

14 May 2018

This agreement is dated [ ] ("~~A~~greement")

## **PARTIES**

1. **Irish Auditing and Accounting Supervisory Authority**, a company limited by guarantee incorporated in Ireland (Company Number 412677) whose registered office is situated at Willow House, Millennium Park, Naas, County Kildare, W91 C6KT, Ireland ("**IAASA**"); and
2. **Jersey Financial Services Commission [insert description]** ("**JFSC**").

Each a "**Party**" and together the "**Parties**".

## **BACKGROUND**

- A. The Parties have agreed the terms of a non-binding Memorandum of Understanding dated [insert date of MOU] for the purposes described therein, attached as the Schedule to this Agreement ("**MOU**").
- B. For purposes of this Agreement, the term "Information" has the same meaning as described in the MOU.
- C. The Parties anticipate that, pursuant to the MOU, the IAASA will from time to time provide to the JFSC Information that the IAASA understands to be subject to the provisions of Regulation 131(2)(b)(ii) of S.I. No. 312/2016.
- D. The JFSC has informed the IAASA that all persons who are or have been employed by the JFSC, involved in the governance of the JFSC or otherwise associated with the JFSC are obliged to keep confidential all non-public Information received from IAASA in response to a request under the MOU.

## **1. UNDERTAKINGS**

In consideration of the IAASA providing the cooperation described in the MOU:

- 1.1 JFSC undertakes that, except in accordance with law, it will keep confidential all non-public Information received from the IAASA in response to a request under the MOU.
- 1.2 JFSC will deliver up possession of the audit working papers and other documents that, in response to a request under the MOU, it received from the IAASA, and do everything in its power to secure the return of them to the IAASA, once JFSC has completed its functions of public oversight, quality assurance (including inspections) and investigations.\*

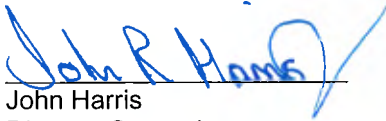
\* These functions are considered completed upon the expiration of applicable prescribed record retention periods.

## **2. EFFECT OF TERMINATION**

- 2.1 Either Party may terminate this Agreement at any time, but termination of the Agreement shall not affect the undertakings described above with respect to any Information received

from the IAASA, in response to a request under the MOU, before such termination, unless otherwise agreed by the Parties.

**IN WITNESS** whereof the Parties have entered into this Agreement on the date shown at the beginning of this Agreement.



John Harris  
Director General  
Jersey Financial Services  
Commission



Martin Sisk  
Chairperson  
Irish Auditing and Accounting  
Supervisory Authority

**SCHEDULE**  
**MOU**  
**[TO BE INSERTED]**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE JERSEY FINANCIAL SERVICES COMMISSION AND THE IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY ON COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE OVERSIGHT OF AUDITORS**

The Jersey Financial Services Commission (“**JFSC**”), based on its obligations and authority under Part 16 of the Companies (Jersey) Law 1991;

and

the Irish Auditing and Accounting Supervisory Authority (“**IAASA**”), based on its obligations and authority under Irish national law.

Recognising that the European Commission has decided upon the adequacy referred to in Article 47, paragraph 1(c) of the Directive 2006/43/EC in respect of the JFSC (Decision No. 2016/1010/EU);

Recognising that the European Commission has decided upon the equivalence referred to in Article 46, paragraph 1 of the Directive 2006/43/EC in respect of the Jersey public oversight, quality assurance, investigation and penalty systems for auditors and audit entities (Decision No. 2013/288/EU);

Recognising that the transfer of personal data from Ireland to Jersey must be in accordance with the Data Protection Act 1998 implementing Directive 95/46/EC and in particular Chapter IV of Directive 95/46/EC;

Recognising that the transfer of personal data from Jersey to Ireland has to be in accordance with the Data Protection (Jersey) Law 2005;

Recognising the Commission Decision of May 8, 2008 pursuant to Directive 95/46/EC on the adequate protection of personal data in Jersey;

Having regard to the auditor oversight regime administered by the JFSC under Part 16 of the Companies (Jersey) Law 1991.

**Have agreed as follows:**

## PURPOSE

1. Both Parties seek to improve the quality, accuracy and reliability of the audit of public companies through audit regulation and auditor oversight so as to protect investors, help strengthen public trust in the audit process and increase investor confidence in their respective capital markets.
2. Given the global nature of capital markets, the Parties recognise the need for mutual cooperation in matters related to the oversight of Auditors subject to the regulatory jurisdictions of both the JFSC and the IAASA.
3. The purpose of this MOU is to facilitate mutual cooperation between the Parties, to the extent permitted by their respective national laws, in the area of public oversight, Inspections and Investigations of Auditors subject to the oversight of the Parties. The JFSC and the IAASA believe it is in their common interest to cooperate in the oversight of Auditors that fall within the regulatory jurisdiction of both Parties to the extent such cooperation is compatible with the Parties' respective Laws or regulations, their important interests and their reasonably available resources. The Parties also recognise the importance of cooperation to avoid undue burden on Auditors of overlapping supervision. Cooperation is intended to permit the Parties to meet their respective statutory oversight mandates.
4. The ultimate objective of cooperation between the Parties is to reach a mutual reliance on each other's oversight systems, in such a way that the transfer of working papers or other documents held by statutory auditors or audit firms and of inspection reports should become the exception. For the avoidance of doubt, this provision shall not apply to an inspection report that relates to the audit of a non-domiciled company inspected by the requested Party at the request of the requesting Party.

