

# Amended and Restated Determination Agency Agreement

between

Leverage Shares Public Limited Company  
as Issuer

Apex Corporate Trustees (UK) Limited  
as Trustee

Calculation Agent Services LLC  
as Determination Agent

and

Leverage Shares Management Company Ltd  
as Arranger relating to

a Collateralised Exchange Traded Securities Programme

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**THIS DETERMINATION AGENCY AGREEMENT** is dated the 6<sup>th</sup> day of November 2020 and made

**BETWEEN:**

- (1) **LEVERAGE SHARES PUBLIC LIMITED COMPANY**, (the “**Issuer**”), a company incorporated under the laws of Ireland under company 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;
- (2) **APEX CORPORATE TRUSTEES (UK) LIMITED**, (the “**Trustee**”) of 6th Floor, 125 Wood Street, London EC2V 7AN, United Kingdom;
- (3) **CALCULATION AGENT SERVICES LLC** (“**CAS**” or the “**Determination Agent**”), (which expression shall, where the context admits, include any successor Determination Agent appointed by the Issuer hereunder), of 34 E Putnam Avenue, Suite 112, Greenwich, CT 06830; and
- (4) **LEVERAGE SHARES MANAGEMENT COMPANY LIMITED**, (the “**Arranger**”), (which expression shall, where the context admits, include any successor Arranger appointed by the Issuer), of 116 Mount Prospect Avenue, Clontarf, Dublin 3, Ireland.

**Background:**

- (A) The Issuer has authorised the issue of exchange traded securities (“**ETP Securities**”) under its Collateralised Exchange Traded Securities Programme (the “**Programme**”) to be constituted pursuant to the Trust Deed and secured pursuant to the Trust Deed.
- (B) The Arranger has procured that, and it has been agreed, that the Determination Agent shall act as Determination Agent in respect of the Programme on the terms and conditions set out herein.
- (C) This Amended and Restated Determination Agency Agreement (the “**Determination Agency Agreement**”) amends and restates the Amended and Restated Determination Agency Agreement dated 5 February 2020 in respect of the Programme.

**THE PARTIES AGREE THAT:**

**1. Interpretation**

**1.1 Definitions**

Capitalised terms used in this Determination Agency Agreement but not otherwise defined 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.

**1.2 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 and schedules to this Determination Agency Agreement;
- (D) the Issuer, any Programme Party and any other person, include its successors in title, permitted assigns and permitted transferees; and
- (E) **“ETP Securities”** are 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 Determination Agency Agreement applies 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 Determination Agency Agreement.

### 1.5 **Contracts**

References in this Determination Agency Agreement to this Determination Agency Agreement or any other document are to this Determination Agency Agreement or those documents as amended, supplemented or replaced from time to time and include any document which amends, supplements or replaces them.

### 1.6 **Schedules**

The schedules are part of this Determination Agency Agreement and shall have effect accordingly.

### 1.7 **Variations**

All references in this Determination Agency 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.

### 1.8 **Alternative Clearing System**

References in this Determination Agency Agreement to the Relevant Clearing Systems shall, wherever the context so permits, be deemed to include reference to any additional or alternative clearing system approved by each of the Issuer, the Trustee and the Issuing and Paying Agent.

### 1.9 **Timing**

All references in this Determination Agency Agreement to any time shall be expressed using the 24-hour clock convention.

## 1.10 Records

Unless the contrary intention appears a reference to the records of Euroclear and Clearstream, Luxembourg shall be a reference to the records that each of Euroclear and Clearstream, Luxembourg holds for its customers which reflect the amount of such customer's interest in the ETP Securities.

## 2. Appointment and Duties

### 2.1 Determination Agent

The Determination Agent is hereby appointed to act as Determination Agent with respect to each Series of ETP Securities. The Determination Agent shall be appointed upon the terms set out herein and to perform the services described herein until termination of this Determination Agency Agreement as provided in Clause 10, and the Determination Agent accepts such appointment and agrees to assume the obligations set out below.

