# **D E E D**

# **(for Collective Investment Scheme in Hedge Funds)**

## Made and entered into by and between

**[Full name of the manager]**

Registration number: **……………………………**

**(“the manager”)**

and

[Full name of the Custodian[[1]](#footnote-1)/ Independent Fund Administrator[[2]](#footnote-2)]

Registration number: …..**………………………….**

 **(“the custodian[[3]](#footnote-3)”)**

### PREAMBLE

**WHEREAS**

1. The manager and the custodian have agreed to establish a collective investment scheme to be known as the
**[Full name of the scheme]**
under the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) and to create thereunder, by means of supplemental deed, one or more separate portfolios;
2. The manager intends, subject to the Act and this deed, to make available to members of the public an opportunity for investment in hedge funds;
3. To protect and secure the interests of investors in a portfolio-

(i) the manager undertakes to invest money or other assets on behalf of investors in one or more portfolios of the collective investment scheme under the supervision and control of the custodian; and

(ii) the custodian agrees to fulfill its duties contemplated in section 70 of the Act.

**THEREFORE t**he parties agree on the following matters relating to the establishment and administration of the collective investment scheme and its portfolios.

###### PART 1: DEFINITIONS

**1. Definitions**

* 1. In this deed a word defined in the Act bears the meaning so assigned to it.
	2. In this deed, unless inconsistent with the context-

“**accounting period**”, in relation to the first distribution in respect of a portfolio to be made in terms of this deed, means the period not exceeding 12 months commencing on the date of commencement of such portfolio as declared by the manager in consultation with the custodian and ending on the day immediately prior to the first day of **[month]** and **[month]**
as may be determined by the manager in consultation with the custodian and, in relation to each subsequent distribution, means the period beginning with the last ex dividend date and ending on the day immediately prior to the next ex dividend date: Provided that after the first distribution in respect of that portfolio the financial year end of a portfolio must each year coincide with the day immediately before one of the ex dividend dates referred to above;

“**certificate**” means a statement or statement of account issued to an investor pursuant to the provisions of this deed which serves as evidence of the title of the investor to the participatory interest referred to therein and properly acquired by the investor;

**“classes of participatory interests”** means a category of participatory interests within a portfolio which differs from another category of participatory interests within the same portfolio as a result of its specific characteristics and different titles represented by characters of the alphabet and further individually distinguished by a number (e.g. Class A, Class A1 Class B, etc.) and indicated on the certificates as such: Provided that when different classes of participatory interests are created in a portfolio participatory interests that exist immediately prior to the implementation date, that are subject to levels of charges as may be determined by the deed, shall be categorised as a specific class of participatory interests other than Class R participatory interests;

“**distribution date**”, in relation to a specific portfolio, means a date not later than the last business day of **[month]** and **[month]**
of each year, or such other day or days as may be determined by the manager and the custodian by supplemental deed: Provided that the first distribution date of each portfolio created under this deed may not be more than 12 months after the date of creation of such portfolio;

**“electronic”**, in relation to any document created under this deed, includes created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic, optical or any similar means;

“**ex dividend date**” means the first business day of
**[month]** and **[month]** of each year or such other day or days as may be determined by the manager and the custodian and approved by the Financial Sector Conduct Authority (“the Authority”);

“**in writing**” includes any visible electronic form;

“**manager’s charge**”, in relation to a participatory interest in respect of different classes of participatory interests, means the charge(s) in that class of participatory interests contemplated in clause 30;;

“**market value**” in respect of securities, means the value determined in terms of section 44 of the Act or in respect of a participatory interest, the repurchase price of that participatory interest;

“**participatory interest in issue**”, in relation to a portfolio, including a portfolio consisting of different classes of participatory interest, means all participatory interests that have been created and entered in the register of that portfolio, including those held or deemed to be held by the manager;

 “**payment in lieu of income accruals**” means the amount which the manager must pay into the income account of a particular portfolio on the creation of new participatory interests to afford such participatory interests equal participation in the relative income which has accrued (including payments received in lieu of income accruals) from the last ex dividend date to the date on which the participatory interests are created. Such amount must be calculated by dividing the total number of participatory interests in issue of a portfolio at the time at which the calculation is made into the total amount then standing to the credit of the relevant income account and by multiplying the quotient by the number of new participatory interests created at the time at which the calculation is made;

“**permissible deductions**” means any deduction in connection with the administration of a portfolio referred to in section 93 of the Act;

“**pricing date**” means the day on which the prices of participatory interests in the portfolio(s) are calculated and shall be as determined in terms of clause 27, excluding weekends and public holidays;

“**register**” means the register of investors;

“**scheme**” means **[Full name of the scheme]**;

“**service charge**” means the periodical charge stipulated in the deed or as agreed with investors in writing, to remunerate the manager for the administration of a portfolio;

“**the Act**” means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“**valuation point**” means [XX time] on [XX] day when the price at which participatory interests may be purchased or repurchased will be determined.[[4]](#footnote-4)

**PART II: THE SCHEME**

1. **Constitution and name of scheme**

The manager and the custodian hereby establish the
**[Full name of the scheme]**,
which may consist of various portfolios.

#### 3. Objects of scheme

The object of the scheme is to establish one or more separate portfolios in which investors can obtain participatory interests in diversified assets of local or foreign origin. In order to achieve this object the manager may, subject to the Act and this deed-

3.1 operate a hedge fund business as declared by the Minister of Finance in *Government Gazette* number 38503 of 25 February 2015;

3.2 create and issue an unlimited number of participatory interests or classes of participatory interests in a portfolio established in terms of a supplemental deed to the deed; or

3.3 establish a variety of portfolios, including portfolios consisting of different classes of participatory interests, in order to provide investors with investment opportunities in diversified assets and to provide for different fees and charges.

###### PART III: THE MANAGER

### 4. Appointment of manager

Subject to the Act and this deed,
**[Full name of the manager]**is the manager of the scheme.

#### Remuneration of manager

* 1. The manager shall be remunerated for its services and reimbursed for its expenses in performing its obligations under this deed.
	2. The manager may at any time in its discretion waive or rebate its remuneration or reimbursement or any part thereof.

### 6. Powers of manager

Subject to the Act and this deed, the manager may in its absolute and uncontrolled discretion-

6.1 do all such things and enter into all such arrangements as are necessary for the administration of the scheme and to achieve the investment objectives of a portfolio of the scheme;

6.2 select, purchase, sell, exchange or change any of the assets of a portfolio;

6.3 in writing appoint persons to exercise powers and perform duties on its behalf and, in particular, appoint transfer secretaries, secretaries and agents; and

6.4 act on the advice or information obtained from professional advisers and others considered by it to be experts.

