

**DELEGATION AGREEMENT**

**DATED [       ]**

**Chartered Institute of Trade Mark Attorneys  
Intellectual Property Regulation Board Limited**

**THIS DELEGATION AGREEMENT is effective the [ ] day of [ ] [2020]**

**THIS AGREEMENT IS BETWEEN:**

- (1) Chartered Institute of Trade Mark Attorneys [Company number RC000889]**
- (2) Intellectual Property Regulation Board Limited [ Company number 06624948]**

## **1. Definitions**

In this Delegation Agreement:

**CIPA** means the Chartered Institute of Patent Attorneys

**CITMA** means the Chartered Institute of Trade Mark Attorneys

**IGR** means the LSB's Internal Governance Rules dated 24 July 2019

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

**IPReg** means the Intellectual Property Regulation Board Limited

**LSA** means Legal Services Act 2007

**LSB** means the Legal Services Board

**Party** means either CITMA or IPReg individually and **Parties** means both collectively

**Patent attorney** means a person who is registered or who can seek to be registered by the PRB under the CDPA

**PCF** means the practising certificate fee as defined in section 51 of the LSA

**PRB** means the Patent Attorney Regulation Board

**Register** means the statutory register kept on behalf of CITMA by the TRB for the purposes, as appropriate, of the TMA and the LSA

**TMA** means the Trade Marks Act 1994

**Trade mark attorney** means a person who is registered or can seek to be registered by the TRB under the TMA

**TRB** means the Trade Mark Attorney Regulation Board

## 2. Interpretation

In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine. Any reference to a named body or organisation includes that body or organisation by whatever name it is subsequently known, or the successor to that body or organisation. Any reference to an enactment includes that enactment as amended or re-enacted from time to time.

## 3. Preamble

- A. The IGR have been created to ensure that the LSB can comply with its duty under section 30 of the LSA to require the separation of representative and regulatory functions of legal services approved regulators. The intention of the IGR is to enhance regulatory independence as far as is reasonably practicable by: (i) creating and maintaining clear divisions which prevent the 'representative functions' prejudicing the 'regulatory functions' (as defined in sections 27(2) and 27(1) of the LSA); (ii) promoting the 'regulatory objectives'

set out at section 1 of the LSA; and (iii) upholding the ‘better regulation principles’ set out at section 28(3) of the LSA.

- B. This Delegation Agreement is drafted so as to be consistent with the IGR, but in the event that there is any conflict, the drafting set out in the IGR will prevail.
- C. CITMA is the professional representative body of trade mark attorneys and is an approved regulator, under Part 1 of Schedule 4 to the LSA.
- D. CIPA is the professional representative body of patent attorneys and is an approved regulator, under Part 1 of Schedule 4 to the LSA.
- E. CITMA is incorporated under Royal Charter and IPReg is a company limited by guarantee without share capital.
- F. This Delegation Agreement recognises that the overarching duty imposed on an approved regulator by Rule 1 of the IGR is to ensure that the exercise of its regulatory functions is not prejudiced by any representative functions it may have.
- G. The source of CITMA’s power to delegate its regulatory functions to another body is set out in Article 13 of CITMA’s Charter and in Bye-Law 76, as granted on 17 November 2016 (as amended, revoked and replaced from time to time).
- H. Together with CIPA, CITMA has established IPReg as the overarching regulatory joint board, to which each of CITMA and CIPA have delegated their respective regulatory functions. IPReg will remain a limited company so that the membership of its board will comprise directors (to be known as “the IPReg Board”). In order to exercise its regulatory functions, the IPReg Board will separately establish the Trade Mark Attorney Regulation Board (“TRB”) and the Patent Attorney Regulation Board (“PRB”). For the purpose of exercising the regulatory functions delegated to it, the IPReg Board will be responsible for determining the composition of its board, the TRB and the PRB in accordance with the IGR. The TRB and the PRB may sit jointly as the “IPReg Board” whose composition will also be subject to the IGR.

- I. The Parties acknowledge in particular that, in accordance with the IGR, it is for IPReg to:
  - I. determine how to discharge its regulatory functions, in a way which is compatible with the regulatory objectives;
  - II. assess, under Section 28(2)(b) of the LSA, the most appropriate way of meeting those objectives;
  - III. have regard to the better regulation principles and best regulatory practice in discharging its regulatory functions;
  - IV. determine any principles beyond the better regulation principles which represent best regulatory practice under Section 28(3)(b) of the LSA; and
  - V. determine its own governance (including rules of procedure), structure, priorities and strategy.
- J. This Delegation Agreement replaces, with effect from the date set out at the start of this agreement, the Amended Delegation Agreement dated 23 May 2012. This Delegation Agreement will remain in force unless terminated in accordance with clauses 33 to 36 below.

