

**In the Crown Court at Southwark**

**Serious Fraud Office**

**v**

**Sarclad Ltd**

**DEFERRED PROSECUTION AGREEMENT**

The Defendant, Sarclad Ltd ("Sarclad"), by its undersigned representatives, pursuant to authority granted by Sarclad's 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 subject to Schedule 17, section 8(1) and (3) of the Crime and Courts Act 2013.

The terms and conditions of this Agreement are as follows:

**The Indictment and Acceptance of Responsibility**

1. Sarclad acknowledges and agrees that the SFO will prefer the draft Indictment charging Sarclad with Conspiracy to corrupt, contrary to section 1 Prevention of Corruption Act 1906; Conspiracy to bribe, contrary to section 1 Bribery Act 2010; and Failure to prevent, contrary to section 7 Bribery Act 2010.
2. Sarclad admits, accepts and acknowledges that it is responsible for the acts of its officers, directors, employees and agents as charged in the draft Indictment and as set out in the Statement of Facts attached hereto as Appendix A and Appendix B respectively. It further admits that all the allegations as described in the draft Indictment and the Statement of Facts are true and accurate.
3. In the event of it becoming necessary for the SFO to pursue the prosecution that is deferred by this Agreement, Sarclad agrees that it will not contest the admissibility of, nor contradict, the Statement of Facts in any such proceedings, including a guilty plea and sentencing. The Statement of Facts will be treated as an admission by Sarclad under section 10 of the Criminal Justice Act 1967 in any criminal proceedings brought against Sarclad for the alleged offence contained in the draft Indictment.

### **Term of the Agreement**

4. This Agreement is effective for a period beginning on the date on which the Court makes a declaration under Schedule 17, section 8(1) and (3) of the Crime and Courts Act 2013, and ending on the earlier of 31 December 2020, or such time after 31 December 2018 but before 31 December 2020, as the financial terms set out in paragraphs 12-19 below have been fully satisfied (the "Term").

### **Scope of Agreement**

5. These terms do not provide any protection against prosecution for conduct not disclosed by Sarclad prior to the date on which the Agreement is made final nor does it provide protection against prosecution for any future criminal conduct committed by Sarclad. In addition these terms do not provide any protection against prosecution of any present or former officer, director, employee or agent of Sarclad.

### **Deferred Prosecution**

6. In consideration of:
  - (i) The past and future cooperation of Sarclad as described in paragraphs 9-11 below; and
  - (ii) Sarclad's disgorgement of profit of £6,201,085.00 as described in paragraph 12-15 below; and
  - (iii) Sarclad's payment of a financial penalty of £352,000.00 as described in paragraphs 16-19; and
  - (iv) Sarclad's review and maintenance of its existing compliance programme as described in paragraphs 20-23 below.

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

7. The SFO further agrees that if Sarclad fully complies with all its obligations under this Agreement, the SFO will not continue the criminal prosecution against Sarclad upon the draft Indictment and at the conclusion of the Term the Agreement will expire. Within 30 days of the Agreement's expiration the SFO will give notice to the court and to Sarclad that the proceedings under the draft Indictment are to be discontinued.
8. After the expiry of the Agreement the SFO may institute fresh proceedings if the SFO finds that during the course of negotiations for the Agreement Sarclad provided inaccurate,

misleading or incomplete information to the SFO and Sarclad knew, or ought to have known, that the information was inaccurate, misleading or incomplete.

## **Terms**

### **A. Co-operation**

9. Sarclad shall continue to cooperate fully and truthfully with the SFO in any and all matters relating to the conduct described in this Agreement and Statement of Facts until the date upon which all investigations and prosecutions arising out of such conduct are concluded.
10. Sarclad shall disclose to the SFO all information and material in the possession, custody or control of Sarclad, not protected by a valid claim of legal professional privilege or any other applicable legal protection against disclosure, in respect of its activities and those of its present and former directors, employees and agents concerning all matters relating to the conduct described in the draft Indictment and the Statement of Facts. Cooperation under this paragraph shall include identification of witnesses who, to the knowledge of Sarclad, may have material information regarding the matters under investigation.
11. Sarclad accepts and warrants that the information provided to the SFO throughout the deferred prosecution negotiations and upon which this Agreement is based does not knowingly contain inaccurate, misleading or incomplete information relevant to the conduct Sarclad has disclosed to the SFO.

### **B. Disgorgement of profits**

12. The SFO and Sarclad agree that £6.5m is the amount of gross profit gained, as a result of the misconduct described in the draft Indictment and Statement of Facts. Sarclad agrees that a total of £6,201,085.00 be disgorged to the SFO for onward transmission to the Consolidated Fund, required to be paid in full satisfaction of the financial obligations contained in this Agreement.
13. Sarclad agrees to pay this sum following the Court's declaration under Schedule 17, section 8(1) and (3) of the Crime and Courts Act 2013 and, subject to paragraph 14 below in six (6) instalments as follows:
  - a. £1,953,085.00 within seven (7) days of the Court's declaration
  - b. £920,144.00 on or before 31 December 2016
  - c. £920,144.00 on or before 31 December 2017
  - d. £920,144.00 on or before 31 December 2018
  - e. £920,144.00 on or before 31 December 2019
  - f. £567,424.00 on or before 31 December 2020

Failure to do so will constitute a breach of this Agreement. The £6,201,085.00 of profits disgorged is final and shall not be refunded.

