

## DEFERRED PROSECUTION AGREEMENT

The United States Attorney's Office for the Western District of Washington ("USAO") has been conducting a criminal investigation into allegations that a former employee of Bradken, Inc. ("Bradken") engaged in fraudulent conduct in connection with Bradken's provision of high-yield steel castings used to fabricate submarines for the United States Navy. The conduct under investigation (the "Subject Conduct") is more fully described in Paragraph 6 of this Deferred Prosecution Agreement ("DPA"). The USAO and Bradken have agreed to resolve Bradken's criminal liability through the following DPA:

1. **Criminal Information and Waivers of Indictment and Speedy Trial Rights.** Bradken understands and agrees that the USAO will file a one-count criminal information (the "Information") in the United States District Court for the Western District of Washington. The Information will charge Bradken with Major Fraud Against the United States in violation of Title 18, United States Code, Section 1031 (the "Charge"). Bradken waives all objections to the form of the charging document. Bradken has been advised of its right to be charged by indictment and agrees to waive that right and to be charged by the USAO in the Information. Bradken has also been advised of its rights to a speedy trial under the United States Constitution and the Speedy Trial Act (18 U.S.C. §§ 3161-3174), and agrees to waive those rights.

2. **Acceptance of Responsibility.** Bradken admits, accepts, and acknowledges that it is responsible for the acts of its current and former officers, employees and agents from on or about July 2008. Bradken admits that the facts described in the Statement of Facts and the Information are true and accurate, and further admits that those facts are sufficient to convict Bradken of the Charge. Should the USAO pursue the prosecution deferred by this DPA, Bradken hereby stipulates to the admissibility, and admission of, the Statement of Facts in any proceeding, including in any trial, guilty plea, or sentencing proceeding, and further disclaims the admissibility of any evidence or argument contrary to the Statement of Facts.

3. **Elements of the Offense.** The elements of the offense of Major Fraud Against the United States, in violation of Title 18, United States Code, Section 1031 are as follows:

a. From on or about July 2008 Bradken knowingly executed a scheme with intent to defraud the United States in this case in that an employee, Person 1, made materially false representations in the form of certifications of metallurgical test results on castings.

b. The scheme involved the receipt of money as a contractor of the United States or as a subcontractor or a supplier on a contract with the United States; and

- c. The value of the contract exceeded \$1 million.

Bradken acknowledges that under established principles of corporate liability and respondeat superior, as these principles apply in the instant case, corporate defendants are liable for the actions of their employees, agents, and servants under circumstances where the employees, agents, and servants are acting within the scope of their agency and their actions are intended, at least in part, to benefit the corporate defendant.

4. **The Penalties.** Bradken understands that the statutory penalties applicable for the offense of Major Fraud Against the United States are as follow: a fine of up to five million dollars (\$5,000,000), pursuant to 18 U.S.C. § 1031(b); or a monetary penalty of the greater of twice the gross gain or gross loss resulting from the unlawful conduct pursuant to 18 U.S.C. § 3571(d). Additional penalties include a period of probation of up to five (5) years and a four hundred dollar (\$400) special assessment. Bradken agrees that if it breaches this DPA and is convicted of the offense by entry of a guilty plea, then a fine, monetary penalty and special assessment may be imposed and shall be paid at or before the time of sentencing.

Bradken agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs, or restitution (if any), is due and payable as directed by the Court.

5. **Restitution:** In light of Bradken's agreement to make a settlement payment of \$10,896,924 to resolve the government's False Claims Act claims against Bradken, the government agrees not to seek an additional restitution payment, fine, monetary penalty or special assessment so long as, in the sole discretion of the USAO, there is no breach of this DPA.

6. **Statement of Facts.** Bradken admits it is guilty of the charged offense. The parties agree on the following facts:

- a. ***Background:*** Bradken, Inc. is a Delaware corporation with its principle place of business in Kansas City, Missouri. Since about July 2008, Bradken has operated a number of foundries in the United States, including a foundry in Tacoma, Washington (the "Tacoma Foundry"). The Tacoma Foundry is the leading supplier of certain high-yield steel castings used in the construction of submarines for the United States Navy. In particular, Bradken produces castings made of high-yield steel known as "HY-80" or "HY-100." Bradken produces these castings as a subcontractor or supplier for prime contractors that contract with the Navy. The value of the contracts between the prime contractors and the Navy substantially exceed \$1 million for each submarine.

- b. The HY-80 and HY-100 castings produced by Bradken are critical components of the submarines on which they are installed, and many of the castings are installed as components of the submarine hulls. As a result, it is critical that the

mechanical properties of the castings (such as strength and toughness) meet rigorous specifications. These specifications are currently set forth in a publication known as “Tech Pub 300,” and were previously contained in a publication known as “Military Specification 23008.” The Tech Pub 300 and Military Specification 23008 specifications will collectively be referred to below to as “the Specifications.”

c. Before delivering a casting to the prime contractor, Bradken is required to conduct a series of tests to ensure that the casting meets the Specifications. One of these tests is known as the “Charpy V-notch” test. The Charpy V-notch test tests a specimen representing the quality of the steel. The Charpy V-notch test evaluates the toughness of the steel, that is, when the steel will fail. Because the strength of the steel can be variable within a specimen, three test samples are required. The average of the three test results must be 50 foot pounds or greater. If a critical casting does not satisfy the Specifications’ Charpy-V notch requirements, this increases the risk that the component could fail under certain circumstances, such as a collision.

d. When Bradken delivers a casting to the prime contractor, it is required to report and certify the testing results for the heat (production) for that casting. The prime contractor, in reliance on those certifications, in turn certifies to the Navy that components of a delivered submarine satisfy the Specifications. The Navy relies on these certifications in making payments to the prime contractors.

e. Bradken conducts metallurgical testing in Bradken’s metallurgical laboratory, which is overseen by Bradken’s Director of Metallurgy. The Director of Metallurgy was responsible for ensuring the steel Bradken produced met the technical requirements of purchasers. The Director of Metallurgy must complete a “Certified Metallurgical Test Report” affirming that the contents of the report are accurate and all test results and operations performed meet the specifications. Between 1977 and May 22, 2017, a person who will be referenced herein as “Person 1” served as a metallurgist, Metallurgy Lab Supervisor, Metallurgy Services Manager, and from 2009 on, as Director of Metallurgy for the Tacoma Foundry. During that period, Person 1 was responsible for reviewing test results, determining whether those results complied with the Specifications, and then submitting and certifying the results to the prime contractor.

f. During the offense period, when lab personnel performed a test, they typically recorded the test results on a note card. Person 1 or other lab personnel then copied the test results into a database known as “AS400,” or an Excel spreadsheet. After 2008, test results were also entered into a second database known as “B&L.” Person 1 used the test results recorded in B&L when submitting certifications to the prime contractor.

g. ***Person 1’s Scheme to Defraud:*** Beginning no later than 1985, and continuing until early 2017, Person 1 knowingly executed a scheme to defraud the United

States by concealing from the United States Navy the fact that the Tacoma Foundry was producing for installation on naval submarines critical components that were in some cases composed of steel that had failed to meet the Specifications. Person 1 knowingly used false statements and representations to cause the United States Navy to make contract payments that the Navy would not have made if it had known the true characteristics of the steel produced by the Tacoma Foundry and certified by Person 1. From on or about July 2008, Person 1 engaged in the scheme to defraud within the scope of Person 1's Bradken employment and, at least in part, for the purpose of benefitting Bradken.

h. Specifically, in cases when Bradken's lab personnel recorded failing test results on testing notecards, Person 1 sometimes altered the notecards to change the results from a failing value to a passing value. For example, Person 1 would sometimes change the first digit of the test results on the notecard to increase the result by ten or twenty points from a failing value to a passing value. Person 1 typically entered the accurate (non-passing) test results into the AS400 or Excel database, but entered the falsified (passing) results into the B&L database. Person 1 then reported the falsified numbers in the B&L database to the prime contractor, knowing that the prime contractor would rely on those results when certifying to the Navy that the casting met the Specifications. Between 1985 and 2017, Person 1 falsified one or more test results for over 200 heats (productions) of high-yield steel provided to the United States Navy for installation in submarines, representing a substantial percentage of all of the known high-yield steel that the Tacoma Foundry produced for installation on submarines over this period.

i. Bradken's internal controls were insufficient to detect Person 1's fraudulent conduct, despite the fact that the conduct persisted over many years, involved a large number of castings, and could have been detected by comparing documents and databases in Bradken's possession.

j. As one example of an execution of the fraud, on March 4, 2016, Person 1 caused to be submitted, on behalf of Bradken, a certification to a prime contractor representing that the Charpy V-notch test results for heat number 433415 were 53, 47, and 56 foot pounds, which represented passing values under the Specifications. In fact, as Person 1 well knew, the actual test results were 33, 27, and 36 foot pounds, which represented failing values under the Specifications.

k. As another example of an execution of the scheme to defraud, on or about March 18, 2016, at Tacoma, within the Western District of Washington, Bradken caused to be submitted to the prime contractor a Certified Metallurgical Test Report for heat number 412715, from which Bradken had produced a casting. Bradken falsely represented on the Certified Metallurgical Test Report that the Charpy V-notch tests had

returned passing values of 58, 51 and 59 foot pounds, when in fact, the true test results were failing values of 48, 41, and 49 foot pounds.

l. The evidence available to the government indicates that no member of Bradken management was aware of Person 1's fraudulent conduct until May 22, 2017. Bradken represents that it is aware of no evidence indicating that any member of Bradken management knew of the fraud before May 22, 2017.

m. ***Management's Discovery of the Fraud and Initial Disclosures:*** On May 22, 2017, a prime contractor requested that a Bradken employee gather information about heat number 433415, which Bradken had previously delivered and certified. In researching the test results, the Bradken employee discovered that the results recorded in some of Bradken's internal records, including the AS400 database, did not match the results recorded in the B&L database, which had been certified to the prime contractor. The results recorded in AS400 reflected that the heat had failed the Charpy V-notch tests. However, the B&L database records for the same tests showed passing values that, in each case, were exactly 20 points higher than the failing results recorded in AS400. When the Bradken employee reviewed the original test card for the heat, the employee observed that the handwritten numbers on the test card appeared to have been changed from failing results to passing results. This discrepancy was strongly suggestive that Bradken's certification was fraudulent.

n. Representatives of Bradken management questioned Person 1 about the discrepancy in the records. Person 1 admitted that the Charpy V-notch test had returned failing results and that Person 1 had altered the results to make it appear that the heat met the Specifications. Person 1 also made statements suggesting that Person 1 had falsified other test results in the past. Bradken and Person 1 agreed that Person 1 would separate from the company immediately.

o. On May 26, 2017, Bradken submitted a Letter of Advise ment ("LOA") to the prime contractor. Bradken expected that the LOA would be forwarded to the Navy. In the LOA, Bradken disclosed the fact that Person 1 had admitted to falsifying test results for one heat. The letter did not disclose the fact that Person 1 had made statements suggesting that Person 1 had falsified other test results. Instead, the LOA stated that "we know of no indications of additional alterations at this time."

p. On May 30, 2017, Bradken discovered that Person 1 had falsified additional test results for castings that had recently been delivered to the prime contractor. In these cases, Person 1 had improperly combined test results from different rounds of testing, and had failed to report failing test results in the final round of testing. Bradken reported the new findings to the prime contractor. On May 30, 2017 Bradken management sent an email to the prime contractor stating "Bradken appreciates the significance of the findings from this small sampling, and we believe that they should be

reported to the government customer immediately.” On May 31, Bradken and the prime contractor participated in a phone call with the Navy in which these findings were disclosed.

q. Based on these disclosures, naval personnel became extremely concerned about the possibility that substandard steel may have been installed in submarines. The Navy opened investigations into the potential fraud and began planning to evaluate the extent to which substandard steel may have been provided by Bradken, and the potential safety and operational risks presented as a result.

r. ***Bradken’s Interview of Person 1 and the Supplemental LOAs:*** On June 1, 2017, Bradken representatives conducted a further interview of Person 1. During the interview, Person 1 recanted Person 1’s prior admissions, denied altering the test data, and stated that there must have been a good reason for the discrepancy. However, Person 1 was unable to provide any plausible explanation for the discrepancy. For example, Person 1 stated the results recorded in B&L (and certified to the prime contractor) could have been the results of a “retest” that occurred after the heat failed the original test. But, as the Bradken employees participating in the interview knew, the probability was extremely low that all the test values for a retest would be exactly 20 points higher than the original test. Person 1 was also unable to provide a credible explanation for Bradken’s more recent discovery that results from different rounds of testing had been improperly combined. The employees participating in the interview, along with other members of Bradken management, concluded that Person 1’s denials were not credible, and found more credible Person 1’s initial admission that Person 1 had falsified the test results.

s. Bradken issued additional LOAs on June 4 and June 8, 2017 (the “June 4 and June 8 Supplemental LOAs”), after consultation with its counsel and its customers. Bradken expected that the information in the Supplemental LOAs would be provided to the Navy. Although the Supplemental LOAs stated that all available information would be reviewed to identify all potentially non-conforming products, they also recounted, and endorsed, Person 1’s statement that Person 1 had not falsified test results, and that there must have been a legitimate reason for the data discrepancy. Despite Bradken management’s continued belief that Person 1 had likely falsified the test results, Bradken stated in one Supplemental LOA that “our investigation has given us confidence that discrepancies between Bradken’s various databases and numbers recorded or overwritten on internal worksheets are not indicative of inaccurate data entries in the final certifications.” Bradken similarly stated in the other Supplemental LOA that “I [a Bradken manager] participated in the interview and can say firmly that [Person 1’s rationale for the discrepancies] appeared to be genuine and well explained.”

t. The misleading statements in the June 4 and June 8 Supplemental LOAs caused Navy decision makers to conclude in June 2017 that: (1) the data

discrepancy reported by Bradken was not the result of fraud; and (2) there was no evidence that Person 1 had engaged in fraud with respect to other castings. As a result, the Navy limited its plans to investigate the matter and allowed Bradken and the prime contractor to investigate and disclose to the Navy any further findings of deliberate fraud.

u. Bradken investigated further data discrepancies, focusing on the prior ten-year period. While the investigation was undertaken in good faith and without any deliberate or intentional attempt to mislead the Navy, Bradken failed, during the 18 months following May 2017, to discover or disclose many of Person 1's fraudulent certifications. These fraudulent certifications could have been identified by comparing Bradken's databases going back to 1985. Between June 2017 and 2018, Bradken did identify and disclose to the prime contractors and other customers between 80 and 90 heats of HY steel from within the 10-year period where there was evidence that the actual test result was different than the certified test result. However, Bradken did not specifically disclose until November 2018 that, in some of those cases, the certified test result was exactly 10 or 20 points higher than the original test result, which was important evidence that Person 1 had engaged in a broader pattern of fraud.

v. The full scope of Person 1's fraud was revealed only after Bradken produced the test data from its AS400 database going back to 1985 to the Navy in May 2018. The Navy then conducted its own data analysis that identified numerous cases where the certified test results were exactly 10 or 20 points higher than the results recorded in the AS400 database. After receiving the results of this analysis, federal investigators requested, and Bradken agreed to provide, access to its internal documents, including the original test notecards. Although Bradken had made substantial efforts to discover and disclose other test discrepancies, it limited its initial review to a ten-year period. After receiving the relevant documents, the investigators reviewed records going back to 1985, identifying over 200 additional data discrepancies not previously identified or disclosed by Bradken. Bradken then disclosed these additional heats in Letters of Advisement to its customers.

w. The 18-month delay caused by Bradken's June 4 and June 8 Supplemental LOAs seriously hindered the Navy's efforts to evaluate and remediate the potential safety and operational risks presented by Person 1's fraud, which could have resulted in serious incidents involving naval submarines. Further, the discovery that some Bradken-produced high-yield steel castings do not meet the Specifications has required the Navy to undertake substantial testing and monitoring measures, which have imposed considerable economic costs and operational limitations on the Navy.

7. **Rule 410 Waiver.** Bradken agrees that by signing this DPA it is admitting to the facts in the Statement of Facts portion of this DPA. Bradken agrees that these facts will be admitted as stipulations in any trial or sentencing that may follow, including any proceeding that may follow if the United States withdraws from this DPA because of a

breach by Bradken. The foregoing provision acts as a modification, and express waiver, of Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11.

8. **Term of DPA:** The term of this DPA (the “Term”) will commence on the date of signing of this DPA and will expire after a period of three years.

9. **Conditions:** Bradken must satisfy all of the following conditions during the Term of this DPA:

a. **Cooperation:** Bradken will cooperate fully with the United States in its investigations and prosecutions of all matters relating to the Subject Conduct. This includes, but is not limited to: (1) upon request, making Bradken employees available for interviews or testimony; (2) upon request, producing business records or other evidence in Bradken’s control; (3) providing any other information requested by the United States; and (4) advising the USAO if Bradken discovers any new material information relating to the Subject Conduct.

b. **No Law Violations:** Bradken will not engage in any similar misconduct to the Offense Conduct; will not violate any provision of the United States criminal code; and will not deceive, mislead or defraud the United States in violation of law. If Bradken learns it has engaged in any violations of federal or state criminal statutes, or that any of its employees have violated any state or federal criminal statute in the performance of their job responsibilities at Bradken, Bradken will immediately notify the USAO of the violations.

c. **Compliance with Administrative Agreement:** Bradken and the Navy have entered into an agreement entitled “Administrative Agreement Between Bradken, Inc. and the Department of the Navy.” Bradken’s compliance with all terms of that agreement is a condition of this DPA.

d. **Compliance with Civil Settlement Agreement:** Bradken is contemporaneously entering into a settlement of False Claims Act claims with the Civil Fraud Section of the Commercial Litigation Branch of Civil Division of the United States Department of Justice and the Civil Division of the USAO. Bradken’s compliance with all terms of that agreement is a condition of this DPA.

e. **Public Statements:** At the time that Bradken signs this DPA, Bradken will publish a public statement, which is attached hereto as Annex A, in *Casteel Reporter*, published by the Steel Founder’s Society of America. Neither Bradken nor its employees or other representatives will make public statements inconsistent with the fact statement set forth in this DPA or any other provision of this DPA.



f. **Certification of Compliance:** Following the expiration of the Term, Bradken will submit to the USAO a Certification of Compliance signed under penalty of perjury by a person with authority to bind Bradken. The Certification of Compliance will certify that, to the best of Bradken's knowledge, Bradken has complied with all provisions of this DPA. The parties agree that the Certification of Compliance will constitute a material statement of fact to the United States executive branch within the meaning of Title 18, United States Code, Section 1001.

10. **Considerations Relevant to Deferred Prosecution:** Bradken understands that the USAO's decision to enter into this DPA is a result of the following factors, among others:

a. Since approximately July 2018, Bradken has shown exceptional cooperation with the USAO's criminal investigation, including by making employee witnesses available upon request, producing documents as requested, and responding to other requests for information; Bradken's cooperation is ongoing and continues to be exceptional;

b. The criminal investigation has revealed no evidence, and Bradken represents that it is aware of no evidence, that any member of Bradken's management was aware of the Subject Conduct prior to May 22, 2017;

c. Bradken has undertaken, and is continuing to undertake, substantial steps to restore its operational integrity and substantial remedial measures to prevent any recurrence of fraudulent conduct within the company, including immediately separating with the employee responsible for the Subject Conduct, undertaking equipment upgrades, creating new positions, and implementing new processes. The new positions and personnel include a Quality Control Support Specialist whose role is to verify all heat treatment and testing was compliant to specification requirements; a Test Block Expeditor whose function is to track and monitor all test materials from the point that a casting is released from heat treatment through final testing; a Heat Treat Manager position created to support the company's efforts to improve oversight of the heat treatment department (previously the Director of Metallurgy managed both the heat treatment and metallurgy lab departments); two new heat treatment operators to support monitoring and control in the heat treat department; a second metallurgist who will support the increased process monitoring and control within the metallurgy lab; and a new internal auditor position who will perform internal audits of processes, procedures and specific products on a continuing basis. Bradken's Board of Directors has created an Audit and Risk Committee that will be responsible for overseeing and auditing risk and compliance processes across the company. Employees have been retrained on all new and updated procedures, with emphasis on those related to compliance, reporting, and Bradken's zero-tolerance fraud policy. Compliance training for new employees regarding fraud and falsification begins immediately at the point of hire followed by

annual retraining. In terms of equipment upgrades, Bradken has eliminated the practice of using handwritten notecards to record test results and now employs a fully electronic system to record results on a tablet, and Bradken is in the process of replacing the use of Excel for data entry with a custom Laboratory Information Management System, which will protect test results and prevent improper alterations by requiring a full audit trail and double approval before recorded data can be changed. Bradken is replacing all mechanical testing equipment with digital-output Instron devices. By entering into an Administrative Agreement with the Department of the Navy, Bradken has provided assurances that it will not engage in further misconduct;

d. By entering into a civil settlement with the United States to resolve False Claims Act claims against Bradken, Bradken has addressed, in part, the financial consequences of the Subject Conduct;

e. Bradken has no criminal history; and

f. By entering into this DPA, Bradken, which provides employees with approximately 250 well-paying jobs, will be able to remain in business and to continue to serve as a contractor or subcontractor for the United States.

11. **Deferred Prosecution:** In consideration of the facts and agreements set forth herein, the USAO agrees that any prosecution of Bradken for the Subject Conduct will be deferred for the Term. If, at the end of the Term, and following the receipt from Bradken of the Certificate of Compliance discussed above, the USAO determines in its sole discretion that Bradken has satisfied all of the terms and conditions set forth herein, the USAO will file a motion to dismiss the Charge with prejudice.

12. **Suspension and Debarment:** The USAO and Bradken expect that Bradken will not be subject to debarment or suspension as a consequence of this DPA. However, Bradken has been advised and understands that the USAO does not, and cannot, make any promise or assurance in this regard.

13. **Conditional Release from Criminal Liability:** The USAO agrees that, subject to Paragraphs 1 and 14 of this DPA, it will not file criminal charges against Bradken for any additional offenses known to it as of the time of this DPA that are based upon evidence in its possession at this time, and that arise out of the Subject Conduct. This DPA does not foreclose or preclude the investigation or prosecution of any natural persons.

14. **Breach of DPA:** A breach of this DPA occurs if the USAO determines, in its sole discretion, that Bradken has failed to satisfy any condition of this DPA, or has deliberately provided false, incomplete or misleading information in connection with the investigation of the Subject Conduct or this DPA. In the event of such a breach, the

USAO will provide notice of the breach to Bradken. Bradken will have thirty days from the date the notice of breach is received to respond to the USAO. If the USAO, in its sole discretion, concludes, notwithstanding any information provided by Bradken, that a breach of this DPA has occurred, the USAO may prosecute Bradken for any criminal violations of which the USAO has knowledge, including but not limited to the Charge. The USAO may prosecute Bradken pursuant to the Information based on Bradken's waivers of indictment and speedy trial rights set forth in Paragraph 1 of this DPA. The following terms will apply to any subsequent prosecution:

a. **Statute of Limitations:** Bradken agrees that any prosecution that is not time-barred by the applicable statute of limitations as of the date of this DPA may be commenced against Bradken, within one year, notwithstanding the expiration of the statute of limitations following the execution of this DPA. To that end, the parties agree that the period of time between the execution of this DPA and the USAO's notice of breach, and an ensuing period of one year, shall be excluded from the calculation of time for any applicable statute of limitations.

b. **Admissibility of Bradken's Statements:** Bradken agrees that, in any such prosecution, all statements made by Bradken in this proceeding, including the factual admissions made by Bradken in this DPA, shall be admissible, notwithstanding any provision of law including Federal Rule of Evidence 410 or Federal Rule of Criminal Procedure 11(f).

c. **United States Sentencing Guidelines.** Bradken understands and acknowledges that, during the sentencing phase of any such prosecution, the Court must consider the sentencing range calculated under the United States Sentencing Guidelines and possible departures under the Sentencing Guidelines together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the history and characteristics of Bradken; (3) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of the defendant; (6) the need to provide Bradken with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Bradken understands and acknowledges that:

i. The Court will determine Bradken's applicable Sentencing Guidelines range at the time of sentencing;

ii. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

iii. Except as provided in the paragraph containing the stipulation of the parties pertaining to sentencing, Bradken may not withdraw the guilty plea solely because of the sentence imposed by the Court.

d. **Ultimate Sentence.** Bradken acknowledges that no one has promised or guaranteed what sentence the Court will impose.

e. **Agreements Regarding Application of Sentencing Guidelines.** The parties agree that the applicable Sentencing Guideline calculation if Bradken is convicted of the Charge is as follows:

i. Offense Level:

a. The base offense level is six, pursuant to USSG § 2B1.1(a)(2);

b. An increase of at least 20 points because Person 1's conduct, which is attributable to Bradken, starting in 1985, caused a loss to the United States in excess of \$9,500,000, pursuant to USSG § 2B1.1(b)(1)(K). The United States reserves the right to argue that the adjustment for economic loss should be greater than 20 points;

c. A 2-point increase because Person 1's conduct, which is attributable to Bradken, involved the conscious or reckless risk of death or serious bodily injury, pursuant to USSG § 2B1.1(b)(16); and

d. A 2-point increase because Person 1's conduct, which is attributable to Bradken, involved the use of a special skill or a position of trust, pursuant to USSG § 3B1.3.

2. Culpability Score:

a. A base culpability score of 5, pursuant to USSG § 8C2.5(a);

- b. A 2-point increase because the organization had more than 50 employees and an individual with substantial authority participated in the offense, pursuant to USSG § 8C2.5(b)(4); and
- c. A 4-point decrease pursuant to USSG § 8C2.5(g). The parties agree that Bradken has fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of its criminal conduct, and is therefore entitled to a reduction of at least 2 points under USSG § 8C2.5(g)(2). In addition, the parties agree that Bradken is entitled to an additional reduction of 2 points because Bradken promptly made a disclosure to the appropriate authority prior to an imminent threat of disclosure or government investigation. The parties agree that the full 5-point reduction allowed by USSG § 8C2.5(g)(1) is not applicable because of the conduct described in Paragraph 6(r) and 6(s) of this DPA following the initial disclosure. Accordingly, while USSG § 8C2.5(g) does not contain a specific provision involving a 4-point reduction, the parties agree that such a reduction is appropriate under the facts of this case.

f. **Sentencing Agreements.** The parties have not reached any agreements about what the appropriate sentence would be in the event that this matter proceeds to sentencing. Bradken understands that, should sentencing occur as a result of a breach of this DPA, each party will be free to recommend any sentence, and further, that the Court will not be bound by those recommendations and may impose any sentence up to the maximum sentence authorized by law.

g. **Waiver of Appellate Rights and Rights to Collateral Attacks.** In the event that the USAO, in its sole discretion, declares a breach of this DPA, and prosecutes Bradken pursuant to the Information, Bradken waives all rights to appeal from Bradken's conviction of the Charge and any pretrial rulings of the court. Bradken further agrees that, provided the court imposes a sentence within the United States Sentencing Guideline range as determined by the court at the time of sentencing, Bradken waives to the full extent of the law: any right conferred by Title 18, United States Code, § 3742, to challenge, on direct appeal, the sentence imposed by the court, including any fine, restitution order, probation or supervised release conditions, or forfeiture order (if applicable); and any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation. If Bradken breaches this DPA at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or

sentence in any way, the United States may prosecute Bradken for any counts, that were dismissed or not charged pursuant to this DPA.

15. **Survival of Agreement.** Bradken agrees and understands that this DPA is intended to bind Bradken Inc. and its affiliates for purposes of agreeing to and implementing this DPA. To that end:

a. If Bradken changes names, reorganizes, merges, is subject to purchase, or otherwise ceases operations in its current form, the person or entity acquiring the assets or taking over the operation of the Bradken business shall take over the obligations of this DPA. Bradken agrees that any agreement effecting such a transaction will include a provision binding the purchaser or other successor in interest to the terms of this DPA;

b. No change in name, change in corporate or individual control, business reorganization, change in ownership, merger, change of legal status, sale or purchase of assets, or similar action shall alter the Bradken's responsibilities under this DPA. Bradken shall not engage in any action to seek to avoid the obligations and conditions set forth in this DPA; and

c. This DPA, together with all of the obligations and terms hereof, shall inure to the benefit and shall bind assignees, parent corporations, subsidiaries, affiliates, successors-in-interest, and transferees of Bradken.

16. **Voluntariness.** Bradken agrees that it has entered into this DPA freely and voluntarily and that no threats or promises, other than the promises contained in this DPA, were made to induce Bradken to enter the plea of guilty.

17. **Completeness of Agreement.** The United States and Bradken acknowledge that these terms constitute the entire agreement between the parties. This DPA binds only the United States Attorney's Office for the Western District of Washington, and does not apply to crimes committed outside of the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor. This DPA does not release from criminal liability any person or entity other than Bradken. This DPA does not provide or promise any waiver of any civil or administrative action, sanction or penalty that may otherwise apply, including but not limited to, claims for damage to natural resources, suspension, debarment, listing, licensing, injunctive relief, or remedial

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action to comply with any applicable regulatory requirement.

Agreed and executed on April 30, 2020

BRIAN T. MORAN  
United States Attorney



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SETH WILKINSON  
Assistant United States Attorney

BRADKEN, INC


Craig Lee

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Craig Lee  
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By CRAIG LEE



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WILLIAM MAUZY  
Attorney for BRADKEN, INC.



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ROBERT WESTINGHOUSE  
Attorney for BRADKEN, INC.