

**Model Annotated Individual Plea Agreement
Last Updated 12/31/2018**

UNITED STATES DISTRICT COURT

[XXXXXXX] DISTRICT OF [XXXXXXX]

UNITED STATES OF AMERICA)	
)	Criminal No. [XXXX]
v.)	
)	Filed
[JOHN R. DOE],)	
)	Violation:
Defendant.)	
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PLEA AGREEMENT¹

The United States of America and [John R. Doe] (“defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B **OR** C)² of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

¹ *This document contains the typical terms used in plea agreements entered into with the Antitrust Division of the Department of Justice for a Sherman Act offense. The Division will adhere to the local practice of the U.S. Attorney’s Office in the district where a plea agreement is filed wherever necessary. Brackets indicate either optional language or case-specific factual information. The Division will periodically update this model to reflect new case law, statutes, or policies. The most recent versions of the Division’s model plea agreements are available at <https://www.justice.gov/atr/criminal-enforcement>.*

This Model provides only internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. No limitations are hereby placed on otherwise lawful investigative and litigative prerogatives of the Department of Justice.

² *See Speech by Gary R. Spratling Before ABA Criminal Justice Section Thirteenth Annual National Institute on White Collar Crime, Negotiating The Waters Of International Cartel Prosecutions -- Antitrust Division Policies Relating To Plea Agreements In International Cases*

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;
 - (g) to appeal his conviction, if he is found guilty; and
 - (h) to appeal the imposition of sentence against him.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives:
 - (a) the rights set out in subparagraphs 1(b)-(f) above;
 - [(b) any right he might have as a resident of [COUNTRY] to decline to accept service of the Summons in this case;]

§ VI.A., at 17-18 (Mar. 4, 1999) [hereinafter Spratling, Negotiating The Waters], <https://www.justice.gov/atr/speech/negotiating-waters-international-cartel-prosecutions-antitrust-division-policies-relating>, for a discussion of the Division's policy on the use of Fed. R. Crim. P. 11(c)(1)(C) plea agreements ("C agreements") with foreign defendants in international cartel cases. Division speeches are available at <https://www.justice.gov/atr/criminal-policy-speeches> and <https://www.justice.gov/atr/speeches-0>.

(c) any right he might have as a resident of [COUNTRY] to contest that the United States District Court for the [XXXXXX] District of [XXXXXXXX] has jurisdiction over him for purposes of this case;]

(d) the right to file any appeal or collateral attack, including but not limited to an application or motion under 28 U.S.C. § 2241 or 2255, that challenges his conviction, including but not limited to any appeal or collateral attack raising any argument that (1) the statute to which he is pleading guilty is unconstitutional or (2) the admitted conduct does not fall within the scope of such statute; and

(e) the right to file any appeal or collateral attack, including but not limited to an appeal under 18 U.S.C. § 3742 or an application or motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence³ in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)[*for C agreements only, also insert “-(c)”*].

Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. [*May also include following stipulation--*The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct.] Consistent with Fed. R. Crim. P. 11(b)(1)(O), the defendant

³ *If the Plea Agreement contains a substantial assistance departure recommendation for the prison term or fine with no specific recommendation as to the amount of the departure, whether there is a waiver of appeal with respect to the prison term or fine may depend on the specific situation and local practice.*

recognizes that if he is not a citizen of the United States pleading guilty may have consequences with respect to his immigration status, including removal from the United States, denial of citizenship, and denial of admission to the United States in the future.⁴ [Under federal law, a broad range of crimes are removable offenses, including the offense to which the defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. The defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is his automatic removal from the United States.] Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a [one]-count Information [in the form attached] to be filed in the United States District Court for the [XXXXXX] District of [XXXXXX]. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by [DESCRIPTION OF CHARGE AS SET OUT IN THE CHARGING PARAGRAPH OF THE INFORMATION] sold in [the United States and elsewhere] [CHARGE PERIOD] in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

⁴ Pursuant to Fed. R. Crim. P. 11(b)(1)(O), district courts give all defendants a basic warning regarding potential immigration consequences. The more detailed bracketed warning that follows the basic warning should also be added to the Plea Agreement if the defendant's immigration status is uncertain or if the defendant is a known foreign national who will not consent to removal, unless the Department of Homeland Security has approved the nonimmigrant waiver of inadmissibility for the defendant that is contained in Paragraph 16 of the model Plea Agreement. If a foreign national defendant will consent to removal following completion of his sentence, the Plea Agreement should include the consent, a waiver of rights relating to any and all forms of relief from removal or exclusion, abandonment of any pending applications for such relief, and cooperation with the Department of Homeland Security during removal proceedings. See *Padilla v. Kentucky*, 559 U.S. 356 (2010).