### **Delegation of regulatory functions**

4. All regulatory functions as defined by the LSA and TMA are delegated by CITMA to IPReg.
5. The TRB shall exercise and undertake all regulatory functions of IPReg which have been delegated to IPReg by CITMA. IPReg will provide day to day support for the operation of the TRB.
6. For the avoidance of doubt, the regulatory functions that are delegated under clause 4 and to be exercised and undertaken under clause 5 above include, but are not limited to:
  - a. The existence and upkeep of and any other work related to the register of trade mark attorneys (s83 TMA 1994);

- b. The regulation of trade mark attorneys (s83A TMA 1994);
- c. The making, amending, monitoring and enforcement of regulatory arrangements (as defined in s21 LSA).

### **Composition and governance**

- 7. Composition of both the IPReg Board and the TRB must each comply with Rule 7 of the IGR in that there must be a lay majority in respect of nominated individuals and there must be a lay Chair.
- 8. IPReg will, independently of CITMA, determine the procedures it has in place for the appointment, reappointment and termination of the tenures of the Chair of the IPReg Board and the TRB and other board members in accordance with the requirements of Rule 8 of the IGR.
- 9. Remuneration of the Chair and other board members of the IPReg Board and the TRB will be determined independently of CITMA.

### **CITMA – the approved regulator’s residual assurance role**

- 10. In respect of applicable IGR matters, including but not limited to the governance, structure, priorities and strategy, any amendment to regulatory arrangements, appointments and terminations and budgets CITMA may only seek to influence determinations of the IPReg Board and/or the TRB. CITMA must only do so in the exercise of its representative functions and in doing so, must not prejudice the independent judgement of IPReg, and/or the TRB.
- 11. In the context of CITMA being assured of compliance by IPReg with section 28 of the LSA, the IPReg Chief Executive is responsible for day-to- day contact with the Chief Executive of CITMA. This does not prevent contact between the Parties at other levels on other matters. Each Party will also nominate an individual who will be the point of contact in the absence of its Chief Executive.

12. Further to clause 111 above, IPReg will provide sufficient information to CITMA as is reasonably required for CITMA to be confident that IPReg is discharging its regulatory functions in accordance with section 28 of the LSA. To that end:

- a. the Parties have developed and agreed a Protocol for the provision of information (“Information Sharing Protocol”);
- b. the Parties have agreed that their Chief Executives will meet on a monthly basis unless otherwise agreed by them;
- c. a Regulatory Forum comprising nominated individuals from CIPA, CITMA and IPReg will meet on a quarterly basis unless otherwise agreed by them. The Regulatory Forum will also review, on an annual basis, the effectiveness of the information provided under the Information Sharing Protocol at its Q4 meeting, unless otherwise agreed by both Parties.

13. Both Parties will act in accordance with the Information Sharing Protocol.

14. CITMA acknowledges that it has put in place effective safeguards in accordance with Rule 3 of the IGR to prevent the misuse of information received for residual assurance purposes and it agrees to monitor these safeguards on a regular basis to ensure they remain effective (see LSB Guidance paragraph 3.30).

15. In accordance with Rule 9 of the IGR, both Parties acknowledge that IPReg receives the entirety of the funds raised through the PCF. Accordingly, IPReg will ensure it and the TRB will raise the resources they reasonably require to exercise their regulatory functions.

## **Communications**

16. In order to exercise its regulatory functions, IPReg may directly contact and communicate with the LSB, the Legal Services Consumer Panel, the Office for Legal Complaints, other approved regulators and regulatory bodies and any other person. Whilst IPReg will keep CITMA informed of such communications, where appropriate, IPReg does not need to obtain the consent of CITMA or seek approval or assistance from CITMA in respect of these communications.

## **Recording non-compliance**

17. In order to ensure that CITMA can comply with the requirements of Rule 13 of the IGR (Candour about compliance), each Party will maintain a record of any issues that it considers to be non-compliant with the IGR together with any remedy (if a remedy has been undertaken or a remedial plan agreed). The Regulatory Forum will consider these records when it meets.

## **Individual conduct**

18. Each Party is individually responsible for compliance training of its staff to ensure each individual staff member is aware of and compliant with, their obligations under this Agreement, the Information Sharing Protocol, the IGR and the LSA.

## **Equivalence in delegation by CITMA and CIPA to IPReg and board independence**

19. The Parties acknowledge that it is intended that (i) the regulatory functions of CITMA, as an approved regulator, which have been delegated to IPReg are to be exercised and undertaken by the TRB and (ii) likewise, the regulatory functions of CIPA, as an approved regulator, which have been delegated to IPReg are to be exercised and undertaken by the PRB. IPReg will ensure that those issues that only relate to trade mark attorneys are considered solely by the TRB and that those issues that only relate to patent attorneys are considered solely by the PRB. IPReg will ensure that it/PRB/TRB carries out regulatory functions in a transparent, proportionate and non-discriminatory way at all times. IPReg will always have due regard to the need for equity in the regulation of the patent attorney profession and the trade mark attorney profession in the manner in which it/PRB/TRB carries out these functions.

