

**SNR DENTON** 

**EXECUTION VERSION**

**Second Supplemental Trust Instrument modifying the provisions of the Trust Instrument constituting Collateralised Currency Securities dated 5 November 2009 (as modified by the first Supplemental Trust Instrument dated 14 June 2010)**

**Dated** *31 December 2010*

**ETF5 Foreign Exchange Limited**  
(the Issuer)

**The Law Debenture Trust Corporation p.l.c**  
(the Trustee)

SNR Denton UK LLP  
One Fleet Place  
London EC4M 7WS  
United Kingdom  
DX 242

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## Supplemental Trust Instrument

Dated 31 December 2010

### Between

- (1) **ETFS Foreign Exchange Limited** a company incorporated under the laws of Jersey with registered number 103518, whose registered office is Ordnance House, 31 Pier Road, St. Helier, Jersey, Channel Islands, JE4 8PW (the **Issuer**); and
- (2) **The Law Debenture Trust Corporation p.l.c** a company incorporated under the laws of England with registered number 1675231, whose registered office is at Fifth Floor, 100 Wood Street, London EC2V 7EX, England (the **Trustee**, which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of these presents) as trustee for the Security Holders (as defined below).

### Recitals

- A This Supplemental Trust Instrument is supplemental to the trust instrument dated 5 November 2009 made between the Issuer and the Trustee as modified by a first Supplemental Trust Instrument dated 14 June 2010 between the same parties (the **Trust Instrument**).
- B The Trustee has agreed to act as trustee of these presents for the benefit of the Security Holders upon and subject to the terms and conditions of these presents.
- C Pursuant to Clause 31.2 (c) of the Trust Instrument, and Condition 25.2 of the Conditions, the Issuer may (with the consent of the Trustee) amend the Trust Instrument and the Trustee Consent Documents if, in the opinion of the Issuer and the Trustee, the amendment is necessary or desirable and is not materially prejudicial to the rights of the Security Holders.
- D Pursuant to the Issuer's powers referred to in Recital C above, the Issuer has determined to amend the Trust Instrument and certain of the Trustee Consent Documents in order to make changes which are not materially prejudicial to the rights of Security Holders and the Trustee has given its consent to the same, in each case in the manner hereinafter appearing.
- E The Issuer and the Trustee intend that this Supplemental Trust Instrument shall constitute a written variation of the terms of the Trust Instrument and the written consent of the Trustee to such variation and the variation of certain Trustee Consent Documents.

This Supplemental Trust Instrument witnesses and it is hereby agreed and declared as follows:

#### 1 Definitions

- 1.1 Except as provided herein, all words and expressions defined or attributed a particular meaning in the Trust Instrument shall, where the context so requires or admits, have the same meanings in this Supplemental Trust Instrument.
- 1.2 In this Supplemental Trust Instrument, the following expression shall have the following meaning:

**Effective Date** means the date on which the Issuer gives notice to the Trustee, the Security Trustee, ETFS Management Company (Jersey) Limited, MSIP, Morgan Stanley & Co.

Incorporated and ETFSL that the novation of the Services Agreement by ETFSL to ETF Management Company (Jersey) Limited has become effective.

1.3 References in this Supplemental Trust Instrument to Clauses, sub-Clauses, paragraphs and sub-paragraphs shall be construed as references to the Clauses, sub-Clauses, paragraphs and sub-paragraphs of this Supplemental Trust Instrument.

1.4 In these presents tables of contents and headings to Clauses, paragraphs, and other provisions of these presents are included for ease of reference only and shall not affect the construction of these presents.

## **2 Incorporation of the provisions of the Trust Instrument**

2.1 The Trust Instrument (including the Schedules thereto) shall be read and construed as one agreement and instrument with this Supplemental Trust Instrument.

2.2 Notwithstanding Clause 2.1, to the extent that the provisions of the Trust Instrument and the provisions of this Supplemental Trust Instrument conflict, the provisions of this Supplemental Trust Instrument shall prevail.

2.3 Save as modified by this Supplemental Trust Instrument, the provisions of the Trust Instrument shall continue in full force and effect.

## **3 Amendments to the Collateralised Currency Securities**

3.1 With effect as set out in Clauses 4 and 5, the Trust Instrument and the Conditions set out in Schedule 2 to the Trust Instrument shall be amended as provided for in this Supplemental Trust Instrument and accordingly all Collateralised Currency Securities shall be held subject to, and with the benefit of, the Trust Instrument as supplemented and amended by this Supplemental Trust Deed and the Conditions set out in Schedule 2 to the Trust Instrument (as amended by this Supplemental Trust Instrument) all of which shall be binding on the Issuer and the Security Holders of such Collateralised Currency Securities and all persons claiming through or under them respectively.

