

Memorandum of Understanding

Commencement Date: xx 2021

Between Chartered Institute of Legal Executives, incorporated by Royal Charter (number RC000850) of Kempston Manor, Manor Drive, Kempston, Bedford MK42 7AB (“**CILEx**”),

CILEx Regulation Limited, a company incorporated in England and Wales (Company Number 06712409) of College House, Kempston, Bedford MK42 7AB

and

Association of Chartered Certified Accountants, incorporated by Royal Charter (number RC000732) of The Adelphi, 1–11 John Adam Street, London WC2N 6AU (“**ACCA**”)

(each a “Party”, together the “Parties”).

1. Background

- (a) The parties to this Memorandum of Understanding (MoU) are CILEx, CILEx Regulation and ACCA. It provides for the establishment of a mutual co-operation, co-ordination and the sharing of information between the Parties.
- (b) Recognising the value of promoting mutual co-operation for the advancement of their respective members and the accountancy and tax and legal professions, CILEx, CILEx Regulation and ACCA agree to the following terms as set out below.

2. Purpose

Regulation of CILEx Practitioner (ACCA Probate) individuals and CILEX-ACCA firms

- (a) The purpose of this MoU is to provide a framework for co-operation, co-ordination and the sharing of information between CILEX, CILEx Regulation and the ACCA. The operation of this MoU will:
 - i. Assist with regulatory work in the public interest
 - ii. Ensure consumers fully understand the regulatory environment
 - iii. Enable CILEx Regulation and the ACCA to co-operate to help prevent and/or take action against dishonesty and/or serious misconduct

Other purposes

- (b) Except where explicitly stated otherwise, this MoU sets out the understanding between the Parties without any intention to create legal relations, rather in the spirit of mutual cooperation. Any collaborative ventures that may bind the Parties are subject to separate contractual arrangements. The purpose of this MoU is to explore opportunities for collaboration to their mutual benefit, to set out the respective roles and responsibilities of the Parties in working cooperatively to further each other's and their mutual interests.
- (c) No funding will be required from either Party except as mutually agreed from time to time. The Parties agree that all financial arrangements will be negotiated for each specific case prior to commencement of the activity and will depend on the availability of funds.

3. Duration and Termination

- (a) This MoU will be deemed to have come into force and effect on the Commencement Date (recorded at the top of this MoU) and will continue for a period of three (3) years from that date, unless terminated earlier. The parties agree to review this MoU annually. This MoU may be terminated at any time during its term by either ACCA or CILEx Regulation upon three (3) months' prior written notice to the other.
- (b) Any changes to this MoU that are agreed will be confirmed in writing by the parties and incorporated into a revised MoU.

4. Legal Status and Effect

- (a) Subject to clause [10(l)] below, neither CILEX, CILEx Regulation nor the ACCA will incur any legal liability arising solely from non-compliance with this MoU and nothing in this MoU shall be construed as requiring CILEX, CILEx Regulation or the ACCA to take any action which would otherwise be prohibited by law. The MoU does not create any legal right or obligation by any third party against either party and nor does it fetter the discretion of either party in its exercise of its work. Nevertheless, CILEX, ACCA and CILEx Regulation are genuinely committed to pursuing the aims and purposes of this MoU in good faith and intend to act in accordance with its terms.

REGULATION OF CILEX PRACTITIONER (ACCA PROBATE) INDIVIDUALS AND CILEX-ACCA FIRMS

Sections 5 – 9 of this MoU come into force at the point of transfer of ACCA individuals and firms into CILEx Regulation

5. Duplication of Effort and Resolution of Conflict

Duplication of effort

- (a) In order to ensure effective working, CILEx Regulation and ACCA will meet periodically in order to discuss the general progress of ongoing investigations, significant developments or issues of mutual interest. Where possible and in appropriate cases, CILEx Regulation and ACCA will co-operate in the course of

investigations or issues arising with a view to avoiding duplication of investigative work in order to better deliver their respective functions.

Resolution of conflict

- (b) Any issues or difficulties will be resolved through discussions between CILEx Regulation and ACCA. Where issues or difficulties arise, these need to be fully documented in a format readily understood by a third party. Where necessary, issues or difficulties will be referred to senior management in the respective organisations for resolution.
- (c) Provisions addressing regulatory conflict specifically and how it should be handled are set out in the CILEx Regulation-ACCA Handbook 2021.

6. Roles and Responsibilities

- (a) The Chartered Institute of Legal Executives (CILEx) is the professional body representing Chartered Legal Executives (also known as Fellows) and individuals in other grades of CILEx membership. CILEx is an Approved Regulator under the Legal Services Act 2007 and has delegated its regulatory functions to CILEx Regulation in accordance with the Royal Charter and Bye-Laws 30 January 2012.
- (b) CILEx Regulation regulates on a contractual basis whereby its regulated community (Chartered Legal Executives (Fellows), CILEx Practitioners, CILEx Authorised Entities, Associate Prosecutors and individuals in other grades of CILEx membership) signs up to adhere to the CILEx Code of Conduct, and other CILEx rules and regulations.
- (c) The Association of Chartered Certified Accountants (ACCA) is the professional body representing Chartered Certified Accountants (also known as members). ACCA regulates accountants and conducts its representative and regulatory functions in accordance with its Royal Charter, Bye-laws and regulations. ACCA's regulated community (members, firms and other persons who agree to be bound by the regulations) is required to comply with ACCA's Bye-laws, regulations, and Code of Ethics and Conduct.

7. Aims

- (a) The MoU is designed to provide a framework for the co-ordination of regulatory work and as such its aims include:
 - i. Provision of a framework for lawful information sharing about the regulated community of each of the parties to this MoU, and which includes any persons or bodies applying to either party for authorisation to become a regulated body or person.
 - ii. Consumer protection and redress through increased collaboration and coordination between the parties.
 - iii. A coordinated approach to oversight which aims to reduce regulatory cost through the minimisation of duplication of effort.

- iv. Provide a framework for the co-ordination of regulatory work to help protect the financial interests of consumers in relation to PII and compensation arrangements.
- v. A coordinated approach to minimise the occurrence of regulatory conflict between the parties.

Transparency

- (a) The parties will work together to ensure common and consistent standards to ensure that consumers understand about the different roles of each organisation. They will:
 - i. Meet and communicate regularly, and at least annually, to discuss matters of mutual interest;
 - ii. Consult one another at an early stage on any issues which might have significant implications for the other organisation in relation to the regulation of ACCA members and firms for reserved legal activities; and
 - iii. Share information, including data on regulated individuals and firms and general reporting requirements, to support CILEx Regulation and ACCA to carry out their statutory, regulatory and disciplinary functions.

8. Data Sharing

- (a) This MoU will be complemented and supported by a written data sharing agreement, as well as operational procedures which will include detailed provisions for information governance and security, including the practical exchange of information.
- (b) Given the confidential and sensitive nature of the information likely to be shared by the parties, at a minimum the agreement and procedures will cover:
 - i. The nature and content of the information that may be shared, including how the accuracy of that information will be ensured.
 - ii. Common rules for the retention and deletion of the shared information and procedures for resolving any differences between the parties.
 - iii. Common technical and security arrangements and policies, including the transmission of and access to the shared information.
 - iv. Data security policies and staff training.
- (c) The parties agree to share information using secure email and to store the shared information in a secure manner in accordance with the parties' retention policies.
- (d) Where there is a need to make a public statement about the exchange of information, the parties agree to liaise before finalising the individual statements each party will make.

9. Principles for regulation of CILEx Practitioner (ACCA Probate) Individuals and CILEX-ACCA Firms

- (a) The regulatory objectives set out in section one of the Legal Services Act 2007 establish the key guiding principles of this MoU. Further principles are set out below to assist in a fuller understanding of how the parties will cooperate and collaborate.

