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

11 UNITED STATES OF AMERICA)
12 Plaintiff,)
13 v.)
14 HEINRICH FLORIAN,)
15 Defendant.)

Case No. CR-04-0397 PJH
PLEA AGREEMENT

16 **PLEA AGREEMENT**

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

20 **RIGHTS OF DEFENDANT**

- 21 1. Defendant understands that he has the right:
22 (a) to be represented by an attorney;
23 (b) to be charged by Indictment;
24 (c) to plead not guilty to any criminal charge brought against him;
25 (d) as a citizen and resident of the Federal Republic of Germany
26 (“Germany”), to decline to accept service of the Summons in this case, and to contest the
27 jurisdiction of the United States to prosecute this case against him in the United States
28 District Court for the 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 of
3 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 waives the rights set out in Paragraph 1(b)-(h) above, including all
12 jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the
13 jurisdiction of the United States to prosecute this case against him in the United States District
14 Court for the Northern District of California. Defendant agrees to have his sentence determined
15 under the United States Sentencing Guidelines (“U.S.S.G.”) and waives all constitutional
16 challenges to the validity of the U.S.S.G. Defendant waives any right he may have to have facts
17 that determine his Guidelines fine and imprisonment ranges under the U.S.S.G. (including any
18 facts used to determine his offense level, volume of commerce, any specific offense
19 characteristic or other enhancement or adjustment under the U.S.S.G.) alleged in an indictment
20 and found by a jury beyond a reasonable doubt. Defendant also waives the right to appeal the
21 imposition of the sentence against him, so long as the sentence imposed is consistent with the
22 recommended sentence contained in Paragraph 8 of this Plea Agreement. Defendant also waives
23 the right to file any collateral attack on his conviction or sentence, including a petition under 28
24 U.S.C. § 2255, at any time after he is sentenced, except for a claim that his constitutional right to
25 the effective assistance of counsel was violated. Further, pursuant to Fed. R. Crim. P. 7(b),
26 Defendant will waive Indictment and plead guilty at arraignment to a one-count Information to
27 be filed in the United States District Court for the Northern District of California. The
28 Information will charge that beginning on or about July 1, 1999, and continuing until on or about

1 June 15, 2002, Infineon Technologies AG (“Infineon AG”), including its United States-based
2 subsidiary Infineon Technologies North America Corp (“Infineon NA”), and co-conspirators
3 participated in a conspiracy in the United States and elsewhere to suppress and eliminate
4 competition by fixing the price of dynamic random access memory (“DRAM”) to be sold to
5 certain original equipment manufacturers of personal computers and servers (“OEMs”), in
6 violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The Information will further charge that
7 Defendant, an employee of Infineon AG, joined and participated in the charged conspiracy from
8 on or about April 1, 2001, until on or about June 15, 2002.

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

12 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

15 (a) For purposes of this Plea Agreement, the “relevant period” is that period
16 from on or about April 1, 2001, to on or about June 15, 2002. During the relevant period,
17 Defendant was an officer of Infineon AG, an entity organized and existing under the laws of
18 Germany, with its principal place of business in Munich, Germany. From April 1, 2001 to
19 December 31, 2001, Defendant was Infineon’s Vice President for Sales, Marketing & Logistics
20 for Memory Products, and from January 1, 2002 until July 15, 2002, Defendant was Infineon’s
21 Vice President for Marketing & Logistics.

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

25 (c) In the course of his employment for Infineon AG during the relevant
26 period, Defendant was engaged in the sale of DRAM in the United States by virtue of his
27 responsibility for recommending to his superiors, including the Infineon Memory Products
28 Board, the minimum price floors for the sale of DRAM in the United States. Defendant also

1 directly supervised other employees engaged in the sale of DRAM in the United States, from
2 April 1, 2001 through December 31, 2001, by virtue of his Sales-related responsibilities as
3 Infineon's Vice President for Sales, Marketing & Logistics for Memory Products.