3. The defendant will plead guilty to the criminal charge described in Paragraph 2 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. [The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.⁵]

FACTUAL BASIS FOR OFFENSE CHARGED⁶

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:⁷

(a) For purposes of this Plea Agreement, the “relevant period” is

⁵ *The Antitrust Division will follow the local practice regarding the release of the defendant on his own recognizance. Personal recognizance bonds may be appropriate in some cases.*

⁶ *Division plea agreements generally include a factual basis section, unless such a section is inconsistent with local practice. Under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), facts that increase a penalty for a crime above the statutory maximum must be proved to a jury beyond a reasonable doubt or admitted by the defendant. *Apprendi* applies to fines as well as prison sentences. See *Southern Union Co. v. United States*, 567 U.S. 343 (2012). Thus, if 18 U.S.C. § 3571(d) is used to obtain a fine greater than the Sherman Act maximum fine, the Plea Agreement should address gain or loss as is done in subparagraph 9(d). In non-Title 15 cases, the Plea Agreement normally contains a loss stipulation to support a sentence above the statutory maximum. Under *United States v. Booker*, 543 U.S. 220 (2005), the government is not required to allege facts supporting Guidelines enhancements in an indictment or plea agreement nor prove them beyond a reasonable doubt. This factual basis section includes Guidelines stipulations as optional language. For a discussion of the continued implications of *Booker* on sentencing recommendations, see Memorandum for All Federal Prosecutors from the Attorney General, Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>; Speech by Scott D. Hammond Before the ABA Section of Antitrust Law Spring Meeting, *Antitrust Sentencing in the Post-Booker Era: Risks Remain High for Non-Cooperating Defendants* (Mar. 30, 2005), <https://www.justice.gov/atr/speech/antitrust-sentencing-post-booker-era-risks-remain-high-non-cooperating-defendants>.*

⁷ *The amount of detail contained in subparagraphs 4(a) and (b) will normally track the detail in the Information. A factual basis must be established for each count of the Information.*

that period [CHARGE PERIOD FROM INFORMATION]. During the relevant period, the defendant was [POSITION] of [CORPORATE EMPLOYER], an entity organized and existing under the laws of [STATE *OR if foreign--* COUNTRY] and with its principal place of business in [CITY, STATE *OR if foreign --* CITY, COUNTRY]. During the relevant period, [CORPORATE EMPLOYER] was a [producer] of [PRODUCT] and was engaged in the sale of [PRODUCT] in [the United States and elsewhere]. [SHORT PRODUCT DESCRIPTION.] [During the relevant period, [CORPORATE EMPLOYER]'s sales of [PRODUCT] affecting U.S. customers totaled at least \$[AFFECTED SALES VOLUME THAT WILL BE USED TO CALCULATE DEFENDANT'S ADVISORY GUIDELINES FINE AND IMPRISONMENT RANGES].]

(b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in the [manufacture and sale] of [PRODUCT], the primary purpose of which was to [DESCRIPTION OF THE CHARGE] sold in [the United States and elsewhere]. In furtherance of the conspiracy, the defendant engaged in discussions and attended meetings with representatives of other major [PRODUCT] [producing] firms. During these meetings and discussions, agreements were reached to [DESCRIPTION OF THE CHARGE] to be sold in [the United States and elsewhere]. [The defendant was an [organizer or leader/manager or supervisor] in the conspiracy[, which involved at least five participants/was extensive].] [The defendant significantly facilitated the [commission/concealment] of the conspiracy by his abuse of his position of trust.]

(c) [*Describe relevant interstate and foreign commerce. A common*

description of interstate commerce follows –

During the relevant period, [PRODUCT] sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of [PRODUCT], as well as payments for [PRODUCT], traveled in interstate commerce.] The business activities of [CORPORATE EMPLOYER] and co-conspirators in connection with the [production and sale] of [PRODUCT] that were the subject of this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the [XXXXXXX] District of [XXXXXXX]. [***Describe relevant venue. Common descriptions are as follows--*** [The conspiratorial meetings and discussions described above took place in [the United States and elsewhere], and at least one of these meetings [which was attended by the defendant] occurred in this District.] ***OR*** [[PRODUCT] that [was/were] the subject of this conspiracy [was/were] sold by one or more of the conspirators to customers in this District.]]

[If the defendant is receiving a sentencing enhancement, or a separate charge, for an obstruction related offense, insert a description of the conduct –

(e) In an attempt to conceal this conspiracy, the defendant [***insert description of the obstructive conduct***].]

ELEMENTS OF THE OFFENSE

5. [***Insert elements for each count charged. Insert the following elements for any count involving any interstate commerce –***

The elements of the charged offense are that:

- (a) the conspiracy described in the Information existed at or about the time alleged;
- (b) the defendant knowingly became a member of the conspiracy; and
- (c) the conspiracy described in the Information either substantially affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods and services.]

