

# Operating Procedures Agreement

between

**Leverage Shares Public Limited Company**

as Issuer

**Interactive Brokers (UK) Limited**

as First Portfolio Administrator

**Interactive Brokers LLC**

As Margin Loan Provider and Custodian

**BNP Paribas Arbitrage S.N.C.**

as Initial Authorised Participant

**Apex Corporate Trustees (UK) Limited**

as Trustee

**Elavon Financial Services DAC**

as Issuing and Paying Agent, Registrar and Transfer Agent

**Calculation Agent Services LLC**

as Determination Agent

**GWM Limited**

as Second Portfolio Administrator, Second Authorised Participant and Broker Dealer of Record

and

**Leverage Shares Management Company Limited**

as Arranger

relating to

**a Collateralised Exchange Traded Securities Programme**

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**THIS AGREEMENT** is dated as of the 18<sup>th</sup> day of December 2020 and made

**BETWEEN:**

- (1) **LEVERAGE SHARES PUBLIC LIMITED COMPANY**, (the “**Issuer**”), a company incorporated under the laws of Ireland under company number 345558 and having its registered office at 2<sup>nd</sup> Floor, Block 5, Irish Life Centre, Abbey Street Lower, Dublin 1, D01 P767, Ireland;
- (2) **INTERACTIVE BROKERS LLC**, (the “**Margin Loan Provider**” and the “**Custodian**”) of One Pickwick Plaza, Greenwich, CT 06830, USA;
- (3) **INTERACTIVE BROKERS (UK) LIMITED**, (the “**First Portfolio Administrator**”) of Level 20 Heron Tower, 110 Bishopsgate, London;
- (4) **BNP PARIBAS ARBITRAGE S.N.C.**, (the “**Initial Authorised Participant**”) of 160/162 Boulevard Macdonald, 75019 Paris, France;
- (5) **APEX CORPORATE TRUSTEES (UK) LIMITED**, (the “**Trustee**”), (which expression shall, where the context admits, include any successor Trustee or additional Trustee appointed by the Issuer) of 6th Floor, 125 Wood Street, London EC2V 7AN;
- (6) **ELAVON FINANCIAL SERVICES DAC**, (the “**Issuing and Paying Agent**” the “**Registrar**” and “**Transfer Agent**”) (which expression shall, where the context admits, include any successor Issuing and Paying Agent and/or Registrar appointed by the Issuer) of Building 8, Cherrywood Business Park, Loughlinstown, Dublin, 18 D18 W319, Ireland;
- (7) **CALCULATION AGENT SERVICES LLC** (the “**Determination Agent**”) (which expression shall, where the context admits, include any successor Determination Agent appointed by the Issuer) of 34 E Putnam Avenue, Suite 112, Greenwich, CT 06830;
- (8) **GWM LIMITED** (the “**Second Portfolio Administrator**”, the “**Second Authorised Participant**” and the “**Broker Dealer of Record**”) (which expressions shall, where the context admits, include any successor Second Portfolio Administrator or Second Authorised Participant or Broker Dealer of Record appointed by the Issuer) of 41 Cedar Avenue, 5<sup>th</sup> Floor, Hamilton, HM12, Bermuda; and
- (9) **LEVERAGE SHARES MANAGEMENT COMPANY LIMITED**, (the “**Arranger**”), a company incorporated under the laws of Ireland (registered number 596207) and having its registered office at 116 Mount Prospect Avenue, Clontarf, Dublin 3, Ireland.

**Background:**

- (A) The Issuer has authorised the issue of ETP Securities under its Collateralised Exchange Traded Securities Programme (the “**Programme**”) to be constituted pursuant to the Master Trust Deed.
- (B) This Operating Procedures Agreement (the “**Operating Procedures Agreement**”) sets out the operating procedures in respect of the subscription, issuance and optional redemption of ETP Securities under the Programme which are cleared through Euroclear Bank or Clearstream, Luxembourg.

