



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

**THE CENTRAL BANK OF IRELAND**

**AND**

**[ ]**

**AGREEMENT RELATING TO RECOGNITION AS PROSPECTUS ADVISOR IN RELATION TO  
THE APPROVAL OF PROSPECTUSES PURSUANT TO THE PROSPECTUS (DIRECTIVE  
2003/71/EC) REGULATIONS 2005 (AS AMENDED)**

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**THIS AGREEMENT** dated [ ] (the “**Agreement**”)

Between:

- (1) **THE CENTRAL BANK OF IRELAND** of New Wapping Street, North Wall Quay, Dublin 1 (the “**Central Bank**”); AND
- (2) [ ] a [ ] under the laws of [ ], having its registered office at [ ] (“[ ]”)

relates to the Recognition by the Central Bank of [ ] as a Prospectus Advisor pursuant to the rights and obligations of the Parties hereby agreed as follows:

## 1 **BACKGROUND**

- 1.1 The Central Bank is the competent authority for the purposes of Regulation 78(1) of the Prospectus Regulations with responsibility for reviewing and approving Prospectuses.
- 1.2 [ ] provides services to Relevant Persons who are seeking approval of their Prospectus by the Central Bank.
- 1.3 The Central Bank and [ ] have agreed to set out in this Agreement the basis on which [ ] is to be recognised as a Prospectus Advisor by the Central Bank (“**Recognition**”).
- 1.4 The Central Bank is entering into this Agreement pursuant to its powers under the Central Bank Act 1942.

## 2 **DEFINITIONS AND INTERPRETATION**

In this Agreement the following terms shall have the following meanings:

“**2005 Act**” means the Investment Funds, Companies and Miscellaneous Provisions Act, 2005;

“**2006 Act**” means the Investment Funds, Companies and Miscellaneous Provisions Act, 2006;

**“Admission to trading”** has the same meaning as in Regulation 2 of the Prospectus Regulations;

**“Central Bank Obligations”** means the obligations of the Central Bank as set out in Schedule 2 of this Agreement;

**“Debt”** means “non-equity securities”, as defined in Regulation 2 of the Prospectus Regulations;

**“Effective Date”** means the effective date of this Agreement as may be notified in writing by the Central Bank to the Prospectus Advisor;

**“Equity”** means “equity securities” as defined in Regulation 2 of the Prospectus Regulations;

**“EU prospectus law”** has the same meaning as it has in the Act;

**“Irish prospectus law”** has the same meaning as it has in the Act;

**“Issuer”** has the same meaning as in Regulation 2 of the Prospectus Regulations;

**“Offeror”** has the same meaning as in Regulation 2 of the Prospectus Regulations;

**“Parties”** the parties to this Agreement and **“Party”** shall mean either of them;

**“Prospectus”** means a prospectus, or a base prospectus, or a supplement or a registration document, or a securities note or a summary for which approval is sought in accordance with the Prospectus Regulations. A prospectus, base prospectus, supplement and a summary shall have the same meaning as set out in the Prospectus Regulations;

**“Prospectus Advisor”** means a legal or natural person who is to be recognised as such by the Central Bank pursuant to an agreement, subject to the rights and obligations defined in such agreement;

**“Prospectus Advisor Eligibility Criteria”** means the criteria set out in Schedule 3 of this Agreement;

**“Prospectus Advisor Obligations”** means the obligations of the Prospectus Advisor as set out in Schedule 1 of this Agreement;

