**Securities and Exchange Commission of Pakistan**

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|  |
| Draft Limited Liability Partnership Agreement |
| **Sample for Limited Liability Partnership Structure** |

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**LIMITED LIABILITY PARTNERSHIP (LLP) AGREEMENT**

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**

**[Name of the Designated Partner]**

Complete Registered Office Address of PFMC

**AND**

**Name of the Person**

**(As nominee of PFMC)**

**(Partner)**

Complete Registered Office Address of the Nominee Partner

**[Place of Creation of Private Fund]**

**Dated: [DATE]**

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# LIMITED LIABILITY PARTNERSHIP AGREEMENT

This Limited Liability Partnership Agreement (hereinafter referred to as the "**LLP Agreement**" or the " **Agreement**") is made at [Please mention name of the City] on this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20XX

**BY AND BETWEEN**

1. 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 referred to as “Name of the PFMC” or the "Designated Partner" or the" Private Fund Management Company" or the "PFMC", which expression wherever the context so permits shall include its legal representative, successors in interest and assigns) whose registered office is situated at­­­­­­­­­­­­­­­­­­­­­

­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

**AND**

1. Mr./Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , holding CNIC \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "the Partner", which expression where the context so permits shall include his legal representative, successors in interest and assigns).

Where the context so permits the "Designated Partner" and the "Partner" are also jointly referred to as the "Partners / Parties" and individually “Partner”.

**Preamble**

WHEREAS, Name of PFMC is desirous of constitute a Private Fund, sub-categorized as \_\_\_\_\_\_\_\_\_\_\_\_\_\_( Private Equity & Venture Capital Fund/ Alternative Fund), named as ‘Name of the LLP ’ and in the form of a Limited Liability Partnership (hereinafter referred to as the “Limited Liability Partnership” or the “LLP” or the“ Fund” or the “Private Fund” or the “Name of LLP”) in accordance with the provisions of 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), Private Fund Regulations, 2015 (the “Regulations,2015"), the Limited Liability Partnership Act, 2017 (the “LLP Act”), and the Limited Liability Partnership Regulations, 2018 (the “LLP Regulations”).

AND WHEREAS, Name of PFMC intends to appoint the Name of Custodian as the Custodian of the Fund.

**Definitions**

The definitions of the terms used in this LLP Agreement are provided in Annexure A.

# Name of the Private Fund

This Private Fund is constituted as **“Name of the Fund” (sub-categorized as Private Equity and Venture Capital/Alternative Fund etc).**

# 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 Private Fund

# The participating parties are:

1. Name of Private Fund Management Company, the Designated Partner named and described above who has been licensed by the SECP as a Private Fund Management Company (the “PFMC”) pursuant to the NBFC Rules and the Regulations, 2015 for the purpose of undertaking Private Fund Management Services under License no. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, attached herewith as Annex B;

**And**

1. Mr./Ms. \_\_\_\_\_\_\_\_ (Name of the partner), as the Partner named and described above.

# The Designated Partner has been authorized by the SECP vide its letter bearing reference no. [NUMBER] dated [DATE] attached herewith as Annex C (the Commission Authorization) to constitute the Limited Liability Partnership under the name and title of NAME OF THE FUND (hereinafter referred to as the "Limited Liability Partnership" or the "LLP" or the "Fund" or the "Private Fund") and to register this Agreement, pending registration of the Fund as a Notified Entity under Section 282A and 282C of the Companies Ordinance, 1984, for the establishment and operation of the Fund in accordance with the provisions of the LLP Act, the LLP Regulations, the NBFC Rules, the NBFC Regulations, Regulations, 2015, the Income Tax Ordinance, 2001 (the ITO, 2001), the Foreign Exchange Manual, the Foreign Exchange Regulation Act, 1947 and any other applicable rules, regulations, circulars, orders, directives or instructions issued by the Commission, the Federal Board of Revenue (the FBR), the State Bank of Pakistan (the SBP) or any other authority having jurisdiction over the Designated Partner, the Private Fund or the Custodian, all as may be issued or amended from time to time (collectively referred to as "the Applicable Laws") and its Constitutive Documents (as defined in the Regulations,2015), including this Agreement. The Designated Partner has been associated with the Partner in constitution of the LLP and launching of the Fund to meet with the requirements of the LLP Act and the LLP Regulations.

# The Designated Partner with the consent of the Partner has nominated and appointed the Name of Custodian as a Custodian of the Fund and the Custodian has accepted such appointment upon the terms and conditions herein contained and in the Custodian Agreement dated [DATE]. Custodian fee is disclosed in Annex D attached herewith.

# The SECP has also approved the appointment of the Custodian vide its letter bearing reference no. [NUMBER] dated [DATE] attached herewith as Annex E.

# The Designated partner has appointed and approved Name of Shariah advisor as Shariah Advisor and the Shariah Advisor has approved the contents of this Agreement vide letter dated Month xx, 20- - (Where Applicable).

# Objective of the LLP

* 1. State the objectives of the Private Fund that will be employed to generate a desirable return (mention any specification of the return e.g. Alpha, Beta etc.) for the Unit Holders.
  2. The Private Fund shall invest in instruments as defined under Regulations, 2015 and any other Applicable Laws (as defined in Clause 5), including the guidelines/circulars issued by Commission from time to time.

# The Private Fund shall be entitled to commence business from the date of the registration of the Fund as a Notified Entity under the Regulations, 2015.

