QUESTIONS FOR TAKING GUILTY PLEA

----- Introductory; Defendant's Competence -----

- 1. [THE CLERK WILL SWEAR THE DEFENDANT.]
- 2. [TO THE DEFENDANT:] I am going to question you about the facts of the crime alleged and your decision to plead guilty; you have been placed under oath, and it is important for you to tell me the truth. If you say something here under oath that you know is not true, you could be charged with committing perjury (which is lying under oath). If you intentionally lie under oath, the things that you say could be used against you in a criminal prosecution; also, I would not give you credit for pleading guilty and your sentence in this case would be higher. Do you understand all that?
- 3. What is your name?
- 4. How old are you?
- 5. How far did you go in school?
- 6. Do you read and write? Have you understood me so far?
- 7. If there is something I say that you do not understand, or if you have a problem understanding a question I ask, please tell me and ask me to explain or repeat it. Do you understand that?
- 8. Are you feeling the effects right now of any medication, drugs or alcohol that you have consumed?
- 9. Are you being treated by any medical or mental health professional?
- 10. Do you feel alert, awake and clear-headed today?
- 11. [TO DEFENSE ATTORNEY:] Are you aware of any negative information concerning the defendant's competence that I should be aware of?
- 12. I find that the Defendant is thinking clearly, not under the influence of intoxicants, and is competent to offer a guilty plea at this time.

----- Advice of Counsel; Defendant's Choice to Plead ------

13. [TO THE DEFENDANT:] You have the right to have an attorney represent you during all stages of the proceedings. The court will appoint an attorney for you to serve at public expense if you cannot afford an

- attorney of your own choice. Do you understand that?
- 14. Have you discussed this case completely with your attorney?
- 15. Are you confident that you understand your attorney's advice?
- 16. Have you listened carefully to that advice and thought about it in making your decision to plead guilty?
- 17. The decision to plead guilty must be your own decision, not your attorney's. Do you understand that?
- 18. Is this in fact your own decision to plead guilty?
- 19. Do you think that this is the best decision for you to make?
- 20. Is this decision also, at least in part, because you actually are guilty of the crime you intend to admit?

----- Trial Rights Given Up -----

- 21. If I accept your guilty plea you will be convicted of the crime to which you are pleading guilty today, and you will not have a trial. Do you understand?
- 22. There are constitutional rights you would have at a trial, but you are giving them up permanently in this case by pleading guilty. I need to make sure that you understand the rights you are giving up.
 - a. You give up the right to enter or continue a plea of not guilty, and to have a trial by jury with a lawyer assisting you.
 - You give up the right to be presumed innocent, and the right to have the government prove beyond a reasonable doubt that you are guilty.
 - c. You give up the right to watch and listen as the witnesses against you testify, and the right to confront those witnesses, that is to question or challenge those witnesses. You give up the right to have the court order witnesses you may have in your defense to come into court and give testimony if you wanted to present a case.
 - d. You give up the right to chose whether to testify or to remain silent during trial.

- e. [IF PLEADING ON A RULE 11 AGREEMENT INVOLVING APPEAL WAIVER]: You give up the right to appeal your conviction based on this plea, and the right to appeal your sentence as long as I sentence you generally in accord with the way your sentence has been estimated or recommended in the Rule 11 agreement.
 f. Your decision to plead guilty means that you give up each of these rights permanently in this case. Do you understand the rights I have just explained?
 ------ Explanation of the Crime and Maximum Penalties ------ [IF PLEADING ON INFORMATION: JUDGE WILL RECORD THE DEFENDANT'S WAIVER OF GRAND JURY INDICTMENT]
- 24. [JUDGE WILL EXPLAIN NATURE AND ELEMENTS OF THE CRIME IN DETAIL]

23.

- 25. The maximum penalty for a person who violates this law is _____ years of imprisonment. A fine of as much as \$____ can be imposed and a \$100 "Special Assessment" per count is required. [OPTION: There is a MANDATORY MINIMUM TERM of ____ years; your sentence cannot be less than that.]
- 26. By pleading guilty you are exposing yourself to those possible maximum [and minimum] penalties. Do you understand all that?
- 27. If I sentence you to prison, I will also sentence you to "supervised release" after you are released from prison. If you violate a condition of supervision, I could send you back to prison for additional time even though you had already served the entire sentence for the crime you are admitting today. Do you understand that?
- 28. [IN APPROPRIATE CASES:] I could also order you to pay restitution to any victim of your conduct. Do you understand that?