### 2.2 Determination Agent to act for Trustee

At any time after an Event of Default or a Potential Event of Default has occurred in relation to the relevant Series of ETP Securities and/or the Security under the Trust Deed relating to the relevant Series of ETP Securities has become enforceable, the Trustee may, by notice in writing to the Issuer, the Arranger and the Determination Agent, require the Determination Agent, until notified by the Trustee to the contrary, so far as permitted by applicable law:

- (A) to act as agent of the Trustee under the Trust Deed and the ETP Securities *mutatis mutandis* on the terms of this Determination Agency Agreement (with consequential amendments as necessary) and except that the Trustee's liability for the indemnification, remuneration and all other expenses of the Determination Agent will be limited to the amounts for the time being held by the Trustee in respect of the relevant Series of ETP Securities on the terms of the Trust Deed and which are available (after application in accordance with the relevant order of priority set out in the Conditions or the relevant Trust Deed, as applicable) to discharge such liability; or
- (B) to deliver the ETP Securities and all moneys, documents and records held by it in respect of the ETP Securities to or to the order of the Trustee or as the Trustee directs in such notice.

### 2.3 Notices of change of Trustee

The Issuer shall forthwith give notice to the Determination Agent of any change in the person or persons comprising the Trustee.

### 2.4 Determination Agent's duties

During the term of this Determination Agency Agreement, the Determination Agent shall, in accordance with the standard of care specified in Clause 3:

- A. Maintain the accounting books and records for the relevant Series of ETP Securities;
- B. Obtain underlying security valuations from appropriate sources consistent with the Issuer's pricing and valuation policies, and calculate the ETP Security Value of the relevant Series;

- C. Track and validate income and expense accruals for management fees and leverage facility fees, and process expense disbursements to vendors and service providers;
- D. Perform cash processing such as recording paid-in capital activity, perform necessary reconciliations with the Transfer Agent and the Custodian, and provide cash availability data to the adviser, if requested;
- E. Coordinate estimated cash payments, and perform necessary reconciliations with the Transfer Agent;
- F. Provide standardized performance reporting data to the Issuer and its Arranger;
- G. Provide performance, financial and expense information for the Programme and proxies;
- H. Communicate ETP Security Value, yield, total return or other financial data to appropriate third party reporting agencies, and assist in resolution of errors reported by such third party agencies;
- I. Update accounting system to reflect leverage facility rate changes, as received from the Custodian;
- J. Provide such accounting and financial reports for each Series of the ETP Securities in connection with meetings of the Board as the Board may reasonably request;
- K. Assist the Issuer in handling and responding to routine regulatory examinations with respect to records retained or services provided by the Determination Agent, and coordinate with the Issuer's legal counsel in responding to any non-routine regulatory matters with respect to such matters;
- L. Cooperate with, and take all reasonable actions in the performance of its duties under this Determination Agency Agreement to ensure that all necessary information is made available to the Issuer's independent public accountants in connection with the preparation of any audit or report requested by the Issuer, including the provision of a conference room at the Determination Agent's location if necessary (in this regard, the Issuer's independent auditors shall provide the Determination Agent with reasonable notice of any such audit so that (i) the audit will be completed in a timely fashion and (ii) the Determination Agent will be able to promptly respond to such information requests without undue disruption of its business); and
- M. Additional Reports and Services.
  - i. Upon reasonable notice and as mutually agreed upon, the Determination Agent may provide additional reports upon the request of the Issuer or its Arranger, which may result in additional charges, the amount of which shall be agreed upon between the parties prior to the provision of such report.
  - ii. Upon reasonable notice and as mutually agreed upon, the Determination Agent may provide such additional services with respect to a Series, which may result in an additional charge, the amount of which shall be agreed upon between the parties prior to the provision of such service.
- N. CAS will calculate each Series ETP Security Value. CAS is entitled to rely on the price and value information (hereinafter "**Valuation Information**") provided by brokers and custodians, Arrangers and service providers to underlying funds in which an Series invests, if applicable, or any third-party pricing services selected by CAS, or Arranger (collectively hereinafter referred to as the "**Pricing Sources**") in order to calculate each Series' aggregate ETP Security Value. CAS shall have no obligation to obtain Valuation Information

from any sources other than the Pricing Sources. CAS shall have no liability or responsibility for the accuracy of the Valuation Information provided by a Pricing Source or the delegate of a Pricing Source. Arranger shall not use Valuation Information provided by third parties appointed by CAS for any purpose other than in connection with the Services and in accordance with the provisions of this Determination Agency Agreement.

