annual Conference, subject to appeal.

Section 2.(f) The delegate(s) of any member orchestra whose dues are not current at the time of the Annual Conference, or any subsequent special meeting, unless having requested and been granted an extension or waiver by the Governing Board, and subsequently been approved by a majority of the voting delegates, shall be seated and allowed to speak but shall not be allowed to vote or to make any motions. Should any member orchestra's dues be three years or more in arrears one day before the start of any Annual Conference, that orchestra shall be considered to have withdrawn from

ICSOM, and no delegate from said orchestra shall be seated. Should that orchestra desire to rejoin ICSOM, it must apply as would a new applicant for membership.

Section 2.(g) Foreign orchestras or conferences of foreign orchestras may apply for and be granted Associate status with the consent and approval of delegates to the Annual Conference. Terms and conditions for such status shall be established by the Governing Board. The Associate status of any foreign orchestra or conference of foreign orchestras may be withdrawn by the delegates to any Annual Conference.

Section 3. The collective membership of a symphony, opera, or ballet orchestra maintaining membership in ICSOM shall constitute a member orchestra.

Section 4. Each member orchestra shall retain its membership as long as it abides by these bylaws and the official policy of the organization.

ARTICLE IV – OFFICERS

Section 1. The officers of ICSOM shall consist of Chairperson, President, Secretary, Treasurer, Editor of *Senza Sordino*, and four Members at Large.

Section 2. The officers of ICSOM shall constitute the Governing Board, which shall meet during the Annual Conference and otherwise as necessary.

Section 3. All officers of ICSOM shall be elected for two-year terms at Annual Conferences, except as provided in Section 5. In odd-numbered years elections shall be held for President, Secretary, and two Members at Large. In even-numbered years elections shall be held for Chairperson, Treasurer, Editor of *Senza Sordino*, and the other two Members at Large. Election shall be by a majority of the votes cast for any office, with all voting delegates eligible to vote. Elections shall be conducted by secret ballot with the exception of any position for which only one candidate is nominated, in which case the candidate so nominated shall be declared elected by acclamation.

Section 4. Any member in an orchestra belonging to ICSOM may be elected to office, but may serve only so long as he/she remains a member of the AFM, is a member of a constituent orchestra, and does not assume any managerial functions, including serving in the position of Personnel Manager or Contractor for an employer or working in any position where he/she receives any remuneration from contracting or booking musical units (other than a regularly organized one of which he/she is a leader or member). No more than one member of any one member orchestra may serve on the Governing Board at the same time.

Section 5. In the event of a vacancy in the office of Chairperson or President, the remaining Chairperson or President shall assume the duties of both offices until an election is held at the next Annual Conference. In the event of a vacancy of such a remaining Chairperson or President, or in the event of a vacancy in the office of Secretary, Treasurer, Editor of *Senza Sordino*, or Member at Large, a replacement may be selected by the Governing Board to serve until an election is held at the next Annual Conference. Persons elected to fill these vacancies shall serve out the unexpired terms of office, if any, of officers originally elected.

Section 6. An officer may be removed for misconduct by a two-thirds vote of eligible voting delegates at any Annual Conference. Any officer may be suspended for misconduct until the next Annual Conference by unanimous vote of the other members of the Governing Board.

ARTICLE V - DUTIES OF OFFICERS, GOVERNING BOARD and COMMITTEES

Section 1. - Chairperson

Section 1.(a) The Chairperson shall be the chief executive officer of the organization and shall preside at all meetings of ICSOM and of the Governing Board. He/she shall appoint all committees not otherwise

provided for, subject to the approval of the Governing Board, and shall be an *ex-officio* member of all committees.

Section 1.(b) The Chairperson shall call meetings of the Governing Board when necessary. If other members of the Governing Board are not able to meet for a special matter, he/she shall be empowered to appoint a member of any member orchestra to help him/her on the specific matter, such appointment to terminate at the completion of the mission.

Section 1.(c) The Chairperson shall report his/her official activities at each duly convened meeting of ICSOM.

Section 1.(d) The Chairperson shall be entitled to vote as a voting delegate if so chosen by his/her orchestra.

Section 1.(e) The Chairperson is given full power to draw on the ICSOM treasury when deemed necessary to further the interests of ICSOM, and shall be authorized to incur expenses, and to receive payment or reimbursement of actual and reasonable expenses incurred, in the performance of his/her duties, subject to any limitations or policies adopted by the Governing Board.