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for [a][each] violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

7. In addition, the defendant understands that:

- (a) pursuant to [U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may] **OR** [*if a Title 18 mandatory restitution case*-18 U.S.C.

§ 3663A(c)(1)(A)(ii), the Court is required to] order him to pay restitution to the victims of the offense;⁸ and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment [for each count] upon conviction for the charged crime.

SENTENCING GUIDELINES⁹

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed.¹⁰ ***[Insert if there is currently no ex post***

⁸ *In an antitrust case against an individual, a court may order restitution under 18 U.S.C. § 3583(d) as a condition of supervised release or under 18 U.S.C. § 3663(a)(3) to the extent it is agreed to by the parties in a plea agreement. If the Division seeks restitution, the recommended sentence that is contained in Paragraph 9 should include the amount of recommended restitution. In most criminal antitrust cases, restitution is not sought or ordered because civil causes of action are filed to recover damages. In Title 18 cases, however, if the mandatory restitution requirements of 18 U.S.C. § 3663A(c)(1)(A)(ii) are met and the exceptions in 18 U.S.C. § 3663A(c)(3)(A)-(B) do not apply, subparagraph 7(a) should use “is required to order” instead of “may order.” Again, in such cases, the recommended sentence in Paragraph 9 should include the recommended amount of restitution. In Division cases, section 3663A most frequently applies to mail or wire fraud cases. See 18 U.S.C. § 3663A(c)(1)(A)(ii) (“an offense against property under this title . . . including any offense committed by fraud or deceit”).*

⁹ *This Section of the Plea Agreement may include Guidelines calculations.*

¹⁰ *U.S.S.G. §1B1.11 provides that the sentencing court should apply the Guidelines Manual in effect at sentencing unless that version of the Manual would violate the Ex Post Facto Clause of the Constitution by resulting in greater punishment than the Manual in effect on the date the offense of conviction was committed. U.S.S.G. §1B1.11(a)-(b)(1). If there is an ex post facto issue, the sentencing court should apply the Manual in effect on the last date the offense of conviction was committed. U.S.S.G. §1B1.1(b)(1) and comment. (n.2) (“[T]he last date of the*

facto issue--The parties agree there is no *ex post facto* issue under the [Month Day, 20XX] Guidelines Manual.] **OR** [*If there is an ex post facto issue, insert the following stipulation and/or stipulations on specific Guidelines calculations*--The parties agree that the [Month Day, 20XX] Guidelines Manual provides for greater punishment than the [Month Day, 20XX] Guidelines Manual, the version in effect on the last date the offense of conviction was committed.] The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Court will make Guidelines determinations by applying a standard of preponderance of the evidence. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). [Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected

*offense of conviction is the controlling date for ex post facto purposes[,]” regardless of whether relevant conduct under U.S.S.G. §1B1.3 occurred at a later date.). In Peugh v. United States, 569 U.S. 530 (2013), the Supreme Court held that the Ex Post Facto Clause is violated when a court sentences a defendant under the version of the Sentencing Guidelines in effect at the time of sentencing rather than the version in effect at the time of the offense, and the newer Guidelines provide for a higher sentencing range. (“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.’ . . . Failure to [do so] constitutes procedural error” *Id.* at 536-37 (citation omitted).) Peugh does recognize, however, that the sentencing court may “give careful consideration to the current version of the Guidelines as representing the most recent views of the [Sentencing Commission].” *Id.* at 549. Thus, the “newer Guidelines . . . will have the status of one of many reasons a district court might give for deviating from the older Guidelines” *Id.* Accordingly, where there is an *ex post facto* issue, after using the Guidelines in effect at the time of the offense to determine the Guidelines range, the sentencing court could consult the higher range under the current Guidelines and choose to vary upward and sentence within the higher range.*

commerce attributable to the defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).]¹¹

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(B **OR** C) and subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, ***[if a Fed. R. Crim. P. 11(c)(1)(B) plea agreement (“B agreement”)]***—the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose] **OR** ***[if a C agreement--***the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose,] a sentence [within the applicable Guidelines range]¹² requiring the defendant to pay to the United States a criminal fine of \$[XXXXXX]***[insert if using the twice the gain or loss maximum to arrive at a recommended fine greater than the Sherman Act \$1 million maximum or the statutory maximum for another charged offense--***, pursuant to 18 U.S.C. § 3571(d),] [payable in full before the fifteenth (15th) day after the date of judgment] **OR** [payable in installments as set forth below [with interest accruing under 18 U.S.C. § 3612(f)(1)-(2)] **OR** [without interest pursuant to 18 U.S.C. § 3612(f)(3)(A) **OR** § 3612(h)]];¹³ a period of imprisonment of [XX months/years];¹⁴ [no period of

¹¹ A U.S.S.G. §1B1.8 provision is optional but is commonly included in Division plea agreements.

