

DATA SHARING AGREEMENT

**ASSOCIATION OF CHARTERED
CERTIFIED ACCOUNTANTS**

and

CILEx REGULATION LIMITED

Date: 21/10/2021

DATA SHARING AGREEMENT

DATED 21 October 2021

PARTIES

- (1) **Association of Chartered Certified Accountants**, a professional body incorporated by Royal Charter (Company No. RC000732), with its registered office at The Adelphi, 1/11 John Adam Street, London, WC2N 6AU ("**ACCA**")
- (2) **CILEx Regulation Limited**, a company incorporated in England and Wales with Company Number 06712409 whose registered office address is College House, Manor Drive, Kempston, Bedford MK42 7AB ("**CILEx Regulation**")

(each a "**Party**", together the "**Parties**").

BACKGROUND

- (A) CILEx, CILEx Regulation and ACCA have entered into a memorandum of understanding dated on or around the date of this Agreement (the "**MoU**"). The MoU sets out the ways in which the parties will work together, including exploring and creating new pathways for ACCA members and firms to carry on reserved legal activities in England and Wales.
- (B) The purpose of this Agreement is to set out the framework for the sharing of personal data between the parties above as independent data controllers for the Agreed Purpose.

OPERATIVE TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Agreed Purpose" means to exchange regulatory and disciplinary information about respective members of ACCA and CILEx Regulation in order to facilitate investigating and addressing issues of licensing, monitoring, complaints and discipline, and more generally about members fitness and propriety or as required to do so to comply with any applicable legislation;

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK or EU including:

- (a) the UK General Data Protection Regulation (UK GDPR);
- (b) the Data Protection Act 2018;
- (c) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and

Electronic Communications Regulations
2003 (SI 2003 No. 2426) as amended

- (d) any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications)
- (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and
- (f) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant supervisory authority relating to such Data Protection Legislation (in each case whether or not legally binding);

“Permitted Recipients”	means ACCA and CILEx Regulation, the employees of each party and any third parties engaged to perform activities directly in connection with the MoU;
“Shared Personal Data”	means the personal data to be shared between the parties pursuant to the MoU, as set out at Schedule 1 to this Agreement;
“Data Subject Request”	means the exercise by a data subject of his or her rights under Article 15 of the UK GDPR and the DPA 2018;
“Supervisory Authority”	means the relevant supervisory authority in the territories where the parties to this Agreement are established.

- 1.2 The terms “**data controller**”, “**data processor**”, “**data subject**”, “**personal data**”, “**processing**” and **appropriate technical and organisational measures** have the same meanings as set out in the Data Protection Legislation.
- 1.3 Any undertaking by either Party hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of that Party.
- 1.4 The layout, headings and titles in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they appear to refer.
- 1.5 Words in the singular shall include the plural and vice versa save where specifically defined herein.

2. OBLIGATIONS

- 2.1 Each Party shall ensure prior to sharing the Shared Personal Data with the other Party that all appropriate privacy notices have been made available to each relevant data subject, as necessary to permit the sharing of the Shared Personal Data with the other Party for the Agreed Purpose and in accordance with Data Protection Legislation. CILEx Regulation and ACCA shall promptly notify the other Party if it becomes aware that a relevant data subject has requested that their personal data is no longer processed by either Party.
- 2.2 Each Party shall ensure that at all times:
- 2.2.1 it shall undertake all processing of the Shared Personal Data only for the Agreed Purposes in accordance with this Agreement and in all respects in accordance with Data Protection Legislation;
 - 2.2.2 it shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with clause 2.2.3 and 2.2.4 of this Agreement during the term of the MoU;
 - 2.2.3 it shall ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data;
 - 2.2.4 it undertakes to inform the data subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by Article 14 of the UK GDPR;
 - 2.2.5 it shall not by any act or omission cause the other Party to be in breach of any of its obligations under the Data Protection Legislation;
 - 2.2.6 it shall not disclose or allow access to the Shared Personal Data to anyone other than its Permitted Recipients;
 - 2.2.7 it shall ensure that all its Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality and compliance with Article 28 and Article 30 of the UK GDPR), which are no less onerous than those imposed by this Agreement and shall remain liable to the other Party for the acts and/or omissions of its Permitted Recipients;
 - 2.2.8 it shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. The parties shall keep such security measures under review and shall carry out such updates as they agree are appropriate throughout the term.
 - 2.2.9 it shall maintain complete and accurate records and information to demonstrate its compliance with this clause 2, and upon reasonable request

Appendix 4

shall make such records and information available to the other Party for inspection.

2.2.10 it shall not transfer any personal data received from CILEx Regulation or ACCA outside the EEA without the other Party's prior written consent.

2.2.11 if consent is obtained under clause 2.2.10 above, the transferring Party must ensure that:

(a) it complies with the provisions of Articles 26 of the UK GDPR (in the event the third Party is a joint controller); and

(b) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or

(c) one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.

2.3 ACCA or CILEx Regulation shall:

2.3.1 promptly (and in any event within 24 hours) notify the other Party if it suspects or becomes aware of any actual or threatened occurrence of any Personal Data Breach in respect of any Shared Personal Data. Either Party shall promptly (and in any event within 24 hours) provide all such assistance and information as ACCA or CILEx Regulation requires to report any actual or suspected Personal Data Breach to a Supervisory Authority and to notify affected data subjects under Data Protection Legislation; and

2.3.2 promptly inform the other Party if it receives any request from data subjects to exercise their rights under the Data Protection Legislation and provide such assistance as is reasonably required to enable the other Party to comply with such request within the time limits imposed by the Data Protection Legislation.

2.4 Subject to the remainder of this Agreement, as between the parties, responsibility in respect of:

2.4.1 acknowledgment of receipt any Data Subject Request falls on the Party which first received such Data Subject Request, provided that it is then the responsibility of both parties to determine together how the Data Subject Request shall be dealt with and responded to;

2.4.2 acknowledgement of receipt any complaint falls on the Party which receives the complaint from a data subject, provided that it is then the responsibility of both parties to determine together how the complaint shall be dealt with and responded to;

Appendix 4

- 2.4.3 any personal data breach (including notification of the Supervisory Authority and/or data subject(s)) impacting or relating to any Shared Personal Data in the possession or control of ACCA or CILEx Regulation (or any third Party with whom it has shared such data) falls on the Party responsible for the breach; and
 - 2.4.4 any other obligation under Data Protection Legislation (including any obligation to notify the Supervisory Authority and/or data subject(s) of any other personal data breach) falls on each Party subject to such obligation(s) under the Data Protection Legislation.
- 2.5 Each Party shall promptly co-operate with and provide reasonable assistance, information and records to the other to assist each Party with their respective compliance with Data Protection Legislation and in relation to all complaints and Data Subject Requests.
 - 2.6 The parties shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purpose.
 - 2.7 Notwithstanding clause 2.6 above, the parties may retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective industries.

3. **TERM**

- 3.1 Subject to clause 3.2 below, this Agreement shall continue to remain in force for the duration of the term of the MoU, or so long as the MoU remains in force, including where the term of the MoU is extended (for convenience, the duration of the MoU is 3 years, but may be extended by mutual agreement of the parties provided 3 month's written notice is given to the other Party).
- 3.2 Each Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect.

4. **LIABILITY**

Each Party shall be liable for and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Agreement.

5. **NOTICES**

- 5.1 Any notice given to a Party under or in connection with this agreement shall be in writing and shall be:
 - 5.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to the relevant address set out in clause 5.3.

Appendix 4

5.1.2 sent by email to the address Standards.Department@accaglobal.com in respect of **ACCA** and to DPO@cilexregulation.org.uk in respect of **CILEx Regulation**.

5.2 Any notice shall be deemed to have been received:

5.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

5.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and

5.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 5.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a Business Day that is not a public holiday in the place of receipt.

5.3 The following addresses shall be used when delivering any notices by mail to the respective parties:

(a) ACCA: Sundeep Takwani, Director - Regulation, ACCA, The Adelphi, 1-11 John Adam Street, London WC2N 6AU;

(b) CILEx Regulation: Vicky Purtill, Director of Authorisation and Supervision, CILEx Regulation, College House, Kempston, Bedford, MK42 7AB.

6. **AMENDMENTS OR VARIATION**

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each Party.

7. **COUNTERPARTS**

This Agreement may be entered into by the Parties on separate counterparts, each of which shall be an original but which together shall constitute one and the same agreement.

8. **LAW AND JURISDICTION**

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation shall be subject to the exclusive jurisdiction of the courts of England and Wales.

9. **NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties nor make any Party the agent of another Party.

Appendix 4

10. SEVERANCE

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

11. WAIVER

No failure, delay or omission by either Party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

12. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Contracts (Rights of Third Parties) Act 1999 shall have no application to this Agreement whatsoever and the Parties do not intend to confer hereunder any benefit on any third party which that third party would not have had other than by operation of the Contracts (Rights of Third Parties) Act 1999.



Signed by)
)
For and on behalf of)
)
CILEx REGULATION LIMITED)

.....

Name: Vicky Purtill

Title: Director of Authorisation and Supervision

Date: 21/10/2021



Signed by)
)
For and on behalf of)
)
ASSOCIATION OF CHARTERED)
CERTIFIED ACCOUNTANTS)

Name: Maggie McGhee

Title: Executive Director – Strategy & Governance

Date: 21/10/2021

SCHEDULE 1

Shared Personal Data

The following types of Personal Data will be shared between the parties during the term of the Agreement (for the avoidance of doubt this is not an exhaustive list):

Submitted to CILEx REGULATION by ACCA	Received by ACCA from CILEx REGULATION
<p>List of individuals and firms authorised for non-contentious probate by ACCA as at the date of transfer</p> <p>Data that is collected as part of the initial application / renewal of probate authorisation will be shared with CILEx Regulation</p> <p>Data is collected on the applications forms for a Firm’s Legal Activities Certificate (FLAC) and an Authorised Legal Activities Individual (ALAI) – member and non-member</p> <p>Personal data includes:</p> <ul style="list-style-type: none"> • Member/non-member name • ACCA membership number • Date of birth • Professional qualification • Position held • Email • Firm name and address • Personal address 	<p>List of ACCA members and firms regulated for legal activities by CILEx Regulation</p>
<p>Details of individuals and firms authorised for non-contentious probate by ACCA in the period from the date of transfer to the date ACCA ceases to regulate probate activities</p> <p>(See above for data)</p>	<p>Enquiries about the status of ACCA members and firms applying to be regulated for legal activities by CILEx Regulation</p>
	<p>CILEx Regulation shares concerns relating to poor professional practice when monitoring ACCA members and firms regulated for legal activities by CILEx Regulation</p>