* 1. borrow money under section 96 of the Act subject to the following limits and conditions:

6.5.1 The manager must obtain written consent of the custodian prior to the borrowing;

* + 1. the term of the loan may not exceed [XX] days[[5]](#footnote-5), provided that if insufficient liquidity continues thereafter the loan may be renewed with the written consent of the custodian
		2. the loan may not bear a penalty for early settlement;
		3. the loan must be serviced in sequence of priority out of–
			1. inflows to the portfolio; and
			2. realisation of assets;
		4. the outstanding capital amount of the loan must be used when computing a portfolio’s net asset value price in terms of clause 27;
		5. as security for the repayment of the loan -
			1. the Trustee may cede a proportionate share of the assets of the portfolio to the lender on condition that ownership of the ceded assets will only be transferred to the lender if the manager is in default; or
			2. the manager may grant an option to the lender to purchase a proportionate share of the assets, equal in value to the outstanding amount of the loan, at the end of the term of the loan, provided that the assets that are already encumbered shall not be used for other obligations;
		6. the manager may only borrow funds if liquidity cannot reasonably be obtained without encumbering the assets of the portfolio;
		7. the amount borrowed must be limited to an amount necessary to meet the manager’s obligations in relation to the administration of the scheme to settlement of buying and sale transactions and repurchases or cancellation of participatory interests;
		8. the manager must disclose in its point of sale documents that an investor is required to sign, that the manager may borrow up to 10 per cent of the market value of the portfolio to bridge insufficient liquidity.

6.6 engage in scrip lending under section 85 of the Act subject to the following limits and conditions:

* + 1. The scrip lending must be beneficial to all investors;
		2. the manager may lend or offer to lend securities with a value not exceeding [XX] per cent of the market value of all the securities included in a portfolio;
		3. the securities that may be lent to one borrower are limited in accordance with the limits determined by the Authority for the inclusion of money market instruments in a portfolio;
		4. collateral security for the securities loaned must have an aggregate value that exceeds the market value of the securities loaned and may only consist of–
			1. cash; or
			2. other securities or a combination of securities;
		5. securities may not be lent for a period longer than 12 months;
		6. securities may not be lent unless subject to a right of recall of [XX] days;
		7. all fee income earned from securities lending, less necessary expenses, must be administered for the benefit of investors;
		8. the manager must disclose in the quarterly and annual financial statements the securities that are lent, the value thereof and the composition and the nature of the collateral security held in respect of such loan;
		9. the agreement of loan and the agreement relating to the security furnished by the borrower must be in writing and must at least provide for-
			1. the period of notice of termination of the loan;
			2. payments that may be made by the borrower to the portfolio in lieu of dividends accrued or paid in respect of the securities borrowed;
			3. fees or charges payable by the borrower to the portfolio;
			4. charges payable by the borrower to the portfolio to compensate investors for additional taxes in respect of taxable earnings in the form of payments by the borrower to the manager in lieu of dividends accrued or paid on the securities loaned;
			5. reservation of the right of execution without court order and immediate transfer to the manager of the ownership of and all rights, including voting rights, attached to the collateral security, if the borrower defaults or becomes insolvent;
			6. an undertaking by the borrower to deliver to the portfolio securities equivalent to any rights in respect of the loaned securities that may become exercisable before redelivery of the loaned securities.

#### 7. Voting rights on assets

* 1. Indemnity

On being furnished with such reasonable indemnity against
 costs as the custodian may require, the
 custodian may delegate to the manager or its nominee the right to attend or to vote at a meeting of an issuer of assets
 included in a portfolio, and to take part in or consent to any action of
 an issuer of such assets. No investor shall have any right in
 relation to any asset, to attend or to vote at such meeting or to take
 part in or consent to any such action.

7.2 Proxies

The custodian must execute such proxies, powers of attorney or other documents as the manager may require in order to enable it or its representative or its nominee to attend or to vote at any such meeting and to take part in or consent to any such action.

7.3 Meaning of vote

In this clause “vote” includes not only a vote at a meeting of an issuer but also any decision of an issuer relating to any arrangement, scheme or resolution, or to any alteration in or abandonment of any rights attaching to any part of the assets, 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.

#### 8. Custodian to forward notice to manager

The custodian or its nominee must on receipt thereof forward to the manager any notice of a meeting of an issuer, a report, circular and all other documents received by it, or its nominee, from an issuer.

#### 9. Manager to prepare documents

The manager must, at its own expense-

9.1 prepare all payments, warrants, notices, accounts, summaries, declarations, offers or statements which the custodian under the provision of this deed is required to issue, serve or send, and deposit the same with the custodian together with stamped and addressed envelopes, if so required, so as to afford the custodian sufficient time to examine, check and timeously dispatch such cheques and documents; and

* 1. prepare, sign and execute all certificates and all transfers of assets which, but for this provision, would fall to be prepared by the custodian, and deposit the same with the custodian for signature and execution.

#### 10. Retirement and substitution or liquidation of manager

10.1 The manager may, with the written approval of the custodian and the Authority, in writing appoint any other company qualified to act as manager in terms of the Act, as manager in its stead, and may assign to such appointee all its rights and duties as manager under this deed. Such appointee must execute an instrument in a form as approved by the custodian and the Authority in terms of which it undertakes to fulfil all the obligations of the retiring manager. The retiring manager is then, upon payment to the custodian of all sums then due by it to the custodian (without prejudice to the rights of the custodian, investors or other persons, in respect of any act or omission prior to such retirement) absolved and released from all its duties and obligations under this deed. The new manager thereafter exercises all the powers, enjoys all the rights, and performs all the duties and obligations of the manager under this deed, as if the new manager had originally been a party to this deed.

* 1. The retiring manager remains entitled to all participatory interests in respect of which no certificate or valid claim is outstanding at the date of retirement and may require the new manager to issue to it a certificate in respect of any such participatory interests and to enter its name in respect thereof in the register or otherwise record its ownership of such participatory interests. The retiring manager continues to enjoy all the rights of an investor in respect of all participatory interests held by it.

10.3 If the manager is liquidated, the custodian must take immediate steps for the appointment of a new manager.

###### PART IV: THE CUSTODIAN

**11. Appointment and powers of custodian**

Subject to the Act and this deed,
**[Full name of the custodian]**is the custodian of the scheme. The custodian has all the powers necessary to protect the interests of investors in terms of the Act and this deed and has, save as otherwise provided in this deed, the powers necessary to perform its functions to achieve the objects of the scheme and its portfolios.

#### 12. Legal proceedings relating to a portfolio of the scheme

* 1. Legal proceedings relating to a portfolio of the scheme must be instituted by or against the custodian in its capacity as such, and the custodian may institute, prosecute, intervene in or defend any legal proceedings relating to or concerning a portfolio of the scheme or its affairs and, as a prerequisite to such action, may require the manager to indemnify it against all costs, expenses and liabilities thereby incurred.
	2. The custodian is not liable to make any payment to any investor except out of any funds held by or paid to it for that purpose under the provisions of this deed.