¹² This optional language is not applicable in cases involving substantial assistance downward departures or an inability to pay a Guidelines fine.

¹³ The Plea Agreement should specify the time for payment of the fine using one of these options. Note that for an installment schedule to be imposed on an individual defendant, there must be a finding that installment payments are “in the interest of justice” under 18 U.S.C. § 3572(d)(1); for example, if a lump sum payment would have an unduly severe impact on the defendant or his dependents. See U.S.S.G. §5E1.2(f). If the defendant requests, and the staff agrees, that the fine be paid in installments, the Plea Agreement should also include a provision such as subparagraph 9(a) setting forth the recommended installment schedule. If the defendant does

supervised release;]¹⁵ [and no order of restitution] **OR** [and restitution of \$XXX pursuant to 18 U.S.C. § 3583(d)/3663(a)(3)/ **OR** 3663A(c)(1)(A)(ii)]¹⁶ [payable in full before the fifteenth (15th) day after the date of judgment] **OR** [payable in installments as set forth below [with interest accruing under 18 U.S.C. § 3612(f)(1)-(2)] **OR** [without interest pursuant to 18 U.S.C.

not pay any fine greater than \$2,500 in full before the 15th day after the date of judgment, 18 U.S.C. § 3612(f)(1) requires the payment of interest unless the defendant does not have the ability to pay interest, in which case the Division may recommend that some or all of the interest be waived pursuant to 18 U.S.C. § 3612(f)(3) or § 3612(h). If staff has concerns about the defendant's ability to pay or the preservation of defendant's assets, a guarantee provision may be warranted in the Plea Agreement.

¹⁴ *The Division will not agree to a “no jail” sentence for an individual defendant, and the Division’s practice is not to remain silent if a defendant argues for a no jail sentence at sentencing. See Speech by Scott D. Hammond Before the ABA Criminal Justice Section Twentieth Annual National Institute on White Collar Crime, Charting New Waters in International Cartel Prosecutions § II.F., at 16 (Mar. 2, 2006), <https://www.justice.gov/atr/file/518446/download>. The Division seeks to prosecute, and obtain jail time for, culpable individuals from all corporate conspirators, domestic and foreign, except the leniency applicant.*

¹⁵ *The Division usually does not seek supervised release when the defendant is a foreign national and will return to his country after completing the jail sentence. See U.S.S.G. §§5D1.1-5D1.3 and 18 U.S.C. § 3583 regarding the imposition and conditions of supervised release. The Guidelines recommend that supervised release be imposed when a court imposes a sentence of imprisonment of more than one year, but that the court ordinarily should not impose a supervised release term if supervised release is not required by statute and the defendant is likely to be deported after imprisonment. See U.S.S.G. §5D1.1(a)(2), (c). The Guidelines also provide that the court may depart from Guideline 5D1.1 and not impose a supervised release term if such a term is not required by statute and the court, after considering the factors listed in Note 3 of Guideline 5D1.1, determines that a term of supervised release is not necessary. See U.S.S.G. §5D1.1, comment. (n.1).*

¹⁶ *See footnote 8 above. Plea agreements in antitrust cases rarely include recommendations for restitution because victims normally file civil suits to recover treble damages from the corporate conspirators. See optional subparagraph 9(c). If restitution is desired in a particular case against an individual, “the recommended sentence” in Paragraph 9 should include the recommended amount of restitution. In an antitrust case against an individual, 18 U.S.C. §§ 3583(d) (restitution as a condition of supervised release) and 3663(a)(3) (restitution to extent agreed to by parties in a plea agreement) provide statutory bases for ordering restitution. In mail or wire fraud cases, 18 U.S.C. § 3663A(c)(1)(A)(ii) provides the statutory basis for an order of restitution (restitution for “an offense against property under this title . . . , including any offense committed by fraud or deceit”).*

§ 3612(f)(3)(A) **OR** § 3612(h)]] (“the recommended sentence”).¹⁷ [*If Plea Agreement is an agreed-upon B agreement*---The defendant agrees that he will not present evidence or arguments to the Court in opposition to the sentencing recommendation made to the Court by the United States.] The defendant agrees that he will not request that he be allowed to serve any part of his sentence in home detention, intermittent confinement, or community confinement. [The United States will not object to the defendant’s request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum Security Camp (if possible at [CITY], [STATE]) to serve his sentence and that the defendant be released following the imposition of sentence to allow him to self-surrender to the assigned prison facility on a specified date on or after [MONTH DAY, YEAR].]¹⁸ The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0.¹⁹ The parties agree not to seek at the sentencing hearing any sentence outside of the Guidelines range nor any

¹⁷ *Although the recommended sentence usually includes a specific number of months or years of imprisonment and a specific dollar amount for the fine, this specificity is not always required. In some circumstances, staffs may prefer to recommend imprisonment and/or a fine within a certain Guidelines range.*

¹⁸ *This sentence regarding the place of imprisonment applies only when the defendant requests, and the staff agrees with, such a provision. The Court’s or Bureau of Prison’s refusal to grant such a request will not void the Plea Agreement, and thus, if the Plea Agreement includes such a request, language such as “Neither party may withdraw from this Plea Agreement, however, based on the type or location of the prison facility to which the defendant is assigned to serve his sentence” should be added to the end of subparagraph 12(a).*

¹⁹ *This language refers to the inapplicability of U.S.S.G. §5K2.0 “out of the heartland” departures, while the next sentence allows for a substantial assistance departure, an inability to pay reduction, or a Guidelines adjustment that is set forth in the Plea Agreement.*

Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

[(a)²⁰ ***If a B agreement*** – The United States agrees that it will recommend] ***OR*** ***If a C agreement*** – The United States and the defendant agree to recommend], in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1) [and U.S.S.G. §5E1.2(f)], that the fine be paid in the following installments: within [XX] days of imposition of sentence — \$[XXXX] [(plus any accrued interest)]; at ninety (90) days after the imposition of sentence-- \$[XXXX] [(plus any accrued interest)]; at one hundred and eighty (180) days after the imposition of sentence -- \$[XXXX] [(plus any accrued interest)]; at two hundred and seventy (270) days after imposition of sentence -- \$[XXXX] [(plus any accrued interest)]; and at the one-year anniversary of the imposition of sentence— \$[XXXX] [(plus any accrued interest)]; provided, however, that the defendant will have the option at any time before the one-year anniversary of prepaying the remaining balance [(plus any accrued interest)] then owing on the fine.]

(b) The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

[Insert subparagraph (c) if no restitution is sought in a Title 15 case and the individual defendant requests the language --

²⁰ *Insert subparagraph (a) if the fine recommendation includes installment payments. See footnote 13. The length of the installment schedule, payment intervals, and installment amounts depend on the facts of the case. Note that the Guidelines recommend that the length of the installment schedule for individual defendants generally should not exceed twelve months and shall not exceed five years. U.S.S.G. §5E1.2(f); 18 U.S.C. § 3561(c)(1). If the Plea Agreement recommends restitution and the recommendation includes installment payments, a new subparagraph (b) comparable to subparagraph (a) should list the installment schedule for restitution and any restitution interest payments.*

(c) In light of the [availability of civil causes of action] **OR** [civil cases filed against the defendant, including [CASE NAME, CASE NUMBER], in the United States District Court, [XXXXXXX] District of [XXXXXXX]], which potentially provide for a recovery of a multiple of actual damages, the recommended sentence does not include a restitution order for the offense charged in the Information.]

[(d)²¹ The United States contends that had this case gone to trial, the United States would have presented evidence to prove that the gain derived from or the loss resulting from the charged offense is sufficient to justify a fine of [RECOMMENDED FINE], pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and sentencing only, the defendant waives his rights to contest this calculation.]

[10.²² [The United States and the defendant agree that the applicable Guidelines [fine and imprisonment] range[s] exceed the [fine and term of imprisonment] contained in the recommended sentence set out in Paragraph 9 above. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. §5K1.1, for a downward departure from the Guidelines [fine and imprisonment] range[s] in this case and will request that the Court impose the [fine and term of

²¹ *The Plea Agreement should contain this subparagraph if it recommends a fine greater than the Sherman Act maximum of \$1 million pursuant to 18 U.S.C. § 3571(d). In non-Title 15 cases, the Plea Agreement normally contains a loss stipulation to support a sentence above the statutory maximum.*

²² *If the Plea Agreement recommends a fine or term of imprisonment below the applicable Guidelines range, it should contain one of the listed explanatory paragraphs, either an agreement to make a downward departure motion for substantial assistance or a recommendation for a reduced fine based on the inability to pay a Guidelines fine. Substantial assistance departure motions should state whether the motion applies to the fine or the prison term or both.*

imprisonment]²³ contained in the recommended sentence set out in Paragraph 9 of this Plea Agreement because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the [PRODUCT] industry.] **OR**

²³ *Most Division substantial assistance agreements contain a recommendation for a specific reduced fine and prison sentence. However, it is not uncommon for Division plea agreements, especially agreements with individuals, to contain a recommendation for a "freefall departure," in which both the Division and defendant are free to argue for the appropriate amount of a departure. Because there is no agreed-upon departure amount, a freefall agreement is more common in B agreements and cases where sentencing is deferred until the defendant's cooperation is complete. The typical freefall B agreement language is as follows: "If the United States determines that the defendant has provided substantial assistance in any investigations or prosecutions, and has otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion, pursuant to U.S.S.G. §5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting that the Court sentence the defendant in light of the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5). The defendant acknowledges that the decision whether he has provided substantial assistance in any investigations or prosecutions and has otherwise complied with the terms of this Plea Agreement is within the sole discretion of the United States. It is understood that, should the United States determine that the defendant has not provided substantial assistance in any investigations or prosecutions, or should the United States determine that the defendant has violated any provision of this Plea Agreement, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will not entitle the defendant to withdraw his guilty plea once it has been entered. The defendant further understands that, whether or not the United States files a motion pursuant to U.S.S.G. §5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge." A separate paragraph usually precedes the freefall paragraph and provides as follows: "The defendant understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence he will receive, and is free to recommend any specific sentence to the Court. However, the United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of the defendant's activities with respect to this case and all other activities of the defendant which the United States deems relevant to sentencing; and (c) the nature and extent of the defendant's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by the defendant both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the criminal violation charged in the attached Information, the participation of the defendant therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of the defendant, and to supply any other information that the Court may require."*

[The United States and the defendant agree that the applicable Guidelines fine range exceeds the fine contained in the recommended sentence set out in Paragraph 9 above. The United States and the defendant further agree that the recommended fine is appropriate pursuant to [U.S.S.G. §5E1.2(e) due to the inability of the defendant to pay a fine greater than that recommended] **OR** [U.S.S.G. §5E1.2(e) [and 18 U.S.C. § 3572(b)]²⁴ due to the inability of the defendant to pay a fine greater than that recommended without impairing his ability to make restitution to victims].]]

11. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. [To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.]

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject [the recommended sentence][*if no agreed-upon sentence but two different recommendations*—either party's sentencing recommendation] provided for in Paragraph 9 of this Plea Agreement. [*If a B agreement*--The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose [the recommended

²⁴ This phrase "and 18 U.S.C. § 3572(b)" should be inserted if the defendant is obligated as a result of a conviction to make restitution to a victim other than the United States and a Guidelines fine would impair the defendant's ability to pay restitution. See also U.S.S.G. §§5E1.1(c), 5E1.2(d)(4).

sentence][*if no agreed-upon sentence but two different recommendations*—either party’s sentencing recommendation] contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.]

[Insert (a) and (b) only for C agreements--(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for subparagraph 12(b) below, will be rendered void. [Neither party may withdraw from this Plea Agreement, however, based on the type or location of the prison facility to which the defendant is assigned to serve his sentence.]²⁵

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)(2)(A)). If the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government will not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 14 below, will be tolled for the period between the date of signature of this Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60) days after the date of signature of this Plea Agreement, whichever period is greater. [*For foreign national defendants residing abroad---*For a period of three (3) consecutive days following such a withdrawal of the guilty plea under

²⁵ *Insert this sentence if Paragraph 9 of the Plea Agreement includes a request by the defendant for a certain prison facility. See footnote 18.*

this subparagraph, the United States will take no action, based upon either a Relevant Offense or any actual or alleged violation of this Plea Agreement, to revoke the defendant's release on his personal recognizance, to subject the defendant to service of process, arrest, or detention, or to prevent the defendant from departing the United States.]]

DEFENDANT'S COOPERATION

13. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the [manufacture or sale] of [PRODUCT][*insert if domestic conspiracy-* in [GEOGRAPHIC AREA]], any federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively "Federal Proceeding"). Federal Proceeding includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The full, truthful, and continuing cooperation of the defendant will include, but not be limited to:

(a) producing [*insert if defendant is foreign located--*in the United States and at other mutually agreed-upon locations] all documents, including claimed personal documents, and other materials, wherever located,²⁶ not protected under the attorney-

²⁶ *The defendant's obligation to produce responsive documents in his possession, custody, or control, wherever located, applies to plea agreements in both domestic and international cases. See Spratling, Negotiating The Waters, supra note 2, § II.B., at 4 for a discussion of the defendant's obligation in international cases to produce documents wherever located.*

client privilege or the work-product doctrine,²⁷ [and with translations into English,] in the possession, custody, or control of the defendant, that are requested by attorneys and agents of the United States in connection with any Federal Proceeding;

(b) making himself available for interviews [*insert if defendant is foreign located*--in the United States and at other mutually agreed-upon locations], not at the expense of the United States, upon the request of attorneys and agents of the United States in connection with any Federal Proceeding;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), or conspiracy to commit such offenses;

(d) otherwise voluntarily providing the United States with any material or information not requested in (a) - (c) of this paragraph and not protected

²⁷ *Prosecutors may not request that a defendant disclose privileged attorney-client communications or attorney work product, with the exception that prosecutors may ask for disclosure of communications allegedly supporting an advice of counsel defense. In addition, communications with counsel made in furtherance of a crime or fraud are outside the scope and protection of the attorney-client privilege. Of course, defendants are free to waive the protections of the attorney-client privilege or work-product doctrine and produce communications and documents so protected if they voluntarily choose to do so, but prosecutors may not request that they do so. To receive credit for cooperation, defendants must produce relevant underlying factual information, as well as relevant underlying non-privileged evidence, such as business records and emails between non-attorneys. See Principles of Federal Prosecution of Business Organizations, Justice Manual 9-28.710 – 9-28.720, <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.710>.*

under the attorney-client privilege or work-product doctrine²⁸ that he may have that is related to any Federal Proceeding;

(e) when called upon to do so by the United States in connection with any Federal Proceeding, participating in affirmative investigative techniques, including but not limited to making telephone calls, recording conversations, and introducing law enforcement officials to other individuals, with all such activity being conducted only at the express direction and under the supervision of attorneys and agents of the United States;²⁹

(f) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings [*insert if defendant is foreign located*--in the United States] fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), and contempt (18 U.S.C. §§ 401-402); and

(g) not committing, participating in, or attempting to commit or participate in any additional crimes.

GOVERNMENT'S AGREEMENT

14. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of [*if a C agreement*--the

²⁸ See footnote 27.

²⁹ Counsel for the defendant should discuss with the Division any concerns, such as safety concerns, regarding engaging in affirmative investigative techniques. The Division will take those concerns into consideration in assessing the defendant's good faith and complete cooperation.

recommended] sentence, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of signature of this Plea Agreement that [*If the defendant is receiving both antitrust and obstruction nonprosecution protection, separate the two nonprosecution coverages into subparagraphs (a) and (b) --(a)*] was undertaken in furtherance of an antitrust conspiracy involving the [manufacture or sale] of [PRODUCT][*insert if domestic conspiracy-* in [GEOGRAPHIC AREA]][*only insert the obstruction nonprosecution coverage that follows if defendant has a sentencing enhancement, or a separate charge, for an obstruction related offense--* or (b) is specified in subparagraph 4(e)] (*insert “collectively” if (b) is included for obstruction coverage--collectively*) “Relevant Offense”). The nonprosecution terms of this paragraph do not apply to (a) any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses[*insert if defendant has a sentencing enhancement, or a separate charge, for an obstruction related offense--*, except for the conduct specified in subparagraph 4(e) of this Plea Agreement]; (b) civil matters of any kind; (c) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (d) any crime of violence.

[15.³⁰ The United States agrees that when the defendant travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject the defendant to arrest, detention, or service

³⁰ *Insert Paragraph 15 if defendant is a foreign national residing abroad who is receiving the immigration relief contained in Paragraph 16. See Spratling, Negotiating The Waters, supra note 2, § II.G., at 7 for a discussion of Division policy regarding this safe passage provision.*

of process, or to prevent the defendant from departing the United States. This paragraph does not apply to the defendant's commission of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses.]

[16.³¹ (a) Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the defendant's guilty plea and imposition of sentence in this case, the United States agrees not to seek to remove the defendant from the United States under Sections 238 and 240 of the Immigration and Nationality Act, 8 U.S.C. §§ 1228 and 1229a, based solely upon the defendant's guilty plea and conviction in this case, should the defendant apply for or obtain admission to the United States as a nonimmigrant (hereinafter referred to as the "agreement not to seek to remove the defendant"). The agreement not to seek to remove the defendant is the equivalent of an agreement not to exclude the defendant from admission to the United States as a nonimmigrant or to deport the defendant from the United States. (Immigration and Nationality Act, § 240(e)(2), 8 U.S.C. § 1229a(e)(2)).

(b) The Antitrust Division of the United States Department of

³¹ *This paragraph provides a nonimmigrant waiver of inadmissibility for cooperating foreign national defendants residing abroad who have been convicted in the United States of an antitrust offense. The waiver allows them to travel to the United States when their conviction would make them otherwise removable and inadmissible. See Spratling, Negotiating The Waters, supra note 2, § IV.B., at 12-14 for a discussion of the Division's policy regarding this immigration relief and the Division's MOU with the Immigration and Naturalization Service, now administered by the Department of Homeland Security. Note this language has been updated since the publication of Negotiating the Waters due to the creation of the Department of Homeland Security.*

Justice has consulted with United States Immigration and Customs Enforcement (“ICE”) on behalf of the United States Department of Homeland Security (“DHS”). ICE, on behalf of DHS and in consultation with the United States Department of State, has agreed to the inclusion in this Plea Agreement of this agreement not to seek to remove the defendant, pursuant to Attachment A to this Plea Agreement. The Secretary of DHS has delegated to ICE the authority to enter this agreement on behalf of DHS.