# Governing law and Jurisdiction

* 1. This Agreement shall be subject to and governed by the laws of Pakistan, including LLP Act, LLP Regulations, Part VIIIA of the repealed Companies Ordinance, 1984, Companies Act, 2017, NBFC Rules, NBFC Regulations, Regulations, 2015, ITO, 2001, Foreign Exchange Manual, Foreign Exchange Regulation Act, 1947 and circulars, orders, directives or instructions issued by the Commission, FBR, SBP or any other authority having jurisdiction over the Designated Partner, the Private Fund and the Custodian, all as may be issued or amended or replaced from time to time. Where any Rules or Regulations are issued or amended, any directives are issued or any relaxation or exemption is allowed by the C Commission, it shall be deemed for all purposes whatsoever that all the provisions required to be contained in this Agreement pursuant to such new Regulations, amendments, directive, relaxation or exemption shall be deemed to have been incorporated in this Agreement without requiring any modification unless specifically required by the Commission. In the event of any conflict between this Agreement and the provisions of the Rules Regulations, directives, circulars, the latter shall supersede and prevail over the provisions contained in this Agreement.
  2. Subject to the clause 28 hereafter, applicable between the Designated Partner and the Partner inter se, each party, including the Partner(s), irrevocably submit to the exclusive jurisdiction of the Courts at (**name of the place of Agreement creation).**

# Declaration of the Private Fund

# It is hereby declared unequivocally that a Private Fund in the name and title of [Name of Private Fund] is hereby created. The Designated Partner and the Partner hereby agree to such appointment and it is hereby irrevocably and unconditionally declared that:

1. The Designated Partner shall assign its nominee(s) / representative(s) to discharge duties of the Designated Partner. The Partner agrees that the Designated Partner shall be responsible for performing all acts, matters and things as are required to be done by the LLP Act, the LLP Regulations, the Regulations, 2015 and any other Applicable Laws.
2. The Partner further agrees that the partner, other than the Designated Partner, shall not take part in the management of the Private Fund.
3. The Custodian of the Private Fund as per the Custodian Agreement shall be required to hold and stand possessed of all assets, properties, or investments of whatsoever nature forming part of the Private Fund (collectively referred to as the " Fund Property") that may from time to time hereafter be vested in the Custodian by the LLP as a single common fund in terms of the Private Fund for the benefit of the Partner(s) ranking *pari passu*, according to the partnership interest (Units) held by each Partner in the Private Fund.
4. The Private Fund Property shall be invested or divested from time to time by the Custodian at the direction of the Designated Partner in terms of the provisions contained and the conditions stipulated in this Agreement, the Custodian Agreement, the Private Placement Memorandum and the Applicable Laws.
5. The Designated Partner shall establish, manage, operate and administer the Private Private Fund in accordance with the Applicable Laws, the Constitutive Documents as amended from time to time.
6. The liability of the Designated Partner and the Partner(s) shall be limited to the extent of their investment in the Private Fund.
7. Any matter or issue relating to the Private Fund (except for remuneration of the Designated Partner) shall be decided by the Designated Partner and for this purpose, the Designated Partner shall have complete authority. However, no change may be made in the fundamental attributes including investment objective, policy and structure of the Private Fund without resolution passed by the Partner(s) including the Designated Partner, representing at least seventy-five percent (75 %) of the value (Units) of the Private Fund.
8. The Partner(s) including the Designated Partner, may redeem their partnership interest (Units) as per the terms and conditions stipulated in the Private Placement Memorandum.
9. The Designated Partner at its own discretion may redeem the partnership interest (Units) of any Partner from the Private Fund under the following circumstances:
   1. The information provided by the Partner for Know Your Client (KYC) process is misleading or not correct;
   2. The Partner is not an Eligible Investor as defined under the Regulations,2015;
   3. The Partner is involved in terrorism, money laundering, criminal, unlawful or fraudulent activity;
   4. The continuance of the Partner jeopardizes the interest of the Private Fund or other Partners;
   5. Any adverse amendment in the Applicable Laws; or
   6. The Designated Partner considers that removal of the Partner is in the best interest of the Private Fund.

Provided that the Designated Partner will serve a written notice of at least ninety (90) days to the concerned Partner to redeem its partnership interest (Units) from the Private Fund under the circumstances enunciated in sub-clauses a. to i. of Clause 6.1 above. The redemption will be processed as per the terms and conditions stipulated in the Private Placement Memorandum.

1. Any new Partner inducted after the execution of this Agreement shall be deemed to have accepted the above conditions enunciated in Clause 6.1(a) to 6.1(i).

# Duration and Date of Extinction of Private Fund

Provide the following:

1. Mention duration of the Private Fund. (Infinite in case of alternative funds whereas the duration of the Private Fund can only be finite in case of private equity and Venture Capital Fund).
2. 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.
3. Clause on extension in time period by the Private Fund Management Company to complete transactions that were in process on such date.
4. Clause on early termination of Fund in accordance with the Constitutive Documents.
5. Any other clauses on reinvestments or additional follow-on investments till termination of the fund etc.

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

# Benchmark/Target Return of the Private Fund

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 investments

# The investment policy of the Private Fund shall be defined in the Private Placement Memorandum in accordance with the Applicable Laws.

# The Private Fund Property shall be invested or divested through the Custodian by instructions issued by the Designated Partner from time to time as set forth in the Private Placement Memorandum.