## THE PARTIES AGREE THAT:

### 1. **Interpretation**

#### 1.1 **Definitions**

Capitalised terms used in this Operating Procedures Agreement but not otherwise defined shall have the meanings given to them in the Master Definitions Schedule (as amended, supplemented and/or replaced from time to time) relating to the Programme.

#### 1.2 **Construction of certain references**

References to:

- (A) an action, remedy or method of judicial proceedings for the enforcement of creditors' rights include references to the action, remedy or method of judicial proceedings in jurisdictions other than Ireland as shall most nearly approximate thereto;
- (B) any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof, or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment;
- (C) clauses and schedules shall be construed as references to, respectively, the clauses of and schedules to this Operating Procedures Agreement;
- (D) the Issuer, the Trustee, the Margin Loan Provider, the First Portfolio Administrator, the Second Portfolio Administrator, the Initial Authorised Participant, the Second Authorised Participant, the Issuing and Paying Agent, the Registrar, the Determination Agent, the Broker Dealer of Record, the Arranger and any other person include its successors in title, permitted assigns and permitted transferees;
- (E) “**include**” or “**including**” and other derivatives thereof shall be construed to be followed by “without limitation” whether or not they are followed by such phrase or words of like import; and
- (F) “**ETP Securities**” are to the ETP Securities of the relevant Series of ETP Securities for the time being outstanding and include any replacement ETP Securities issued pursuant to the Conditions only and not to all ETP Securities that may be issued under the Programme.

#### 1.3 **Application**

This Operating Procedures Agreement shall apply separately to each relevant Series of ETP Securities and the terms herein shall be construed accordingly.

#### 1.4 **Headings**

Headings shall be ignored in construing this Operating Procedures Agreement.

#### 1.5 **Contracts**

References in this Operating Procedures Agreement to this Operating Procedures Agreement or to any other document are to this Operating Procedures Agreement or such

other document as amended, supplemented or replaced from time to time and include any document that amends, supplements or replaces it.

## 1.6 **Variations**

All references in this Operating Procedures Agreement to an agreement, instrument or other document shall be construed as a reference to that agreement, instrument or document as the same may be amended, modified, varied or supplemented from time to time in accordance with its terms. Where there are conflicting terms between this Operating Procedures Agreement and the Agency Agreement the latter shall take precedence.

## 1.7 **Rights of Third Parties**

Any third parties referred to in clause 7 of this Agreement has the right to enforce such rights under this Agreement. Except as stated in this clause 1.7, the parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it.

## 1.8 **Directives**

All references in this Operating Procedures Agreement to a directive include any relevant implementing measure of each Relevant Member State.

## 1.9 **Timing**

All references in this Operating Procedures Agreement to any time shall be expressed using the 24 hour clock convention and refer to GMT.

## 1.10 **Time of the essence**

Any time, date or period mentioned in this Operating Procedures Agreement may be extended by written agreement between the parties but otherwise and except as expressly provided, as regards any time, date or period originally fixed or any time, date or period so extended as aforesaid, time shall be of the essence.

## 2. **Operating Procedures**

The operating procedures in respect of the subscription, issuance and optional redemption of ETP Securities shall be as set out in the Operating Manual, the form of which as at the date hereof is contained in the Schedule 1 hereto. The parties to this Operating Procedures Agreement agree that they will comply with the procedures set out in the Operating Manual in relation to the ETP Securities.

## 3. **Amendment of the Operating Manual**

Without prejudice to Condition 14.2, the parties to this Operating Procedures Agreement may from time to time agree, without the consent of the Trustee or any ETP Securityholders, to any modification to the Operating Manual or this Operating Procedures Agreement and/or to the waiver of any of the terms of the Operating Manual, provided that no such modification or waiver may be made without the Trustee's consent where such modification or waiver would, in the Trustee's opinion, affect its rights, protections or impose more onerous obligations on the Trustee.