## 2.5 **Delegation of Determination Agent's duties**

Except as provided below, the Determination Agent may delegate to, or sub-contract with, third parties or affiliates administrative or other functions it deems necessary to perform its obligations under this Determination Agency Agreement; provided, however, all fees and expenses incurred in any delegation or sub-contract shall be paid by the Determination Agent and the Determination Agent shall remain responsible for the acts and omissions of such other entities as if such acts or omissions were the acts or omissions of the Determination Agent. The Issuer acknowledges that during the term of this Determination Agency Agreement, the services to be performed by the Determination Agent may be completed by one or more of the Determination Agent's affiliates or third parties.

No delegation or sub-contracting by the Determination Agent of any part of its performance of its services under this Determination Agency Agreement shall be permitted other than in accordance with this Clause.

## 2.6 **Calculations binding**

The calculation by the Determination Agent of any amount, price, rate or value required to be made by the Determination Agent under this Determination Agency Agreement shall be made in good faith and shall (in the absence of manifest error) be final and binding on the Issuer, the ETP Securityholders and the Programme Parties.

## 2.7 **Delegation of Issuer's duties**

The Issuer shall be entitled in its absolute discretion to delegate to the Arranger, or any other person appointed by the Issuer, the carrying out on behalf of the Issuer of any of the Issuer's duties under or in connection with this Determination Agency Agreement and the exercise on behalf of the Issuer of all discretions or decisions which the Issuer is required or entitled to take under or in connection with this Determination Agency Agreement, provided that the Issuer shall not be entitled to and shall not delegate to the Arranger or any other person any Issuer Reserved Matters. Any such delegation by the Issuer under this Clause shall not in any way relieve the Issuer from its obligations under this Determination Agency Agreement for which it shall continue to be liable as if no such delegation had taken place.

## 3. **Standard of Care**

The Determination Agent shall perform its duties and obligations hereunder in good faith and with skill, care and diligence and in a manner consistent with practices and procedures followed by a prudent professional under similar circumstances.

## 4. **Representations and Warranties of the Determination Agent**

On the date hereof and on each date on which the Determination Agent is required to make a calculation in accordance with this Determination Agency Agreement, the Determination Agent shall be deemed to represent, warrant and agree to and with the Issuer that:

#### 4.1 **Due incorporation**

It is duly incorporated and validly existing under the laws of its jurisdiction of incorporation with full power and authority to conduct its activities as described in this Determination Agency Agreement;

#### 4.2 **Validity of agreement**

The execution and delivery of this Determination Agency Agreement and the performance of the rights and obligations of it hereunder have been duly authorised and constitute valid and legally binding obligations of the Determination Agent;

#### 4.3 **Consents**

All governmental and other consents and licences that are required by it, if any (including the obtaining of any consent or licence or the making of any filing or registration) for the entry into this Determination Agency Agreement and the performance of its obligations hereunder have been so taken, fulfilled or done and, in the case of consents or licences, are in full force and effect; and

#### 4.4 **Compliance**

The execution and delivery of this Determination Agency Agreement, the carrying out of any other transactions or duties contemplated by this Determination Agency Agreement and compliance with the terms thereof do not and will not (i) conflict with or result in a material breach of any of the terms or provisions of, or constitute a default under, the documents constituting it or to the best of its knowledge and belief, a material breach of any agreement or instrument to which it is a party or by which it or any of its properties is bound, or (ii) infringe any existing applicable law, rule, regulation, order or decree of any government, governmental body or court, domestic or foreign, having jurisdiction over it.

