

## **Amended and Restated Services Agreement**

between

Leverage Shares Public Limited Company  
as Issuer

and

Leverage Shares Management Company Limited  
as Arranger

relating to a Collateralised Exchange Traded Securities Programme

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THIS AGREEMENT is dated 6 November 2020 and made

BETWEEN:

- (1) **LEVERAGE SHARES PUBLIC LIMITED COMPANY**, (the "**Issuer**"), a public limited company incorporated under the laws of Ireland with registration number 597399 and having its registered office at 2<sup>nd</sup> Floor, Block 5, Irish Life Centre, Abbey Street Lower, Dublin 1, D01 P767, Ireland; and
- (2) **LEVERAGE SHARES MANAGEMENT COMPANY LIMITED**, (the "**Arranger**"), a private company limited by shares incorporated under the laws of Ireland with registered number 596207 and having its registered office at 116 Mount Prospect Avenue, Clontarf, Dublin 3, Ireland.

BACKGROUND:

- (A) Whereas the Issuer is established as a limited recourse special purpose vehicle to issue collateralised exchange traded securities under its collateralised exchange traded securities programme (the "**Programme**").
- (B) The Issuer is a qualifying company within the meaning of section 110 of the Irish Taxes Consolidation Act 1997.
- (C) The Issuer wishes has engaged the Arranger to provide certain management, administration and arrangement services, and the Arranger agrees to provide such services upon the terms and conditions of this Agreement.
- (D) This Amended and Restated Services Agreement amends and restates the Amended and Restated Services Agreement dated 5February 2020.

IT IS AGREED as follows:

## 1. Interpretation

### 1.1 Definitions

Definitions in this Agreement:

**"Agreement"** means this Amended and Restated Services Agreement;

**"Business Day"** means a day, other than a Saturday, Sunday or public holiday, on which banks are open for non-automated business in Dublin, Ireland;

**"Commencement Date"** means 2 February 2018;

**"Confidential Information"** means any information relating to either parties' business affairs, customers, clients or suppliers which is described as confidential or disclosed under conditions which clearly indicate it is confidential or which a reasonable person would consider confidential;

**"Service Providers"** means any entity or person appointed from time to time by the Issuer or the Arranger, including the Arranger itself, for the provision of the Services or any other services to the Issuer; and

**"Services"** means the services to be provided by the Arranger to the Issuer more particularly described in Clause 2.

## 1.2 Capitalised Terms

Capitalised terms used in this Agreement but not otherwise defined under Clause 1.1 (*Definitions*) shall have the meanings given to them in the Master Definitions Schedule dated the date hereof (as amended, supplemented and/or replaced from time to time) relating to the Programme.

## 1.3 Construction

(A) In this Agreement:

- (1) the contents page and clause headings are for convenience only and do not affect its construction;
- (2) words denoting the singular include the plural and vice versa; and
- (3) general words shall not be give a restrictive meaning by reason of their being precede or followed by words indicating a particular class or examples of acts, matters or things.

(B) Unless otherwise specified or the, context otherwise requires, a reference in this Agreement to:

- (1) a party is a reference to a party to this agreement;
- (2) any statutes, legislation, rules, or laws shall be to such statutes, legislation rules, or laws as modified, amended, restated or replaced from time to time; and
- (3) writing shall include any method of reproducing words in a legible and permanent form.

## 1.4 Acknowledgement of Security

In respect of each relevant Series of ETP Securities, the Arranger acknowledges an assignment by way of security, in favour of the Trustee, of all of the Issuer's rights, title, interest and benefit present and future in, to and under this Agreement.

## 2. Appointment

2.1 The Issuer hereby appoints the Arranger to provide the following management, administration and arrangement services to the Issuer, provided that the Issuer does not appoint the Arranger to undertake any Issuer Reserved Matters and accordingly the Arranger has no authority to undertake such Issuer Reserved Matters on behalf of the Issuer (which Issuer Reserved Matters shall be undertaken by the Issuer itself):

- (A) Management and arrangement of the Programme and the issuance of ETP Securities under the Programme.
- (B) Liaising with and coordinating, as appropriate, Authorised Participants, the Issuing and Paying Agent, the Determination Agent, the CREST Settlement Agent, the Trustee, any Paying Agents, the Registrar, any Transfer Agent, the Portfolio Administrator, the Margin Loan Provider, the Custodian and the Broker Dealer of Record in respect of the issuance and redemption of ETP Securities under the Programme.
- (C) Liaising with and coordinating, as appropriate, the Portfolio Administrator, the Custodian, the Margin Loan Provider and the Determination Agent in relation to the purchase or sale of the relevant Reference Assets.
- (D) Liaising with and coordinating, as appropriate, the Portfolio Administrator, the Custodian, the Margin Loan Provider and the Determination Agent in relation to the rebalance of the relevant Margin Account at the end of each Rebalance Period, and (i) related purchases or sales of Reference Assets where the Reference Assets are Physical Assets and; (ii) where the Reference Assets are futures contracts, by rolling them forward before their expiry.
- (E) Liaising with and coordinating, as appropriate, the Portfolio Administrator, the Custodian, the Margin Loan Provider and the Determination Agent in relation to receipt of dividends in respect of the relevant Reference Assets and in dealing with corporate actions in respect of relevant Reference Assets, and related purchases or sales Reference Assets and drawdown or repayment under the Margin Loan as a result of such dividends or corporate actions.
- (F) Liaising with and coordinating, as appropriate, the Portfolio Administrator, the Custodian, the Margin Loan Provider and the Determination Agent in relation to, as relevant, drawdowns or repayments under the Margin Loan in the case of Leveraged Exposures where the Reference Assets are Physical Assets, securities borrowing in the case of Short Exposures where the Reference Assets are Physical Assets and where the Reference Assets are futures contracts, the rolling forward of such futures contracts before their expiry.
- (G) Arranging approvals, passporting and listing of securities in respect of the Programme and the ETP Securities.
- (H) Arranging index licences required for the issuance of ETP Securities under the Programme.
- (I) Recommending and arranging, as applicable, Authorised Participants, Issuing and Paying Agents, Determination Agents, CREST Settlement Agents, Trustees, Paying Agents, Registrars, Transfer Agents, Portfolio Administrators, the Margin Loan Providers, Broker Dealers of Record and the Custodians and arranging replacements if necessary to ensure the efficient operation of the Programme and the ETP Securities.
- (J) Carrying out on behalf of the Issuer or assisting the Issuer in carrying out the duties of the Issuer under or in connection with the ETP Securities, the Programme or the Programme Documents and the exercising of discretions of the Issuer under the ETP Securities, the Programme and the Programme Documents other than, in each case, the Issuer Reserved Matters.

(K) Development of websites and investor communications in respect of the Programme and the ETP Securities.

(L) Record keeping on behalf of the Issuer.

2.2 The Issuer agrees that the Arranger may delegate any of its duties hereunder to any Service Provider which the Arranger in its absolute discretion considers suitable for such purpose provided that the Arranger shall not delegate to any other person the authority to make decisions, exercise any discretion, conclude contracts, agree terms or otherwise carry on business on behalf of or as agent of the Issuer. For the avoidance of doubt, the Arranger shall be entitled to procure the assistance of a third party for the purposes of providing non-binding advice and recommendations to the Arranger or the Issuer with regard to the carrying out of such matters, provided that the Arranger or the Issuer, as applicable, shall in their absolute discretion determine whether or not to act in accordance with such advice or recommendations.

2.3 To the extent that the Services involve making decisions, exercising any discretion, concluding contracts, agreeing terms or otherwise carrying on business on behalf of or as agent of the Issuer, the Arranger (and its delegates and successors) shall perform such Services in and from business establishments in Ireland but not in any other jurisdiction using staff located in Ireland but not in any other jurisdiction.

### **3. Arranger Fees**

3.1 In consideration of the Services to be provided by the Arranger in respect of the Programme and the agreement of the Arranger to discharge any fees, costs and expenses in accordance with Clause 4, the Issuer shall, in relation to each Series of ETP Securities, pay the Arranger Fee to the Arranger.

3.2 The parties understand, and shall use reasonable endeavours to ensure, that the provision of the Services under this Agreement is exempt from VAT. In the event that VAT is chargeable on the provision of the Services under this Agreement, then the Arranger Fee shall be inclusive of such VAT. The Arranger shall deliver to the Issuer a valid VAT invoice in respect of the Arranger Fee as applicable. No additional amounts shall be payable by or on behalf of the Issuer to the Arranger in respect of such VAT. In the event that the Issuer is liable to account to any Authority in respect of VAT in respect of the Services under the reverse charge mechanism, the amount of Arranger Fee payable by the Issuer to the Arranger shall be reduced to such amount which creates an aggregate cost to the Issuer (taking into account the VAT payable by the Issuer to such Authority in respect of the Arranger Fee) equal to the Arranger Fee which would have been due if no such VAT had been applicable.

### **4. Payment of Expenses**

In consideration of the Issuer establishing the Programme and issuing Series of ETP Securities from time to time, the Arranger agrees to pay, as they become payable and in any event promptly following a request by the Issuer, all fees, costs and expenses incurred by the Issuer or the Arranger in relation to the Programme and the ETP Securities including the remuneration and expenses of the Issuing and Paying Agent, the Determination Agent, the CREST Settlement Agent, the Trustee, any Paying Agents, the Registrar, any Transfer Agent, any costs of listing and admission to trading of the Programme and/or each Series of ETP Securities, and other costs and expenses payable

in relation to the Programme and the ETP Securities, in each case other than (a) any amounts payable to the Margin Loan Provider, the Custodian and the Broker Dealer of Record; (b) Arranger Fee pursuant to this Agreement; (c) the relevant Funding and Brokerage Fees; (d) any taxes, fees and other amounts payable to the Irish Revenue Commissioners; (e) the costs and expenses incurred in connection with the liquidation of the Collateral Assets.

## **5. Representations and warranties**

Each party represents and warrants to the other that it is validly existing and that it has all necessary authority, power and capacity to enter into and perform this Agreement.

## **6. Term and termination**

This Agreement shall commence on the Commencement Date and shall continue until such time as it is terminated in writing by either party on giving 30 days written notice.

## **7. Consequences of termination**

- 7.1 Termination of this Agreement shall be without prejudice to, and shall not affect, any accrued rights or existing obligations of either party.
- 7.2 Upon termination of this Agreement Clauses 1, 7, 8, 9, 10, 11, and 13-18 (inclusive) shall remain in full force and effect.

## **8. Liability**

Neither the Arranger nor any of its Affiliates, directors, officers, employees, shareholders and agents will be liable for any loss suffered by the Issuer in connection with its provision of the Services or the appointment of any Service Providers in the absence of gross negligence, wilful default or fraud on the part of the Arranger or that of any of its directors or employees.

In respect of each Series of ETP Securities the aggregate liability of the LS Group Entities (which includes the Arranger), for any Loss, Liability or otherwise under or in connection the Transaction Documents shall not exceed EUR 500,000 and this limit shall apply:

- (i) regardless of the capacities in which the LS Group Entities are acting in relation to the Series;
- (ii) regardless of the Transaction Document under which any liability arises;
- (iii) whether the claim for liability is made in negligence, breach of contract, duty or otherwise;
- (iv) whether any liability is sought to be established pursuant to a single claim or multiple claims; and
- (v) whether the liability is sought to be established against a single LS Group Entity or jointly against more than one LS Group Entity.

For the purposes of calculating whether the above limit has been reached, all claims in respect of which liability has been established against an LS Group Entity in connection with the Series shall be aggregated regardless of whether the claims were made by different persons.

## **9. Limited recourse and non petition**

- 9.1 The Arranger 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 this Agreement, the general law or otherwise), 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 Trust Deed and not to any other assets of the Issuer. Any unsecured claim by a party to the relevant Trust Deed 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 8 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 such Secured Property (whether by way of liquidation or enforcement) and application of available cash sums as provided in Condition 6.4 of the Programme, this Clause 8 and 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 8, neither the Arranger or any other person acting on its behalf 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.
- 9.2 Neither the Arranger or any person acting on its behalf 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.

## **10. Confidentiality**

- 10.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties under this Agreement, and shall not use nor disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the other party.
- 10.2 Where disclosure is made in accordance with Clause 9.1 to any employee, consultant, sub-contractor or agent, it shall be done subject to obligations equivalent to those set out in this Agreement. The disclosing party shall be responsible to the other party in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.



10.3 The obligations of confidentiality in this Clause 9 do not apply to any matter that the disclosing party can show:

- (A) is in the public domain other than as a result of a breach of its obligations under this Agreement;
- (B) was in its written records before the date of this Agreement and not subject to any confidentiality obligations;
- (C) was disclosed to it independently by a third party entitled to disclose it; or
- (D) must be disclosed by law, or as a requirement of a court order, any governmental body or any authority of competent jurisdiction.

## **11. Assignment**

This Agreement is personal to each party and subject to Clause 1.4, shall not be capable of any assignment, transfer or any other dealing by either party which may purport to have a similar effect unless agreed by the parties hereto.

## **12. Entire agreement**

This Agreement constitutes the entire agreement between the parties relevant to the subject matter of this Agreement. Each of the parties irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement because of, breach of any warranty not expressly contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.

## **13. Amendments**

No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by authorised representatives of both parties.

## **14. Waiver**

No failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof and no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

## **15. Notices and other communications**

15.1 Any notice sent under this Agreement must be in writing.

15.2 Any notice may be served by personal delivery, or by sending it by registered first class post, special delivery post, or email, to the addresses shown below, or to such

other address as the relevant party may notify to the other for the purpose of service of notices under this Agreement.

**Issuer**

2<sup>nd</sup> Floor, Block 5  
Irish Life Centre  
Abbey Street Lower  
Dublin 1  
D01 P767  
Ireland  
Email: [leverageshares@apexfs.com](mailto:leverageshares@apexfs.com)

**Arranger**

116 Mount Prospect Avenue  
Clontarf  
Dublin 3  
Ireland  
Email: [neil.fleming@borucapital.com](mailto:neil.fleming@borucapital.com)

15.3 Every such notice shall be deemed to have been served:

- (A) on delivery if served by hand;
- (B) two Business Days after despatch if sent by registered post; or
- (C) on receipt, if sent by email.

**16. Counterparts**

This Agreement may be executed in one or more counterparts each of which shall for all purposes be deemed to be an original, and all of which shall constitute one and the same instrument.

**17. Severability**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provisions shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated.

**18. No partnership or agency**

- 18.1 Nothing in this Agreement or in any agreement entered into pursuant hereto shall give rise to or constitute a partnership between the parties.
- 18.2 Nothing in this Agreement or in any agreement entered into pursuant hereto shall constitute either party as the agent or representative of the other and in addition neither party shall be entitled to commit the other to any liability, relationship or arrangement, whether or not legally binding.

**19. Governing law and jurisdiction**

This Agreement (including any non-contractual obligations arising out of or in connection with the same) shall be governed by and construed in accordance with Irish law and the parties hereby submit themselves to the exclusive jurisdiction of the Irish Courts.

**EXECUTION PAGE**

Signed by: )

Director for and on behalf of  
**LEVERAGE SHARES PUBLIC LIMITED  
COMPANY** )

Signed by: )

Director for and on behalf of  
**LEVERAGE SHARES MANAGEMENT  
COMPANY LIMITED** )