## DEFINITIONS

For the purpose of this MOU,

**"Party" or "Parties"** means the Jersey Financial Services Commission ("**JFSC**") and/or the Irish Auditing and Accounting Supervisory Authority ("**IAASA**").

**"Auditor"** means a natural person or an audit firm that is subject to the oversight of the Parties in accordance with the SI 316 of 2016 relating to the audit profession in Ireland and the Companies (Jersey) Law 1991.

**"Laws or regulations"** mean any laws, rules or regulations including auditing standards in force in the respective countries of the Parties.

**"Information"** means non-public information that relates to: (1) the outcome of Inspections and Investigations, including information on firm-wide quality control procedures and

engagement reviews, (2) audit working papers or other documents held by Auditors, and (3) other areas of mutual interest for the purpose of supervision, provided that the information relates to matters that are subject to the regulatory jurisdictions of both Parties.

**“Inspections”** refers to external quality assurance reviews of Auditors generally undertaken on a regular basis with the aim of enhancing audit quality.

**“Investigations”** refers to investigations in response to a specific suspicion of infringement or violation of Laws or regulations.

**“Non-domiciled company”** means a company registered in the jurisdiction of the requesting Party but audited by an auditor in the jurisdiction of the requested Party.

## **COOPERATION**

### *Exchange of Information*

5. Cooperation includes the exchange of Information between the Parties for the purposes permitted or required by Laws or regulations on public oversight, registration, Inspections, and Investigations of Auditors.

### *Mutual recognition*

6. The Parties will rely on the supervision of the Auditors in their home country and:
  - (a) shall in general refrain from public oversight activities, Inspections, Investigations and penalties with respect to Auditors from the other country on the basis of reciprocity, to the extent permitted by their respective national Laws or regulations; and
  - (b) will endeavour to minimise the burden related to the registration of Auditors from the other country on the basis of reciprocity, to the extent permitted by their respective Laws or regulations.
7. To the extent permitted by Laws or regulations, the Parties will use their best endeavours to inform one another, prior to or immediately after taking any significant public oversight measures, in respect of relevant Auditors that are registered or seek registration in the other country.

### *Requests for Information*

8. Each Party will at its sole discretion provide the other Party with Information upon request subject to paragraph 16.
9. Requests will be made in writing (including e-mail) and addressed to the contact person of the requested Party.

10. The requesting Party should specify the following:
  - (a) the Information requested;
  - (b) the purposes for which the Information will be used;
  - (c) the reasons why the Information is needed, and if applicable, the respective Laws or regulations that may have been violated;
  - (d) an indication of the date by which the Information is needed;
  - (e) an indication to the best of the knowledge of the requesting Party, of whether the Information requested might be subject to further use, transfer or disclosure under paragraphs 25 to 28.
11. Any request for Information which is held exclusively by the relevant auditor shall be made to the other Party and not directly to the relevant auditor.
12. In cases where the Information requested may be maintained or available at another Party within the country of the requested Party, the requested Party will endeavour to provide the Information to the extent permitted by its Laws or regulations.

*Execution of requests for Information*

13. Each request will be assessed on a case by case basis by the requested Party to determine whether Information can be provided under the terms of this MOU and applicable Laws or regulations. In any case where the request cannot be met in full within the desired time period, the requested Party will inform the requesting Party accordingly and will consider whether other relevant Information or assistance can be given.
14. Each Party shall endeavour to provide a prompt and adequate response to requests for Information.
15. In order to avoid unnecessary delays, the requested Party will provide as appropriate parts of the requested Information as they become available.
16. The requested Party may refuse to act on a request where:
  - (a) it concludes that the request is not in accordance with this MOU;