#### 13. Remuneration of custodian

* 1. In every accounting period, the manager must-

13.1.1 authorise payment to the custodian by way of remuneration for the custodian’s services, of such amount as may be agreed between them; and

13.1.2 reimburse the custodian for all its expenses incurred in connection with the scheme, other than expenses expressly required by this deed to be paid out of a portfolio, and other than expenses incurred by it as a result of its own negligent and unlawful conduct.

13.2 Such remuneration and reimbursement are in addition to any sums that the custodian may receive or retain under any other provision of this deed.

##### 14. Registration and retention of assets by custodian/depository[[6]](#footnote-6)

* 1. The assets of a portfolio must be registered either in the name of the custodian or with the written consent of the Authority in the name of a nominee company of the custodian. Any reference in this deed to the custodian in relation to the vesting, registration or holding in its name of assets, or to its rights, powers and obligations as the registered owner of the assets, is, unless inconsistent with the context, deemed also to be a reference to the said nominee company.
	2. The custodian is liable for any act or omission of the nominee company in relation to any assets held in the name of the nominee company. Despite the foregoing, the custodian or the nominee company must take delivery of and retain in safe custody and under its own supervision and control the documents of title to the assets.

14.3 Subject to the provisions of this deed with regard to scrip lending and the borrowing of money by the manager, the assets or the collateral must be held by the custodian or its nominee company in its name in trust for the investors and the custodian or the nominee company may not allow the whole or any part of such assets to be pledged or encumbered in any way other than as is permissible in terms of the Act.

14.4 The assets of each portfolio-

(a) shall be separate from the assets of another portfolio;

(b) shall be protected from creditor claims against the manager or custodian; and

(c) shall not be available to meet the liabilities of any other portfolio in the scheme.

**15. Custodian not obliged to furnish security**

The custodian is not obliged to furnish security to the Master of the High Court or to any other official for the due performance by it of any of its obligations in terms of this deed.

1. **Custodian may deal in participatory interests and act as banker to the scheme where it is a registered bank**
	1. The custodian may–

16.1.1 purchase, hold, deal in or dispose of participatory interests for its own account or otherwise;

16.1.2 if it is a bank as defined in Board Notice No. 52 of 2015 published in *Government Gazette* Number 38540 of 6 March 2015, act as banker for the scheme;

16.1.3 enter into any financial, banking or other transaction with the manager or an investor, or with a concern any of whose shares or securities form part of the assets;

16.1.4 hold any security in any such concern.

* 1. The custodian is not accountable in any way to the manager or investors for any profits made or benefits derived by it from any of the matters referred to in clause 16.1.
1. **Custodian may accept signed request from manager**

17.1 Subject to section 72 of the Act, the custodian is not liable for anything done or omitted or suffered by it in good faith and in accordance with or pursuant to any written request, notice, direction, advice or other communication of the manager.

17.2 The custodian may accept any document signed on behalf of the manager by a duly authorised person and directed by the manager to the custodian, as sufficient evidence of any request, notice, direction, advice or other communication from the manager to the custodian.

**18. Custodian may act on advice of competent person**

The custodian may act upon the advice, statements of or information obtained from lawyers, the manager, bankers, accountants, members of any exchange or other persons considered by the custodian to be experts in relation to the matters upon which they are consulted.

**19. Custodian and manager may interpret deed**

Subject to this deed and without prejudice to the right of any person to have recourse to the Courts, the custodian and the manager may resolve all questions of interpretation of the provisions of this deed.

**20. Removal of custodian**

20.1 Subject to the Act, the manager may with the written approval of the Authority-

20.1.1 pursuant to a ballot of investors in all portfolios (to which clause 65 applies); or

20.1.2 at the written request of not less than 50% of the investors excluding the manager, in all the portfolios, holding not less than 50% in value of the total number of participatory interests then in issue,

require the custodian by notice in writing to resign from office.

20.2 A custodian appointed in the place of a retiring custodian must execute an instrument in a form approved by the manager and the Authority in terms of which it undertakes to fulfil all the obligations of the retiring custodian.

20.3 The retiring custodian is (without prejudice to the rights of the manager, investors or other persons, in respect of any act or omission, liability, negligence or dishonesty, prior to such retirement) absolved and released from all further obligations under this deed. The new custodian thereafter exercises all the powers, enjoys all the rights, and is subject to all the duties and obligations of the custodian under this deed, as fully as if such new custodian had originally been a party to this deed.

* 1. A custodian is deemed to have resigned if its certificate of
	registration is revoked or suspended under section 69(3) of the Act,
	and the manager must in that event immediately appoint another
	person qualified to act as custodian in terms of the Act.

**PART V: PORTFOLIO**

**21. Number of portfolios**

The scheme may consist of one or more portfolios, inclusive of portfolios consisting of different classes of participatory interests, established by supplemental deed.

**22. Custodian entitled to reject asset**

The custodian may refuse to accept as part of the assets of a portfolio, any asset which according to its judgement, infringes the terms of this deed or a supplemental deed or the Act and the manager must, in such an event, deposit with the custodian cash or assets of equal value which comply with the terms and objects of this deed.

**PART VI: CREATION, SALE, REPURCHASE OR CANCELLATION OF PARTICIPATORY INTEREST**

**23. Initial or additional portfolio and offer of participatory interests**

23.1 The initial and each additional portfolio must each have a minimum market value as determined by the manager after consultation with the custodian and comprise assets or cash received or deemed to be received by the manager.

23.2 The manager is responsible for the payment of all expenses (including permissible deductions) arising out of and relating to the formation of the initial and any additional portfolio.

23.3 The participatory interests issued to the manager in respect of such assets or cash are deemed to be the first participatory interests in issue in a particular portfolio and must be issued at a minimum price determined by the manager.

23.4 At the date on which the manager commences the sale of participatory interests to the public, the market value of each portfolio must be at least an amount as determined by the manager after consultation with the custodian. The first issue of participatory interests in a portfolio to the public is made in such a manner as the manager may decide.

23.5 The said first issue may take the form of an offer by the manager of a specified number of participatory interests at a fixed price not exceeding the net asset value price on a previous date, which date shall not be more than 28 days before the closing of the offer.

**24. Creation, subdivision or consolidation of participatory interests**

24.1 The manager has the exclusive power to secure the creation and issue of participatory interests in a portfolio.

24.2 The manager may, with the consent of the custodian and the approval of the Authority, in writing, at any time effect any subdivision or consolidation of participatory interests in issue in any particular portfolio without prejudice to the rights and privileges of the then existing investors. For the purpose hereof the manager is obliged to send a written notice to all investors which must include the following minimum information:

24.2.1 Full particulars of the subdivision or consolidation including-

24.2.1.1 in the case of a subdivision, the number of additional participatory interests to which the investor is entitled and which have been entered in the register; or

* + - 1. in the case of a consolidation, the number of participatory interests to which the investor is entitled and which have been entered in the register.
	1. The costs involved in the subdivision or consolidation of participatory interests must be borne by the manager which must within 21 days after the date on which the subdivision or consolidation takes place, issue additional certificates or certificates replacing existing certificates to investors or, if certificates are no longer issued, notify investors as contemplated in clause 24.2.
	2. If an investor tenders participatory interests to the manager for repurchase after the date of the subdivision or consolidation but before additional certificates are issued or existing certificates replaced, or investors are notified as aforesaid, a certificate issued before the subdivision or consolidation is deemed to represent the number of participatory interests to which the investor is entitled as a result of the subdivision or consolidation

**25. Undivided interest in portfolio**

Each investor is, equally with every other investor, entitled to one undivided proportionate participation in a portfolio but is, subject to
clause 34, not entitled to any particular asset of the portfolio. Every fraction of a participatory interest ranks *pari passu* proportionately
with that participatory interest.

**26. Minimum number of participatory interests that may be sold**

The minimum number of participatory interests that may be sold to an investor must be determined by the manager.

**27. Net asset value and sale price of participatory interest**

Unless participatory interests are offered at a fixed
price pursuant to section 94(1)(b) of the Act, the manager must issue participatory interests in a portfolio at the net asset value price per participatory interest, which price is calculated on the date on which any participatory interest is issued or the previous date, whichever is consistently applied, according to the formula–

A + B

 C

Where:

A = the aggregate market value of the assets in the portfolio,
excluding the income accruals and payments referred to in B, on the last valuation point determined by the manager on the last pricing date, which valuation point may not be more than 24 business hours prior to or after such date;

B = the aggregate of all income accruals and payments received in lieu of income accruals from the creation of new participatory interests in the portfolio, during the relevant accounting period up to the said date, but excluding:

(i) any part of those income accruals and payments in lieu of income accruals, set aside at the last preceding distribution date for distribution, but not yet distributed; and

(ii) such further amount, out of those income accruals and payments in lieu of income accruals, as in the opinion of the manager represents a fair proportion, at the pricing date, of the permissible deductions for the relevant accounting period;

C = the total number of participatory interests in issue in the portfolio

on the pricing date.

**28. Price at which manager may sell participatory interest owned by it for own account**

28.1 The manager may at any time for its own account sell any participatory interest owned or deemed to be owned by it and for the time being outstanding, at any price not exceeding the price at which a new participatory interest in the relevant portfolio would at that time be issued in accordance with the provisions of clause 27, and the manager may retain for its own use and benefit all monies received by it in respect of such sale.

28.2 Any commission, remuneration or other sum payable to an authorised agent of the manager in respect of the sale of any such participatory interest, must be paid by the manager.

**29. Manager may sell participatory interest in exchange for asset**

* 1. Subject to and in accordance with the following provisions, the manager may secure the creation and issue of, or sell a
	participatory interest in a particular portfolio by way of exchange for an
	asset upon such terms as the manager may think fit.
	2. The value of the participatory interest so sold is calculated according to the purchase price at the time when such participatory interest was so sold.
	3. Any permissible deductions relating to the acquisition of such asset must be paid out of the relevant portfolio.
	4. The manager and the custodian must be satisfied that the exchange is not likely to prejudice existing investors.

**30. Manager’s Charge**

* 1. Manager’s charge includes any or all of the following:

30.1.1 **Upfront manager’s charge**

In relation to a participatory interest, means that portion of the amount received from an investor which represents the manager’s charge in respect of expenditure incurred and administration performed by it in connection with the creation, issue and selling of such participatory interest in that class of participatory interests which, subject to any notice referred to in clause 30.2-

(a) may be expressed as a percentage of the amount received from an investor;

(b) may be calculated, as agreed with an investor in writing, in terms of clause 30.3 in accordance with a sliding scale;

(c) may be a fixed amount per specific type of transaction; or

(d) may be a combination of the above.

30.1.2 **NOTE: If a manager wants to levy other manager’s charges *e. g.* “exit charge, withdrawal fee, low balance fee, redemption fee, subscription amount”, the method of calculation thereof and the formula for calculation thereof must be described in each individual portfolio’s supplemental deed.**

* 1. The manager must give not less than three months’ written notice to investors of any increase in the manager’s charge or any change in the method of calculation thereof that could result in an increase thereof or of the introduction of any new charge.
	2. Nothing herein contained precludes the manager, in its discretion, to reduce or waive the manager’s charge or to pay commission in respect thereof. The scale of the manager’s charge applicable to varying sizes of investment, if any, must be determined and published by the manager in all relevant marketing material.

**31. Variations in manager’s charge**

Any reduction in the manager’s charge, if any, shall be passed on to investors in respect of the uncompleted portion of any contract for the sale of participatory interests. Any increase in that charge, if any, may not be applied to any contracts for the sale of participatory interests entered into at a date prior to the date on which such increase came into effect.

**32. Conditions for sale of participatory interest**

The manager may not sell or offer any participatory interest for sale except on the terms set out below:

32.1 Each purchase of participatory interests must be a completed transaction and ownership of the participatory interests passes to the purchaser as soon as the manager has accepted an offer to sell participatory interests and the purchase price has been paid;

32.2 the manager must immediately after each purchase transaction take steps to register the transfer of the participatory interests to the purchaser in the register of the portfolio; and

* 1. the manager must issue a Purchase Note or a statement of account to a purchaser reflecting the sale of the relevant participatory interests: Provided that the purchaser may at any time demand a certificate referred to in clause 40 in respect of the participatory interests so purchased if the minimum number of participatory interests referred to in clause 26 is purchased.

**33. Manager to furnish custodian with information**

In order to enable the custodian to give effect to this deed, the manager must furnish to the custodian on request statements of all issues of participatory interests and of the prices at which they were issued, particulars of any assets which it intends or plans to purchase or sell for the account of the scheme, and any other information which the custodian may reasonably require.

**34. Manager to repurchase participatory interests**

* 1. A manager must repurchase any number of participatory interests offered to it by an investor as determined in this deed.
	2. For the purposes of clause 34.1 and subject to clause 34.3 the manager must determine a point in time by when repurchase requests must be received for the purpose of determining a valuation point to be used for the pricing calculation on a pricing date, which valuation point may not be more than [XX] days after the time when repurchase requests must have been received.
	3. The time determined in terms of clause 34.2 may not be changed unless 30 days’ prior written notice has been given to investors.
	4. A manager, when it receives a request for repurchase of participatory interests under circumstances prescribed by the Authority under section 114(3)(f) of the Act-

34.4.1 may, with the prior consent of the custodian; or

34.4.2 must, without delay when the custodian so requires,

suspend the basis of the repurchase of the relevant participatory interests, if the manager or custodian, as the case may be, is of the opinion that the circumstances referred to, warrant the suspension in the interests of investors.

* 1. The repurchase of such participatory interests shall be priced and settled in accordance with conditions prescribed by the Authority under section 114(3)(f) of the Act.
	2. The assets shall be valued independently, and if not valued independently, the manager shall ensure that the valuation of the assets is independently verified.

**35. Notice to repurchase**

* 1. An investor who wishes to request the manager to repurchase or sell his or her participatory interests may, by notice in writing to the manager or its duly authorised agent, require the manager to repurchase all or any of such participatory interests.
	2. The manager has the discretion not to honour the request contemplated in clause 35.1 if the investor fails to provide the manager with the certificate, if any, representing the participatory interests offered for repurchase or, at the option of the manager, produced such evidence of his or her title to the participatory interest to be sold as the manager may consider sufficient. .
	3. The notice contemplated in clause 35.2 must be accompanied by a document that proves the transfer and such other necessary documents referred to in this deed. If the repurchase price is not paid to the investor on delivery of the said documents to the manager, the investor must be issued with a receipt for such documents.
	4. The manager shall disclose to the investors that he or she may require the investor to provide the documents contemplated in clauses 35.2 and 35.3.

**36. Repurchase price**

Subject to clause 34, the repurchase price per participatory interest payable by the manager must be the amount determined in terms of clause 27 at the time when the notice referred to in clause 35 was received by the manager.

**37. Date of payment of repurchase price**

Subject to clauses 34.4 and 34.5, payment in respect of an offer for the repurchase of a participatory interest must be made to the holder of such participatory interest within [XX] days[[7]](#footnote-7) of the receipt of such offer.

**38. Balance certificate**

If the certificate delivered to the manager or its authorised agent comprises a larger number of participatory interests than that stated in the notice to the manager to sell or repurchase, a balance certificate must, subject to clause 40, be issued by the manager free of charge to the investor.

**PART VII: PARTICIPATORY INTEREST CERTIFICATES**

**39. Certificate**

39.1 When any participatory interest is created and sold, the manager must issue a certificate representing the said participatory interest in the name of the investor entitled thereto, and the investor may request such certificate at any time.

39.2 The custodian may not countersign any certificate unless it has received from the manager payment for the participatory interests sold in the form of cash or assets in terms of the Act and this deed, together with all documents necessary to effect transfer of the participatory interests.

**40. Form of certificate**

40.1 A certificate must be in the form determined by the manager and the custodian.

40.2 A certificate must, for each separate portfolio, contain at least-

40.2.1 the investor account number;

40.2.2 the number of participatory interests represented thereby;

40.2.3 the full name and address of the investor;

40.2.4 the name and address of the manager and the custodian; and

40.2.5 the date on which the name of the investor has been entered in the register as the investor represented by the certificate.

**41. Validity of certificate**

A certificate issued by the manager is valid if issued as an official document by the manager.

**42. Certificate to be issued to manager or investor**

* 1. A certificate must be issued to the manager, should it require one, and to an investor, if requested, in respect of a participatory interest to which the manager or investor is entitled.
	2. If the intention of the manager is to resell any repurchased participatory interest in the future for its own account, it shall be required to enter its name into the register.

**43. Number of participatory interests for which certificate is issued**

A certificate may represent any number of participatory interests determined by the manager.

**PART VIII: RECEIPTS AND DISTRIBUTIONS**

**44. Payment of receipts to custodian**

44.1 The following receipts in cash must be deposited in a separate trust account for each or all portfolios with a bank, registered in terms of the Banks Act, 1990 (Act 94 of 1990), or the Mutual Banks Act, 1993 (Act 124 of 1993), being an account under the control and supervision of the custodian:

44.1.1 All monies which are received for investment as a result of the sale of participatory interests;

44.1.2 all dividends, interest or other income which accrue to the underlying assets; and

44.1.3 the proceeds of all capital profits, rights and bonus issues.

44.2 If any receipts are to be deposited with a foreign bank not approved under the Banks Act, 1990, it must be deposited with a bank, agreed upon between the manager and the custodian, and finally registered as a bank in terms of the laws of a foreign jurisdiction applying regulatory standards which are not less stringent than the equivalent standards in the Republic.

44.3 All assets received as a result of the sale of a participatory interest must be taken into account as an investment for the benefit of the relevant portfolio and new participatory interests must be created in terms of this deed to represent such investment.

44.4 All income accrued during an accounting period must be credited to an account called the “Income Account” in the books of account of the portfolio concerned and shall form part of such portfolio under the supervision and control of the custodian.

44.5 If a portfolio receives any bonus, right or benefit in respect of any of the assets, whether in cash or scrip or by warrant, cheque, credit or otherwise, which is in the nature of income, the manager must convert such bonus, right or benefit into cash for the credit of the relative Income Account. Any other bonus, right or benefit must be treated as a capital gain and must be included in the relevant portfolio. No new participatory interests may be created out of income accruals or such capital gains.

44.6 All amounts in lieu of income accruals from the creation and sale of participatory interests in a portfolio during an accounting period and all income accruals in terms of clause 44.4 must be credited to the Income Account and must be available for distribution to investors in that portfolio at the next ex dividend date.

**45. Manager’s decision on nature of bonus conclusive**

If any doubt arises as to whether any bonus, right or benefit referred to in clause 44.5 constitutes an income accrual or a capital gain, such question must be resolved by the manager after consulting the custodian and the auditors, and such resolution is conclusive.

**46. Distribution of income**

46.1 The manager must on each distribution date distribute to investors registered in the register of a portfolio as at the commencement of business on the immediately preceding ex dividend date, pro rata to the number of participatory interests then held by such investors in a portfolio, the amount verified by the custodian as available for distribution in that portfolio as hereinafter provided in respect of the accounting period immediately prior to such ex dividend date.

46.2 On each ex dividend date, the amount required to effect a distribution must be set aside and may no longer be taken into account in determining the market value of a portfolio for the purpose of calculating the selling and prices of a participatory interest in all classes.

46.3 On each distribution date the said amount shall be transferred from the Income Account to a Distribution Account under the supervision and control of the custodian, and the custodian must distribute the amount for the benefit of investors as herein provided.

46.4 The amount to be distributed in respect of each participatory interest must be rounded down to the nearest one hundredth of a cent, and the amount to be distributed to any one investor must be rounded down to the lower cent. The aggregate balance remaining to the credit of the Distribution Account on completion of the distribution shall be carried forward and added to the amount available for distribution in the next accounting period.

46.5 If an investor makes a written application to the manager to that effect, the distribution due to him or her must automatically be reinvested in participatory interests for his or her benefit.

**47. Determination of amount available for distribution**

An amount equal to the income accruals during the accounting period plus all payments in lieu of income accruals received by the portfolio during the accounting period, and any balance carried forward, less any permissible deductions, must be distributed to investors.

**48. Charges[[8]](#footnote-8) and method of calculation**

48.1 The service charge in respect of a class of participatory interests shall consist of–

48.1.1 a monthly amount for the administration of the scheme in respect of a class of participatory interests of a portfolio, whether accrued daily or not, based on an annual percentage rate of the proportionate net asset value.

48.1.2If a manager wants to levy a performance fee, the method of calculation thereof must be described in each portfolio’s supplemental deed.[[9]](#footnote-9)

**49. Payment of service charge**

After the end of each calendar month, the custodian must pay to the manager by an agreed date in respect of a class of participatory interests of a portfolio, proportionately from the Income Account, the service charge referred to in clause 48.1 for each day of the respective calendar month: Provided that if there is a shortfall in the Income Account of a particular class of participatory interests–

49.1 participatory interests in that class of participatory interests may be issued to the manager; or

49.2 an amount in respect of that class of participatory interests proportionately deducted from the Capital Account may be paid to the manager,

equal in value to such shortfall.

**PART IX: REGISTER OF INVESTORS**

**50. Register of investors**

A register of investors in respect of each portfolio must be kept by the manager and the manager may for this purpose appoint transfer secretaries acceptable to the custodian. The remuneration of the transfer secretaries must be paid by the manager out of its own funds and the manager is liable for any act or omission, dishonesty or negligence on the part of a transfer secretary, when acting as such.

**51. Contents of register**

51.1 The manager must enter in the register of each portfolio-

51.1 the name and address of each investor;

51.2 the number of participatory interests held by each investor and the account number of his or her certificate or the serial number, if applicable;

51.3 the date of entry and, if participatory interests are transferred, a full reference to the names and addresses of the transferor and the transferee.

5.1.2 If new participatory interests are created, the manager must enter the number of such participatory interests in the register.

**52. Register is evidence**

The register is proof that a registered investor is the owner of the participatory interests registered in his or her name. The manager need not recognise any right affecting the ownership of a participatory interest or the rights incidental thereto unless such right is recorded in a legally enforceable instrument.

**53. Change of name or address**

If an investor wishes to register a change of name or address such investor must give notice thereof in writing to the manager who must change the register accordingly.

**54. Inspection of register**

The custodian may at all reasonable times during business hours inspect a register. Any other person may inspect the register during business hours on payment of a fee determined by the manager.

**55. Closing of register**

A register may be closed at such times and for such period as the manager may with the approval of the custodian determine: Provided that it may not be closed for more than 14 consecutive days or more than 30 days in any period of twelve months.

**56. Death, insolvency or other disability of investor**

56.1 The manager may require such evidence of the death, insolvency or other disability of an investor as it may think fit.

56.2 On the death of any one of joint investors, the survivor(s) shall be the only person(s) recognised by the manager as having any title to or interest in the participatory interest in respect of which they are registered.

56.3 The executor or administrator of a deceased investor, or the trustee of

an insolvent investor, or the curator of an investor under a legal disability (not being one of several investors) including the custodian in respect of this scheme (if appointed as executor, administrator, trustee or curator) shall be the only persons recognised by the manager as having any title to or interest in a participatory interest held by the deceased, insolvent or disabled investor.

56.4 Any person becoming entitled to a participatory interest in terms of clauses 56.2 or 56.3, upon producing such evidence as sustains the capacity in which he or she seeks to act or of his or her title as the manager considers sufficient and on delivering of the relevant certificate (if any) to the manager for cancellation, may (subject to the rights of any joint investor) elect either to be registered himself or herself or to have some other person nominated by him or her to be registered as an investor. If the person so becoming entitled elects to be registered himself or herself, he or she shall deliver or send to the manager a notice in writing in a form prescribed by the manager, signed by him or her, stating that he or she so elects. If he or she elects to have his or her nominee registered he or she must testify his or her election by executing in favor of his or her nominee, a transfer of such a participatory interest. All the provisions of this deed relating to the transfer of a participatory interest are applicable to any such notice of transfer as if the death, insolvency or other disability of the investor had not occurred and the notice of transfer were a notice of transfer executed by such investor.

56.5 A person entitled to a participatory interest in terms of clauses 56.2 or 56.3 may receive and may give a discharge for all monies payable in respect of such participatory interest: Provided that he or she may not receive notices of or take part in any ballot of investors until he or she has been registered as an investor.

56.6 The custodian may hold in trust any monies payable in respect of a participatory interest in respect of which any person is entitled to be registered, or a participatory interest in respect of which a person is entitled to transfer, until such person or his or her nominee has been registered as an investor.

**57. Participatory interest owned by manager**

The manager is deemed to hold participatory interests, and is treated for all purposes of this deed as an investor, during such times as there is no other person registered or entitled to be registered as an investor in respect of such participatory interests. All such participatory interests are deemed to be in issue. Nothing herein contained prevents the manager from becoming an investor.

**58. Transfer of participatory interest**

58.1 Every investor may transfer a participatory interest held by him or her by a written notice in such form as the manager may approve: Provided that no transfer may be registered if the registration thereof would result in the transferor or the transferee becoming the holder of a number of participatory interests representing a lesser value than the value of the participatory interests at the date of transfer.

58.2 The instrument of transfer accompanied by such evidence as the manager may require to prove the title of the transferor or his or her right to transfer the participatory interest (together with any necessary declarations or other documents) must be duly completed and executed by the transferor and (unless otherwise determined by the manager) by the transferee, and must be lodged with the manager, and within 14 days thereafter the manager must register the transferee referred to in such instrument of transfer as an investor and must issue to such transferee a new certificate representing the participatory interest so transferred.

58.3 The transferor remains entitled to the participatory interest to be transferred until the name of the transferee is entered in the register in respect thereof. No transfer or purported transfer of a participatory interest, other than a transfer made in accordance with this clause, entitles the transferee to be registered in respect thereof nor may any notice of such transfer or purported transfer be entered in the register. The manager must retain all instruments of transfer.

**59. Balance certificate**

If only a portion of the participatory interests represented by any certificate are transferred, the transferor must be provided with a new certificate free of charge in respect of the balance of such participatory interests.

**60. Liability for transfer cost**

In all cases where the transfer of participatory interests between an investor and the manager is effected, the manager is liable for the payment of all costs necessarily incurred in connection with such transfer. In all other cases the costs so incurred are the liability of the persons concerned and not of the manager and the manager may charge a fee determined by the manager, for each transfer.

**61. Cancellation of participatory interest**

61.1 Only the manager may effect a reduction of a portfolio by means of a cancellation of a participatory interest or by requiring the custodian to cancel a participatory interest, subject to surrender of the appropriate certificate of a participatory interest to the manager and confirmation by the manager that the appropriate participatory interest has been struck from the register of investors.

61.2 The manager must retain records, which may be inspected by the custodian at all reasonable times during business hours, of the number of participatory interests so cancelled and the amount paid to the manager in respect thereof, which amount must be calculated in terms of clause 62. Before effecting a reduction, the manager must ensure that a portfolio includes (or will include upon completion of the sale of assets which may have to be sold as a result of the cancellation of a participatory interest) sufficient cash to pay the amount payable to the manager upon such reduction.

**62. Payment to manager for cancelled participatory interest**

If a manager cancels a participatory interest, the manager is entitled to receive out of a portfolio in respect of the participatory interest cancelled, an amount determined in terms of clause 27 on the date of the notice to cancel. The said amount must be paid to the manager out of cash forming part of the portfolio concerned and against delivery to the custodian of particulars of the participatory interest to be cancelled in respect of which no certificate was issued. Upon such payment and surrender or delivery the participatory interest in question is cancelled.

**PART X: FINANCIAL MATTERS**

**63. Financial year-end of manager and portfolio**

The financial year-end of the manager and of each portfolio of the scheme is the end of **[month]** of each year.

**PART XI: GENERAL**

**64. Deed binding on all parties**

This deed is binding on the custodian, the manager and an investor and any person claiming through them as if such investor or person had been a party to this deed.

**65. Amendment of deed and balloting of investors**

The consent of investors for an amendment of this deed must be obtained in the following manner:

65.1 Where such an amendment only affects one or more than one class of participatory interests in a portfolio, the investors, excluding the manager, holding no less than 25% in value of the total number of participatory interests then issued in that class of participatory interests or those classes of participatory interests of that portfolio, as the case may be, must respond in writing in a ballot conducted by the manager. The amendment must be consented to by investors holding a majority in value of the participatory interests held by the investors who have responded.

65.2 Where the amendment affects more than one or all the portfolios in the scheme, investors, excluding the manager, holding no less than 25 per cent in value of the total number of participatory interests then issued in those portfolios affected, must respond in writing. The amendment must be consented to by investors holding a majority in value of the participatory interests held by the investors who have responded.

65.3 If investors holding less than 25 per cent in value of the total number of participatory interests then issued have responded in accordance with clauses 65.1 and 65.2, a second ballot must be conducted. In this ballot investors holding a majority in value of the participatory interests held by the investors who have responded, must consent to the amendment.

65.4 Every registered investor may vote in the case of a ballot in respect of each participatory interest held by him or her: Provided that an investor or his or her duly authorised representative may exercise all his or her voting rights, but is not obliged to exercise all his or her votes or exercise all the votes he or she is entitled to in the same way.

65.5 When a ballot is necessary the manager must dispatch to every investor a ballot paper and a memorandum approved by the Authority containing the reasons for the proposed amendment.

65.6 For the purposes of clauses 65.1, 65.2 and 65.3 only ballot papers which are received by the manager within thirty business days after dispatch to investors may be taken into account and be regarded as valid. Ballot papers must be counted by the auditors of the scheme and their finding, as conveyed in writing to the manager, is final and binding.

65.7 Where a registered investor is holding participatory interests as a nominee or person duly appointed to act on behalf of the beneficial owners of such participatory interests, the nominee or such person must obtain written instructions from such owners as to how to respond to the proposed amendment of this deed.

65.8 If, for the purposes of clause 65.7, some beneficial owners are in favour of the proposed amendment but others are against it, the nominee or such person must respond accordingly and for that purpose the nominee or such person may respond in favour of and against the proposed amendment.

65.9 The provisions of clauses 65.1, 65.2 and 65.3, which deal with the weighting of the response by an investor, also apply in the case of the responses by a nominee or such appointed person.

**66. Copies of deed and inspection thereof**

A copy of this deed must at all times during normal business hours be made available by the manager or the custodian at their respective head offices for the inspection by an investor or a prospective purchaser of a participatory interest. Any investor is entitled to receive from the manager a copy of this deed on production of his or her certificate or other acceptable evidence of his or her holding, upon request to the manager and on payment to the manager of such amount as the manager may require for each copy of the deed. The manager must on request and at its expense supply to the custodian such copies of this deed as the custodian may require.

**67. Payment to investor**

67.1 Any monies payable under this deed to an investor-

(a) must be paid in the manner determined by the manager, provided that all the necessary steps have been taken to ensure valid proof of payment is available to the investor;

(b) the manner of payment contemplated in paragraph (a) must take into account the interest of the investor to be safe and convenient; or

(c) in the case of joint investors, may be made payable to or to the order of one of the joint investors who is first named in the register, or otherwise as agreed, at his or her risk. If an investor or the joint investor who is first named in the register, gives a mandate in writing to the manager, in such form as the manager must approve, for payment to the bankers or other agent or nominee of the investor or joint investors, then the same must be dealt with in accordance with such mandate.

67.2 Payment as set out clause 67.1 is a good discharge to the manager and the custodian.

**68. Receipt by one of joint investors valid discharge**

The payment to the joint investor who is first named in the register of any money payable to joint investors, or of a certificate, written notice or other document intended for joint investors, is deemed to be payment to all such joint investors.

**69. Side pocketing, gating and redemption suspensions**

69.1 The manager shall obtain approval of the Authority before the manager establishes a new portfolio for purposes of segregating illiquid assets from liquid assets (side pocketing), or for purposes of using other facilities, including gating and redemption suspensions.

69.2 The manager must inform investors, prior to them investing, of the possibility that the manager may utilise the facilities contemplated in clause 69.1.

69.3 The manager shall ensure that the utilisation of the facilities contemplated in clause 69.1 do not prejudice the investors.

69.4 The manager shall, when utilising the facilities contemplated in clause 69.1, ensure adherence to the following conditions:

(a) the manager must confirm to the custodian the purpose for which the new portfolio is established;

(b) the manager must clearly describe the assets that are to be placed in the portfolio;

(c) the manager must confirm that the new portfolio will be closed ended, restricted to the investors who are in the corresponding portfolio at the time of establishment of the portfolio;

(d) the manager must ensure the fair valuation of the assets in the new portfolio;

(e) the manager must ensure that the assets are realized as soon as they become liquid;

(f) the manager must indicate what will happen to the assets in the portfolio in the event that the assets are not able to be realized or tradeable;

(g) the manager must provide a description of the fees and any charges to be payable in respect of the new portfolio;

(h)      the side pocket performance must be included in all performance reporting on the portfolio to which the side pocket is created as a composite performance;

1. a side pocket portfolio may only be established as a side pocket to a specific portfolio and must include in the name of the side pocket portfolio the name of the portfolio to which the side pocket is created;
2. the manager must ensure that investors are properly informed as soon as practicably possible on all the relevant information pertaining to the side pocketing, gating and redemption suspensions.

69.5 The manager shall disclose the existence of side letters, their nature and the special benefits awarded under them to the investors prior to any investment.

**70. Notices**

70.1 Any notice required to be served on an investor is deemed to have been duly given if sent by post to or delivered at his or her registered address and be deemed to have been served four days after the same was posted or delivered. In proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was posted.

70.2 Any notice sent to an investor by means of a facsimile is deemed to have been served on the date of transmission. If so requested by an investor any notice may be sent electronically and is deemed to have been served on the same day it was sent.

70.3 Any notice or document sent by post to or delivered at the registered address of an investor is, notwithstanding that such investor is deceased, insolvent, or under any other legal disability, and whether or not the custodian or the manager has notice of his or her death, insolvency or other disability, deemed to have been duly served, and such service is deemed a sufficient service on all persons interested in the participatory interests concerned, whether jointly with or as claiming through or under him or her.

70.4 The accidental omission to give notice to an investor, or the non-receipt of any notice by any investor, does not give rise to any claims by such investor against the scheme, the custodian or the manager, and does not invalidate any matter or thing done pursuant to or in terms of such notice.

70.5 Any notice between a manager and custodian shall be in writing.

**71. Custody and disposal of documents**

71.1 The manager shall keep in its custody investors’ information for a period of not less than 10 years after the closure of the investor’s account, for whatever reason.

71.2 The manager may destroy or otherwise dispose of all instruments of transfer in its custody after the expiration of six years in the case of documents in hard copies and ten years in the case information stored electronically, from the date of registration thereof and all certificates in its custody which have been cancelled at any time after the expiration of six years from the date of cancellation thereof and all registers, statements and other records and documents, other than this deed, relating to the scheme at any time after the expiration of six years from the termination of the scheme. The manager incurs no liability as a result of such destruction.

71.3 Unless the contrary is proved, every document that proves a transfer which has been destroyed as contemplated in clause 71.2 is deemed to have been a valid and effective instrument, duly and properly registered, and every certificate so destroyed is deemed to have been a valid certificate, duly and properly cancelled.

71.4 This clause applies only to the destruction of a document in good faith and without notice of any claim or dispute, regardless of the parties thereto, to which the document might be relevant.

71.5 This clause does not apply to any document expressly excluded by the custodian by notice in writing to the manager.

# **72.** **Electronic and telephonic transacting**

72.1 The manager and the custodian agree to allow for
transacting via electronic and telephonic means and also for balloting via electronic means, subject to clauses
72.2 and 72.3 and the consent of the investor.

72.2 If the investor consents to electronic or telephonic transacting and also for balloting via electronic means, the
investor must be fully apprised in the initial application form used for
electronic and telephonic transacting and in all application forms
posted on the manager’s website, of the conditions of electronic and
telephonic transacting as well as electronic balloting.

72.3 The application forms contemplated in clause 74.2 must at least provide for–

72.3.1 the procedure to effect electronic or telephonic transacting and the costs involved;

72.3.2 the procedure for registration of an electronic or telephonic transaction;

72.3.3 the legal implications of such a transaction for the investor;

72.3.4 all disclaimers by the manager;

72.3.5 any limitation of liability afforded to the manager;

72.3.6 the security risks and risk of interception inherent to electronic and telephonic transacting;

72.3.7 related precautionary or security measures;

72.3.8 confirmation to investors that telephone calls are recorded and that such records shall be retained for a period of five years;

72.3.9 confirmation by the manager that its website complies with relevant legislative requirements applicable in the Republic;

72.3.10 a warning that taxation of other jurisdictions is not taken into account;

72.3.11 a warning that information contained on the website does not constitute advice.

72.4 The terms and conditions under which electronic or telephonic transacting will be done must be displayed on screen or verbally communicated, as the case may be.

SIGNED AT ………………………………………… THIS ……………. DAY OF ………………………………………….. 20…

AS WITNESSES:

1. …………………………
2. …………………………

For **[Full name of the Manager]**

(the Manager)

 …………………………………………

 AUTHORISED SIGNATORY/IES

 Who is/are duly authorised to do so

SIGNED AT ………………………………………… THIS ……………. DAY OF ………………………………………….. 20…

AS WITNESSES:

1. …………………………
2. …………………………

For **[Full name of the Custodian/independent fund administrator]**

(the Custodian)

 …………………………………………

 AUTHORISED SIGNATORY/IES

 Who is/are duly authorised to do so

1. Custodian includes a trustee as per the definition in the Notice determining the Hedge Funds requirements published in *Government Gazette* number 38540 of 6 March 2015 (“the Notice”) [↑](#footnote-ref-1)
2. **Note:** This is applicable where a manager of a Qualified Investor Hedge Funds appoints an independent fund administrator as per paragraph 3(d) of the Notice. Depending on the scheme arrangement, this could be the custodian [↑](#footnote-ref-2)
3. To align with the terminology in the Act and the Notice, the term custodian should be used throughout the Deed even in cases where an independent fund administrator has been appointed to perform the duties of a custodian or trustee, except in the cover page where it is necessary to stipulate the appointment of an independent fund administrator [↑](#footnote-ref-3)
4. Note: In the case of a RIHF the repurchase period cannot be more than 30 days and in the case of a QIF the repurchase period cannot be more than three calendar months [↑](#footnote-ref-4)
5. In the case of RIHF the term may not exceed 61 days and in the case of a QIF the term may not exceed 92 days [↑](#footnote-ref-5)
6. Where a manager’s elected legal structure necessitates the appointment of a depository in terms of the Notice [↑](#footnote-ref-6)
7. Note: In the case of a RIHF the repurchase period cannot be more than 30 days and in the case of a QIF the repurchase period cannot be more than three calendar months [↑](#footnote-ref-7)
8. **NOTE:** The service charge that may be levied in respect of a scheme and the method of calculation of this charge must be prescribed in this clause 48.1.1 or, if portfolio specific, in the supplemental deed of such portfolio [↑](#footnote-ref-8)
9. The following guideline can be used:“a performance fee based on a portion of the percentage by which a pre-defined performance level for a portfolio exceeds a specific benchmark (performance target) set for that portfolio over a specified period.” The formula for the calculation of such fee must also be described in each portfolio’s supplemental deed. The detail (quantum) for the pre-defined performance, fee, relevant benchmark (performance target) and the time period over which such performance will be measured, shall be disclosed in the relevant marketing material and application form. [↑](#footnote-ref-9)