### 5. **Trustee**

The Trustee shall not be responsible for monitoring or supervising the performance by the Determination Agent of its duties, obligations and functions and, unless and until the Trustee has been notified in writing to the contrary, the Trustee shall be entitled to assume that the Determination Agent is properly performing its duties, obligations and functions pursuant to the terms of this Determination Agency Agreement. The Trustee shall not be liable to any Programme Party or any other person for any loss occasioned by any of the acts or omissions of the Determination Agent in relation to its obligations under this Determination Agency Agreement whether or not it has actual knowledge regarding the performance of the Determination Agent as aforesaid.

### 6. **Fees and Expenses**

#### 6.1 **Fees**

Arranger shall pay to CAS a fee of [REDACTED] per annum of the ETP Security Value for the services performed and the facilities and personnel provided by CAS pursuant to this Determination Agency Agreement.

Arranger shall have no right of set-off. The fees set forth herein are determined based on the investment strategy of each Series as of the date of this Determination Agency Agreement. Any change to the investment strategy of a relevant Series may give rise to an adjustment to the fees set forth in this Determination Agency Agreement. In the event of a change in the investment strategy of the relevant Series, the parties shall negotiate any adjustment to the fees payable hereunder in good faith. Arranger shall pay CAS's fees quarterly in U.S. Dollars, unless otherwise agreed to by the parties. CAS is hereby authorized to, and may, at its option, automatically debit its fees due from Series account(s) for which it is an authorized party. Arranger shall pay the foregoing fees despite the existence of any dispute among the parties. If this Determination Agency Agreement becomes effective subsequent to the first day of any calendar quarter or terminates before the last day of any calendar quarter, CAS's compensation for that part of the quarter in which this Determination Agency Agreement is in effect shall be prorated in a manner consistent with the calculation of the fees as set forth above. Arranger agrees to pay interest on all amounts past due in an amount equal to the lesser of the maximum amount permitted by applicable law or one and one-half percent (1 ½ %) times the amount past due multiplied by the number of whole or partial quarters from the date on which such amount was first due up to and including the day on which payment is received by CAS.

The Arranger has procured that the Determination Agent provides the services set out in this Determination Agency Agreement and the Determination Agent agrees that payment of any fees in connection with such services shall be the obligation of the Arranger and not that of the Issuer. The fees payable in connection with such services shall be in an amount as separately agreed between the Arranger and the Determination Agent.

## 6.2 **Costs of the Determination Agent**

The Arranger shall also, upon receipt of reasonable evidence of such expenditure, if requested by the Determination Agent pay on demand all proper out-of-pocket expenses (including, but not limited to, legal, advertising, and postage expenses) properly incurred by the Determination Agent in connection with its services unless otherwise expressly agreed in writing by the Arranger.

## 6.3 **Taxes**

- (A) All payments by the Issuer or the Arranger under this Determination Agency Agreement shall be made free and clear of, and without withholding or deduction for, any Taxes, unless such withholding or deduction is required by law. In such event, and subject to Clause 12, the Issuer or the Arranger (as applicable) shall pay such additional amounts as will result in receipt by the Determination Agent of such amounts as would have been received by it if no such withholding or deduction had been required.
- (B) All fees payable by the Issuer or the Arranger under or pursuant to this Determination Agency Agreement are exclusive of VAT (if any). Accordingly, if the Determination Agent is required to account for VAT in respect of any taxable supply for VAT purposes made to the Arranger or the Issuer (as applicable) under or in connection with this Determination Agency Agreement, the person liable to pay the relevant fees shall, in addition to such fees, pay to the Determination Agent such VAT as is chargeable in respect of the supply at the same time as payment is due or in any other case when demanded by the Determination Agent. The Determination Agent shall provide a valid VAT invoice in respect of any such payment of VAT.
- (C) Where under this Determination Agency Agreement, one party has agreed to reimburse or indemnify another party in respect of any payment made or cost, charge or expense incurred by that other party, the first party shall also reimburse that other

party for any VAT paid by that other party which forms part of its payment made or cost, charge or expense incurred, to the extent that such VAT is not available for credit or repayment or otherwise recoverable by that other party or for any person with which the reimbursed or indemnified party is treated as a member of a group for VAT purposes.