Section 1.(f) The Chairperson shall be responsible for liaison with agencies and organizations outside ICSOM.

Section 1.(g) The Chairperson shall, by virtue of the office, be a delegate to the AFM convention.

Section 1.(h) At the expiration of his/her term of office, the Chairperson shall deliver to his/her successor when qualified to receive them all official books, papers, and other documents pertaining to his/her office under his/her control, clear of all encumbrance.

Section 2. - President

Section 2.(a) The President shall be responsible for the supervision of the operation of the organization, subject to the directions of the Chairperson, and for such other duties as directed by the Governing Board. As chief operations officer, he/she shall be responsible for the ICSOM-related activities of all member orchestras. He/she shall be responsible for supervising the ICSOM conductor evaluation program. He/she shall be an *ex-officio* member of all committees.

Section 2.(b) The President shall be advised by a President's Council composed of members of individual member orchestras selected by the Governing Board should he/she so request.

Section 2.(c) The President shall report his/her official activities at each duly convened meeting of ICSOM.

Section 2.(d) The President shall be authorized to incur expenses, and to receive payment or reimbursement of actual and reasonable expenses incurred, pursuant to his/her duties, subject to any limitations or policies set by the Governing Board.

Section 2.(e) The President shall, by virtue of the office, be a delegate to the AFM convention.

Section 2.(f) At the expiration of his/her term of office, the President shall deliver to his/her successor when qualified to receive them all official books, papers, and other documents pertaining to his/her office under his/her control, clear of all encumbrance.

Section 3. - Secretary

Section 3.(a) The Secretary shall keep a faithful record of the proceedings of all meetings, answer all communications pertaining to the affairs of ICSOM, cause the minutes of each annual meeting to be distributed to member orchestras within a reasonable length of time, notify all member orchestras of all meetings, and distribute any and all documents necessary to the proper functioning of the organization.

Section 3.(b) The Secretary shall procure and preserve the necessary books, papers, and other documents pertaining to his/her office and transmit them to his/her successor when properly qualified to receive the same, clear of all encumbrance.

Section 3.(c) The Secretary shall be authorized to incur expenses, and to receive payment or reimbursement of actual and reasonable expenses incurred, in the performance of his/her duties, subject to any limitations or policies set by the Governing Board.

Section 3.(d) The Secretary shall, by virtue of office, be an alternate delegate to the AFM convention.

Section 4. - Treasurer

Section 4.(a) The Treasurer shall collect all dues and contributions and shall keep a true account of all funds and disbursements.

Section 4.(b) The Treasurer shall receive all funds intended for ICSOM and cause them to be deposited into bank accounts in his/her name as Treasurer of ICSOM.

Section 4.(c) As may be needed at the discretion of the Governing Board, the Treasurer shall set up separate accounts for the Chairperson, the President, and the Secretary, with sufficient funds to pay the ordinary expenses incurred by each, pursuant to their duties. The Treasurer shall set up an account with sufficient funds to pay the cost of publication of *Senza Sordino*, and, if the Editor of *Senza Sordino* also supervises publication of the ICSOM Directory, the cost of publication of the ICSOM Directory. The Chairperson, President, Secretary, and Editor of *Senza Sordino* may each disburse funds from their individual accounts, if any, or using bank cards set up for them by the Treasurer to pay for ordinary expenses incurred pursuant to their duties. The Treasurer shall monitor all such disbursements and shall report any irregularities to the Governing Board. The Treasurer shall at all times maintain full access to and authority over all accounts holding any funds of ICSOM.

Section 4.(d) The Treasurer shall be the bookkeeper of ICSOM. He/she shall be authorized to incur expenses, and to receive payment or reimbursement of actual and reasonable expenses incurred, in the performance of his/her duties, subject to any limitations or policies adopted by the Governing Board. He/she shall submit at each Annual Conference a complete statement of all receipts and disbursements, including those of other officers, during his/her term of office. His/her books shall be open to examination by the Governing Board at any time.

Section 4.(e) At the expiration of his/her term of office, the Treasurer shall deliver to his/her successor all funds, books, and papers of ICSOM under his/her control, clear of all encumbrance.

Section 4.(f) The Treasurer shall, by virtue of office, be an alternate delegate to the AFM convention.