# The Private Fund shall invest primarily under the Regulations, 2015, and as specified in the Private Placement Memorandum in the following areas:

* Please mention areas of investment in bullet form

# Effect of this Agreement and status of the Partner(s)

* 1. The terms and conditions of this Agreement as amended, as per the term of Clause 23, from time to time, shall be binding on each Partner, including new Partner(s) that may be inducted from time to time, as if the Partner(s) had been party to it and each Partner shall be bound by its provisions and shall be deemed to have authorized and required the Custodian and the Designated Partner to do as required of them by the terms of this Agreement, the Custodian Agreement, the Private Placement Memorandum and the Applicable Laws.
  2. No Partner, other than Designated Partner shall take part in the management or control of the Private Fund’s investment or other activities, transact any business in the Private Fund’s name or have the power to sign documents for or otherwise bind the Private Fund (whether or not through a power of attorney on behalf of the Private Fund).
  3. To the fullest extent permitted by the Applicable Laws, the exercise by any Partner of any right conferred herein shall not be construed to constitute participation by such Partner in the control of the investment or other activities of the Private Fund.
  4. No Partner shall be liable to make any further payment after he/she has paid hundred percent (100 %) of Capital Commitment as defined in this Agreement and specified in the Private Placement Memorandum and no further liability shall be imposed on any Partner in respect of the partnership interests (Units) held by him/her.
  5. All partnership interests (Units) of the Partners, including Designated Partner and fractions thereof shall represent an undivided share in the Private Fund in form of Units as envisaged in the Regulations,2015 details of which shall be specified in the Private Placement Memorandum and shall rank *pari passu* according to the number of Units (partnership interests) held by each Partner, including as to the rights of the Partner(s) in the Net Assets, earnings and the receipt of the dividends and distributions of the Private Fund. Each Partner has a beneficial interest in the Private Fund Property proportionate to the partnership interests (Units) and fractions held by such Partner and shall have such rights as are set out in this Agreement and the Private Placement Memorandum.
  6. Issuance, transfer, pledge / lien of Units (partnership interest) shall be carried out in accordance with the requirements of the PF Regulations, directives, circulars and guidelines issued by the Commission from time to time, this Agreement and the Private Placement Memorandum.
  7. No change in the fundamental attributes including investment objective, policy and structure of the Private Fund shall be made without approval of the Partner(s) including the Designated Partner, representing at least seventy-five percent (75%) of the value (Units) of the Private Fund and notify Commission accordingly.
  8. The details and share percentage of the Designated Partner and Partner of this Private Fund are mentioned in Annex F, which shall be transformed into Units at the par value of PKR XXXX each. Provided however, in case of induction of new Partner(s), Annex F shall be amended in writing with/without the need to alter this Agreement.

# Duties, Powers, Rights and Obligations of the Designated Partner

* 1. The Designated Partner shall manage, operate and administer the Private Fund in accordance with the Rules, Regulations, 2015 directives, circulars and guidelines issued by Commission, this Agreement and the Private Placement Memorandum.
  2. The Designated Partner 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 Agreement and the Private Placement Memorandum in accordance with the requirements of Rules, Regulations, directives, circulars and guidelines issued by Commission. Subject to such investment objective approach and any restriction, the Designated Partner 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 the Custodian 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 Designated Partner 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 shall 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 Custodian 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, Regulations 2015 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, Regulations 2015, 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 Designated Partner are not trading on the basis of material nonpublic information obtained from another area of the Designated Partner.
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 Designated Partner may from time to time, with the consent of the Custodian, 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 Designated Partner 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 Designated Partner (save as herein otherwise provided) be liable for any act or omission of the Custodian, 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 Agreement and the Private Placement Memorandum, the Designated Partner 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 Designated Partner 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 Custodian, and shall notify the Custodian 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 Designated Partner. Any change in such authorized persons shall promptly be notified to the Custodian.
    6. The Designated Partner shall, from time to time, advice the Custodian of any settlement instruction relating to any transactions entered into by it on behalf of the Private Fund. The Designated Partner shall ensure that settlement instructions are given promptly after entering into the transaction so as to facilitate timely settlement.
    7. The Designated Partner 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 Designated Partner 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 Custodian 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 Custodian. In the exercise of its discretionary investment management of the Private Fund, the Designated Partner 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 Designated Partner 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, 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 Designated Partner 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 Designated Partner’s duties under the Constitutive Documents and the Custodian agrees to provide settlement instruction and confirm such authority to such parties on request.
    11. The Designated Partner may, if it considers necessary for the protection of Private Fund’s Property or safeguarding the interest of the Unit holders, request the Custodian to institute or defend any suit, proceeding, arbitration or inquiry or any corporate or shareholders action in respect of the Private Fund’s Property or any part thereof at the cost of the Private Fund.
    12. The Designated Partner 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 Designated Partner has employed reasonable due care and due diligence in this regard.
    13. The Designated Partner 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 Designated Partner 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 Designated Partner`s gross negligence, willful default or fraud or that of any of its directors or employees.
    15. The Designated Partner 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 Designated Partner`s gross negligence, willful default or fraud or that of any of its Directors or employees. No warranty is given by the Custodian or Designated Partner as to the performance or profitability of the Private Fund or its Investments or any part of it.
    16. The services of the Designated Partner hereunder are not to be deemed exclusive. The Private Fund acknowledges that the Designated Partner 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 Designated Partner 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, Custodian 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 Designated Partner (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 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 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 Custodian; (Provided that a fund sub-categorized as Venture Capital Fund shall be valued once in two years by independent valuer appointed with the consent of Custodian).

# Duties, powers, rights and obligations of the Custodian

# The Custodian shall perform its role, duties and obligations and have such powers and rights, as are specified in the Rules, the Regulations,2015, the LLP Regulations and directives issued thereunder, this Agreement, the Custodian Agreement and the Private Placement Memorandum.

