

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

MISAO HIOKI

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Criminal No. H-08-795

PLEA AGREEMENT

The United States of America and Misao Hioki (“defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) as a citizen and resident of Japan, to contest the jurisdiction of the United States to prosecute this case against him in the United States District Court for the Southern District of Texas;
 - (d) to plead not guilty to any criminal charge brought against him;
 - (e) 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 offenses beyond a reasonable doubt for him to be found guilty;
 - (f) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (g) not to be compelled to incriminate himself;

- (h) to appeal his conviction, if he is found guilty; and
- (i) to appeal the imposition of sentence against him.

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

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(h) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in the United States District Court for the Southern District of Texas. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a 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 sentence in Paragraph 10 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). Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a two-count Information to be filed in the United States District Court for the Southern District of Texas. Count 1 of the Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares for sales of marine hose sold in the United States and elsewhere, beginning at least as early as January 2004 and continuing until as late as May 2007 in unreasonable restraint of foreign and interstate trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. Count 2 of the Information will charge the defendant with participating in a conspiracy to violate the laws of the United

States, in violation of 18 U.S.C. § 371, that is, to violate the antibribery provisions of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. § 78dd-3(a).

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charges described in Paragraph 2 above 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.

FACTUAL BASIS FOR OFFENSES CHARGED

4. The defendant is pleading guilty because he is in fact guilty of the charges contained in Counts 1 and 2 of the Information. In pleading guilty to Counts 1 and 2 of the Information, the defendant acknowledges and admits that the facts as stated in this Plea Agreement are true, that he was aware of these facts during his employment at a major industrial products manufacturer (“Company-1”), and that if the case proceeded to trial, the United States would be able to prove these facts beyond a reasonable doubt. The facts set forth in this Plea Agreement are not a complete recitation of all facts relevant to the underlying criminal conduct or known to the defendant that relate to his conduct, nor does the factual basis include all the relevant conduct that may be considered by the Court for sentencing purposes.

(a) Beginning at least as early as January 2004 and continuing until as late as May 2007 (the “Relevant Period”), the defendant was the General Manager of Company-1’s International Engineered Products Department (“IEP”) in Tokyo, Japan. Company-1 is an entity organized and existing under the laws of Japan and with its principal place of business in Tokyo, Japan. During the Relevant Period, Company-1 was a manufacturer of marine hose and other products, including marine fenders, conveyor belts and rubber dams, and was engaged in the sale of marine hose and other products in the United States and

elsewhere. Marine hose is a flexible rubber hose used to transfer oil between tankers and storage facilities and/or buoys.

(b) As General Manager, the defendant oversaw Company-1's international sales of marine hose and other marine products, supervised sales employees in Japan and elsewhere, and, along with his supervisors and/or subordinates, approved Company-1's pricing decisions. Within IEP, the defendant's subordinate employees included the individuals holding the positions of "Section Manager" and "Person in Charge" for the products manufactured by IEP. During the Relevant Period, the staff in Company-1's IEP subsidiaries in Malaysia, the United Kingdom, and the United States ("U.S. Subsidiary") also reported to the defendant. U.S. subsidiary is headquartered in the United States and sells marine hose and other products in North, Central, and South America. U.S. subsidiary, including through its Houston office, sells marine hose and other products to customers in Latin America.

Count 1

(c) Beginning at least as early as 1999 and continuing until as late as May 2007, co-conspirators of the defendant entered into and engaged in a conspiracy, the primary purpose of which was to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares for sales of marine hose sold in the United States and elsewhere. The defendant joined and participated in the conspiracy during the Relevant Period. In furtherance of the conspiracy, the defendant attended meetings and engaged in discussions with executives from other marine hose manufacturers, and with an individual who acted as the coordinator of the cartel. During such meetings and discussions, the defendant and co-conspirators agreed to rig bids, fix prices and allocate

market shares for the sale of marine hose in the United States and elsewhere. The conspiring manufacturers provided a co-conspirator, who acted as a coordinator, with information about upcoming marine hose jobs. The coordinator then designated, based on rules agreed to by the conspirators, which of the conspiring manufacturers would win the job. After the winning conspirator was designated, the coordinator provided the other conspirators with instructions regarding how much to bid on the job to ensure that the designated conspirator would win the job.

(d) During the Relevant Period, marine hose sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of marine hose, as well as payments for marine hose, traveled in interstate and foreign commerce. The business activities of the defendant and co-conspirators in connection with the manufacture and/or sale of marine hose affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce. During the Relevant Period, the volume of commerce attributable to the defendant is greater than \$10 million, but less than \$40 million.

(e) Acts in furtherance of this conspiracy were carried out within the Southern District of Texas within the Relevant Period. On at least one occasion, members of the conspiracy attended a meeting in Houston during which the conspirators discussed the implementation of the conspiracy. The defendant met with the cartel's coordinator in Houston to discuss the conspiracy.

