

## Ombudsman for Financial Services (OFS) Terms and Procedures for Adjudication (Second Stage)

Our Reference: OFS(B)/OI/AC/XXX/15

- i. [name of Eligible Complainant] ... Eligible Complainant
- ii. [name of Member] ... Member

(hereinafter referred to collectively as the “Parties” or individually as the “Party”)

### 1. Submission for Adjudication

The Parties agree for the Dispute relating to [e.g. loan/credit card/insurance] which was referred to the OFS for Case Management on [insert date] to be submitted to the Ombudsman for Adjudication.

### 2. Disclosure of documents or information relating to the Eligible Complainant

Where the Eligible Complainant is a customer of a Member which is a licensed bank, licensed Islamic bank, prescribed development financial institution, an approved issuer of a designated payment instrument or an approved issuer of a designated Islamic payment instrument, the Eligible Complainant expressly authorises the Member to disclose to the Ombudsman, the OFS and its officers, employees and/or representatives, all documents or information in relation to his accounts or affairs which are or may be relevant to the Dispute. Such authorisation and disclosure shall discharge the Member of its confidentiality obligations towards the Eligible Complainant.

### 3. Adjudication

- 3.1 The Dispute shall be adjudicated by the Ombudsman assigned by the OFS.
- 3.2 The Ombudsman assigned by the OFS to adjudicate the Dispute may provide a preliminary assessment of the Dispute before it is adjudicated on. The Parties shall be given a reasonable opportunity to make further submissions, and to provide further information, if any, relating to the Dispute.

- 3.3 The Ombudsman shall be entitled to request for further data, document and information relevant to the Dispute from the Parties. The Parties shall provide all such data, document and information within such period specified by the Ombudsman.
- 3.4 The Ombudsman shall accept written evidence submitted by the Parties and may also accept any other form of evidence it deems appropriate, including taped or video evidence. The Ombudsman shall give such evidence due weight and consideration.
- 3.5 The Adjudication may be conducted by way of submission of documents (including written submissions, replies and clarifications, if any) or by way of hearing. Upon the full submission of the documents or at such time as the Ombudsman shall determine, a hearing may be conducted with the Parties, where necessary. The Parties shall not make any recording (visual or audio) of the hearing. Where no hearing is conducted, the Ombudsman decides on the Dispute solely on the documents.
- 3.6 If a settlement is reached at the Adjudication stage, the Parties shall execute a Settlement Agreement in accordance with paragraph 4.
- 3.7 The Ombudsman shall adjudicate the Dispute independent of the findings or the Recommendation made by the Case Manager at the Case Management stage and issues a final decision within 14 days from the receipt of full and complete documentation from the disputing Parties.
- 3.8 The Adjudication shall be conducted in strict confidence and all communication shall not be used in any court proceedings.

#### **4. Settlement Agreement**

Where a settlement is reached at the Adjudication stage, the Parties shall enter into a Settlement Agreement which shall be signed by the Parties at the office of the OFS and in the presence of an officer of the OFS. In the event that the Settlement Agreement is not signed at the office of the OFS, it shall be signed by the Parties in the presence of a witness.

#### **5. The Decision**

- 5.1 Where the Ombudsman has made a final decision with respect to the Dispute, the Eligible Complainant may choose whether or not to accept the Ombudsman's decision.

5.2 Where the Eligible Complainant accepts the Ombudsman's final decision within 30 days from the date of the decision, the Parties are bound by such decision. The Ombudsman may, after considering the reason for any delay, grant an extension of time within which an Eligible Complainant may accept the Ombudsman's final decision and if accepted, such decision shall bind the Parties to the Dispute.

5.3 The Ombudsman shall record in writing the terms of settlement reached by the Parties and the Parties shall execute a Settlement Agreement in accordance with paragraph 4. The Member shall comply with the Award made by the Ombudsman within 14 days from the date the Eligible Complainant informed the Member of his acceptance of the Award.

5.4 Where the Eligible Complainant does not accept the Ombudsman's decision, the Parties are free to pursue their rights through any other means, including a legal process or arbitration.

## **6. Award**

In the event the Ombudsman grants a monetary Award and it is accepted by the Eligible Complainant, such monetary Award can be sued for and recovered as a contractual debt, without any set-off or counter claim as provided for in the Terms of Reference of the OFS.

## **7. Withdrawal and Termination**

7.1 The Eligible Complainant may withdraw from the Adjudication at any time prior to the final decision by the Ombudsman by giving a written notice to the Ombudsman of his intention to withdraw from the Adjudication. This option is not available to the Member.

7.2 The Adjudication terminates when –

- (a) the Eligible Complainant withdraws from the Adjudication;
- (b) the Parties accept the preliminary assessment of the Dispute by the Ombudsman before Adjudication and enter into a Settlement Agreement in accordance with paragraph 4;
- (c) the Ombudsman makes a final decision and/or Award with respect of the Dispute; or

- (d) the Eligible Complainant has initiated a legal proceeding against the Member in court or arbitration.

## **8. Confidentiality Obligation**

8.1 Save as shall be required under any written law or by an order of the court –

- (a) the Member, Eligible Complainant, Ombudsman and such other persons involved in the Adjudication shall not disclose to any third party, whether expressly or impliedly, any information, documents, correspondences (including emails), issues or matters discussed, proposals or counter-proposals or Award pertaining to a Dispute.
- (b) all persons involved in the Adjudication shall keep confidential and not use for any collateral or ulterior purpose in any proceedings –
  - (i) the fact that any Adjudication is to take place, is in progress or has taken place;
  - (ii) the matters that transpired in the course of the Adjudication by the Ombudsman;
  - (iii) any views expressed or suggestion made or proposal for settlement made by the Parties for the settlement of the Dispute in the course of Adjudication;
  - (iv) proposals, recommendations or indications made or suggested by the Ombudsman during the Adjudication; and
  - (v) all information, documents, correspondences (including emails) and communication made during the Adjudication.

8.2 Save as shall be required under any written law or by an order of the court, all data, documents and information produced for or arising in relation to the Adjudication shall be privileged and shall not be admissible as evidence or discoverable in any legal proceedings connected with the Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.

8.3 The Parties shall not call the Ombudsman and/or the Case Manager, and/or any employees of the OFS, including the Chief Executive Officer, as a witness or expert witness in any proceedings related to or arising from the Dispute.

8.4 The Parties acknowledge and agree that any breach and/or contravention of the confidentiality requirement constitute a loss which cannot be reasonably or adequately compensated in damages. The Parties also agree that in the event of any such breach and/or contravention, the OFS and/or innocent Party or Parties shall be entitled to the remedy of an injunction in addition to any other remedy available in law or in equity. The OFS and/or innocent Party or Parties shall be entitled to recovery of legal costs on a full indemnity basis from the Parties.

## 9. Immunity from Liability

The OFS, Chief Executive Officer, Ombudsmen, Case Managers, officers and employees of the OFS and such other person appointed by the OFS to facilitate the settlement of Disputes shall not be liable to any Parties for any loss or damage arising directly or indirectly from any act or omission in connection with or arising from the services provided by the OFS, provided such act or omission was done or made or omitted to be done or made in good faith.

## 10. Not Legal Advice

The OFS and/or any of its employees, officers or representatives shall not be construed at any time whatsoever (and/or in any capacity howsoever) as having given, offered or rendered legal advice or expressed any opinion (whether professional or personal) on any legal position as to the rights of the Eligible Complainant, the Member or any representative of the Member.

## 11. Interpretation of defined terms

In this Terms and Procedures, unless the context otherwise requires –

“**Adjudication**” means the process where the Ombudsman adjudicates a Dispute and makes a final decision in accordance with the Terms of Reference of the OFS;

“**Award**” means an award granted by the Ombudsman in accordance with the Terms of Reference of the OFS;

**“Case Management”** means the management of a Dispute by a Case Manager by way of, including but not limited to, conducting mediation, negotiation or conciliation process in accordance with the Terms of Reference of the OFS;

**“Case Manager”** means an officer of the OFS appointed to manage a Dispute filed by an Eligible Complainant against a Member in accordance with the Terms of Reference of the OFS;

**“Dispute”** means a dispute between an Eligible Complainant and a Member in respect of financial services or products and Islamic financial services or products developed, offered or marketed by a Member, or by a Member for or on behalf of another person as set out in the Terms of Reference of the OFS;

**“Eligible Complainant”** refers to any person who is eligible to refer a Dispute to the Financial Ombudsman Scheme as set out in the Terms of Reference of the OFS;

**“Financial Ombudsman Scheme” or “FOS”** means the financial ombudsman scheme approved by Bank Negara Malaysia under subsection 126(2) of the Financial Services Act 2013 and subsection 138(2) of the Islamic Financial Services Act 2013 for the resolution of Disputes;

**“Member”** means a financial service provider as set out in the First Schedule of the Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015, and Regulation 3 of the Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016 which is member of the FOS. A reference to the member includes any of its officers or employees, agents, contractors, any person who has actual, ostensible, apparent or usual authority to act on behalf of the member or authority to act by necessity in relation to a financial service or product;

**“Ombudsman for Financial Services” or “OFS”** means the scheme operator approved by Bank Negara Malaysia to operate the FOS;

**“Ombudsman”** means an officer of the OFS appointed by the board of directors of the OFS to adjudicate Disputes;

**“Recommendation”** means an assessment made by a Case Manager relating to a Dispute if the Parties fail to reach an amicable settlement; and

**“Terms of Reference” or “TOR”** means the terms of reference for the OFS as approved by Bank Negara Malaysia.

**12. General**

- 12.1 A reference to the singular number includes, where the context requires, the plural number and vice versa.
- 12.2 A reference to the male gender includes, where the context requires, the female gender and vice versa.
- 12.3 The words “including”, “such as” or “for example”, does not limit the meaning of the words to which the example relates, that example or examples of a similar kind.
- 12.4 References to paragraphs are to paragraphs of these Terms and Procedures unless otherwise stated.
- 12.5 A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 12.6 Headings are inserted for convenience only and do not affect the interpretation of the Terms and Procedures.

Date:

Signed by:

Date:

Signed by:

---

Eligible Complainant:  
NRIC No:

---

Authorised Representative for and on  
behalf of the Member

Designation:  
NRIC No:

Ombudsman: \_\_\_\_\_