



Banking  
Ombudsman  
Scheme

Te Whare  
Rama  
Tōkeke

# Participation Agreement

Relating to Banking Ombudsman Scheme Limited

## PARTIES

1. BANKING OMBUDSMAN  
SCHEME LIMITED
2. THE ENTITIES NAMED IN THE  
FIRST SCHEDULE

# Participation agreement

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## PARTIES

1. **BANKING OMBUDSMAN SCHEME LIMITED** (NZCN 1952125) at Wellington (*the Company*)
2. **THE ENTITIES NAMED IN THE FIRST SCHEDULE** (together, *the Participants*)

## INTRODUCTION

This Agreement sets out the legal arrangements between the parties as to the operation and functions of the Company and the Banking Ombudsman scheme.

## TERMS

### 1. *Definitions*

- 1.1 In this Agreement, unless the context otherwise requires, the following terms will have the following meanings:

<i>Act</i>	The Financial Service Providers (Registration and Dispute Resolution) Act 2008.
<i>Annual Meeting</i>	Has the meaning given to that term in clause 1.1 of Part B of the Constitution.
<i>Auditor</i>	The auditor or auditors for the time being of the Company.
<i>Banking Ombudsman</i>	The Banking Ombudsman appointed in accordance with clause <b>5.1</b> .
<i>Board</i>	The board of directors of the Company.

<i>Constitution</i>	The constitution of the Company.
<i>Non-bank Deposit Taker</i>	As defined in section 5 of the Non-bank Deposit Takers Act 2013.
<i>Financial Services</i>	Has the meaning given to that term in section 5 of the Act.
<i>Financial Year</i>	The year ending 30 June in each year.
<i>Minister</i>	The Minister responsible for the administration of the Act.
<i>Objects</i>	The objects of the Company as set out in clause <b>2.1</b> .
<i>Participant</i>	<p>Those Registered Banks or Non-bank Deposit Takers who are for the time being parties to this Agreement, including all:</p> <ul style="list-style-type: none"> <li>• wholly owned subsidiary companies of Participants, except those notified by the Participant to the Scheme as exempt from the Scheme.</li> <li>• companies that are not wholly owned subsidiaries but are within the same corporate group as the Participant, if the Participant has notified them to the Scheme as participating in the Scheme. This may include companies in which the Participant has a majority interest.</li> </ul>
<i>Participation Criteria</i>	The criteria to be met by a Participant which will be set, from time to time, by the Board in accordance with clause 10.15 of the Constitution, and published on the Scheme's website.

<i>Registered Bank</i>	A bank which is registered under the provisions of the Reserve Bank of New Zealand Act 1989.
<i>Scheme</i>	The Banking Ombudsman scheme operated by the Company and set out in this Agreement, the Constitution and the Terms of Reference.
<i>Secretary</i>	The secretary of the Company appointed pursuant to clause 22.1 of the Constitution.
<i>Share</i>	The one fully paid up share in the capital of the Company.
<i>Shareholder</i>	The holder for the time being of the Share.
<i>Terms of Reference</i>	The rules established from time to time by the Company which constitute and govern the powers and duties of the Banking Ombudsman and the Scheme (and, in particular, the process by which the Scheme may consider complaints).
<i>Winding Up</i>	Receivership, liquidation, winding up or other cessation of operation or existence.
<i>Working Days</i>	Any day of the week on which banks in Wellington and Auckland are open for business, but not including either a Saturday, a Sunday or a public holiday.

1.2 In the interpretation of this Agreement, unless the context otherwise requires:

1.2.1 References to the parties include their respective executors, administrators, successors and permitted assignees;

1.2.2 References to persons include individuals, partnerships, firms, associations, corporations and unincorporated bodies of persons,

government or semi-government or local body or municipal bodies, and agencies or political subdivisions of them in any case whether having separate legal personality or not;

- 1.2.3 Words in the singular will include the plural and vice versa. Words importing one gender will include the other genders;
  - 1.2.4 Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
  - 1.2.5 Headings have been inserted for convenience only and do not affect the construction of this Agreement;
  - 1.2.6 Reference to a statute includes all statutes amending, consolidating or replacing the statute referred to;
  - 1.2.7 References to clauses and schedules are to be construed as references to the same in this Agreement;
  - 1.2.8 References to currency or \$ are to New Zealand dollars unless otherwise expressly stated; and
  - 1.2.9 *Including* and similar terms do not imply limitation.
- 1.3 Any covenant that binds any two or more persons or parties will bind them jointly and severally.