Count 2

(f) To sell its IEP products throughout the world, Company-1 coordinated with its regional subsidiaries, including U.S. Subsidiary. These regional subsidiaries typically entered into commission-based contracts with local sales agents in the countries for which they were responsible. U.S. Subsidiary, for example, entered into contracts with local sales agents in Argentina, Brazil, Ecuador, Mexico, and Venezuela, among other countries. Typically, local sales agents were responsible for developing relationships with and keeping apprised of upcoming work with the potential customers in their respective territories. Many of these local sales agents had relationships with officials in the state-owned entities that were often Company-1's customers for IEP products.

Corrupt Payments in Latin America

(g) For a substantial period of time, and beginning before the Relevant Period, Company-1 has, through its local sales agents in Latin America and elsewhere, made corrupt payments to various foreign government officials employed at state-owned customers and employees of private customers to secure contracts for its IEP products, including marine hose. For a substantial period of time, including during the Relevant Period, Company-1 has made corrupt payments to government officials and employees of private customers in various countries in Latin America through U.S. Subsidiary. The defendant was aware of these circumstances and, during the Relevant Period, participated in such conduct.

(h) To secure projects in Latin America, and in Mexico in particular, Company-1 made corrupt payments to government officials employed by state-owned entities through U.S. Subsidiary's local sales agents. While the specifics varied among the

different engineered products, most sales within IEP generally followed a similar pattern. Local sales agents gathered information related to potential projects and relayed that information to their counterparts in the Company-1 regional subsidiaries. The regional subsidiaries then forwarded the information provided by the local agents to the IEP employee in Japan responsible for the particular product, typically to the relevant Person in Charge.

(i) The local agents often agreed to pay officials within the state-owned customer a percentage of the total value of the proposed deal. Employees of Company-1's regional subsidiaries, as well as their supervisors in Japan, were aware of and authorized these payments.

(j) Company-1 IEP and U.S. Subsidiary employees took steps to conceal these payments. For example, to avoid creating an email or written record of the corrupt payments, some of the facsimiles sent from U.S. Subsidiary to Company-1 IEP that contained details of the payments, often including the exact amounts of the payments and the identities of the individuals within the customer to whom the payments would be made, reflected the handwritten notation: "Read and Destroy." On other occasions, in a further effort to avoid creating a written record, Company-1 IEP and U.S. Subsidiary employees addressed issues surrounding the corrupt payments by telephone.

(k) Company-1 IEP employees within the marine hose section, including the Persons in Charge, Section Manager, or the General Manager, indicated their approval of a proposed IEP deal by stamping their names on a financial spreadsheet that outlined the terms of the particular deal. In Japanese, this spreadsheet was called a Kessai Sho. The Kessai Sho would include the expected sales price and/or profit and would sometimes

include the commission percentage for the particular deal. In certain circumstances, the General Manager sought the approval of his supervisors for deals that included corrupt payments.

(l) After Company-1 agreed to make corrupt payments to employees of the customer to secure a project, Company-1's regional subsidiary placed the bid through the local sales agent. Typically, if the regional subsidiary secured the project, it paid the local sales agent a "commission," which included not only the local sales agent's actual commission, but also whatever corrupt payments were to be paid to employees of the customer. The local sales agent was then responsible for passing the agreed upon corrupt payments to the employees of the customer.

(m) For a period of time starting before the Relevant Period, and continuing through the end of the Relevant Period, co-conspirators of the defendant entered into and engaged in a conspiracy to make corrupt payments to foreign government officials to secure business and contracts for the purchase of IEP products, including the purchase of marine hose. The defendant joined and participated in the conspiracy throughout the Relevant Period. During the Relevant Period, Company-1, U.S. Subsidiary, and their local sales agents authorized more than \$1,000,000 in corrupt payments to be given either directly or indirectly to employees of state-owned customers.

(n) As General Manager, the defendant authorized and/or participated in having the local agents make corrupt payments to employees of Company-1's and U.S. Subsidiary's customers in order to secure business for Company-1 and U.S. Subsidiary. The defendant's involvement included, but was not limited to, both his specific authorization of certain corrupt payments and his stamped approval on Kessai Shos for

projects which he knew included corrupt payments to employees of Company-1's and U.S. Subsidiary's customers. In authorizing and/or participating in having the local agents make corrupt payments to employees of Company-1's and U.S. Subsidiary's customers, the defendant was aware that certain of those customers were state-owned enterprises, in whole or in part, and that, therefore, certain of their employees were foreign government officials. Furthermore, during his employment as General Manager, the defendant was aware that the authorization and payment of money or things of value corruptly to foreign government officials to assist in obtaining business was illegal under U.S. law.