# 

# Private Fund Property

# The Private Fund Property shall constitute all cash, properties, investments, income earned or accrued and other benefits arising therefrom and all other assets for the time being held or deemed to be held upon Private Fund by the Custodian for the benefit of the Partner(s) pursuant to this Agreement. This does not include any amount payable or paid to the Partner(s) as distribution. However, any income earned or accrued on the amount payable to the Partner(s) as distribution shall become part of the Private Fund Property.

# Bank accounts for the Private Fund shall always be in the name of the Private Fund with the title "Name of Private Fund" and shall be operated by authorized representative(s) of the Custodian in accordance with the provisions of the Custodian Agreement.

Shariah Compliant Bank accounts for the Private Fund shall always be in the name of the Custodian with the title “Name of Custodian-[Name of the Private Fund].

# All expenses incurred by the Designated Partner or the Custodian in effecting the registerable investments in the Private Fund shall be payable out of the Private Fund Property.

# Except as specifically provided in this Agreement, the Private Placement Memorandum, the Constitutive Documents and the Applicable Laws for the sole benefits of the Partner(s), the Private Fund Property shall always be kept as separate property free from any mortgages, charges, liens or any other encumbrances whatsoever and the Custodian shall not, except for the purpose of the Private Fund and as directed by the Designated Partner, 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 Custodian or the Private Fund or any other person.

# Voting rights on the Private Fund Property

* 1. All rights of voting attached to the Private Fund or any Private Fund Property shall be exercisable by the Designated Partner on behalf of the Private Fund, who shall be entitled to exercise or refrain from exercising such rights in the manner it considers at its sole discretion to be in the best interest of the Partner(s) and the Designated partner may refrain at its own discretion from exercising any voting rights, without interference from the Custodian or the Unit Holders.
  2. The Custodian shall, upon written request by the Designated Partner and on account of the Private Fund Property, from time to time execute and deliver or cause to be executed or delivered to the Designated Partner 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 Designated Partner 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 the 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 Designated Partner shall keep records stating the reasons for casting the vote in favor or against any resolution for a period of ten years.

# Transactions with the Connected Person(s)

1. Invest with its connected person or connected person of the Custodian 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

# 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 the Commission issued from time to time.

# The Designated Partner has appointed a Shariah Advisor who shall advise the Designated Partner on matters relating to Shariah Compliance.

# The Shariah Advisor shall be appointed for a period mutually agreed between the Designated Partner and such Shariah Advisor, as disclosed in the Private Placement Memorandum and may be re-appointed on completion of his term. The Designated Partner may terminate its agreement with the Shariah Advisor and appoint a new Shariah Advisor under intimation to the custodian and the Commission. Provided that till the appointment of new Shariah Adviser, the existing Shariah Advisor shall continue to perform his duties. Provided further that the Designated Partner shall inform the Commission at least one month in advance for change in the Shariah Advisor.

# The Shariah Advisor shall

1. provide technical guidance and support on various aspect of Shariah so as to enable the designated partner 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 custodian, the designated partner, 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 Designated Partner in drawing up of the Agreement and other related material documents including Constitutive Documents for the formation of the Private Fund.
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 Designated artner the criteria for selecting the charities registered under relevant Pakistani laws to whom such sums shall be donated.

# Change of the Designated Partner

* 1. The Designated Partner, may with the approval of Partner(s)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 Custodian. The exiting Designated Partner shall appoint another Designated Partner as the Designated Partner for the Private Fund in accordance with the Regulations, 2015 and other Applicable Laws. Provided that no retirement of the Designated Partner shall become effective until the appointment of another Designated Partner (the “Successor Designated Partner”) licensed by the Commission in accordance with the Regulations, 2015 and execution of a supplemental Agreement in the name of the Successor Designated Partner.
  2. Provided that the removal or retirement of the Designated Partner shall not become effective until the Designated Partner has utilized all its legal remedies and received its remuneration as described in the section of the Private Placement Memorandum titled Remuneration of the Designated Partner. 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 Designated Partner, the Designated Partner will take immediate steps to hand over all the documents and records pertaining to the Private Fund to the successor Designated Partner and shall pay all sums due to the Custodian. The Designated Partner 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 Custodian may immediately in case of change of Designated Partner 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 Custodian shall ensure that accounts of the Private Fund till the day of the appointment of the new Designated Partner are audited by such Auditor.
  5. The auditors so appointed may be other than the existing auditors of the Private Fund, the Designated Partner and the Custodian.
  6. Upon appointment of the successor the Designated Partner shall exercise all the powers and enjoy all the rights and shall be subject to all duties and obligation of the Designated Partner hereunder as fully as though such new Designated Partner 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 Custodian or Commission.
  8. The Auditors Report shall be submitted by the Auditors to the Custodian not later than thirty (30) Business Days from the appointment. A copy of the report shall also be provided to the Commission, the Designated Partner and the Successor Designated Partner.
  9. The cost of such audit shall be borne by the Private Fund.

# Borrowing arrangements/Borrowing Restrictions

# Subject to any statutory requirements for the time being in force and to the terms and conditions herein contained, the Designated Partner 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 of the size of the Private Fund at the time of borrowing or such other limit as specified by the Commission.

# 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 18.1 above, shall not be higher than the normal prevailing bank charges or normal market rates.

# Neither the Custodian, nor the Designated Partner shall be required to issue any guarantee or provide any security over their own assets for securing financings from banks and financial institutions. The Designated Partner or Custodian shall not in any manner be liable in their personal capacities for repayment of financings.

