**Securities and Exchange Commission of Pakistan**

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|  |
| Draft Trust Deed |
| **Sample for Trust Structure** |

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**TRUST DEED**

Of

**[Name of the Private Fund]**

Private Fund sub-categorized as (Private Equity and Venture Capital/Alternative Fund etc.) as per regulation 2(i) & 11(6) of Private Funds Regulations, 2015

[(Unlisted Close-End (PE & VC/Alternative) / Open-End Fund (Alternative)]

***Where applicable***

**(SHARIAH COMPLIANT)**

(DULY VETTED BY SHARIAH ADVISOR)

(NAMELY----------------)

(Registration No. ---------------------------)

**BETWEEN**

**][Name of Private Fund Management Company]**

Complete Registered Office Address of PFMC

**AND**

**Trustee (CDC/DCCL)**

Complete Registered Office Address of the Trustee

**[Place of Creation of Trust]  
  
\_**

**Dated: [DATE]**

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TRUST DEED

This Trust Deed is made and entered into at [Name of place], on this [xx day] of 20\_\_.

# Name of the Private Fund

This Private Fund is constituted as **“Name of the Fund”** (Type of Private Fund sub-categorized as Private Equity and Venture Capital/Alternative Fund etc.) as per regulation 2(i) & 11(6) of Private Funds Regulations, 2015).

# Category of the Private Fund

The Private Fund is a (Private Equity and Venture Capital Fund/Alternative fund) sub-categorized as a (Private Equity and Venture Capital/Alternative Fund etc.) which is established in a (closed-end/open end) structure under the Regulations, 2015.

# Participating Parties and Constitution of the Trust

I**. Name of Private Fund Management Company (PFMC)**, an unlisted public/private limited company incorporated (under the erstwhile Companies Ordinance, 1984) now Companies Act, 2017, (hereinafter called the “Private Fund Management Company/PFMC”, which expression wherever the context so permits shall include its legal representative, successors in interest and assigns) whose registered office is situated at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the first part.

**AND**

**II. Name of the Trustee** a public limited company incorporated in Pakistan under the erstwhile Companies Ordinance, 1984, now Companies Act, 2017 having its registered office at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (hereinafter called the **“Trustee”** which expression where the context so permits shall include its successors in interest administrators and permitted assigns) of the second part.

**WITNESSETH:**

1. The Private Fund Management Company has been licensed by the Commission as a Private Fund Management Company pursuant to the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (hereinafter referred to as the **“NBFC Rules”**, which expression shall include any amendments thereto and substitutions thereof), Non-Banking Finance Companies and Notified entities Regulations, 2008 (hereinafter referred to as the “NBFC Regulations”) for the purpose of undertaking Private Fund Management Services under License No. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **dated Month xx, 20--**, attached hereto as **Annexure “A”.**
2. The Private Fund Management Company has been authorized by the Commission vide its letter bearing reference No. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** dated Month xx**,** 20--**,** attached herewith as **Annexure “B”** **” (**the **“SECP Authorization”)** to constitute the Trust under the name and title of “**Name of** the **Fund**” (hereinafter referred to as the “**Trust**” or the **“Private Fund**”) and to register this Trust Deed (the “**Deed**”), under the \_\_\_Trust Act 2020 and pending registration of the Trust as a notified entity under Section 282CA of the Ordinance for the establishment and operation of the Trust in accordance with the provisions of the Rules, the Private Funds Regulations, 2015 (the “**Regulations**”), and any other applicable rules and regulations, or circular, orders, directives, or instructions issued by the Commission or any other authority having jurisdiction over the Private Fund Management Company, the Private Fund or the Trustee, all as may be issued or amended from time to time (collectively referred to as “**Applicable Law**”) and its Constitutive Documents (as defined in the Regulations), including this Deed;
3. SECP has provided No Objection Certificate vide its letter bearing reference No. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** dated **Month xx, 20--,** attached herewith as Annexure **“B”** to constitute the Trust under the name and title of “**Name of the fund”** (hereinafter referred to as the “Trust” or the “Private Fund” and to register this Trust Deed (the “Deed”), pending registration of the Trust as a notified entity under Section 282CA of the Ordinance for the establishment and operation of the Trust in accordance with the provisions of the Rules and Regulations and this Deed;
4. The Private Fund Management Company has nominated and hereby appoints [**Name of Trustee]** as Trustee of the Private Fund and the Trustee has accepted such appointment upon the terms and conditions herein contained and the tariff structure for trusteeship as per **Annexure “C”** attached herewith;
5. Assistant Director of Industries and Commerce Directorate of the Department has issued a certificate of registration bearing reference no ……………. upon registration of the Trust under Sindh Trust Act, 2020.
6. The SECP has also approved the appointment of the Trustee vide its letter bearing reference No. dated attached herewith as **Annexure “D”**;
7. The Private Fund Management Company has appointed and approved **Name of Shariah advisor** as Shariah Advisor and the Shariah Advisor has approved the contents of this Deed vide letter dated **Month xx, 20--.**

# Objective of the Trust

State the objectives of the trust that will be employed to generate a desirable return (mention any specification of the return e.g. Alpha, Beta etc.) for the Unit Holders.

The Private Fund shall invest in instruments as defined under Private Funds Regulations, 2015 and any other Applicable Laws (as defined in Clause 5.1), including the guidelines/circulars issued by Commission from time to time.

# Governing Law and Jurisdiction

* 1. This Deed shall be subject to and governed by the laws of Pakistan, including Part VIIIA of the repealed Companies Ordinance, 1984, Companies Act, 2017, the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003, Non-Banking Finance Companies (Establishment and Regulations) Regulations, 2008, Private Funds Regulations, 2015, ITO, 2001, Foreign Exchange Manual, Foreign Exchange Regulation Act, 1947 and all applicable rules, regulations, directives, orders and circulars by the SECP, Federal Board of Revenue (FBR), State Bank of Pakistan (SBP) or any other authority having jurisdiction over the Private Fund Management Company, the Private Fund and the Trustee, all as may be issued or amended or replaced from time to time, including Shariah Advisor guidelines (where applicable). The terms and conditions in the Deed and any supplemental (s) shall be binding on each Unit Holder. Where any Rules or Regulations are issued or amended, any directives are issued or any relaxation or exemption is allowed by the Commission it shall be deemed for all purposes whatsoever that all the provisions required to be contained in a Deed pursuant to such new Regulations, amendments, directive, relaxation or exemption shall be deemed to have been incorporated in this Deed without requiring any modification unless specifically required by the Commission. In the event of any conflict between this Deed and the provisions of the Rules, Regulations, directives, circulars, the latter shall supersede and prevail over the provisions contained in this Deed.
  2. Subject to the Clause 26 hereafter, applicable between the Private Fund Management Company and the Trustee inter se, each party, including the Unit Holder(s), irrevocably submit to the exclusive jurisdiction of the Courts at (**name of the place of trust creation).**

# Declaration of Trust

It is hereby declared unequivocally, that by way of this Deed, a Private Fund in the name and title of **“Name of the Private Fund**” is hereby created and the Trustee is hereby nominated, constituted and such appointed as the Trustee of the Private Fund. The Private Fund Management Company and the Trustee hereby agree to such appointment and it is hereby irrevocably and unconditionally declared that:

1. the Trustee shall hold and stand possessed of all assets, properties, or investments of whatsoever nature forming part of the Trust (the “Trust Property”) that may from time to time hereafter be vested in the Trustee upon trust as a single common fund in the terms of Private Fund for the benefit of the Unit Holder(s) ranking pari passuinter se, according to the number of Units held by each Unit Holder(s);
2. the Trust Property shall be invested or disinvested from time to time by the Trustee at the direction of the Private Fund Management Company, in such manner and on such terms as stipulated in this Deed, the Private Placement Memorandum, the Rules, the Regulations, directives or circulars issued by the Commission and conditions (if any) which may be imposed by the Commission from time to time; and
3. The Private Fund Management Company shall establish, manage, operate and administer the Private Fund in accordance with clause 5.1 and the Constitutive Documents as amended from time to time.

# Duration and Date of extinction of Trust

Please provide following details:

1. The duration of the Private Fund for a period of **\_\_ years** starts from the date of any point of reference i.e. point of first closing etc.
2. Clause on extension in time period by the Private Fund Management Company to complete transactions that were in process on such date.
3. Clause on early termination of Private Fund in accordance with the Constitutive Documents.
4. Any other clauses on reinvestments or additional follow-on investments till termination of the Private Fund etc.

*Add this clause:* However, the Commission or the Private Fund Management Company may terminate or revoke, on the occurrence of certain events as specified in Applicable Laws and Constitutive Documents of the Private Fund.

# Benchmark/Target Return

The Benchmark/ target return of the Private Fund shall be disclosed in the Private Placement Memorandum and shall be in accordance with the applicable laws (as defined in clause 5.1).