**“Prospectus Regulations”** mean the Prospectus (Directive 2003/71/EC) Regulations 2005;

**“Prospectus Rules”** means the prospectus rules issued by the Central Bank pursuant to Section 51 of the 2005 Act;

**“Relevant Person”** has the same meaning as in Regulation 2 of the Prospectus Regulations;

**“Regulated Market”** means a regulated market as defined by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

**“Transparency Regulations”** mean the Transparency (Directive 2004/109/EC) Regulations 2007; and

**“Transparency Rules”** mean the transparency rules issued by the Central Bank pursuant to Section 22 of the 2006 Act.

- 2.1 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

### **3 OBLIGATIONS OF THE PROSPECTUS ADVISOR**

- 3.1 The Recognition will be conditional upon the Prospectus Advisor undertaking at all times during the term of the Recognition to comply with the Prospectus Advisor Obligations, provided that it shall not constitute a breach of the Prospectus Advisor Obligations where the Prospectus Advisor can demonstrate to the satisfaction of the Central Bank that any failure on its part to take any required action is attributable to the Relevant Person or other key parties and/or is not within the control of the Prospectus Advisor.
- 3.2 Following consultation, within a period prescribed by the Central Bank (being not less than 20 calendar days) with all Prospectus Advisors, the Central Bank shall be entitled at any time during the term of the Recognition by written notice of 10 calendar days to the Prospectus Advisor, to modify the terms of the Prospectus Advisor Obligations.
- 3.3 In the event of a suspected breach by the Prospectus Advisor of any of the Prospectus Advisor Obligations, the Central Bank will notify the Prospectus Advisor of the suspected breach and require the Prospectus Advisor to respond to the Central Bank within 30 calendar days.
- 3.4 Following the determination by the Central Bank that there has been a breach of any of the Prospectus Advisor Obligations, the Central Bank may take such action as it considers reasonable including but not limited to:
  - 3.4.1 instructing the Prospectus Advisor to take all necessary remedial action within a period prescribed by the Central Bank, being not less than 30 calendar days;
  - 3.4.2 requiring the Prospectus Advisor to pay an amount communicated by the Central Bank, such amount being a reasonable estimate by the Central Bank of the cost incurred by the Central Bank (which may include reasonable internal costs, and shall not be limited to costs paid to third parties) in investigating and considering any apparent breach;

3.4.3 notifying the Prospectus Advisor that the Recognition has been suspended for such period as the Central Bank considers reasonable to enable the Prospectus Advisor to take remedial action;

3.4.4 terminating the Recognition in accordance with Clause 6.2.3.

#### **4 OBLIGATIONS OF THE CENTRAL BANK**

4.1 The Central Bank shall undertake at all times during the term of the Recognition to comply with the Central Bank Obligations.

4.2 The Central Bank shall be entitled at any time during the term of the Recognition by written notice of 30 calendar days to the Prospectus Advisor, to modify the terms of the Central Bank Obligations.

4.3 The Central Bank accepts no liability, and the Prospectus Advisor hereby agrees and accepts that no claim shall be made by the Prospectus Advisor or on behalf of the Prospectus Advisor, in respect of any loss or expense allegedly arising in respect of any inability by the Central Bank to review any Prospectus within the timeframes set out in Schedule 2, whether due to force majeure or any other reason. Notwithstanding the foregoing, the Central Bank will use all reasonable endeavours to ensure that timeframes are met.

#### **5 PROSPECTUS ADVISOR ELIGIBILITY CRITERIA**

5.1 The Recognition will be conditional upon the Prospectus Advisor continuing to satisfy the Prospectus Advisor Eligibility Criteria at all times during the term of the Recognition.

5.2 The Central Bank shall be entitled at any time during the term of the Recognition by written notice of 30 calendar days to the Prospectus Advisor, to modify the terms of the Prospectus Advisor Eligibility Criteria.

5.3 In the event of a suspected breach by the Prospectus Advisor of any of the Prospectus Advisor Eligibility Criteria, the Central Bank will notify the Prospectus Advisor of the

suspected breach and require the Prospectus Advisor to respond to the Central Bank within 30 calendar days.

5.4 Following the determination by the Central Bank that the Prospectus Advisor no longer complies with the Prospectus Advisor Eligibility Criteria, the Central Bank may take such action as it considers reasonable including but not limited to:

5.4.1 instructing the Prospectus Advisor to take all necessary remedial action within a period prescribed by the Central Bank, being not less than 30 calendar days;

5.4.2 requiring the Prospectus Advisor to pay an amount communicated by the Central Bank, such amount being a reasonable estimate by the Central Bank of the cost incurred by the Central Bank (which may include reasonable internal costs, and shall not be limited to costs paid to third parties) in investigating and considering any apparent non-compliance;

5.4.3 notifying the Prospectus Advisor that the Recognition has been suspended for such period as the Central Bank considers reasonable to enable the Prospectus Advisor to take remedial action;

5.4.4 terminating the Recognition in accordance with Clause 6.2.5.

## **6 TERMINATION**

6.1 The Recognition may be terminated at any time by either Party giving 30 calendar days' written notice to the other of the termination.

