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PROPOSAL FOR MERGER OF UCOA and TOA

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## **Proposal for Merger of UCOA and TOA Into A New Association**

Submitted by the UCOA-TOA Merger Committee

(John Barkat, Andrea Briggs, Wendy Friede, Dorothy Graham, Gordon Halfacre, Carolyn Noorbakhsh)  
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Dear Colleagues,

The UCOA-TOA Merger Committee (C6) is pleased to submit for your consideration and vote, a proposal for merger of the University and College Ombuds Association (UCOA) and The Ombudsman Association (TOA) into a single, new ombudsman association.

### Rationale

UCOA and TOA have, over many years, discussed the value of combining resources and merging to form a new association.

Impetus for these discussions included the recognition that funding of our respective ombuds offices is increasingly restricted and membership in, and time commitments to, two associations (impacting about 100 “overlap” members) is becoming difficult to justify. In addition there was recognition that there are significant external challenges to the profession that could be addressed by combining resources to pursue projects related to the American Bar Association, and legislation and regulations impacting the profession (such as the Sarbanes-Oxley Act, United States Sentencing Guidelines, new SEC determinations, Federal Mediation guidelines, ADR Act, and related items from countries around the world). Furthermore there was recognition that the number of International Organizational Ombudsman offices is expanding (or in need of assistance) and there is limited human and financial support to assist such programs. Additionally, steps required to effectively establish and advance our role as a profession, such as recognized Ombuds Certification, would require a consistent approach and support of these efforts. Furthermore, many association members simply recognized that both associations offered such similar programming and services that merger simply made sense.

### History

In 2001, responding to such input from association members, the UCOA/TOA boards formed a formal joint UCOA-TOA Joint Oversight Committee (JOC) to “identify and assess structural, operational, and programmatic collaborations specifically in terms of feasibility and membership needs.”

At the joint conference held in Washington, D.C., in spring of 2002, the JOC reported and recommended further talks should be pursued to explore merger. At the same conference attendees had an opportunity to learn about and discuss the commonalities and differences between the two organizations. After the conference a survey was sent to members of both organizations indicating that 80% of respondents favored further collaboration and consideration of merging.

During the fall of 2002, the two Boards discussed various ways to proceed and created a joint inquiry team charged “to explore different models of partnering.” The team was to bring back a report to the Boards at their annual conferences in 2003.

In spring 2003, the joint inquiry team reported back and noted that merger was the recommended form of partnership between UCOA and TOA. Both boards accepted the recommendation of the joint inquiry team to move forward with merger talks.

Towards this end, the Transition Oversight Committee (TOC) was formed to identify the various questions and concerns related to merger and to develop more detailed recommendations, structures and plans for the two boards. The TOC was comprised seven Subcommittees, (By-Laws, Finance, Board Structure, Membership, Communications, Training and Legal) each comprised of members of UCOA and TOA.

TOC completed its work and a joint report was issued to both Boards at the 2004 Annual Conference. The TOC recommendation stated: "...we believe that TOA and UCOA should merge to become a new organization." Among the reasons they cited were the bright future they envisioned for a stronger organization to represent organizational ombuds, and the friendly, collegial and productive way members of both associations worked together.

At the joint conference held in Tucson, Arizona, in spring 2004, the two boards met to review the TOC report and to identify any specific outstanding areas which needed to be identified and resolved before a final vote could be submitted to membership.

There were several issues identified at that meeting including two (finances and membership) that were determined to be high priority. It was agreed that these issues would require the work of two subcommittees with membership from both organizations. Although there were several issues identified, both Boards prioritized and agreed on those which must minimally be addressed prior to merger.

At the annual business meetings of both associations, informal "straw" votes were conducted to assess membership support regarding merging. The response was overwhelmingly supportive from members of both associations.

#### History Since the 2004 Joint Conference

In 2004, the boards then appointed a committee of six (C6), three board members from each association, to serve as final negotiation committee to resolve any remaining issues and to make a proposal which C6 was to present to the boards and membership, to be decided by membership vote. It was recognized, consistent with the TOC recommendation to both boards, that if agreement was reached on these issues (with which the C6 was charged) then it would be prudent to move to merge with the understanding that other issues could be dealt with within the framework of a new association.

Midway through 2004, and upon positive report from the C6 committee, both boards committed to jointly retaining an attorney, Michael Deese, to assist with final stages of presenting the merger proposal to membership.

Finally, in 2005, both Boards commended C6 on their work and asked them to prepare a proposal for membership vote by the Annual Conferences in April.

### Result

The committee of six, as duly appointed negotiation representatives of our respective boards, has now completed its work as charged, has reached agreement on all areas identified and submitted to us as necessary for merger by both boards of directors, and is submitting the following to our respective memberships for consideration and vote.

### Documents For Your Consideration

In order for a merger to take place the following documents must be shared with and voted on by both associations:

1. New Bylaws
2. Agreement and Plan for Merger and related appendices.

Please note that, for legal purposes, the process for merger occurs in two steps. First, UCOA will merge into TOA (since we must incorporate in a state where one association is already registered). This is why the document titled Agreement and Plan of Merger refers to UCOA becoming part of TOA.

The second step happens immediately afterwards when legal documents are submitted by our attorney changing TOA into a new association. The new association will be defined by the newly created bylaws.

### Question for Vote

The question for the TOA membership is:

“In accordance with the terms of the Agreement and Plan of Merger, together with its Exhibits 1-3, which Agreement has been approved by the Board of The Ombudsman Association (TOA) and is under consideration by the Board of the University and College Ombuds Association (UCOA), UCOA and TOA should be merged into one organization. A "YES" vote signifies being in favor of the merger; a "NO" vote signifies being opposed to the merger. The vote of the TOA membership is dependent and contingent upon approval of the Agreement and Plan of Merger by the UCOA Board and the UCOA membership.”

The question for the UCOA membership is: “In accordance with the terms of the Agreement and Plan of Merger, together with its Exhibits 1-3, which Agreement has been approved by the Boards of the University and College Ombuds Association (UCOA) and The Ombudsman Association (TOA), UCOA and TOA should be merged into one organization. A “YES” vote signifies being in favor of a merger; a “NO” vote signifies being opposed to a merger.”

The questions above are different due differences in the legal requirements for the timing of the votes by the two organizations.

### Next Steps

It is the belief of our committee that the new Bylaws, the Agreement and Plan, and material from The Oversight Committee (TOC) that preceded us, serve as a strong and viable starting point for a new association. As with any new venture, there will undoubtedly be many details which will need to be completed on and after merger.

If the respective associations' votes were to support merger, then the associations will immediately submit necessary legal documents to consummate the merger. The goal is to have a merger date of no later than July 1, 2005 so that necessary business (such as 2006 conference planning) can proceed in a timely manner. It should be noted that this is only one month after the dates originally proposed by the TOC (June 1, 2005).

#### Conclusion

The C6 would like to thank our Boards and Membership for their confidence in our work, and for committing that our proposal be directly submitted to, and determined by, membership vote. Our task has not been easy. We also recognize that as individuals and associations we have differences. Nevertheless, our work, and that of the TOC and other successful joint ventures, convinces us that these differences can be overcome by commitment to a mutually acceptable process, and a shared common belief in the value and importance of our profession.

## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER dated this 16<sup>th</sup> day of March, by and between The Ombudsman Association, a Virginia nonprofit corporation (“TOA”), and the University and College Ombuds Association, an Illinois nonstock corporation (“UCOA”).

WHEREAS, TOA and UCOA share the goals of promoting the profession of organizational ombudsmanry, advancing the understanding of the profession internationally, assisting with the establishment of ombudsman offices in the private and public sectors, ensuring the availability of effective training for ombuds professionals, and fostering cooperation and exchange with other professional ombudsman organizations and professionals engaged in dispute resolution; and

WHEREAS, a Merger Task Force consisting of members of the Boards of Directors of TOA and UCOA has recommended that the goals of each corporation would be most effectively achieved if the two corporations were to merge; and

WHEREAS, the Boards of Directors of TOA and UCOA have considered that the goals of each corporation would be most effectively achieved if the two associations were to merge; and

WHEREAS, the Boards of Directors of the two corporations, in considering the shared interests of TOA and UCOA, the shared membership of TOA and UCOA, the history of cooperation between TOA and UCOA, and the efficiencies to be gained by combining the two corporations into one entity, deem it advisable and in the best interests

of each that UCOA be merged with TOA, and have adopted resolutions approving this Agreement and Plan of Merger and authorizing that it be submitted to their respective members for approval.

NOW, THEREFORE, to effect the merger and in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto do hereby prescribe the terms and conditions of the merger and the mode of carrying the same into effect as follows:

1. Merger of UCOA into TOA.

Upon the Effective Date of the merger, UCOA shall be merged with and into TOA, which shall be the surviving corporation, pursuant to the procedural provisions set forth in paragraph 10 hereof. The corporate existence of TOA with all of its purposes, powers and objects, shall, except as provided herein with respect to amendment of TOA's Articles of Incorporation and Bylaws, continue unaffected and unimpaired by the merger.

Upon the Effective Date of the Merger, the separate corporate existence of UCOA shall cease, and thereupon TOA and UCOA shall be a single corporation, to wit, and pursuant to the amendment of the TOA Articles of Incorporation, International Ombudsman Association (hereinafter sometimes referred to as the "Surviving Corporation"), and such Surviving Corporation shall be governed by the laws of the Commonwealth of Virginia.

2. Vesting of Assets and Liabilities of UCOA in TOA.

Upon the Effective Date of the merger, all rights, immunities, privileges, powers and franchises of the two associations, both of a public and a private nature, all property, real, personal and mixed, all debts due on account, and all other things belonging to the two associations and all and every other interest, shall vest in the Surviving Corporation without further act or deed as effectually as they were vested in the former corporations, and the Surviving Corporation shall thenceforth assume and be responsible for all debts, liabilities, obligations and duties of each of the corporations and all debts, liabilities, obligations and duties shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities, obligation and duties had been incurred or contracted by it, but the liabilities of each corporation or of their directors or officers shall not be affected, nor shall the rights of creditors thereof or of any person dealing with the two corporations, and all rights of creditors of the two corporations shall be preserved unimpaired, and any action or proceedings pending by or against any of the two corporations may be prosecuted to judgment the same as if the merger had not taken place, which judgment shall bind the Surviving Corporation, or the Surviving Corporation may be proceeded against or substituted in its place.

If at any time after the Effective Date of the merger the Surviving Corporation shall consider or be advised that any further assignments or assurances in law or any other things are necessary or desirable to vest, perfect or confirm, on record or otherwise, in the Surviving Corporation the title to any property or rights of UCOA acquired or to be acquired by reason of, or as a result of, the merger, UCOA and its proper officers and directors shall and will execute and deliver all such proper deeds, assignments and



assurances in law and do all things necessary or proper to vest, perfect or confirm title to such property or rights in the Surviving Corporation and otherwise to carry out the purpose of this Agreement, and the proper officers and directors of UCOA and the proper officers and directors of the Surviving Corporation are fully authorized in the name of UCOA or otherwise to take any and all such action.

3. Name.

Upon the Effective Date of the merger the name of the Surviving Corporation shall become International Ombudsman Association (“IOA”).

4. Articles of Incorporation.

The Articles of Incorporation of the Surviving Corporation shall be the Articles of Incorporation of TOA, attached hereto and made a part hereof as Exhibit 1, except that, upon the Effective Date of the merger, the “Articles of Amendment to the Articles of Incorporation of TOA,” attached hereto and made a part hereof as Exhibit 2, shall be filed with the State Corporation Commission of the Commonwealth of Virginia.

5. Bylaws.

The Bylaws of the Surviving Corporation shall be the Bylaws of TOA, except that, upon the Effective Date of the merger, the Bylaws shall thereupon be amended to read in their entirety as set forth in the Bylaws attached hereto and made a part hereof as Exhibit 3. Such Amended Bylaws shall be the Bylaws of the Surviving Corporation until

the same shall thereafter be altered, amended or repealed from time to time in accordance with law, the Articles of Incorporation of the Surviving Corporation and said Bylaws.

6. Directors of Surviving Corporation.

On and after the Effective Date of the merger, the members of the Board of Directors of the Surviving Corporation for the year 2005 shall be eight of the current directors of TOA and eight of the current directors of UCOA, as appointed by the respective Boards and including the Treasurers of TOA and UCOA. Of the sixteen directors, the terms of six will expire at the end of 2005, the terms of five will expire at the end of 2006, and the terms of the remaining five will expire at the end of 2007, as determined by the Board. The number and manner of electing directors of the Surviving Corporation in years beyond 2005 shall be as set forth in the Bylaws attached hereto as Exhibit 3. Directors who, upon the conclusion of their initial term on the Surviving Corporation's Board of Directors, will have served either four consecutive years on the boards of directors of UCOA and the Surviving Corporation or six consecutive years on the boards of directors of TOA and the Surviving Corporation, shall not be eligible to serve again on the Surviving Corporation's board for a minimum of three years.

7. Officers of Surviving Corporation.

As soon as possible following the Effective Date of the merger, a President, a Vice President, and a Secretary shall be elected by the members of the Surviving Corporation's 2005 Board of Directors from among themselves. The past Treasurers from both TOA and UCOA shall continue in office as Treasurer and Assistant Treasurer

of the Surviving Corporation for 2005, as determined by the Board. The manner of electing officers of the Surviving Corporation in years 2006 and beyond shall be as set forth in the Bylaws attached hereto as Exhibit 3.

8. Membership.

All members of TOA shall continue to be members of the Surviving Corporation on the Effective Date of the merger. All members of UCOA who are not already members of TOA shall automatically become members of the Surviving Corporation on the Effective Date of the merger. All members of the Surviving Corporation on and after the Effective Date of the merger, whether continuing members or automatic new members, shall thereafter be subject to all of the requirements of membership as set forth in the Articles of Incorporation, the Bylaws and this Agreement, provided, however, that any member may resign from membership in the Surviving Corporation at any time within the first 30 days following the latter of the Effective Date of the merger or any membership reclassification which results from the merger without incurring any new obligations to the Surviving Corporation. Irrespective of whether a member chooses to resign, obligations due to TOA or UCOA as of the Effective Date of the merger shall thereafter be and remain due to the Surviving Corporation.

9. Dues Structure.

The initial annual membership dues in the Surviving Corporation on and after the Effective Date of the merger shall be as follows:

Members New – \$195

Members renewing – \$170

Associates New- \$195

Associates renewing – \$170

Affiliates - \$145.

The Board shall determine in what manner and, amount, if any, dues for 2005 shall be payable by new and continuing members.

10. Procedural Provisions.

(a) Submission to TOA and UCOA Boards of Directors and Members.

This Agreement and Plan of Merger shall comply with the provisions of the Virginia Nonstock Corporation Act and the Illinois General Not For Profit Corporation Act.

This Agreement and Plan of Merger has been submitted to the Boards of Directors of TOA and UCOA for approval in accordance with and in the manner provided in Illinois and Virginia law and the Articles of Incorporation of TOA and UCOA.

This Agreement and Plan of Merger shall be submitted to the members of TOA for approval in accordance with and in the manner provided in the Virginia Nonstock Corporation Act and the Articles of Incorporation of TOA.

This Agreement and Plan of Merger shall be submitted to the members of UCOA for approval in accordance with and in the manner provided in the Illinois General Not For Profit Corporation Act and the Articles of Incorporation of UCOA.

(b) Effective Date of the Merger.

Provided that the members of TOA and UCOA shall have approved and adopted this Agreement and Plan of Merger by the vote required by their respective state corporation statutes and articles of incorporation, and provided further that all necessary and appropriate tax certificates have been obtained from state authorities, and provided further that this Agreement and Plan of Merger and all appropriate Articles of Merger and certificates in respect thereof have been filed and/or recorded in accordance with the statutes of Virginia and Illinois, the merger shall become effective upon the date when the final Certificate of Merger is issued.

11. Assets, Liabilities, Reserves, Accounts.

Upon the Effective Date of the merger, the assets, liabilities, reserves and accounts of UCOA shall be taken upon the books of the Surviving Corporation.

12. Corporate Acts of UCOA.

All corporate acts, plans and policies of UCOA, its members, Board of Directors, committees, officers and agents, to the extent not inconsistent with the acts, plans or policies of the Surviving Corporation, which were valid and effective immediately prior to the Effective Date of the merger shall be taken for all purposes as the acts, plans and policies of the Surviving Corporation, and shall be as effective and binding thereon as the same were with respect to UCOA.

13. Termination.

This Agreement and Plan of Merger shall be considered terminated and abandoned in the event that it is not approved by the members of TOA and UCOA.

In the event of the termination and abandonment of this Agreement and the merger, this Agreement shall become void and have no effect and there shall be no liability on the part of the two corporations, their members, directors or officers in respect thereof.

14. Representations, Warranties and Covenants.

(a) TOA represents warrants and covenants as follows:

(i) TOA is a nonstock, nonprofit corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and has full power and authority to make and perform this Agreement and Plan of Merger according to its terms.

(ii) No approval of this Agreement and Plan of Merger by any regulatory authority is required by law, and neither this Agreement and Plan of Merger nor the performance thereof will violate any provisions of the TOA Articles of Incorporation or Bylaws or equivalent governing instruments of TOA or any applicable law or regulation of any governmental authority.

(iii) TOA is not subject to any charter, bylaw, indenture, judgment or other restriction which would prevent the consummation of the transactions contemplated in this Agreement and Plan of Merger.

(iv) TOA is not subject to any pending or threatened litigation or proceeding which might materially and adversely affect its financial condition or its continued

operations. TOA has provided its most recent financial statement to the Board of Directors of UCOA.

(b) UCOA represents warrants and covenants as follows:

(i) UCOA is a nonstock, nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and has full power and authority to make and perform this Agreement and Plan of Merger according to its terms.

(ii) No approval of this Agreement and Plan of Merger by any regulatory authority is required by law, and neither this Agreement and Plan of Merger nor the performance thereof will violate any provisions of the UCOA Articles of Incorporation or Bylaws or equivalent governing instruments of UCOA or any applicable law or regulation of any governmental authority.

(iii) UCOA is not subject to any charter, bylaw, indenture, judgment or other restriction which would prevent the consummation of the transactions contemplated in this Agreement and Plan of Merger.

(iv) UCOA is not subject to any pending or threatened litigation or proceeding which might materially and adversely affect its financial condition or its continued operations. UCOA has provided its most recent financial statement to the Board of Directors of TOA.

15. Governing Law.

This Agreement and Plan of Merger shall be construed in accordance with the laws of the Commonwealth of Virginia.

16. Agent for Service of Process in the State of Illinois.

The Surviving Corporation shall be subject to service of process in the State of Illinois in any proceeding for the enforcement of any obligation of UCOA and shall irrevocably appoint the Secretary of State of the State of Illinois as its agent to accept service of process in any such proceeding.

17. Notice of Material Facts.

TOA and UCOA shall immediately give to the other immediate notice of any claim, event or transaction that would or does materially and adversely affect its business, properties, operations or financial condition. Any notice required hereunder shall be given by facsimile and certified mail to the president of each corporation at his or her office address.

18. Cooperation in Carrying Out Agreement.

TOA and UCOA agree to cooperate in carrying out the provisions of this Agreement and Plan of Merger to the end that the merger contemplated herein may be duly consummated, and, until such consummation, to carry on business and conduct their affairs in, and only in, the usual and customary manner, provided, however, that the parties acknowledge that TOA shall be permitted to continue with its process of evaluating professional management.



19. Termination for Failure to Consummate Merger.

The Board of Directors of TOA or UCOA may, at its option, terminate this Agreement and Plan of Merger (a) at any time prior to the Effective Date upon receipt of a disclosure required by paragraph 17 hereof or upon learning of facts which should have been disclosed under said paragraph 17; and (b) for any reason if the merger has not become effective on or before October 1, 2005.

20. No Rights or Remedies in Third Parties.

Except as otherwise expressly provided in this Agreement and Plan of Merger, nothing herein expressed or implied is intended, or shall be construed, to confer upon or give any person, firm or corporation other than TOA and UCOA and their respective members any rights or remedies under or by reason of this Agreement and Plan of Merger.

21. Execution of Counterparts.

This Agreement and Plan of Merger may be executed in any number of counterparts. Each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement and Plan of Merger.

22. Entire Agreement

This Agreement and Plan of Merger, with Exhibits 1 through 3 hereto, supersedes all prior merger agreements, written or oral, between TOA and UCOA as of the date of execution hereof. This Agreement and Plan of Merger shall constitute the entire

agreement between the parties and shall not be modified except by a further agreement in writing executed by authorized representatives of both parties.

23. Severability.

In the event that, for any reason, any provision of this Agreement and Plan of Merger is construed to be invalid, the invalidity of such provision is not to be considered or held to impair or invalidate any other provision of this Agreement and Plan of Merger unless a failure of consideration would result thereby.

24. Filing of Required Documents.

The parties hereby agree to file in a timely manner such documents as are required, in the opinion of counsel, to be filed with any governmental authority.

# International Ombudsman Association Bylaws

## Article I - Name

The name of the organization is International Ombudsman Association, to be referred to throughout these bylaws as "the Association."

## Article II - Mission of the Association

The Association's purposes are to:

- A. Serve practicing International Ombudsman and others using Ombudsman skills in their work.
- B. Advance understanding of the profession internationally.
- C. Assist with the establishment of Ombudsman offices in the private and public sectors.
- D. Ensure the availability of effective training for Ombudsman professionals.
- E. Foster cooperation and exchange with other professional Ombudsman organizations and professionals engaged in dispute resolution.
- F. Establish educational standards, standards of practice and codes of ethics for Ombudsman practitioners.

## Article III – Membership

The Association shall consist of the following classes of members:

- A. Member: Members are practicing Ombudsman who:
  - 1. are employed 50-100% time as an Ombudsman by an organization, and
  - 2. have no other role in the organization by which they are employed, and
  - 3. agree to adhere to the Association's Standards of Practice.

Members are entitled to vote on all matters that are presented to the Association, provided that they are current in their dues and other obligations to the Association.

- B. Associate Member: Associate Members are practicing Ombudsman who:
  - 1. are employed as an Ombudsman by an organization, and
  - 2. may have additional roles within their organization, but
  - 3. do not carry additional roles within the organization entailing formal compliance, regulatory, enforcement, adjudicatory, or disciplinary functions, and
  - 4. agree to adhere to the Association's Standards of Practice.

Associate Members must be current in their dues and other obligations to the Association.

Associate Members are eligible to vote only for the election of directors and the Associate Member representative to the Board of Directors.

C. Affiliate Member: Affiliate Members are persons or entities who or which support the purposes of the Association but do not qualify as Members or Associate Members, including without limitation individuals who offer the Ombudsman service to an organization on a contract basis, individuals employed in control functions, such as legal, faculty governance, compliance, audit, human resources or administration, and other persons or entities as determined by the Board of Directors.

Affiliate Members are not eligible to vote.

Affiliate Members must be current in their dues and other obligations to the Association. With the approval of the Board, Affiliate Members may participate in and/or chair committees and/or task forces from time to time.

D. Distinguished Emeritus. This membership status includes retired Ombudsman who have served the Association and/or profession with distinction. The Board will accept nominations from members and will select the recipients for the distinguished title.

Distinguished Emeritus members are not eligible to vote and are not required to pay dues to the Association.

E. Acceptance of members and duration of membership.

1. Members of the Association shall consist of those persons whose applications for membership are accepted by the Association. Applications for membership may be submitted at any time to the Association, accompanied by a yearly membership fee in an amount to be determined by the Board of Directors.

2. The Board will establish yearly membership fees by November 1 of the preceding year. Memberships are valid from January 1 to December 31.

3. The Membership Committee is responsible for approval of new applications.

4. Membership qualifications shall be published in the Association's newsletter and/or on the website. Any person accepted as a member in any class may remain in that class for so long as the membership criteria are met and the member remains current in all dues and other obligations to the Association. Members delinquent in their dues or other obligations to the Association for 120 days shall, after receiving written notice of same, have their membership terminated. Any member whose membership has been so terminated and who desires to reapply for membership shall, as a condition of reapplication, be required to pay to the Association the amount due as of the date of termination.