## 7. **Limitation of Liability**

- 7.1 Neither the Determination Agent nor any of its Affiliates, directors, officers, employees, shareholders and agents shall be liable (whether directly or indirectly, in contract, in tort or otherwise) to the Issuer, any ETP Securityholder, any other Programme Party or any other person for any liability, damages, cost, loss or expense (including legal fees, costs and expenses) (a "**Loss**") incurred by any such person that arises out of or in connection with the performance or non-performance by the Determination Agent of its obligations under this Determination Agency Agreement, provided that nothing shall relieve the Determination Agent from liability for any Loss arising by reason of acts or omissions constituting bad faith, fraud or gross negligence (as defined herein) of the Determination Agent (any such act or omission a "**Determination Agent Breach**"). For purposes of this Determination Agency Agreement, gross negligence shall refer to any conscious, voluntary act or omission of a party in reckless disregard of the rights or consequences to others.
- 7.2 If the Determination Agent would, but for the operation of this Clause 7.2, be held liable for any Loss arising as the result of a Determination Agent Breach, the Determination Agent shall nevertheless incur no liability to the Issuer, any ETP Securityholder, any other Programme Party or any other person if such Determination Agent Breach results solely and directly from either (i) the failure by any other Programme Party to provide any notice, instruction or direction which such Programme Party is required or permitted to give under the Conditions or any Programme Document or (ii) a delay in the delivery by any other Programme Party of any notice, instruction or direction which such Programme Party is required or permitted to give to the Determination Agent under the Conditions or any Programme Document.
- 7.3 If the Determination Agent would, but for the operation of this Clause 7.3, be held liable for any Loss arising as the result of a Determination Agent Breach, the Determination Agent shall nevertheless incur no liability to the Issuer, any ETP Securityholder, any other Programme Party or any other person if such Determination Agent Breach results solely and directly from the reliance by the Determination Agent upon a rate, amount, quotation, value or other calculation or determination notified to the Determination Agent pursuant to the Conditions and/or any Programme Document which is made by another Programme Party in accordance with the Conditions and the terms of any Programme Document.
- 7.4 In respect of each Series of ETP Securities the aggregate liability of the LS Group Entities (which includes the Determination Agent), 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.

## **8. Indemnity**

### **8.1 By the Issuer in favour of the Determination Agent**

Without prejudice to the qualification in Clause 6.2, the Issuer shall indemnify the Determination Agent, on an after-Tax basis, against any Loss incurred by the Determination Agent (other than any costs and expenditure contemplated by this Determination Agency Agreement and/or incurred in the ordinary performance of the Determination Agent's duties and obligations under this Determination Agency Agreement and any ordinary office expenses, remuneration of directors or employees or general operating costs of the Determination Agent (whether incurred in connection with the performance of its obligations under this Determination Agency Agreement or otherwise)) or that is made against it arising out of or in relation to or in connection with its appointment or the exercise of its functions, except such as may result from its own gross negligence as defined herein, bad faith or fraud or that, of its officers, employees or agents.

### **8.2 By the Issuer to the Trustee**

The Issuer shall indemnify the Trustee in respect of all liabilities and expenses properly incurred by it or by anyone appointed by it or to whom any of its functions may be delegated by it in the carrying out of its functions and against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) that any of them may incur or that may be made against any of them arising out of or in relation to or in connection with its appointment or the exercise of its functions under this Determination Agency Agreement and the transactions contemplated herein.

### **8.3 Force majeure**

The Determination Agent shall not be liable for any Loss caused by events beyond its reasonable control, including any malfunction, interruption or error in the transmission of information caused by any machine or systems or interception of communication facilities, abnormal operating conditions or events of force majeure. Nothing in this Determination Agency Agreement shall limit or exclude a party's liability for bad faith, fraud or gross negligence as defined herein.

### **8.4 Consequential loss**

Notwithstanding the foregoing, no party to this Determination Agency Agreement shall have any liability whatsoever for any consequential, special, indirect or speculative loss or damages (including loss of profits or loss of opportunity) howsoever caused and whether or not foreseeable.