## **Disputes**

20. If a dispute arises between the Parties about (i) whether an information request by CITMA is being made on a reasonable basis, or (ii) any other matter arising under or in connection with the IGR, the Parties will use reasonable endeavours to resolve the dispute by discussion between the members of the Regulatory Forum (either at its next scheduled meeting or outside the agreed schedule of meetings). If the dispute cannot be resolved between the Parties in a reasonable period, the dispute must be referred to the LSB under Rule 14(2) of the IGR.



## **Warranties**

21. Each Party warrants that it has full power and capacity to enter into this Agreement and comply with the obligations set out herein.

## **No proceedings**

22. Neither Party will issue proceedings against the other Party in pursuance of any right or claimed right or obligation under this Agreement.

## **Publication**

23. This Agreement and the Information Sharing Protocol will be published, separately, on the websites of each Party. If a third party requests a copy of this Agreement and/or the Information Sharing Protocol in any other medium, where the request is reasonable, the Parties will make this available.

## **Confidentiality**

24. Neither Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
25. Each Party agrees that it shall not, at any time during this Agreement, disclose to any person any confidential information concerning the other Party, except as permitted by clause 26.
26. Each Party may disclose the other Party's confidential information:
  - a. to its employees, officers, representatives or advisors who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement; and
  - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## **Force Majeure**

27. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected Party shall be entitled to a reasonable extension of time for performing such obligations. If the period of delay or non-performance continues for six months, the Party not affected may terminate this agreement by giving six months' written notice to the affected Party (as applicable).

## **Intellectual Property Rights**

28. CITMA shall retain ownership of all Intellectual Property Rights in its pre-existing and newly created materials used in connection with the performance of its representative functions as anticipated by this Agreement. IPReg shall retain ownership of all Intellectual Property Rights in its pre-existing and newly created materials used in connection with the performance of its regulatory functions as anticipated by this Agreement. ("**IPReg Materials**"). IPReg grants CITMA, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Agreement to copy and modify the IPReg Materials for the purpose of performing its representative functions.

## **No agency over the other**

29. Nothing in this Agreement is intended to, or shall be deemed to, constitute either Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party, unless provided otherwise in this Agreement.

30. Each Party confirms it is acting on its own behalf and not on behalf of any other Party.

## **Variations**

31. Subject to the LSB's rule approval process set out at Part 3 of Schedule 4 to the LSA, the Parties acknowledge that this Agreement may be amended from time to time by written agreement between the Parties.

## **Counterparts**

32. This Agreement may be executed in any number of counterparts, each of which when signed by or on behalf of each Party shall be regarded as an original, but all of which together shall constitute one agreement binding on both Parties.

## **Termination and withdrawal from the Delegation Agreement**

33. If, on referral to the LSB of a dispute under Rule 14(2) of the IGR, the LSB concludes that the Agreement should be terminated, IPReg shall co-operate so as to facilitate the establishment by CITMA, prior to termination, of alternative arrangements so as to enable CITMA to comply with the overarching duty imposed on it by Rule 1 of the IGR.
34. If the LSA is repealed or modified to such an extent that the Parties agree in writing that the Agreement is rendered redundant, then after the Parties have notified the LSB of the position, the Parties can agree in writing to terminate the Agreement.
35. Further and in any event, CITMA may (i) withdraw from the arrangements established by and (ii) terminate this Agreement at any time, provided that nine months' written notice is given to IPReg. A lesser period of notice may be agreed between the Parties.
36. If any of the events in clauses 33, 34 or 35 occur, the Parties must ensure that IPReg and the TRB continue to operate for so long as is reasonably necessary to conclude any outstanding business relating to the exercise of regulatory functions under clause 4.

## **Notices and information**

37. Any notice given or any information to be provided between Parties under this Agreement must be sent by e-mail to the email address provided by the other Party or, in default, the email address of the Chair of the IPReg Board or the Chief Executive of CITMA.

### **Assignment of rights**

38. No Party may assign or purport to assign its rights and obligations under this Agreement.

### **Waiver of rights**

39. The waiver of any right under this Agreement by a Party shall not imply the waiver of any other right or of the Agreement as a whole.

### **Validity of provisions**

40. If a provision of this Agreement is found to be unlawful and/or unenforceable, it shall not affect the validity of any other provision in the Agreement.

### **Governing law**

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

Signed for and on behalf of the Chartered Institute of Trade Mark Attorneys

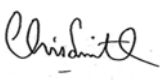
By: 

Name: Richard Goddard

Title: President

Date: 8<sup>th</sup> July 2020

Signed for and on behalf of Intellectual Property Board Regulation Limited

By: 

Name: Rt Hon Lord Smith of Finsbury

Title: IPReg Chair

Date: 8 July 2020