If the Operating Manual is so amended, such amended Operating Manual shall be deemed to be the Operating Manual for the purposes of this agreement from the date of such amendment and a copy of the amended Operating Manual shall be posted on the Issuer's website.

#### 4. **Changes of Parties**

In relation to any Series of ETP Securities, the Issuer may from time to time appoint additional or alternative Margin Loan Providers, Portfolio Administrators, Authorised Participants, Issuing and Paying Agents, Broker Dealers of Record, Registrars, Transfer Agents or Determination Agents (each an “**Additional Party**”) and any entities duly appointed in any such capacities under the Programme shall accede (and such appointment shall be conditional on such accession) to this Operating Procedures Agreement as of the date on which it commences to act in such capacity and, as from such date, shall act in such capacity for the purposes of the Operating Manual as if originally named in it. In order for an Additional Party to accede to this Operating Procedures Agreement, such Additional Party shall have executed and delivered to the Company a deed of accession substantially in the form set out at Schedule 2 hereto.

If any Margin Loan Provider, Portfolio Administrator, Authorised Participant, Issuing and Paying Agent, Registrar, Transfer Agent, Broker Dealer of Record or Determination Agent ceases to act in such capacity under the Programme, such entity shall cease to be a party to this Operating Procedures Agreement as of the date on which it ceased to act in such capacity.

#### 5. **Communications**

##### 5.1 **Method**

Each communication under this Operating Procedures Agreement shall be made by electronic communication, or otherwise in writing. Each communication or document to be delivered to any party under this Operating Procedures Agreement shall be sent to that party at the postal address (by recorded delivery or courier) or electronic address, and marked for the attention of the person (if any) from time to time designated by that party for the purpose of this Operating Procedures Agreement. The initial postal address, electronic address and person(s) so designated by each party are as set out in the signature pages of this Operating Procedures Agreement.

##### 5.2 **Deemed receipt**

Any communication from any party to any other under this Operating Procedures Agreement and the Operating Manual shall be effective: (i) (if by recorded delivery or courier) on the day it is delivered and (ii) (if by electronic communication) when the relevant receipt of such communication being read is given or where no read receipt is required by the sender, at the time of sending, provided that no delivery failure notification is received by the sender within 24 hours of sending such communication, and further *provided that* any communication which is received (or deemed to have been received or have taken effect in accordance with the foregoing) outside business hours or on a non-business day in the place of receipt shall be deemed to take effect at the opening of business on the next following business day in such place, unless in each case some other time of receipt is specified in the Operating Manual. Any communication delivered to any party under this Operating Procedures Agreement or the Operating Manual which is to be sent by electronic communication will be written legal evidence.

#### 6. **Limited Recourse and Non-Petition**

##### 6.1 **Limited recourse**

Each party to this Operating Procedures Agreement acknowledges and agrees that, in respect of any claim against the Issuer in connection with any relevant Series of ETP Securities or otherwise (whether arising under the relevant Trust Deed, the general law or otherwise), with the exception of the Margin Loan Provider with respect to the Second Margin

Account Agreement, it shall only have recourse in the case of any claim whether secured or unsecured to the Secured Property in respect of the relevant Series of ETP Securities, subject always to the Security constituted by the relevant Security Documents and not to any other assets of the Issuer. With the exception of the Margin Loan Provider with respect to the Second Margin Account Agreement, any unsecured claim by a party to this Operating Procedures Agreement and any claims against the Issuer of any other unsecured creditors of the Issuer who have agreed to limit their recourse in respect of such claim to such Secured Property on the same terms (*mutatis mutandis*) as this Clause 6.1 shall be reduced pro rata so that the total value of all unsecured claims against the Issuer in respect of the relevant Series of ETP Securities shall not exceed the aggregate value of such Secured Property after meeting claims secured thereon and the claims of any other creditors of the Issuer who have not agreed to limit their recourse to the specified assets of the Issuer. If, following realisation in full of the Secured Property (whether by way of liquidation or enforcement) and application of available cash sums as provided in Conditions 6.4 and 6.5 and this Clause 6.1, any outstanding claim against the Issuer whether secured or unsecured remains unpaid, then such outstanding claim shall be extinguished and no debt shall be owed by the Issuer in respect thereof. Following extinguishment in accordance with this Clause 6.1, with the exception of the Margin Loan Provider with respect to the Second Margin Account Agreement, none of the parties to this Operating Procedures Agreement, any other Programme Party, the ETP Securityholders or any other person acting on behalf of any of them shall be entitled to take any further steps against the Issuer or any of its officers, shareholders, corporate service providers or directors to recover any further sum in respect of the extinguished claim and no debt shall be owed to any such persons by the Issuer in respect of such further sum.