5. Questions concerning membership class will be resolved by the Membership Committee and, if necessary, the Board of Directors.

## **Article IV - Board of Directors**

A. Responsibility for the operation of the Association shall be vested in the Board of Directors, which shall consist of not less than 13 or more than 17 Directors, all of whom shall be Members. In addition, there shall be at least one Associate Member Representative to the Board of Directors, as determined by the Board. Should the directorship of the Immediate Past President of the Association have terminated, that person shall be an ex officio, non-voting attendee at meetings of the Board for a period of one year.

B. Separate and distinct elections will be held annually for a) Election of Members to the Board and b) Election of Associate Member Representative(s) to the Board. Associate Member Representatives will be elected by Associate Members only.

C. Board Members may be elected by the Members and Associate Members to no more than two (2) consecutive 3-year terms of office. Associate Member Representatives will be elected by the Associate Members to a maximum of one (1) 2-year term.

D. After service of two (2) consecutive 3-year terms, an outgoing Director may not be re-elected to the Board for a period of three years. No person who has served a two-year term as the Associate Member Representative to the Board may serve again in that position until at least two years have elapsed since the completion of his or her two-year term in office.

E. Associate Member Representatives to the Board of Directors:

1. will be entitled to speak at Board meetings;
2. will be expected to communicate issues and/or ideas to other Associate Members;
3. will not be eligible to vote on matters before the Board; and
4. will be listed separately from the listing of the Board members.

F. No Director or Associate Member Representative shall receive, by reason of such directorship, any dividend, profit, or compensation from the Association, provided that reasonable expenses incurred on behalf of the Association in the course of any activity for the Association may, as determined by the Board of Directors, be reimbursed by the Association.

G. A Director or Associate Member Representative may resign at any time by submitting a written resignation to the President, or in the case of the President, to the Vice President. A Director or Associate member Representative will be deemed to have resigned from the Board, as well as from any Association office held, in the event that he or she is absent from three consecutive Board meetings, provided that the Board may waive this requirement in the event of extenuating circumstances. The Board of Directors shall fill any vacancies on the Board or in the position of Associate Member Representative to the Board. A Director or Associate Member Representative elected by the Board of Directors to fill a vacancy shall serve the balance of his or her predecessor's term.

H. The Board of Directors shall consist of no more than one Member from any ombudsman unit, as defined by the Board of Directors.

I. A Director may be removed from the Board with or without cause by a majority vote of the Members and Associate Members at a meeting called for that purpose. An Associate Member Representative to the Board may be removed from that position either with cause by a two-thirds vote of the Board or with or without cause by a majority vote of the Associate Members at a meeting called for that purpose.

## **Article V - Officers**

A. Officers: The Officers of the Association shall include the President, Vice President, Secretary and Treasurer and such other officers as the Board of Directors may from time to time appoint or elect. Such officers, except any assistant officer appointed by the Board, shall maintain Member status. An individual may only serve in one Association office at a time.

B. Terms: Officers shall be elected by and from among the Directors at the initial meeting of the Board following the annual election of Directors. The President and Vice President shall be elected to one-year terms, and there shall be no limit upon the number of consecutive terms a person may serve in the same office, provided that no person may serve as an officer of the Association beyond the expiration of his or her second consecutive three-year term as a Director. The Secretary and Treasurer shall serve two-year terms;

however, the Secretary and Treasurer shall begin their terms in alternate years. The Immediate Past President shall, if his or her term as a Director has expired upon the conclusion of service as President, remain on the Board of Directors in an ex officio capacity for a period of one year thereafter.

C. Compensation: Officers shall not receive any compensation for their services to the Association.

D. Duties:

1. The President, subject to the supervision of the Board of Directors, shall serve as the chief executive officer of the Association, shall preside at all meetings of the Association and the Board of Directors, and shall perform all duties customary to that office.

2. The Vice President will assume the duties of the President in his/her absence and fulfill other duties as assigned by the Board of Directors or the President.

3. The Treasurer shall keep or cause to be kept regular books of account which are to be available at all times for inspection by the Board and shall submit a report to the Board of Directors whenever requested to do so by the Board. Subject to the supervision and control of the Board of Directors, the Treasurer shall oversee the receipt and disbursement of the Association's funds.

4. The Secretary shall be responsible for the minutes of all meetings of the members and Board, shall give or cause to be given notice of meetings of members and of the Board of Directors and shall perform all duties commonly incident to such office or which may be required of the Secretary by the Board or the President. The Secretary shall have the authority to attest to the signature of the President or any other officer on any documents as to which such attestation is required.

5. In addition to their specifically assigned duties and powers, the President, Vice President, Secretary and Treasurer shall be charged with such other duties and shall have such powers (to the extent permitted by law) as may be delegated to them from time to time by the Board of Directors or any Officer herein authorized to do so or as may be imposed on them by law.

E. Vacancies: The Board of Directors will fill any vacancy occurring in Officer position(s). An individual appointed to fill an Officer vacancy must be an Association Member, and shall serve the balance of his or her predecessor's term.

F. Removal: Officers may be removed from office with or without cause by a two-thirds vote of the Board of Directors.

G. Agents and Employees: The Board of Directors may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board.

## **Article VI - Meetings**

A. Meetings of the Board of Directors

1. Regular meetings: A regular meeting of the Board of Directors shall be held, without other notice than these Bylaws, either before or after and in the same location as the Annual Meeting, unless the Board of Directors agrees to and establishes a different time or place for such annual meeting.

Any other regular meeting of the Board of Directors may be held at such time and place as may be established from time to time by the Board of Directors.

At any meeting of the Board of Directors, Directors may participate by means of a conference call or other communications technology which allow simultaneous participation/ communication.

2. Special Meetings: Special meetings of the Board may be called by the President or one-third (1/3) of the Directors, provided that a minimum of three (3) days notice is given stating the purpose for which the meeting is being called. Notice may be given by telephone, mail, facsimile, or electronic media.

3. Action by the Board of Directors: The affirmative vote of a majority of the Directors present at any meeting at which a quorum is present shall be sufficient to transact any business which may properly come before the Board.

Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if it is consented to in writing by the entire Board; for purposes hereof, any such written consent may be communicated by mail, facsimile, and electronic media.

#### B. Meetings of the Association

1. Annual Meeting: There will be an Annual Meeting of the Association. At the Annual Meeting, the Members shall confirm those Board Members and Associate Member Representatives who were elected. Members will also hear the report of the Treasurer, and transact such other business as may otherwise properly come before them.

2. Special Meetings: Special meetings of the Association may be called by the President, or one-third (1/3) of the Board Members, or by the Secretary or any other Officer upon written request of at least one-fifth (1/5) of the voting Members.

3. Place of Meeting: The Board may designate the location for any Annual Meeting or for any special meeting called by the Board.

4. Notice of Meetings: Unless otherwise required by law, written notice stating the location, date, and time of any meeting of the Association shall be delivered to each Member, Associate Member and Affiliate Member not less than ten (10) days before the date of such meeting. In the case of a special meeting, the purpose for which the meeting is called shall be stated in the notice. Written notice may be given by mail, facsimile, and/or electronic media.

#### C. Quorum

1. Meetings of the Board of Directors: A quorum for the purpose of the legal transaction of business at any meeting of the Board shall be fifty percent (50%) of the Members of the Board, including at least one Officer. If a quorum is not present at any meeting of the Board of Directors, a majority of the Board present may recess the meeting, and may also set a time and place to reconvene the meeting, or may adjourn the meeting. Associate Member Representative(s) to the Board are not included in determining whether a quorum is present.

2. Meetings of the Association: A quorum for the purpose of the legal transaction of business at any meeting of the Members shall consist of a twenty-five percent (25%) of the total number of Members, as determined by the number of Members present and Members duly represented by proxy.

If a quorum is not present at any meeting of the Association, a majority of the Members present may recess the meeting and may set a time and place to reconvene the meeting, or may adjourn the meeting.

If a quorum is represented at a meeting, the affirmative vote of a majority of the Members who are present or duly represented by proxy at the meeting shall be sufficient to transact any business unless the matter is one upon which, by express provision of law or the Bylaws of the Association, as amended from time to time, a different vote is required, in which case such express provision shall govern. Any election by Members shall be determined by a plurality of the votes cast by Members.

Each Member of the Association shall be entitled to one vote at any meeting of the Members or at any adjournment thereof. Any Member not physically present at any such meeting of the Members may vote

by a proxy signed by such Member and filed with the Secretary prior to the commencement of the meeting, but no such instrument which is dated more than six months before the meeting specified therein shall be accepted. Proxies may be submitted electronically. Except as otherwise limited therein, proxies shall entitle the Member to vote at any such meeting or adjournment, but no such proxy instrument shall be valid after the final adjournment of the meeting specified therein.

Any action required or permitted to be taken at any meeting of Members may be taken without a meeting if all of the Members entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the meetings of the Members. Such consents shall be treated for all purposes as a vote at a meeting.

## **Article VII - Committees**

A. Standing Committees: The Board of Directors or the President, with the approval of the Board of Directors, may create standing committees of the Association as needed and appoint their chairs and members. Any Member, Associate Member or Affiliate Member of the Association is eligible to serve on standing committees. Affiliate Member participation in a Standing Committee is at the discretion of the Board.

B. Ad hoc Committees and Task Forces: Both the Board of Directors and the President, with the approval of the Board of Directors, have the authority to create ad hoc committees and task forces and to appoint their members. Ad hoc committees and task forces may include Members and Associate Members of the Association, including Board members. Affiliate Members and others from outside the Association may assist in an advisory position at the discretion of the Board.

C. Annual Report: The Board of Directors or the President will issue an annual report informing the Association of the activities of the Standing Committees and the names of the committee members.

## **Article VIII – Nominations and Elections**

### **A. Nominations**

1. The Nominating Committee(s) shall nominate one or more candidates for each position to be filled on the Board of Directors and each Associate Member Representative position. The Nominating Committee report identifying all such nominees shall be submitted to the Board of Directors for approval prior to conducting elections.

2. Any Member or Associate Member of the Association may contact the Nominating Committee in writing, including electronically, to suggest candidates for the Board of Directors or Associate Member Representative prior to the close of nominations.

3. Any Member nominated for the Board of Directors and any Associate Member nominated to be an Associate Member Representative must meet the eligibility requirements as defined by the Board of Directors.

4. The final list of nominees shall be posted on the Association's website and/or communicated by other means to all Members and Associate Members prior to the election.

5. Prior to the preparation of ballots, the Nominating Committee shall obtain the nominees' consent to serve if they are elected.

### **B. Elections**



1. Election of Board members and Associate Member Representatives shall be conducted separately by mail or electronic mail ballot in accordance with Article IV (B) of these Bylaws at least forty-five (45) days prior to the Annual Meeting. The separate elections do not need to be held at the same time, may have separate nominating committees, and may have visibly differing ballots.
2. Those receiving the greatest number of votes for the number of positions to be filled shall be considered elected.

## **Article IX – Offices and Registered Agent**

The Association shall maintain within the Commonwealth of Virginia a registered office and, at such office, a registered agent. The Association may also have other offices in any other locations specified by the Board of Directors.

## **Article X – Finances**

A. Fiscal Year. Unless otherwise fixed by the Board of Directors, the fiscal year of the Association shall end on the thirty-first day of December in each year.

### **B. Contracts, Checks, Deposits, and Funds**

1. Contracts: In addition to the Officers authorized by these Bylaws, the Board of Directors may authorize any other Officer(s) or agent(s) of the Association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association. Such authority may be general or may be limited to specific matters or occasions.

2. Checks, Drafts, and other Orders for Payment: The Board of Directors shall determine who is authorized to sign all checks, drafts, or other orders for the payment of money, including any instruments of indebtedness of the Association. The Treasurer will provide an outside accounting firm with the necessary records and documentation for a yearly audit, review or compilation of the Association's financial statements, as determined by the Board of Directors.

3. Deposits: The Treasurer shall deposit or cause to be deposited all funds of the Association to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

4. Gifts: On behalf of the Association, the Board of Directors may accept any contribution, gift, bequest, or devise for the benefit of the Association. The Board may refuse, by majority vote, any such gift it believes to be an actual or perceived conflict of interest.