Sharing of Information

- (b) This MoU is guided by statutory, regulatory, common law and other considerations, duties, obligations and constraints as they apply to the sharing and disclosure of information in the operation of this MoU including the Human Rights Act 1998 and common law duties, including confidentiality, privacy and the Data Protection Act 2018 and thereafter the UK General Data Protection Regulation (UK GDPR), tailored by the Data Protection Act 2018, UK data protection legislation and any relevant codes of conduct or certifications. Subject to being lawful and in the public interest, the parties agree to disclose relevant information to the other to enable the assessment of risk to the public such as to:

- i. Minimise the risk of financial default
- ii. Minimise the risk of fraud or other criminality
- iii. Identify the risk of financial failure
- iv. Minimise the risk to clients
- v. Ensure clients understand who is dealing with matters
- vi. Resolve regulatory conflicts
- vii. Minimise duplication

- (c) The appropriateness and lawfulness of sharing the information will be determined by the disclosing party on a case by case basis and is subject to the condition that the receiving party is reasonably considered able to take regulatory or other proper action upon that information.

- (d) The parties agree to use the shared information, for proper purposes only, such as regulatory, disciplinary, contractual or other legal, enforcement or regulatory investigations or proceedings. The disclosing party will notify the receiving party of any restrictions on the use to which the information can be put including any restrictions as to the disclosure of the shared information to third parties.

- (e) The parties agree to share information with each other to:

- Enable the risk of harm and/or detriment to the public posed by a regulated body, or person, including an applicant to be assessed and mitigated where practicable and appropriate.
- Ensure that alleged criminality, misconduct or other failures can be properly investigated and decided upon by the most appropriate party.
- Enable the protection of consumers' interests (financial and otherwise).

Co-ordinated Oversight and Minimisation of Duplication of Effort

- (f) The parties will co-operate where appropriate in coordinating oversight and investigation to achieve the regulatory objectives as set out in the Legal Services Act 2007.
- (g) Where one party identifies that the other party may have a proper interest in issues, persons or bodies subject to an investigation within its regulatory remit, the Identifying party will discuss whether exchange of Information is appropriate with the other party. Proper purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, persons subject to intervention, other regulators, professional bodies, prosecuting bodies and law enforcement agencies including the police, HMRC and the National Crime Agency (or any successor body).

Investigation and Enforcement

- (h) CILEx Regulation and ACCA recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate regulator will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise and resources, they will seek to ensure that in cases of investigations, CILEx Regulation and ACCA will notify each other of significant developments where the other is likely to have an interest, upon receipt of any request to do so from the other party.
- (i) CILEx Regulation and ACCA may refer a matter for action if the other party is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other party determines not to proceed, an explanation will be provided, where possible.
- (j) Where CILEx Regulation and ACCA agree that an investigation should be carried out by both parties, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one party's investigation should proceed before the other party's investigation.
- (k) The parties will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.
- (l) Relevant CILEx Regulation and ACCA staff will, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

10. Other areas of co-operation

Developing a route to enable ACCA members authorised under the Legal Services Act 2007 to provide non-contentious probate activities

- (a) ACCA will work together with CILEx and CILEx Regulation in the following areas:
- i. Explore and create new pathways for ACCA members and firms to carry on reserved legal activities in England and Wales;
 - ii. Further to the above, the parties intend that:
 - I. ACCA will cease authorising and regulating individuals and firms for non-contentious probate from [xx 2021];
 - II. ACCA will transfer all individuals and firms authorised by, and continuing to meet the authorisation requirements of, ACCA for non-contentious probate to CILEx Regulation by [xx 2021];
 - III. ACCA authorised individuals and firms transferred to CILEx Regulation will be automatically authorised for non-contentious probate with CILEx Regulation, and going forward will be regulated by CILEx Regulation with regard to such probate activities;
 - IV. ACCA authorised individuals and firms transferred to CILEx Regulation will be encouraged to renew their authorisation for non-contentious probate with CILEx Regulation, but may apply to be authorised for probate with another approved regulator;
 - V. From [xx 2021], ACCA members and firms who wish to be authorised for non-contentious probate (and have not previously been authorised by ACCA) will have the opportunity to obtain probate authorisation from CILEx Regulation, in accordance with the rules, regulations and guidance that apply to CILEx/ACCA authorised firms, and will be regulated by CILEx Regulation for reserved legal activities only (for the sake of clarity no regulation of probate will be carried out by ACCA); and
 - VI. Following the transfer of ACCA authorised individuals and firms to CILEx Regulation, ACCA shall make arrangements to have its approved regulator status for probate revoked.
 - VII. Provide access to CILEx education, professional development and practitioner resources;
 - VIII. Jointly develop strategies and marketing campaigns to promote the collaboration between CILEx, CILEx Regulation and ACCA;
 - IX. Seek to ensure that investigations are not compromised.