# For the purposes of securing any borrowing the Custodian may, on the instruction of the Designated Partner mortgage, charge or pledge in any manner all or any part of the Private Fund Property.

# Neither the Custodian, nor the Designated Partner shall incur any liability by reason of any loss to the Custodian or any loss that a Partner(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.

# Shariah Compliant Financing Arrangements / Restrictions

Subject to any statutory requirements for the time being in force and to the terms and conditions herein contained, the Designated Partner may arrange shariah compliant financing for account of the 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.

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 19.1 above, shall not be higher than the normal prevailing bank charges or normal market rates.

Neither the Custodian, nor the Designated Partner shall be required to issue any guarantee or provide security over their own assets for securing financings from banks and financial institutions. The Custodian, nor the Designated Partner shall not in any manner be liable in their personal capacities for repayment of financings.

For the purposes of securing any financing the custodian may, subject to clause 16.1 above, on the instruction of the Designated Partner mortgage, charge or pledge in any manner all or any part of the Custodian Property.

Neither the Custodian, nor the Designated Partner shall incur any liability by reason of any loss to the Private Fund or any loss that a Partner(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.

# Fee and Charges

# 20.1 Remuneration of the Designated Partner and its agents:

* + 1. The Designated Partner shall be entitled to prescribe and receive remuneration as permitted under the Private Placement Memorandum 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 Partner(s) make their contributions;
    3. Such remuneration shall be paid to Designated Partner in the manner specified in the Private Placement Memorandum
    4. The Designated Partner 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 Designated Partner and its affiliates. The Designated Partner shall not charge either the Partner(s) 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 Designated Partner will not be responsible for fees and expenses of the Custodian 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 Designated Partner and Custodian 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 Private Fund Property and the Private Fund or otherwise imposed on the Designated Partner 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 Designated Partner hereunder will supplement and will not be abated by any other remuneration receivable by the Designated Partner or any associate of the Designated Partner in connection with any transactions effected by the Designated Partner for the benefit of or associated with the Private Fund or any investment transactions;
    7. Any increase in the management fees or remuneration of Designated Partner shall be effective only after prior notice and approval of 75% of the Partners(s). However, any decrease in remuneration, agreed to by the Designated Partner shall not require any prior notification or approval.
    8. The Designated Partner 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 Designated Partner by the Private Fund or by the Custodian under this Agreement, 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.

# Remuneration of Custodian and Its Agents

The Custodian shall be entitled to a (mention frequency i.e. monthly, quarterly etc.) remuneration out of the Fund Property determined in accordance with the Custodian Agreement and as disclosed in Annex D attached herewith.

# Formation cost and its treatment:

All preliminary and floatation expenses of the Private Fund including expenses incurred in connection with the establishment and authorization of the Private Fund, the execution and registration of the Constitutive Documents, issue, legal costs, printing, circulation and publication of the Constitutive Documents, advertisements etc., and all other expenses incurred during and up-to the calling of the Capital Commitments shall be borne by the Private Fund.

# Other costs and expenses to be borne by the Private Fund:

1. All costs subsequent to the costs specified in Clause 20.2 above and expenses as specified in the Private Placement Memorandum shall be charged to and borne by the Private Fund. This may include but not limited to remuneration of the Designated Partner, custodian fee, audit fee, legal consultant fee, tax advisory fee, independent valuation charges etc.
2. The Designated Partner may, subject to the Applicable Laws, from time to time appoint investment facilitators, sales agents, legal consultants, tax advisors and independent valuers to assist in investment / divestment and promoting sales of partnership interests (Units) of the Private Fund. The remuneration of:
3. Legal consultants, tax advisors and independent valuers shall be paid from the Private Fund Property as set forth in the Private Placement Memorandum.
4. Investment facilitators and sales agent will not impact the NAV of the existing Partners and will be set off against the investment amount of the new Partner(s). The Units to the new Partner(s) will be issued against the investment amount after deduction of remuneration / commission of the investment facilitators and sales agent.
5. All expenses incurred by the Designated Partner or the Custodian in effecting the registerable investments in the Private Fund shall be payable out of the Private Fund Property.
6. The Designated Partner may bear and pay the expenses (including audit fees, etc.) of the Private Fund, partly or wholly, at its own discretion.

# Representations and Warranties of the Designated Partner

The Designated Partner represents and warrants to the Private Fund and the Custodian that:

1. it is validly existing, duly empowered and authorized to execute, deliver and perform this Agreement and to give effect to the transactions contemplated hereby;
2. this Agreement is binding upon it and enforceable in accordance with its terms excepts insofar as enforcement may be limited by termination, revocation 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 Agreement.

# Distribution policy

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

# Appointment of Auditor

# The Designated Partner shall under intimation to the Custodian, appoint an Auditor. The appointment of an Auditor and contents of the auditor's report shall be in accordance with the provisions of the Applicable Laws.

# The Designated Partner has appointed [AUDIT FIRM] as the first Auditor of the Private Fund in accordance with the requirements of the Applicable Laws. The details of first Auditor are as follows:

|  |  |
| --- | --- |
| Audit firm | [FIRM NAME] |
| Address | [ADDRESS] |

# The Accounting Period or Financial Year of the Private Fund will be from \_\_\_ to \_\_\_ each year.

# Rectification of Agreement

# In case of any proposed rectification, amendments and / or modification in fundamental attributes of the Private Fund including investment objective, policy and structure etc. the Designated Partner shall obtain the approval of seventy-five percent (75%) or more of the Partner(s) including the Designated Partner, in terms of value (Units) of the Private Fund, and submit the updated Constitutive Documents to the Custodian and the Commission within fifteen (15) days of such change as per the requirements of Regulation 11(1)(iii) of the Regulations,2015.