### **C. Books and Records**

Any Member or Associate Member, or his/her agent or attorney, may inspect all books and records of the Association, for any proper purpose, at any reasonable time, with sufficient notice (at least 30 days) to the designated custodian of the record. Any Director may inspect all books and records at any time.

## **Article XI – Parliamentary Authority**

Robert's Rules of Order Newly Revised shall govern the proceedings of the Association in all situations for which no provision is made in these Bylaws or in policies and procedures adopted by the Board of Directors.

## **Article XII – Amendment of Bylaws**

These Bylaws may be repealed or amended, and/or additional by-laws may be adopted, at any meeting of the Members of the Association at which a quorum shall be present by a majority vote of the Members present in person or represented by proxy, provided that the substance of any proposed amendment or changes to an existing amendment shall have been set forth in the notice of the meeting.

## **Article XIII - Dissolution**

In the event of dissolution of the Association, all remaining assets of the Association shall, after paying or making provision for the payment of all of the liabilities and obligations of the Association and for the necessary expenses thereof, be distributed according to a plan of distribution of assets adopted by the Board of Directors and approved by the Members, provided that such plan of distribution of assets is consistent both with the Virginia Nonstock Corporation Act and with any provision of the Internal Revenue Code applicable to organizations described in Section 501(c)(6) of the Code.

3/15/05

ARTICLES OF AMENDMENT  
TO THE  
ARTICLES OF INCORPORATION  
OF  
THE OMBUDSMAN ASSOCIATION

The undersigned, for the purpose of amending the Articles of Incorporation of The Ombudsman Association, a nonstock corporation organized under the laws of the Commonwealth of Virginia ("the Corporation") pursuant to the Virginia Nonstock Corporation Act, hereby certifies:

**FIRST:** The name of the Corporation is The Ombudsman Association.

**SECOND:** The following amendments to the Articles of Incorporation of the Corporation were adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2005 by the Corporation in the manner prescribed by the Virginia Nonstock Corporation Act:

Article First of the Articles of Incorporation is revised to read in its entirety as follows:

The name of the Corporation is International Ombudsman Association.

Article Second of the Articles of Incorporation is revised to read in its entirety as follows:

The Corporation is organized exclusively for non-profit purposes. More specifically, in an effort to promote the common business and professional interests of ombudsman professionals and to enhance the quality and value of the organizational ombudsman function, the Corporation shall serve practicing international ombudsman and others using ombudsman skills in their work; advance understanding of the profession internationally; assist with the establishment of ombudsman offices in the private and public sectors; ensure the availability of effective training for ombudsman professionals; foster cooperation and exchange with other professional ombudsman organizations and professionals engaged in dispute resolution; and establish educational standards, standards of practice and codes of ethics for ombudsman practitioners.

Article Fourth of the Articles of Incorporation is revised to read in its entirety as follows:

The affairs of the Corporation shall be managed by the Board of Directors. The Board of Directors of the Corporation shall consist of not less than thirteen (13) or more than seventeen (17) Directors; Directors shall be elected to staggered, three-year terms in the manner provided in the Bylaws of the Corporation. There shall be at least one non-voting Associate Member Representative to the Board, and the Corporation's Immediate Past President shall serve for one year in an ex officio capacity should his or her term as a Director have expired. The exact number of Directors (within such limits) constituting the Board of Directors shall be fixed from time to time by the Members or by the Board of Directors. The qualifications for Directors are as prescribed in the Bylaws of the Corporation.

Article Sixth of the Articles of Incorporation is revised to read in its entirety as follows:

The Members of the Corporation, as defined in the Bylaws, shall have the power to make, amend or repeal the Bylaws.

Article Twelfth of the Articles of Incorporation is revised to read in its entirety as follows:

To the fullest extent permitted by Section 13.1-870.1 of the Code of Virginia, as may be amended from time to time, no officer or director of the Corporation shall be personally liable for any damages in any proceeding brought against him or her in that capacity, including without limitation in any proceeding brought by or in the right of the Corporation or brought by or on behalf of one or more members of the Corporation.

**THIRD:** The amendments were proposed by the Board of Directors and submitted to the members at a meeting held upon notice at which a quorum was present in accordance with the Virginia Nonstock Corporation Act. The total number of votes cast for and against the amendments by the members were \_\_\_\_ and \_\_\_\_, respectively. The number of votes cast for the amendments by the members was sufficient for approval by the members.

The undersigned President of the Corporation declares that the facts herein stated are true as of \_\_\_\_\_, 2005.

THE OMBUDSMAN ASSOCIATION

By: \_\_\_\_\_  
Thomas P. Zgambo, President

**ARTICLES OF INCORPORATION  
OF THE OMBUDSMAN ASSOCIATION**

We the undersigned, desiring to form a non-stock corporation under the Virginia Non-Stock Corporation Act, do hereby certify:

FIRST: The name of the Corporation shall be The Ombudsman Association.

SECOND: The Corporation is organized exclusively for non-profit purposes. More specifically, in an effort to enhance the quality and value of the ombudsman function to business and industry with the goal of improving relations and the quality of communication between and among management and the workforce and of promoting efficient and effective approaches to dispute resolution in the workplace, the Corporation shall, through conferences and periodic newsletters, provide an educational forum for developing and disseminating to the public a framework of job responsibilities, standards of excellence and ethical guidelines for the ombudsman function and for assessing the development and value of the ombudsman function to business and industry.

THIRD: The Corporation shall have, and may exercise in the furtherance of the foregoing purposes, the power to solicit and receive gifts, grants, contributions, and bequests, and to engage in fund-raising activities; the powers specified in Va. Code

Section 13.1-826 (and any successor statute thereto) and the power to be a partner in any enterprise which the Corporation would have the power to conduct by itself, provided that no such power shall be exercised in a manner inconsistent with the Virginia Non-Stock Corporation Act at Chapter 10 of Article 8.1 of the Virginia Code or any other chapter of the Virginia Code. The Corporation shall not engage in any activities that would (a) prevent it from obtaining exemption from federal income taxation as a Corporation described in § 501(c)(6) of the federal Internal Revenue Code of 1986 (or any corresponding provisions of any statutes which succeed such section), or (b) cause it to lose such exempt status. No part of the net earnings of the Corporation shall inure to the benefit of or be distributed to any member or other private person, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payment and distributions in furtherance of the purposes set forth in these articles.