Publication

- (b) This MoU is a public document and the parties will publish it as they see fit.

Confidentiality

- (c) The parties agree to keep confidential any information which is disclosed or obtained and which is not publicly available or already known and not to disclose such information to third parties, otherwise than in accordance with the consent of the other party or as required by law or any relevant regulatory authority.

Anti-Bribery and Anti-Slavery Measures

- (d) Each Party will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption and each other's respective anti-bribery and gift and hospitality policies (where applicable) as may be amended from time to time, copies of which will be provided on written request.
- (e) Each Party shall ensure that it and any persons or subcontractors involved in the delivery of the objectives of this MOU shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force.
- (f) Each Party shall promptly notify the other Parties on any actual or potential request or demand for any undue inducement of any kind that any Party receives in connection with the performance of this MOU.
- (g) Breach of this section shall be deemed to be a material breach and in case any party breaches this section, the non-breaching party may terminate the MOU immediately by written notice.

Intellectual Property Rights

- (h) All intellectual property content that is developed jointly by ACCA and CILEx Regulation after the commencement of this MOU will be jointly owned by ACCA and CILEx Regulation and subject to any other terms and conditions that will be worked out on a case-to-case basis, as may be agreed upon in writing.
- (i) Any intellectual property that is owned by any of the Parties, pre dating this agreement, and is exploited or modified under this MOU, will remain the sole property of that Party. It will therefore not be reproduced or transmitted in any other form or by any other means, electronic or mechanical, including photocopying, recording on any storage or retrieval system, without the prior permission and written consent of the intellectual property owner.
- (j) Use of logos, trademarks, intellectual property, copyright materials, etc. will be in accordance with each organisation's guidelines. None of the Parties shall use, nor permit any person or entity to use the name, logo (or any variation thereof), intellectual property, copyright materials, etc. of the other party without first obtaining the other Party's written consent.

Assignment

- (k) Unless this MOU expressly states otherwise, no right or obligation arising under this MOU may be assigned, transferred or otherwise disposed of, in whole or in part, without the prior written agreement of the parties.

Form of Understanding

- (l) This MOU outlines the areas of co-operation that have been agreed between CILEx, CILEx Regulation and ACCA, however nothing in this MOU should be construed as creating legal obligations between the Parties, except for clauses 10(c) (Confidentiality), 10(d)-(g) (Anti-Bribery and Anti-Slavery Measures), 10(h-j) (Intellectual Property), and 10(k) (Assignment). This MOU supersedes any previous agreement between the parties relating to its subject matter.

Good Faith

- (m) In entering into this MOU, the parties recognise that it is impractical to make provisions for every contingency that may arise during the course of the MOU.

- (n) Accordingly, the parties declare it to be their intention that this MOU shall operate between them in accordance with the principles of good faith, with fairness and without detriment to the interests of anyone and if any dispute arises, the parties shall use commercially reasonable endeavours to agree upon such action as may be necessary and equitable to remove or resolve the cause or causes of the same.

Signed for and on behalf of **Chartered Institute of Legal Executives**

Name: _____

Position: _____

Date _____

Signed for and on behalf of **CILEx Regulation Limited**

Name: _____

Position: _____

Date _____

Signed for and on behalf of **Association of Chartered Certified Accountants**

Name: _____

Position: _____

Date: _____