### **8.5 Survival of indemnities**

Subject to Clause 12, the indemnities set out in this Clause 8 will survive the termination or expiry of this Determination Agency Agreement.

## **9. General**

### **9.1 No agency or trust**

In acting under this Determination Agency Agreement, the Determination Agent shall not have any obligation towards or relationship of agency or trust with the ETP Securityholders of the relevant Series of ETP Securities.

### **9.2 No implied duties of the Determination Agent**

The Determination Agent shall have no duties or responsibilities except those expressly set forth in this Determination Agency Agreement and no implied or inferred duties or obligations of any kind shall be read into this Determination Agency Agreement against or on the part of the Determination Agent. The Determination Agent shall not, and shall not be deemed to, assume or be liable for the obligations or duties of the Issuer or any other person under the Conditions, the Trust Deed or any other Programme Document unless otherwise agreed pursuant to this Determination Agency Agreement.

### **9.3 Taking of advice by the Determination Agent**

The Determination Agent may consult, on any legal matter which it believes in good faith requires such consultation, any legal or other professional advisers reasonably selected by it, who may be employees of or advisers to the Issuer, and it shall not be liable in respect of anything done, or omitted to be done, relating to that matter in good faith in accordance with the opinion of such adviser(s). The Arranger shall, on demand by the Determination Agent, pay or discharge the costs of any such advice, provided that the Determination Agent must first obtain the consent of the Arranger in respect of the cost of the advice sought, such consent not to be unreasonably withheld and with the Arranger being required to indicate whether they consent or not in an expeditious manner. For the avoidance of doubt, it shall not be reasonable to withhold any such consent merely because the advice sought may be prejudicial to the interests of the Issuer and/or any other Programme Party.

### **9.4 Reliance on genuineness of documents**

The Determination Agent shall not incur any liability to any person in acting upon any ETP Security, signature, or other document or information from any electronic or other source reasonably believed by it to be genuine and believed by it to have been signed or otherwise given or disseminated by the proper party or parties, in each case received by it in connection with the performance of its duties under this Determination Agency Agreement.

### **9.5 Other relationships**

The Determination Agent, whether or not acting for itself, may acquire, hold or dispose of any ETP Security or other security (or any interest therein) of the Issuer or any other person, may enter into or be interested in any contract or transaction with any such person, and may act on, or as depositary, trustee or agent for, any committee or body of holders of securities of any such person, in each case with the same rights as it would have had if that Determination Agent were not a Determination Agent under this Determination Agency Agreement and need not account for any profit.

### **9.6 No expenditure or risk of own funds**

Without prejudice to Clause 6.2, none of the provisions of this Determination Agency Agreement or of any other Programme Document shall require the Determination Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise (other than such costs and expenditure contemplated by this Determination Agency Agreement and/or incurred in the ordinary performance of the Determination Agent's duties and obligations under this Determination Agency Agreement and any ordinary office expenses, remuneration of directors or employees or general operating costs of the Determination Agent (whether incurred in connection with the performance of its obligations under this Determination Agency Agreement or otherwise)) if it shall have reasonable grounds for believing that repayment of such funds or the provision of an indemnity satisfactory to it against such risk or liability is not assured to it.

#### **9.7 No investigation**

The Determination Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document received by it from the Issuer or any other Programme Party.

#### **9.8 Clarification of duties**

To the extent that the Determination Agent requires clarification of its duties pursuant to this Determination Agency Agreement, the Determination Agent is entitled to seek instructions from, and to rely entirely and act on the instructions received from, the Issuer and, without prejudice to Clauses 3, 7 and 8, the Determination Agent shall not be responsible for any action it takes in accordance with such instructions.

#### **9.9 Issuer instructions**

If the Issuer expressly instructs the Determination Agent to take any action not contemplated by this Determination Agency Agreement, the Determination Agent shall, without prejudice to Clauses 3, 7 and 8, not be responsible for any action it takes on behalf of the Issuer in accordance with such instructions and this Clause 9.9 shall apply equally in respect of any such instruction.

