### [IOA CONFERENCE OMBUDS TOOLKIT](https://www.ombudsassociation.org/resources-for-conference-contract-ombuds)

### Conference Contract Ombuds Services Agreement[[1]](#footnote-1)

This Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_\_ \_\_\_, 20\_\_ (the “Effective Date”) by and between [Sponsoring Organization] (“\_\_\_\_\_\_\_\_\_” or the “Association”), and \_\_\_\_\_\_\_\_\_\_\_ (“Ombuds”) (\_\_\_\_\_\_\_\_\_\_ and Ombuds are each individually referred to as a “Party” and collectively as the “Parties”).

[Sponsoring Organization] has determined that it will create an ombuds program (the “Ombuds Program”) for its members and conference attendees in connection with its conference [ specify name, date, and place of the conference] ("Conference") and desires to retain Ombuds to provide professional services as a non-employee external ombuds for the Ombuds Program in connection with the Conference, pursuant to a Charter, dated \_\_\_\_\_\_\_\_ \_\_, 20\_\_ (the “Charter”), attached as Exhibit A, by which the Ombuds Program is established.

In consideration of the mutual covenants, promises and agreements contained in this Agreement, the Parties hereby agree to the following terms and conditions governing the Ombuds Program and Ombuds’ professional services as Ombuds for the Association:

1. Scope of Work and Mutual Responsibilities. Ombuds agrees to render professional ombuds services as the Association’s Ombuds (the “Services”) in connection with the Conference. In particular, the Parties agree that:

(a) The scope of work encompassed by this Agreement is the establishment of an Ombuds Program for the Conference by the Association, with the staffing and operation of that position by Ombuds, all as contemplated by this Agreement and the Charter.

(i) Nothing in this Agreement shall be construed as the provision of legal services by Ombuds to the Association or to any inquirer, and nothing in this Agreement will create a counselor or attorney-client relationship between Ombuds and the Association or between Ombuds and any inquirer.

(ii) In the performance of the Services, Ombuds will act solely as an independent contractor, and nothing in this Agreement shall be construed to create the relationship of employer-employee, partnership, principal and agent, or joint venture between the Association and Ombuds.

(iii) The conduct and control of the Services performed by Ombuds under this Agreement will be solely with Ombuds, subject to the Ombuds’ obligations under this Agreement, the Charter, and the Ombuds' obligation to adhere to the International Ombudsman Association (“IOA”) Code of Ethics and Standards of Practice.

(iv) Because the Ombuds position is established as an independent and external function, Ombuds has no authority to make policy, business decisions, or conduct investigations on behalf of the Association or to serve as an agent of notice for any claims against the Association.

(v) Nothing in this Agreement shall preclude Ombuds from providing ombuds services to other organizations or entities, provided that all Services performed by Ombuds for the Association shall remain confidential and any services Ombuds agrees to perform for others shall not in any way compromise Ombuds’ ability to perform the Services contemplated by this Agreement.

(b) The Association shall:

(i) Comply with the provisions of the Charter, obtain any necessary approvals within the Association for the establishment of the Ombuds Program, and establish the Ombuds Program and the Ombuds position as contemplated in the Charter;

(ii) Reimburse Ombuds, as provided in Paragraph 6 below, for the cost of telephone services used in connection with the Services and make provisions for toll free access to Ombuds by telephone by the Association’s members wherever located;

(iii) Provide a place on the Association’s website for information about the Ombuds Program, contact information for Ombuds, and the term during which the Ombuds services are available;

(iv) Provide Ombuds with access to a designated electronic mail address for Ombuds sufficient to allow Association’s members and Ombuds to communicate with each other confidentially; and, if an inquirer so desires, anonymously;

(v) Provide Ombuds with access to Association personnel and non-privileged records reasonably requested by Ombuds without requiring Ombuds to disclose the identity of any inquirer or confidential communications with an inquirer, subject to the provisions of this Agreement and Ombuds’ agreement to abide by any applicable privacy laws;

