

DEFERRED PROSECUTION AGREEMENT

Tesco Stores Limited (“TSL”) by its undersigned representatives pursuant to authority granted by its Board of Directors, and the Director of the Serious Fraud Office (“the SFO”) enter into this Deferred Prosecution Agreement (the "Agreement"). This Agreement comes into force on the day when the Court makes a declaration pursuant to Schedule 17, section 8(1) and (3) of the Crime and Courts Act 2013 (“the Act”).

The terms and conditions of this Agreement are as follows:

The Indictment and Acceptance of Responsibility

1. TSL agrees that the SFO will prefer an Indictment numbered U2017XXXX (“the Indictment”).
2. TSL agrees that the Statement of Facts is true and accurate to the best of its knowledge and belief.
3. In the event of it becoming necessary for the SFO to pursue the prosecution that is deferred by this Agreement, the Statement of Facts will be treated as an admission by TSL of the facts stated therein under section 10 of the Criminal Justice Act 1967 in any criminal proceedings brought against TSL for the alleged offence contained in the Indictment.

Term of the Agreement

4. This Agreement is effective from the date on which the Court makes a declaration under Schedule 17, Section 8(1) and (3) of the Crime and Courts Act 2013 until 10 April 2020 (“the Term”).

Scope of Agreement

5. These terms do not provide any protection against prosecution for conduct not disclosed by TSL prior to the date on which the Agreement comes into force. The SFO acknowledges, however, that at the request of the authorities, TSL did not interview witnesses to the conduct which is the subject of the Indictment and described in the Statement of Facts. These terms do not provide protection against prosecution for any

future criminal conduct committed by TSL. In addition these terms do not provide any protection against prosecution of any present or former officer, director, employee or agent of TSL.

Deferred Prosecution

6. In consideration of:
 - (i) the past and future cooperation of TSL as described in Part A below; and
 - (ii) TSL's payment of a financial penalty of £128,992,500; and
 - (iii) TSL's payment of costs of £3,069,951; and
 - (iv) TSL's agreement to complete, at its own expense, the actions required at Part E below.

The SFO agrees that, subject to the Court's approval of the Agreement, the Indictment should, on being preferred, immediately be suspended for the Term of the Agreement.

7. The SFO further agrees that if TSL complies fully with all its obligations under this Agreement or the Agreement as varied with approval of the Court, the SFO will not continue the prosecution against TSL upon the Indictment and at the conclusion of the Term the Agreement will expire. Within 30 days of this Agreement's expiration the SFO will give notice to the Court and to TSL that the proceedings under the Indictment are to be discontinued.
8. After the expiry of the Agreement the SFO may institute fresh proceedings if the SFO believes that during the course of negotiations of the Agreement TSL provided inaccurate, misleading or incomplete information to the SFO and TSL knew, or ought to have known, that the information was inaccurate, misleading or incomplete.

Terms

A. Co-operation

9. Unless released from the obligation to do so by the SFO, TSL shall retain in England and Wales for the Term all material gathered in the course of the SFO's investigation leading to this Agreement, and shall procure that Tesco PLC ("Tesco") does the same.

This provision does not amend or derogate from sections 2 (16) and (17) of the Criminal Justice Act 1987 nor any other statutory or common law obligation.

10. TSL shall cooperate fully and honestly, and shall procure Tesco's full and honest cooperation, with the SFO in relation to any prosecution brought by the SFO in respect of its activities and those of its present and former directors and employees concerning all matters relating to the conduct which is the subject of the Indictment and described in the Statement of Facts.
11. At the reasonable request of the SFO, TSL shall also cooperate with, and procure Tesco's co-operation with, other law enforcement and regulatory authorities and agencies in any investigation or prosecution of or regulatory proceedings against any of its present or former officers, directors, employees, or any other third party, in any and all matters relating to the conduct which is the subject of the Indictment and described in the Statement of Facts.
12. TSL agrees that its cooperation and the cooperation it shall procure of Tesco pursuant to paragraphs 10 and 11 shall include, but not be limited to, the following:
 - a) disclosure of all information and material in its possession, custody or control, which is not protected by a valid claim of legal professional privilege or any other applicable legal protection against disclosure, as the SFO may reasonably request in respect of its activities and those of its present and former directors, employees, or any other third parties.
 - b) use of its best efforts to make available for interview, as requested by the SFO, present or former officers, directors, employees, or other third parties.
13. Nothing in paragraphs 9 to 12 is intended to derogate from TSL's or Tesco's legal rights to raise any defences or assert affirmative claims in any civil, regulatory or criminal proceedings in other fora or jurisdictions relating to the matters set out in the Statement of Facts.
14. Pursuant to paragraph 3.3 of the joint SFO and Crown Prosecution Service Deferred Prosecution Agreements Code of Practice nothing in this Agreement is intended to require TSL to produce documents or information protected by a valid claim of legal

professional privilege or any other applicable legal protection against disclosure, or to require TSL to procure Tesco to do so.

