

**Dated [to be dated same date as the conversion to a certified fund] 2017**

**ASHBURTON EMERGING MARKETS FUNDS LIMITED**

**and**

**ASHBURTON FUND MANAGERS LIMITED**

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**MANAGEMENT AGREEMENT**

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## MANAGEMENT AGREEMENT

**THIS AGREEMENT** is made on 2017.

### **BETWEEN:**

- (1) **ASHBURTON EMERGING MARKETS FUNDS LIMITED**, a company incorporated under the laws of Jersey whose registered office is at 17 Hilary Street, St Helier, Jersey JE4 8SJ, (the “**Company**”); and
- (2) **ASHBURTON FUND MANAGERS LIMITED**, a company incorporated under the laws of Jersey whose registered office is at 17 Hilary Street, St Helier, Jersey, Channel Islands, (the “**Manager**”).

### **WHEREAS:**

- (A) The Company is a Collective Investment Fund with an umbrella structure.
- (B) Pursuant to the Articles, the Directors are to appoint a manager to act as manager of the Company and may entrust to and confer upon the manager so appointed any of the powers, duties, discretions and/or functions exercisable by them as Directors, other than the power to make calls or forfeit shares, upon such terms and conditions including the right to remuneration payable by the Company and with such powers of delegation and such restrictions as the Directors think fit and either collaterally with or to exclusion of their powers, and the Manager is willing to accept such appointment on the terms and subject to the conditions herein contained.

### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

#### **1. Interpretation and Construction**

- (a) In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

“**Articles**” means the memorandum and articles of association of the Company;

“**Associate**” means in relation to a company, any company

which is a subsidiary or a holding body of that company or a subsidiary of any such holding body and any individual, partnership or other unincorporated association or firm which has direct or indirect control of that company and any company which is directly or indirectly controlled by any such individual, partnership or other unincorporated association or firm, and in relation to an individual, partnership or other unincorporated association, means any company directly or indirectly controlled by that individual, partnership or other unincorporated association;

**“Collective Investment Fund”** means a collective investment fund within the meaning of Article 3 of the Funds Law;

**“Custodian”** means any Custodian of the Company appointed in accordance with the Articles;

**“Directors”** means any directors of the Company appointed in accordance with the Articles;

**FSJ** means the Financial Services (Jersey) Law 1998

**“Funds Law”** means the Collective Investment Funds (Jersey) Law 1988;

**“Fund Rules”** means any and all Fund Rules adopted by the Directors in accordance with the Articles;

**“Proceeds of Crime Laws”** means the Proceeds of Crime (Jersey) Laws 1999 and any and all other relevant and applicable laws, orders and regulations in force from time to time;

**“Proper Instructions”** means written or facsimiled instructions or

instructions given by any other means of electronic transmission in a readable form in respect of any of the matters referred to in this Agreement signed or purported to be signed by such one or more person(s) (whose name, signature and office address shall have been delivered to the Manager) as the Directors shall from time to time have authorised to give the particular class of instruction in question. In instances indicated in advance by the Directors, and agreed with the Manager, the Manager may also act pursuant to instructions by telephone given or purported to be given by designated persons and such telephonic instructions shall be deemed to be Proper Instructions. Where Proper Instructions are given by telephone, written confirmation thereof shall be sent to the Manager as soon as practicable thereafter. Different persons may be authorised to give instructions for different purposes and such persons may also include officers of corporations other than the Company so authorised by the Directors. A certified copy of a resolution of the Directors may be received and accepted by the Manager as conclusive evidence of the authority of any such person to act and may be considered as in full force and effect until receipt of written notice to the contrary;

**“Prospectus”**

means the most recently published prospectus issued by the Company offering for subscription or sale Participating Shares of any class in the

Company; and

**“Records”**

means all corporate records, registers, books of account, correspondence, files, tables, documents, discs, print outs, data and information systems.

- (b) In this Agreement, any reference to:-
- (i) a Recital, Clause or a Schedule is, unless the context otherwise requires, a reference to a recital or clause of, or a schedule to, this Agreement and any reference to a sub-clause is, unless otherwise stated, a reference to the sub-clause of the Clause in which the reference appears;
  - (ii) this Agreement or to any agreement or document referred to in this Agreement shall be construed as a reference to such agreement or document as amended, varied, modified, supplemented, restated, novated or replaced from time to time;
  - (iii) any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision as the same may have been or may from time to time be amended, modified, extended, consolidated, re-enacted or replaced and shall include any subordinate legislation made thereunder;
  - (iv) a “subsidiary” or “holding body” shall be construed in accordance with Articles 2 and 2A of the Companies (Jersey) Law, 1991, as amended (the “**Law**”).
- (c) Unless otherwise defined herein, terms and expressions defined in the Articles shall, where the context permits, bear the same meaning in this Agreement provided that no amendment to the Articles shall affect the rights, duties or obligations of the Manager hereunder without its written consent.
- (d) In this Agreement, except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting a gender include

every gender and references to persons include bodies corporate and unincorporate.

- (e) The Recitals and Schedule form part of this Agreement and shall have the same force and effect as if they were expressly set out in the body of this Agreement and any reference to this Agreement shall include the Recitals and Schedule.
- (f) Clause headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.

## **2. Appointment of Manager**

- (a) Subject to sub-clause 2(b) below, the Company hereby appoints the Manager to be the manager of the Company and to provide management, secretarial and registrar services to the Company subject to and in accordance with the terms and conditions hereinafter contained and the Manager hereby accepts such appointment.
- (b) Until the Manager has been granted a registration certificate as a functionary in accordance with the provisions of FSJ the only obligations of the parties hereunder shall be to use their respective best endeavours to obtain the grant of such a functionary certificate to the Manager as soon as practicable.
- (c) Prior to the date of issue to the Company of a certificate under the Funds Law no activity shall be undertaken which would result in any party being in breach of the Funds Law or FSJ, as applicable, as a functionary to a Collective Investment Fund.

## **3. Manager's Obligations**

The Manager hereby agrees and undertakes as follows:

- (a) that at all times when so required by FSJ, it will hold the relevant registration certificate to be a fund services business of the Company as a Collective Investment Fund;

- (b) that it will take all steps necessary or desirable at such time or times as the Company may request to enable the Company to obtain and continue to hold a certificate as a Collective Investment Fund under the Funds Law.

#### **4. Manager's Duties**

During the continuance of this Agreement the Manager shall:

- (a) carry out and follow all reasonable Proper Instructions which may from time to time be given to it with regard to the Manager's duties hereunder;
- (b) devote such time and attention to its duties hereunder as shall be necessary for the efficient conduct thereof;
- (c) in carrying out its duties hereunder, be subject to the overall policies, directions, supervision and control of the Directors;
- (d) observe and comply with all the provisions of the Articles and the Prospectus and Fund Rules (if any) for each class of Participating Shares;
- (e) observe, comply with and carry out its services in such a manner as to ensure that the Proceeds of Crime Laws are complied with and to carry out all checks required by the Proceeds of Crime Laws in relation to the Fund; and
- (f) in carrying out its duties hereunder, comply with all applicable laws and regulations in any applicable jurisdiction.

#### **5. Management and Secretarial Responsibilities**

5.1 During the continuance of this Agreement the Manager shall:

- (a) carry out and perform such duties in relation to the Company as are normally to be performed by the secretary of a company pursuant to the Law and the Articles and other duties of an administrative nature in connection with the affairs of the Company as shall be necessary for the efficient conduct of the business and affairs of the Company;
- (b) negotiate and supervise all borrowings of the Company;

- (c) prepare and forward to Members (and, where applicable, the Custodian and the Auditors) all certificates, warrants, cheques, statements, notices and other documents which the Company is required to issue, send or serve in accordance with the Articles and the Law;
- (d) prepare and keep or cause to be kept on behalf of the Company in accordance with the Articles and the Law the accounts of the Company and each Sub Fund and such books, records and statements as may be necessary to give a complete record of all transactions carried out by the Manager on behalf of the Company and each Sub Fund and at any time during business hours permit the Directors, the Auditors, the Custodian and the employees and agents for the time being of the Company to inspect such accounts, books, records, statements and the Register and provide such persons with such information, explanations and assistance as they may reasonably require in connection therewith;
- (e) provide the Auditors with any or all information, explanations and assistance as they may require in connection with auditing the accounts of the Company;
- (f) pay to or deposit with the Custodian or pay to the account of the Custodian all monies, bills and notes received either by it on behalf of the Company or by the Company, after deducting therefrom any charges payable to the Manager in connection with the issue of shares;
- (g) notify the Custodian of the amount and payees of all cheques and warrants for payments to be made by the Company;
- (h) upon receipt of the proceeds of redemption of shares from the Custodian and of a duly endorsed certificate as required by the Articles (if shares are certificated) from a shareholder wishing to redeem such shares, pay the proceeds to such shareholder;
- (i) supply the Custodian on its request with such information concerning the management and administration of the Company as the Custodian may reasonably require;



- (j) prepare and regularly revise a prospectus offering for subscription or sale each class of Participating Shares in compliance with the requirements of any governing law or regulation and any other applicable law of any jurisdiction;
- (k) deliver to the Custodian for approval in accordance with Clause 15 of the Custodian Agreement, prior to issue thereof, a copy of any prospectus, explanatory memorandum, application form, sales literature, advertisement, circular or other document of the nature described in the said Clause 15;
- (l) make a copy of the Articles, the Prospectus and Fund Rules (if any) for each class of Participating Shares, this Management Agreement, the Management, Investment Management, Registrar, Secretarial and Administration Delegation Agreement and the Custodian Agreement, and any supplemental agreements or amendments thereto, available for inspection as required by any applicable law or regulation during ordinary office hours at its principal place of business in Jersey as well as in such other territories as the Directors may determine;
- (m) calculate the Net Asset Value and the Offer Price and Redemption Price of each class of Participating Shares upon the occasions, in the manner, and for the purposes for which the same are from time to time required to be determined under the Articles and the Prospectus and Fund Rules (if any) for each class of Participating Shares;
- (n) on receipt of applications or requests for the issue, purchase conversion or redemption of Participating Shares, deal therewith in accordance with the provisions of this Agreement and the Articles;
- (o) in the case of requests for the issue or purchase of Participating Shares, determine whether the same shall be satisfied by the creation of new Participating Shares by the Company or by transfer by the Manager or some other Member pursuant to arrangements made by it or partly by such issue and partly by such transfer;
- (p) in the case of requests for the redemption or re-purchase of Participating Shares, determine whether the same shall be satisfied by redemption out of the monies of the Company or by purchase by the Manager, or by some other purchaser

pursuant to arrangements made by it, or partly by redemption and partly by purchase;

- (q) determine and notify the Custodian of the number of Participating Shares of each class to be issued, transferred, allotted, converted, purchased or redeemed on each Subscription Day and the amounts receivable and payable by the Company in respect thereof and the initial charges payable to the Manager in relation thereto and arrange for the issue, allotment, conversion, purchase and redemption of such shares and/or the transfer of shares to satisfy subscriptions, conversions and redemptions, in accordance with the Articles provided that Participating Shares shall not be issued or transferred to an applicant for Participating Shares until the Custodian shall have confirmed to the Manager that the Offer Price in respect of such Participating Shares has been received by the Custodian in cleared funds or Investments (as the case may be);
- (r) calculate the premium payable on the conversion of Nominal Shares into Participating Shares;
- (s) determine the number of Nominal Shares (if any) required to be issued on each Subscription Day for the purposes of the redemption of Participating Shares and subscribe for such Nominal Shares;
- (t) carry out such other duties in connection with the operation of the Company as are stated to be performed by the Manager in the Prospectus or the Custodian Agreement or as may be incidental to any of the above duties; and
- (u) provide and maintain all administrative services, office staff and accommodation reasonably required for the due performance of its duties under this Agreement.

## **6. Investment Management Responsibilities**

During the continuance of this Agreement the Manager shall:-

- (a) act as investment manager to the Company in relation to each Sub Fund and manage the investment and re-investment of the cash, securities and other property comprising the assets of each Sub Fund with power to:-

- (i) apply the monies of each Sub Fund at its discretion in the acquisition by purchase, or otherwise, of Investments and to retain, sell, exchange, vary or transpose the same;
  - (ii) cause such sums as it may think fit to be retained in cash by the Custodian on behalf of the Company or placed on deposit in the name of the Custodian or otherwise segregated into accounts designated for each Sub Fund in accordance with the Articles and the Custodian Agreement;
  - (iii) negotiate, enter into and perform all contracts, agreements and other undertakings as may, in the opinion of the Manager, be necessary, advisable or incidental to the performance of its duties under this Clause 6;
  - (iv) appoint (at the Manager's expense) one or more investment advisers to advise the Manager as to the investment and re-investment of the cash, securities and other property comprising the assets of any Sub Fund; and
  - (v) give the Custodian directions in relation to the exercise by the Custodian of any rights attaching to or relating to Investments of the Company.
- (b) keep constantly under surveillance and review, and analyse the performance of, Investments of each Sub Fund;
  - (c) advise and make recommendations to the Directors as to the overall investment policy and objectives of each Sub Fund;
  - (d) at all times promptly provide the Directors and/or the Custodian with all such information and explanations as the Directors and/or the Custodian may require with respect to the Investments of each Sub Fund and render written reports of the composition of the portfolio of each Sub Fund in such form and at such intervals as the Directors and/or Custodian shall reasonably require; and
  - (e) in carrying out its duties as investment manager hereunder, observe and have regard to:-

- (i) the Company's investment policy and objectives as described in the Prospectus and Fund Rules (if any) for each class of Participating Shares;
- (ii) any restrictions for the time being contained in the Articles and the Prospectus and the Fund Rules (if any) for each class of Participating Shares with regard to borrowings and investment;
- (iii) the entitlement of the holders of shares to require redemption of their shares in accordance with the Articles; and
- (iv) any other matter to which a prudent investment manager to an investment portfolio should reasonably pay regard in the proper discharge of his duties.

## **7. Registrar Responsibilities**

During the continuance of this Agreement the Manager shall carry out and perform such duties as are normally to be performed by the registrar of a company pursuant to the Law including without prejudice to the generality of the foregoing:-

- (a) the maintenance of the Register;
- (b) the maintenance of dividend instruction records and processing of any distributions to holders of shares;
- (c) on the occasion of each issue of shares, the registration of the holders thereof;
- (d) the certification and registration of transfers, redemptions, exchanges, conversions and cancellations of shares;
- (e) the registration of probate, letters of administration, powers of attorney, certificates of death or marriage, stop notices and other instruments affecting the legal ownership of shares;
- (f) the preparation and authentication of share certificates (if shares are certificated) and their despatch to the persons entitled thereto or to their agent;

- (g) the preparation of a list of Members for inclusion in any annual return required to be made by the Company in accordance with the Law;
- (h) the holding open of the Register for inspection and the provision of copies thereof and of parts thereof in accordance with the Law and the Articles;
- (i) the preparation and despatch of dividend warrants to the Members; and
- (j) the preparation of addressed envelopes for the despatch by or on behalf of the Company to the Members of its annual report and accounts, notice of annual general meetings and such other reports, notices, statements and documents as the Directors may from time to time require.

## **8. Agents and Delegation**

- (a) Subject to sub-clauses (b) and (c) below, the Manager may, in the performance of its duties and in the exercise of any of the powers vested in it hereunder, act by an authorised officer or officers for the time being and employ and pay an agent or agents (including any Associate of the Manager) at the expense of the Manager to perform or concur in performing any of the duties required to be performed hereunder and may act or rely upon the opinion or advice or any information obtained from any broker, lawyer, valuer, surveyor, auctioneer or other expert (whether reporting to the Company, the Manager or the Custodian) appointed in good faith and without negligence and the Manager shall not be responsible for any loss occasioned by its acting upon such opinion, advice or information.
- (b) Subject to sub-clause (c) below, the Manager may, with the prior written approval of the Company, delegate in whole or in part any of its duties, functions, powers and discretions under this Agreement to a delegate or other agent and may disclose to such a delegate or agent such information about the Company as the Manager considers necessary or desirable for the delegate or agent to carry out its duties. For the avoidance of doubt, the Manager may delegate hereunder to separate delegates or other agents in respect of the same or separate Sub Funds.

- (c) The Manager shall have regard to the outsourcing policies from time to time of the Jersey Financial Services Commission in relation to any delegation under sub-clauses (a) and (b) above.

## 9. Rights of Voting

- (a) Except as otherwise expressly directed by the Company, the Company shall procure that all rights of voting (if any) conferred by any Investments held by or on behalf of the Company shall be exercised in accordance with the written directions of the Manager. Except as aforesaid the Company shall at the request of the Manager from time to time cause to be executed and delivered to the Manager or its nominee sufficient powers of attorney or proxies in such name or names as the Manager may request authorising such attorney(s) or proxies to vote, consent or otherwise act in respect of all or any Investments comprising all or any part of the property of the Company. The Manager shall be entitled to procure the exercise of the said rights in such manner as it considers to be in the best interests of the Company but neither the Manager nor its agent shall be under any liability or responsibility in respect of the management of any corporation or body in which an Investment is held nor in respect of any vote, action or consent given or taken by the Manager whether in person or by proxy and neither the Manager nor its agent nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by any one or more of them.
- (b) The phrase “**rights of voting**” or the word “**vote**” used in this Clause shall be deemed to include not only a vote at a meeting but any consent to or approval of any arrangement, scheme or resolution or any alteration 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 or to consent to any short notice of any meeting and any other right conferred by any Investment.

## 10. Dealings

- (a) Subject to the provisions of the Articles and the Fund Rules (if any) for each class of Participating Shares, the Company hereby grants to the Manager a right to make a market in Participating Shares in accordance with the Articles by:-
- (i) transferring or procuring the transfer of Participating Shares in satisfaction of applications for Participating Shares;
  - (ii) purchasing Participating Shares in respect of which the Company or the Manager receives a request for redemption or purchase;
  - (iii) converting Nominal Shares into Participating Shares and transferring the same to an applicant for Participating Shares.
- (b) All transactions in Participating Shares effected by the Manager in exercise of the rights granted pursuant to Clause 10(a) shall be for the account and benefit of the Manager.
- (c) The Manager shall not at any time quote, buy or sell Participating Shares (whether for its own account or otherwise) at lower or higher prices respectively, than the Redemption and Offer Prices (calculated, in accordance with the Articles, on a mid market basis) for the time being in force in accordance with the Articles and the Fund Rules (if any).
- (d) Save as herein mentioned, the Manager shall not sell Participating Shares from time to time acquired by it except to the Company or to persons who have made a request to the Company or the Manager for the issue or purchase thereof.
- (e) Where subscription monies for Participating Shares are received by the Manager, the Manager shall be entitled to deduct therefrom an amount equal to any preliminary charge included in the subscription moneys and shall pay the balance to or to the order of the Custodian on behalf of the Company. The Manager shall in addition, to the extent permitted by the Articles, be permitted to retain any preliminary charge arising on a conversion or exchange of Participating Shares of one class for another.

- (f) If the Manager makes a market in Participating Shares in accordance with this Agreement, the Manager shall:-
  - (i) keep a daily record of Participating Shares held by it, including the class of such Shares, which have been acquired or disposed of, and of the balance of any acquisitions or disposals; and
  - (ii) make such daily record of Participating Shares available for inspection by the Custodian free of charge at all times during ordinary office hours and shall supply the Custodian with a copy of such record or any part of it on request free of charge.
- (g) Where subscription monies for Participating Shares are received directly by the Company, forthwith after the relevant allotment date, the Company shall pay to the Manager an amount equal to any preliminary charge included therein.
- (h) For the purposes of this Clause, any preliminary charge so deducted or paid shall be at a maximum rate of five per cent of the Subscription Price or such lesser rate, if any, as may from time to time either generally or otherwise be agreed between the parties hereto.
- (i) The Manager may rebate all or any part of any preliminary charge to financial intermediaries or other third parties at its discretion.

## **11. Further Assurance**

The Company will provide all such information and take all such steps and execute all such documents as may be required by the Manager to enable the Manager properly to carry out and perform its duties hereunder and, in particular (but without prejudice to the generality of the foregoing) will take all such steps as may be requisite to vest in the Manager due power and authority to buy and sell Investments on behalf of the Company as aforesaid.

## **12. Remuneration**

- (a) As remuneration for its services hereunder there shall be payable to the Manager a fee in such manner and at such rate or rates as are set out in the Schedule.



- (b) The Company shall reimburse to the Manager all disbursements properly incurred in connection with the discharge of its duties hereunder (which for the avoidance of doubt shall exclude any fees or expenses paid to any delegate or agent appointed by the Manager) provided that the Manager shall on request by the Company provide reasonable documentary evidence of such disbursements.

### **13. Non-Exclusivity**

- (a) The Manager and any Associate of the Manager may:
  - (i) act as manager, administrator or in any other role for any other company, corporation or body of persons on such terms as may be arranged with such company, corporation or body of persons and shall be deemed not to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which may come to the knowledge of the Manager or any servant or agent of the Manager in the course of so doing or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder;
  - (ii) acquire, hold or deal with for its own account or for the account of any customer or other person and in its own name or in the name of such customer or person or of a nominee any shares or securities for the time being issued by the Company and any securities or other investments, notwithstanding that securities or investments of the same type may be held by the Custodian for the account of the Company.
- (b) Neither the Manager nor any Associate of the Manager shall be liable to account to the Company, the Members or any of them for any profits or benefits made by or derived from or in connection with any transaction permitted by paragraph (a)(ii) above.
- (c) Nothing herein contained shall prevent the Manager or any Associate of the Manager from contracting or entering into any financial, banking or other transaction with the Company or any Member or any company or body shares or

interests in which are comprised in any of the Investments or which are held by or for the account of the Company or from being interested in any such contract or transaction and neither the Manager nor any Associate of the Manager shall be liable to account to any person for any profits or benefits made or derived by them in connection with any such transaction.

#### **14. Liability and Indemnity**

- (a) The Manager shall not be liable to the Company for any liabilities, obligations, losses (including without limitation losses arising out of delay, mis-delivery or error in the transmission of any letter, cable, telex, telephonic communication, telephone, facsimile transmission or other electronic transmission in a readable form) damages, actions, proceedings, suits, costs, expenses (including without limitation legal expenses) claims and demands (“**Liabilities**”) suffered by the Company in connection with the subject matter of this Agreement unless such Liabilities arise from the fraud, wilful default or gross negligence of the Manager or its agents, officers or employees (except so far as the Company may from time to time be an agent of the Manager) in the discharge of its functions under this Agreement, and subject to and without prejudice to the foregoing the Company shall indemnify and keep indemnified the Manager and its agents, officers and employees from and against any and all Liabilities which may be suffered or incurred by or asserted against the Manager and its agents, officers and employees arising out of or in connection with the performance of its or their duties hereunder except such as may be due to the fraud, wilful default or gross negligence of the Manager or its agents, officers or employees provided always that (subject as hereinafter provided) the Manager shall send to the Company as soon as reasonably practicable copies of all claims, letters, summonses, writs or documents which it receives from third parties in connection with the performance of its duties hereunder and give whatever information and assistance the Company may reasonably require.
- (b) If any action or claim shall be brought against the Manager, its agents, officers or employees in respect of which it appears that an indemnity may be sought from the Company pursuant to this Clause, the Manager, its agents, officers or

employees, as the case may be, shall as soon as reasonably practicable notify the Company in writing of such action or claim and the Company may give notice to the Manager, its agents, officers or employees, as the case may be, that the Company wishes to assume the defence thereof whereupon the Manager, its agents, officers or employees, as the case may be, shall, within five business days after receipt of such notice (or such longer period as the Company may allow) elect by notice to the Company either:

- (i) to retain the conduct of the action or claim in which event such notice shall acknowledge and confirm that no indemnity will be sought from the Company pursuant to this Clause in respect of any Liabilities which may result from such action or claim and the Company shall provide the Manager or the agents, officers or employees concerned, as the case may be, with such information and assistance as it or he shall reasonably request at its or his expense (to the extent of out-of-pocket expenses reasonably incurred); or
  - (ii) that the Company shall be entitled to assume the defence thereof, in which case the Company shall keep the Manager, its agents, officers or employees, as the case may be, fully informed about the progress thereof and shall consult in good faith with it as to the conduct thereof and the Manager, its agents, officers or employees, as the case may be, shall provide to the Company, subject to the indemnity contained in sub-clause (a) of this Clause, such information and assistance as it shall reasonably request.
- (c) The indemnity contained in sub-clause (a) of this Clause shall not extend to any Liabilities which may result from the settlement or compromise of any action or claim brought against the Manager, its agents, officers or employees, made or effected without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed in a case where the Company has not at the time such consent is sought assumed the defence of the action or claim) or any legal expenses being costs, charges and expenses which may result from employment by the Manager, its agents, officers or employees, of their own legal

adviser in connection with any action or claim against them after the defence of such action or claim has been assumed by the Company.

## **15. Proper Instructions**

When acting pursuant to Proper Instructions the Manager shall not be under any duty to make any enquiry as to the genuineness or authenticity of any such instructions so long as such instructions reasonably appear to be genuine and authentic.

## **16. Proceedings**

- (a) The Manager shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Manager and if the Company requires the Manager to take any action of whatsoever nature which in the reasonable opinion of the Manager might make the Manager liable for the payment of money or liable in any other way the Manager shall be and be kept indemnified in any reasonable amount and form satisfactory to the Manager as a pre-requisite to taking action.
- (b) The Manager shall be entitled at the expense of the Company (subject to obtaining the prior approval of the Company in each and every case) to obtain legal advice from its lawyers for the time being and/or the opinion of counsel on any matter relating to the Company or this Agreement.

## **17. Prospectuses and Advertisements**

No prospectus, explanatory memorandum, application form, sales literature, advertisement, circular or other document of that nature containing any statement with reference to the issue price of shares or the yield therefrom or containing any invitation to subscribe for or purchase shares shall be issued by or on behalf of the Company to prospective shareholders without in any case the prior approval of the Manager in respect of any references to the Manager made therein.

## **18. Disclosure**

- (a) Except in so far as required by any governmental or regulatory organisation or any applicable law or rule in any jurisdiction, the Manager shall not (except in

exercise of its duties hereunder or as required by any governing law or regulation) disclose any information relating to or to the affairs of the Company or any of its subsidiaries which is not in the public domain to any person (other than to the Directors, officers, auditors and accountants of the Company or the Custodian and any agent or delegate appointed pursuant to Clause 8) not authorised by the Company or the Custodian, as the case may be, to receive such information and the Manager shall use its best endeavours to prevent any such disclosure as aforesaid whether by any officer, employee or agent of itself or by anyone else.

- (b) The Manager shall not without the written consent of the Company at any time after the termination of this Agreement represent itself as being in any way connected with or interested (except in a capacity other than Manager) in the business of the Company or any subsidiary thereof, other than in the usual course of legal proceedings.
- (c) Neither of the parties hereto shall do or commit any act, matter or thing which would or might prejudice or bring into disrepute in any manner the business or reputation of the other party hereto or any director thereof.
- (d) In the event of this Agreement being terminated the provisions of this Clause shall remain in full force and effect.

## **19. Notices**

Any notice served hereunder shall be sufficiently served if:-

- (a) delivered by hand or sent by registered mail addressed to the other party concerned at its registered or principal office (as the case may be) for the time being and a notice so sent by registered mail shall be deemed to be received at the expiry of two clear days after the day of posting; or
- (b) sent by telefax to the other party concerned at its registered or principal office (as the case may be) for the time being and a notice so sent by telefax shall be deemed to be received on completion of its transmission.

## 20. Termination

- (a) Subject to the Articles this Agreement shall be terminated:
- (i) upon the expiration of not less than six months' notice of termination given by the Company to the Manager; or
  - (ii) upon the expiration of not less than six months' notice of termination given by the Manager to the Company or such term as the parties shall agree in writing; or
  - (iii) immediately, upon one party giving to the other notice of immediate termination in the event of:
    - (aa) the property of the other party being declared *en désastre* or that other party becoming insolvent or going into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the other party) or a receiver being appointed of any of its assets or if some event having equivalent effect occurs; or
    - (bb) the other party committing a material breach of this Agreement and (if such breach shall be capable of remedy) the other party not making good such breach.
  - (iv) immediately, upon the Company giving to the Manager notice of immediate termination in the event of the Manager ceasing to be the holder of a registration certificate as a manager of the Company under the FSJ.
- (b) The termination of this Agreement shall be without prejudice to any antecedent liability of either of the parties hereto. The Manager shall be entitled to receive all fees and other monies accrued due up to the date of such termination provided that the Manager shall not be entitled to compensation in respect of such termination.

- (c) In the event of termination of the Manager's appointment under this Agreement the Manager shall have the right by written request to require the Company for a period of 12 months from the date of such termination in all prospectuses, explanatory memoranda, advertising material, letterheads and other material designed to be read by investors and prospective investors to state in a prominent position and in prominent type (as may reasonably be approved by the Manager) that the Manager has ceased to be its manager.

**21. Delivery of Records on Termination**

Immediately upon the termination of this Agreement the Manager shall deliver to the Company (or as it shall direct) and shall use all reasonable endeavours to procure that its officers, servants, agents, advisers or any person appointed by it under Clause 8 shall deliver to the Company (or as it shall direct) all Records appertaining to the Company's business as are in the possession or under the control of the Manager or any such persons and shall do all such further acts and things as the Company may reasonably require in consequence of such termination.

**22. Assignment**

The benefit of this Agreement may not be assigned by the parties hereto without the consent of the other parties except that the Manager may assign the benefit of this Agreement to an Associate of the Manager.

**23. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Jersey and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the Courts of Jersey as regards any matter or claim relating to this Agreement.

**IN WITNESS** whereof this Agreement has been entered into the day and year first before written.

## **Schedule**

### **Remuneration**

- (a) The Manager shall be paid a management fee by the Fund as a percentage per annum of the Offer Price of the property of the Company to a maximum of 2% per annum at such a rate as shall be agreed by the Company and the Manager in writing and disclosed in the Prospectus. The management fee (if any) shall accrue daily and shall be payable to the Manager by monthly payments in arrears becoming due on the first business day of each month in respect of the preceding month provided that in the event of termination of this Agreement other than on the first day of a month the last payment in respect of the fee shall become due to the Manager on the date of such termination and shall be in respect of the remuneration due to the Manager for the period from the end of the preceding month to the date of the said termination and provided further that the first payment in respect of the fee shall become payable at the end of the current month and shall be for the period from the date of this Agreement to the end of such month.
- (b) Subject to paragraph (c) of this Schedule, the management fee may be increased at any time without the consent of the Members by written notice given by the Manager to the Company and agreed in writing by the Directors provided that the amount of the fee shall at no time exceed a fee calculated at the rate of two per cent of the Net Asset Value of each Sub Fund as ascertained at each Subscription Day during the relevant month and further provided that ninety days' prior written notice of any such increase shall be given to the Members. Any such increase in the fee shall not constitute a variation of the terms of this Agreement.
- (c) In addition to the management fee, the Manager shall be entitled to receive a preliminary charge in accordance with the Articles and Clause 10 of this Agreement.
- (d) Where the Investments of any Sub-Fund comprise Collective Investment Funds (including unit trusts) managed by the Manager or any Associate of the Manager



no management fee shall be payable on that portion of the Net Asset Value represented by Collective Investment Funds.

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**SIGNED** )  
for and on behalf of )  
**ASHBURTON EMERGING** )  
**MARKETS FUNDS LIMITED** )

**SIGNED** )  
for and on behalf of )  
**ASHBURTON FUND** )  
**MANAGERS LIMITED** )

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