IN THE MATTER OF

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

-and-

(1) KPMG LLP
(2) STUART PETER JAMES SMITH

SETTLEMENT AGREEMENT

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1. This Settlement Agreement ("**Agreement**") is made on the eleventh day of January 2022 between Elizabeth Barrett as the Executive Counsel to the Financial Reporting Council (respectively "**the Executive Counsel**" and "the **FRC**"), KPMG LLP ("**KPMG**") and Stuart Peter James Smith ("**Mr Smith**"). The Executive Counsel, KPMG and Mr Smith together are described as "**the Parties**". The Agreement is evidenced by the signatures of the Executive Counsel on her own behalf, by Jeremy Barton on behalf of KPMG and by Mr Smith on his own behalf.

2. Terms used in this Agreement have the same meaning as set out in the Accountancy Scheme effective from 1 January 2021 as re-issued on 30 March 2021.

3. A Formal Complaint alleging Misconduct by KPMG and Mr Smith as respectively a Member Firm and a Member of the Institute of Chartered Accountants in England and Wales ("**the ICAEW**") was delivered by the Executive Counsel on 8 March 2021 and a Tribunal was convened. The Formal Complaint has been amended and re-amended with the approval of the Tribunal.

4. The relevant Misconduct is set out in Allegation 1 of the Re-amended Formal Complaint. It concerns representations made by KPMG and Mr Smith during an inspection of the audit of the financial statements of Regenersis plc for the financial year ended 30 June 2014 by the Audit Quality Review **("AQR")** inspectors of the FRC. The Allegation is that Mr Smith made or was responsible for representations which were misleading (namely that Mr Meehan, as the Non-Audit Relationship Partner for Regenersis, had not attended any Audit Committee meetings), while being reckless (a) as to whether those representations were misleading and (b) as to whether the FRC's AQR inspectors and/or the FRC would be misled by them.

5. The Allegation also records that Mr Smith acted at all material times in the course of his employment by KPMG and/or as an agent of KPMG acting within the scope of his actual or ostensible authority. The acts and omissions of Mr Smith are to be attributed to KPMG pursuant to paragraph 5(11) of the Accountancy Scheme.

6. KPMG and Mr Smith admit the Misconduct set out in Allegation 1.

7. The Executive Counsel and Mr Smith have agreed sanctions appropriate to reflect the Misconduct.

8. The Executive Counsel and KPMG have agreed that consideration of sanction in respect of KPMG's liability for Mr Smith's Misconduct should be determined by the Tribunal at the conclusion of the hearing of the Re-amended Formal Complaint.

9. The Parties recognise that the determination to be made in respect of this settlement is a matter for the Tribunal member in accordance with paragraph 8(5) of the Scheme.

Sanction

10. The Executive Counsel and Mr Smith have agreed the following in respect of sanction for his Misconduct:

    a. That Mr Smith be excluded from the ICAEW for a recommended period of three years.

    b. That Mr Smith pay a Fine of £150,000.

    c. The Fine shall be paid not later than 28 days after the date when this Agreement takes effect.

11. In determining the appropriate sanctions the Executive Counsel has had regard to the reasons for imposing sanctions set out at paragraph 9 of the Sanctions Guidance and followed the approach set out in paragraph 18 of the Sanctions Guidance, as set out in summary below.

Nature and Seriousness of the Misconduct

12. The Executive Counsel considers that the factors relevant to assessing the nature and seriousness of the Misconduct are:

    a. The conduct, by an individual approved to conduct audits, caused the FRC, a body tasked with monitoring audit quality by inspecting audits under the regulatory framework for statutory audit established by the Companies Act 2006, to be misled, or risked doing so. The FRC relies on Members of professional bodies to be straightforward in their dealings with the FRC in order for it to be able to carry out its monitoring and inspection functions effectively in the public interest.
    b. The Misconduct undermined this trust and in so doing put at risk the regulator's ability to protect the public, maintain public and market confidence in the regulatory regime and in the standards and conduct of Members, and deter breaches.
    c. The Misconduct is therefore plainly very serious.

d. The Misconduct involved a breach of the fundamental principle of integrity and was reckless. It is accepted however that the conduct was not dishonest.
e. At the relevant time Mr Smith was a director of KPMG and the audit engagement partner (as defined in ISA (UK) 220) for Regenersis plc.
f. The Misconduct was isolated, not repeated, and took place over a short period of a matter of days.
g. The Misconduct did not involve or cause or put at risk the loss of money.

Identification of Sanction

13. In light of the factors identified above the Executive Counsel and Mr Smith have agreed that the appropriate sanctions as regards Mr Smith are as set out in paragraph 10 above.

14. The Executive Counsel considers that the factors relevant to identifying the sanction are:
    a. The Misconduct, involving a lack of integrity in dealings with a regulator, is fundamentally incompatible with continued membership of a Participant and consequently a period of exclusion is required. In this case it is agreed that 3 years is the appropriate period, having regard to the fact that the Misconduct was reckless rather than intentional, and not dishonest, and that it was isolated and over a short period.
    b. It is appropriate to impose a financial sanction in combination with an order for exclusion having regard to the need to deter members of the accountancy profession from such Misconduct which would have passed undetected but for KPMG having drawn the matter to the FRC's attention.
    c. The level of the Fine reflects the seriousness of the Misconduct, Mr Smith's remuneration and that KPMG or its insurers will indemnify Mr Smith in respect of any Fine imposed, and is appropriate to act as an effective deterrent.
    d. The assessment of the sanctions individually and collectively has also taken into account the admissions made by Mr Smith (albeit at a late stage) and to the fact that Mr Smith has been suspended from practice for an extended period.

Aggravating and Mitigating Factors

15. The Executive Counsel considers that there are no aggravating or mitigating factors that have not already been considered as part of the assessment of the seriousness of the Misconduct and that make it necessary to adjust the sanctions determined to be appropriate.

Adjustment for deterrence

16. The Executive Counsel considers that no adjustment for deterrence to the proposed sanction is required where the issue of deterrence has already been considered in determining the appropriate amount of the Fine.

Discount for admissions and settlement

17. The Executive Counsel considers that Mr Smith's admissions have been reflected in the period of exclusion imposed but no reduction to the Fine has been made in light of the late stage at which settlement has been agreed.

Costs

18. KPMG agrees that it is liable for the costs of, and incidental to, the investigation, enforcement proceedings and settlement in respect of KPMG and Mr Smith. The Parties have agreed that the amount of the costs award in respect of such costs should be determined by the Tribunal at the conclusion of the hearing of the Re-amended Formal Complaint.

19. If the decision is to approve the Settlement Agreement, including the sanctions set out above, then the Settlement Agreement shall take effect from the next working day after the date on which the notice of the decision is sent to KPMG and Mr Smith in accordance with paragraph 8(5) of the Scheme. The Agreement and annex will remain confidential until published in accordance with para 8(6) of the Scheme.

11 January 2022

Elizabeth Barrett **Date**

Executive Counsel

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Jeremy Barton, General Counsel **Date**

On behalf of KPMG LLP

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Stuart Peter James Smith **Date**