B. Payment of a Financial Penalty

15. The SFO and TSL agree that TSL will pay a financial penalty to the SFO, as set out at paragraph 15, for onward transmission to the Consolidated Fund in the amount of £128,992,500, and failure to do so will constitute a breach of this Agreement. Subject to any finding of bad faith on the part of the SFO, payment of the financial penalty is final and shall not be refunded.

C. Payment Terms in respect of Financial Penalty

16. TSL will, subject to paragraph 17, pay the financial penalty within thirty (30) days of this Agreement coming into force.

17. At the sole discretion of the SFO late payment of the financial penalty by up to 30 days will not constitute a breach of this Agreement but TSL will be subject to simple interest at the prevailing rate applicable to judgment debts in the High Court on any amount of financial penalty unpaid.

18. The SFO is not precluded from arguing in any future prosecution that the Court should impose a higher financial penalty.

19. TSL agrees that no tax reduction will be sought in the UK or elsewhere in connection with the payment of this financial penalty including interest.

D. Costs

20. The SFO and TSL agree that TSL will pay the reasonable costs of the SFO's investigation and of entering into this Agreement in the amount of £3,069,951 to the SFO. TSL will pay this sum to the SFO subject to paragraph 22 within ten (10) days of this Agreement coming into force. The payment of costs is final and shall not be refunded.

21. At the sole discretion of the SFO late payment of the SFO's costs by up to 30 days will not constitute a breach of this Agreement but will be subject to interest at the prevailing rate applicable to judgment debts in the High Court.

22. The SFO is not precluded from arguing in any future prosecution that the Court should impose a higher costs order.
23. TSL acknowledges that no tax deduction may be sought in the United Kingdom or elsewhere in connection with the payment of any part of this costs order.

E. Compliance Programme

24. TSL represents that, from the first quarter of the 2015/16 financial year, it and the rest of the Tesco business embarked on a five-year project called the Global Finance Transformation Programme which included, amongst other things, the creation of its Commercial Income Governance Body whose purpose is to ensure that there is a consistent approach to managing commercial income across Tesco's businesses. It also acknowledges that its external auditors, Deloitte, identified the recognition of commercial income as a key risk in its 2016 audit opinion.
25. By 10 May 2017, TSL will commission Deloitte to produce a report ("the First Report") commenting on, and making recommendations for any improvements to:
 - a. the controls applied to the recognition of commercial income within TSL.
 - b. the operation of Tesco's Commercial Income Governance Body.
 - c. the segregation of duties between;
 - i. TSL's Commercial and Finance teams; and
 - ii. TSL's business partner finance function and its control finance function.
 - d. TSL's training and policies relating to the recognition of commercial income and their impact in TSL's Commercial and Finance employees' understanding of their roles and responsibilities in respect of the recognition of commercial income.
26. By 10 August 2017, TSL will agree the scope of the First Report with Deloitte and the SFO provided always that the report must be completed and served on TSL and the SFO by 10 February 2018.
27. By 10 May 2018, TSL will produce a plan ("the First Implementation Plan") setting out how and when it will implement improvements in response to the First Report,

provided always that the actions in the First Implementation Plan must be completed by 10 February 2019.

28. By 10 May 2019, TSL will procure Deloitte to review and comment on TSL's implementation of the First Implementation Plan, and to provide the SFO and TSL with those comments. At the sole discretion of the SFO any failure to implement actions arising from the First Implementation Plan will not constitute a breach of this Agreement and the SFO and TSL may agree further time for implementation of those actions provided always that they are complete by 10 April 2020.
29. By 10 May 2019 TSL will commission Deloitte to provide a second report ("the Second Report"), whose scope will have been agreed with Deloitte and the SFO, reviewing and commenting on:
 - a) the controls applied to the recognition of commercial income within TSL;
 - b) the segregation of duties within TSL's finance team; and
 - c) the impact on controls within TSL by the automation of certain processes.
30. TSL will procure that the Second Report is provided to the SFO and TSL by 10 October 2019 and that any recommendations are implemented in accordance with an implementation plan ("the Second Implementation Plan") by 10 February 2020. At the sole discretion of the SFO any failure to implement actions arising from the Second Implementation Plan will not constitute a breach of this Agreement and the SFO and TSL may agree further time for the implementation of those actions provided always that they are completed by 10 April 2020.
31. TSL will permit Deloitte partners and staff access to any such material they reasonably request in order to collect the information they will need to complete the work commissioned of them pursuant to this agreement, and TSL will permit Deloitte's partners and staff to co-operate generally with the SFO as requested by it.
32. In the event that Deloitte resigns as TSL's external auditor or is unable to complete either the First Report or the Second Report required of it by TSL under this

Agreement or any other tasks falling to it as a result of work commissioned pursuant to this Agreement, TSL shall nominate to the SFO two possible replacements for joint agreement as to a replacement. The terms of this Agreement shall apply to the replacement.