6.2 The Central Bank may terminate the Recognition, in writing, without notice where:

6.2.1 the Prospectus Advisor fails to take remedial action as requested by the Central Bank in accordance with Clause 3.4.1 and/or 5.4.1; or

6.2.2 the Prospectus Advisor fails to make a payment under Clause 3.4.2 and/or 5.4.2 within the stipulated time (not being less than 30 calendar days); or



- 6.2.3 the Prospectus Advisor breaches any of the Prospectus Advisor Obligations;  
or
  - 6.2.4 the Central Bank determines in its absolute discretion that continuing the Recognition may adversely impact the reputation of the Central Bank or may be detrimental to the integrity of the securities market in Ireland or elsewhere;  
or
  - 6.2.5 the Prospectus Advisor no longer complies with any of the Prospectus Advisor Eligibility Criteria and the Prospectus Advisor, having been so notified of its non-compliance, has failed to take the necessary remedial action within the period subscribed by the Central Bank for such action.
- 6.3 The Prospectus Advisor may terminate the Recognition by giving 5 calendar days written notice to the Central Bank in the event of:
- 6.3.1 an amendment to the Prospectus Advisor's Obligations pursuant to Clause 3.2; or
  - 6.3.2 an amendment to the Central Bank Obligations pursuant to Clause 4.2.

## **7 CHARGES**

- 7.1 The Prospectus Advisor will pay the following charges upon receipt of an invoice from the Central Bank:
- 7.1.1 An Annual Charge. The amount of such charge will be determined by the Central Bank and calculated with reference to the charges set out in Schedule 4 hereto and the number of calendar days in a calendar year in respect of which the Prospectus Advisor holds the Recognition. The Annual Charge will be subject to review by the Central Bank on a periodic basis but no more frequently than annually. Any increase or decrease in the Annual Charge following such a review shall be at the sole discretion of the Central Bank and shall be binding on the Prospectus Advisor. Following such a review the amount of the Annual Charge, if amended, shall be communicated, in writing,

by the Central Bank to the Prospectus Advisor 60 calendar days prior to the date on which the next Annual Charge must be paid.

7.1.2 A Document Charge. The amount of such charge will be determined by the Central Bank and calculated with reference to the charges set out in Schedule 4 hereto and to the number of documents approved during the previous calendar quarter. The Document Charge shall be subject to review by the Central Bank on a periodic basis but no more frequently than annually. Any increase or decrease in the Document Charge following such a review shall be at the sole discretion of the Central Bank and shall be binding on the Prospectus Advisor. Following such a review, the amount of the Document Charge, if amended, shall be communicated, in writing, by the Central Bank to the Prospectus Advisor 60 calendar days prior to the date from which it will become applicable.

7.1.3 All charges will be due and payable no later than 30 calendar days from the date of the relevant invoice.

7.2 Each party shall bear its own costs including charges of professional advisors in relation to the negotiation and conclusion of this Agreement and any documents related to the Recognition.

## **8 DISPUTE RESOLUTION**

If there is a disagreement in relation to this Agreement, both Parties shall use their reasonable endeavours to negotiate and settle the disagreement. If the disagreement has not been resolved within 28 calendar days of it first coming to the Parties' attention, both Parties shall each nominate a senior representative within their respective organisations who shall meet to try and resolve the matter. If such senior representatives cannot settle the disagreement within 56 calendar days of it first coming to the Parties' attention, either Party may deem the procedures set out in Clause 8 exhausted for the purposes of Clause 9 hereof.

## **9 GOVERNING LAW AND JURISDICTION**

This Agreement is subject to the laws of Ireland and the Courts of Ireland shall have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with this Agreement, subject to the procedures set out in Clause 8 hereof having first been exhausted.

## **10 CONFIDENTIALITY**

10.1 At all times any information relating to the business of the Central Bank, or which relates to any entity which is regulated by the Central Bank, or any other information which the Central Bank reasonably deems to be confidential ("Confidential Information") that is received by the Prospectus Advisor from the Central Bank pursuant to this Agreement or through any other means will be kept secret and treated as confidential by the Prospectus Advisor and its agents and will not, without the prior written consent of the Central Bank (which may be given, if at all, at the Central Bank's sole discretion on such terms as the Central Bank considers appropriate), be disclosed (whether in written, oral or in any other form) in whole or in part to any other person. The Prospectus Advisor shall not use that Confidential Information for any purpose other than in connection with the Recognition provided, however, that the foregoing shall not apply to any information which becomes publicly available other than as a result of the breach of the Prospectus Advisor's undertakings hereunder, or to any information the Prospectus Advisor is required to disclose by law, to any regulatory authority or in connection with any judicial process.

