



5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count Four of the indictment. Count Four charges defendant with participating in a scheme to commit wire fraud, including through the deprivation of honest services, in violation of Title 18, United States Code, Sections 1343 and 1346.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Four of the indictment. In pleading guilty, Defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline §1B1.3:

From approximately October 2008 to on or about December 9, 2008, in the Northern District of Illinois, Eastern Division, Defendant, together with co-defendant Rod Blagojevich and others, participated in a scheme to deprive the people of the State of Illinois of their intangible right to the honest services of Defendant and Rod Blagojevich, in violation of Title 18, United States Code, Sections 1343 and 1346.

It was part of the scheme that beginning in or about October 2008, and continuing until on or about December 9, 2008, Rod Blagojevich ("Blagojevich"), with the assistance of Defendant and others, sought to obtain financial benefits for Blagojevich and his wife, in return for the exercise of his duty under Illinois law to appoint a United States Senator to fill the vacancy created by the election of Barack Obama as President of the United States. At times Defendant assisted Blagojevich's efforts to carry out the scheme by suggesting means

by which Blagojevich could secure personal benefits for himself in exchange for appointing a United States Senator, conducting factual research relating to the scheme at Blagojevich's direction, and counseling Blagojevich on carrying out the scheme. At other times, Defendant expressed opposition to Blagojevich's efforts to enrich himself through his appointment of a United States Senator, and/or did not follow instructions from Blagojevich to assist in those efforts.

Specifically, starting in December 2005 and continuing until December 2008, Defendant served as then Illinois Governor Rod Blagojevich's Chief of Staff. Over the course of many months in 2008, Defendant participated in and was aware of discussions involving Blagojevich and others about the possibility that Blagojevich might have the ability to appoint someone to replace then-U.S. Senator Barack Obama if he won the general election for the President of the United States. By early October 2008, Defendant participated in regular conversations with Blagojevich about what personal benefits Blagojevich could obtain in exchange for naming someone to the U.S. Senate seat should Obama win the Presidency. As one example, around October 6, Blagojevich asked Defendant what Blagojevich could get in exchange for the U.S. Senate seat. Defendant told Blagojevich that the appointment could either reward an ally or make a new ally but that Blagojevich could not trade the Senate seat for something for himself. In other discussions with Blagojevich, Defendant and others told Blagojevich that he could not receive money

(either campaign money or other money) in exchange for naming someone to the Senate seat. Blagojevich ignored Defendant's statements.

Shortly before and immediately after the November 4, 2008 election of Barack Obama as President of the United States, Blagojevich's discussions with Defendant about Blagojevich's appointment of a replacement Senator became more frequent and more detailed. Defendant participated in numerous discussions with Blagojevich and others about this issue. Defendant was aware that Blagojevich was also talking to a small group of internal and external advisors about this issue. Throughout the course of these discussions, Blagojevich made it clear to Defendant that Blagojevich was not focused on what was in the best interest of the people of the state of Illinois but instead was focused in large part on what Blagojevich could get personally in exchange for the Senate appointment.

Around the time of the November 4 election, Defendant learned that Senate Candidate B was interested in the Senate seat. Blagojevich discussed with Defendant that he wanted to use Senate Candidate B's interest in the Senate seat as a way to get something for himself from President-elect Obama. Initially, Blagojevich wanted to be appointed Secretary of Health and Human Services ("HHS"). On or about November 6, 2008, Blagojevich met with Service Employees International Union (SEIU) Official A, who had been presented to Blagojevich and Defendant as an emissary working on behalf of President-elect Obama with respect to filling the Senate seat. Prior to the meeting, Defendant helped Blagojevich strategize regarding how to ask SEIU Official A for the HHS position in exchange for

making Senate Candidate B the Senator. After the meeting, Blagojevich told Defendant and others that during the meeting, he asked SEIU Official A for the HHS position in exchange for making Senate Candidate B the Senator.

During discussions with Defendant, Blagojevich expressed interest in an ambassadorship from President-elect Obama in exchange for making Senate Candidate B the Senator. On or about November 5, 2008, Blagojevich directed Defendant and Deputy Governor A to research ambassadorship options for him. Blagojevich also directed Defendant and Deputy Governor A to research private foundations where he might be able to get a high-paying position in exchange for making Senate Candidate B the Senator. Defendant told Blagojevich that the private foundation option would give President-elect Obama a buffer, meaning that it would not be obvious that Blagojevich was getting a position in exchange for making Senate Candidate B the Senator. Defendant suggested that the foundation would need to be a group that was dependent on federal funding, so that President-elect Obama would have enough influence to get Blagojevich a position. Blagojevich was very interested in this idea and told Defendant to look into options right away.