4 (d) During the relevant period, Defendant participated in a pre-existing
5 conspiracy, as described below, in the United States and elsewhere among certain DRAM
6 producers and their officers and employees, the primary purpose of which was to raise the price
7 of DRAM sold to certain OEMs. The conspiracy directly affected these OEMs in the United
8 States: Dell Inc., Hewlett-Packard Company, Compaq Computer Corporation, International
9 Business Machines Corporation, Apple Computer Inc., and Gateway, Inc. Defendant
10 participated in the above-referenced conspiracy by engaging in communications with
11 representatives of other DRAM producers and sellers, during which information on pricing was
12 exchanged between competitors for the purpose and with the effect of influencing the price of
13 DRAM sold to certain OEMs. Also during these communications understandings were reached,
14 the effect of which was to stabilize and raise the price of DRAM sold to certain OEMs.
15 Defendant then made minimum pricing floor recommendations, for the sale of DRAM to certain
16 OEMs, to his superiors, including the Infineon Memory Products Board. Those price
17 recommendations were based on pricing information obtained by Defendant and other Infineon
18 employees in communications with competitors.

19 (e) In addition, during the relevant period Defendant was aware of the
20 existence of the conspiracy among the employees and officers of Infineon AG, and he knowingly
21 consented to the participation of one or more of his subordinate employees in that conspiracy.

22 (f) During the relevant period, DRAM sold by one or more of the
23 conspirators, equipment and supplies necessary to the production and distribution of DRAM, and
24 payments for DRAM, traveled in interstate and foreign commerce. The business activities of
25 Defendant and his co-conspirators in connection with the production and sale of DRAM affected
26 by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade
27 and commerce.

28 (g) Acts in furtherance of this conspiracy were carried out within the Northern

1 District of California. Furthermore, DRAM affected by this conspiracy was sold by one or more
2 of the conspirators to customers in this District.

3 **POSSIBLE MAXIMUM SENTENCE**

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

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

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

12 (c) a term of supervised release of one (1) year following any term of
13 imprisonment. If Defendant violates any condition of supervised release,
14 Defendant could be imprisoned for the entire term of supervised release
15 (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and U.S.S.G. § 5D1.2(a)(3)).

16 6. In addition, Defendant understands that:

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

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

22 **SENTENCING GUIDELINES**

23 7. Sentencing for the offense to be charged will be conducted pursuant to
24 the U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the
25 United States agrees that self-incriminating information that Defendant provides to the United
26 States pursuant to this Plea Agreement will not be used to increase the volume of affected
27 commerce attributable to Defendant or in determining Defendant's applicable sentencing
28 guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b). The United States and

1 Defendant agree that the U.S. Sentencing Guidelines may be applied and, if applied, the
2 applicable sentencing guidelines is U.S.S.G. § 2R1.1 with a base level of 10, a volume of
3 commerce adjustment of plus 7 pursuant to U.S.S.G. § 2R1.1(b)(2)(G); a role in the offense
4 adjustment of plus 3 pursuant to U.S.S.G. § 3B1.1 for a total of 20, less a 3-level adjustment for
5 acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a) and (b), for a total offense level of
6 17. Further, the United States agrees to make a motion for downward departure pursuant to
7 Paragraph 10 herein and U.S.S.G. § 5K1.1, recommending that Defendant be sentenced to the
8 sentence agreed to below.

9 **SENTENCING AGREEMENT**

10 8. (a) Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and Defendant
11 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
12 Court impose, a sentence requiring that Defendant pay to the United States a criminal fine of
13 \$250,000, pursuant to 18 U.S.C. § 3571(d), payable in full before the thirtieth (30th) day after the
14 date of judgment; a period of incarceration of 180 days; no order of restitution; and no period of
15 supervised release (“the recommended sentence”). Defendant understands that this Court will
16 order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G.
17 § 5E1.3 in addition to any fine imposed.

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

24 (c) The parties also agree that if the U.S. Sentencing Guidelines do not apply,
25 this Court in exercising its unfettered discretion within the statutory limits for this offense should
26 impose the same recommended sentence. Nothing in this Agreement shall preclude the United
27 States from making a motion to reduce Defendant’s sentence pursuant to Fed. R. Crim. P. 35(b)
28 or otherwise, if circumstances so warrant.