10.2 The Central Bank may use information received from the Prospectus Advisor in relation to the approval of a Prospectus by the Central Bank in furtherance of its statutory functions.

## **11 SURVIVAL**

Clauses 4.3 (*Limitation on Liability*), 9 (*Governing Law and Jurisdiction*) and 10 (*Confidentiality*) shall survive the termination of this Agreement.

## **12 DATA PROTECTION**

12.1 Each Party shall comply at all times with the provisions of all applicable data protection legislation in the performance of its obligations under this Agreement.

12.2 In this Clause 12.2, the terms: “personal data”, “process” or “processing”, “data processor” and/or “data controller” shall bear the meanings attributed to such terms under all applicable data protection legislation. In so far as either Party may act as a data processor in respect of the other Party, the Party undertaking such data processing shall:

12.2.1 take all reasonable technical and organisational measures to prevent unauthorised or unlawful processing of or the accidental loss or destruction of or damage to any personal data which it processes for or on behalf of the other Party;

12.2.2 take reasonable steps to ensure the reliability of its employees, contractors and agents having access to the personal data which it processes; and

12.2.3 only use such personal data as is reasonably necessary to comply with the terms of this Agreement, and shall ensure that such use shall not breach the provisions of the data protection legislation.

## **13 NOTICES**

13.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant Party at, in the case of the Central Bank, its office at New Wapping Street, North Wall Quay, Dublin 1, marked for the attention of the Deputy Head, Primary Markets, Primary Markets and Wholesale Conduct Supervision Division, and in the case of [ ], at its registered office.

13.2 A notice under Clause 13.1 shall be deemed to have been received:

13.2.1 if delivered personally, at the time of delivery; and

13.2.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

In proving service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant Party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.

## **14 FORCE MAJEURE**

Notwithstanding any other provision contained herein, the Parties shall not be liable for any action taken, or any failure to take any action required to be taken hereunder or otherwise to fulfil their obligations hereunder in the event and to the extent that the taking of such action or other failure arises out of or is caused by or directly or indirectly by a Force Majeure Event (an event beyond the reasonable control of the affected party including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the party affected by the Force Majeure Event (the "Affected Party") places of business.

The Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party; provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

## **15 ASSIGNMENT**

This Agreement and the rights and obligations created hereunder may not be assigned in whole or in part by either Party hereto without the prior consent in writing of the other Party hereto.

## **16 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties or to authorise either Party to act as agent for the other and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **17 ENTIRE AGREEMENT**

This Agreement, together with the Schedules hereto, constitutes the entire agreement and understanding between the Parties with respect to its subject matter and except as expressly provided supersedes all prior representations, writings, negotiations or understandings with respect to the subject matter.

## **18 VALIDITY**

If at any time any one or more of the provisions of this Agreement or any part of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

## SCHEDULE 1

### PROSPECTUS ADVISOR OBLIGATIONS

The obligations which this Agreement confers on the Prospectus Advisor are cumulative and without prejudice to any duties or obligations which the Prospectus Advisors may have under the general law.

When recognised as a Prospectus Advisor, the Prospectus Advisor shall have the following obligations during the term of its Recognition:

#### **General Obligations**

1. Compliance with the obligations set out in Section 3 of the Prospectus Rules of the Central Bank.
2. Acting ethically and responsibly in its dealing with the Central Bank.

#### **Prospectus Review Process Obligations**

1. Taking reasonable steps to ensure that, in so far as is possible, the first draft of any Prospectus submitted to the Central Bank is in a form likely to require a minimum amount of redrafting having regard to its knowledge of Irish and EU prospectus law, guidance from the European Securities and Markets Authority and the prior published practices and decisions of the Central Bank as remain in force.
2. Keeping the Central Bank apprised on the proposed issuance timetable and the preparation and management of a realistic timetable which facilitates both the financing requirements of the Relevant Person and the views of the Central Bank on what is required for effective review of the Equity Prospectus (other than for equity securities issued by a collective investment undertaking subject to the Prospectus Regulations).
3. In circumstances where a 'tacit approval' for an Equity Prospectus (other than for equity securities issued by a collective investment undertaking subject to the Prospectus Regulations) has been requested from the Central Bank, the provision of a written assurance to the Central Bank that it is satisfied, as far as it is aware, that no issues of significance arise for the Relevant Person with any outstanding comments provided by

the Central Bank and that all remaining outstanding comments will be satisfactorily addressed.

