

U. S. Department of Justice

*United States Attorney
Northern District of Iowa*

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2101

May 18, 2018

Alfred E Willett
Attorney at Law
Elderkin and Pirnie
316 2nd Street, Suite 124
Cedar Rapids, Iowa, 52401

Re: *United States v. Josh Harry Isler*
Pending Investigation

Dear Mr. Willett:

This letter will serve as a SECOND memorandum of a proposed plea agreement between the United States Attorney's Office for the Northern District of Iowa and Josh Harry Isler, defendant. All references to the "United States" or "government" in this proposed plea agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity. This plea offer will expire on May 31, 2018, unless the deadline is otherwise extended in writing by the government. **The government has made one prior plea offer and this letter incorporates changes to that offer as negotiated by the parties.**

CHARGES AND PENALTIES

1. *JHI* Defendant will waive Indictment and plead guilty to two-count Information that will charge in Count 1, taking, misappropriating, and carrying away, without authorization, trade secrets of DuPont, Inc., in violation of 18 U.S.C. § 1832(a)(1), and in Count 2, making a materially false statement in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the executive branch of the government of the United States, in violation of 18 U.S.C. § 1001(a)(2).

2. *JAI* Defendant understands that Count 1 of the Information is punishable by the following maximum penalties: (1) not more than 10 years' imprisonment without the possibility of parole; (2) a fine of not more than \$250,000;

**Government
Exhibit
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(3) a mandatory special assessment of \$100; and (4) a term of supervised release of not more than 3 years.

3. ~~JUL~~ Defendant understands that Count 2 of the Information is punishable by the following maximum penalties: (1) not more than 5 years' imprisonment without the possibility of parole; (2) a fine of not more than \$250,000; (3) a mandatory special assessment of \$100; and (4) a term of supervised release of not more than 3 years.

4. ~~JUL~~ Defendant may be subject to the alternative fine provisions of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on defendant for each count is the greatest of the following amounts: (1) twice the gross gain to defendant resulting from the offense; (2) twice the gross loss resulting from the offense; (3) \$250,000; or (4) the amount specified in the section defining the offense.

5. ~~JUL~~ Defendant understands restitution and a term of supervised release following incarceration may be imposed in addition to any other sentence. Defendant further acknowledges that, if defendant violates, at any time, any condition of supervised release, defendant could be returned to prison for the full term of supervised release and the Court is not required to grant credit for any amount of time defendant may have successfully completed on supervised release. Defendant also understands the U.S. Sentencing Guidelines will provide advisory guidance to the Court in determining a sentence in this case.

6. ~~JUL~~ At the time the guilty plea is entered, defendant will admit that defendant is guilty of the charges specified in Paragraph 1 of this agreement. The U.S. Attorney's Office for this District will file no additional Title 18 criminal charges based solely upon information now in our possession. If this office becomes aware of evidence of additional crimes warranting criminal prosecution, all information in our possession could be used in such a prosecution.

7. ~~JUL~~ Defendant understands and agrees defendant has the absolute right to plead guilty before a United States District Court Judge. However, if convenient to the Court, defendant agrees to waive and give up this right and to plead guilty before a United States Magistrate Judge. Defendant understands defendant will not be found guilty unless the United States District Court Judge accepts the plea of guilty or adopts a recommendation of the Magistrate Judge to accept such plea. Defendant agrees to execute a written consent to proceed before the United States Magistrate Judge.

COOPERATION

8. JHI Defendant agrees to fully and completely cooperate with the United States Attorney's Office and other law enforcement agencies in the investigation of criminal activity within the Northern District of Iowa and elsewhere.

9. JHI Full and complete cooperation with the United States Attorney's Office and law enforcement agencies shall include, but is not limited to, the following, if feasible:

- A. providing information to secure search warrants;
- B. providing testimony before the federal grand jury and, if necessary, testimony before any Court as a witness in any prosecution growing out of this or any related investigation; in the event defendant is called upon to testify on behalf of the government in any trial, grand jury or other proceeding and is incarcerated at that time in any local, state or federal institution, defendant agrees to waive any and all claim for witness fees and/or expenses which might otherwise be due under any statute, regulation or other provision of law pertaining to such fees and/or expenses; if, at the time of the testimony, defendant is not incarcerated, defendant agrees to waive witness fees and all local travel expenses;
- C. providing any documents or other items in defendant's custody, possession, or under defendant's control that are relevant to this or any related investigation;
- D. making defendant available for interview and debriefing sessions by government attorneys and law enforcement agents upon request;
- E. recording conversations related to any investigation as requested; and
- F. engaging in and conducting other activities as directed by the law enforcement agents in charge of the investigation.

