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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(A) of the Federal Rules of
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree that
4 the defendant will plead guilty to Count Two of the Indictment. The defendant acknowledges that
5 the plea is voluntary and did not result from force, threats, or promises, other than any promise
6 made in this plea agreement. More specifically, the parties agree as follows:

7 Count Two charges the defendant with Possession with Intent to Distribute a Controlled
8 Substance, in violation of Title 21 U.S.C. § 841(a)(1).

9 **B. Acceptance.** Upon acceptance of the defendant's guilty plea, and the defendant's
10 full compliance with the other terms of this Agreement, including the terms of cooperation set
11 forth below, the Government agrees that it will dismiss, under Rule 11(c)(1)(A), Count One of the
12 Indictment. Defendant acknowledges, agrees and waives objection to the fact that the Court may
13 consider "relevant conduct" including relevant conduct alleged in these dismissed counts in
14 arriving at an appropriate sentence pursuant to Section 1B1.3 of the Sentencing Guidelines.

15 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

16 Defendant understands that he will be placed under oath at the plea hearing and that the
17 government, in a prosecution for perjury or false statement, has the right to use against the
18 defendant any statement that the defendant gives under oath. Moreover, the defendant understands
19 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense(s) charged
20 against the defendant and to persist in that plea; 2) the right to a trial by jury; 3) the right to be
21 represented by counsel, and if necessary, to have the court appoint counsel at trial and at every
22 stage of the proceeding; and 4) the rights, at trial, to confront and cross-examine adverse
23 witnesses, to be protected from compelled self-incrimination, to testify, to present evidence and to
24 compel the attendance of witnesses. The defendant understands that by pleading guilty he waives

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26 ¹The word "Government" in this Agreement refers to the United States Attorney for the
27 District of Idaho.

1 (gives up) all of the rights set forth above. The defendant fully understands that by entering a plea
2 of guilty, if that plea is accepted by the District Court, there will be no trial and defendant will
3 have waived (given up) these trial rights.

4 **III. NATURE OF THE CHARGES**

5 **A. Elements of the Crime.** The elements of the crime of Possession with intent to
6 distribute a controlled substance, as charged in Count Two, are as follows:

7 First, the defendant knowingly possessed methamphetamine and cocaine; and

8 Second, the defendant possessed it with the intent to deliver it to another person.

9 **B. Factual Basis.** If this matter were to proceed to trial, the Government and the
10 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts
11 accurately represent the defendant's readily provable offense conduct. This factual summary is not
12 intended to detail all relevant conduct, or cover all specific offense characteristics, which will be
13 determined by the Court after its consideration of the Presentence Report.

14 On October 22, 2003, in Bonneville County, District of Idaho, following a tip, officers
15 from the Idaho State Police received consent to search the home of the defendant. A search of that
16 location found 119 grams of cocaine, and 49 grams of methamphetamine, as well as scales and
17 baggies indicative of drug distribution. The defendant possessed the cocaine and
18 methamphetamine with the intention to distribute it to another person.

19 **IV. SENTENCING FACTORS**

20 **A. Maximum Penalties.** A violation of Possession with Intent to Distribute a
21 Controlled Substance, as charged in Count Two, is punishable by a term of imprisonment of
22 Twenty years, a term of supervised release of not more than five year, a maximum fine of
23 \$1,000,000, and a special assessment of \$100.

24 **B. Supervised Release.** Defendant will be sentenced to a term of supervised release,
25 to be served after incarceration, of at least five years.

26 The defendant's term of supervised release will be a specific (i.e., a determinate) term
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1 chosen by the Court at sentencing. The combination of prison time and supervised release is
2 permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) that
3 defendant is pleading guilty to violating. Violation of any condition of supervised release may
4 result in defendant being imprisoned for the entire term of supervised release or being prosecuted
5 for contempt of court under Title 18, United States Code, Section 401(3).

6 **C. Fines and Costs.** Unless the Court determines that the defendant will not
7 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's
8 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The
9 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised
10 release.

11 **D. Special Assessment.** Defendant will pay a special assessment of \$100 per count, in
12 addition to any fine imposed. This assessment will be paid by defendant before sentence is
13 imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the United
14 States District Court, Clerk's Office, Federal Building and United States Courthouse, 550 W. Fort
15 Street, Fourth Floor, Boise, ID 83724.

16 **V. UNITED STATES SENTENCING GUIDELINES:**

17 **A. Application of Sentencing Guidelines.** As consideration for the benefits
18 conferred by this guilty plea, the defendant specifically waives his *Apprendi* rights, that every fact
19 which is legally essential to punishment be charged in the indictment and proven to a jury, and
20 consents to judicial fact-finding under a preponderance-of-evidence standard, with respect to any
21 sentencing enhancements, following the procedures described in the United States Sentencing
22 Commission Guideline Manual. (See *Blakely v. Washington*, 2004 WL 1402697, *7 (June 24,
23 2004), *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000); *Duncan v. Louisiana*, 391 U.S. 145,
24 158 (1968).

25 Defendant understands that defendant will be sentenced under the Federal Sentencing
26 Guidelines and that: (1) the sentence has not yet been determined by the District Judge; (2) any
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1 estimate of the likely sentence received from any source is a prediction and not a promise; and (3)
2 the District Judge has the final authority to decide what the sentence will be.

3 The defendant also understands that the Court will determine the applicable sentencing
4 factors at sentencing and that the Court's determination will affect the sentence range under the
5 Sentencing Guidelines. While the Court may take the defendant's cooperation and the
6 recommendations of the parties into account in determining the sentence to be imposed, the Court
7 has complete discretion to impose a sentence other than the sentence recommended, including the
8 maximum sentence possible for the crimes to which defendant has pled.

9 **B. Sentencing Guidelines Recommendations and Requests.**

10 1. **Acceptance of Responsibility.** Unless the Government learns of new
11 information to the contrary, defendant will be entitled to a reduction of two levels in the combined
12 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant
13 clearly accepts responsibility for the offense. The Government will move for an additional one-
14 level reduction in the combined offense level under section 3E1.1(b) if the following conditions
15 are met: the defendant qualifies for a decrease under section 3E1.1(a); the offense is level 16 or
16 greater; and the defendant has assisted authorities in the investigation or prosecution of
17 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea
18 of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to
19 allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant fails
20 to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner
21 inconsistent with acceptance of responsibility, the Government will not make such a
22 recommendation and/or motion or, if one has already been made, it will withdraw the
23 recommendation and/or motion.

24 2. **Downward Departure Request by Defendant.** The defendant will not
25 seek a downward departure without first notifying the Government of defendant's intent to seek a
26 downward departure and defendant's reasons and basis therefor, 21 days before the date set for
27

1 sentencing.

2 **VI. COOPERATION**

3 **A. Truthful Information and Assistance.** Defendant promises to provide truthful
4 and complete information to the Government and its investigative agencies, including full
5 debriefings and truthful testimony at all proceedings, criminal, civil or administrative, including,
6 but not limited to, grand jury proceedings, trials, and pretrial and post-trial proceedings,
7 concerning defendant's role and the roles of all others involved in the offense or offenses that were
8 part of the same course of conduct or of a common scheme or plan as the offense of conviction. In
9 so doing, the defendant shall neither attempt to protect any person or entity through false
10 information or omission, nor falsely implicate any person. The defendant shall testify truthfully no
11 matter who asks the questions, the prosecutor, judge or defense counsel. It is further understood
12 that the defendant shall be subject to prosecution for perjury and obstruction of justice for any
13 intentional deviation from the truth. The defendant's duty under the terms of this Agreement is to
14 tell the truth whether or not it bolsters the Government's case against any particular individual.
15 The defendant specifically understands that this Agreement is not contingent upon the conviction
16 of any person or the forfeiture of any property.

17 The defendant agrees to cooperate in good faith, meaning that the defendant will not only
18 respond truthfully and completely to all questions asked, but will also volunteer all information
19 that is reasonably related to the subjects discussed in the debriefings or testimony. In other words,
20 the defendant may not omit facts about crimes, participants, or defendant's involvement, and then
21 claim not to have breached the Agreement because he was not specifically asked questions about
22 those crimes, participants, or involvement. Any actions or statements inconsistent with continued
23 cooperation under this Agreement, including but not limited to, criminal activity, or a statement
24 indicating a refusal to testify, constitutes a breach of this Agreement.

25 Defendant agrees to be available for interviews in preparation of all testimony. If
26 necessary, defendant further agrees to submit, upon request, to government-administered

1 polygraph examinations to verify defendant's full and truthful cooperation.

2 Defendant agrees to identify all property known to defendant, in which defendant or any
3 other person has a legal or equitable interest, that is or was the proceeds of, or acquired with the
4 proceeds of, a drug crime, or that was used in any manner to facilitate a drug crime. Defendant
5 also agrees to identify the extent of any person's or entity's (including defendant's) interest in any
6 such property. The defendant further agrees to assist in the recovery and forfeiture to the United
7 States of any property or property interest which may be forfeitable as the proceeds of criminal
8 activity, or as property which was involved in or facilitated criminal activity, or which is otherwise
9 forfeitable under federal law.

10 **B. Use of Information Against Defendant.** In exchange for defendant's agreement
11 to cooperate with the Government, the Government agrees not to use new information defendant
12 provides (pursuant to this Agreement) about the defendant's own criminal conduct. Such
13 information may be revealed to the Court but may not be used against the defendant in determining
14 defendant's sentence range, choosing a sentence within the range, or departing from the range.
15 There shall be no such restrictions on the use of information: (1) previously known to law
16 enforcement agencies; (2) revealed to law enforcement agencies by, or discoverable through, an
17 independent source; (3) in a prosecution for perjury, obstruction of justice, or giving a false
18 statement; or (4) in the event there is a breach of this Agreement.

19 **C. Substantial Assistance Determination.** Upon the Government's determination
20 that defendant's cooperation amounts to "substantial assistance" in the investigation of others, the
21 Government will request that the Court depart downward from the applicable sentencing range,
22 pursuant to Section 5K1.1 of the Sentencing Guidelines and/or any mandatory minimum sentence
23 pursuant Title 18, United States Code, Section 3553(e). The Government reserves the right to
24 make the sole determination as to whether and when defendant has provided substantial assistance
25 for purposes of the Government's motion for a downward departure. If, in good faith, the
26 Government cannot conclude that the defendant has provided substantial assistance, the
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1 Government will not be obligated to move for a downward departure.

2 The Government's final decision whether to file motions pursuant to Section 5K1.1 and/or
3 Title 18, United States Code, Section 3553(e) will be made after evaluating defendant's
4 cooperation with regards to: (1) the significance and usefulness of the defendant's cooperation, (2)
5 the truthfulness, completeness, and reliability of any information or testimony provided by the
6 defendant, (3) the nature and extent of the defendant's assistance, (4) any injury suffered, or any
7 danger or risk of injury to the defendant or defendant's family resulting from defendant's
8 cooperation, and (5) the timeliness of the defendant's cooperation. The Government's specific
9 recommendation will also be contingent upon its evaluation of all the facts of the case, the
10 sentence that would have been imposed absent an Agreement, and the extent and value of the
11 cooperation provided.

12 **D. Defendant's Assumption of Risk.** The defendant agrees that defendant's
13 cooperation is given freely and voluntarily, with a knowledge of the possible consequences of
14 cooperation with the Government. The defendant agrees that defendant's involvement in this case
15 has been made known to defendant's attorney and that he has permission from defendant's
16 attorney to enter into such an agreement. The defendant hereby absolves the Government, any of
17 its political subdivisions and any of its employees from any liability associated with this
18 cooperation, and includes defendant's successors, heirs and assigns.

19 **VII. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

20 The defendant is aware that Title 18, United States Code, Section 3742 affords defendant
21 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the
22 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all
23 appeal rights defendant may have regarding both defendant's conviction and sentence, including
24 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,
25 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect
26 application of the sentencing guidelines to which the defendant filed a proper and timely
27

1 objection.

2 The defendant is also aware that under certain circumstances a defendant has the right to
3 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to
4 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms
5 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to
6 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any
7 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal
8 claiming ineffective assistance of counsel based upon facts discovered after the entry of
9 defendant's guilty pleas.

10 The defendant further understands that nothing in this Plea Agreement shall affect the
11 Government's right and/or duty to appeal as set forth in Title 18, United States Code,
12 Section 3742(b).

13 **VIII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT.**

14 The defendant agrees to provide all material financial and other information as may be
15 requested by a representative of the United States Probation Office for use in preparing a
16 Presentence Report. Failure to execute releases and/or provide such material information as may
17 be required is a violation of the terms of this Agreement, and will relieve the Government of its
18 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under
19 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the
20 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for
21 withdrawing the plea of guilty.

22 **IX. NO RIGHT TO WITHDRAW PLEA.**

23 The defendant understands that the Court is not bound to follow any recommendations or
24 requests made by the parties at the time of sentencing. If the Court decides not to follow any of the
25 parties recommendations or requests, the defendant cannot withdraw from this plea agreement or
26 the guilty plea.

1 **X. CONSEQUENCES OF VIOLATING AGREEMENT**

2 **A. Government's Options.** If defendant fails to keep any promise in this Agreement
3 [including any promise to cooperate] or commits a new crime, the Government is relieved of any
4 obligation not to prosecute defendant on other charges, including any charges dismissed as part of
5 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the
6 Government determines after sentence is imposed under this Agreement that defendant's breach of
7 the Agreement warrants further prosecution, the Government will have the choice between letting
8 the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such
9 charge(s) may be re-prosecuted. If the Government makes its determination before sentencing, it
10 may withdraw from the Plea Agreement in its entirety.

11 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep
12 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in
13 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed
14 under this Agreement; (2) any right under the Constitution and laws of the United States to be
15 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's
16 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of
17 limitations period for any charge that is brought as a result of defendant's failure to keep this
18 Agreement, and on which the statute of limitations expired after defendant entered into this
19 Agreement.

20 Furthermore, the defendant further understands and agrees that if defendant does not enter
21 a valid and acceptable plea, the Government will move to continue the trial now set. The
22 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be
23 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or
24 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to prepare
25 for trial.
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1 **XI. MISCELLANEOUS**

2 **A. No Other Terms.** This Agreement incorporates the complete understanding
3 between the parties, and no other promises have been made by the Government to the defendant or
4 to the attorney for the defendant. This Agreement does not prevent any governmental agency from
5 pursuing civil or administrative actions against defendant or any property. Unless an exception to
6 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or
7 obligate governmental entities other than the United States Attorney's Office for the District of
8 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring
9 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

10 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned
11 on acceptance of this plea Agreement no later than 5:00 p.m. on August 9, 2004. It is defendant's
12 sole and complete responsibility to notify the U.S. Attorney's Office of the acceptance of this
13 Agreement by the date specified above in order for this offer to be effectively accepted.

14 **XII. UNITED STATES' APPROVAL**

15 I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States
16 that the terms and conditions set forth above are appropriate and are in the best interests of justice.

17 THOMAS E. MOSS
18 UNITED STATES ATTORNEY

19 By:

20 
21 MICHAEL J. MCA
22 Assistant United States Attorney

23
24
25
26
27
DATE

8/13/04

1 **XIII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

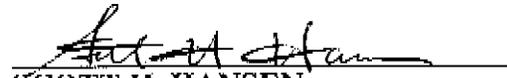
2 A. I have read [have had read to me by an interpreter] and carefully reviewed every
3 part of this Plea Agreement with my attorney. I understand the Agreement and its effect upon the
4 potential sentence. Furthermore, I have discussed all of my rights with my attorney and I
5 understand those rights. No other promises or inducements have been made to me, directly or
6 indirectly, by any agent of the Government, including any Assistant United States Attorney,
7 concerning any plea to be entered in this case. In addition, no person has, directly or indirectly,
8 threatened or coerced me to do, or refrain from doing, anything in connection with any aspect of
9 this case, including entering a plea of guilty. I am satisfied with my attorney's advice and
10 representation in this case.

11 
12 _____
13 **PEDRO BUENAS-RIVERA**
Defendant

8-12-04

DATE

14 B. I have read this Plea Agreement and have discussed the contents of the agreement
15 with my client. The Plea Agreement accurately and completely sets forth the entirety of the
16 agreement. I concur in my client's decision to plead guilty as set forth above.

17 
18 _____
19 **SCOTT H. HANSEN**
Attorney for the Defendant

8.12.04

DATE