(vi) Provide Ombuds with access to space at the Conference appropriate for providing Ombud Services, as reasonably requested by Ombuds, suitable for confidential in-person and other meetings with inquirers;

(vii) Pay for the reasonable travel and other expenses of Ombuds as follows: [specify] subject to the obligations of all Parties to maintain the confidentiality of Ombuds’ communications, and provided further that Ombuds agrees to comply with standard Association policies relating to reimbursement of expenses;

(viii) In consultation with Ombuds, advertise, publicize, and otherwise inform Association members and attendees of the Conference, as agreed by the Association and Ombuds, of the existence and availability of the Ombuds Program and the means to contact Ombuds, including the preparation of a suitable brochure and website content, inclusion of appropriate references to Ombuds and the Ombuds Program in the Association’s policies, posters or other announcements;

(ix) Take reasonable steps to prevent and remedy any actual or potential retaliation against Ombuds for rendering services to the Association as provided in this Agreement;

(x) Notify Ombuds of any subpoena or request for the production of documents served on the Association seeking disclosure of Ombuds’ confidential communications and cooperate with Ombuds to take all reasonable steps to resist such attempts to compel disclosure of Ombuds’ confidential communications or documents, including filing a motion for protective order or taking other legal action to resist such attempts; and

(xi) Upon reasonable requests by Ombuds, pay reasonable costs to enable Ombuds to obtain independent counsel to provide independent legal advice to Ombuds in connection with the defense of the Ombuds Program and to assist Ombuds in resisting any attempts by inquirers or third parties to compel Ombuds to disclose confidential communications or documents.

(c) The Ombuds shall:

(i) Comply with the provisions of this Agreement and the Charter in performing the Services under this Agreement and adhere to the IOA Code of Ethics and Standards of Practice;

(ii) Ombuds shall use their best judgment and professional skills at all times in performing the Services and shall do so in a timely and safe manner, in accordance with governing laws and regulations and professional standards, including responding promptly to all inquirers and using Ombuds’ best efforts to provide assistance or guidance to inquirers in a professional and courteous manner. In particular, Ombuds recognizes that it may be necessary to respond to or meet with inquirers off-premises or outside of normal business hours;

(iii) Ensure that the Services provided under this Agreement will be performed by \_\_\_\_\_\_\_\_\_\_\_\_as Ombuds. The Ombuds shall not render Services or become involved in any matter for which it would be a conflict of interest to do so;

(iv) Hold all confidential communications with inquirers in strict confidence as provided in the Charter and take all reasonable action to safeguard the confidentiality of these communications, subject to the exceptions to confidentiality (a) where in the course of confidential communications an inquirer grants Ombuds permission to make a disclosure and Ombuds agrees to do so or (b) where Ombuds determines that there is an imminent risk of serious harm;

(v) Immediately notify the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the Association of any circumstance in which Ombuds breaches confidentiality on the grounds that Ombuds has determined that there is an imminent threat of serious harm;

(vi) Maintain the confidentiality of the Association’s confidential or proprietary information, as further provided below, and not disclose such information to third parties;

(vii) Notify the Association of any subpoena or of any request for the production of documents served on Ombuds relating to confidential communications and take all reasonable steps to resist such attempts to compel Ombuds to disclose confidential communications or documents, including filing a motion for protective order or taking other legal action to resist such attempts;

(viii) Meet with senior leaders of the Association or prepare such reports as the Parties agree, provided that any such reports contain only non-confidential information, advising the Association of any systemic issues or trends that Ombuds believes may be beneficial to disclose to the Association to improve its conference environment or the Association’s business practices;

 [(ix) Maintain in effect during the term of this Agreement professional liability insurance in an amount determined satisfactory to the Association; and

(x) Notify \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ when Ombuds requests the Association pay for independent counsel to assist or defend the Ombuds in resisting any attempts by inquirers or third parties to compel Ombuds to disclose confidential communications or documents and submit any invoices for such legal services to \_\_\_\_\_\_\_\_\_\_\_\_\_\_, together with a certification that the Ombuds has approved the work and the invoice.

1. Term and Termination. This Agreement shall commence on the Effective Date identified above and shall continue until \_\_\_\_\_\_ \_\_, 20\_\_as follows unless terminated earlier as provided below.[[2]](#footnote-2)

(a) This is a contract for services and should not be construed as creating an employment relationship between the parties. Either party may terminate this agreement upon giving written notice no less than [ \_\_ 10/20/60/90 ] days in advance to the other of intent to terminate; however, the Association may not terminate this Agreement because of Ombuds’ refusal to disclose confidential information that Ombuds determines is required to be kept confidential by the Charter and the IOA Code of Ethics and Standards of Practice.

(b) The Association may terminate this Agreement for “cause” upon giving written notice to Ombuds. Termination for “cause” shall be defined as: [Specify]

 (c) Upon the expiration or earlier termination of this Agreement, Ombuds shall surrender to the Association any property furnished to Ombuds by the Association to use in connection with the Services to be performed under this Agreement and shall surrender to the Association access and control over telephone numbers, email addresses, websites and other means of contact used by Ombuds, as well as all brochures and non-confidential information. Any confidential information in the possession of Ombuds at the time of expiration or earlier termination of this Agreement shall be provided to a successor ombuds or destroyed as agreed by both Ombuds and the Association. If the Ombuds Program is terminated, the Association shall not seek the return of such confidential information.