FOURTH: The affairs of the Corporation shall be managed by the Board of Directors. The Board of Directors of the Corporation shall consist of not less than three (3) nor more than fifteen (15) Directors plus those Emeritus and Ex-Officio Directors, described below in this FOURTH Article. There will be three (3) classes of Directors -- up to five (5) in each class. Each class serves three (3) years with the terms of each class being staggered. The exact number of Directors (within such

limits) constituting the Board of Directors shall be fixed at each annual meeting by the Members, provided that by vote of the Members at a special meeting called for the purpose the number of Directors may be increased or decreased (subject to said limitation) and provided further that by vote of a majority of the Directors then in office the number of Directors may be increased (subject to said limitation). Directors shall be elected by the members as set forth in the bylaws of the Corporation except that the Directors may appoint one Emeritus Director, and if the Immediate Past President's term on the Board has expired he or she shall serve on the Board one (1) year ex-officio with a vote. Directors must be members of the Corporation.

FIFTH: The Corporation shall not be operated for the primary purpose of carrying on a trade or business for profit.

SIXTH: The Board of Directors shall have the power to make, amend, or repeal the By-Laws.

SEVENTH: Each person at any time a director, officer, employee or agent of the Corporation and any person who serves at its request as a director, officer, employee or other agent of another organization in which the Corporation directly or indirectly has an interest (including any person who is no longer a director, officer, employee, or agent of the Corporation or of



said other organization) shall, to the extent permitted by law and only to the extent that the status of the Corporation as an organization exempt under Section 501(c)(6) of the Internal Revenue Code is not affected thereby and without prejudice to any other rights he or she might have, be entitled to be reimbursed by the Corporation for, and indemnified by the Corporation against, all costs and expenses reasonably incurred by him or her in connection with or arising out of any claims made, or any action, suit or proceeding threatened or brought against him or her or in which he or she may be involved as a party or otherwise by reason of any action alleged to have been taken or omitted by him or her as such director, officer, employee or agent, whether or not he or she continues to be such director, officer, employee or agent at the time of incurring such costs and expenses, including amounts paid or incurred by him or her in connection with reasonable settlements (other than amounts paid to the Corporation itself) of any claim, action, suit or proceeding, provided that no person shall be so indemnified in relation to any matter which has been made the subject of a settlement, except with the approval of a court of competent jurisdiction or a vote of a majority of the members of the Corporation, or by a vote of a disinterested majority of Directors then in office. Any rights to reimbursement and indemnification granted under this section to any such director, officer, employee or agent shall extend to his or her heirs, executors and administrators. No such reimbursement or indemnification shall be provided for

any person with respect to any matter as to which he or she shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Corporation. Reimbursement or indemnification hereunder may, in the discretion of the Board of Directors, include payments by the Corporation of costs and expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding upon receipt of an undertaking by the person indemnified to repay such payment if he or she shall be adjudicated to be not entitled to indemnification hereunder. Nothing herein contained is intended to, or shall, prevent a settlement by the Corporation prior to final adjudication of any claim, including claims for reimbursement or indemnification hereunder, against the Corporation when such settlement appears to be in the interests of the Corporation. Each such person shall, by reason of his or her continuing such service or accepting such election or employment, have the right to be reimbursed and indemnified by the Corporation, as above set forth with the same force and effect as if the Corporation, to induce him or her to continue so to serve or to accept such election or employment, specifically agreed in writing to reimburse and indemnify him or her in accordance with the foregoing provisions of this section. No director or officer of the Corporation shall be liable to anyone for making any determination as to the existence or absence of liability of the Corporation hereunder or

for making or refusing to make any payment hereunder in reliance upon advise of counsel.

EIGHTH: Neither the Board of Directors, nor any member or officer, shall have the power to bind the members or the individual directors or officers of the Corporation, personally. All persons or corporations extending credit to, contracting with, or having claims against the Corporation, shall look only to the funds and property of the Corporation for payment of any such contract or claim or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due and payable to them from the Corporation, so that neither the members nor the directors nor the officers, present or future, shall be personally liable thereon.

NINTH: References to provisions of the Internal Revenue Code of 1986 shall be deemed to include corresponding provisions of any statutes which succeed such provisions.

TENTH: The address of the Corporation's initial registered office is 510 King Street, Suite 200, Alexandria, Virginia 22314 which is located in the City of Alexandria.

ELEVENTH: The name of the initial registered agent is Henry A. Hart who is a resident of Virginia and a member of the

Virginia State Bar whose business office is identical with the registered office.

TWELFTH: Pursuant to Section 13.1-870.1 of the Code of Virginia, as may be amended from time to time, there shall be no liability for the acts or omissions of any officer or Director of the Corporation in any proceeding brought by or in the right of the Corporation or brought by or on behalf of the members (or member) of the Corporation, if any, unless otherwise provided by the laws of the Commonwealth of Virginia, arising out of any single transaction, occurrence, or course of conduct.

THIRTEENTH: The initial Board of Directors shall consist of \_\_\_\_\_ directors, whose names and addresses, including street and number, are as set forth below, and who shall serve as the initial directors of the Corporation for the terms noted below or until their successors have been elected and qualified:

Name and Address	Term
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IN WITNESS WHEREOF the undersigned incorporator has  
subscribed his name this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
\_\_\_\_\_, Incorporator

CLIENT/MATTER NAME: OMBUDSMAN ASSOC./GENERAL

CLIENT/MATTER NUMBER: 99001/000

FILENAME: I:\DATA\CLIENT\99\99001\AOI

ATTORNEY: H. HART

DOCUMENT TITLE: ARTICLES OF INCORPORATION

PLEASE KEEP THIS SHEET WITH DOCUMENT FOR ALL FURTHER REVISIONS.  
THANK YOU.

REVISION INFORMATION: 12/22/94 Alex clm  
12/27/94 Alex gmd