1 9. The United States and Defendant agree that, pursuant to U.S.S.G. § 5E1.1(b),
2 Defendant should not be ordered to pay restitution in light of the civil cases filed against
3 Infineon AG, Defendant’s employer, including *In re DRAM Antitrust Litigation*, No. M-02-
4 1486-PJH, MDL No. 1486, in the United States District Court, Northern District of California,
5 and *DRAM Cases*, No. CJC-03-004265, in the Superior Court, San Francisco, California, which
6 potentially provide for a recovery of a multiple of actual damages.

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

19 11. The United States and Defendant jointly submit that this Plea Agreement and the
20 record that will be created by the United States and Defendant at the plea and sentencing hearing
21 will provide sufficient information concerning Defendant, the offense charged in this case, and
22 Defendant’s role in the offense to enable the meaningful exercise of sentencing authority by this
23 Court under 18 U.S.C. § 3553. The United States will not object to Defendant’s request that this
24 Court accept Defendant’s plea of guilty and impose sentence on an expedited schedule as early
25 as the date of arraignment, based upon the record provided by Defendant and the United States,
26 under the provisions of Rule 32(b)(1), Fed. R. Crim. P., U.S.S.G. § 6A1.1, and Criminal Local
27 Rule 32-1(b). The Court’s denial of the request to impose sentence on an expedited schedule
28 will not void this Plea Agreement. Should the Court deny Defendant’s request to impose

1 sentence on an expedited schedule, the United States agrees that, at the initial appearance or
2 arraignment, it will recommend the release of Defendant on his personal recognizance and
3 without bond, under 18 U.S.C. § 3142, without restriction as to travel, pending the sentencing
4 hearing in this case.

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

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

13 (b) If this Court does not accept the recommended sentence, Defendant will be
14 free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If Defendant
15 withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement
16 made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty
17 plea or this Plea Agreement or made in the course of plea discussions with an attorney for
18 the government shall not be admissible against Defendant in any criminal or civil
19 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, should the
20 Court not accept the Plea Agreement and should Defendant then withdraw his guilty plea,
21 the United States agrees that it will dismiss the Information, without prejudice to the
22 United States' right to indict Defendant on the charge contained in the Information and
23 any other related charges. In addition, Defendant agrees that, if he withdraws his guilty
24 plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period
25 for any Relevant Offense, as defined in Paragraph 13 below, will be tolled for the period
26 between the date of the signing of the Plea Agreement and the date Defendant withdrew
27 his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea
28 Agreement, whichever is greater. For a period of three (3) consecutive days following

1 such a withdrawal of the guilty plea under this subparagraph, the United States shall take
2 no action, based upon either a Relevant Offense or any actual or alleged violation of the
3 Plea Agreement, to revoke Defendant's release on his personal recognizance, to subject
4 Defendant to service of process, arrest, or detention, or to prevent Defendant from
5 departing the United States.

6 **DEFENDANT'S COOPERATION**

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

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

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

20 (c) responding fully and truthfully to all inquiries of the United
21 States in connection with any Federal Proceeding, without falsely implicating any person
22 or intentionally withholding any non-privileged information, subject to the penalties of
23 making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. §
24 1503);

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

28 (e) when called upon to do so by the United States in connection

1 with any Federal Proceeding, testifying in grand jury, trial, and other
2 judicial proceedings in the United States, fully, truthfully, and under oath, subject to the
3 penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand
4 jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and
5 obstruction of justice (18 U.S.C. § 1503).

6 **GOVERNMENT'S AGREEMENT**

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

16 15. The United States agrees that when Defendant travels to the United States for
17 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
18 meetings with counsel in preparation therefor, the United States will take no action, based upon
19 any Relevant Offense, to subject Defendant to arrest, detention, or service of process, or to
20 prevent Defendant from departing the United States. This paragraph does not apply to
21 Defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
22 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
23 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401 - 402) in
24 connection with any testimony or information provided or requested in any Federal Proceeding.

25 16. (a) Subject to the full and continuing cooperation of Defendant,
26 as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of
27 Defendant's guilty plea and imposition of sentence in this case, the United States agrees not to
28 seek to remove Defendant from the United States under Section 240 of the Immigration and

1 Nationality Act, based upon Defendant's guilty plea and conviction in this case, should
2 Defendant apply for or obtain admission to the United States as a nonimmigrant (hereinafter
3 referred to as the "agreement not to seek to remove Defendant"). The agreement not to seek to
4 remove Defendant is the equivalent of an agreement not to exclude Defendant from admission to
5 the United States as a nonimmigrant or to deport Defendant from the United States.
6 (Immigration and Nationality Act, § 240(e)(2)).

7 (b) The Antitrust Division of the United States Department of Justice has
8 consulted with the United States Immigration and Customs Enforcement of the United States
9 Department of Homeland Security ("ICE"). ICE, in consultation with the United States
10 Department of State, has agreed to the inclusion in this Plea Agreement of this agreement not to
11 seek to remove Defendant.

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

20 (d) This agreement not to seek to remove Defendant will remain
21 in effect so long as Defendant:

- 22 (i) acts and has acted consistently with his cooperation obligations
23 under this Plea Agreement;
- 24 (ii) is not convicted of any felony under the laws of the United States
25 or any state, other than the conviction resulting from Defendant's
26 guilty plea under this Plea Agreement or any conviction under the
27 laws of any state resulting from conduct constituting an offense
28 subject to this Plea Agreement; and

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

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

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

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

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

24 **REPRESENTATION BY COUNSEL**

25 18. Defendant has reviewed all legal and factual aspects of this case with his attorney
26 and is fully satisfied with his attorney's legal representation. Defendant has thoroughly reviewed
27 this Plea Agreement with his attorney and has received satisfactory explanations from his
28 attorney concerning each paragraph of this Plea Agreement and alternatives available to

1 Defendant other than entering into this Plea Agreement. After conferring with his attorney and
2 considering all available alternatives, Defendant has made a knowing and voluntary decision to
3 enter into this Plea Agreement.

4 **VOLUNTARY PLEA**

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

10 **VIOLATION OF PLEA AGREEMENT**

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

20 Defendant may seek Court review of any determination made by the United States under this
21 Paragraph to void any of its obligations under the Plea Agreement. Defendant agrees that, in the
22 event that the United States is released from its obligations under this Plea Agreement and brings
23 criminal charges against Defendant for any Relevant Offense, the statute of limitations period for
24 such offense will be tolled for the period between the date of the signing of this Plea Agreement
25 and six (6) months after the date the United States gave notice of its intent to void its obligations
26 under this Plea Agreement.

27 21. Defendant understands and agrees that in any further prosecution
28 of him resulting from the release of the United States from its obligations under this Plea

1 Agreement based on Defendant's violation of the Plea Agreement, any documents, statements,
2 information, testimony, or evidence provided by him to attorneys or agents of the United States,
3 federal grand juries, or courts, and any leads derived therefrom, may be used against him in any
4 such further prosecution. In addition, Defendant unconditionally waives his right to challenge
5 the use of such evidence in any such further prosecution, notwithstanding the protections of Fed.
6 R. Evid. 410.

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

15 **ENTIRETY OF AGREEMENT**

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

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

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3 25. A facsimile signature shall be deemed an original signature for the purpose of
4 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of
5 executing this Plea Agreement.

6

7 DATED: November 30, 2004

Respectfully submitted,

8

9 BY:

10

_____/s/
Heinrich Florian
Defendant

_____/s/
Niall E. Lynch (CSBN 157959)
Eugene S. Litvinoff (CSBN 214318)
Nathanael M. Cousins (CSBN 177944)
U.S. Department of Justice
Antitrust Division
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12

_____/s/
Counsel for Defendant
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1875 Century Park East, 23rd Floor
Los Angeles, CA 90067-2561

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