# The Custodian and the Designated Partner acting together shall be entitled by a Supplemental Agreement to rectify and / or amend, the existing provisions of this Agreement in such manner and to such extent as they may consider expedient for any purpose other than matters set out in Clause 23.1 above, and subject to the condition that it does not prejudice the interests of the Partner(s).

**27.3** If at any time, any clause of this Agreement is, or becomes, in whole or in part, illegal, invalid or unenforceable under the laws of under the laws of Pakistan, neither the legality, validity and enforceability of the remaining clauses of this Agreement, nor the legality, validity or enforceability of of the remaining clauses of this Agreement, 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 Private Fund

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

1. the Private Fund is not commercially viable in order to be continued;
2. the continuance of the Private Fund jeopardizes the interest of the Partner(s);
3. the Private Fund cannot be continued due to any new or recent amendment in the Applicable Laws; or
4. if the Private Fund is unable to pay its debts.
5. if the number of the Partners has been reduced to less than two.
6. size of the Private Fund has been reduced significantly due to a continuance of losses.
7. if the Private Fund has acted against the interests of the sovereignty or integrity of Pakistan, the security of the State or public order.
8. upon application to the Commission by three-fourth in value of the total Partner(s) 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 Partner(s), the Commission may direct the Custodian to liquidate the Private Fund.
9. if the Private Fund has made a default in filing with the Registrar the statement of accounts for any five consecutive Financial Years.
10. if the Private Fund has been conceived or brought forth or is or has been carrying on unlawful or fraudulent activities.
11. The Designated Partner at its own discretion may terminate or dissolve the Private Fund even if the Private Fund has delivered good returns to its Partners.
12. any other reason specified by the Commission pursuant to the Rules and/or the 2015 Regulations.
    1. For clause (a, b, c, d, e, f, g, j, k), the Designated Partner shall submit to the Custodian notice in writing specifying its intention of termination/revocation of the Private Fund and the Partner (s) along with the reasons for the same.
    2. The Custodian shall, after assessing the reasons provided by the Designated Partner, starts termination/revocation of the Private Fund by giving notices to the Partner(s) and the Commission. All information related to the Private Fund shall be transferred to the Custodian who shall dispose off the Private Fund Property in consultation of Designated Partner in the best interest of the Partner (s).
    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 Private Fund Property / asset of the Private Fund shall be first utilized towards discharge of the Private Fund`s liabilities and the fees /remuneration of the Designated Partner (including any carried interest/performance fee) and the Custodian, 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 Partner (s) 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 Partner (s) shall be treated pari passu.
    4. The Distribution Period will be 12 (twelve) months from the date of revocation or termination of the Private Fund. This Distribution Period may exceed in case the underlying investments of the Private Fund are not actively traded and / or could not be divested or realized. Alternatively, the Private Fund may distribute in kind (securities and assets held by the Fund) subject to the Applicable Laws.
    5. Upon termination/revocation of the Private Fund and before distribution of proceeds thereof, net assets available for distribution to Partner (s) shall be subject to audit by the Commission’s list of QCR approved Auditors issued vide circular no. 04 of 2023 dated April 03,2023. Auditor shall provide their report to Designated Partner and Custodian within timeframe as prescribed by Designated Partner with consultation of Custodian. On the completion of the revocation process, the Custodian shall forward to the Commission and the Partner (s) 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 Partner (s), along with a certificate from the Auditors of the Private Fund.
    6. After the receipt of the termination/revocation report from the Custodian, 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.

# Arbitration

# In the event of any disputes arising out of or in connection with this Agreement or the Private Placement Memorandum between the Designated Partner on one part and the Partner(s) on the other part, 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 Agreement and the Private Placement Memorandum, the same shall be referred to arbitration by two arbitrators, one to be appointed by the Designated Partner and the other to be appointed by the Partner(s). 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 the Designated Partner and Partner(s). The arbitrators and the umpire shall be selected from amongst the retired judges, senior chartered accountants or senior lawyers. The venue of the arbitration shall be ------. The arbitration shall be conducted in accordance with the Arbitration Act, 1940.

# Confidentiality

# The Custodian, the Partner(s) and the Designated Partner and their directors or officer or agent of the Custodian and the Designated Partner who are in any way engaged in the business of or associated with the business of the Private Fund and all persons employed or engaged by the Custodian or the Designated Partner 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 discharge of their duties except when required to be done so in the ordinary course of performance of their duties under the Constitute documents provided such third parties are also bound by the confidentiality requirement or by law or if compelled by any court of law or any competent authority.

# Notwithstanding anything to the contrary in this clause, Designated Partner 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 Custodian, in each case to assist or enable the proper performance of the Private Fund, provided the recipients is under an obligation to maintain confidentiality.

# 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.

# Notwithstanding the above, the Designated Partner 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.

# Force Majeure

# Force Majeure means any occurrence or circumstance or element beyond the control of, and which cannot be avoided or overcome by, the Designated Partner or the Custodian, and makes the performance of the Constitutive Documents or any obligations of Designated Partner or the Custodian 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 Designated Partner or Custodian.

# Notices

# Any notice required to be served upon the Partner(s) 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 Partner(s). 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.

# Service of a notice or document on any one of several joint Partners shall be deemed effective service on the other joint Partner.

# Any notice or document sent by post or left at the registered address of the Partner(s) shall notwithstanding that such Partner(s) become bankrupt or insolvent and bankruptcy be deemed to have been duly served and such service shall be deemed a sufficient service on all persons interested (whether jointly with or as claiming through or under him) in the partnership interests (Units) concerned.

# A copy of this Agreement and of any Supplemental Agreement shall be made available for inspection at the respective head offices of the Custodian and the Designated Partner at all times during usual business hours.

# Amendments in the Constitutive Documents

* 1. No amendments shall be made in the fundamental attributes of the Constitutive Documents including investment objective, policy, and structure of the Fund without approval of the Partner(s) including the Designated Partner, representing at least 75 % (seventy-five percent) of the value (Units) of the Fund.
  2. The Designated Partner shall submit the updated Constitutive Documents to the Custodian and the Commission within fifteen (15) days of such change as per the requirements of Regulation 11(1)(iii) of the Regulations,2015.

# Successor-in-Interest

# The Agreement shall be binding on the Parties and their respective successors-in-interest, provided however the Designated Partner 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 Custodian under this Agreement and the Designated Partner 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.

# 

# 36. Definitions

(This is not an exhaustive list of definition)

Whenever the following capitalized terms appear in this Agreement, they shall have the meanings stated below, unless expressed otherwise:

|  |  |  |
| --- | --- | --- |
| Terms |  | Definitions |
|  |  |  |
| Act  Advisors/Sales Agents  Accounting Period / Financial Year | :  :  : | means the Companies Act, 2017.  means an individual, firm, corporate or other entity appointed by the Designated Partner to identify, solicit and assist investors in investing in the Private Fund. The Designated Partner shall compensate the Sales Agents.  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 Private Fund Property is first paid or transferred to the Custodian and (in any other case) from the next day of the preceding Accounting Period. |
|  |  |  |
| Alternative Fund  Applicable Laws | :  : | “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.  The LLP Act, LLP Regulations, Part VIIIA of the repealed Companies Ordinance, 1984, Companies Act, 2017, NBFC Rules, NBFC Regulations, Regulations, 2015, ITO, 2001, Foreign Exchange Manual, Foreign Exchange Regulation Act, 1947 and circulars, orders, directives or instructions issued by the Commission, FBR, SBP or any other authority having jurisdiction over the Designated Partner, the Private Fund and the Custodian, all as may be issued or amended or replaced from time to time. |
|  |  |  |
| Auditor | : | An Auditor of the Fund which shall be appointed by the Designated Partner under intimation to the Custodian as per the Applicable Laws. |
|  |  |  |
| Bank | : | The institution(s) providing 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. |
|  |  |  |
|  |  |  |
|  |  |  |
| Business Days | : | Any day (business hours thereof as specified in the Private Placement Memorandum) on which banks are open for business in Pakistan. |
| Capital Commitments | : | Commitments provided by the Partner(s) that they will provide funds (proceeds) on the Designated Partner's call. |
|  |  |  |
| Capital Contributions / Called Down Capital / Drawdowns | : | Actual contribution made by the Partner(s). |
|  |  |  |
| Connected Person | : | As defined in Clause 2(xv) of the NBFC Rules, Connected Persons include but not limited to:   1. Any person owning 10 % or more in the Private Fund. 2. Any person able to exercise 10 % or more voting power in the Private Fund. 3. Designated Partner. 4. Custodian. 5. Other Private Funds being managed by the Designated Partner. 6. Any director or officer of the Designated Partner and the Custodian. |

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| Constitutive Documents | : | The LLP Agreement, the Custodian Agreement, the Private Placement Memorandum and any other principal document governing the formation of the Private Fund established by the Designated Partner including all related material agreements. |
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| Custodian | : | **Name of Custodian** which has been appointed by the Designated Partner to offer Custodial Services to the Private Fund. |
|  |  |  |
| Custodian Agreement | : | The agreement executed between the Designated Partner and the **Name of the Custodian** to hold and protect the Private Fund Property or any part thereof as a custodian on behalf of the Private Fund. |
|  |  |  |
| Custodial Services | : | Services which shall be provided by the Custodian and as defined in the Custodian Agreement. |
| Designated Partner / Private Fund Management Company / PFMC | : | Company licensed by the Commission to provide Private Equity and Venture Capital Fund Management Services under NBFC Rules, 2003. |
| Distribution Period  Duration | : | A period (after revocation or termination of the Private Fund) where the Private Fund Property will be realized and, after payment of all expenses and liabilities of the Private Fund, the surplus amount, if any, will be distributed amongst the Partner(s) on pro rata basis in accordance with their ownership / partnership interest (Units) in the Private Fund.  : The term of the Private Fund. |
| Eligible Investor | : | A person who a) has net assets of at least PKR 15 million excluding the value of personal residence and b) furnishes a declaration to the PFMC that he understands the risks of investment in the Private Fund. |
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| FBR  Financial Institution | :  : | The Federal Board of Revenue.  carries the same meaning as defined under the Companies Act, 2017. |