Deputy Governor A asked whether Blagojevich was thinking about a position with a private foundation for 2010 (when his term as Governor ended) or now. Blagojevich said that he wanted the position now and wanted to know how much the position paid. Deputy Governor A responded that the salary was likely \$200,000 to \$300,000. Blagojevich seemed

disappointed in that salary and asked something like, "Oh is that all?" At that point, Defendant said that he thought the salary was more like \$300,000 to \$500,000. Blagojevich had a more positive reaction to that salary. Blagojevich suggested that SEIU and other labor unions provided funds to some private foundations and suggested those foundations be the ones Defendant and Deputy Governor A research. Defendant understood that Blagojevich's personal financial circumstances and security were a significant consideration for Blagojevich in his analysis of whom he should name to the Senate seat.

Blagojevich told Defendant that if he could not get a position directly through President-elect Obama in exchange for picking a desired candidate, then Blagojevich would seek a position through supporters of President-elect Obama in exchange for naming someone to the Senate seat. Blagojevich asked Defendant to develop a union-based option for him. The next day Defendant responded to his assignment by presenting Blagojevich with an idea by which Blagojevich could become the national coordinator for an organization named "Change to Win." Change to Win is an organization associated with a number of labor unions, including SEIU. Defendant suggested to Blagojevich that SEIU Officials A and B, whom Defendant and Blagojevich believed were already acting as emissaries between Blagojevich and President-elect Obama for purposes of picking a desired Senate candidate, could get Blagojevich the Change to Win position in exchange for Blagojevich agreeing to make Senate Candidate B the Senator. Defendant explained to Blagojevich that the benefit to SEIU would be that SEIU would have helped President-elect Obama by getting

Blagojevich to appoint Senate Candidate B to the Senate and in exchange, President-elect Obama would look favorably on SEIU's agenda in President-elect Obama's administration. The benefit to Blagojevich would be a paid position as National Coordinator with Change to Win. Defendant further explained that the benefits to President-elect Obama would be that Blagojevich would appoint Senate Candidate B to the U.S. Senate seat, and SEIU Officials A and B would act as a buffer between President-elect Obama and Blagojevich.

Defendant explained to Blagojevich that the Change to Win position would keep him politically viable, pay him a salary, and provide him with union support and connections for whatever he wanted to do down-the-road. Blagojevich said that he thought it was a great idea, but was concerned that he would have to make the Senate appointment first, which meant that SEIU could withhold the Change to Win position later. Defendant explained to Blagojevich that part of the advantage to the Change to Win idea was that this was something that SEIU Officials A and B could promise to Blagojevich now and Blagojevich could believe that they would follow through on later, while part of the disadvantage to the Change to Win idea was that it was not politically acceptable for Blagojevich to step down as Governor to take that position. In response, Blagojevich suggested the possibility of having his wife take a position now and then Blagojevich could take the national position later. Defendant told him that this was not a good idea. Blagojevich asked Defendant what the Change to Win position paid and asked whether he could get extra income if he sat on other

boards. Defendant speculated that the position would pay no more than SEIU Official A's salary.

On November 7, 2008, Defendant participated in a conference call with Blagojevich and Advisor A, in which Blagojevich solicited Advisor A's thoughts on the Change to Win idea. Defendant knew that Advisor A was an outside consultant whom Blagojevich trusted and upon whom Blagojevich relied for political advice. During the call, Blagojevich told Advisor A what had happened at the November 6 meeting with SEIU Official A. Blagojevich then directed Defendant to tell Advisor A about the Change to Win idea. Defendant explained the idea and Advisor A responded in a very positive way. Advisor A analogized the Change to Win deal to a three-way trade in baseball because it allowed President-elect Obama to stay out of Illinois politics because he would have a buffer and there would be no obvious quid pro quo for Senate Candidate B. Blagojevich told Advisor A that he was looking for \$250,000-\$300,000 in salary and also to sit on some boards. During the call, Defendant understood that Blagojevich was focused on obtaining money and maintaining his political viability in his analysis of whom to name to the Senate seat. After this call, defendant and Blagojevich learned that SEIU Official A's salary was approximately \$125,000 to \$150,000 annually. Upon learning this, Blagojevich was disappointed and wanted to know if he could be paid more than SEIU Official A.



On or about November 12, 2008, the media reported that Senate Candidate B was going to work at the White House. Defendant participated in a number of conversations with Blagojevich about this development. Defendant believed that Senate Candidate B's decision to go to the White House caused Blagojevich to become anxious about losing leverage for what he might be able to ask of President-elect Obama with respect to a position for himself. At this point, Blagojevich began to express greater interest in the possibility that supporters of President-elect Obama would establish and fund a 501(c)(4) organization for the benefit of Blagojevich in exchange for a Senate seat appointment. Blagojevich asked Defendant to reach out to United States Congressman A about this possibility. Defendant believed that this was a direct quid pro quo and Defendant did not make any calls to further Blagojevich's request. Defendant concealed from Blagojevich that he did not follow Blagojevich's directive to contact United States Congressman A about the 501(c)(4). Blagojevich later told Defendant that he had approached SEIU Official A about the 501(c)(4) idea and Blagojevich said that SEIU Official A was going to "run it up the flag pole," which Defendant took to mean that he was going to check with representatives of President-elect Obama.