## 2. ***Objects of the Company***

2.1 *Objects*: The objects of the Company are:

- 2.1.1 To appoint and support a Banking Ombudsman with power (on behalf of the Company):
  - (a) to consider, subject to the Terms of Reference, complaints in connection with the provision of Financial Services by any Participant;

- (b) to facilitate the resolution, settlement or withdrawal of such complaints whether by making a decision or by such other means as shall seem expedient;
- (c) to promote and publicise the Scheme and to encourage and provide advice to Participants on the development and maintenance of good complaint-handling practices; and
- (d) to ensure that the Scheme complies with its benchmark principles of accessibility, accountability, effectiveness, efficiency, fairness and independence.

2.1.2 To collaborate with government or other authorities (whether national, local or otherwise) or any corporations, companies or persons on all matters relating to and affecting the business of Financial Services and referred to in clause **2.1.1** and the settlement of complaints in relation thereto.

2.2 *Support of Objects:* The Participants and the Company will:

- 2.2.1 support and pursue the Objects by whatever reasonable means are within their control;
- 2.2.2 work collaboratively together to achieve the Objects; and
- 2.2.3 not take any action or do anything in contradiction to the Objects or the spirit or intent of the Objects.

### 3. **Structure of Company**

- 3.1 *One Share:* The parties agree that the Company shall have one fully paid up share, which will be held at all times by the then Chairperson of the Board.
- 3.2 *Appointment of Chair:* The parties agree that the Board shall appoint the Chairperson of the Board from time to time in accordance with clause 10.1 of Part B of the Constitution.

#### 4. ***Powers and Duties of the Company***

4.1 The powers and duties of the Company, acting by and through the Board, shall be:

4.1.1 To appoint and support the Banking Ombudsman in accordance with the provisions of clause **5.1**;

4.1.2 To appoint any person to act as deputy or substitute for the Banking Ombudsman for such period of time and, subject to this Agreement and the Constitution, on such terms and conditions as it shall think fit (and so that while such deputy or substitute shall hold office, this Agreement and the Constitution shall apply to him or her, with any necessary alterations, in every respect as if he or she were the Banking Ombudsman);

4.1.3 Subject to this Agreement and the Constitution, to give such assistance to the Banking Ombudsman concerning the performance of his or her duties as to the Company shall seem expedient;

4.1.4 To receive and consider recommendations from the Banking Ombudsman for changes to the Terms of Reference;

4.1.5 To monitor the operation of the Terms of Reference;

4.1.6 Subject to clause **17.1**, from time to time to make such amendments to this Agreement or the Terms of Reference as it thinks fit;

4.1.7 At each Annual Meeting to receive and if thought fit to approve the Report of the Banking Ombudsman for a period co-extensive with the Financial Year of the Company last ended;

4.1.8 From time to time, and not less frequently than once in each year, to consider and if thought fit to approve a draft financial budget prepared by the Banking Ombudsman, each such budget to be

prepared in respect of a period co-extensive with a Financial Year of the Company;

- 4.1.9 In relation to each Financial Year of the Company, to prepare or procure the preparation of every document required to be comprised in the accounts of the Company in respect of that period;
  - 4.1.10 To suspend or to remove the Banking Ombudsman;
  - 4.1.11 To receive complaints about the operation and performance of the Scheme;
  - 4.1.12 Where appropriate, to take action to improve the performance of the Scheme;
  - 4.1.13 To set standards for the Banking Ombudsman and the Scheme, against which the performance of the Banking Ombudsman and the Scheme can be measured;
  - 4.1.14 To receive regular reports from the Banking Ombudsman about his or her and/or the Scheme's performance against the standards set by the Board; and
  - 4.1.15 To commission an independent review of the Scheme at least once every 5 years from the date of approval of the Scheme under the Act, and to provide a copy of the independent reviewer's report to the Minister within 3 months of the independent reviewer's completion of that report.
- 4.2 All electronic payments, cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be authorised, signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Company determines from time to time.