10. JHI Defendant will provide complete and truthful information to the government, law enforcement officers, the federal grand jury conducting this investigation, and any court. Defendant will answer all questions concerning this

investigation and will not withhold any information. Defendant will neither attempt to protect any person or entity through false information or omission nor falsely implicate any person or entity. Defendant will at all times tell the truth and nothing but the truth during any interviews or as a witness regardless of who asks the questions – the prosecutors, defense attorneys, investigating agents, probation officers, or the judge. Since the United States insists upon defendant telling the truth and nothing but the truth during any court proceeding, grand jury proceeding, or government interview related to this case, failure to provide complete and truthful information at any such time will constitute a breach of this agreement.

11. ~~14~~ No testimony or other information provided by defendant pursuant to this plea agreement or pursuant to a proffer agreement to the United States Attorney's Office, federal or state law enforcement officers, employees of the government, the federal grand jury conducting this investigation, or to a court will be used against defendant for the purpose of bringing additional Title 18 criminal charges in the Northern District of Iowa, provided defendant does not violate or withdraw from the terms of this agreement. However, such testimony or other information may and will be used in the following circumstances:

- A. derivatively or indirectly, including but not limited to the following: to impeach defendant's credibility; to cross-examine defense witnesses; to re-direct government witnesses; or to rebut any evidence or argument presented by defendant that is inconsistent with information provided by defendant pursuant to this agreement; to develop leads from the information provided, including for use in determining the applicable guideline range; and use for all other non-evidentiary purposes;
- B. by the Court or Probation Office at any time, including at the time of defendant's guilty plea and sentencing in this matter, but shall not be used in determining the applicable guideline range in accordance with §1B1.8, except the information may be used derivatively or indirectly, as provided in subparagraph A;
- C. in any proceeding concerning a breach of this agreement;
- D. at any time in any criminal prosecution against defendant if defendant fails to provide complete and truthful information as required by the terms of this agreement;

- E. in a subsequent prosecution for crimes or acts that were not disclosed by defendant during an interview conducted pursuant to this agreement or any related proffer agreement;
- F. in a subsequent prosecution for crimes or acts committed by defendant after the date defendant provided the testimony or information;
- G. in a subsequent prosecution for perjury or giving a false statement;
- H. in any asset forfeiture matter; and
- I. in any civil proceeding.

The above restrictions on use of information and/or testimony in this agreement extend only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date. Defendant understands the obligation of the United States to provide all information in its file regarding defendant to the United States Probation Office and the Court.

12. ~~JHI~~ It is understood that, upon request by the government, defendant will voluntarily submit to a polygraph examination. If performance in any polygraph examination suggests a conscious intent to deceive, mislead, or lie and the totality of circumstances convinces the government defendant's statement is not complete and truthful, defendant will be so informed and any and all obligations imposed on the government by this agreement will be rendered null and void. This decision to nullify the agreement will be in the sole discretion of the United States Attorney's Office for the Northern District of Iowa.

13. ~~JHI~~ Defendant shall not reveal or discuss the existence or conditions of this agreement or defendant's cooperation to any person other than defendant's attorney and law enforcement personnel involved in this investigation. Nor shall defendant or any agent of defendant disclose to any person, directly or indirectly, other than to defendant's attorney, without prior written authorization from the government, the true identity or occupation of any law enforcement personnel participating in this investigation in an undercover capacity or otherwise. Nor shall defendant or any agent of defendant disclose to any person, without prior written approval of the government, the location of investigative offices, surveillance locations, or the nature of investigative techniques used by agents in this investigation. Nothing in this paragraph is intended to restrict or prohibit

defendant from providing complete and truthful testimony in any court proceeding. Furthermore, this agreement does not prohibit defendant from speaking with an attorney for a party adverse to the government in any litigation concerning defendant's possible testimony in that litigation. While defendant is under no obligation to speak with such an attorney, defendant is free to do so if defendant chooses. That decision rests solely with defendant as it does with any witness.

14. ~~THE~~ Nothing in this agreement requires the government to accept any cooperation or assistance defendant may offer or propose. The decision whether and how to use any information and/or cooperation defendant provides (if at all) is in the exclusive discretion of the United States Attorney's Office.

STIPULATION OF FACTS

15. ~~THE~~ By initialing each of the following paragraphs, defendant stipulates to the following facts. Defendant agrees these facts are true and may be used to establish a factual basis for defendant's guilty plea, sentence, and any forfeiture. Defendant has been advised by defendant's attorney of defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Defendant waives these rights and agrees this stipulation may be used against defendant at any time in any proceeding should defendant violate or refuse to follow through on this plea agreement, regardless of whether the plea agreement has been accepted by the Court. Defendant agrees that the stipulation below is a summary of the facts against defendant and does not constitute all of the facts the government would be able to prove at trial and may be able to prove to the Court in accordance with this agreement.