3.2 In accordance with Clause 31.2(c) of the Trust Instrument, each of the Issuer and the Trustee confirms that it is of the opinion that the amendments to the Trust Instrument made herein are necessary or desirable and not materially prejudicial to the Security Holders and the Trustee hereby consents to the terms of this Supplemental Trust Instrument.

3.3 The Issuer hereby covenants promptly after the execution hereof to give notice of the amendments to the Collateralised Currency Securities provided for in Clauses 4 and 5 to Security Holders. Such notice will be given by way of a RIS announcement.

## **4 Amendments to the Trust Instrument**

4.1 With effect from the Effective Date, the Trust Instrument shall be modified as follows:

4.1.1 Clause 1.1 of the Trust Instrument shall be amended by deleting the definition of "Services Agreement".

4.1.2 Clause 16.1(d) of the Trust Instrument shall be amended by deleting the words "ETFSL (or any Affiliate with which the Issuer has entered into a Services Agreement)" and inserting the words "ManJer (or any Affiliate of the Issuer with which the Issuer has entered into a Services Agreement)".

## 5 Amendments to the Conditions

5.1 With effect from the Effective Date, Schedule 2 to the Trust Instrument and the Conditions shall be modified as follows:

5.1.1 Condition 1.1 shall be amended as follows:

(a) by the addition of the following definition:

**"ManJer** means ETFS Management Company (Jersey) Limited, a company incorporated in Jersey, with registered number 106921";

(b) the definition of "Management Fee" by deleting the word "ETFSL" and inserting the words "ManJer (or any Affiliate of the Issuer)";

(c) the definition of "outstanding" by deleting the word "ETFSL" in the twelfth and fourteenth lines and inserting the word "ManJer";

(d) the definition of "Secured Liabilities" by deleting the word "ETFSL" and inserting the word "ManJer";

(e) the definition of "Secured Parties" by deleting the word "ETFSL" and inserting the word "ManJer"; and

(f) the definition of "Services Agreement" shall be replaced with the following definition:

**Services Agreement** means the agreement between the Issuer and ETFSL dated 5 November 2009 as novated to the Issuer and ManJer pursuant to a novation agreement dated \*\* in respect of the provision of services by ManJer to the Issuer in connection with the Programme or any replacement agreement which the Issuer may agree from time to time, in respect of the provision of such services with any of its Affiliates.

5.1.2 Condition 13.3(e) shall be amended by deleting the words "ETFSL or any Affiliate" and inserting the words "ManJer (or any Affiliate of the Issuer)".

5.1.3 Condition 13.4(d) shall be amended by deleting the words "ETFSL (or any Affiliate with which the Issuer has entered into a Services Agreement)" and inserting the words "ManJer (or any Affiliate of the Issuer with which the Issuer has entered into a Services Agreement)".

## 6 Counterparts

This Supplemental Trust Instrument may be executed and delivered in any number of counterparts, all of which, taken together, shall constitute one and the same instrument and any party to this Supplemental Trust Instrument may enter into the same by executing and delivering a counterpart.

## 7 Consent of the Trustee

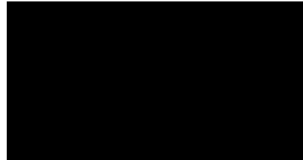
The Trustee hereby consents to the amendments to be made to the Trustee Consent Document proposed to be entered into on or about the date of this Supplemental Trust Instrument in the form attached in Schedule 1 hereto.

**8 Governing law and submission to jurisdiction**

Clause 32 of the Trust Instrument shall apply, *mutatis mutandis*, to this Supplemental Trust Deed.

**IN WITNESS** whereof this Trust Instrument has been executed as a deed by the Issuer and the Trustee and entered into on the day and year first above written.

Executed and Delivered as a deed by )  
ETF5 Foreign Exchange Limited )  
acting by: GRAEME DAVID (B) )



Director

Executed and Delivered as a deed by )  
The Law Debenture Trust Corporation p.l.c. )  
acting by: )

Director

Director/Secretary

IN WITNESS whereof this Trust Instrument has been executed as a deed by the issuer and the Trustee and entered into on the day and year first above written.

Executed and Delivered as a deed by )  
ETFS Foreign Exchange Limited )  
acting by: )

Director

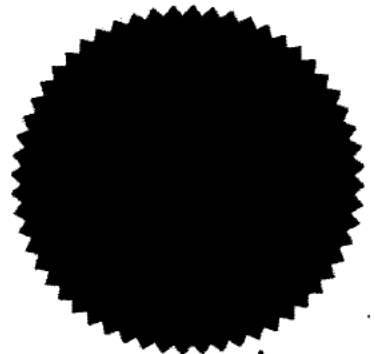
Executed and Delivered as a deed by )  
The Law Debenture Trust Corporation p.l.c. )  
acting by: )

[Redacted Signature]

Director

[Redacted Signature]

AUTHORISED  
SIGNATORY



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