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| Force Majeure | : | any occurrence or circumstance or element beyond the control of, and which cannot be avoided or overcome by, the Designated Partner or the Custodian, and makes the performance of the Constitutive Documents or any obligations of Designated Partner or the Custodian 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 Designated Partner or Custodian. |
| Private Fund Property | : | All cash, properties, investments, income earned or accrued and other benefits arising therefrom and all other assets for the time being held or deemed to be held upon Private Fund by the Custodian for the benefit of the Partner(s) pursuant to this Agreement. This does not include any amount payable or paid to the Partner(s) as distribution. However, any income earned or accrued on the amount payable to the Partner(s) as distribution shall become part of the Private Fund Property. |
|  |  |  |
| Frustration of Contract  Haram Income | : | Rules, regulations, decisions, orders, actions or directives of federal, provincial or local governments or governmental authorities, court(s)' injunction(s) or restraining order(s) or action(s) of any investigation authorities and agencies, change of law, change of policy or regulations of federal or provincial governments or authorities preventing the Designated Partner, the Custodian and the Fund from fulfilling their respective obligations.  means any income prohibited by the Shariah |
|  |  |  |
| ICAP  Investment  Investment Facilitators | : | The Institute of Chartered Accountants of Pakistan.  Any Authorized Investment forming part of the Private Fund Property.  An individual, firm, corporate or other entity appointed by the Designated Partner to identify, solicit and assist investors in investing in the Scheme. The Designated Partner shall compensate the Investment Facilitators. |
| IPS | : | Investment Policy Statement means a statement obtained from the Partner(s) which at least covers the information regarding the Partner’s knowledge, qualification, risk appetite and investment objective. |
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| ITO, 2001 | : | The Income Tax Ordinance, 2001. |
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| Launch Date | : | The date on which the Capital Contributions from one of the two Partners specified in Annex F, is received in the Private Fund’s Bank account. |
| Limited Liability Partnership | : | A partnership registered under the Limited Liability Partnership Act, 2017 which will invest in portfolio of Securities and Financial assets as allowed under the Private Funds Regulations, 2015. |
|  |  |  |
| LLP Act | : | The Limited Liability Partnership Act, 2017. |
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| LLP Agreement / Agreement | : | This Agreement (including the Supplemental Agreement) executed between the Designated Partner and (s) of the Private Fund. |
|  |  |  |
| LLP Regulations | : | The Limited Liability Partnership Regulations, 2018. |
|  |  |  |
| LLP Property | : | The term ‘LLP Property’ has the same meaning as Private Fund Property. |
| Short/abbreviated name of the designated partner used throughout document | : | Full name of designated partner or the Designated Partner. |
|  |  |  |
| Short/abbreviated Name of the Private Fund | : | Full name of the fund is a Private Fund sub-categorized as \_\_\_\_\_\_\_ and will invest in \_\_\_\_\_\_\_\_\_\_\_\_. It can also be referred to as ‘the Fund’ or ‘the Private Fund’. |
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| MOU | : | Memorandum of Understanding. |
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| NBFC Regulations | | : | The Non-Banking Finance Companies and Notified Entities Regulations, 2008. |
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| NBFC Rules | | : | The Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003. |
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| Net Assets | | : | 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. |
|  | |  |  |
| Net Assets Value / NAV  Ordinance | | : | Net Assets of the Fund divided by the number of Units outstanding, at any given date.  The Companies Ordinance, 1984 (XLVII of 1984). |
| Partner(s)/ Unit Holder(s) | | : | The Eligible investor who owns one or more units of a Private Fund and whose name appears in the Register. |
|  | |  |  |
| Regulations, 2015 | | : | The Private Funds Regulations, 2015. |
|  | |  |  |
| PKR | | : | Pakistani Rupee. |
|  | |  |  |
| Private Placement Memorandum | | : | A Constitutive Document issued by the Designated Partner to the Partner(s) describing details of the Private Fund and giving an offer for subscription by eligible Investor only. |
|  | |  |  |
| Private Fund | | : | 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 these 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. |
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| SBP | | : | The State Bank of Pakistan. |
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| Shariah  Shariah Advisor  Shariah Compliant  SECP / Commission  Stock Exchange | | :  :  :  : | 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.  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 Custodian, having knowledge of Islamic finance, to supervise and monitor the activities of the Fund in order to ensure that all its activities comply with Shariah.  any activity that is in accordance with the Islamic Shariah as advised by the Shariah Advisor.  The Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 and shall include its successor.  : A public company that is licensed by the Commission as a security exchange under section 5 of Securities Act, 2015. |
|  | |  |  |
| Supplemental Agreement | | : | A means a deed supplemental to this Agreement, executed by the Designated Partner and the Custodian, after seeking approval of the Commission to modify, add to, alter and amend or amend and restate the provisions of this Agreement or any other Supplemental Agreement 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 Agreement. |
|  |
| Units (Partnership interest) | | : | the instrument of ownership of the Private Fund signifying the beneficial interest of the Unit Holders in that Private Fund. |

In witness whereof, the Parties have their hands below on the date, month, and year herein first mentioned.

Signed for and on behalf of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Designated Partner)

Signature: Date:

Name:

CNIC:

Signature: Date:

Name:

CNIC:

WITNESSES:

Signature: Date:

Name:

CNIC:

Signature: Date:

Name:

CNIC:

Signed for and on behalf of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Partner)

Signature: Date:

Name:

CNIC:

WITNESSES:

Signature: Date:

Name:

CNIC:

Signature: Date:

Name:

CNIC:

# List of Annexures

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| --- | --- |
| A. | Definitions |
|  |  |
| B. | License for Private Fund Management Services issued by Commission. |
|  |  |
| C. | Authorization to constitute the Private Fund |
|  |  |
| D. | Remuneration of Custodian and its Agents  The custodian 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. | |
|  |  |
| E. | Approval for appointment of the Custodian |
|  |  |
| F. | Details and share percentage of the Designated Partner and Partner(s) |