(o) In furtherance of the conspiracy described in Paragraph 4(f)-(n), the following acts, among others, occurred within the Southern District of Texas and elsewhere:

(i) U.S. Subsidiary employees in Houston, Texas corresponded by facsimile with employees of Company-1 IEP in Tokyo, Japan, identifying both the percentages of the corrupt payments and the ultimate foreign public official recipients (on occasion by name, position and/or initials) of those corrupt payments in connection with contracts to sell IEP products to state-owned customers in various Latin American countries;

(ii) U.S. Subsidiary employees in Houston, Texas corresponded by email with the defendant and other employees of Company-1 IEP in Tokyo, Japan, discussing projects in which corrupt payments were made to employees of state-owned customers; and

(iii) U.S. Subsidiary employees in Houston, Texas communicated by telephone with employees of Company-1 IEP in Tokyo, Japan, discussing and

planning corrupt payments, including payments to employees of state-owned customers.

POSSIBLE MAXIMUM SENTENCE

5. For Count 1, the defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for 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 imprisoned for up to two (2) years (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)).

6. For Count 2, the defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

- (a) a term of imprisonment for 5 years;
- (b) a fine in an amount equal to the greatest of (1) \$250,000, (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 (18 U.S.C. § 3571); and

(c) a term of supervised release of three (3) years following any term of imprisonment (18 U.S.C. § 3559(a)(4); 18 U.S.C. § 3583(b)(2); and U.S.S.G. §5D1.2(a)(2)). If the defendant violates any condition of supervised release, the defendant could be imprisoned for up to two (2) years (18 U.S.C. § 3583(e)(3)).

7. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663, the Court may order him to pay restitution to the victims of the offenses; 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 GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. 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). Accordingly, Defendant will have the right to present to the Court relevant factors as contemplated by 18 U.S.C. §3553(a) in support of the recommended sentence contained in Paragraph 10 of this Agreement. 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 in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

9. The United States and the defendant agree that Counts 1 and 2 should not be grouped together as "closely related counts" under U.S.S.G. §3D1.2, and pursuant to U.S.S.G. §6B1.4, enter into the following stipulations:

(a) Count 1

- (i) The base offense level applicable to Count 1, as established by U.S.S.G. §2R1.1(a), is 12.
- (ii) The offense to which the defendant is pleading guilty in Count 1 involved participation in an agreement to submit non-competitive bids, within the meaning of U.S.S.G. §2R1.1(b)(1), which increases the offense level by 1.
- (iii) The volume of commerce attributable to the defendant within the meaning of U.S.S.G. §2R1.1(b)(2) for the offense in Count 1 is more than \$10,000,000, but less than \$40,000,000, which increases the offense level by 4.
- (iv) Based on the defendant's role in the offense charged in Count 1, a three-level increase in the offense level is appropriate pursuant to U.S.S.G. §3B1.1(b).
- (v) The adjusted offense level for Count 1 is 20.

(b) Count 2

- (i) The base offense level applicable to Count 2, as established by U.S.S.G. §2C1.1(a)(2), is 12.

- (ii) The offense to which the defendant is pleading guilty in Count 2 involved more than one bribe within the meaning of U.S.S.G. §2C1.1(b)(1), which increases the offense level by 2.
 - (iii) The amount of corrupt payments attributable to the defendant within the meaning of U.S.S.G. §2C1.1(b)(2) for the offense in Count 2 is more than \$1,000,000, which increases the offense level by 16.
 - (iv) The adjusted offense level for Count 2 is 30.
- (c) The combined offense level for Counts 1 and 2, pursuant to U.S.S.G. §3D1.4, is 30.
- (d) For purposes of U.S.S.G. §3E1.1, a three-level reduction of the combined offense level for defendant's acceptance of responsibility is appropriate, in the event that the defendant enters a plea of guilty to the Information pursuant to this plea agreement. However, should the United States obtain or receive additional evidence or information prior to sentencing that, in its sole discretion, it determines to be credible and materially in conflict with this stipulation, then the United States shall no longer be bound by this stipulation.
- (e) Based on the foregoing, defendant's adjusted offense level for the offense to which he is pleading guilty is 27. The Guidelines sentencing range for offense level 27 is 70 to 87 months imprisonment. The defendant's appropriate Guidelines fine range within the meaning of §2R1.1(c)(1) for the offense in Count 1 is \$107,000 to \$535,000. The defendant's appropriate Guidelines fine range within the meaning of §5E1.2(c)(3) for the offense in Count 2 is \$12,500 to \$125,000.