## 6.2 **Non Petition**

With the exception of the Margin Loan Provider with respect to the Second Margin Account Agreement, none of the Programme Parties, any ETP Securityholder or any person acting on behalf of any of them may at any time bring, institute, or join with any other person in bringing, instituting or joining, insolvency, administration, bankruptcy, winding up, examinership or any other similar proceedings (whether court based or otherwise) in relation to the Issuer or any of its assets, and none of them shall have any claim arising with respect to the assets and/or property attributable to any other securities issued by the Issuer (save for any further securities which form a single series with the relevant Series of ETP Securities).

## 6.3 **Survival**

The provisions of this Clause 6.3 shall survive notwithstanding any redemption of the relevant Series of ETP Securities or the termination or expiration of this Operating Procedures Agreement.

## 6.4 **Enforcement**

Each party to this Operating Procedures Agreement acknowledges and agrees that only the Trustee may enforce the Security over the Secured Property in respect of the relevant Series of ETP Securities in accordance with, and subject to the terms of, the relevant Security Documents.

## 7. **Indemnity and Limitation of Liability**

### 7.1 **By the Issuer to each Agent**

The Issuer shall indemnify and hold harmless each Agent and their directors, officers, employees and sub-agents (each, an “**Indemnified Party**”) from and against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all proper costs,

charges and expenses paid or incurred in disputing or defending any of the foregoing) (“**Losses**”) that it may incur or that may be made against it arising out of or in relation to or in connection with its appointment or the exercise of its duties, including for the avoidance of doubt, any Losses incurred by the Indemnified Party resulting or arising from the breach of this Operating Procedures Agreement by another party to this Operating Procedures Agreement or any third party claims, actions, proceedings, investigations or litigation relating to or arising from this Operating Procedures Agreement or the duties contemplated hereunder except such as may result from the negligence, fraud or wilful default of this Operating Procedures Agreement by that Indemnified Party or any of its officers, employees or agents.

## 7.2 **Limitation of Liability**

Each Agent shall not be liable for any losses, damages or expenses suffered or incurred by the Issuer other than those resulting from negligence, fraud or wilful default on the part of an Agent or any of its officers, employees or agents in the performance and/or exercise by it of its duties and responsibilities under this Operating Procedures Agreement.

## 7.3 **Consequential Loss**

Notwithstanding anything to the contrary in this Operating Procedures Agreement, none of the Agents, their Affiliates, the Issuer, nor any of their directors, officers, employees, or agents shall have any liability of any type (including, but not limited to, contractual or tortious liability, including negligence and non-fraudulent misrepresentation, breach of statutory duty, restitution or otherwise), for any:

- (A) special, incidental, indirect or consequential loss or damages; or
- (B) direct or indirect loss of profits or opportunity; or
- (C) loss of goodwill, loss of reputation or customers; or
- (D) any other pure economic loss;

in each case in connection with or arising out of this Operating Procedures Agreement or the performance of the duties contemplated hereunder, or in connection with any other aspect of the services offered by such Agent in connection with the Programme Documents.

Nothing in this Clause 7 excludes or limits liability for death or personal injury caused by an Agent’s negligence, liability for fraud by any Agent or any other liability which cannot be excluded by law.

## 8. **Governing Law and Submission to Jurisdiction**

### 8.1 **Governing law**

This Operating Procedures Agreement and any non-contractual obligations arising out of or in connection with it shall, unless otherwise specified therein be governed by and construed in accordance with Irish law.

### 8.2 **Submission to jurisdiction**

The courts of Ireland are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Operating Procedures Agreement and accordingly any legal action or proceedings arising out of or in connection with this Operating Procedures



Agreement and any non-contractual obligations arising out of or in connection with them (“**Proceedings**”) may be brought in such courts. Each of the Issuer and any party incorporated outside Ireland irrevocably submits to the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum or otherwise.

### 8.3 **Service of process**

The Initial Authorised Participant will appoint BNP Paribas Dublin Branch of 5 George’s Dock, IFSC, Dublin 1, Ireland (with all communications to be addressed to Head of Legal), the Trustee will appoint Apex IFS Limited, 2 Grand Canal Square, Grand Canal Harbour, Dublin 2, the Determination Agent will appoint Matheson of 70 Sir John Rogerson’s Quay, Dublin 2, Ireland, the Second Portfolio Administrator, the Broker Dealer of Record and the Second Authorised Participant will appoint Matheson of 70 Sir John Rogerson’s Quay, Dublin 2, Ireland, as their respective agents to receive, for and on their behalf, service of process in any Proceedings in Ireland. Service of process on such agent shall be deemed valid service upon the relevant party whether or not it is forwarded to and received by such party. Each party appointing a process agent shall inform all other parties in writing of any change in its process agent’s address within 28 calendar days of such change. If for any reason such process agent ceases to be able to act as such or no longer has an address in Ireland, the relevant party irrevocably agrees to appoint a substitute process agent in Ireland reasonably acceptable to the other parties and to deliver to each of the other parties a copy of the substitute process agent’s written acceptance of that appointment, within 14 calendar days. Each party appointing a process agent irrevocably consents to any process in any Proceedings anywhere being served by mailing a copy by registered post to it in accordance with Clause 5. However, nothing in this Clause 8.3 shall affect the right to serve process in any other manner permitted by law.

### 8.4 **Termination**

- (A) Any party may terminate this Operating Procedures Agreement
  - (i) upon service of written notice if another party commits a material breach of its obligations under this Operating Procedures Agreement (including any payment default) which that party has failed to remedy within 45 days of receipt of a written notice to do so from the first party; or
  - (ii) upon service of written notice if a resolution is passed or an order made for the winding-up, dissolution or administration of another party, or if another party is declared insolvent or if an administrator, administrative receiver, manager or provisional liquidator (or similar officer to any of the foregoing in the relevant jurisdiction) is appointed over the whole of or a substantial part of another party or its assets or undertakings.
- (B) The Issuer may terminate this Operating Procedures Agreement upon service of 30 days written notice to all other parties to this Operating Procedures Agreement.

## 9. **Notice of Security**

In respect of each relevant Series of ETP Securities, the Issuer hereby notifies each party to this Operating Procedures Agreement that pursuant to the Trust Deed, the Issuer has created security in favour of the Trustee over all of the Issuer’s rights, title, interest and benefit present and future in, to and under this Operating Procedures Agreement.

10. **Trustee Protections**

The Trustee has agreed to become a party to this Operating Procedures Agreement for the better preservation and enforcement of its rights hereunder and shall not assume any liabilities or obligations under this Operating Procedures Agreement unless such obligation or liability is expressly assumed by the Trustee in this Operating Procedures Agreement and any such expressly assumed obligations are solely of a mechanical and administrative nature.

In performing any act under this Operating Procedures Agreement, it is agreed and acknowledged that the Trustee shall have the protections, immunities, rights, powers, authorisations, indemnities and benefits conferred on it under and by the relevant Security Documents.

This Operating Procedures Agreement shall be construed in accordance with, and subject to, the provisions of the relevant Security Documents such that all rights, remedies, privileges, discretions granted to, or exercisable by, the Trustee in respect of, or in connection with this Operating Procedures Agreement, shall be exercisable by the Trustee as if such provisions were set out in full herein and this Operating Procedures Agreement shall be construed accordingly.

## OPERATING PROCEDURES AGREEMENT

EXECUTION PAGE

### The Issuer

#### **LEVERAGE SHARES PUBLIC LIMITED COMPANY**

2<sup>nd</sup> Floor, Block 5,  
Irish Life Centre  
Abbey Street Lower  
Dublin 1  
D01 P767  
Ireland

Telephone: + 353 1 224 0300  
Email: [leverageshares@apexfs.com](mailto:leverageshares@apexfs.com)  
Attention: The Directors

By:

### The Margin Loan Provider and Custodian

#### **INTERACTIVE BROKERS LLC**

One Pickwick Plaza  
Greenwich  
CT 0683082  
USA

Telephone: +1 203 618-7776  
Email: [wcummings@interactivebrokers.com](mailto:wcummings@interactivebrokers.com)  
Attention: William Cummings

By:

**The First Portfolio Administrator**

**INTERACTIVE BROKERS (UK) LIMITED**

Level 20 Heron Tower  
110 Bishopsgate  
London EC2N 4AY  
United Kingdom

Telephone: +44 (207) 710-5646  
Email: [spescetto@interactivebrokers.com](mailto:spescetto@interactivebrokers.com)  
Attention: Sabrina Pescetto

By:

**The Initial Authorised Participant**

BNP PARIBAS ARBITRAGE S.N.C.  
c/o BNP Paribas  
Harewood Avenue  
London  
NW1 6AA

Telephone: +44 20 7595 2000  
Email: [cib.legal.eqd.london@uk.bnpparibas.com](mailto:cib.legal.eqd.london@uk.bnpparibas.com)  
[dl.etf.mm.lev.shares@uk.bnpparibas.com](mailto:dl.etf.mm.lev.shares@uk.bnpparibas.com)  
Attention: Head of Legal

By:

**The Trustee**

**APEX CORPORATE TRUSTEES (UK) LIMITED**

6<sup>th</sup> Floor  
125 Wood Street  
London EC2V 7AN

Email: [corporatetrusts@apexfs.com](mailto:corporatetrusts@apexfs.com)  
Attention: Manager, Corporate Trusts

By:

**The Issuing and Paying Agent, Registrar and Transfer Agent**

**ELAVON FINANCIAL SERVICES DAC**

Telephone: +353 523 8206 (Darren Mockus)  
+353 1 272 5071 (Aidan Scannell)  
+353 1272 1509 (Fergal Calvey)  
+353 1 220 1673 (Declan McGovern)

Email: [jpa@usbank.com](mailto:jpa@usbank.com)  
Attention: IPA Issuance desk

By:

**The Determination Agent**

**CALCULATION AGENT SERVICES LLC**

34E Putnam Avenue  
Suite 112  
Greenwich  
CT 06830  
USA

Telephone: +1 646 206 1788  
Email: [jcgonzalez@gwmbm.com](mailto:jcgonzalez@gwmbm.com)  
Attention: Jose Gonzalez

By:

**The Second Portfolio Administrator, Second Authorised Participant and Broker Dealer of Record**

**GWM LIMITED**

41 Cedar Avenue,  
5<sup>th</sup> Floor  
Hamilton HM12  
Bermuda

Email: [cspurling@gwmltd.com](mailto:cspurling@gwmltd.com)  
Attention: Chris Spurling

By:

**The Arranger**

**LEVERAGE SHARES MANAGEMENT COMPANY LIMITED**

116 Mount Prospect Avenue  
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Ireland

Telephone: +353 (0) 86 805 1445  
Email: [neil.fleming@borucapital.com](mailto:neil.fleming@borucapital.com)  
Attention: The Directors

By: