

1 NIAL E. LYNCH (CSBN 157959)
NATHANAEL M. COUSINS (CSBN 177944)
2 MAY Y. LEE (CSBN 209366)
BRIGID S. BIERMANN (CSBN 231705)
3 U.S. Department of Justice
Antitrust Division
4 450 Golden Gate Avenue
Room 10-0101, Box 36046
5 San Francisco, CA 94102
Telephone: (415) 436-6660

6 Attorneys for the United States

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 UNITED STATES OF AMERICA)
11)
12 v. Plaintiff,)
13 DAE SOO KIM,)
14 Defendant.)

Case No. CR 06-0126 PJH
PLEA AGREEMENT

15 **PLEA AGREEMENT**

16 The United States of America and Dae Soo Kim (“Defendant”) hereby enter into the
17 following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
18 Procedure (“Fed. R. Crim. P.”):

19 **RIGHTS OF DEFENDANT**

- 20 1. Defendant understands that he has the right:
21 (a) to be represented by an attorney;
22 (b) to be charged by Indictment;
23 (c) to plead not guilty to any criminal charge brought against him;
24 (d) as a citizen and resident of the Republic of Korea (“Korea”), to decline to
25 accept service of the Summons in this case, and to contest the jurisdiction of the United
26 States to prosecute this case against him in the United States District Court for the
27 Northern District of California;

1 (e) to have a trial by jury, at which he would be presumed not
2 guilty of the charge and the United States would have to prove every essential element
3 of the charged offense beyond a reasonable doubt for him to be found guilty;

4 (f) to confront and cross-examine witnesses against him and to
5 subpoena witnesses in his defense at trial;

6 (g) not to be compelled to incriminate himself;

7 (h) to appeal his conviction; and

8 (i) to appeal the imposition of sentence against him.

9 **AGREEMENT TO PLEAD GUILTY**
10 **AND WAIVE CERTAIN RIGHTS**

11 2. Defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-
12 (h) above, including all jurisdictional defenses to the prosecution of this case, and agrees
13 voluntarily to consent to the jurisdiction of the United States to prosecute this case against him
14 in the United States District Court for the Northern District of California. Defendant also
15 knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other
16 writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under
17 28 U.S.C. § 2241 or 2255 that challenges the sentence imposed by the Court, if that sentence is
18 consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement,
19 regardless of how the sentence is determined by the Court. This agreement does not affect the
20 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this
21 paragraph, however, shall act as a bar to the Defendant perfecting any legal remedies he may
22 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of
23 counsel. Further, pursuant to Fed. R. Crim. P. 7(b), Defendant will waive Indictment and plead
24 guilty at arraignment to a one-count Information to be filed in the United States District Court
25 for the Northern District of California. The Information will charge that beginning on or about
26 April 1, 1999, and continuing until on or about June 15, 2002, Hynix Semiconductor Inc.
27 (“Hynix”) and co-conspirators participated in a conspiracy in the United States and elsewhere to
28 suppress and eliminate competition by fixing the price of dynamic random access memory

1 (“DRAM”) to be sold to certain original equipment manufacturers of personal computers and
2 servers (“OEMs”), in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The Information
3 will further charge that Defendant, an employee of Hynix, joined and participated in the
4 charged conspiracy from on or about April 1, 2001, until on or about June 15, 2002.

5 3. Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the
6 criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
7 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

8 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

11 (a) For purposes of this Plea Agreement, the “relevant period” is that period
12 from on or about April 1, 2001, to on or about June 15, 2002. During the relevant period,
13 Defendant was an employee of Hynix, an entity organized and existing under the laws of Korea,
14 with its principal place of business in Korea. During the relevant period, Defendant was
15 Hynix’s Senior Vice President and General Manager, Worldwide Sales & Marketing.

16 (b) DRAM is the most commonly used semiconductor memory product.
17 DRAM provides high-speed storage and retrieval of electronic information in personal
18 computers, servers, and other devices.

19 (c) In the course of his employment for Hynix during the relevant period,
20 Defendant was engaged in the sale of DRAM in the United States. As Senior Vice President
21 and General Manager, Worldwide Sales & Marketing, Defendant was responsible for setting the
22 minimum price floors for the sale of DRAM in the United States, and directly supervised other
23 employees engaged in the sale of DRAM in the United States.

24 (d) During the relevant period, Defendant participated in a pre-existing
25 conspiracy, as described below, in the United States and elsewhere among certain DRAM
26 producers and their officers and employees, the primary purpose of which was to raise the price
27 of DRAM sold to certain OEMs. The conspiracy directly affected these OEMs in the United
28 States: Dell Inc., Hewlett-Packard Company, Compaq Computer Corporation, International

1 Business Machines Corporation, Apple Computer Inc., and Gateway, Inc. The Defendant
2 participated in this conspiracy by engaging in, and permitting his subordinates to engage in,
3 communications with representatives of certain other DRAM producers and sellers, during
4 which information on pricing was exchanged between competitors with the effect of influencing
5 the price of DRAM sold to certain OEMs. Also during these communications understandings
6 were reached, the effect of which was to stabilize and raise the price of DRAM sold to certain
7 OEMs.

8 (e) During the relevant period, DRAM sold by one or more of the
9 conspirators, equipment and supplies necessary to the production and distribution of DRAM,
10 and payments for DRAM, traveled in interstate and foreign commerce. The business activities
11 of Defendant and his co-conspirators in connection with the production and sale of DRAM
12 affected by this conspiracy were within the flow of, and substantially affected, interstate and
13 foreign trade and commerce.

14 (f) Acts in furtherance of this conspiracy were carried out within the
15 Northern District of California. Furthermore, DRAM affected by this conspiracy was sold by
16 one or more of the conspirators to customers in this District.

17 **POSSIBLE MAXIMUM SENTENCE**

18 5. Defendant understands that the statutory maximum penalty which may be
19 imposed against him upon conviction for a violation of Section One of the Sherman Antitrust
20 Act is:

21 (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);

22 (b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the
23 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross
24 pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18
25 U.S.C. § 3571(b) and (d)); and

26 (c) a term of supervised release of one (1) year following any term of
27 imprisonment. If Defendant violates any condition of supervised release,
28 Defendant could be imprisoned for the entire term of supervised release

1 (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and United States
2 Sentencing Guideline (“U.S.S.G.” or “Guidelines”) § 5D1.2(a)(3)).

3 6. In addition, Defendant understands that:

4 (a) pursuant to U.S.S.G. § 5E1.1 and 18 U.S.C. § 3583(d), this Court may
5 order him to pay restitution to the victims of the offense; and

6 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, this
7 Court is required to order Defendant to pay a \$100.00 special assessment
8 upon conviction for the charged crime.

9 **SENTENCING GUIDELINES**

10 7. Defendant understands that the Sentencing Guidelines are advisory, not
11 mandatory, but that the Court must consider the Guidelines, along with the other factors set
12 forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. Defendant understands
13 that the Guidelines determinations will be made by the Court by a preponderance of the
14 evidence standard. Defendant understands that although the Court is not ultimately bound to
15 impose a sentence within the applicable Guidelines range, its sentence must be reasonable based
16 upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant
17 to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that Defendant
18 provides to the United States pursuant to this Plea Agreement will not be used to increase the
19 volume of affected commerce attributable to Defendant or in determining the Defendant’s
20 applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b). Defendant
21 and the United States agree that the Court should consider the Guidelines in effect at the time of
22 the offense, June 15, 2002, rather than at the time of sentencing, in accordance with U.S.S.G. §
23 1B1.11(b). The United States and Defendant agree that the Guidelines may be applied and, if
24 applied, the applicable sentencing guidelines is U.S.S.G. § 2R1.1 with a base level of 10, a
25 volume of commerce adjustment of plus 7 pursuant to U.S.S.G. § 2R1.1(b)(2)(G); a role in the
26 offense adjustment of plus 3 pursuant to U.S.S.G. § 3B1.1 for a total of 20, less a 3-level
27 adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a) and (b), for a total
28 offense level of 17. Further, the United States agrees to make a motion for downward departure

1 pursuant to Paragraph 10 herein and U.S.S.G. § 5K1.1, recommending that Defendant be
2 sentenced to the recommended sentence agreed to below.

3 **SENTENCING AGREEMENT**

4 8. (a) Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and Defendant
5 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
6 Court impose, a sentence requiring that Defendant pay to the United States a criminal fine of
7 \$250,000, payable in full before the fifteenth (15th) day after the date of judgment; a period of
8 incarceration of eight months; no order of restitution; and no period of supervised release (“the
9 recommended sentence”). Defendant understands that this Court will order him to pay a \$100
10 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed. The
11 parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a
12 degree, not adequately taken into consideration by the U.S. Sentencing Commission in
13 formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The
14 parties agree not to seek or support any sentence outside of the Guidelines range nor any
15 Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties
16 further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

17 (b) The United States will not object to Defendant’s request that the Court
18 make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that
19 Defendant be assigned to a Federal Minimum Security Camp (and specifically to the Lompoc
20 Prison Camp in Lompoc, California) to serve his sentence of imprisonment and that Defendant
21 be released on his own personal recognizance following the imposition of sentence to allow him
22 to self-surrender to the designated institution on a specified date.

23 9. The United States and Defendant agree that, pursuant to U.S.S.G. § 5E1.1(b),
24 Defendant should not be ordered to pay restitution in light of the civil cases filed against Hynix,
25 Defendant’s employer, including *In re DRAM Antitrust Litigation*, No. M-02-1486-PJH, MDL
26 No. 1486, consolidated in the United States District Court, Northern District of California,
27 which potentially provide for a recovery of a multiple of actual damages.

1 10. The United States and Defendant agree that the applicable Guidelines fine and
2 incarceration ranges exceed the fine and term of imprisonment contained in the recommended
3 sentence set out in Paragraph 8 above. Subject to the full and continuing cooperation of
4 Defendant, as described in Paragraph 13 of this Plea Agreement, and prior to sentencing in this
5 case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a
6 downward departure from the Guidelines fine and incarceration ranges in this case. The motion
7 for downward departure is based on cooperation that has already occurred and any additional
8 cooperation that may occur prior to sentencing. Furthermore, the United States will request that
9 this Court impose the fine and term of imprisonment contained in the recommended sentence
10 set out in Paragraph 8 of this Plea Agreement because of Defendant's substantial assistance in
11 the government's investigation and prosecutions of violations of federal criminal law in the
12 DRAM industry.

13 11. The United States and Defendant jointly submit that this Plea Agreement and the
14 record that will be created by the United States and Defendant at the plea and sentencing
15 hearing will provide sufficient information concerning Defendant, the offense charged in this
16 case, and Defendant's role in the offense to enable the meaningful exercise of sentencing
17 authority by this Court under 18 U.S.C. § 3553. The United States will not object to
18 Defendant's request that this Court accept Defendant's plea of guilty and impose sentence on an
19 expedited schedule as early as the date of arraignment, based upon the record provided by
20 Defendant and the United States, under the provisions of Rule 32(b)(1), Fed. R. Crim. P.,
21 U.S.S.G. § 6A1.1, and Criminal Local Rule 32-1(b). The Court's denial of the request to
22 impose sentence on an expedited schedule will not void this Plea Agreement. Should the Court
23 deny Defendant's request to impose sentence on an expedited schedule, the United States agrees
24 that, at the initial appearance or arraignment, it will recommend the release of Defendant on his
25 personal recognizance and without bond, under 18 U.S.C. § 3142, without restriction as to
26 travel, pending the sentencing hearing in this case.

1 12. The United States and Defendant understand that this Court retains complete
2 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea
3 Agreement.

4 (a) If this Court does not accept the recommended sentence, the United States
5 and Defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall
6 be rendered void. Neither party may withdraw from this Plea Agreement, however,
7 based on the type or location of the correctional facility to which Defendant is assigned
8 to serve his sentence.

9 (b) If this Court does not accept the recommended sentence, Defendant will be
10 free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If Defendant
11 withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement
12 made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty
13 plea or this Plea Agreement or made in the course of plea discussions with an attorney
14 for the government shall not be admissible against Defendant in any criminal or civil
15 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, should the
16 Court not accept the Plea Agreement and should Defendant then withdraw his guilty
17 plea, the United States agrees that it will dismiss the Information, without prejudice to
18 the United States' right to indict Defendant on the charge contained in the Information
19 and any other related charges. In addition, Defendant agrees that, if he withdraws his
20 guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of
21 limitations period for any Relevant Offense, as defined in Paragraph 13 below, will be
22 tolled for the period between the date of the signing of the Plea Agreement and the date
23 Defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the
24 signing of the Plea Agreement, whichever is greater. For a period of three (3)
25 consecutive days following such a withdrawal of the guilty plea under this
26 subparagraph, the United States shall take no action, based upon either a Relevant
27 Offense or any actual or alleged violation of the Plea Agreement, to revoke Defendant's
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1 release on his personal recognizance, to subject Defendant to service of process, arrest,
2 or detention, or to prevent Defendant from departing the United States.

3 **DEFENDANT’S COOPERATION**

4 13. Defendant will cooperate fully and truthfully with the United
5 States in the prosecution of this case, the current federal investigation of violations of federal
6 antitrust and related criminal laws involving the manufacture or sale of DRAM, any other
7 federal investigation resulting therefrom, and any litigation or other proceedings arising or
8 resulting from any such investigation to which the United States is a party (“Federal
9 Proceeding”). The ongoing, full, and truthful cooperation of Defendant shall include, but not be
10 limited to:

11 (a) producing in the United States and at other mutually agreed-
12 upon locations all non-privileged documents, including claimed personal documents,
13 and other non-privileged materials, wherever located, in the possession, custody, or
14 control of Defendant, requested by attorneys and agents of the United States;

15 (b) making himself available for interviews in the United States
16 and at other mutually agreed-upon locations, not at the expense of
17 the United States, upon the request of attorneys and agents of the United States;

18 (c) responding fully and truthfully to all inquiries of the United
19 States in connection with any Federal Proceeding, without falsely implicating any
20 person or intentionally withholding any non-privileged information, subject to the
21 penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18
22 U.S.C. § 1503);

23 (d) otherwise voluntarily providing the United States with any non-
24 privileged material or information, not requested in (a) - (c) of this paragraph, that he
25 may have that is related to any Federal Proceeding; and

26 (e) when called upon to do so by the United States in connection
27 with any Federal Proceeding, testifying in grand jury, trial, and other judicial
28 proceedings in the United States, fully, truthfully, and under oath, subject to the

1 penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand
2 jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and
3 obstruction of justice (18 U.S.C. § 1503).

4 **GOVERNMENT’S AGREEMENT**

5 14. Subject to the full, truthful, and continuing cooperation of Defendant, as
6 described in Paragraph 13 of this Plea Agreement, and upon the Court’s acceptance of the guilty
7 plea called for by this Plea Agreement and the imposition of the recommended sentence, the
8 United States will not bring further criminal charges against Defendant for any act or offense
9 committed before the date of this Plea Agreement that was undertaken in furtherance of an
10 antitrust conspiracy involving the manufacture or sale of DRAM or undertaken in connection
11 with any investigation of such a conspiracy (“Relevant Offense”). The nonprosecution terms of
12 this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or
13 securities laws, or to any crime of violence.

14 15. The United States agrees that when Defendant travels to the United States for
15 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
16 meetings with counsel in preparation therefor, the United States will take no action, based upon
17 any Relevant Offense, to subject Defendant to arrest, detention, or service of process, or to
18 prevent Defendant from departing the United States. This paragraph does not apply to
19 Defendant’s commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
20 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
21 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401 - 402) in
22 connection with any testimony or information provided or requested in any Federal Proceeding.

23 16. (a) Subject to the full and continuing cooperation of the Defendant,
24 as described in Paragraph 13 of this Plea Agreement, and upon the Court’s acceptance of
25 the Defendant’s guilty plea and imposition of sentence in this case, the United States
26 agrees not to seek to remove the Defendant from the United States under Sections 238
27 and 240 of the Immigration and Nationality Act, 8 U.S.C. §§ 1228 and 1229a, based
28 upon the Defendant’s guilty plea and conviction in this case, should the Defendant apply

1 for or obtain admission to the United States as a nonimmigrant (hereinafter referred to as
2 the “agreement not to seek to remove the Defendant”). The agreement not to seek to
3 remove the Defendant is the equivalent of an agreement not to exclude the Defendant
4 from admission to the United States as a nonimmigrant or to deport the Defendant from
5 the United States. (Immigration and Nationality Act § 240(e)(2), 8 U.S.C. §
6 1229a(e)(2)).

7 (b) The Antitrust Division of the United States Department of Justice has
8 consulted with United States Immigration and Customs Enforcement (“ICE”) on behalf
9 of the United States Department of Homeland Security (“DHS”). ICE, on behalf of
10 DHS and in consultation with the United States Department of State, has agreed to the
11 inclusion in this Plea Agreement of this agreement not to seek to remove the Defendant.
12 The Secretary of DHS has delegated to ICE the authority to enter this agreement on
13 behalf of DHS.

14 (c) So that the Defendant will be able to obtain any nonimmigrant
15 visa that he may need to travel to the United States, DHS and the Visa Office, United
16 States Department of State, have concurred in the granting of a nonimmigrant waiver of
17 the Defendant’s inadmissibility. This waiver will remain in effect so long as this
18 agreement not to seek to remove the Defendant remains in effect. While the waiver
19 remains in effect, the Department of State will not deny the Defendant’s application for
20 a nonimmigrant visa on the basis of the Defendant’s guilty plea and conviction in this
21 case, and DHS will not deny his application for admission as a nonimmigrant on the
22 basis of his guilty plea and conviction in this case.

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

25 (i) acts and has acted consistently with his cooperation
26 obligations under this Plea Agreement;

27 (ii) is not convicted of any felony under the laws of the United
28 States or any state, other than the conviction resulting from the Defendant’s

1 guilty plea under this Plea Agreement or any conviction under the laws of any
2 state resulting from conduct constituting an offense subject to this Plea
3 Agreement; and

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

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

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

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

18 17. Defendant understands that he may be subject to administrative action by federal,
19 state or foreign agencies other than the United States Department of Justice, Antitrust Division,
20 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
21 no way controls whatever action, if any, other agencies may take. However, the United States
22 agrees that, if requested, it will advise the appropriate officials of any governmental agency
23 considering such administrative action of the fact, manner, and extent of the cooperation of
24 Defendant as a matter for that agency to consider before determining what administrative
25 action, if any, to take.

1 **REPRESENTATION BY COUNSEL**

2 18. Defendant has reviewed all legal and factual aspects of this case with his attorney
3 and is fully satisfied with his attorney’s legal representation. Defendant has thoroughly
4 reviewed this Plea Agreement with his attorney and has received satisfactory explanations from
5 his attorney concerning each paragraph of this Plea Agreement and alternatives available to
6 Defendant other than entering into this Plea Agreement. After conferring with his attorney and
7 considering all available alternatives, Defendant has made a knowing and voluntary decision to
8 enter into this Plea Agreement.

9 **VOLUNTARY PLEA**

10 19. Defendant’s decision to enter into this Plea Agreement and to tender a plea of
11 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
12 or representations other than the representations contained in this Plea Agreement. The United
13 States has made no promises or representations to Defendant as to whether this Court will
14 accept or reject the recommendations contained within this Plea Agreement.

15 **VIOLATION OF PLEA AGREEMENT**

16 20. Defendant agrees that, should the United States determine in good faith, during
17 the period that any Federal Proceeding is pending, that Defendant has failed to provide full and
18 truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has otherwise
19 violated any provision of this Plea Agreement, the United States will notify Defendant or his
20 counsel in writing by personal or overnight delivery or facsimile transmission and may also
21 notify his counsel by telephone of its intention to void any of its obligations under this Plea
22 Agreement (except its obligations under this paragraph), and Defendant shall be subject to
23 prosecution for any federal crime of which the United States has knowledge including, but not
24 limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement.

25 Defendant may seek Court review of any determination made by the United States under this
26 Paragraph to void any of its obligations under the Plea Agreement. Defendant agrees that, in
27 the event that the United States is released from its obligations under this Plea Agreement and
28 brings criminal charges against Defendant for any Relevant Offense, the statute of limitations

1 period for such offense will be tolled for the period between the date of the signing of this Plea
2 Agreement and six (6) months after the date the United States gave notice of its intent to void
3 its obligations under this Plea Agreement.

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

12 22. Defendant agrees to and adopts as his own the factual statement contained in
13 Paragraph 4 above. In the event that Defendant breaches the Plea Agreement, Defendant agrees
14 that the Plea Agreement, including the factual statement contained in Paragraph 4 above,
15 provides a sufficient basis for any possible future extradition request that may be made for his
16 return to the United States to face charges either in the Information referenced in Paragraph 2 of
17 this Plea Agreement or in any related indictment. Defendant further agrees not to oppose or
18 contest any request for extradition by the United States to face charges either in the Information
19 referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

20 **ENTIRETY OF AGREEMENT**

21 23. This Plea Agreement constitutes the entire agreement between the
22 United States and Defendant concerning the disposition of the criminal charge in this case. This
23 Plea Agreement cannot be modified except in writing, signed by the United States and
24 Defendant.

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