# Investment Policy and Authorized Investment

The Investment Policy of the Private Fund shall be defined in the Private Placement Memorandum and shall be in accordance with the Applicable Laws.

The Trust Property shall be invested by the Trustee, as instructed by the Private Fund Management Company from time to time, as set forth in the Placement Memorandum.

# Effect of this Deed and Status of Unit holder(s)

* 1. **Trust Deed Binding on Each Unit Holder**

The terms and conditions of this Deed as amended, as per the term of Clause 26 of this Deed, from time to time shall be binding on each Unit Holder as if the Unit Holder had been party to it and shall be bound by its provisions and shall be deemed to have authorized and required the Trustee and the Private Fund Management Company to do as required of them by the terms of this Deed and the Regulations.

* 1. **Unit Holder(s) Not Liable to Make Further Payments**

No Unit Holder(s) shall be liable to make any further contributions to the Private Fund after he/she has paid Capital Commitments and no further liability shall be imposed on any Unit Holder(s) in respect of the Units held by him/her.

* 1. **Units to Rank Pari Passu**

All Units and fractions thereof represent an undivided share in the Private Fund and shall rank pari passu according to the number of Units held by each Unit Holder, including as to the rights of the Unit Holder(s) in the Net Assets, earnings and the receipt of the dividends and distributions. Each Unit Holder has a beneficial interest in the Trust proportionate to the Units and fractions held by such Unit Holder and shall have such rights as are set out in this Deed and the Private Placement Memorandum.

Issuance, transfer, pledge and/ or lien of Units shall be carried out in accordance with the requirements of the Rules, Regulations, directives, circular and other guidelines issued by the Commission from time to time, as well as this Deed and the Private Placement Memorandum.

# Duties, Powers, Rights and Obligation of Trustee

* 1. The Trustee shall perform its role, duties and obligations and have such powers and rights, as are specified in the Rules, Regulations and directives issued thereunder, this Deed and the Private Placement Memorandum.
  2. In addition, the Trustee shall have the following obligations with respect to the Private Fund, the Private Fund Management Company and/ or the Unit Holders as applicable:

1. take under its control all the property of the Private Fund and hold it for the Unit Holders in accordance with the Rules, Regulations and the provisions of the Constitutive Documents. Any cash and registerable assets shall be registered in the name of, or to the order of, the trustee in case of trust;
2. ensure that the sale, purchase, issue and transfer of Units effected by a Private Fund are carried out in accordance with the provisions of the Constitutive Documents;
3. carry out the instructions of the Private Fund Management Company, in respect of investments unless these are in conflict with the provisions of the Regulations or the Constitutive Documents;
4. issue a report to be included in the annual report of the Private Fund and therein state whether, in its opinion, the Private Fund Management Company has in all material respects managed the Private Fund in accordance with the provisions of the Constitutive Documents, the Rules and the Regulations, and if the Private Fund Management Company has not done so, the respects in which it has not done so and the steps that the Trustee has taken in respect thereof;
5. not legally or beneficially own or invest in the Units of the Private Fund;
6. Obtain and maintain duplicate of all the records of register of Unit Holders maintained by the Private Fund Management Company or the Registrar and shall update the record on a regular basis;
   1. In the event of any loss caused due to any gross negligence or willful act and/or omission of the Trustee or that of its agent, the Trustee shall have an obligation to \*replace the lost investment forthwith with similar investment of the same class and issue together with all rights and privileges pertaining thereto or compensate the Trust to the extent of such loss. However, the Trustee shall not be under any liability thereof or thereby and it shall not incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done in good faith hereunder.
   2. Comply with any directions of the Commission given in the interest of the Unit Holders.
   3. The Trustee shall nominate one or more of its officers to act as authorized persons for performing the Trustee’s functions and for interacting with the Private Fund Management Company. Any change in such authorized persons shall be promptly notified to the Private Fund Management Company.
   4. The Trustee shall on the instructions of the Private Fund Management Company appoint, remove or replace from time to time one or more bank(s) and/or other depository company(ies) etc. to act as the Custodian(s) for holding and protecting the Trust Property and every part thereof and for generally performing the custodial services at one or more locations and on such terms as the Trustee and the Private Fund Management Company may mutually agree to be incorporated in custodial services agreement(s) to be entered into between the Trustee and the Custodian(s), except where the Trustee itself is acting as a Custodian. Notwithstanding appointment of any other entity to act as Custodian for any of the Trust Property, the Trustee shall continue to remain responsible for performance of its function and obligations under this Deed, Constitutive Documents and Applicable Law.
   5. Except as otherwise provided in the Constitutive Documents or Applicable Law, the Trustee shall not be under any liability on account of anything done or suffered by the Trust, if the Trustee had acted in good faith in performance of its duties under this Deed or in accordance with or pursuant to any request of the Private Fund Management Company provided it is not in conflict with the provisions of this Deed or the Rules and the Regulations. Whenever any instruction pursuant to any provision of this Deed, certificate, notice, direction or other communication is required to be given by the Private Fund Management Company, the Trustee may accept as sufficient evidence thereof.
   6. A document signed or purporting to be signed on behalf of the Private Fund Management Company by any authorized representative(s) whose signature, the Trustee is for the time being authorized in writing by the Private Fund Management Company to accept; and
   7. Any instructions received online through the software solution adopted by the Private Fund Management Company/Trustee in consultation with each other shall be deemed to be instructions from the authorized representative(s).
   8. The Trustee shall not be liable for any loss caused to the Private Fund or to the value of the Trust Property directly caused by Force Majeure;
   9. The Trustee shall make available or ensure that there is made available to the Private Fund Management Company such information as the Private Fund Management Company may reasonably require from time to time in respect of the Trust Property and all other matters relating to the Trust.
   10. The Trustee shall, if requested by Private Fund Management Company or if it considers necessary for the protection of Trust Property or safeguarding the interest of Unit Holder(s) subject to obtaining prior written consent of Private Fund Management Company institute or defend any suit, proceeding, arbitration or inquiry or any corporate or shareholders’ action in respect of the Trust Property or any part thereof, with such powers as may be authorized by the Private Fund Management Company to sign, swear, verify and submit pleadings and affidavits, to file documents, to give evidence, to appoint and remove counsel and to do all incidental acts, things and deeds through the Trustee’s authorized director(s) and officer(s). All costs, charges and expenses (including legal fees) incurred in instituting or defending any such action shall be borne by the Trust and the Trustee shall be indemnified against all such costs, charges and expenses, provided that no such indemnity shall be available in respect of any action taken against the Trustee in connection with the Trustee’s gross negligence or breach of its duties in connection with the Trust. For the avoidance of doubt it is clarified that notwithstanding anything contained in this Deed, the Trustee and the Private Fund Management Company shall not be liable in respect of any losses, claims, damages or other liabilities whatsoever suffered or incurred by the Trust arising from or consequent to any such suit, proceeding, arbitration or inquiry or corporate or shareholders’ action or otherwise howsoever and (save as herein otherwise provided) all such losses, claims, damages and other liabilities shall be borne by the Trust.
   11. The Trustee shall promptly forward to the Private Fund Management Company within one Business Day any notices, reports or other documents issued by the issuers of securities, recipients of any of the Trust Property (as deposits, refunds, distribution of dividends, income, profits, repayment of capital or for any other reason), any depository, an intermediary or agent in any transaction or from any court, government, regulator, stock exchange or any other exchange.
   12. The Trustee shall call a meeting of the Unit Holders through notice to the Unit Holders whenever required as per mechanism defined in Private Placement Memorandum.

# Duties of the Trustee which may be delegated to the Third Parties

The Trustee may appoint any third party to act as agent of the Trustee for holding and protecting Trust property and every part thereof and for generally performing the custodial services at one or more locations and on such terms as the Trustee and the Private Fund Management Company may mutually agree to be incorporated in custodial services agreement(s). Notwithstanding appointment of any other entity to act as agent of the Trustee for any of the Trust Property, the Trustee shall continue to remain responsible for performance of its function and obligations under this Deed, Constitutive Documents and Applicable Law.

# Duties, Powers, Rights of the Private Fund Management Company in relation to the Trust

* 1. The Private Fund Management Company shall manage, operate and administer the Private Fund in accordance with the Rules, Regulations, 2015 directives, circulars and guidelines issued by Commission, this Deed and the Private Placement Memorandum.
  2. The Private Fund Management Company shall manage, operate, administer the Private Fund and make investment decisions on a discretionary basis in pursuit of the Investment objective and approach and restriction set out in this Deed and the Private Placement Memorandum in accordance with the requirements of Rules, the Regulations, directives, circulars and guidelines issued by Commission. Subject to such investment objective approach and any restriction, the Private Fund Management Company shall have complete discretion for the account and as the agent of the Private Fund, to buy, sell, retain, convert, execute, exchange, negotiate, settle and instruct Trustee to sign on behalf of the Private Fund account opening and any other related trading documentation or otherwise deal in investments, make deposits, subscribe to issue and offers for sale, and accept placing, underwritings, of any investments, effect transactions whether or not on any recognized market or exchange and otherwise act as it determines appropriate in relation to the management and investment of the Private Fund.
  3. The Private Fund Management Company shall:

1. be obliged to manage the assets of a Private Fund in the interest of the Unit Holders in good faith and to the best of its ability and without gaining undue advantage for itself or any of its related parties including connected persons and group companies or its officers;
2. before offering a Private Fund to an eligible investor assess or take into consideration the financial sector experience, risk tolerance and net worth of eligible investor as per schedule VI of Regulations;
3. prepare and fill the Investment Policy Statement in consultation with the Eligible Investor as per prescribed Schedule VI of the Regulations;
4. account to the Trustee for any loss in value of the Private Fund where such loss has been caused by its negligence, recklessness or willful act or omission; and
5. ensure prevention of money laundering and terrorist financing and abide by such laws, directive and circulars issued by the Federal Government and Commission regarding know your customer requirements and safe guard against the involvement in money laundering and terrorist financing;
6. ensure that investment decisions are consistent with the objectives and investment policy of the Private Fund as contained in the constitutive documents;
7. ensure that investments do not deviate from the Constitutive Documents, the Regulations or directions of the Commission;
8. develop and follow internal investment restrictions and polices;
9. review the performance of the Private Fund on regular and timely basis;
10. ensure that proper record of investment decisions is maintained;
11. manage the Private Funds according to its Constitutive Documents, the Rules, the Regulations, circular or directives issued by the Commission;
12. establish and maintain sufficient risk management system and controls to enable it to identify, assess, mitigate, control and monitor risk in the best interest of the unit holders;
    1. Formulate and implement Board’s approved internal control policies and procedures ensuring:
13. appropriate segregation of duties and information barriers between the trading, risk management and processing functions, commonly referred to as the front, middle and back offices;
14. segregation between trading, research, and corporate finance functions;
15. establishes ‘Chinese Walls’ along with implementation of policies and physical apparatus designed to prevent the improper or unintended dissemination of market sensitive information from one division of a multiservice firm to another division;
16. establish polices and procedure, reasonable under the circumstances, to ensure that individuals making investment decisions for the Private Fund Management Company are not trading on the basis of material nonpublic information obtained from another area of the Private Fund Management Company;
17. establishes policies and procedures for managing, minimization and disclosure of conflict of interest.
    1. Formulate a Board approved risk management policy for identifying, measuring and managing the risks of the investments, including the sources, nature and degree of such risks and shall also make compliance manuals.
    2. Identify and assign unit, department or personnel for carrying out risk management function which shall be, hierarchically and functionally, independent of the operating units and shall be responsible for the identification, monitoring / measurement and proper management of all risks.
    3. The Private Fund Management Company may from time to time, with the consent of the Trustee, frame procedures for conducting the business of the Private Fund or in respect of any other matter incidental thereto; provided that such procedures are not inconsistent with the provisions of Applicable Law and the Constitutive Documents.
    4. The Private Fund Management Company shall not be under any liability except such liability as may be expressly imposed on it under Applicable Law and the Constitutive Documents, nor shall the Private Fund Management Company be liable for any act or omission of the Trustee, nor for anything except for its own gross negligence or willful breach of duty and the acts and omission, and the acts and omission of all persons to whom it may delegates any of its functions, as if they were its own acts and omissions. If for any reason it becomes impossible or impracticable to carry out the provisions of this Deed and the Private Placement Memorandum, the Private Fund Management Company shall not be under any liability thereof or thereby and it shall not incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done in good faith.
    5. The Private Fund Management Company shall nominate by way of an authority letter /power of attorney or other document as proof of authorization, one or more of its officers(s) to act as authorized persons for interacting with and giving instructions to the Trustee, and shall notify the Trustee of the identities of such authorized persons. Any instruction or notice given by such authorized persons shall be deemed to be the instruction or notice given by the Private Fund Management Company. Any change in such authorized persons shall promptly be notified to the Trustee.
    6. The Private Fund Management Company shall, from time to time, advice the Trustee of any settlement instruction relating to any transactions entered into by it on behalf of the Private Fund. The Private Fund Management Company shall ensure that settlement instructions are given promptly after entering into the transaction so as to facilitate timely settlement.
    7. The Private Fund Management Company shall not hold client money. Money within the Private Fund shall be held in accordance with the provision of Applicable Law and the Constitutive Documents.
    8. The Private Fund Management Company shall not have authority to hold or have possession of any Investments or other assets of the Private Fund and, unless otherwise directed by the Trustee on behalf of the Private Fund or in any particular respect, custody of all investments and other assets of the Private Fund shall be entrusted to the Trustee. In the exercise of its discretionary investment management of the Private Fund, the Private Fund Management Company shall itself be responsible for reviewing, and taking such actions as it may consider appropriate, in respect of rights, other than income, conferred in respect of any Investments or other assets within the Private Fund.
    9. The Private Fund Management Company shall be responsible for negotiating and establishing all agreements or arrangements with any other party in relation to the negotiation and implementation of equity and debt arrangement, whether on a secured or unsecured basis, financing, trading investment or custody of the assets of the Private Fund including, without limitation, agreements with any broker or the Custodian in relation to the assets of the Private Fund, the establishment of wholly or partly owned companies to hold the assets/including shares forming part of the Private Fund, account opening documentation, International Swaps & Derivatives (ISDA) master agreements, repurchase agreement, stock lending agreement or other financing or trading agreements, schedule, credit support and other annexes and all documents relating thereto.
    10. The Private Fund Management Company is authorized to give the brokers, the Custodian, administrators, dealers and advisors or counterparties any trade instructions on behalf of the Private Fund, which may be necessary or desirable for the proper performance of the Private Funds Management Company`s duties under the Constitutive Documents and the Trustee agrees to provide settlement instruction and confirm such authority to such parties on request.
    11. The Private Fund Management Company may, if it considers necessary for the protection of Trust Property or safeguarding the interest of the Unit holders, request the Trustee to institute or defend any suit, proceeding, arbitration or inquiry or any corporate or shareholders action in respect of the Trust Property or any part thereof at the cost of the Private Fund.
    12. The Private Fund Management Company shall not be liable in respect of any act or omission of any person, firm or company through whom transaction in Investments are affected for the account of the Private Fund or any other party having custody or possession of the assets of the Private Fund or any clearance or settlement system. Provided that Private Fund Management Company have employed reasonable due care and due diligence in this regard.
    13. The Private Fund Management Company gives no warranty that assets acquired for the Investments will not depreciate in value or that they will not be affected by adverse tax consequences.
    14. The Private Fund Management Company will not be responsible for any loss of opportunity whereby the value of the Private Fund could have been increased or for any decline in the value of the Private Fund howsoever arising, except to the extent that such loss or decline is due to the Private Fund Management Company’s gross negligence, willful default or fraud or that of any of its directors or employees.
    15. The Private Fund Management Company will not be liable for any loss arising from errors of fact or judgment or any action taken (or omitted to be taken) by it howsoever arising except to the extent that any such error or action (or the omission thereof) is due to the Private Fund Management Company`s gross negligence, willful default or fraud or that of any of its directors or employees. No warranty is given by the Trustee or Private Fund Management Company as to the performance or profitability of the Private Fund or its Investments or any part of it.
    16. The services of the Private Fund Management Company hereunder are not to be deemed exclusive. The Private Fund acknowledges that the Private Fund Management Company and its members, officers, employees or associates may from time-to-time act as director, investment manager, manager, investment advisor or dealer in relation to, or be otherwise involved in, investment funds other than the Private Fund, which have similar or different objectives to that of the Private Fund. It is therefore possible that any of them may, in the course of business, have potential conflicts of interest with the Private Fund. Each will, at all times, have regard in such event to its obligations to the Private Fund and will endeavor to ensure that such conflicts are resolved fairly.
    17. The Private Fund Management Company shall announce the Net Asset Value (NAV) of the Private Fund within such period and at such frequency as prescribed and disclosed in the Private Placement Memorandum of the Private Fund.
    18. Disclose at least the following information on half yearly basis to the investor;
18. Detail and composition of portfolio including value and description of the portfolio, value of each security held in the portfolio and cash balances as on the date of report;
19. Details of expense charged and expense ratio including management fee, Trustee fee, formation cost, auditor fee, brokerage commission, bank charges, other charges etc. as per the constitutive documents;
20. Details of benefit received during that period including interest, dividend, bonus units; and
21. Performance review.
    1. Shall maintain at its registered office, proper books and records of accounts and activities undertaken in connection with the Private Fund in order to enable a true and fair view to be formed of the:
22. assets and liabilities of the Private Fund;
23. the profit and loss accruing out of the operation of the Private Fund;
24. transactions undertaken with respect to the Private Fund;
25. amounts received in respect of issue of Units; and
26. pay-outs, if any, by way of distributions to the Unit Holders.
    1. Maintain the books of accounts and other records of the Private Fund at least for ten (10) years.
    2. Maintain register of unit holders as part of the records and exercise due diligence and take reasonable care to ensure that the register is accurate, complete and up-to-date and ensure that persons recorded in the register are eligible investors;
    3. Only undertake sale and purchase transactions between Private Funds under its management or with client of the Private Fund Management company (cross trades) where the: -
27. Sale and purchase decisions are in the best interest of both clients/ Private Funds;
28. Transactions are executed on an arm’s length and fair value basis;
29. Reasons for such transactions are documented prior to execution; and
30. Activities are identified to both clients/ Private Funds in their respective periodic transaction reports or statements.
    1. Within four (4) months of close of the financial year of the Private Fund, prepare as per the approved applicable International Accounting Standards and International Financial Reporting Standards, and transmit to the unit holders and the Commission, with respect to the Private Fund:
31. The balance sheet stating details of investments depicting cost and realizable value of such investments;
32. Profit and loss statement;
33. Cash flow statement; and
34. Statement of movement in NAV per Unit of the Private Fund.
    1. Appoint external auditor of the Private Fund who shall be a Chartered Accountant and has received satisfactory rating under the Quality Control Review (QCR) Program of the Institute of Chartered Accountants of Pakistan and the appointed auditor shall give the report on annual accounts of the Private Fund containing the following; -
35. Whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with the relevant provisions of the Regulations;
36. Statement to the effect that the auditor has conducted audit of the Private Fund in accordance with the international standards on auditing as applicable in Pakistan;
37. Without prejudice to the foregoing, whether in the auditor's opinion, a true and fair view is given of the disposition of Private Fund at the end of the period and of the transactions of the Private Fund of the period;
38. if the auditor is of the opinion that proper books and records have not been kept by the Private Fund or the accounts prepared are not in agreement with the books and records of the Private Fund, that fact; and
39. If the auditor has failed to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purpose of the audit, that fact.
    1. The Private Fund is valued at least once in a financial year by an independent valuer appointed with the consent of the Trustee; (Provided that a Private Fund sub-categorized as Venture Capital Fund shall be valued once in two years by independent valuer appointed with the consent of Trustee).