1. Compensation. [Specify]
2. Reporting. The Ombuds shall report to [specify whether it is to the Sponsoring Organization's Executive Director, Board of Directors, Executive Committee or some other person or entity]. The Ombuds may also meet with and alert senior leadership of [the Sponsoring Organization} of any identified or potential systemic issues or trends the Ombuds believes may help the organization address or improve the climate for membership or future conferences, or improve the {Sponsoring Organization's} policies and practices. When reporting issues to senior leadership, the Ombuds shall protect the confidentiality of those using the Ombuds’ services.
3. Billing and Payments. Ombuds will submit invoices to the Association for the Ombuds Services provided pursuant to this Agreement. Payment for the Services is due and payable on receipt of the Ombuds invoice, in accordance with the Association’s customary practices.
4. Reasonable and Necessary Business Expenses. [Specify, including telephone expenses]
5. Nondisclosure.  As further provided in Paragraph 12 below, except as required in order to perform Services under this Agreement, Ombuds shall not, without the express prior written consent of the Association, directly or indirectly, disclose or divulge to any other person or entity any of the Association’s Confidential Information.  “Association’s Confidential Information” means any valuable, competitively sensitive data and proprietary information related to Association's business that are not generally known by or readily available to the general public, including, information relating to Services performed by Ombuds for the Association. The obligations of this Paragraph survive the expiration or termination of this Agreement.
6. Non-Interference.  Ombuds agrees that while this Agreement is in effect, Ombuds will not directly or indirectly interfere with or influence or attempt to influence or solicit present or future attendees of the conference or members of the Association to restrict, reduce, sever or otherwise alter their relationship with the Association. Breach of the provisions in this Paragraph constitutes a material breach of this Agreement.
7. Representations and Warranties. Ombuds hereby represents and warrants that there are no third-party obligations preventing the provision of these Services.
8. Indemnification and Hold Harmless. As a material term of this Agreement, the Association agrees to (a) indemnify and hold harmless Ombuds to the fullest extent permitted by law, from and against any and all losses, claims, damages, or liabilities (or actions with respect thereof), joint or several, arising out of or relating to this Agreement, or any Services provided by Ombuds or other actions taken by the Ombuds pursuant to this Agreement; and (b) to reimburse the Ombuds for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling, or compromising any action, suit, inquiry, investigation or proceeding, pending or threatened, brought by or against any person arising out of or relating to this Agreement. The Association shall not, however, be liable under this Indemnification and Hold Harmless provision for any loss, claim, damage, or liability which is finally adjudicated or determined in arbitration, as provided in Paragraph 16 below, to have resulted primarily from the willful misconduct or gross negligence of Ombuds.
9. Property Rights. Parties agree that aside from the Charter, this Agreement, brochures, and other descriptive information about the Ombuds Program made available to conference attendees and Association members, the Ombuds shall be the exclusive owner of work product developed by Ombuds during the term of this Agreement.
10. Confidential Matters and Proprietary Information. Ombuds recognizes that, during the course of the performance of this Agreement, Ombuds may have access to, or may acquire Confidential Information of or relating to the Association, including but not limited to business plans; marketing strategies; databases; methodologies; pricing and cost data; customer and client lists; personal, financial, or health information relative to its members; and financial and other proprietary information of the Association (the "Proprietary Information"). Ombuds agrees to keep all Proprietary Information confidential during the term of this Agreement and thereafter. Ombuds further agrees not to publish, use, communicate, or otherwise disclose, directly or indirectly, Proprietary Information for Ombuds’ own benefit or for the benefit of another. Upon termination or expiration of this Agreement, Ombuds shall deliver all records, data, information, and other documents containing Proprietary Information (”Material”) to the Association. The Material shall remain the property of the Association, but such Material shall not include Ombuds’ paper or electronic files containing confidential communications produced or acquired during the performance of this Agreement.
11. Amendments; Waivers. This Agreement may be amended only by agreement in writing signed by all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the Party to be bound and then only for the specific purpose and to the extent so provided.
12. Integration. This is the entire Agreement of the Parties and supersedes all prior or contemporaneous oral and written agreements and understandings of the Parties.
13. No Assignment. Neither this Agreement nor any rights or obligations under it are assignable by the Parties.
14. Governing Law. This Agreement and the legal relations between the Parties shall be governed by the internal substantive laws, but not the choice of law rules, of \_\_\_\_\_\_\_\_\_\_\_, except to the extent that certain matters may be preempted by federal law.
15. Dispute Resolution. Any dispute arising under or in connection with this Agreement shall first be attempted to be resolved by discussion between the Parties, and if not able to be resolved, shall then seek mediation of the matter, and then, if not resolved, shall be submitted to arbitration in [ City], [State], in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, before a single arbitrator, who may be selected by the Parties or from a list of potential arbitrations selected by AAA.
16. No Announcement: No Publication Rights. Ombuds will not make any announcements (public or otherwise) concerning the Association or the Services being rendered to the Association by Ombuds. Ombuds will not use any Association information (including the name the Association or any other trademarks or service marks of the Association) for any purpose whatsoever without written permission from the Association and in connection with Services rendered pursuant to this Agreement.
17. Severability. If a court of competent jurisdiction or an arbitration tribunal holds any provision of this Agreement to be illegal, invalid, or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, shall not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, invalid, or unenforceable provision. Such a holding shall not affect the validity or enforceability of this Agreement in any other jurisdiction, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, invalid, or unenforceable provision in the invalidating jurisdiction.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the day and year first above written.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [named]

 **OMBUDS**

**[Association]**

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Title)

1. This contract may be more extensive that what a Sponsoring Organization and a Contract Ombuds may ultimately decide is necessary, but this is intended to identify issues that may arise in this context and should at least be considered when entering into a contract conference relationship. [↑](#footnote-ref-1)
2. It is advisable to identify the dates on which the Ombuds is expected to be on site at the Conference. The Parties should also consider whether the Ombuds should be available to attendees following the conference for such matters as completing discussions with attendees who raised issues at the Conference or attendees who wish to raise issues about the Conference following the Conference. In either event, some terminal or expiration date is advised. [↑](#footnote-ref-2)