4. In circumstances where a 'tacit authorisation' of an omission of information request for an Equity Prospectus (including for equity securities issued by a collective investment undertaking subject to the Prospectus Regulations) or Debt Prospectus has been requested from the Central Bank, the provision of a written assurance to the Central Bank that it is satisfied, as far as it is aware, that no issues of significance arise for the Relevant Person with any outstanding comments provided by the Central Bank and that all remaining outstanding comments will be satisfactorily addressed.



## SCHEDULE 2

### CENTRAL BANK OBLIGATIONS

The Central Bank shall use all reasonable endeavours to comply with the following obligations during the term of the Recognition:

1. Ensure the prompt and efficient handling of any review applications of a Debt Prospectus within the following timeframes:
  - (i) 3 business days for the review of the first submission of the draft Debt Prospectus, and
  - (ii) 2 business days for the review of each subsequent submission of the draft Debt Prospectus.
2. Ensure the prompt and efficient handling of any review applications of a Debt Financial Supplement<sup>1</sup> within 1 business day.
3. Ensure the prompt and efficient handling of any review applications of an Equity Prospectus (other than for equity securities issued by a collective investment undertaking subject to the Prospectus Regulations) within the following timeframes:
  - (i) 20 business days for the review of the first submission of the draft Equity Prospectus if the public offer involves securities issued by an Relevant Person which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public. 10 business days for the review of each subsequent draft.
  - (ii) For Equity Prospectuses not referred to in (i) above, 10 business days for the review of the first and subsequent submissions of the draft Equity Prospectus.
4. Ensure the prompt and efficient handling of any review applications of an Equity Prospectus (where the equity securities are issued by a collective investment undertaking subject to the Prospectus Regulations) within the following timeframes:
  - (i) 5 business days for the review of the first submission of the draft Equity Prospectus, and

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<sup>1</sup> Supplements which pertain solely to periodic financial reporting or regulatory filing.

(ii) 2 business days for the review of each subsequent submission of the draft Equity Prospectus.

5. Acting ethically and responsibly in its dealing with the Prospectus Advisor.

## SCHEDULE 3

### PROSPECTUS ADVISOR ELIGIBILITY CRITERIA

To be recognised as a Prospectus Advisor and to continue to be recognised as a Prospectus Advisor, a legal or natural person must:-

1. be or be a subsidiary of, or be otherwise owned or controlled by:
  - (i) an investment firm authorised under Directive 2004/39/EC or Directive 2014/65/EU to provide investment advice; or
  - (ii) a credit institution authorised under Directive 2006/48/EC or Directive 2013/36/EU; or
2. be a recognised sponsor on at least one Regulated Market; or
3. a firm of solicitors; or
4. otherwise satisfy the Central Bank that it has systems, procedures and experienced personnel to otherwise conduct the role of Prospectus Advisor, and
5. be able to satisfy the Central Bank of the systems, procedures and experienced personnel it has in place to ensure that Relevant Persons and their advisors understand the requirements of the Central Bank and be able to satisfy the Central Bank that the Prospectus Advisor's process for submitting and amending the Prospectus is efficient and reliable.

## SCHEDULE 4

### CHARGES

#### ANNUAL CHARGE<sup>2</sup>

The charge payable annually to the Central Bank for:

Prospectus Advisor that holds an authorisation from the Central Bank as a regulated financial service provider	€0
Prospectus Advisor (without such an authorisation)	€14,500

#### DOCUMENT CHARGES

The per document charge payable quarterly in arrears to the Central Bank for:

Debt Prospectus	€250
Debt Base Prospectus	€250
Debt Registration Document	€250
Debt Securities Note	€250
Debt Summary	€0
Debt Supplement	€250
Debt Financial Supplement	€250

Other than the charges set out above, no further charges shall be payable under this Agreement. The Central Bank reserves the right to amend Schedule 4.

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<sup>2</sup> Firms that are domiciled outside of the State will not be subject to the Annual Charge.

IN WITNESS whereof this Agreement the Parties to this Agreement have executed this Agreement in the manner following and on the day and year first above WRITTEN.

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**AUTHORISED REPRESENTATIVE  
THE CENTRAL BANK OF IRELAND**

**Date:**

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**AUTHORISED REPRESENTATIVE  
[ ]**

**Date:**