#### **9.10 No duty to institute or defend proceedings**

The Determination Agent shall not be under a duty to institute or defend any proceedings on behalf of the Issuer.

#### **9.11 No responsibility for inability to perform due to law or regulation**

The Determination Agent shall not have any responsibility or liability for any Loss resulting from its being unable to perform any functions or obligations under this Determination Agency Agreement if the same results from any law, regulation or requirement (whether or not having the force of law) of any central bank or governmental or other regulatory authority affecting it. Nothing in this Determination Agency Agreement shall require the Determination Agent to take any action or refrain from taking any action if the same would be contrary to any applicable law, regulation or requirement of any central bank or government or other, regulatory authority affecting it.

## **10. Changes in Determination Agent**

### **10.1 Appointment and termination**

Each of the parties to this Determination Agency Agreement may terminate this Determination Agency Agreement in respect of one or more Series of ETP Securities by giving not less than sixty (60) calendar days' written notice to the other parties hereto.

Notwithstanding the previous paragraph, this Determination Agency Agreement may be terminated by any party giving prior notice in writing to the other parties if at anytime the other party or parties have been first (i) notified in writing that such party shall have materially failed to perform its duties and obligations under this Determination Agency Agreement (such notice shall be of the specific asserted material breach) ("**Breach Notice**") and (ii) the party receiving the Breach Notice shall not have remedied the noticed failure within sixty (60) days after receipt of the Breach Notice requiring it to be remedied.

### **10.2 Termination for Liquidation**

This Determination Agency Agreement may be terminated by any party giving sixty (60) days prior notice in writing to the other parties prior to the "liquidation" of any one or more Series. For purposes of this paragraph, the term "liquidation" shall mean a transaction in which all the assets of the Series are sold or otherwise disposed of and proceeds there from are distributed in cash or in kind to the ETP Securityholders in complete liquidation of the interests of such ETP Securityholders in the Series. A termination pursuant to this Clause 10.2 shall be effective as of the date of such liquidation. Notwithstanding the foregoing, the right to terminate set forth in this Clause 10.2 shall not relieve the Arranger of its obligation to pay the fees set forth herein for the remainder of the sixty (60) day period set forth in this Clause 10.2, which amount shall be payable prior to the effective date of such liquidation.

### **10.3 Notices**

The Issuer undertakes to take appropriate steps to notify any resignation, appointment or termination to each Programme Party and to the holders of the relevant Series of ETP Securities pursuant to this Clause 10.3. The payment to any replacement Determination Agent and the costs and expenses incurred by the Issuer in connection with any termination, resignation or retirement of the Determination Agent shall be solely the responsibility of the Arranger.

### **10.4 Change of office**

If the Determination Agent changes the address of its specified office in a city, it shall give the Issuer and the Programme Parties at least 5 calendar days' notice of the change, giving the new address and the date on which the change is to take effect.

### **10.5 Automatic Termination**

The appointment of any Determination Agent shall forthwith terminate if that Determination Agent becomes incapable of acting, is dissolved (other than pursuant to a consolidation, amalgamation or merger), is adjudged bankrupt or insolvent, files a voluntary petition in bankruptcy, makes a general assignment, arrangement or composition with or for the benefit of its creditors, consents to the appointment of a receiver, administrator, liquidator or other similar official of either the entity or all or substantially all its assets or admits in writing its inability to pay or meet its debts as they mature or suspends payment thereof, or if a

resolution is passed or an order made for the winding-up, official management, liquidation or dissolution of such entity (other than pursuant to a consolidation, amalgamation or merger), a receiver, administrator, liquidator or other similar official of either the entity or all or substantially all its assets is appointed, a court order is entered approving a petition filed by or against it under applicable bankruptcy or insolvency law, or a public officer takes charge or control of the entity or its property or affairs for the purpose of liquidation.

#### **10.6 Delivery of records**

If the Determination Agent resigns or its appointment is terminated, the Determination Agent shall, on the date on which the resignation or termination takes effect, deliver to the Issuer (or as directed by the Issuer) the records kept by it and all documents and forms held by it pursuant to this Determination Agency Agreement.