## 5. ***Appointment of Banking Ombudsman***

5.1 The parties agree:

5.1.1 The Company will from time to time appoint a Banking Ombudsman to hold office with the Company (subject to clause **5.1.2** and **5.1.3**) for such period and on such terms and conditions of engagement as the Company shall think fit. The person holding the office of Banking Ombudsman may be reappointed at the expiry of any period of office.

5.1.2 In appointing a Banking Ombudsman, the Board will consider candidates' objectivity, qualifications (including, in particular legal and/or alternative dispute resolution qualifications), experience and personal qualities.

5.1.3 The Banking Ombudsman shall neither be an employee of, nor hold any office or position with a Participant, nor shall he or she, either personally or through any other entity or body, act in a professional capacity for the Company.

5.1.4 The Banking Ombudsman shall be entitled to be paid such travelling, hotel and other expenses as are reasonably and properly incurred by him or her in connection with the business of the Company.

5.2 The powers and duties of the Banking Ombudsman shall be as set out in the Terms of Reference.

5.3 Each Participant undertakes to the Company (but not to any other Participant) to be bound by any decision which, in accordance with the Terms of Reference, is made by the Banking Ombudsman against it and accepted by the other party to the dispute.

## 6. ***Complaints Procedures***

- 6.1 Each Participant acknowledges that it has its own internal complaints procedures and undertakes to the Company to publicise such procedures to customers and to inform customers of the details of the Scheme, in accordance with the Code of Banking Practice (as amended or replaced from time to time).
- 6.2 Each Participant will otherwise comply with the Code of Banking Practice (as amended or replaced from time to time) and any other industry code of practice applicable to the Participant.

## 7. ***Commencement of Participation***

- 7.1 Any Registered Bank or Non-bank Deposit Taker may apply in writing to the Company to become a Participant under this Agreement. The Company shall decide the procedure to be adopted in considering applications. Any decision to admit an applicant as a Participant is to be made by the Board in accordance with clause 10.15 of the Constitution and is subject to that applicant meeting the Participation Criteria.
- 7.2 The Company will not admit as a Participant any applicant which has previously failed to comply with any award and/or remedial action imposed on it by any approved dispute resolution scheme.
- 7.3 Any applicant being admitted as a Participant shall execute a Deed of Accession in the form attached in the **Second** Schedule, pursuant to which it agrees to be bound by all of the obligations of a Participant under this Agreement.
- 7.4 Each Participant will, by written notice to the Company in June each year, advise whether it continues to meet the Participation Criteria.

7.5 The Banking Ombudsman may, at any time, undertake a review to determine whether a Participant continues to meet the Participation Criteria.

7.6 Participants will immediately notify the Banking Ombudsman upon becoming aware that they no longer meet any of the Scheme's Participation Criteria.

## 8. ***Withdrawal or Termination of Participation***

8.1 A Participant may, at any time, give no less than three calendar months' written notice to the Company to the effect that it wishes to withdraw from this Agreement. Such withdrawal will take effect upon expiry of that notice and will have the effect of terminating this Agreement only insofar as it affects that Participant.

8.2 In the event that the Company has its status under the Act as an approved dispute resolution scheme withdrawn, then a Participant may, by written notice to the Company, immediately terminate the participation of the Participant.

8.3 The Company may, by written notice to the relevant Participant, at any time immediately terminate the participation of any Participant if that Participant:

8.3.1 Ceases to be a Registered Bank or a Non-bank Deposit Taker, as the case may be; or

8.3.2 Has received notice from the Company that in the opinion of the Board the Participant, having received reasonable opportunity to make submissions to the Board, does not meet the Participation Criteria currently applied by the Board in approving a Participant which is a Non-bank Deposit Taker; or

- 8.3.3 Has not paid any levy or subscription demanded by the Company pursuant to clause **9.4** within three months after written demand is served on the Participant; or
- 8.3.4 Has, in the reasonable opinion of the Board, failed to comply with an decision made by the Scheme in accordance with the Terms of Reference; or
- 8.3.5 Breaches, or fails to perform, any other material obligation of that Participant under this Agreement and fails to remedy the breach or perform the obligation within one month after written notice from the Company is served on the Participant specifying the breach or failure and requiring remedy.

Such termination of participation will have the effect of terminating this Agreement only insofar as it affects that Participant.

- 8.4 Withdrawal of a Participant, or termination of participation of a Participant (for whatever reason), pursuant to clauses **8.1** or **8.3** respectively:
  - 8.4.1 shall not entitle the Participant to repayment of the whole or any part of any levy or subscription previously paid by it;
  - 8.4.2 shall be without prejudice to the Participant's liability to pay any levy or subscription which has become due and payable before such withdrawal or termination;
  - 8.4.3 shall be without prejudice to the Participant's obligations in respect of any complaint referred to the Scheme before such withdrawal or termination (including to pay a sum of money recommended by the Scheme); and
  - 8.4.4 shall be without prejudice to any obligations of this Agreement surviving pursuant to clause **18.1**, and will not relieve that Participant of any obligations under this Agreement arising prior to such withdrawal or termination.

## 9. ***Levies on Participants***

9.1 The Company may at any time and from time to time obtain money for the purposes of the Company or the Banking Ombudsman by raising a levy from each Participant.

9.2 Where a Participant accedes to this Agreement, that Participant shall pay to the Company any entry fee prescribed by the Company provided that no entry fee will be payable by a Participant which was a participating bank of the Banking Ombudsman Commission immediately prior to the date of this Agreement.

9.3 The parties agree:

9.3.1 Subject to clause **9.4** and clause **9.9**, the amount of the levy to be charged to a Participant on its own account in respect of each Financial Year shall be calculated as follows:

(a) First, the liability of each Participant for 40% of the total levies of all Participants is in the same proportion as the New Zealand-based Assets of a Participant as at 31 December of the previous Financial Year bears to the total New Zealand-based Assets of all Participants as at 31 December of the previous Financial Year. For the purposes of this clause **9.3**, New Zealand-based Assets means New Zealand-based branch and group assets and includes the assets of any subsidiaries and related parties of the Participant; and

(b) Second, the liability of each Participant for the remaining 60% of the total levies of all Participants is in the same proportion as the weighted number of disputes considered by the Banking Ombudsman on behalf of the Company in the previous Financial Year bears to the total weighted number of disputes considered in the previous Financial Year. The weighting for disputes is made by a resolution of

the Board approved by a majority of 75% of the directors to achieve a fair apportionment of the costs. Where a Participant has been a Participant for only part of the previous Financial Year reference to the Financial Year will be a reference to that part year.

9.3.2 On or about 1 July 2008 and three yearly thereafter the Participants shall review the period for which levies are payable in accordance with this clause **9.3** and the method of calculating the amount of levy to be charged to Participants pursuant to clause **9.3.1**, and the Company shall make such amendments to this clause **9.3** (following consultation with the Council of the New Zealand Bankers' Association and otherwise in accordance with clause **17.1**) as shall be required to achieve a fair apportionment of the costs of the Company (including the costs of the Scheme) amongst the Participants.

9.3.3 The Company may by a resolution approved by a majority of 75% of the directors raise a supplementary levy from each or any Participant to achieve a fair apportionment of the costs of the Company amongst the Participants or for the payment of levies for any transitional period resulting from an alteration to the period over which the levy is charged.

For the purposes of this clause **9.3**, the amounts and proportions of liabilities shall be established conclusively by the statistics published in the Report of the Banking Ombudsman as at 30 June of that year or otherwise by the available statistics as at the date closest to 30 June of the year in question.

9.4 The Company may determine in respect of Participants:

9.4.1 a minimum contribution per year payable by each Participant in respect of levies or expected levies of the Company and the date of such payment; and

- 9.4.2 that any payment of levies to be calculated on the basis of the liabilities of a Participant be calculated provisionally on the basis of the relative proportions of liabilities of Participants as at 30 June of the immediately preceding year, and that they be payable at such times as the Company determines. All necessary payments, credits or other adjustments shall be made after publication of the statistics referred to in clause **9.3** as at 30 June of the year in question or otherwise by the available statistics as at the date closest to 30 June of the year in question.
- 9.5 The Company shall, no later than 30 Working Days prior to the commencement of each Financial Year, serve upon each Participant a notice requesting payment of the levy to be raised from that Participant in respect of that Financial Year, giving particulars of the total amount of the levy to be raised and the amounts payable by each Participant.
- 9.6 Each levy raised pursuant to clause **9.5** will be due and payable by each Participant in four instalments on each of 1 July, 1 October, 1 January and 1 April of each Financial Year of such amounts as the Company may determine. Any other levies raised pursuant to this Agreement will be due and payable by each Participant 20 Working Days after the written notice requesting it has been served on that Participant by the Company.
- 9.7 Any Participant ceasing to be a Participant, whether by withdrawal or termination, before the end of a Financial Year will be liable to pay in full the total amount of the levy payable by the Participant for that Financial Year not less than 20 Working Days before ceasing to be a Participant.
- 9.8 The Company may in its entire discretion pay to a Participant or allow as a credit any amount by way of a rebate of any levy or fee paid or payable by the Participant.

9.9 The Company may determine, in respect of a Participant which joins the Scheme after 30 June 2010, that an additional levy is payable to the Company which shall be applied towards the cost incurred by the Company in extending the Scheme to Non-bank Deposit Takers, such additional levy to be payable in such instalments and for such period as the Company may determine.

## 10. ***Special Levies***

10.1 In the event of Winding Up of the Company, the Company may, prior to or in the course of such Winding Up, raise a special levy from each person which is a Participant at the time of the Winding Up (or was within one year before that Winding Up), equal to the estimated debts and liabilities of the Company that may remain outstanding following the Winding Up process, taking into account the costs, charges and expenses of the Winding Up process. Such levy will be payable by persons in the same proportions as the levies paid or payable by each such person in respect of the Financial Year of the Company last ended before the commencement of such Winding Up.

10.2 Each Participant acknowledges that:

10.2.1 The Company, pursuant to the Sale and Purchase Agreement under which it has purchased the business and undertaking of its predecessor, the Banking Ombudsman Commission, is indemnifying the Banking Ombudsman Commission, and each past and present member thereof, (each, an *Indemnitee*), against liabilities, claims, expenses, losses, damages or costs (including direct, indirect and consequential losses, and including legal costs on a solicitor and own client basis) incurred by an Indemnitee, or for which the Indemnitee may become liable, as a result of any act or omission (including the carrying out of any functions or duties) by an Indemnitee arising from or in connection with the Banking Ombudsman Commission; and

10.2.2 The Company may, from time to time, raise special levies from each Participant equal to the amount of any liability pursuant to that indemnity. Such levy will be payable by Participants in the same proportions as the levies paid or payable by each such Participant in respect of the Financial Year of the Company last ended.

## 11. ***Process on Winding Up***

11.1 Upon Winding Up of the Company, the Board may proceed to realise the property of the Company or set such value as it considers fair upon any property to enable it to satisfy any outstanding debts or liabilities and to rebate the then remaining money or property to the Participants in accordance with clause **11.2**.

11.2 If upon Winding Up of the Company there remains, after the satisfaction of all the Company's debts and liabilities, any money or property whatsoever it shall be paid or transferred to the Participants by way of rebate of levies previously paid by each Participant. Such rebate shall be proportionate to the amount of any levy paid or payable by each such Participant in the Financial Year of the Company last ended before the commencement of such Winding Up.

11.3 The Company will take all actions (including procuring the Board and the Shareholder to pass all resolutions and sign all documents) necessary to facilitate the rebates set out in this clause **11**.

## 12. ***Inspection of Records***

12.1 The Company may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or the Banking Ombudsman (or any of them) will be opened to the inspection of Participants. A Participant does not have the right to inspect any document of the Company or the Banking Ombudsman except as provided by law or authorised by the Company.

13. ***Right to Attend Annual Meetings***

13.1 Any Participant may attend and speak at any Annual Meeting through a representative appointed by that Participant.

13.2 Notice of every Annual Meeting must be given in a manner authorised by clause **18.2** to:

13.2.1 Every Participant;

13.2.2 Every member of the Board;

13.2.3 The Chairperson of the New Zealand Bankers' Association;

13.2.4 The Banking Ombudsman;

13.2.5 The Auditor;

13.2.6 The Secretary; and

13.2.7 Consumer representatives as identified by the Chairperson.

13.3 No other person is entitled to receive notices of Annual Meetings.

14. ***Constitution and Terms of Reference***

14.1 No party will take any action inconsistent with, or intended to prevent the Company or the Board from complying with, any provision of the Constitution and Terms of Reference.

14.2 In the event of any inconsistency between this Agreement and the Constitution, this Agreement shall prevail.

14.3 In the event of any inconsistency between this Agreement and the Terms of Reference, this Agreement shall prevail.

15. ***Assets of the Banking Ombudsman Commission***

15.1 Each Participant acknowledges that it does not have any claim to, and will not make any claim in relation to, any of the assets used by the Banking Ombudsman Commission prior to the transfer of those assets to the Company pursuant to the Sale and Purchase Agreement referred to in clause **10.2.1**.

16. ***Confidentiality***

16.1 Except as provided in clause **16.2** or as required by any competent authority or as otherwise required by law or as properly and reasonably required in connection with any legal proceedings instituted by or against the Company or any of its officers, no party shall disclose to any person (other than the Banking Ombudsman and the Scheme) any information concerning a complaint referred to the Scheme from which it would or might be possible to identify the complainant or any Participant named in a complaint or any other information or matter of a confidential nature including the banking or security procedures of any Participant or any matter relating to the handling of complaints by the Banking Ombudsman and the Scheme.

16.2 Clause **16.1** shall not prohibit the disclosure of any information by the Company, the Banking Ombudsman or the Scheme to any Participant named in a complaint.

17. ***Amendments to this Agreement and Terms of Reference***

17.1 This Agreement and the Terms of Reference may at any time be altered, added to, rescinded or replaced by the Company (by the Board in accordance with clause 10.15 of the Constitution) after consultation with the Council of the New Zealand Bankers' Association. The Company will give each Participant 20 Working Days' notice of any such alteration, addition, rescission or replacement.

17.2 In the event of any such alteration, addition, rescission or replacement, all parties will be bound by the amended Agreement or Terms of Reference (as the case may be) as if they had executed those amended versions.

18. **General**

18.1 *Survival*: All the obligations contained in this Agreement (including without limitation clauses **7.6**, **9**, **9.8**, **14**, **15**, and **18**) which are by their nature intended to and are capable of surviving the termination of this Agreement (or, with respect to each Participant, withdrawal from this Agreement or termination of participation pursuant to clauses **8.1** and **8.3** respectively) will continue in full force and effect according to their terms.

18.2 *Notices*: All notices provided for in this Agreement must be in writing and will be properly given if sent by email, facsimile transmission or by prepaid post to the address of the relevant party as specified in the **First** Schedule for the giving of notices marked for the attention of the person or the holder of the position specified in the **First** Schedule. If no such address is specified, then to the principal place of business of that party, provided that a party may specify a new address for giving notice under this Agreement by serving notice on the Company in accordance with this clause. Any notice sent pursuant to this clause will be deemed to have been received on the date of completion of an email, facsimile transmission or on the third Working Day following posting.

18.3 *Waiver*: No waiver of any breach of this Agreement by a party will be effective except an express waiver in writing signed by the party against whom enforcement of the waiver is sought. A waiver of a party's rights or remedies due to any particular breach of any provision of this Agreement will not be construed as a waiver of any other breach of the same or any other provision. Termination of this Agreement will not operate as a waiver of any rights, powers or

remedies of a party in respect of any breach giving rise to such termination or otherwise arising under this Agreement prior to termination.

18.4 *Unenforceability*: If any provision of this Agreement is held to be unenforceable under any law, that provision will be deemed modified to the extent necessary to comply with such law, or if the modification would be impracticable, will be deemed deleted and none of the other rights or obligations in this Agreement will be prejudiced or rendered unenforceable by reason thereof.

18.5 *Force Majeure*: Except to the extent otherwise provided in this Agreement, performance by a party of their obligations may be interrupted or suspended without liability to any other party if, and to the extent, the interruption or suspension is due to a force majeure affecting those obligations. The term *force majeure* includes an act of God, terrorism, war, civil commotion, fire, explosion, flood, failure of electrical or telecommunications networks, or any other event beyond the reasonable control of either party. However, no party shall be entitled to the benefit of the provisions of this clause under any or all of the following circumstances:

18.5.1 To the extent that the failure was caused by the contributory negligence of that party; or

18.5.2 If the failure was caused by lack of funds or the financial position of that party; or

18.5.3 To the extent that that party has failed to remedy the event, and to resume the performance of such covenants or obligations, as soon as reasonably practicable following the force majeure event.

18.6 *Costs*: Each party will meet its own costs in relation to the preparation and execution of this Agreement.

- 18.7 *Entire Understanding*: This Agreement, the Schedules and the documents referred to in them (including the Constitution and the Terms of Reference) embody the entire understanding of the parties relating to the matters herein referred to. This Agreement supersedes all prior agreements with respect to the matters contemplated in this Agreement.
- 18.8 *Further Assurances*: Each party shall promptly do everything reasonably required to give effect to this Agreement according to its spirit and intent.
- 18.9 *No Joint Venture or Partnership*: Nothing in this Agreement will be construed as in any sense creating a joint venture or any kind of partnership between the parties or as giving to any party any of the rights, or subjecting any party to any of the liabilities of, a partner.
- 18.10 *Facsimile and Counterpart Copies*: This Agreement may be signed by facsimile and in counterparts. The forwarding by facsimile by one party to the other party of the execution pages of this Agreement duly signed by the sending party will be sufficient proof of signing of the Agreement by the sending party.
- 18.11 *Governing Law*: This Agreement will be governed by and construed in all respects in accordance with the laws of New Zealand and the parties hereby submit to the exclusive jurisdiction of the courts of New Zealand.

**SIGNED:**

**SIGNED** by **BANKING** )  
**OMBUDSMAN** **SCHEME** ) \_\_\_\_\_ Director  
**LIMITED** in the presence of

\_\_\_\_\_ Witness's Signature

\_\_\_\_\_ Name

\_\_\_\_\_ Occupation

\_\_\_\_\_ Address

**SIGNED** on behalf of [# ] in the  
presence of: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**First Schedule**

**PARTICIPANTS**

ANZ Bank New Zealand

ASB Bank (including Bank Direct & Sovereign Home Loans)

Bank of Baroda New Zealand

Bank of China (New Zealand) Limited

Bank of India New Zealand

BNZ

China Construction Bank (New Zealand) Limited

Citi New Zealand

Heartland Bank

HSBC New Zealand

ICBC

Kiwibank

Nelson Building Society

NZCU Baywide

Rabobank New Zealand (including RaboDirect)

SBS Bank (including HBS Bank)

The Co-operative Bank

TSB Bank

Westpac

**Second Schedule**

**DEED OF ACCESSION**

*[#Date]*

By *[#full name of acceding party]* of *[#address]* (*Acceding Party*)

Background

This deed is supplemental to a Participation Agreement dated *[#date]* between Banking Ombudsman Scheme Limited and various Participants (*Participation Agreement*).

Terms

1. The Acceding Party confirms that it has been supplied with a copy of the Participation Agreement and the Constitution and Terms of Reference (as those terms are defined in the Participation Agreement).
2. The Acceding Party covenants with all present parties to the Participation Agreement (whether original or by accession) to observe, perform and be bound by all the terms of the Participation Agreement to the intent and effect that the Acceding Party is a “Participant” within the meaning of the Participation Agreement.
3. The Acceding Party’s address, and name/position of relevant contact person, for the purposes of the Participation Agreement is, until substituted in accordance with the Participation Agreement:

*[#address]*

*[#name/position of contact person]*

4. This deed is governed by the law of New Zealand.

**EXECUTED** as a deed.

*[insert execution clauses]*