

Ombudsman for Financial Services (OFS) Terms and Procedures for Case Management (First 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. Parties to the Dispute

- 1.1 The Parties agree that the Case Manager assigned by the OFS shall manage the resolution of their dispute relating to [e.g. loan/credit card/insurance].
- 1.2 The Parties will co-operate in good faith with each other and with the Case Manager to resolve the Dispute.

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 Case Manager, 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. Case Management

- 3.1 The Dispute shall be managed by a Case Manager assigned by the OFS.
- 3.2 The Case Manager’s role is to encourage and facilitate dialogue, provide guidance, assist the Parties in clarifying their interests and in

understanding differences, and to work towards a mutually acceptable settlement.

- 3.3 The Case Manager shall be entitled to request for any data, document and information relevant to the Dispute from the Parties.
- 3.4 The Parties shall provide to the Case Manager such data, document and information that are relevant to the Dispute within such period specified by the Case Manager, together with the Member's investigation report on the Dispute (including the grounds of its decision and any other relevant document or information), as the case may be, which was completed when the Eligible Complainant first lodged his complaint with the Member.
- 3.5 After giving the Parties a reasonable opportunity to make submissions and provide data, document and information about the Dispute, the Case Manager may facilitate the resolution of Dispute through negotiation, mediation or conciliation process, as the case may be, with a view to reach an amicable settlement within 3 months from the date of receipt of full and complete data, document and information from the Parties.
- 3.6 The Case Manager shall conduct interviews, if deemed necessary, either via telephone or physical meeting. The Case Manager may meet with any of the Parties jointly or separately. The separate meetings (caucus) are designed to improve the Case Manager's understanding of the Party's position and to facilitate the Case Manager in expressing each Party's viewpoint. The Parties shall not make any recording (visual or audio) of such interview or meeting.
- 3.7 The Case Management shall be conducted in strict confidence and all communication shall not be used in any court proceedings.
- 3.8 The Case Manager may, subject to the approval of the Ombudsman, dismiss a Dispute if such Dispute, in the opinion of the Case Manager, falls within the circumstances set out in paragraph 14 of the Terms of Reference of the OFS.
- 3.9 At all times while the Dispute is being investigated by the Case Manager, nothing shall operate to prevent the Parties from jointly seeking an amicable settlement of the Dispute.
- 3.10 If the Parties fail to reach an amicable settlement, the Case Manager will make an assessment on the manner in which the Dispute should be resolved and issue a Recommendation within 30 days from the date the Parties fail to reach such amicable settlement.

- 3.11 If the Parties accept the Recommendation within 30 days from the date of the Recommendation or by the date stipulated in the Recommendation (whichever is later), the Dispute is resolved on the basis of the Recommendation. The Case Manager 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.
- 3.12 If either Party does not accept the Recommendation made by the Case Manager, the Parties are not bound by the Recommendation. The Parties are free to pursue their rights through any other means, including referring the Dispute to the Ombudsman for adjudication within 30 days from the date of the Recommendation or by the date stipulated in the Recommendation (whichever is later), or a legal process or arbitration.

4. Settlement Agreement

Where a settlement is reached at the Case Management 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. Authorised Representatives of a Member

- 5.1 The Member shall be represented by person(s) who are authorised and empowered to represent the Member in the negotiation and settlement of the Dispute.
- 5.2 The Member shall inform the Case Manager before the commencement of the Case Management if the authorised representative does not have the mandate to negotiate or resolve the Dispute.
- 5.3 The person(s) authorised by the Member are as follows:

Name of Representative(s)/NRIC No.	Designation
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(a)

(b)

6. Withdrawal and Termination

- 6.1 The Eligible Complainant may withdraw from the Case Management at any time prior to the Case Manager issuing his Recommendation by giving a written notice to the Case Manager of his intention to withdraw his complaint. This option is not available to the Member.
- 6.2 The Case Management terminates when –
- (a) the Eligible Complainant withdraws from the Case Management;
 - (b) the Dispute is resolved amicably by the Parties;
 - (c) the Parties accept the Recommendation of the Case Manager and enter into a Settlement Agreement in accordance with paragraph 4;
 - (d) the Dispute is referred to the Ombudsman; or
 - (e) the Eligible Complainant has initiated a legal proceeding against the Member in court or arbitration.

7. Confidentiality Obligation

- 7.1 Save as shall be required under any written law or by an order of the court –
- (a) the Member, Eligible Complainant, Case Manager and such other persons involved in the Case Management 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 Recommendation pertaining to a Dispute.
 - (b) all persons involved in Case Management shall keep confidential and not use for any collateral or ulterior purpose in any proceedings –
 - (i) the fact that any Case Management is to take place, is in progress or has taken place;
 - (ii) the matters that transpired in the course of the Case Management conducted by the Case Manager;

- (iii) any views expressed or suggestion made or proposal for settlement made by the Parties for the resolution of the Dispute in the course of Case Management;
 - (iv) proposals, recommendations or indications made or suggested by the Case Manager during the Case Management; and
 - (v) all information, documents, correspondences (including emails) and communication made during Case Management.
- 7.2 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 Case Management shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.
- 7.3 The Parties shall not call the Case Manager and/or the Ombudsman 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.
- 7.4 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.

8. 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 resolution 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.

9. 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.

10. Interpretation of defined terms

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

“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 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.

11. General

- 11.1 A reference to the singular number includes, where the context requires, the plural number and vice versa.
- 11.2 A reference to the male gender includes, where the context requires, the female gender and vice versa.
- 11.3 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.
- 11.4 References to paragraphs are to paragraphs of these Terms and Procedures unless otherwise stated.
- 11.5 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.
- 11.6 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:

Case Manager: _____