Upon the delivery of all books, records, files and other documents of the Issuer to the Issuer or to the replacement Determination Agent in accordance with the Issuer's instructions, the Determination Agent shall not have any further duties, responsibilities or obligations under this Determination Agency Agreement, provided that the termination of this Determination Agency Agreement will not affect any liabilities of the Determination Agent in respect of matters occurring prior to the termination of this Determination Agency Agreement.

#### **10.7 Successor corporations**

A corporation into which the Determination Agent is merged or converted or with which it is consolidated or that results from a merger, conversion or consolidation to which it is a party shall, to the extent permitted by applicable law, be the successor Determination Agent under this Determination Agency Agreement without further formality. The Determination Agent concerned shall forthwith notify such an event to the Issuer and the Programme Parties.

### **11. Communications**

#### **11.1 Method**

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

#### **11.2 Deemed receipt**

Any communication from any party to any other under this Determination Agency Agreement 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, *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. Any communication delivered to any party under this Determination Agency Agreement which is to be sent by electronic communication will be written legal evidence.

### 11.3 **Determination Agent notices under Conditions and Programme Documents**

Notwithstanding anything to the contrary in this Determination Agency Agreement, the Conditions or any other Programme Document, the parties to this Determination Agency Agreement acknowledge and agree that any notice, consent, authorisation, certification and instruction which the Determination Agent is to give pursuant to this Determination Agency Agreement (including, without limitation, pursuant to Clause 2.4) may be given in such form and manner as may be agreed by the parties to this Determination Agency Agreement from time to time.

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

### 12.1 **Limited Recourse**

Each party to this Determination Agency 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), 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. Any unsecured claim by a party to this Determination Agency 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 (*mutatis mutandis*) as this Clause 12.1 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 Condition 6, this Clause 12, as applicable, 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 12, none of the parties to this Determination Agency Agreement, 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.

### 12.2 **Non-Petition**

None of the parties to this Determination Agency Agreement 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 class with the relevant Series of ETP Securities).

### 12.3 **Survival**

The provisions of this Clause 12 shall survive notwithstanding any redemption of the relevant Series of ETP Securities or the termination or expiration of this Determination Agency Agreement.

#### 12.4 **Enforcement**

The Determination Agent acknowledges and agrees that only the Trustee may enforce the Security over the Secured Property in accordance with, and subject to the terms of, the relevant Security Documents.

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

#### 13.1 **Governing law**

This Determination Agency Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Ireland.

#### 13.2 **Submission to jurisdiction**

The courts of Ireland are to have non-exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Determination Agency Agreement and accordingly any legal action or proceedings arising out of or in connection with this Determination Agency Agreement (“**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 objections 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. These submissions are made for the benefit of each of the other parties to this Determination Agency Agreement and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude any of them from taking Proceedings in any other jurisdiction (whether concurrently or not).

### 14. **Trustee Protections**

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

In performing any act under this Determination Agency 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 Determination Agency 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 Determination Agency Agreement, shall be exercisable by the Trustee as if such provisions were set out in full herein and this Determination Agency Agreement shall be construed accordingly.

**15. Acknowledgement of Security**

In respect of each relevant Series of ETP Securities, each party to this Determination Agency Agreement 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 Determination Agency Agreement.

**DETERMINATION AGENCY 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 2240300  
Fax: +353 1 2240480  
Email: [leverageshares@apexfs.com](mailto:leverageshares@apexfs.com)  
Attention: The Directors

By:

**The Trustee**

**APEX CORPORATE TRUSTEES (UK) LIMITED**

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

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

By:

**The Determination Agent**

**CALCULATION AGENT SERVICES LLC**

34E Putnam Avenue  
Suite 112  
Greenwich  
CT 06830  
United States of America

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

By:

**The Arranger**

**LEVERAGE SHARES MANAGEMENT COMPANY LIMITED**

116 Mount Prospect Avenue  
Clontarf  
Dublin 3  
Ireland

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

By: