

Model Annotated Corporate Plea Agreement – 11(c)(1)(C)
Last Updated 04/04/2022

UNITED STATES DISTRICT COURT
[XXXXXX] DISTRICT OF [XXXXXX]¹

UNITED STATES OF AMERICA	)	Criminal No. [XXXX]
	)	
	)	Filed:
v.	)	
	)	Violation:
[GLOBAL PRODUCTS, INC.],	)	
	)	
Defendant.	)	
_____	)	

PLEA AGREEMENT²

The United States Department of Justice, Antitrust Division (“United States”) and [GLOBAL PRODUCTS, INC.] (“Defendant”) enter into this Plea Agreement under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”), the terms and conditions of which are as follows:

¹ *The format of the case caption should conform to local practice.*

² *This document contains the typical terms used in plea agreements entered into with the Department of Justice, Antitrust Division for a Sherman Act offense. The local practice in the district where a plea agreement is filed will be adhered to wherever necessary. Bracketed, all-caps text indicates optional language or case-specific factual information; bold, italicized text indicates internal guidance and drafting instructions. The Division will periodically update this model to reflect new case law, statutes, or policies. The most recent versions of the Division’s model plea agreements are available at <https://www.justice.gov/atr/criminal-enforcement>.*

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

Parties to and Scope of the Agreement

1. The Defendant is organized under the laws of [STATE ***OR if foreign*** COUNTRY] and headquartered in [CITY, STATE ***OR if foreign*** CITY, COUNTRY]. This Agreement binds the Defendant [and [NAMES OF RELATED CORPORATE ENTITIES] (collectively “Related Entities”)] and the United States Department of Justice, Antitrust Division.³ [***If the Agreement covers individuals, include:*** This Agreement also creates contingent rights and obligations for the individuals listed in Attachment A under seal, who will be collectively referred to as “Covered Individuals.” The contingent rights and obligations of Covered Individuals are limited expressly as described below.]

Rights of Defendant

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

³ *Only related entities that the Division is satisfied can fulfill their obligations under the DPA, including cooperation, are eligible for coverage in an appropriate case and in the Division’s discretion. Subsidiaries, if included, must be defined and may be limited to those “engaged in the sale or production” of the relevant product or service.*

- (g) to appeal the imposition of sentence against it.

Agreement to Plead Guilty and Waive Certain Rights

3. The Defendant knowingly and voluntarily waives:

- (a) the rights set out in subparagraphs 2(b)-(e) above;

[(b) any right it might have as a corporation organized and existing under the laws of [COUNTRY] to decline to accept service of the Summons in this case;]

[(c) any right it might have as a corporation organized and existing under the laws of [COUNTRY] to contest that the United States District Court for the [XXXXXX] District of [XXXXXXXX] has jurisdiction over it for purposes of this case;]

(d) the right to file any appeal or collateral attack that challenges its conviction, including but not limited to any appeal or collateral attack raising any argument that (1) the statute to which it is pleading guilty is unconstitutional or (2) the admitted conduct does not fall within the scope of such statute; and

(e) the right to file any appeal or collateral attack, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court, 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).

Nothing in this paragraph, however, will act as a bar to the Defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. [*May also include following stipulation--*The Defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct.] Under Fed. R. Crim. P. 7(b), the Defendant will waive indictment and plead guilty to a [one]-count Information [in the form attached] to be filed in the United

States District Court for the [XXXXXX] District of [XXXXXXX]. The Information will charge the Defendant with [DESCRIPTION OF CHARGE].

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

Factual Basis for Offense Charged⁴

5. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:⁵

(a) For purposes of this Plea Agreement, the “relevant period” is that period [CHARGE PERIOD FROM INFORMATION]. During the relevant period, the Defendant was a corporation organized and existing under the laws of [STATE ***OR if foreign***--COUNTRY], with its principal place of business in [CITY, STATE ***OR if foreign***--CITY, COUNTRY]. During the relevant period, the Defendant employed [X] or more individuals. During the relevant period, the Defendant [SHORT DESCRIPTION OF BUSINESS AND GEOGRAPHIC SCOPE, *e.g.*, “in the United States and elsewhere”.] During the relevant period, the Defendant’s sales of [PRODUCT/SERVICE] affecting U.S. customers totaled at least \$[AFFECTED SALES VOLUME THAT WILL BE USED TO CALCULATE GUIDELINES RANGE].

⁴ Division plea agreements generally include a factual basis section, unless such a section is inconsistent with local practice. If 18 U.S.C. § 3571(d) is used to obtain a fine greater than the Sherman Act maximum fine, the Plea Agreement should address gain or loss. In non-Title 15 cases, the Plea Agreement will normally contain a loss stipulation to support a sentence above the statutory maximum.

⁵ The amount of detail contained in subparagraphs (a) & (b) normally tracks the detail in the Information. A factual basis must be established for each element of each count of the Information.

(b) During the relevant period, [SHORT DESCRIPTION OF THE OFFENSE; INCLUDE PERSONNEL THROUGH WHICH THE DEFENDANT ACTED] *[In a bid-rigging case where Defendant submitted comp bid(s), may insert the following if larger than the volume of commerce done by Defendant in the goods or services affected by the violation]*—The largest contract on which the Defendant submitted a complementary bid in connection with the conspiracy was in the amount of \$[XXX].]

(c) *[Describe relevant interstate and foreign commerce. A common description of interstate commerce in a Section 1 case follows --*

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

(d) Acts in furtherance of this offense were carried out within the [XXXXXXX] District of [XXXXXXX]. *[Describe relevant venue. Common descriptions for a Section 1 case include --* [Meetings in furtherance of the conspiracy took place in [the United States and elsewhere], and at least one of these meetings [which was attended by a representative of the Defendant] occurred in this District.] *OR* [[PRODUCT] that was the subject of this conspiracy was sold by one or more of the conspirators to customers in this District.]

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

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

Elements of the Offense

6. ***[Insert elements for each count charged]***

Possible Maximum Sentence⁶

7. The Defendant understands that the statutory maximum penalty which may be imposed against it on conviction for [a][each] violation of [Section One/Two] of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$100 million (15 U.S.C. § [1/2]);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

8. In addition, the Defendant understands that:

- (a) under §8D1.2(a)(1) of the United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) or 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;
- (b) under U.S.S.G. §8B1.1 or 18 U.S.C. § 3563(b)(2) or 3663(a)(3), the Court may order it to pay restitution to the victims of the offense;⁷ and

⁶ Insert statutory maximum penalty for each count.

⁷ In corporate antitrust cases, a court may order restitution under 18 U.S.C. § 3563(b)(2) as a condition of probation or under 18 U.S.C. § 3663(a)(3) to the extent it is agreed to by the parties

(c) under 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the Defendant to pay a \$400 special assessment [for each count] on conviction for the charged crime.

Sentencing Guidelines⁸

9. The Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed.⁹ ***[Insert if there is currently no ex post facto***

in a plea agreement. If the Division seeks restitution, the Recommended Sentence should include the amount of recommended restitution. In most criminal antitrust cases, restitution is not sought or ordered because civil causes of action are filed to recover damages.

In Title 18 cases, if the mandatory restitution requirements of 18 U.S.C. § 3663A(c)(1)(A)(ii) are met and the exceptions in 18 U.S.C. § 3663A(c)(3)(A)-(B) do not apply, subparagraph (b) should use “is required to order” instead of “may order,” citing 18 U.S.C. § 3663A(c)(1)(A)(ii). The restitution amount should be included in the Recommended Sentence. In Division cases, § 3663A most frequently applies to fraud cases. See 18 U.S.C. § 3663A(c)(1)(A)(ii) (“an offense against property under this title . . . including any offense committed by fraud or deceit”).

⁸ This section of the Plea Agreement may include Guidelines calculations.

⁹ U.S.S.G. §1B1.11 provides that the sentencing court should apply the Guidelines Manual in effect at sentencing unless that version of the Manual would violate the Ex Post Facto Clause of the Constitution by resulting in greater punishment than the Manual in effect on the date the offense of conviction was committed. U.S.S.G. §1B1.11(a)-(b)(1). If there is an ex post facto issue, the sentencing court should apply the Manual in effect on the last date the offense of conviction was committed. U.S.S.G. §1B1.1(b)(1) and comment. (n.2) (“[T]he last date of the offense of conviction is the controlling date for ex post facto purposes[.]” regardless of whether relevant conduct under U.S.S.G. §1B1.3 occurred at a later date.). Where there is an ex post facto issue, after using the Guidelines in effect at the time of the offense to determine the Guidelines range, the sentencing court can consult the higher range under the current Guidelines and choose to vary upward and sentence within the higher range. *Peugh v. United States*, 569 U.S. 530, 536-37 (2013).

issue--The parties agree there is no *ex post facto* issue under the [Month Day, 20XX] Guidelines Manual.] *OR [If there is an ex post facto issue, insert the following stipulation and/or stipulations on specific Guidelines calculations*--The parties agree that the [Month Day, 20XX] Guidelines Manual provides for greater punishment than the [Month Day, 20XX] Guidelines Manual, the version in effect on the last date the offense of conviction was committed.] The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The Defendant understands that the Court will make Guidelines determinations by applying a standard of preponderance of the evidence. The Defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based on consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). [Under U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the Defendant provides to the United States under this Plea Agreement will not be used to increase the volume of affected commerce attributable to the Defendant or in determining the Defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).]¹⁰

Sentencing Agreement

10. Under Fed. R. Crim. P. 11(c)(1)(C) and subject to the full, truthful, and continuing cooperation of the Defendant [and Related Entities], the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence [within the applicable Guidelines range]¹¹ requiring the

¹⁰ A U.S.S.G. §1B1.8 provision is optional but is commonly included in Division plea agreements.

Defendant to pay to the United States a criminal fine of \$[XX] million [*insert if using the twice the gain or loss maximum to arrive at a recommended fine greater than the Sherman Act \$100 million per count maximum or the statutory maximum for another charged offense--*, under 18 U.S.C. § 3571(d),] [payable in full before the 15th day after the date of judgment] *OR* [payable in installments as set forth below [with interest accruing under 18 U.S.C. § 3612(f)(1)-(2)] *OR* [without interest under 18 U.S.C. § 3612(f)(3)(A) *OR* § 3612(h)]]¹² [and no order of restitution] *OR* [and restitution of \$XXX under 18 U.S.C. § [3563(b)(2)/3663(a)(3)/ *OR* 3663A(c)(1)(A)(ii)]¹³ [payable in full before the 15th day after the date of judgment] *OR* [payable in installments as set forth below [with interest accruing under 18 U.S.C. § 3612(f)(1)-(2)] *OR* [without interest under 18 U.S.C. § 3612(f)(3)(A) *OR* § 3612(h)]]] (“Recommended Sentence”). [The Defendant agrees that it will not present evidence or arguments to the Court in opposition to the sentencing recommendation made to the Court by the United States.] The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree,

¹¹ This optional language is not applicable in cases involving substantial assistance downward departures or an inability to pay a Guidelines fine.

¹² The Plea Agreement should specify the time for payment of the fine using one of these options. Note that for an installment schedule to be imposed, there must be a finding that installment payments are “in the interest of justice” under 18 U.S.C. § 3572(d)(1); for example, if the organization is financially unable to make immediate payment or if such payment would be unduly burdensome. See U.S.S.G. §8C3.2(b). If the Plea Agreement includes an installment payment provision, it should include the recommended installment schedule, payable over a period not exceeding five years. If the Defendant does not pay any fine greater than \$2,500 in full before the 15th day after the date of judgment, 18 U.S.C. § 3612(f)(1) requires the payment of interest unless the Defendant does not have the ability to pay interest, in which case the Division may recommend that some or all of the interest be waived under either 18 U.S.C. § 3612(f)(3) or § 3612(h). The Plea Agreement can include a guarantee provision if staff has concerns about the Defendant's ability to pay or the preservation of its assets.

¹³ See n.7.

not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure under U.S.S.G. §5K2.0.¹⁴ The parties agree not to seek at the sentencing hearing 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 is reasonable.

(a)¹⁵ [The United States and the Defendant agree to recommend, in the interest of justice under 18 U.S.C. § 3572(d)(1) [and U.S.S.G. §8C3.2(b)], that the fine be paid in the following installments: within 30 days of imposition of sentence -- \$[XX] million [(plus any accrued interest)]; at the one-year anniversary of imposition of sentence (“anniversary”) -- \$[XX] million [(plus any accrued interest)]; at the two-year anniversary -- \$[XX] million [(plus any accrued interest)]; at the three-year anniversary -- \$[XX] million [(plus any accrued interest)]; at the four-year anniversary -- \$[XX] million [(plus any accrued interest)]; and at the five-year anniversary -- \$[XX] million [(plus any accrued interest)]; provided, however, that the Defendant will have the option at any time before the five-year anniversary of prepaying the remaining balance [(plus any accrued interest)] then owing on the fine.]

¹⁴ *This language refers to the inapplicability of U.S.S.G. §5K2.0 “out of the heartland” departures, while the next sentence allows for a substantial assistance departure, an inability to pay reduction, or a Guidelines adjustment that is set forth in the Plea Agreement.*

¹⁵ *Insert subparagraph (a) if the fine recommendation includes installment payments. The length of the installment schedule, payment intervals, and installment amounts depend on the facts of the case, but the Guidelines recommend that the length of the schedule not exceed five years. See U.S.S.G. §8C3.2, comment (n.1). If the Plea Agreement recommends restitution and the recommendation includes installment payments, a new subparagraph (b) comparable to subparagraph (a) should list the installment schedule for restitution and any restitution interest payments.*

(b) The Defendant understands that the Court will order it to pay a \$400 special assessment per count, under 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(d)¹⁶ [Both parties will recommend that no term of probation be imposed, but the Defendant understands that the Court's denial of this request will not void this Plea Agreement.]

(e)¹⁷ [The United States and the Defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the Defendant at the plea and sentencing hearings, and the further disclosure described in Paragraph 13, will provide sufficient information concerning the Defendant, the crime charged in this case, and the Defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and Defendant agree to request jointly that the Court accept the Defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based on the record provided by the Defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. §6A1.1, and [Rule XXX] of the Criminal Local

¹⁶ *The Plea Agreement may generally include this optional subparagraph unless probation is called for by local practice or under U.S.S.G. §8D1.1 or 18 U.S.C. §§ 3553(a) and 3562(a) (e.g., to ensure payment of restitution, to ensure payment of fine if not paid in full upfront, to protect against future crime by defendant, due to prior similar criminal offense within the last five years by defendant or high-level personnel, etc.). Local practice in some districts requires probation whenever the fine is paid in installments.*

¹⁷ *This subparagraph applies only when the parties want to expedite sentencing. In jurisdictions where the practice is permissible, the Division generally will agree to a request for expedited sentencing made by a foreign-based corporation pleading guilty under a C agreement.*

Rules. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.]

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

11. [The United States and the Defendant agree that the applicable Guidelines fine range exceeds the fine contained in the Recommended Sentence. Subject to the full, truthful, and continuing cooperation of the Defendant [and Related Entities], as defined in this Plea Agreement, and before sentencing in this case, the United States agrees that it will make a motion under U.S.S.G. §8C4.1,¹⁹ for a downward departure from the Guidelines fine range and will request that the Court impose the fine contained in the Recommended Sentence because of the Defendant's [and Related Entities'] substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in [DESCRIPTION OF INDUSTRY].

12. [The United States and the Defendant agree that the applicable Guidelines fine range exceeds the fine contained in the Recommended Sentence. The United States and the Defendant further agree that the recommended fine is appropriate under [U.S.S.G. §8C3.3(a)

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

¹⁹ *Note that the Guidelines do not permit an 8C4.1 departure motion based on the organization's cooperation in the investigation or prosecution of its own employees. See U.S.S.G. §8C4.1(a) and comment (n.1).*

[and 18 U.S.C. § 3572(b)]²⁰ due to the inability of the Defendant to pay a fine greater than that recommended without impairing its ability to make restitution to victims] OR [U.S.S.G. §8C3.3(b) due to the inability of the Defendant to pay a fine greater than that recommended without substantially jeopardizing its continued viability].]²¹

13. Subject to the full, truthful, and continuing cooperation of the Defendant [and Related Entities], as defined in this Plea Agreement, and before sentencing in this case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the Defendant's [and Related Entities'] cooperation and [its/their] commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the Defendant's involvement in the charged offense, and all other relevant conduct.

14. The United States and the Defendant understand that the Court retains complete discretion to accept or reject the Recommended Sentence.

(a) If the Court does not accept the Recommended Sentence, the United States and the defendant agree that this Plea Agreement, except for subparagraph 12(b) below, will be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)(2)(A)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11

²⁰ The phrase "and 18 U.S.C. § 3572(b)" should be inserted if the Defendant is obligated as a result of a conviction to make restitution to a victim other than the United States and a Guidelines fine would impair the Defendant's ability to pay restitution.

²¹ Normally the Plea Agreement contains only one of these inability to pay provisions, and in most cases the second provision is used.

regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government will not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 15 of this Plea Agreement will be tolled for the period between the date of signature of this Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of signature of this Plea Agreement, whichever period is greater.

15. ***[Insert if Defendant is to pay fine in installments:*** In the event that the United States determines that the Defendant has breached the Plea Agreement and the Defendant fails to cure the breach, the entire amount of the fine, less amounts already paid (if any), shall be due and owing within ten business days after receipt by the Defendant of written notice of breach from the United States. If the Defendant fails to either cure or pay the balance due within ten business days of receipt of the written notice of breach, the Defendant will consent to entry of a civil judgment for the full balance due plus all reasonable costs incurred in the civil action, including attorney's fees and expenses; will provide the United States with its most recent audited financial statement; and will not oppose any collection action undertaken by the United States to satisfy the civil judgment.]

16. ***[Insert when restitution is contemplated:*** The Defendant understands that this Plea Agreement is voidable by the United States if it fails to pay the restitution as required by this Plea Agreement. The Defendant further agrees that it will not seek to discharge any restitution obligation or any part thereof in any bankruptcy proceeding.] ***[OR if no provision for***

restitution: In light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, [**insert if appropriate:** and the civil action already [filed against] **OR** [settled by] the Defendant, (insert case citation),] this Plea Agreement does not include any provision for restitution.]

17. [**Insert if Defendant will be required to assume other obligations:** The Defendant agrees to [**describe other obligations including any deadlines for beginning to perform and/or discharging the obligations**]].²²

Defendant's Cooperation²³

²² See, e.g., Paragraph 12(f) of the Plea Agreement in *United States v. Shiu-Min Hsu*, No. 12-cr-00121 (C.D. Cal. 2012) (requiring a defendant to make a series of targeted antitrust compliance presentations to similarly situated executives to educate the broader business community on the nature and importance of the United States' antitrust laws and the consequences to corporations and individuals who violate the United States' antitrust laws), available at <https://www.justice.gov/atr/case-document/file/498966/download>; see also Paragraph 10 of the Deferred Prosecution Agreement filed in *United States v. Florida Cancer Specialists & Research Institute, LLC* US v. Florida Cancer Specialists, No. 2:20-cr-00078 (M.D. Fla. 2020) (defendant agreed to "waive and not enforce any and all non-compete, non-solicitation, and/or non-interference provisions restricting competition with the Company in the provision of oncology services or solicitation of the Company's employees in any contract or agreement that would otherwise apply to any current or former partners, members, officers, directors, employees, and agents of the Company or any of its subsidiaries or corporate affiliates who, during the Term of [the DPA, join a competing oncology practice]. Further, within thirty (30) calendar days after acceptance of this Agreement, the Company agrees to furnish via email to all of its current partners, members, officers, directors, employees, and agents of the Company or any of its subsidiaries or its corporate affiliates a copy of this Deferred Prosecution Agreement and a cover letter in a form attached as Exhibit 1."), available at <https://www.justice.gov/atr/case-document/file/1281681/download>.

²³ The cooperation terms must be at least as broad as the nonprosecution terms. The products and/or industry referenced in the nonprosecution paragraph should also be referenced in the cooperation paragraphs.

18. The Defendant [and Related Entities] will cooperate fully and truthfully²⁴ with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving [DESCRIPTION OF INDUSTRY][*if domestic conspiracy insert--* in [GEOGRAPHIC AREA]], any federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively “Federal Proceeding”).²⁵ Federal Proceeding includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The full, truthful, and continuing cooperation of the Defendant [and Related Entities] will include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine,²⁶ [and with translations into English,] in the possession, custody, or control of the Defendant [and Related Entities], that are requested by the United States in connection with any Federal Proceeding;

(b) using its best efforts to make available for interviews or testimony, as requested by the United States and at the Defendant’s expense, present or former officers, directors, employees, agents, and consultants of the Defendant. This obligation includes,

²⁴ See [JM 9-28.700](#).

²⁵ The term “Federal Proceeding” identifies the federal investigations and litigations in which the Defendant and any Related Entities and Covered Individuals must cooperate to receive the Plea Agreement’s protections.

²⁶ See [JM 9-28.710 – 9-28.720](#).

but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Defendant, may have material information regarding the matters under investigation; and

(c) **[if Plea Agreement includes Covered Individuals--** securing the full, truthful, and continuing cooperation of the Covered Individuals as may be requested by the United States.

19. **[Insert paragraph if Plea Agreement includes Covered Individuals--** The full, truthful, and continuing cooperation of the Covered Individuals will be subject to the procedures and protections of this paragraph, and will include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine,²⁷ and with translations into English as requested by the United States, that are requested by attorneys and agents of the United States in connection with any Federal Proceeding;

(b) making themselves available for interviews, not at the expense of the United States, on the request of the United States in connection with any Federal Proceeding;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or

²⁷ See footnote 27.

intentionally withholding any information, subject to the penalties of making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), or conspiracy to commit such offenses;

(d) otherwise voluntarily providing the United States with any material or information not requested in (a) - (c) of this paragraph and not protected under the attorney-client privilege or work-product doctrine²⁸ that they may have that is related to any Federal Proceeding;

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

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

(g) not committing, participating in, or attempting to commit or participate in

²⁸ See footnote 27.

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

any additional antitrust crime in violation of Title 15, United States Code, or any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; and

(h) agreeing that, if the agreement not to prosecute the Covered Individual in this Plea Agreement is void, the statute of limitations period for any Relevant Offense, as defined in subparagraph (a), will be tolled as to that Covered Individual for the period between the date of signature of this Plea Agreement and six months after the date that the United States gave notice of its intent to void its obligations to that Covered Individual under this Plea Agreement.^{30]}

Government's Agreement

20. Subject to the full, truthful, and continuing cooperation of the Defendant [and Related Entities], as defined in this Plea Agreement, and on the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence, the United States agrees that it will not bring further criminal charges against the Defendant [or Related Entities] for any act or offense committed before the date of signature of this Plea Agreement that [***If the Defendant is receiving both antitrust and obstruction nonprosecution protection, separate the two nonprosecution coverages into subparagraphs (a) and (b)--(a)***] was undertaken in furtherance of an antitrust conspiracy involving [DESCRIPTION OF INDUSTRY] [***if domestic conspiracy insert--***in [GEOGRAPHIC AREA][***only insert the obstruction nonprosecution***

³⁰ Cooperating individuals will sign a separate letter tolling the statute of limitations with respect to them before they can receive the nonprosecution protections of the corporate plea agreement.

coverage that follows if Defendant has a sentencing enhancement, or a separate charge, for an obstruction related offense-- or (b) is specified in subparagraph 5(e)]. The nonprosecution terms of this paragraph do not apply to (a) any acts of subornation of perjury (18 U.S.C. § 1622), making a false statement (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-02), or conspiracy to commit such offenses [*insert if Defendant has a sentencing enhancement, or a separate charge, for an obstruction related offense--*, except for the conduct specified in subparagraph 5(e) of this Plea Agreement]; (b) civil matters of any kind; (c) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (d) any crime of violence.

[Insert the following paragraph if Plea Agreement includes Covered Individuals--

21. The United States agrees to the following:

(a) On the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence and subject to the exceptions noted in subparagraph (c), the United States agrees that it will not bring criminal charges against any Covered Individual for any act or offense committed before the date of signature of this Plea Agreement and while that person was acting as a director, officer, or employee of the Defendant [or its [related entities]] that was undertaken in furtherance of an antitrust conspiracy involving [DESCRIPTION OF INDUSTRY] [*if domestic conspiracy insert--*in [GEOGRAPHIC AREA]] ("Relevant Offense");

(b) Should the United States determine that any Covered Individual may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the Defendant)

or, if the individual is not known by the United States to be represented, to the undersigned counsel for the Defendant;

(c) If any person requested to provide cooperation fails to comply fully with his or her cooperation obligations, the terms of this Plea Agreement as they pertain to that person and the agreement not to prosecute that person granted in this Plea Agreement will be void, and the United States may prosecute such person criminally for any federal crime of which the United States has knowledge, including, but not limited to any Relevant Offense;

(d) Except as provided in subparagraph (e), information provided by a person described in subparagraph (b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 et seq.), contempt (18 U.S.C. §§ 401-02), or conspiracy to commit such offenses;

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her cooperation obligations under this Plea Agreement, the agreement in subparagraph (d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case will be void;

(f) The nonprosecution terms of this paragraph do not apply to civil matters of any kind; any violation of the federal tax or securities laws or conspiracy to commit such offenses; any crime of violence; or perjury or subornation of perjury (18 U.S.C.

§§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; and

(g) Documents provided under subparagraphs 14(a) and 15(a) will be deemed responsive to outstanding grand jury subpoenas issued to the Defendant [or any of its [related entities]].

22. [The United States agrees that when any person travels to the United States for interviews, grand jury appearances, or court appearances under this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based on any Relevant Offense, to subject such person to arrest, detention, or service of process, or to prevent such person from departing the United States. This paragraph does not apply to an individual's commission of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-02), or conspiracy to commit such offenses.]

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

Representation by Counsel

24. The Defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The Defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

Voluntary Plea

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

Breach of Plea Agreement

26. If, during the period that any Federal Proceeding is pending, the Defendant [or any Related Entities] fail to provide full, truthful, and continuing cooperation, as defined in this Plea Agreement, or otherwise violate any provision of this Plea Agreement, the United States will notify counsel for the Defendant in writing by personal or overnight delivery or email and may also notify 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 [and Related Entities] will be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The Defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the Defendant [or Related Entities] relating to the conduct described in Paragraph 5 or relating to

conduct known to the United States before the date of the signing of this Agreement that is not time-barred by the applicable statute of limitations on the Effective Date of this Agreement, the statute of limitations period for such offense will be tolled for the period between the date of signature of this Plea Agreement and six months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

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

Public Statements by the Defendant

28. The Defendant expressly agrees that it will not, through current or future attorneys, directors, officers, employees, agents, or any other person authorized by the Defendant to speak on its behalf, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above or the facts described in the Information or Factual Basis section of this Plea Agreement. Any such contradictory statement will, subject to cure rights of the Defendant described below, constitute a violation of this Plea Agreement, and the Defendant thereafter will be subject to prosecution. The decision whether any public statement by any such person contradicting a fact contained in the Information or

Factual Basis section of this Plea Agreement was made on behalf of the Defendant for the purpose of determining whether it has violated this Plea Agreement will be at the sole discretion of the United States. If the United States determines that a public statement by any such person contradicts in whole or in part a statement contained in the Information or Factual Basis section of this Plea Agreement, the United States shall so notify the Defendant, and the Defendant may avoid a violation of this Plea Agreement by publicly repudiating such statement(s) within five (5) business days after notification. The Defendant will be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Information and the Factual Basis section of this Plea Agreement provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Information or Factual Basis section of this Plea Agreement. This paragraph does not apply to any statement made by any current or future director, officer, employee, or agent of the Defendant in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Defendant. This paragraph does not affect the obligation of any Covered Individual to respond fully and truthfully to all inquiries of the United States without falsely implicating any person or intentionally withholding information and to testify fully and truthfully as required by this Plea Agreement.

29. The Defendant agrees that if it[or Related Entities] *OR* [, its parent, and/or any of its direct or indirect subsidiaries or affiliates]³¹ issue a press release or holds any press conference in connection with this Agreement, the Defendant shall first consult the United States to determine: (a) whether the text of the release or proposed statements at the press conference

³¹ Use the latter if the Agreement does not use the term *Related Entities*.

are true and accurate with respect to matters between the United States and the Defendant; and
(b) whether the United States has any objection to the release or proposed statements.

Entirety of Agreement

30. This Plea Agreement [and Attachment A] [constitute/s] the entire agreement between the United States and the Defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the Defendant.

31. The undersigned is authorized to enter this Plea Agreement on behalf of the Defendant as evidenced by the Resolution of the Board of Directors of the Defendant attached to, and incorporated by reference in, this Plea Agreement.

32. A PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: _____

Respectfully submitted,

BY: _____
[CORPORATE REPRESENTATIVE]³²
[Title]
[Global Products, Inc.]

BY: _____
[STAFF]

³² Most courts will not accept a corporate plea agreement that is only executed by counsel for the company. An authorized corporate officer, in addition to the company attorney, must normally sign the Plea Agreement, and the Resolution of the Board of Directors, which is attached to the Plea Agreement, must grant that officer the power to enter into the agreement on behalf of the company.

BY: _____
[NAME OF CORPORATE COUNSEL]
Counsel for [Global Products, Inc.]

Attorneys
U.S. Department of Justice
Antitrust Division
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]
Tel.: [(XXX) XXX-XXXX]