Section 5. - Editor of *Senza Sordino*

Section 5.(a) The Editor of *Senza Sordino* shall cause to be published no fewer than four issues of *Senza Sordino* annually.

Section 5.(b) The Editor of *Senza Sordino* shall be authorized to incur expenses, and to receive payment or reimbursement of actual and reasonable expenses incurred, in the performance of his/her duties, subject to any limits or policies adopted by the Governing Board.

Section 5.(c) The Editor of *Senza Sordino* shall, by virtue of office, be an alternate delegate to the AFM convention.

Section 5.(d) At the expiration of his/her term of office, the Editor shall deliver to his/her successor when qualified to receive them all official books, papers and documents pertaining to his/her office under his/her control, clear of all encumbrance.

Section 6. - Members at Large

Section 6.(a) The four Members at Large shall be responsible for the primary communication between the Governing Board and the ICSOM delegates.

Section 6.(b) A Member at Large shall be authorized to incur, and to receive payment or reimbursement for actual and reasonable expenses incurred, in the performance of his/her duties, subject to any limitations or policies adopted by the Governing Board.

Section 6.(c) At the time of the election of Members at Large in the year prior to an AFM convention, the voting delegates shall also select one of the Members at Large to be a delegate to the AFM convention. In the event that said Member at Large is unable to attend the AFM convention, the Governing Board shall designate an alternate delegate to attend.

Section 6.(d) Each Member at Large, by virtue of the office, shall be an alternate delegate to the AFM convention.

Section 7. - Governing Board

Section 7.(a) The Governing Board shall carry out the mandates of the voting delegates as determined at any duly convened meeting of ICSOM.

Section 7.(b) Matters not covered by the Bylaws shall be in the discretion of the Governing Board during the period between duly convened meetings of delegate from member orchestras. The disposition of such matters shall be in keeping with Section 7.(a) above and with the purpose of ICSOM as defined in the FOURTH (a) of the ICSOM Certificate of Incorporation.

Section 7.(c) The Governing Board shall determine the agenda before each regular or special meeting of the organization. The Secretary shall send, not later than thirty (30) days prior to the meeting, a copy of the agenda to each member orchestra so that the voting delegate may be prepared to adequately express the views of his/her orchestra.

Section 7.(d) The Governing Board shall adopt policies and may adopt limits regarding expenditures by officers.

Section 7.(e) In the event of the inability of the Chairperson or President to attend the AFM convention as a delegate, the Governing Board shall select an alternate delegate officer to attend.

Section 7.(f) The Governing Board shall have full power to draw on the ICSOM treasury to further the interests of ICSOM.

Section 8. - Committees

Section 8.(a) **Membership Committee:** The Membership Committee shall be composed of the President, the Secretary, who shall chair the committee, and one Member at Large selected by the Governing Board. The Membership Committee shall meet at such times as may be necessary from time to time to perform its responsibilities hereunder.

Section 8.(b) **Audit Committee:** The Governing Board shall appoint from its members an Audit Committee responsible for reviewing, at least once a year, the records of the Treasurer and reporting any irregularities to the entire Governing Board.

Section 8.(c) **Nominating Committee:** The Governing Board shall appoint a Nominating Committee which may, at its discretion, nominate candidates at each annual conference for those offices which are to be filled that year. Additional nominations may be made from the floor.

ARTICLE VI - MEETINGS

Section 1. A regular meeting (“**Annual Conference**”) of ICSOM shall be held once a year. The location for each Annual Conference shall be chosen by the voting delegates of a previous Annual Conference, or, if at the conclusion of an Annual Conference there has been no location chosen for the next Annual Conference, by the Governing Board.

Section 2.(a) ICSOM delegates shall be elected by AFM members in each member orchestra in accordance with each orchestra’s established procedure. Delegates must be members in good standing of the AFM. Each member orchestra shall elect one primary ICSOM delegate. A member orchestra may elect additional delegates (“alternate delegates”) to send to annual conferences in addition to, or in lieu of, the primary ICSOM delegate. Regardless of the number of delegates from a member orchestra who attend an annual conference, each member orchestra shall have only one vote. Each member

orchestra shall notify the ICSOM secretary in writing of the identity of the delegate and, if there is an alternate delegate(s), the identity and voting rights of each. Said notification shall be made as soon as feasible after the election. Only those delegates, or alternate or substitute delegates, elected by secret ballot, or by acclamation if unopposed, may make nominations or vote in the election of officers.

Section 2.(b) In the event a member orchestra is unable to send one of its own members as a delegate to a regular or special meeting of ICSOM because it will be engaged in a foreign or domestic tour at the time of such meeting, it may designate a member of another member orchestra to act as its proxy delegate, with all rights and privileges. The chairperson of such member orchestra shall notify its proxy delegate and the Secretary of ICSOM of such designation in writing.

Section 2.(c) In the event that a personal or family emergency arises which prevents the elected delegate or proxy from attending the Annual Conference, a substitute voting delegate may be appointed by the Orchestra Committee, provided that such appointment is in writing and sets forth the reason for the substitution.

Section 2.(d) No ICSOM delegate shall (1) serve in the position of a Personnel Manager or Contractor for an employer; or (2) work in any position where he/she receives any remuneration from contracting or booking musical units (other than a regularly organized one of which he/she is a leader or member).

Section 3. Any musician who is a member of an ICSOM orchestras shall be entitled to attend ICSOM meetings as an observer.

Section 4. Each member orchestra shall be allowed only one vote, even in those instances where an orchestra has one of its members on the Governing Board.

Section 5. A majority of member orchestras shall constitute a quorum.

Section 6. A special meeting of ICSOM shall be called by the Governing Board upon receipt of a petition stating the purpose of such meeting and signed by the chairpersons of not less than a majority of member orchestras. A special meeting of ICSOM may also be called by the Governing Board at any such time as may be required pursuant to Article X hereof.

Section 7. When a referendum of all member orchestras is called, each orchestra shall conduct the referendum in accordance with its own rules and procedures. Thereafter, the votes shall be tallied with each orchestra having one vote, and a simple majority of those orchestras whose votes have been received by the due date shall prevail.

Section 8. The order of business shall be as follows, unless changed by a majority of voting delegates present:

1. Chairperson's Report
2. President's Report
3. Secretary's Report
4. Treasurer's Report
5. Report of the Editor of *Senza Sordino*
6. Committee Reports
7. Unfinished Business
8. New Business
9. Choice of Location of Future Meetings
10. Good and Welfare

Section 9. Each ICSOM officer shall have the right to speak and to introduce motions at all meetings of ICSOM but shall only be entitled to vote if he/she is the voting delegate of his/her orchestra.

ARTICLE VII - RULES OF GOVERNMENT

The latest edition of Robert's *Rules of Order* shall govern the organization in all cases to which such rules are applicable and in which they are consistent with the bylaws of this organization.

ARTICLE VIII – DUES AND FINANCES

Section 1. The funds of ICSOM shall be created and maintained by dues and contributions by member orchestras, earned interest and other additional contributions and revenue.

Section 2. All funds shall be used to further the interests of ICSOM.

Section 3. For each member orchestra, the amount of dues assessed per year shall be the sum of:

- (a) the number of players guaranteed a minimum annual wage below \$16,000.00 times \$29.00;
- (b) the number of players guaranteed a minimum annual wage between \$16,000.00 and \$22,999.99 times \$34.00;
- (c) the number of players guaranteed a minimum annual wage between \$23,000.00 and \$39,999.99 times \$39.00; and
- (d) the number of players guaranteed a minimum annual wage of \$40,000.00 or more times \$47.00.

Section 4. In addition to the dues amounts set forth above in Section 3, each member orchestra shall pay an amount equal to the number of players times one dollar (\$1), to be set aside by the Treasurer and kept in a separate fund which, together with the interest generated, shall be used exclusively to provide payments of expense money to one or more members of ethnic groups underrepresented in American orchestras, including but not limited to African Americans, Hispanic Americans and Native Americans studying at *bona fide* music schools to be classical instrumentalists. The procedure for the selection of recipients of these monies shall be determined by the Governing Board.

Section 5. ICSOM dues shall be due September 1 of each year and payable by member orchestras on or before December 31. In the event that a member orchestra does not remit its dues by March 1 of a fiscal year, that member orchestra's dues shall be increased that year by an amount equal to the number of orchestra players times one dollar (\$1). An orchestra unable to pay dues by March 1 due to bankruptcy, work stoppage or other similar occurrence extending to that date will be forgiven such increase at the discretion of the Governing Board.

Section 6.(a) From the dues set forth in Section 3 above, an amount equal to \$2 per member shall be devoted exclusively to the ICSOM Emergency Relief Fund ("**ERF**"), to be used to provide temporary support, in the form of loans, to member orchestras in need of such support as the result of labor disputes or otherwise.

Section 6.(b) Member orchestras whose dues are fully paid and who have no outstanding loans from the ERF may borrow up to an amount equal to fifteen percent (15%) of the cash balance in the ERF as of the previous June 30, upon the approval of the ICSOM Governing Board. Such loans shall be free of interest for one year from the date the contract is settled or from the resolution of the emergency giving rise to the loan; thereafter, borrowing orchestras shall be charged the then current prime rate *per annum*.

Section 6.(c) The ICSOM Governing Board acting in its official capacity may borrow from the ERF such amount as it deems necessary. It shall repay such loan(s) on the same terms and conditions as any ICSOM orchestra, except that the term of the loan shall be no longer than one year from the date it is made.

Section 7. The Chairperson shall receive a yearly honorarium of \$3,000. The President, Secretary, Treasurer, and Editor of *Senza Sordino* shall each receive a yearly honorarium of \$2,000. The Secretary shall also receive an additional \$700 in recognition of his/her efforts in compiling, preparing, and distributing the minutes of the Annual Conference. The Editor of *Senza Sordino* shall also receive an additional

honorarium of \$150 per edition of *Senza Sordino* in recognition of his/her efforts in the preparation and distribution of said publication.

ARTICLE IX - SENZA SORDINO

Section 1. *Senza Sordino* shall be the official publication of ICSOM and shall reflect its official policy.

ARTICLE X - INDEMNIFICATION

Section 1.(a) ICSOM shall indemnify, to the extent permitted by current applicable law, any person made, or threatened to be made, a party to an action or proceeding other than one by or in the right of ICSOM to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of ICSOM served in any capacity at the request of ICSOM, by reason of the fact that he/she, his/her testator or intestate, was a Board member or officer of ICSOM, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein if such Board member or officer acted in good faith for a purpose he/she reasonably believed to be, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of ICSOM and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his/her conduct was unlawful. The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such director or officer did not act in good faith for a purpose for which he/she reasonably believed to be in, or in the case of service for any other corporation or any partnership, joint venture, trust employee benefit plan or other enterprise, did not act in opposition to, the best interests of ICSOM or that he/she had reasonable cause to believe that his/her conduct was unlawful.

ICSOM shall indemnify a Board member or officer of ICSOM made, or threatened to be made, a party to an action by or in the right of ICSOM to procure a judgment in its favor by reason of the fact that he/she, his/her testator or intestate, is or was a director or officer of the corporation, or is or was serving at the request of the corporation as director or officer of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, against amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred by him/her in connection with the defense or settlement of such action or in connection with an appeal therein, if such director or officer acted in good faith for a reason which he/she reasonably believed to be in, or in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise, not opposed to, the best interests of ICSOM, except that no indemnification under this paragraph shall be made in respect of (1) a threatened action, or a pending action, which is settled or otherwise disposed of, or (2) any claim, issue, or matter as to which such person shall be adjudged to be liable to ICSOM, unless and only to the extent that the court in which the action was brought or, if no action was brought, any court of competent jurisdiction, determines upon application that, in the view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

No indemnification or advance of the costs of defense under this Section shall be made which is, on the advice of labor counsel, contrary to the provisions of the Labor Management Reporting and Disclosure Act.

The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by ICSOM the expenses incurred in defending any such Proceeding in advance of its final disposition; *provided, however*, that if so required by the New York Not-for-Profit Foundation Law ("NPCL"), as in effect at the time of such payment, the payment of such defense expenses in advance of the final disposition of a Proceeding shall be made only upon receipt by ICSOM of an undertaking, by or on behalf of such indemnified party, to repay all amounts so advanced if it shall ultimately be determined that such indemnified party is not entitled to be indemnified under this Section or otherwise.