SENTENCING AGREEMENT

10. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine of \$80,000 to be paid, pursuant to U.S.S.G. §5E1.2(f), in installments with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) as follows: within fifteen (15) days of imposition of sentence -- \$40,000; at the one-year anniversary of imposition of sentence--\$40,000; provided, however, that the defendant shall have the option at any time before the one-year anniversary of prepaying the remaining balance then owing on the fine, and requiring the defendant to serve a period of imprisonment of twenty-four (24) months (“the recommended sentence”). The defendant agrees that he will not oppose this recommendation. 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. The parties agree not to seek or support any sentence outside of the Guidelines range nor any 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. The parties further agree that no term of supervised release following imprisonment is necessary. The United States agrees that it will not seek an order of restitution in relation to Count 1 because of the availability of civil causes of action. The defendant understands that the Court will order him to pay a \$100 special assessment per count of conviction pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

11. The United States will not object to defendant’s request to waive a pre-sentence investigation and report and for the Court to conduct a sentencing hearing and impose sentence immediately upon entry of the defendant’s plea. The United States will not object to defendant’s

request that the Court recommend to the U.S. Bureau of Prisons that the defendant be assigned to the minimum security satellite prison camp at the Lompoc Federal Correctional Complex in Lompoc, California to serve his sentence. The United States also agrees not to object to defendant's request to be released, following imposition of sentence, on his personal recognizance, under 18 U.S.C. §3142, and to be allowed to self-surrender to the assigned facility on the date specified by the Court or the U.S. Bureau of Prisons.

12. The United States and the defendant agree that the defendant's applicable Guidelines imprisonment and fine ranges set out in Paragraph 9 exceed the term of imprisonment and fine contained in the recommended sentence set out in Paragraph 10. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 15 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 imprisonment and fine ranges in this case and will request that the Court impose the recommended sentence as set out in Paragraph 10 of this Plea Agreement because of the defendant's substantial assistance in the investigations and prosecutions of violations of criminal laws including: the criminal antitrust conspiracy in the marine hose industry; the conspiracy to violate the Foreign Corrupt Practices Act; and any other investigation and prosecution resulting from the investigation and prosecution of these crimes.

13. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 15 of this Plea Agreement, and before sentencing in the 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 investigations and prosecutions, all material facts relating to the defendant's involvement in the charged offenses, and all other relevant conduct.

14. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 10 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommendation contained in this Plea Agreement, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

15. The defendant will cooperate fully and truthfully. That cooperation includes, but is not limited to, cooperating with the United States in the prosecution of this case and the United States' investigations and prosecutions of violations of federal criminal laws including the criminal antitrust conspiracy in the marine hose industry and the conspiracy to violate the Foreign Corrupt Practices Act; any other federal investigation resulting from the investigation and prosecution of these crimes; and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- (a) producing in the United States and at other mutually agreed-upon locations all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;
- (b) making himself available for interviews 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;
- (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 false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

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

(e) 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 in the United States, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

UNITED STATES' AGREEMENT

16. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 15 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of either an antitrust conspiracy involving the manufacture or sale of marine hose or the corrupt payments conspiracy (including bribery and related offenses) arising out of the facts as described in Paragraphs 2 and 4 of this Plea Agreement or undertaken in connection with any investigation of such conspiracies ("Relevant Offenses"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

17. 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 Offenses, to subject the defendant to arrest, detention, or service of process, or to prevent the defendant from departing the United States. This paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401 - 402) in connection with any testimony or information provided or requested in any Federal Proceeding.

18. The defendant understands that he may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust and Criminal Divisions, based upon the convictions resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

19. The defendant has reviewed all legal and factual aspects of this case with his undersigned attorneys and is fully satisfied with his attorneys' legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorneys and has received satisfactory explanations from his attorneys concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his

attorneys and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

20. 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. 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

21. 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 and truthful cooperation, as described in Paragraph 15 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall 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 Offenses, the statute of limitations period for such offense shall be tolled for the period between the date of

the signing 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.

22. 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 based on the defendant's violation of the 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 any such further prosecution. 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.

23. The defendant agrees to and adopts as his own the factual statement contained in Paragraph 4. In the event that the defendant breaches the Plea Agreement, the defendant agrees that this Plea Agreement, including the factual statement contained in Paragraph 4, provides a sufficient basis for any possible future extradition request that may be made for his return to the United States to face charges either in the Information referenced in Paragraph 2 of this Plea Agreement or in any related indictment. The defendant further waives any right to, and agrees not to, oppose or contest, on any grounds, any request for extradition by the United States to face charges either in the Information referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

ENTIRETY OF AGREEMENT

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

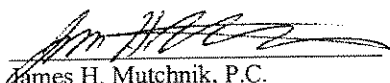
25. The undersigned attorneys for the United States have been authorized by the

Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

26. A facsimile signature shall 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.



Misao Hioki
Defendant



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