At this time, Blagojevich also pressed Defendant to have an "off campus" discussion with Senate Candidate D. Defendant knew that this was a reference to Blagojevich's prior directive to Defendant to ask Senate Candidate D for Senate Candidate D's remaining campaign funds in exchange for appointing Senate Candidate D to the U.S. Senate Seat. Sometime in the summer of 2008, Blagojevich told Defendant that if he appointed Senate

Candidate D to the vacant Senate seat, he would want and expect Senate Candidate D to give Blagojevich some or all of Senate Candidate D's campaign funds. Blagojevich raised this topic, which was often referred to as "the off-campus discussion" with Senate Candidate D, in several phone calls with Defendant. Defendant believed that Blagojevich was again raising this issue because Blagojevich believed that a deal with representatives of President-elect Obama involving Senate Candidate B was no longer a possibility.

In response to Blagojevich's directives to him, on November 12, 2008, Defendant met with Senate Candidate D in his Springfield office. During the meeting, Defendant had a discussion with Senate Candidate D about his plans for his campaign funds that could not be converted to personal use. Defendant did not directly tell Senate Candidate D that Blagojevich was going to ask Senate Candidate D for his campaign funds. Based on what Defendant did say, however, Defendant believed that Senate Candidate D was on notice that, in relation to the Senate seat, Blagojevich was going to talk with Senate Candidate D about Senate Candidate D's campaign funds.

On or about December 4, 2008, Blagojevich told Defendant that Senate Candidate A, through a third-party, had offered to raise \$1.5 million in campaign funds for Blagojevich in exchange for the U.S. Senate appointment. Defendant told Blagojevich that the offer to raise funds should not be a factor in his decision, although it was clear to Defendant that a large part of Blagojevich's consideration for appointing Senate Candidate A to the Senate was the offer of campaign funds. Defendant had previously advanced an argument in favor of Senate

Candidate A, listing all of the favorable points of a Senate Candidate A appointment, in response to which Blagojevich had dismissed all of the points Defendant made and had refused to even entertain the idea of appointing Senate Candidate A. Although Blagojevich was previously not willing to consider Senate Candidate A, Defendant believed that Blagojevich was now seriously considering Senate Candidate A because of the offer of campaign funds.

In addition, Defendant was aware that, from time to time, in the course of considering options to fill the open Senate seat, Blagojevich considered appointing certain other individuals or appointing himself to the open Senate seat, often with personal benefits to himself as part of Blagojevich's consideration. For instance, with respect to appointing himself, Blagojevich expressed a variety of reasons for doing so, including to possibly avoid impeachment by the Illinois legislature, to obtain greater resources if he was indicted as a sitting Senator as opposed to a sitting governor, and to facilitate his wife's employment as a lobbyist.

In or about the spring of 2008, around the time that Blagojevich's wife passed her Series 7 examination, which allowed her to sell financial securities, Blagojevich told Defendant that Blagojevich wanted to get Blagojevich's wife a job using her Series 7 license with an entity that did business with the State of Illinois. Defendant told Blagojevich that his wife could not work for an entity that did business with the State of Illinois. Despite this, Blagojevich asked Defendant to set up informational or networking meetings for his wife

with financial institutions that had business with the State of Illinois in hopes that those businesses would assist in getting Blagojevich's wife a job. Defendant subsequently arranged a meeting between Blagojevich's wife and an official at a financial institution that had business with the State of Illinois. Defendant also spoke with an official at another financial institution that had business with the State of Illinois concerning that official helping Blagojevich's wife develop possible employment opportunities. When Blagojevich concluded that officials at these institutions had been unhelpful in finding his wife a job, Blagojevich told Defendant that he did not want the institutions to receive further business from the State of Illinois. With respect to one of the institutions, Defendant told Blagojevich that, because the entity had business through the state pension funds, Blagojevich did not control those decisions. With respect to the other financial institution, despite Blagojevich's directive, Defendant did not prevent that institution from getting further business with the State and avoided telling Blagojevich when the institution was applying for State business so as to prevent Blagojevich from following through on his directive.

Further, in November and December 2008, in response to Chicago Tribune editorials that had been critical of Blagojevich, Blagojevich directed Defendant to tell Tribune Financial Advisor that Blagojevich was going to withhold state financial support that would benefit the Tribune Company, unless the Tribune Owner fired people on the editorial board. In order to appease Blagojevich, Defendant told Blagojevich that he would and did relay this threat to Tribune Financial Advisor. Although Defendant did have a conversation with

Tribune Financial Advisor about the negative editorials regarding Blagojevich, Defendant did not relay the threats as directed by Blagojevich.

On or about November 7, 2008, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, Defendant and Blagojevich, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely a phone call between Blagojevich and Defendant, in Chicago, Illinois, and Advisor A, in Washington, D.C., in which Blagojevich, Defendant, and Advisor A discussed financial benefits which Blagojevich could request in exchange for the appointment of Senate Candidate B to the United States Senate; in violation of Title 18, United States Code, Sections 1343 and 1346.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crime and related conduct.

**Maximum Statutory Penalties**

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

**Sentencing Guidelines Calculations**

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2008 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the offense of conviction is 14, pursuant to Guideline §2C1.1(a)(1), because defendant was a public official.

ii. Pursuant to Guideline §2C1.1(b)(2), because the value to be obtained exceeded \$5000, the offense level is increased by the number of levels from the table in §2B1.1.

iii. Pursuant to Guideline §2B1.1(b)(1)(H), a 14 level increase is warranted because the pecuniary value of the intended loss foreseeable to defendant was more than \$400,000 but less than \$1,000,000.

iv. Pursuant to Guideline §2C1.1(b)(3), a four level increase is warranted because defendant and Blagojevich were public officials in high-level decision-making or sensitive positions.

v. Pursuant to Guideline §3B1.2, a two level decrease is warranted because defendant was a minor participant in the criminal activity.

vi. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vii. In accord with Guideline §3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level

reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 27, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 70 to 87 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant



shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

#### **Cooperation**

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

#### **Agreements Relating to Sentencing**

12. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant

has continued to provide full and truthful cooperation as required by this plea agreement, then the government shall move the Court, pursuant to Guideline §5K1.1, to depart from the applicable Guideline range and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court.

13. If the government moves the Court, pursuant to Sentencing Guideline §5K1.1, to depart from the applicable Guideline range, as set forth in the preceding paragraph, this Agreement will be governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties agree that any sentence of imprisonment shall not exceed fifty percent (50%) of the low end of Federal Sentencing Guidelines range applicable to defendant's offense. It is also agreed that while the government will recommend a sentence of imprisonment that is 50% of the low end of Federal Sentencing Guidelines range applicable to defendant's offense, defendant and his attorney are free to ask the sentencing court for any sentence deemed to be appropriate. Other than the agreed maximum term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts the agreed maximum term of incarceration set forth herein, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If, however, the Court does not agree to the agreed maximum term of incarceration set forth herein, thereby rejecting this plea agreement, or otherwise refuses

to accept defendant's plea of guilty, either party has the right to withdraw from this plea agreement.

14. If the government does not move the Court, pursuant to Sentencing Guideline §5K1.1, to depart from the applicable Guideline range, as set forth above, this plea agreement will not be governed, in any part, by Federal Rule of Criminal Procedure 11(c)(1)(C), the preceding paragraph of this plea agreement will be inoperative, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to §5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Sentencing Guideline §5K1.1.

15. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

**Presentence Investigation Report/Post-Sentence Supervision**

16. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing, including the nature and extent of defendant's cooperation.

17. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

18. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

**Acknowledgments and Waivers Regarding Plea of Guilty**

### **Nature of Plea Agreement**

19. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 08 CR 888-5.

20. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

21. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could

require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, if the government makes a motion at sentencing for a downward departure pursuant to Sentencing Guideline § 5K1.1, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28,

United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant understands that he has the right to have the criminal charge in the indictment brought within five years of the last of the alleged acts constituting the specified violation. By signing this document, defendant knowingly waives any right to have the charge in the indictment brought against him within the period established by the statute of limitations. Defendant also knowingly waives any defense or claim based upon the statute of limitations or upon the timeliness with which the charge in the indictment was brought.

#### **Other Terms**

22. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

#### **Conclusion**



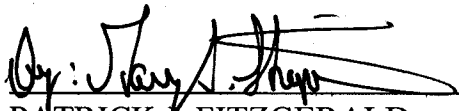
23. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

24. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

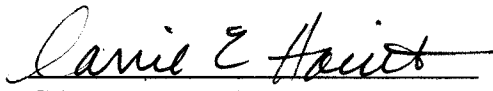
25. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.


26. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 7-8-09

  
PATRICK J. FITZGERALD  
United States Attorney

  
JOHN HARRIS  
Defendant

  
CARRIE E. HAMILTON  
Assistant U.S. Attorney

  
TERRY EKL  
Attorney for Defendant