Section 1.(b) Anything herein to the contrary notwithstanding, no indemnification shall be made to or on behalf of any person if such person has not met the standard of conduct necessary to such indemnification set forth in Section 722 of the NPCL or established pursuant to Section 721 of the NPCL or imposed by any other applicable law. The termination of any Proceeding by judgment, settlement, conviction or on a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any person seeking indemnification under this Article did not meet the standard of conduct necessary therefore under the NPCL or any other applicable law. In addition, no indemnification shall be made with respect to any Proceeding initiated by any such person against ICSOM or an officer of ICSOM or a member of its Governing Board, other than to enforce the terms of this Section, unless such Proceeding was authorized by the Governing Board. Further, no indemnification shall be made with respect to any settlement or compromise of any Proceeding unless and until ICSOM has consented to such settlement or compromise.

Section 1.(c) In making any determination regarding any person's entitlement to indemnification hereunder-any determination as to whether a person has met an applicable standard of conduct shall be made in accordance with the provisions of Section 723 and 725 of the NPCL.

Section 1.(d) Written notice of any Proceeding for which indemnification may be sought by any person under this Article shall be given to ICSOM as soon as practicable. ICSOM shall then be permitted to participate in the defense of any such proceeding or, unless conflicts of interest or position exist between such person and ICSOM in the conduct of such defense, to assume such defense. In the event that ICSOM assumes the defense of any such Proceeding absent such conflicts, legal counsel selected by ICSOM shall be acceptable to such person. After such an assumption, ICSOM shall not be liable to such person for any legal or other expenses subsequently incurred unless such expenses have been expressly authorized by ICSOM. In the event that ICSOM participates in the defense of any such Proceeding, such person shall cooperate in good faith with any request that common counsel be utilized by the parties to any Proceeding who are similarly situated, unless to do so would be inappropriate due to actual or potential differing interests between or among such parties. ICSOM shall only assume the defense as provided in this Section where such an undertaking is consistent with state and federal law. In the event that the person seeking indemnification under this Article has not been successful on the merits in defending the action or proceeding, no indemnification or defense costs under this Article shall be paid without prior review and approval of the Board, or membership, as required by Section 723 of the NPCL.

Section 2. ICSOM shall have the power to purchase and maintain insurance to indemnify (i) ICSOM for any obligation that it incurs as a result of any indemnification obligation under the provisions of this Article, or any other indemnification obligation of ICSOM, (ii) any officers of ICSOM or other persons in instances in which they may be indemnified by ICSOM under the provisions of this Article or pursuant to any other indemnification obligation. In the event such insurance is purchased, any person seeking defense or indemnification under this Article shall cooperate with the insurance provider, and a material failure to do so may be deemed by ICSOM to foreclose indemnification under this Article.

Section 3. ICSOM may, to the extent authorized from time to time by the Governing Board, provide indemnification to employees or agents of ICSOM who are not officers of, or members of the Governing Board of, ICSOM with such scope and effect as shall be determined by the Governing

Board. Nothing in this Section 3 shall be understood to limit or restrict any right to indemnification under Section 1.(a) of this Article.

Section 4. The indemnification and other rights conferred by this Article shall not be exclusive of any other right permissible under applicable law that any person may have or hereafter acquire under any applicable law or upon the authorization thereof by resolution of the Governing Board or pursuant to the terms of an agreement providing for such rights.

Section 5. If any provision of this Article is determined to be unenforceable in whole or in part, such provision shall nonetheless be enforced to the fullest extent permissible, it being the intent of this Article to provide indemnification to all persons eligible hereunder to the fullest extent permitted under applicable law.

ARTICLE XI - AMENDMENTS TO BYLAWS

Section 1. No amendment shall be entertained which is not consistent with the FOURTH (a) of the ICSOM Certificate of Incorporation.

Section 2. Amendments to Articles II, VIII and XI of these bylaws may be submitted for approval at any regular or special meeting. Within thirty (30) days after the approval of such an amendment by a majority of voting delegates at such meeting, such amendment shall be referred to the member orchestras for ratification. Within ninety (90) days following the final day of the meeting, the member orchestras shall notify the ICSOM Secretary in writing of the approval or non-approval of such amendment(s). Adoption shall be constituted by two-thirds majority affirmation of those member orchestras voting, but in no event shall any proposed amendment(s) to the ICSOM bylaws be deemed adopted unless at least fifty percent (50%) of ICSOM member orchestras have actually cast their respective votes either for or against the adoption of such amendment(s).

Section 3. Amendments to these bylaws other than Articles II, VIII and XI may be adopted by two-thirds affirmative approval of the voting delegates present at any regular or special meeting of ICSOM.