33. TSL recognises that it retains responsibility in law for identifying, assessing and addressing risks arising from its business, including its finance function. It represents that, aside from its specific obligations under this Agreement and as part of Tesco's Global Finance Transformation Programme, it shall continue to review its internal controls, policies and procedures regarding finance functions and, if necessary and appropriate, it will adopt new or modify existing controls, policies or procedures in order to ensure it complies with all applicable finance best practice.
34. Implementation of additional controls, policies and procedures shall not be construed in any future proceedings as providing an automatic statutory defence, immunity or amnesty in respect of conduct occurring subsequent to their implementation. Nothing in this paragraph is intended to derogate from TSL's legal rights to raise that implementation as part of any defences, or for it to assert affirmative claims, in civil, regulatory and criminal proceedings relating to the independent review conducted under this Agreement or the matters set out in the Statement of Facts.

Breach of the Agreement

35. Subject to paragraph 37 below, if, during the Term, the SFO believes that TSL has failed to comply with any of the terms of this Agreement, the SFO may make a breach application to the Court. In the event that the Court terminates the Agreement the SFO may make an application for the lifting of the suspension of the indictment associated with the Agreement and thereby reinstitute criminal proceedings.
36. In the event that the SFO believes that TSL has failed to comply with any of the terms of this Agreement the SFO agrees to provide TSL with written notice of such alleged failure prior to commencing proceedings resulting from such failure. TSL shall, within fourteen (14) days of receiving such notice, have the opportunity to respond to the SFO in writing to explain the nature and circumstances of the failure, as well as the actions TSL has taken to address and remedy the situation. The SFO will consider the explanation in deciding whether to make an application to the Court.

Sale or merger of TSL

37. TSL agrees that in the event that, during the Term, it sells, merges or transfers all or substantially all of its business operations as they exist at the date of this Agreement, whether such sale is an asset sale, merger or transfer it shall include in any contract for sale, merger or transfer a provision binding the purchaser or successor to the obligations described in this Agreement.
38. In the event that, during the Term, Tesco sells, merges or transfers all or substantially all of TSL's business operations as they exist at the date of this Agreement, whether such sale is an asset sale, merger or transfer, TSL shall procure that Tesco shall include in any contract for sale, merger or transfer a provision binding the purchaser or successor to the obligations described in this Agreement.

Public statements

39. TSL shall not make, and it shall not authorise, its present or future lawyers, officers, directors, employees, agents, its parent company, sister companies, subsidiaries or shareholders or any other person authorised to speak on TSL's behalf to make any public statement contradicting the matters described in the Statement of Facts.
40. TSL shall procure that Tesco shall not make, and it shall not authorise its present or future lawyers, officers, directors, employees, agents, its subsidiaries or shareholders or any other person authorised to speak on Tesco's behalf to make any public statement contradicting the matters described in the Statement of Facts.
41. Paragraphs 39 and 40 do not apply to any statement made by any present or former director, officer, employee or agent of Tesco or TSL in the course of or in contemplation of any criminal, regulatory or civil proceedings. Nothing in paragraphs 39 and 40 is intended to derogate from Tesco or TSL's legal rights to raise any defences or assert affirmative claims in any civil, regulatory and criminal proceedings.

Warranty

42. TSL warrants that:

- i. the information provided to the SFO throughout the DPA negotiations and upon which the DPA is based does not knowingly contain inaccurate, misleading or incomplete information relevant to the conduct TSL has disclosed to the SFO. TSL provides this warranty on the basis that, at the request of the authorities, it did not interview witnesses to the conduct which is the subject of the Indictment and described in the Statement of Facts.
- ii. it will notify the SFO and provide where requested any documentation or other material in its possession, custody or control that it becomes aware of whilst this Agreement is in force which it knows or suspects would have been relevant to the offences particularised in the Indictment.

43. TSL has procured an identical warranty from Tesco.

44. TSL agrees to its legal advisors (Kingsley Napley LLP and Freshfields Bruckhaus Deringer LLP) providing a warranty in the same terms as paragraph 42.i above.

Consent

Agreed

For Tesco Stores Limited: 

Name: *ADRIAN MORRIS*
Position: *GENERAL COUNSEL*
Dated *10* day of April 2017

For the Serious Fraud Office: 

Name: David Green, CB QC
Position: Director
Dated *10* day of April 2017

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