~~THE~~A. On December 5, 2012, defendant applied for employment as a Technical Service Engineer with Genencor-Danisco (a division of DuPont). Danisco (previously known as Genencor) focuses on industrial biotechnology products such as enzymes for laundry and dishwashing detergents; enzymes for bioethanol and carbohydrate processing as well as textile treatment; and enzymes for bread, feed and brewing applications.

~~THE~~B. The enzymes involved in the fuel ethanol production process aid in converting the starch found in corn into fermentable sugars that yeast uses to produce ethanol. There are about 200 fuel ethanol plants in the United States, with the majority of those plants located near the corn in the Midwest states of Iowa, Minnesota, Wisconsin, Illinois, and Nebraska. Fuel ethanol enzymes are distributed in and affect interstate commerce. DuPont is one of a few major producers of

enzymes for ethanol production. CTE Global was a much smaller competitor of DuPont in the ethanol enzyme business.

JHIC. On January 22, 2013, defendant was offered employment as a Technical Service Account Manager related to DuPont's ethanol fuel business. Defendant signed the offer letter on February 1, 2013, and accepted employment with DuPont's Danisco U.S. division. Defendant's starting salary was set at \$80,000 with a bonus target of 25% of salary. This included health coverage for defendant and his family.

JHID. On February 1, 2013, defendant signed an employee confidentiality and inventions assignment agreement. As part of that agreement, defendant agreed:

[a]t all times during my employment and thereafter, I will hold in confidence and will not disclose, use, lecture upon, or publish any of the Company's Confidential Information [as defined in the agreement], except as such use is required in connection with my work for the Company, or unless the Chief Executive Officer (the "CEO") or Chief Technology Officer ("CTO") of the company expressly authorizes in writing such disclosure or publication.

JHIE. Defendant further agreed that upon termination of his employment or upon the Company's request at any other time:

I will deliver to the Company all of the Company's property, equipment, and documents, together with all copies thereof, and any other material containing or disclosing any Inventions, Third Party Information or Confidential Information of Company and certify in writing I have fully complied with the foregoing obligation. I agree I will not copy, delete, or alter any information contained upon my Company computer before I return it to Company.

JHIF. On April 23, 2013, defendant completed training on DuPont's "Records and Information Management" and on DuPont's Code of Conduct (Code). The Code required that all DuPont employees conduct

themselves and their business affairs “with the highest ethical standards.” Further, the Code made clear that employees needed to be aware of trade secrets and take steps to protect them by complying with DuPont’s trade secrets policy. The Code specified that trade secrets may only be disclosed to others under a written agreement that applied to the disclosure and had been approved by the legal department. The Code provided that employees who leave the company must:

- Promptly return all company assets, including physical materials and DuPont information assets, such as computers, mobile phones, calling cards, access cards, keys, business cards, and electronic storage media.
- Not make or take copies of DuPont information when departing.
- Not disclose DuPont non-public information to others even after leaving the company.

Failure to comply with this obligation may result in severe civil and criminal penalties.

The Code also imposed a requirement that all employees protect the Company’s intellectual property, trademarks, and assets, and not steal, or misappropriate the trade secrets or information of a competitor. The Code noted “[t]here are heavy legal penalties for employees who misappropriate other’s trade secrets.” Moreover, was well-understood in the ethanol industry that the trade secrets and proprietary information of one company were not to be shared with a competitor as doing so could harm the owner of the information.

THE G. Defendant knew DuPont’s pricing information was proprietary and a trade secret not to be shared with competitors. If the information was disclosed to a competitor, the competitor would have an advantage as to where they needed to price their products to compete with DuPont.

THE H. Beginning by at least last July 2013, defendant began having discussions with corporate officials of CTE Global (a competitor of DuPont) concerning their desire to hire defendant to work for them. Defendant was notified On August 2, 2013 that the Chief Operating Officer or CTE was ready to bring defendant on board if CTE could come to terms with defendant.

JHII. On August 8, 2013, defendant was offered and accepted a position with CTE as a “Technical Representative” with a start date of August 26, 2013, and starting salary of \$110,000 per year with an increase to \$115,000 after six months of employment. Defendant signed and returned the offer that day. Defendant has advised this did not include health coverage. Defendant also signed a “Non Disclosure Agreement” dated August 8, 2013, that accompanied the job offer and prohibited defendant from disclosing any reports, data, notes, or other documents of CTE “without limitation.”

JHIJ. On August 8, 2013, defendant exchanged texts with the COO of CTE who asked defendant whether he had been servicing NuGen or Tharaldson (ethanol plants). The COO advised defendant that defendant would be overseeing those accounts and another when he started with CTE. Defendant responded, stating in part:

Great! Have you seen baseline data from any of these plants?
Let me see what I can before I can't.

JHIK. On August 9, 2013, defendant submitted his DuPont resignation via email and noted therein that he was giving two weeks' notice and his last day with DuPont would be August 23, 2013.

JHIL. On August 12, 2013, defendant received information via email from CTE concerning a future meeting between CTE and Corn Plus (an ethanol plant customer of DuPont). Three days later, defendant emailed a CTE official a DuPont document titled “Corn Plus.docx”. This document contained notes summarizing a recent meeting between DuPont and Corn Plus employees discussing DuPont product usage and cost at the Corn Plus plant.

JHIM. On August 15, 2013 defendant emailed a CTE official who was then attending a baseball game with the CTE COO. Defendant offered to provide visitor logs “that may be of use to you. If you are not comfortable viewing these I'll understand. Let me know . . .” The employee responded “fire away.” Defendant expressed his relief with the response. The CTE official replied, “If you're ok with it, I'm certainly ok with it! Are we going to have some fun or what?!!!!”

THN. Defendant then emailed the CTE official eight documents that were the property of DuPont and related to the following ethanol plant customers of DuPont: Boyceville, Big River Galva, Corn Plus, Glacial Lakes, GPRE Otter Tail, GPRE Shenandoah; NuGen, and Theraldson. Some of these documents contained trade secrets of DuPont.

THO. On August 16, 2013, after receiving information from CTE about some business with the Homeland Energy Solutions (Homeland) (an ethanol plant customer of DuPont), defendant copied 28 DuPont files pertaining to Homeland from his DuPont computer to an external media device. Defendant also emailed one of the copied Homeland documents to a group of CTE employees. Later that day, defendant told the CTE COO he would be turning in his DuPont issued phone and gave the COO information as to how defendant could thereafter be reached. Defendant was then instructed by the CTE COO to “erase all texts with me before giving the [DuPont issued] phone back.”

THP. Between at least August 11 and August 19, 2013, defendant transferred hundreds of DuPont’s electronic files to an external media device folder. Defendant knew the files he downloaded contained proprietary information and trade secrets of DuPont and many related to customers of DuPont who were also customers of CTE or whose business was being sought by CTE. Defendant downloaded this information to assist him in his new job. Defendant had difficulty assimilating in his position with DuPont and wanted to avoid those difficulties when starting with CTE. Defendant wanted to impress CTE and convince them they made the correct decision in hiring him away from DuPont at a substantially higher salary than defendant was being paid at DuPont. Defendant understood if he was effective in his new job, CTE could increase its business and DuPont could lose business.

THQ. On August 21, 2013, CTE scheduled a meeting with officials of the Theraldson ethanol plant to take place on August 27, 2013. Defendant was scheduled to participate in this meeting. Theraldson was then an ethanol plant customer of DuPont.

THR. On August 23, 2013, defendant participated in an exit interview by phone with a DuPont Human Resources (HR) employee. The HR employee emphasized the need for confidentiality of DuPont’s intellectual property (IP). Defendant acknowledged receiving and

understanding a copy of his confidentiality agreement and that he understood the need to keep DuPont's IP private after he left the company. The HR employee told defendant that he could be held personally liable if he were to violate any part of the agreement and offered to serve as a resource to defendant in the even he was unsure what could disclose. Defendant stated he understood what the HR employee was saying and took it seriously. Defendant's employment with DuPont ended at 5:00 p.m. on August 23, 2013.

~~JHI~~ S. Shortly after 7:00 a.m. on November 8, 2013, FBI agents executed a federal search warrant at defendant's residence. Defendant agreed to speak to the agents outside his home. When initially questioned about whether he had downloaded any computer files in the weeks prior to his departure from DuPont, defendant hesitated then stated he did not recall taking any files. He stated he only downloaded files of a personal nature, such as photographs, but not files belonging to DuPont. The agents asked defendant if he recalled how many files he had downloaded and he responded "only a handful." When pressed if he was certain he downloaded no other files, he replied he was certain. Defendant denied transferring any files from his company laptop to any type of removable storage media that he retained. He stated he would never take anything from DuPont. Defendant knew when he made these statements that they were not true and that it was wrong to lie to the FBI about these matters.

~~JHI~~ T. Agents then showed defendant a copy of an internal DuPont computer security report that showed he had downloaded hundreds of proprietary files of DuPont. Agents also showed defendant his Employee Confidentiality Agreement that defendant acknowledged signing. Defendant admitted he was reminded in his DuPont exit interview that he was required to return all DuPont property. Defendant then claimed he had transferred files to his laptop to be used in his new job. He claimed he did not know how to transfer files with important information. When it was pointed out that defendant also downloaded files relating to companies he had not worked with, defendant stated the reason he downloaded the files was just to help him out with his new job as he was not familiar with all the companies.

~~JHI~~ U. After the agents concluded their search, defendant notified CTE officials that the FBI had searched his residence.

~~JUL~~V. Numerous files containing proprietary and trade secret information were seized from computers and electronic storage devices found in defendant's home. This included multiple Biorefinery Sales Reports for 2013 that showed pricing, costs, gross profit, profit margins, and quantities for all biorefinery customers of DuPont globally and constituted DuPonts trade secrets.

~~JUL~~W. On November 14, 2013, defendant was advised by the CTE COO that CTE was placing defendant on "temporary administrative leave" with pay and benefits, "while we continue to assess the situation."

~~JUL~~X. On December 30, 2013, the CTE COO sent defendant an email stating:

As per our conversation attached you will find a letter which you will need to sign and return back to our office. You will be receiving the original letter tomorrow via overnight carrier.

Once we receive the signed letter back from you, then we will be sending you a new laptop which **should only be used for company use and not for personal use or conducting other business.**

Let's plan on getting you back to work on Monday January 6. We can schedule a conference call for Friday January 3 together with . . . to discuss coverage.

If you have any questions let me know.

~~JUL~~Y. On December 31, 2013, defendant signed the following memorandum supplied by CTE:

As we discussed, CTE Global, Inc. (the "Company") is extremely troubled by and concerned about your alleged conduct relating to your former employer, DuPont. So there is no misunderstanding, the Company has no interest in any files, documents or other information that may be confidential and proprietary to DuPont, and you must not, in the performance of your duties and responsibilities for the

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Company, misappropriate, disclose, use, or rely upon any documentation or information which may even arguably constitute or contain any of DuPont's confidential and proprietary information.

By countersigning this memorandum, you confirm that in the performance of your duties and responsibilities for the Company, you have not taken, misappropriated, disclosed, used, and/or relied upon any documentation or information that you consider to be DuPont's confidential and proprietary information. The Company reserves the right to terminate your employment, with or without notice and for cause, if this representation ever proves to be incorrect. As a reminder, your employment with Company at all times remains at-will, and nothing in this memorandum changes your at-will employment status.

Please confirm your understanding of this memorandum by signing below.

WIZ. Defendant's salary at CTE was increased from \$115,000 in his first year to \$125,000, effective November 1, 2014.

SENTENCING PROVISIONS

16. WIZ Defendant understands and agrees to be sentenced based on facts to be found by the sentencing judge by a preponderance of the evidence and agrees facts essential to the punishment need not be (1) charged in the Information; (2) proven to a jury; or (3) proven beyond a reasonable doubt. Defendant agrees the Court will determine the appropriate sentence after considering a variety of factors, including: (1) the nature and circumstances of the offense and the history and characteristics of defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence to afford adequate deterrence to criminal conduct; (4) the need for the sentence to protect the public from further crimes of defendant; (5) the need for the sentence to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (6) the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Defendant understands the Court will also consider the

consider the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines for the applicable category of offense(s) committed by defendant and will consider any pertinent policy statements issued as part of the Guidelines. The Court will consider relevant adjustments under the United States Sentencing Guidelines, which will include a review of such things as defendant's role in the offense, criminal history, acceptance or lack of acceptance of responsibility, and other considerations. The Court may also consider other information including any information concerning the background, character, and conduct of defendant.

17. ~~JH~~ During plea negotiations the parties may have discussed how various factors could impact the Court's sentencing decision and the determination of the advisory sentencing guidelines range. The parties agree, however, that discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the Court. Defendant understands the Court is not bound by the stipulations of the parties, nor is it bound by the sentencing range as determined pursuant to the sentencing guidelines. This plea agreement provides for no guarantee concerning the actual sentence to be imposed. Defendant further understands defendant will have no right to withdraw defendant's guilty plea if the sentence imposed is other than defendant hoped for or anticipated.

18. ~~JH~~ The parties stipulate and agree the United States Sentencing Guidelines should be applied, at least, as follows:

~~JH~~ A. **Base Offense Level - (Chapter 2):** For Count 1, pursuant to USSG §2B1.1(a)(2), the appropriate base offense level is 6.

~~JH~~ B. An upward adjustment is warranted pursuant to USSG §2B1.1(b)(1) for the amount of the actual or intended loss as defined by the sentencing guidelines. The parties agree the loss was at least \$5,000. The parties agree to litigate this adjustment.

~~JH~~ C. **Base Offense Level - (Chapter 2):** For Count 2, pursuant to USSG §2B1.1(a)(2), the appropriate base offense level is 6.

~~JH~~ D. **Obstruction of Justice (Chapter 3):** The parties agree there is no basis for an obstruction of justice enhancement under USSG § 3C1.1 based upon the facts known as of the date of the agreement and the government will not seek imposition of an adjustment based upon the facts underlying Count 2.

~~III~~E. **Acceptance of Responsibility (Chapter 3 adjustment):** The United States agrees for purposes of USSG §3E1.1(b) that defendant timely notified authorities of defendant's intention to enter a guilty plea.

~~III~~F. **Criminal History (Chapter 4):** No agreement has been reached regarding defendant's criminal history. The parties reserve the right to contest the Probation Office's determination of defendant's criminal history and criminal history category under Chapter Four of the sentencing guidelines. In addition, defendant understands that, if defendant's criminal history would result in a higher base offense level under any guideline, the government is free to seek such a base offense level.

~~III~~G. No other agreements have been reached, and the parties are free to litigate any and all other applicable adjustments, departures, or cross-references under the United States Sentencing Guidelines, and any variances of any kind from the advisory guideline range, in any amount, in either direction.

19. ~~III~~ Defendant, defendant's attorney, and the United States may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information and controlling authority to the Probation Office and Court for use in preparing and litigating adjustments, enhancements, or departures scored in the presentence report, including offering statements made by defendant at any time.

20. ~~III~~ The parties are free to contest or defend any ruling of the Court, unless otherwise limited by this agreement, on appeal or in any other post-conviction proceeding.

21. ~~III~~ Defendant understands that, pursuant to the Victim and Witness Protection Act, Title I of the Justice for All Act, and the regulations promulgated under the Act by the Attorney General of the United States:

- A. The victim of a crime is given the opportunity to comment on the offense and make recommendations regarding the sentence to be imposed. Defendant understands the victim's comments and recommendations may be different from those of the parties to this agreement.

- B. The government is required to consult with victims of serious crimes to obtain their views regarding the appropriate disposition of the case against defendant and to make any such information regarding sentencing known to the Court. Defendant understands any victim's opinions and recommendations may be different from those presented by the government.
- C. The government is required to "fully advocate the rights of victims on the issue of restitution unless such advocacy would unduly complicate the sentencing proceeding," and the Court is authorized to order restitution by defendant to victims of crime, including, but not limited to, restitution for property loss, personal injury, or death.

CONDITIONS OF SUPERVISION

22. JHI If probation or a term of supervised release is ordered, the parties are free to seek whatever conditions they deem appropriate.

POTENTIAL FOR DEPARTURE OR CREDIT

23. JHI The United States may, but shall not be required to, make a motion pursuant to §5K1.1 of the United States Sentencing Guidelines in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. No downward departure for "substantial assistance" may be made absent a government motion under §5K1.1.

24. JHI It is understood and agreed no motion for downward departure based on defendant's cooperation shall be made, under any circumstances, unless defendant's cooperation is deemed "substantial" by the United States Attorney's Office and defendant has fully complied with all provisions of this plea agreement. The United States has made no promise, implied or otherwise, that a departure motion will be made or that defendant will be granted a departure for "substantial assistance." Further, no promise has been made that a motion will be made for departure even if defendant complies with the terms of this agreement in all respects, but has not, in the assessment of the United States Attorney's Office, provided "substantial assistance."

25. JHI The United States will consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the assessment of the United States Attorney's Office, defendant has provided

“substantial assistance” that would merit a government request for a downward departure under USSG §5K1.1 and/or 18 U.S.C. § 3553(e), and if so, what recommendation to make to the Court.

- A. the government’s evaluation of the significance and usefulness of any assistance rendered by defendant;
- B. the truthfulness, completeness, and reliability of any information or testimony provided by defendant;
- C. the nature and extent of defendant’s assistance;
- D. any injuries suffered or any danger or risk of injury to defendant or family members resulting from any assistance provided;
- E. the timeliness of any assistance provided by defendant; and
- F. Other benefits received by defendant in the plea agreement.

26. JHI Defendant understands and agrees the government has gathered extensive evidence in the course of its investigation, and further, no departure motion will be made on the basis of information or cooperation provided by defendant if such information or cooperation is merely cumulative of information already in the possession of the United States.

27. JHI It is understood and agreed that, if the United States makes a motion for departure based upon defendant’s “substantial assistance,” the Court will decide whether to grant the motion. If the Court grants the motion, it will be for the Court to decide, within the limits of the law and its discretion, how much of a reduction in sentence is warranted.

28. JHI Defendant agrees and understands defendant shall not be permitted to withdraw defendant’s plea of guilty as to any count or otherwise fail to comply with the terms of this agreement in the event defendant is not satisfied with the government’s “substantial assistance” motion decision or the Court’s sentence in the case.

FINANCIAL MATTERS

29. JHI Defendant agrees to pay a special assessment of \$100 per count, for a total of \$200, as required by 18 U.S.C. § 3013. Defendant may pay the special assessment to the Clerk of Court using the enclosed payment coupon. Upon execution of this agreement, defendant or defendant’s representative will send or deliver the special assessment payment to the U.S. District Clerk of Court, 111

Seventh Avenue, SE, Box 12, Cedar Rapids, IA 52401. If payment is made in the form of a check or money order, it should be made out to the "U.S. District Clerk of Court." If defendant fails to pay the special assessment prior to the date of sentencing, defendant stipulates that a downward adjustment for acceptance of responsibility under USSG §3E1.1 is not appropriate unless the Court finds defendant has no ability to pay prior to the sentencing.

30. *JHI* Defendant agrees defendant will be required to pay full restitution to all victims of the offense(s) including relevant conduct victims. Defendant further understands the amount of loss sustained by any victim will be determined during the course of preparation of the presentence investigation report. Defendant agrees to cooperate in the investigation of the amount of loss and the identification of victims. Defendant understands full restitution will be ordered regardless of defendant's financial resources. Any restitution obligation should be paid to the Clerk of Court for eventual disbursement to the victim. Complete restitution shall be due and payable at or before the time of sentencing. Defendant agrees to cooperate in efforts to collect the restitution obligation, by any other means the United States deems appropriate. Defendant understands imposition or payment of restitution will not restrict or preclude the filing of any civil suit or administrative action. Defendant agrees any restitution imposed will be non-dischargeable in any bankruptcy proceeding and defendant will not seek a discharge or a finding of dischargeability as to the restitution obligation.

GENERAL MATTERS

31. *JHI* Defendant shall not violate any local, state, or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking violations, committed by defendant will constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. Defendant or defendant's attorney shall notify this office within 48 hours if defendant is questioned, charged, or arrested for any law violation.

32. *JHI* If defendant violates **any** term or condition of this plea agreement, in **any** respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. Defendant understands, however, the government may elect to proceed with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United States. If defendant does breach this agreement, defendant faces the following consequences: (1) all testimony and other information defendant has provided at any time (including any stipulations in this agreement) to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury may and will be used against defendant in any prosecution or proceeding; (2) the United States will be

entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions; and (3) the United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

33. ~~THI~~ Defendant waives all claims defendant may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment to the Constitution. Defendant also agrees any delay between the signing of this agreement and the final disposition of this case constitutes excludable time under 18 U.S.C. § 3161 et seq. (the Speedy Trial Act) and related provisions.

34. ~~THI~~ Any dismissal of counts or agreement to forego filing charges is conditional upon final resolution of this matter. If this agreement is revoked or defendant's conviction is ultimately overturned, the United States retains the right to file charges that were not filed because of this agreement. Uncharged offenses may be filed if: (1) the plea agreement is revoked, or (2) defendant successfully challenges defendant's conviction through a final order in any appeal, cross-appeal, habeas corpus action, or other post-conviction relief matter. A final order is an order not subject to further review or an order that no party challenges. The United States may file any uncharged offenses within 90 days of the filing date of the final order. Defendant waives all constitutional and statutory speedy trial rights defendant may have. Defendant also waives all statute of limitations or other objections or defenses defendant may have related to the timing or timeliness of the filing or prosecution of charges referred to in this paragraph.

WAIVER OF APPEAL

35. ~~THI~~ After conferring with defendant's attorney and after being advised of defendant's appeal rights, defendant knowingly and voluntarily waives defendant's right to appeal his convictions. Defendant also waives the right to file post-conviction relief actions, including actions pursuant to 28 U.S.C. § 2255, 28 U.S.C. § 2241, *coram nobis*, and motions to reconsider or reduce defendant's sentence. Should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to defendant's offenses and explicitly make such an amendment retroactive, the government agrees that it will not assert this waiver as a bar to defendant filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2). However, if defendant files such a motion, the government reserves the right to oppose the motion on any other grounds, and it reserves the right to assert this waiver as a bar to an appeal from the district court's decision regarding the motion. This waiver

does not, however, prevent defendant from challenging the effectiveness of defendant's attorney after conviction and sentencing. Defendant does not have any complaints at this time about the effectiveness of defendant's attorney. The waivers set out above relate to any issues that now exist or that may arise in the future. Defendant agrees to these waivers in order to induce the government to accept the provisions and stipulations of this plea agreement, to avoid trial, and to have defendant's case finally concluded. Defendant understands that, at the conclusion of the sentencing hearing, the Court will note defendant's appeal rights are limited by this waiver. No assurances or promises have been made by any party as to what defendant's ultimate sentence will be.

ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING

36. JHI Defendant acknowledges defendant has read each of the provisions of this entire plea agreement with the assistance of counsel and understands its provisions. Defendant has discussed the case and defendant's constitutional and other rights with defendant's attorney. Defendant understands that, by entering a plea of guilty, defendant will be giving up the right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in defendant's defense; to remain silent and refuse to be a witness by asserting defendant's privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a reasonable doubt. Defendant agrees defendant's attorney has represented defendant in a competent manner and has no complaints about that lawyer's representation. Defendant states defendant is not now on or under the influence of, any drug, medication, liquor, or other substance, whether prescribed by a physician or not, that would impair defendant's ability to fully understand the terms and conditions of this plea agreement.

37. JHI Defendant acknowledges defendant is entering into this plea agreement and is pleading guilty freely and voluntarily because defendant is guilty and for no other reason. Defendant further acknowledges defendant is entering into this agreement without reliance upon any discussions between the government and defendant (other than those specifically described in this plea agreement), without promise of benefit of any kind (other than any matters contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. Defendant further acknowledges defendant's understanding of the nature of each offense to which defendant is pleading guilty, including the penalties provided by law.

38. JHI Defendant further understands defendant will be adjudicated guilty of each offense to which defendant will plead guilty and will thereby be

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deprived of certain rights, including, but not limited to, the right to vote, to hold public office, to serve on a jury, and to possess firearms and ammunition. Defendant understands the government reserves the right to notify any state or federal agency by whom defendant is licensed, or with whom defendant does business, of the fact of defendant's conviction.

39. *JHI* Defendant has been advised, and understands, that under the Sex Offender Registration and Notification Act, a federal law, defendant must register and keep the registration current in each of the following jurisdictions: where defendant resides; where defendant is an employee; and where defendant is a student. Defendant understands the requirements for registration include providing defendant's name, defendant's residence address, and the names and addresses of any places where defendant is or will be an employee or a student, among other information. Defendant further understands the requirement to keep the registration current includes informing at least one jurisdiction in which defendant resides, is an employee, or is a student not later than three business days after any change of defendant's name, residence, employment, or student status. Defendant has been advised, and understands, that failure to comply with these obligations subjects defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine, imprisonment, or both.

VERIFICATION

40. *JHI* This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to defendant by the United States or its agents. No additional agreement may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

If this agreement is acceptable, please have your client indicate acceptance by placing initials on the line preceding each of the above paragraphs and by signing below where indicated. By initialing each paragraph and signing below, defendant acknowledges defendant has read, fully understands, and agrees to each paragraph of this agreement. Please return all enclosures, completed and signed, with this signed letter to the U.S. Attorney's Office.

Enclosed are a Waiver of Indictment and a copy of the Draft Information. After the signed waiver is returned, it will be filed with the Information.

Finally, please remember to pay the special assessment as agreed above.

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Thank you for your cooperation.

Sincerely,

PETER E. DEEGAN, JR.
United States Attorney

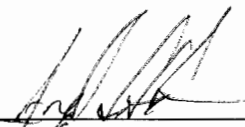
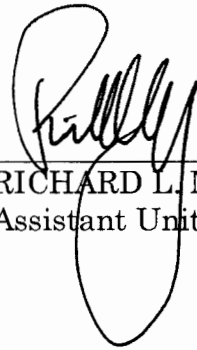
By, *Richard L. Murphy*

RICHARD L. MURPHY
Assistant United States Attorney

ENCLOSURES:

Financial Statement Form
Special Assessment Payment Coupon
Waiver of Indictment
Copy of Proposed Information
Authorization to Release Credit Information

The undersigned defendant, with advice of counsel, accepts the terms of this plea agreement. The undersigned Assistant United States Attorney accepts the terms of the executed plea agreement.

	<i>6/18/18</i>		<i>6/19/18</i>
_____ JOSH HARRY ISLER Defendant	Date	_____ RICHARD L. MURPHY Assistant United States Attorney	Date

	<i>6/18/18</i>
_____ ALFRED E. WILLETT Attorney for Defendant	Date