# Trust Property

* 1. The aggregate proceeds of all Units issued to all Unit Holders from time to time shall constitute part of the Trust Property and includes the Investment and all income, profit and other benefits arising therefrom and all cash, bank balances and other assets and property of every description for the time being held or deemed to be held upon trust by the Trustee for the benefit of the Unit Holder(s) pursuant to this Deed but does not include any amount payable to the Unit Holders as distribution. However, any profit earned on the amount payable to the Unit Holders as distribution shall become part of the Trust Property.
  2. Bank accounts for the Private Fund (Shariah Compliant Bank Account in case of Shariah Compliant Private Fund) shall always be in the name of the Trustee with the title “Name of Trustee-Trustee [Name of the Private Fund].
  3. The Trust Property shall initially be constituted out of the proceeds received from eligible Investors/Unit Holder after deducting any applicable charges therefrom.
  4. All expenses incurred by the Trustee in effecting the registerable Investments in its name shall be payable out of the Trust Property.
  5. Except as specifically provided in this Deed, Private Placement Memorandum, and / or under Applicable Law, the Trust Property shall always be kept as separate property free from any mortgages, charges, liens or any other encumbrances whatsoever and the Trustee or the Custodian shall not, except for the purpose of the Private Fund as directed by the Private Fund Management Company, create or purport to create any mortgages, charges, liens or any other encumbrance whatsoever to secure any loan, guarantee or any other obligation actual or contingent incurred assumed or undertaken by the Trustee or the Custodian or any other person.

# Voting Rights on Trust Property

* 1. All rights of voting attached to any Trust Property shall be exercisable by the Private Fund Management Company on behalf of the Trustee in such manner as the Private Fund Management Company, at its discretion, may deem fit and considers to be in the best interest of the Unit Holders, and the Private Fund Management Company may refrain at its own discretion from the exercise of any voting rights, without interference from the Trustee or the Unit Holders.
  2. The Trustee shall, upon written request by the Private Fund Management Company and on account of the Trust Property, from time to time execute and deliver or cause to be executed or delivered to the Private Fund Management Company or their nominees powers of attorneys or proxies, or any other authorization, authorizing such attorneys and proxies to vote, consent or otherwise act in respect of any investment in such form and in favor of such persons as the Private Fund Management Company may direct in writing.
  3. The phrase “rights of voting” or the word “vote” used in this Clause shall have same meaning as defined in Companies Act, 2017 and shall be deemed to include not only a vote at a meeting but the right to elect or appoint directors, any consent to or approval of any arrangement scheme or resolution or any alteration in or abandonment of any rights attaching to any Investment and the right to requisition or join in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement. The Private Fund Management Company shall keep records stating the reasons for casting the vote in favor or against any resolution for a period of ten years.

# Transaction with connected persons

Invest with its connected person or connected person of the Trustee only if adequate disclosure to this effect is given in the Private Placement Memorandum and provided that such transaction is done on an arm’s length basis.

# Shariah Governance/ Shariah Advisory Services

* 1. All activities of the Private Fund shall be undertaken in accordance with the Shariah Guidelines provided by the Shariah Advisor or Shariah Regulatory Provisions of Commission issued from time to time.
  2. The Private Fund Management Company has appointed a Shariah Advisor who shall advise the Private Fund Management Company on matters relating to Shariah Compliance.
  3. The Shariah Advisor shall be appointed for a period mutually agreed between the Private Fund Management Company and such Shariah Advisor, as disclosed in the Private Placement Memorandum and may be re-appointed on completion of his term. The Private Fund Management Company may terminate its agreement with the Shariah Advisor and appoint a new Shariah Advisor under intimation to the Trustee and Commission. Provided that till the appointment of new Shariah Adviser, the existing Shariah Advisor shall continue to perform his duties. Provided further that the Private Fund Management Company shall inform the Commission at least one (1) month in advance for change in the Shariah Advisor.
  4. The Shariah Advisor shall

1. provide technical guidance and support on various aspect of Shariah so as to enable the Private Fund Management Company to operate the Private Fund as a Shariah Compliant Private Equity and Venture Capital Fund.
2. recommend general investment guidelines consistent with the Shariah. Any verdict issued by the Shariah Advisor in respect of any Shariah related matter shall be final and acceptable to the Trustee, the Private Fund Management Company, the Unit Holders and other parties related with that matter.
3. at the end of Annual Accounting Period, issue a certificate, to be included in the Private Fund`s financial reports, in respect of Shariah Compliance of the preceding year`s operation of the Private Fund and the Shariah Advisor may, at the expense of the Private Fund, conduct such audit or other investigation as may be necessary for the issuance of the certificate.
4. co-ordinate with the Private Fund Management Company in drawing up of the Deed and other related material documents including Constitutive Documents for the formation of the Unit Trust.
5. perform the research as appropriate for the purpose of screening of investments. The Shariah Advisor will then decide as to which criteria are relevant to be used in the context of Pakistani Markets as well as foreign countries, and the instruments available therein, and which need to be modified/added/deleted and also decide the methodology for calculation of Haram Income.
6. certify that all the provisions of the Constitutive Documents of the Private Fund and proposed investments to be made on account of the Private Fund are Shariah compliant with the established criteria.
7. determine percentage of income and cash flows included in the income and cash flows of the companies in which the Private Fund has invested from activities not in accordance with the principles of the Shariah, and recommend to the Private Fund Management Company the criteria for selecting the Charities registered under relevant Pakistani laws to whom such sums shall be donated.

# Change of the Private Fund Management Company

* 1. The Private Fund Management Company may be changed on the occurrence of any of the following:

1. The Private Fund Management Company goes into liquidation (other than voluntary liquidation on terms previously agreed to with the Trustee for purpose of reconstruction and amalgamation), or its license is cancelled;
2. A receiver is appointed over all or substantially all of the assets of the Private Fund Management Company.
   1. The Private Fund Management Company, may with the approval of Unit Holders representing 75% or more of the value of the Private Fund, voluntarily retire at any time with prior written intimation to the Commission and at least ninety days prior notice to the Trustee. The exiting Private Fund Management Company shall appoint another Private Fund Management Company as the Private Fund Management Company for the Private Fund in accordance with the Regulations, 2015 and other Applicable Laws. Provided that no retirement of the Private Fund Management Company shall become effective until the appointment of another Private Fund Management Company (the “Successor Private Fund Management Company”) licensed by the Commission in accordance with the Regulations, 2015 and execution of a supplemental Trust Deed in the name of the Successor Private Fund Management Company.
   2. Provided that the removal or retirement of the Private Fund Management Company shall not become effective until the Private Fund Management Company has utilized all its legal remedies and received its remuneration as described in the section of the Private Placement Memorandum titled Remuneration of the Private Fund Management Company. Furthermore, Distribution of Income and Capital provision set out in the Term Sheet in Annexure I of the Private Placement Memorandum will survive any such removal/retirement and transfer.
   3. Upon appointment of the successor the Private Fund Management Company, the Private Fund Management Company will take immediate steps to hand over all the documents and records pertaining to the Private Fund to the successor Private Fund Management Company and shall pay all sums due to the Trustee. The Private Fund Management Company shall have the right to receive its remuneration upto the effective date of removal or retirement, i.e., up to the expiry of the ninety days’ notice period.
   4. Furthermore, the Trustee may immediately in case of change of Private Fund Management Company appoint auditors who shall be qualified chartered accountants in Pakistan and have received satisfactory rating under the Quality Control Review (QCR) Program of the Institute of Chartered Accountants of Pakistan. The Trustee shall ensure that accounts of the Private Fund till the day of the appointment of the new Private Fund Management Company are audited by such Auditor.
   5. The auditors so appointed may be other than the existing auditors of the Private Fund, the Private Fund Management Company and the Trustee.
   6. Upon appointment of the successor the Private Fund Management Company shall exercise all the powers and enjoy all the rights and shall be subject to all duties and obligation of the Private Fund Management Company hereunder as fully as though such new Private Fund Management Company had originally been a party hereto.
   7. The Auditors shall have the same scope as that for the annual audit as set out in the Regulations, 2015 or such other enhanced scope as may be specified by the Trustee or the Commission.
   8. The Auditors Report shall be submitted by the Auditors to the Trustee not later than thirty (30) Business Days from the date of appointment. A copy of the report shall also be provided to the Commission, the Private Fund Management Company and the Successor Private Fund Management Company.
   9. The cost of such audit shall be borne by the Private Fund.

# Borrowing Arrangements/ Borrowing Restrictions

* 1. Subject to any statutory requirements for the time being in force and to the terms and conditions herein contained, the Private Fund Management Company may arrange borrowing for account of the Private Fund, from Banks, financial institutions, non-banking finance companies or such other companies as specified by the Commission from time to time. The borrowing, however shall be repayable within a period of less than one year and such short-term borrowing shall not exceed fifteen per cent (15%) of the size of the Private Fund at the time of borrowing or such other limit as specified by the Commission.
  2. The charges payable to any bank, non-banking finance companies or financial institution against borrowing on account of the Private Fund as permissible under Clause above, shall not be higher than the normal prevailing bank charges or normal market rates.
  3. Neither the Trustee, nor the Private Fund Management Company shall be required to issue any guarantee or provide security over their own assets for securing financings from banks and financial institutions. The Trustee or the Private Fund Management Company shall not in any manner be liable in their personal capacities for repayment of borrowing.
  4. For the purposes of securing any borrowing the Trustee may, subject to clause 16.1 above, on the instruction of the Private Fund Management Company mortgage, charge or pledge in any manner all or any part of the Trust Property.
  5. Neither the Trustee nor the Private Fund Management Company shall incur any liability by reason of any loss to the Trust or any loss that a Unit Holder(s) may suffer by reason of any depletion in the Net Asset Value that may result from any arrangement made hereunder in good faith.

# Shariah Compliant Financing Arrangements / Financing Restrictions

* 1. Subject to any statutory requirements for the time being in force and to the terms and conditions herein contained, the Private Fund Management Company may arrange shariah compliant financing for account of the Private Fund from Islamic Banks, Islamic financial institutions, non-banking finance companies or such other companies as specified by the Commission from time to time. The financing, shall be repayable within a period of, less than one year and such short-term financing shall not exceed fifteen percent (15%) of the size of the Private Fund at the time of financing or such other limit as specified by the Commission. Financing arrangement will exclusively be made under the Islamic modes of finance and with the approval of the Shariah Advisor of the Private Fund.
  2. The charges payable to any bank, non-banking finance companies or financial institution against financing on account of the Private Fund as permissible under Clause above, shall not be higher than the normal prevailing bank charges or normal market rates.
  3. Neither the Trustee, nor the Private Fund Management Company shall be required to issue any guarantee or provide security over their own assets for securing financings from banks and financial institutions. The Trustee or the Private Fund Management Company shall not in any manner be liable in their personal capacities for repayment of financings.
  4. For the purposes of securing any financing the Trustee may, subject to clause 19.1 above, on the instruction of the Private Fund Management Company mortgage, charge or pledge in any manner all or any part of the Trust Property.
  5. Neither the Trustee nor the Private Fund Management Company shall incur any liability by reason of any loss to the Trust or any loss that a Unit Holder(s) may suffer by reason of any depletion in the Net Asset Value that may result from any financing arrangement made hereunder in good faith.

# Retirement or Removal of Trustee

* 1. The Trustee may, subject to the prior approval of the Commission, retire from his office on appointment of a new Trustee and the retirement shall take effect at the same time as the new Trustee is appointed with the approval of the Commission or from the date of assumption of Trust Property of the Private Fund by the newly appointed Trustee, whichever is later.
  2. In circumstances where the Commission is of the opinion that Trustee has been in violation of the Regulations or this or found guilty of misconduct or failed to discharge its obligations under the Regulations, 2015 it may remove the Trustee after giving an opportunity of being heard.
  3. The Private Fund Management Company may, giving cogent reasons, apply to the Commission for change of the Trustee by simultaneously proposing appointment of a new breach circumstances and reasons for this change and accords approval for appointment of such a new Trustee.
  4. Upon the appointment of a new Trustee the Trustee shall immediately hand over all the documents and records to the new Trustee and shall transfer all the Trust Property and any amount held in any distribution Account to the new Trustee and make payments to the new Trustee of all sums due from the trustee. The Trustee shall have the right to receive its remuneration up to the effective date of its removal or retirement.
  5. The new Trustee shall exercise all the powers and enjoy all the rights and shall be subject to all duties and obligations of the Trustee hereunder as fully as though such new Trustee had originally been a party hereto.
  6. The Private Fund Management Company may immediately in case of retirement or removal of Trustee appoint auditors with the consent of the Commission from amongst the panel of auditors from the SECP’s list of QCR approved Auditors issued vide circular no. 04 of 2023 dated April 03,2023. The Private Fund Management Company shall ensure that accounts of the Private Fund till the day of the appointment of the new Trustee are audited by such Auditor.
  7. The auditors so appointed may be other than the existing auditors of the Private Fund, the Private Fund Management Company and the Trustee.
  8. The auditors shall have the scope as may be specified by the Private Fund Management Company or the Commission.
  9. The audit report for the audit shall be submitted by the auditors to the Private Fund Management Company not later than thirty (30) Business Days from their appointment. A copy of the report shall also be provided to the Commission, the Trustee and the new Trustee.
  10. The costs of such audit shall be borne by the Private Fund.

# Fees and Charges

* 1. **Remuneration of the Private Fund Management Company and its Agents** 
     1. The Private Fund Management Company shall be entitled to prescribe and receive remuneration up to the maximum rate of remuneration permitted under the Private Placement Memorandum and directives issued thereunder;
     2. The remuneration shall in all cases be determined with reference to and shall begin to accrue from the mention period **e.g. First closing date etc.** as specified in Private Placement Memorandum / Term sheet, regardless of the date on which the Unit Holders make their contributions;
     3. Such remuneration shall be paid to the Private Fund Management Company in the manner specified in the Private Placement Memorandum:
     4. The Private Fund Management Company and their respective associates save as provided in the Constitutive Documents, shall bear all expenses in relation to their respective professional management services provided in accordance with the provisions of the Constitutive Documents in which expenses may include their own office costs and the remuneration cost of their respective personnel including overhead, salaries, employee benefits and travel expenses of employees of the Private Fund Management Company and its affiliates. The Private Fund Management Company shall not charge either the Unit holders or the Private Fund, nor any Distribution Account, for their services or for any expenses, except such expenses or fees as are expressly authorized under the provisions of the Regulations, 2015 and the Constitutive Documents to be payable by the Private Fund.
     5. The Private Fund Management Company will not be responsible for fees and expenses of the Trustee or advisors appointed by the Private Fund or the fees and expenses of any legal advisors, Auditors, external advisors or other service providers appointed by the Private Fund Management Company and Trustee solely for the purposes and benefit of the Private Fund, or for any expenses incurred in conducting investment transactions. Such expenses shall include any and all taxes, stamp duty, commissions and registration fees and legal fees associated with the Trust Property and the Private Fund or otherwise imposed on the Private Fund Management Company in connection with the provision of its services relating to the Private Fund. All such expenses shall be borne by the Private Fund.
     6. The fees payable to the Private Fund Management Company hereunder will supplement and will not be abated by any other remuneration receivable by the Private Fund Management Company or any associate of the Private Fund Management Company in connection with any transactions effected by the Private Fund Management Company for the benefit of or associated with the Private Fund or any investment transactions;
     7. Any increase in the management fees or remuneration of Private Fund Management Company shall be effective only after prior notice and approval of 75% of the Unit holders. However, any decrease in remuneration, agreed to by the Private Fund Management Company shall not require any prior notification or approval.
     8. The Private Fund Management Company may from time to time, in its absolute discretion, waive or rebate all or any part of its fees to any third party. Fees may be reduced or may not be payable on such Units as may be specified in the Private Placement Memorandum.
     9. In the event of any dispute as to the amounts payable to the Private Fund Management Company by the Private Fund or by the Trustee under this Deed. The certificate of the Auditors of the Private Fund acting as experts shall be conclusive and binding, and the fees of the Auditors to act as experts in this regard shall be borne by the Private Fund.

* 1. **Remuneration of Trustee and Its Agents**

The Trustee shall be entitled to a quarterly remuneration out of the Trust Property determined in accordance with **Annexure “C”**. The remuneration shall begin to accrue from the First Closing Date. Such remuneration shall be paid to the Trustee quarterly.

In consideration of the foregoing and save as aforesaid the Trustee shall be responsible for the payment of all expenses incurred by the Trustee from time to time in connection with its duties as Trustee of the Private Fund. The Trustee shall not make any charge against the Unit Holders or against the Trust Property or against the Distribution Account for their services or for their expenses, except such expenses as are expressly authorized to be paid out of the Trust Property under the provisions of the 2015 Regulations and the Constitutive Documents.

Any increase in the remuneration of the Trustee will be on mutually agreed basis with Private Fund Management Company and such agreement shall be recorded in writing

* 1. **Other Costs and Expenses to be Charged to and Borne by the Trust**

All other costs and expenses specified in the Regulations, 2015 and directives issued there under shall be charged to and borne by the Private Fund and are specified in the Private Placement Memorandum.

The Private Fund Management Company shall, within three (3) months of the close of its Financial Year of the private Fund pay an annual fee to the Commission at the rate specified in the Regulations, 2015 and such fee shall be chargeable to the Private Fund.

# Representations and Warranties of the Private Fund Management Company

The Private Fund Management Company represents and warrants to the Private Fund and the Trustee that:

1. it is validly existing, duly empowered and authorized to execute, deliver and perform this Deed and to give effect to the transactions contemplated hereby;
2. this Deed is binding upon it and enforceable in accordance with its terms excepts insofar as enforcement may be limited by winding up, insolvency or other laws relating to or affecting enforcement of creditor`s rights or general principles of equity;
3. it has complied with and will continue to comply with all laws, rules and Regulations or court and governmental orders by which it is bound or to which it is subject in connection with the execution and performance of this Deed.

# Dividend Policy

The Private Fund Management Company may announce/ decide the amount of Realization Proceeds for an accounting year, and thereby shall advise the Trustee of the amount of such distribution per Units. The Private Fund will comply with regulatory and taxation requirements and the distribution policy may be amended accordingly.

# Appointment of Auditor

The Private Fund Management Company shall appoint auditor as the auditors of the Private Fund in accordance with the requirements of the Regulations and directions issued from time to time.

# Rectification of the Deed

* 1. In case of any proposed rectification, amendment and/or modification in the fundamental attributes of the Private Fund, structure of the Private Fund, investment objective and policy etc., the Private Fund Management Company must obtain approval of seventy-five (75%) percent or more Unit Holders, in term of value of the Private Fund as per the requirement of Regulation, and notify Commission accordingly.
  2. The Trustee and the Private Fund Management Company acting together shall be entitled by a Supplemental Deed to rectify, the exiting provisions of this Deed in such manner and to such extent as they may consider expedient for any purpose other than matters set out in Clause 25.1 above, and subject to the condition that it does not prejudice the interests of Unit Holders.
  3. If at any time, any Clause of this Deed is, or becomes, in whole or in part, illegal, invalid or unenforceable under the laws of Pakistan, such illegally, invalidity or unenforceability shall have no effect on the legality, validity and enforceability of the remaining Clauses of this Deed, which shall remain valid and in full force and effect. The contravening provision shall be interpreted in a manner to bring it in consistence with the relevant laws.

# Revocation of Trust/Private Fund

* 1. The Private Fund may be terminated / revoked on the occurrence of any of the below events;

1. in the opinion of the Private Fund Management Company, the Private Fund is not commercially viable in order to be continued;
2. continuation of the Private Fund may jeopardize the interest of the Unit Holders;
3. it becomes impractical to continue the Private Fund in terms of its investments objectives and policies due to any amendments in laws;
4. size of the Private Fund has been reduced significantly due to a continuance of losses.
5. upon application to the Commission by three-fourth in value of the total Unit Holders of the Private Fund, or if in the opinion of the Commission, continuation of the Private Fund will be detrimental to the interest of the Unit Holders, the Commission may direct the Trustee to liquidate the Private Fund.
6. any other reason specified by the Commission pursuant to the Rules and/or the 2015 Regulations.
   1. For clause (a, b, c & d), the Private Fund Management Company shall submit to the Trustee notice in writing specifying its intention of termination/revocation of the Private Fund and the Unit Holders along with the reasons for the same.
   2. The Trustee shall, after assessing the reasons provided by the Private Fund Management Company, starts termination/revocation of the Private Fund by giving notices to the Unit Holders and Commission. All information related to the Private Fund shall be transferred to the Trustee who shall dispose off the Trust Property in consultation of Private Fund Management Company in the best interest of the Unit Holders.
   3. After notice of revocation of the Private Fund, all transfer of the Units in the Private Fund shall be suspended and the proceeds from the sale of the Trust Property / asset of the Private Fund shall be first utilized towards discharge of the Private Fund`s liabilities and the fees /remuneration of the Private Fund Management Company (including any carried interest/performance fee) and the Trustee, accrued up to the effective date of revocation, and after appropriate provisions for meeting any expenses connected with such revocation, the balance assets shall be paid to the Unit Holders in proportion to their respective interest in the assets of the Private Fund as at the date on which the decision for revocation was taken. In case of revocation of the Private Fund, all Unit Holders shall be treated pari passu.
   4. Upon termination/revocation of the Private Fund and before distribution of proceeds thereof, net assets available for distribution to unit holders shall be subject to audit by the SECP’s list of QCR approved Auditors issued vide circular no. 04 of 2023 dated April 03,2023. Auditor shall provide their report to Private Fund Management Company and Trustee within timeframe as prescribed by Private Fund Management Company with consultation of Trustee. On the completion of the revocation process, the Trustee shall forward to the Commission and the Unit Holders a report on the revocation process containing particulars such as circumstances leading to the revocation, the steps taken for disposal of assets of the Private Fund before revocation, expenses of the Private Fund for revocation and the net assets available for distribution to the Unit Holders, along with a certificate from the Auditors of the Private Fund.
   5. After the receipt of the termination/revocation report from the Trustee, if the Commission is satisfied that all actions for revocation of the Private Fund have been completed, the Commission shall cancel the registration of the Private Fund and the Private Fund shall cease to exist as of the date of such cancellation.

# Proposed Size of Private Fund

The expected size of the Private Fund of Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_/= (In Words) shall be as set out in the Term Sheet and Private Placement Memorandum, or otherwise shall be determined by the Private Fund Management Company after taking into account the resources, expertise and overall capacity of the Private Fund Management Company to carry out the duties in accordance with acceptable and efficacious business practices, the Regulations, 2015 and the Constitutive Documents, and the investment objectives, financial situation and particular needs of the investors.

# Arbitration

In the event of any disputes arising out of or in connection, with this Deed or the Private Placement Memorandum between the Private Fund Management Company and the Trustee, including as to the respective rights and obligations of the parties hereto, as well as those relating to the interpretation of the terms and conditions of this Deed, the same shall be referred to arbitration by two arbitrators, one to be appointed by the Private Fund Management Company and the other to be appointed by the Trustee. In the event of lack of consensus between the two arbitrators, the matter shall be referred to an umpire, to be selected by the two arbitrators before commencement of the reference. The unanimous decision of both the arbitrators, or the decision of the umpire, as the case may be, shall be final and binding upon both the parties hereto. The arbitrators and the umpire shall be selected from amongst retired judges, senior chartered accountants, or senior lawyers. The venue of the arbitration shall be [Name of the City] or any other city in Pakistan as may be mutually agreed. The arbitration shall be conducted in accordance with the Arbitration Act, 1940.

# Confidentiality

* 1. The Trustee and the Private Fund Management Company and every director or officer or agent of the Trustee and the Private Fund Management Company who are in any way engaged in the business of or associated with the Private Fund and all persons employed or engaged by the Trustee or the Private Fund Management Company in connection with the business of the Private Fund shall observe strict confidentiality in respect of all transactions of the Private Fund, its Holders and all matters relating thereto and shall not disclose to any third party, any information or document which may come to their knowledge or possession in the discharge of their duties except when required to do so in the ordinary course of performance of their duties under the Constitutive Documents, provided such third parties are also bound by the Confidentially requirement or by law or in compliance with an order of a Court of Law or other competent authority.
  2. Notwithstanding anything to the contrary in this clause, the Private Fund Management Company may disclose information relating to the Private Fund and its investments to its associates, delegates and other agents, or any other relevant counterparty or any broker (in accordance with market practice) and to the Trustee, in each case to assist or enable the proper performance of the Private Fund, provided the recipients is under an obligation to maintain confidentiality.
  3. Nothing in this Clause shall prevent the disclosure of information by any party to its auditors, legal or other professional advisers in the proper performance of their duties.
  4. Notwithstanding the above, the Private Fund Management Company shall be within its rights to disclose information relating to the Private Fund and its investments to Eligible Investors in the Private Fund, subject to such Eligible Investors agreeing not to disclose such information to any third party.

# Notice

* 1. Any notice required to be served upon the Unit Holder shall be deemed to have been duly given if sent by post, by courier, email or any other electronic medium or left at his address as appearing in the Register of Unit Holders. Any notice so served by post/courier/email or other electronic means shall be deemed to have been served on the day following that on which the letter containing the same is posted, sent by courier, sent by email or other electronic means, or upon receiving confirmation of receipt of such email or other electronic means, whichever is earlier, and in providing such service, it shall be sufficient to prove that such letter was properly addressed, stamped (if required) and posted, sent by courier or emailed.
  2. Service of a notice or document on any one or several joint Unit Holders shall be deemed effective service on the other joint Holders.
  3. Any notice or documents sent by post or by email, or left at the registered address of, a Unit Holder shall notwithstanding that such Unit Holder be then dead and regardless of whether the Trustee or the Private Fund Management Company have notice of his death, be deemed to have been duly served and such services shall be deemed a sufficient service on all persons interested (whether jointly with or as claiming through or under him) in the Units concerned.
  4. A copy of this Deed and of any Supplemental Deed shall be made available for inspection at the respective head offices of the Trustee and the Private Fund Management Company at all times during usual business hours.

# Successor-in-Interest

The Agreement shall be binding on the Parties and their respective successors-in-interest, provided however that CDC shall be entitled to assign this Agreement or any of its rights and obligations under this Agreement to any of its subsidiary companies provided such entity has obtained all necessary authorizations/registration licenses under Applicable law to be appointed by the Trustee under this Deed and the Private Fund Management Company has given its prior written approval to such appointment (which approval shall not be unreasonably withheld).

# Base Currency

The base currency of the Private Fund shall be Pakistani Rupee; it being clarified, however, that the Authorized Investments may be denominated in Pakistani Rupee or (subject to applicable law) any other Foreign Currency.

# Definitions

Unless the context requires otherwise the following words or expressions when used in this Deed shall have the meaning respectively assigned to them:

* 1. **“Accounting Date”** means the [date] of [month] in each year and any interim date on which the financial statements of the Private Fund are drawn up. Provided that the Private Fund Management Company may, under intimation to the Trustee and after obtaining approval from the Commission, change such date to any other date and such change shall be intimated to the Commission.
  2. **“Act”** means the Companies Act, 2017.
  3. **“Accounting Period”** means a period ending on and including an Accounting Date and commencing (in case of the first such period) on the date on which the Trust Property is first paid or transferred to the Trustee and (in any other case) from the next day of the preceding Accounting Period.
  4. **“Advisors/Sales Agents”** means an individual, firm, corporate or other entity appointed by the Private Fund Management Company to identify, solicit and assist investors in investing in the Private Fund. The Private Fund Management Company shall compensate the Sales Agents.
  5. **“Alternative Fund”** means a Private Fund which invests in portfolio of securities and other financial assets other than a Private Equity and Venture Capital Fund
  6. **“Annual Accounts”** mean in relation to the Private Fund, the balance sheet, profit and loss statement, cash flow statement and statement of movement of NAV per Unit price, required by the Regulations, 2015 to be prepared annually.
  7. **“Annual Accounting Period” or “Financial Year”** means the period commencing on [date and month] and ending on [date and month] of the succeeding calendar year.
  8. **“Applicable Laws”** means Part VIIIA of the repealed Companies Ordinance, 1984, Companies Act, 2017, the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003, Non-Banking Finance Companies (Establishment and Regulations) Regulations, 2008, Private Funds Regulations, 2015, ITO, 2001, Foreign Exchange Manual, Foreign Exchange Regulation Act, 1947 and all applicable rules, regulations, directives, orders and circulars by the Commission, FBR, SBP or any other authority having jurisdiction over the Private Fund Management Company, the Private Fund and the Trustee, all as may be issued or amended or replaced from time to time, including Shariah Advisor guidelines.
  9. **“Auditor”** means the Auditor of the Trust appointed by the Private Fund Management Company, with the consent of the Trustee, as Private Funds Regulations, 2015.
  10. **“Bank”** means institutions(s) banking services under the Banking Companies Ordinance 1962, or any other Regulation in force for the time being in Pakistan, or if operating outside Pakistan, under the banking laws of the jurisdiction of its operation outside Pakistan.
  11. **“Bank Accounts”** means those account(s) opened and maintained for the Private Fund by the Trustee at Banks, the beneficial ownerships in which shall vest in the Unit Holder(s). Bank Accounts shall only be opened in Scheduled Banks (Scheduled Islamic Banks, Islamic banking windows of scheduled commercial banks for Shariah Compliant Private Fun. In case an account needs to be opened with a conventional bank, it shall only be a current account and it shall be opened after specific approval from the Shariah Advisor).
  12. **“Board”** means the Board of Directors of the Private Fund Management Company.
  13. **“Business Day”** means any day (business hours thereof as specified in the Private Placement Memorandum) on which banks are open for business in Pakistan.
  14. **“Capital Commitments”** shall have the same meaning as prescribed in the Private Placement Memorandum).
  15. **“Carried Interest”** shall have the same meaning as prescribed to it in the Private Placement Memorandum and the Term Sheet.
  16. **“Certificate”** means the definitive certificate acknowledging the number of Units registered in the name of the Unit Holder issued at the request of the Unit Holder pursuant to the provisions of this Deed.
  17. **“Charity”** means amount paid by the Trustee, upon instruction of the Private Fund Management Company and in consultation with the Shariah Advisor, out of the income of the Fund to approved Charitable Trust/welfare organization, representing income which is impermissible/ Haram.
  18. **“Constitutive Documents”** means the Deed, Private Placement Memorandum and other principal documents governing the formation of a Private Fund established by a Private Fund Management Company including all related material agreements
  19. **“Distributor of Income and Capital”** shall have the same meaning as prescribed to it in the Term Sheet in Annexure I of the Private Placement Memorandum.
  20. **“Eligible Investor”** means a person who has net assets of at least Rs. 15 million excluding the value of personal residence and who furnishes a declaration to the Private Fund Management Company that he understands the risks of investment in a Private Fund.
  21. **“Financial Institution”** carries the same meaning as defined under the Companies Act, 2017.

* 1. **“Force Majeure”** shall mean any occurrence or circumstance or element beyond the control of, and which cannot be avoided or overcome by, the Private Fund Management Company or the Trustee, and makes the performance of the Constitutive Documents or any obligations of the Private Fund Management Company or the Trustee in whole or in part impossible or impracticable or otherwise delays such performance, including but not limited to any situation where performance is impossible without unreasonable expenditure. Such circumstances include but are not limited to floods, fires, droughts, typhoons, earthquakes and other acts of God and other unavoidable or unpredictable elements beyond reasonable control, such as war (declared or undeclared), insurrection, civil war, acts of terrorism, accidents, strikes, riots, turmoil, civil commotion, pandemics (including COVID 19), any act or omission of a governmental authority, failure of communication system, hacking of computer system and transmissions by unscrupulous persons, closure of stock exchanges, banks or financial institutions, freezing of economic activities and other macro-economic factors, etc. or any other event which prevents or significantly hinders or prevents performance of the operations of the Private Fund Management Company or Trustee.
  2. **“Holder” or “Unit Holder”** means the Eligible Investor who owns one or more units of a Private Fund and whose name appears in the Register.
  3. **“Haram Income”** means any income prohibited by the Shariah.
  4. **“IAS”** means International Accounting Standards.
  5. **“IFRS”** means International Financial Reporting Standards.
  6. **“Investee Company” or “Portfolio Company”** shall have the same meaning as prescribed to it in the Private Placement Memorandum.
  7. **“Investment”** means any Authorized Investment forming part of the Trust Property.
  8. **“Investment Facilitators”** means an individual, firm, corporate or other entity appointed by the Management Company to identify, solicit and assist investors in investing in the Scheme. The Private Fund Management Company shall compensate the Investment Facilitators.
  9. **“Investment Policy Statement”** means a statement obtained from the investor which at least covers the information regarding investor knowledge, qualification, risk appetite and investment objective.
  10. **“Net Assets”** means the difference between the value of the assets and liabilities of a Private Fund established by the Private Fund Management Company, on any given date, and computed in the manner specified in the Private Placement Memorandum in accordance with the Regulations, 2015.

* 1. **“NAV of a Unit”** means per Unit value of the Private Fund arrived at by dividing the Net Assets by the number of Units outstanding.
  2. **“Online”** means transactions through electronic data-interchange whether real time transactions or otherwise, which may be through the internet, intranet networks and the like.
  3. **“Ordinance”** means the Companies Ordinance, 1984 (XLVII of 1984) as amended and/or substituted from time to time.
  4. **“Par Value”** means the face value of a Unit.  i.e. Rs. 1,000,000 or such other amount determined by the Private Fund Management Company from time to time and disclosed in this Private Placement Memorandum.
  5. **“Private Placement Memorandum”** means the document, issued by the Private Fund Management Company describing the details of the Private Fund and giving an offer for subscription by eligible Investor only.
  6. **“Preferred Return”** shall have the same meaning as prescribed to it in the Term Sheet in Annexure I of the Private Placement Memorandum.
  7. **“Private Fund”** means an arrangement which has the purpose of pooling funds from one or more Eligible Investors for investment in a portfolio of securities or other financial assets for profit, income or other returns and where participants of the funds, neither have day to day control over the management of fund property, nor the right to give directions in respects of such management and which is established and operated by the Private Fund Management Company:

Provided that for the purpose of the Regulations following shall not classify as a Private Fund:

1. collective investment schemes regulated under the Non-Banking Finance Companies and Notified Entities Regulations, 2008;
2. employee welfare trusts or gratuity trusts or employees provident fund or employees’ pension fund setup for the benefit of employees by companies; and
3. any such pool of funds which is separately regulated by the Commission or which is already established under any other specific law.
   1. **“Private Fund Management Company (PFMC)”** means Company licensed by the Commission to provide Private Equity and Venture Capital Fund Management Services under NBFC Rules, 2003.
   2. **“Private Equity & Venture Capital Fund Management Services”** means services provided for management of Private Funds.
   3. **“Private Equity and Venture Capital Fund”** means a Private Fund established in a closed-end structure for investment mainly in securities or financial assets other than derivatives of an unlisted company or for turning around a listed company or listed and unlisted SME or an unlisted company engaged in business of investing in developing a new product or process or expansion of business:

Provided that a Private Equity and Venture Capital Fund may invest in units of other Private and Venture Capital Fund.

* 1. **"Private Placement"** means the offer for sale of Units of a Private Fund offered to Eligible Investors by the Private Fund Management Company only through a Private Placement Memorandum, without any public advertisement.
  2. **“Realization Proceeds”** shall have the same meaning as prescribed to it in the Term Sheet and Private Placement Memorandum.
  3. **“Register”** means the Register for the purpose of recording the details of the Units held by each Unit Holder of the Private Fund.
  4. **“Registrar Functions”** means the functions with regard to:

1. maintaining the Register, including keeping a record of change of addresses/other particulars of the Unit Holder(s);
2. issuing account statements to the Unit Holder(s);
3. issuing Certificates;
4. canceling old Certificates on redemption or replacement thereof;
5. processing of applications for issue, redemption, transfer and transmission of Units, recording of pledges, liens and changes in the data with regard to the Unit Holder(s);
6. issuing and dispatching of Certificates;
7. Dispatching income distribution warrants, and bank transfer intimation and distributing bonus or cash dividend Units or partly both and allocating Units to Holders on re-investment of dividends; and
8. Maintaining record of lien/pledge/charge on units, transfer/switching of units, Zakat.
   1. **“Regulations, 2015”** means Private Funds Regulations, 2015 and includes Forms and Schedules annexed hereto.

* 1. **“Rules”** mean Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 or as amended from time to time.
  2. **"Schedule"** means the Schedule annexed to these Regulations.
  3. **“SECP” or “Commission”** means Securities and Exchange Commission of Pakistan established under Securities and Exchange Commission of Pakistan Act, 1997 and shall include its successor.
  4. **“Shariah”** means divine guidance as given by the Holy Quran and the Sunnah of Holy Prophet Muhammad ﷺ and embodies all aspects of the Islamic faith, including beliefs, practices, rules and principles as per the interpretation of the Shariah Advisor of the fund.
  5. **“Shariah Advisor”** means an Institution or a body of Islamic scholars, or an individual Islamic scholar, appointed by the Private Fund Management Company under Shariah Advisors Regulations, 2017 of SECP and intimation to the Commission and the Trustee, having knowledge of Islamic finance, to supervise and monitor the activities of the Private Fund in order to ensure that all its activities comply with Shariah.
  6. **“Shariah Compliant”** means any activity that is in accordance with the Islamic Shariah as advised by the Shariah Advisor.
  7. **“Stock Exchange”** means a public company that is licensed by the Commission as a security exchange under section 5 of Securities Act, 2015.
  8. **“Supplemental Deed”** means a deed supplemental to this Deed, executed by the Private Fund Management Company and the Trustee, after seeking approval of the Commission, to modify, add to, alter and amend or amend and restate the provisions of this Deed or any other Supplemental Deed in such manner and to such extent as may be considered expedient for all purposes, which shall be consolidated, read and construed together with this Deed.
  9. **“Term”** shall mean the term of duration of the Private Fund being defined in the Private Placement Memorandum.
  10. **“Term Sheet”** shall mean the Term Sheet annexed with the Private Placement Memorandum.
  11. **“Transfer Agent” or “Registrar”** means a company (duly registered under the relevant laws) including a Bank that the Private Fund Management Company shall appoint for performing the registrar Functions. The Private Fund Management Company may itself perform the registrar function.
  12. **“Trust” or “Private Fund”** means the Trust constituted by this Deed for continues offers for sale of units of the Trust.
  13. **“Trust Deed” or “Deed”** means the deed executed between the Private Fund Management Company and the Trustee in respect of a Private Fund.
  14. **"Trustee"** means a person appointed as trustee in respect of a Private Fund established in accordance with these Regulations.
  15. **“Trust Property”** means any and all assets comprising the Private Fund under this Deed.
  16. **“Unit”** mean the instrument of ownership of the Private Fund signifying the beneficial interest of the Unit Holders in that Private Fund.
  17. **“Unit Holder”** means the Eligible Investor who owns one or more units of a Private Fund and whose name appears in the Register.
  18. **“Valuation Day”** shall have the same meaning prescribed thereto in the Private Placement Memorandum.
  19. **“Zakat”** has the same meaning as in Zakat and Ushr Ordinance, 1980 (XVIII of 1980).

Words and expressions used but not defined herein shall have the meanings assigned to them in the Rules and Regulations. Words importing persons include corporations, words importing the masculine gender include the feminine gender, words importing singular include plural and words **“written”** or **“in writing”** include printing, engraving, lithography or other means of visible reproduction

**IN WITNESS WHEREOF** **THIS TRUST DEED** has been executed at the date mentioned herein above.

**The Common Seal of Private Fund Management Limited was hereunto affixed in the presence of:**

**1. Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2. Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CNIC No**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **CNIC No**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESSES:**

**1. Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 1. Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CNIC No**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **CNIC No**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FOR [Name of Trustee]**

**1. Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**CNIC No**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESSES:**

**1. Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2. Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CNIC No**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **CNIC No**.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ANNEXURE “A”

License to Carry Private Fund Management Company Services as a Non-Banking Finance Company

Insert as Picture

# ANNEXURE ‘B’

In principal Approval for the registration of Deed of the Private Fund

Insert as Picture

# ANNEXURE ‘C’

**REMUNERATION OF TRUSTEE**

The Trustee remuneration shall consist of reimbursement of actual custodial expenses/ charges plus the following tariff:

|  |  |  |
| --- | --- | --- |
| **Net Assets**  **(Rupees in millions)** | | **Tariff**  **e.g.** |
| From | To |
| 1 | 1,000 | Rs. XX million or X% per annum of net assets whichever is higher |
| 1,000 | and above | Rs. XX million plus X % per annum of net assets on amount exceeding Rs. X billion. |

Trustee Fee subject to review by either party. However, any upward revision shall require prior approval of Commission.

# ANNEXURE ‘D’

Approval of Trustee as trustee of the Private Fund.

Insert as Picture