14. At the sole discretion of the SFO late payment of the profits 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 judgement debts in the High Court.
15. Sarclad agrees that no tax deduction will be sought in the UK or elsewhere in connection with the disgorgement of profits.

**C. Payment of a financial penalty**

16. The SFO and Sarclad agree that Sarclad will pay a financial penalty in the amount of £352,000.00 in the manner described at paragraph 17 to the SFO for onward transmission to the Consolidated Fund and failure to do so will constitute a breach of this Agreement.
17. Sarclad agree to pay this sum following the Court's declaration under Schedule 17, section 8(1) and (3) of the Crime and Courts Act 2013 and, subject to paragraph 18 below, on or before 31 December 2020. Failure to do so will constitute a breach of this Agreement. The £352,000.00 financial penalty is final and shall not be refunded.
18. At the sole discretion of the SFO late payment of this sum 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 judgement debts in the High Court.
19. Sarclad agrees that no tax reduction will be sought in the UK or elsewhere in connection with the payment of this financial penalty.

**D. Corporate Compliance Programme**

20. Sarclad will undertake a review including the implementation of its existing internal controls, policies, and procedures regarding compliance with the Bribery Act 2010 and other applicable anti-corruption laws.
  - a. In particular, Sarclad's Chief Compliance Officer will prepare a report for submission to the SFO to be completed within twelve (12) months of the date of the Agreement and annually thereafter during the Term of the Agreement on Sarclad's current anti-bribery and corruption policies and their implementation. The report should cover:
    - i. circumstances where third party intermediaries (such as agents, consultants and local partners) are involved with transactions in which Sarclad

participates in a consortium or any other form of association in order to conduct its operations, irrespective of the existence of any formal contractual or direct payment relationship between those parties and Sarclad.

- ii. Sarclad's anti-bribery and corruption training system measures to monitor training completion; and
- iii. the effectiveness of Sarclad's anti-bribery and corruption training provided and the level of anti-bribery and corruption awareness raised among its employees.

- 21. Sarclad's Chief Compliance Officer will co-operate generally with the SFO as requested by it during the Term of the Agreement.
- 22. The ultimate responsibility for identifying, assessing and addressing risks remains with the Board of Directors of Sarclad.
- 23. 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 clause is intended to derogate from Sarclad'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 review conducted under this Agreement or the matters set out in the Statement of Facts.

#### **Breach of the Agreement**

- 24. In the event that the SFO believes that Sarclad has failed to comply with the terms of this Agreement, the SFO agrees to provide Sarclad with written notice of such failure prior to commencing proceedings resulting from such failure. Sarclad shall, within 30 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 Sarclad has taken to address and remediate the situation. The SFO will consider the explanation in deciding whether to make an application to the Court.
- 25. If, following receipt of Sarclad's response described in paragraph 24 above, the SFO believes that Sarclad has failed to comply with the terms of this Agreement and that any such failure is not being reasonably addressed, the SFO may apply to the court for the Agreement to be terminated and the suspension of draft Indictment lifted thereby reinstating criminal proceedings

### **Sale, merger, liquidation of Sarclad's business**

26. Sarclad agrees that in the event it sells, merges or transfers all or substantially all of its business operations as they exist at the date of this Agreement, 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.
27. If Sarclad enters into voluntary or compulsory liquidation while the Agreement remains in force it will notify the SFO at the earliest opportunity. Failure to do so will constitute a breach of this Agreement.

### **Public statements**

28. Sarclad agrees that it shall not, through present or future lawyers, officers, directors, employees, agents or any other person authorised to speak on behalf of Sarclad or its parent company or subsidiaries, make any public statement contradicting the acceptance of responsibility of Sarclad for the conduct described in the Statement of Facts. Any such contradictory statement shall constitute a failure to comply with the terms of this Agreement. This paragraph does not apply to any statement made by any present or former director, officer, employee or agent of Sarclad in the course of any criminal or civil proceedings instituted by or against the said individual.

### **Warranty**

29. Sarclad warrants that:
- i. the information provided to the prosecutor throughout the DPA negotiations and upon which the DPA is based does not knowingly contain inaccurate, misleading or incomplete information relevant to the conduct Sarclad has disclosed to the SFO.
  - ii. it will notify the SFO and provide where requested any documentation or other material 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 draft Indictment.
30. Sarclad agrees to its current and former legal advisors providing a warranty in the same terms as paragraph 29.i above.

**Consent**

Agreed

For Sarclad Ltd:  .....

Name: Richard Cowlshaw

Position: Managing Director

Dated: 6<sup>th</sup> day of July, 2016

For the Serious Fraud Office:  .....

Name: David Green, CB QC,

Position: Director

Dated 6 day of  2016

Appendix A: Draft Indictment

Appendix B: Statement of Facts