- (b) the request relates to the audit of a company which has not issued securities in the country of the requesting Party, or does not form a part of a group of companies that issue statutory group financial statements in the country of the requesting Party;
  - (c) acceding to the request would contravene the Laws or regulations of the requested Party's country;
  - (d) it would burden the requested Party disproportionately;
  - (e) it concludes that it would be contrary to the public interest of the requested Party's country for assistance to be given;
  - (f) the provision of Information would adversely affect the sovereignty, defence, security or public order or international relations of the requested Party's country; or
  - (g) judicial, administrative or disciplinary proceedings have already been initiated or have become legally effective in respect of the same actions and against the same persons before the authorities of the country of the requested Party.
  - (h) final judgment has already been passed in respect of the same actions and on the same Auditor by the competent authorities of the requested Party.
17. The Parties will ensure the protection of the commercial interests of the audited entity, including its industrial and intellectual property, is not undermined by the provision of any information requested.
18. The requested Party will promptly inform the requesting Party of the reasons where it refuses to act on a request made under this MOU.
19. The Parties will, once the performance of the functions for which it has obtained the requested documents or other material has been concluded, deliver up possessions of all transferred documents or other materials, and otherwise do everything within their powers to secure the return of them to the other Party.
20. In the event a third party or an Auditor under inspection or investigation refuses to provide requested information, the Parties will consult to determine if there are alternative ways to meet the requirements of the requesting Party.

## **CONFIDENTIALITY**

21. Each Party shall keep confidential all Information received or created in the course of cooperation, to the extent consistent with its Laws or regulations and subject to paragraphs 25-28. The obligation of confidentiality shall apply to all persons who are or have been:

- (a) employed (or formerly employed) by the Parties;
- (b) involved in the governance of the Parties; or
- (c) otherwise associated with the Parties.

- 22. The Parties have established and will maintain such safeguards as are necessary and appropriate to protect the confidentiality of the Information, including storing the Information in a secure location when not in use.
- 23. The Parties have provided each other with a description of their applicable information systems and controls and a description of their Laws or regulations that establish appropriate limits on access to non-public information.
- 24. The Parties will inform each other if the safeguards, information systems, controls, Laws or regulations referred to in paragraphs 21-23 above change in a way that weaken the confidentiality of the information and/or documents provided by the other Party.

#### **USE OF INFORMATION**

- 25. The Parties may use Information received or created in the course of cooperation only for the exercise of their functions of public oversight, quality of assurance, Inspections and Investigations of Auditors. If either Party intends to use Information received or created in the course of cooperation for any purposes other than those stated in the request, it must obtain the prior written and specific consent of the requested Party. If the requested Party consents to the use of Information for a purpose other than that stated, it may subject such use to conditions.

#### **EXCEPTIONS TO CONFIDENTIALITY**

- 26. In the event that the requesting Party is legally required to disclose or to transfer the Information received or created in order to comply with its obligation under Laws or regulations or by a court order, it will provide, wherever possible, at least fifteen working days advance written notice to the requested Party prior to its disclosure or transfer, stating why the Party is required to disclose or transfer such Information.
- 27. If the other Party objects to the disclosure or the transfer, the requesting Party will make best efforts to resist the disclosure or transfer of the Information received or created.

#### **THE TRANSFER OF PERSONAL DATA**

- 28. The Parties will only transfer personal data in accordance with their respective Laws or regulations on data protection.

#### **OTHER**



29. This MOU does not create any binding legal obligations, nor does it modify or supersede any Laws or regulations in Ireland or in Jersey. This MOU does not give rise to a right on the part of the IAASA, the JFSC or any other governmental or non-governmental entity or any private person to challenge, directly or indirectly, the degree or manner of cooperation by the IAASA or the JFSC.
30. This MOU does not prohibit the Parties from taking measures with regard to the supervision of Auditors that are different from or in addition to the measures set forth in this MOU.
31. The Parties shall at the request of either Party consult on issues related to the matters covered by this MOU and otherwise exchange views and share experiences and knowledge gained in the discharge of their respective duties to the extent permitted by their respective Laws or regulations.
32. The Parties may consult informally, at any time, about a request or proposed request or about any Information provided.
33. The Parties may consult and revise the terms of this MOU in the event of a substantial change in Laws or regulations and/or practices affecting the operation of this MOU, or if they wish to modify the terms of their cooperation. The Parties will review the operation of this MOU every three years, or as agreed by the parties, by a process agreed between the Parties

#### **ENTRY INTO EFFECT AND TERMINATION**

34. This MOU will come into force from the date of signature by both Parties.
35. This MOU may be terminated by either Party at any time. The provisions concerning confidentiality (paragraphs 21 to 24) and on the transfer of personal data (paragraph 28) shall remain in force thereafter.

#### **PUBLICATION**

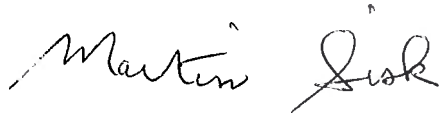
36. Either, or both, Parties may make a copy of this MOU or the text of it publically available.

Ireland,

**the Irish Auditing and Accounting  
Supervisory Authority**

Jersey,

**the Jersey Financial Services  
Commission**



Martin Sisk  
Chairperson

Date: 27 Feb, 2018



John Harris  
Director General

Date: 14 May 2018