(c) So that the defendant will be able to obtain any nonimmigrant visa that he may need to travel to the United States, DHS and the Visa Office, United States Department of State, have concurred in the granting of a nonimmigrant waiver of the defendant’s inadmissibility, pursuant to Attachment A. This waiver will remain in effect so long as this agreement not to seek to remove the defendant remains in effect. While the waiver remains in effect, the Department of State will waive any denial, made solely on the basis of the defendant’s guilty plea and conviction in this case, of the defendant’s application for a nonimmigrant visa, and DHS will waive any denial, made solely on the basis of his guilty plea and conviction in this case, of his application for admission as a nonimmigrant. This nonimmigrant waiver only applies to applications for entry as a nonimmigrant. DHS does not agree to waive any grounds of removability on an application for an immigrant visa.

(d) This agreement not to seek to remove the defendant will remain in effect so long as the defendant:

- (i) acts and has acted consistently with his cooperation obligations under this Plea Agreement;
- (ii) is not convicted of any felony under the laws of the United States

or any state, other than the conviction resulting from the defendant's guilty plea under this Plea Agreement or any conviction under the laws of any state resulting from conduct constituting an offense subject to this Plea Agreement; and

(iii) does not engage in any other conduct that would warrant his removal from the United States under the Immigration and Nationality Act.

The defendant understands that should the Antitrust Division become aware that the defendant has violated any of these conditions, the Antitrust Division will notify DHS. DHS will then determine, in consultation with the Antitrust Division, whether to rescind this agreement not to seek to remove the defendant.

(e) The defendant agrees to notify the Assistant Attorney General of the Antitrust Division should the defendant be convicted of any other felony under the laws of the United States or of any state.

(f) Should the United States rescind this agreement not to seek to remove the defendant because of the defendant's violation of a condition of this Plea Agreement, the defendant irrevocably waives his right to contest his removal from the United States under the Immigration and Nationality Act on the basis of his guilty plea and conviction in this case, but retains his right to notice of removal proceedings.]

[Insert if defendant is pleading to a felony arising out of a contract or first-tier subcontract of the Department of Defense (see 10 U.S.C. § 2408/48 C.F.R. § 252.203-7001) --

17. The defendant understands that, upon sentencing, the Antitrust Division will report his conviction to the Department of Justice's Bureau of Justice Assistance pursuant to 10 U.S.C. § 2408 for inclusion in the Defense Procurement Fraud Debarment Clearinghouse database and the System for Award Management. The defendant understands that 10 U.S.C. §

2408 provides for a mandatory term of debarment of at least five years, which term may only be waived if the Secretary of Defense determines a waiver is in the interests of national security.

The defendant understands that he may be subject to additional suspension or debarment actions by state or federal agencies other than the Antitrust Division, based upon the conviction resulting from this Plea Agreement and upon grounds other than 10 U.S.C. § 2408, and that this Plea Agreement in no way controls what additional action, if any, other agencies may take.

However, the Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such additional action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what action, if any, to take. The defendant nevertheless affirms that he wants to plead guilty regardless of the suspension or debarment consequences of his plea.]

[If the defendant is not pleading to a felony arising out of a contract or first-tier subcontract of the Department of Defense, but suspension or debarment is an issue, may insert below optional paragraph for cooperating defendants--

17. The defendant understands that he may be subject to suspension or debarment action by state or federal agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls what action, if any, other agencies may take. However, the Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what action, if any, to take. The defendant nevertheless affirms that he wants to plead guilty regardless of any suspension or debarment consequences of his plea.]

REPRESENTATION BY COUNSEL

18. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

19. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement[and Attachment A].³² The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

20. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and continuing cooperation, as defined in Paragraph 13 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and may also notify counsel by telephone of its intention to void any of its

³² *The Plea Agreement contains this reference to Attachment A when the defendant receives a nonimmigrant waiver of inadmissibility. See Paragraph 16 above.*

obligations under this Plea Agreement (except its obligations under this paragraph),³³ and the defendant will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of signature of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

21. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement because of the defendant's violation of this Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

22. This Plea Agreement [and Attachment A]³⁴ [constitutes/constitute] the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing,

³³ See *Spratling, Negotiating The Waters, supra note 2, § II.H., at 7-8 for a discussion of Division policy regarding voiding the Plea Agreement.*

³⁴ *The Plea Agreement contains this reference to Attachment A when the defendant receives a nonimmigrant waiver of inadmissibility. See Paragraph 16 above.*

signed by the United States and the defendant.

23. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

[24. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.]

DATED: _____

Respectfully submitted,

BY: _____

[JOHN R. DOE]
Defendant

BY: _____

[STAFF]

BY: _____

[NAME OF COUNSEL]
Counsel for [John R. Doe]

Attorneys
U.S. Department of Justice
Antitrust Division
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]
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