----- Sentencing -----

29. Any sentence you receive will be governed by federal law, including the provisions of *Federal Sentencing Guidelines*. Under the law, I must make decisions concerning your sentence.

- a. I will be guided, in part, by your Sentencing Guidelines "score," which combines the seriousness of your offense with your criminal background and results in a range of suggested sentences. My decision about your sentencing range may be the same as the estimates that you or the government may have made, but it also might be different higher or lower than estimated. Do you understand?
- b. Just because the government makes a recommendation, such as that your sentencing be at a certain level, or that you receive sentencing credit for "accepting responsibility," or that certain facts exist, does not require me to accept their recommendation. Do you understand?
- c. I most often give a defendant a sentence that is within the range I calculate by using the Sentencing Guidelines. However, I do not have to follow the Guideline range sentence; for example, if there are particular reasons that convince me that a Guideline sentence is not proper --that it is too high or too low-- I can legally impose a sentence that is either below or above the Guideline recommended sentence range. Do you understand all that?

----- Plea Agreements, Generally -----

- 30. Your plea of guilty is a result of discussions between the attorney for the government and your attorney. I have not been part of those discussions. I have not approved of this agreement in advance or predicted any particular sentence for you. Do you understand that?
- 31. [TO THE AUSA:] Please summarize the important terms of the plea agreement.
- 32. [TO DEFENSE ATTORNEY:] Do you agree with that summary of the guilty plea agreement?
- 33. Are you confident that your client fully understood the agreement before he [she] signed it?
- 34. Do you believe this agreement is in your client's best interest?

- 35. *[TO THE DEFENDANT:]* Do you also agree with those statements in the guilty plea agreement?
- 36. Are you confident that your attorney fully explained the agreement to you before you signed it?
- 37. Do you want to live by the terms of that agreement?

----- 11(c)(1)(B) pleas -----

38. The government has a recommendation that your sentence should be at a particular level. I will carefully consider the recommendation, but I cannot guarantee that I will follow it. I will if I think it's proper. Whether or not I follow it, you will not be allowed to back out of your plea because this is a permanent decision on your part. Do you understand that?

----- 11(c)(1)(C) pleas (very rarely used) ------

- 39. a. The government and you have agreed that there should be a cap on your possible sentence, but I do not know yet whether I will follow that agreement or not. I may, but then again, I may not.
 - b. The cap you and the government have agreed on is _____. I will be bound by that agreement only if I think it's proper.
 - c. If I decide otherwise, I will tell you I am rejecting the sentence cap, and in that event give you the chance to either back out of your guilty plea or maintain your plea. My rejection of a sentence cap agreement would be the only way that you would be able to back out of your guilty plea once I accept it. Do you understand that?

----- 5K1.1 and/or 18 § 3553(e) provisions -----

- 40. a. You and the government have agreed that you will provide information to the government, perhaps including testimony, if necessary, and so forth. The government says that it will make a decision about asking me to reduce your sentence below whatever sentence you would otherwise receive.
 - b. This is an agreement that has yet to be carried out. The government has yet to make a decision as to how much value your assistance has and they must make a professional good faith judgment about what to ask me to do with your sentence. And then, if they do ask me to lower your sentence, I have to decide whether it's a legitimate request and how much to value your assistance. I will make that decision independently. Do you understand those ideas?

You do not have any guarantees, and no particular sentence is C. "locked in," so to speak based upon your information and proposed assistance to the government. Do you understand that? ----- Voluntariness -----Has anyone tried to force you or threatened you in any way to get you to plead guilty? Has anybody done anything you think is improper, illegal or unethical in order to get you to plead guilty? Except for what has already been stated here or what is in the written agreement, are there any other promises of any kind that have been made to you to get you to plead guilty? ----- Change of Plea -----To the charge contained in Count ____ of the indictment, "[NAME OF OFFENSE]," how do you plead? JUDGE WILL ESTABLISH A FACTUAL BASIS FOR THE CRIME; JUDGE WILL EXAMINE EITHER THE DEFENDANT OR THE CASE AGENT OR THE ATTORNEYS AS TO FACTS THAT COULD BE PRODUCED AT TRIAL. **ITO THE ATTORNEYS:1** Are you satisfied that there is a proper factual basis for the plea and that the court has complied with Rule 11?

48. [IF DEFENDANT RESPONDS YES:] I accept the Defendant's plea to Count _____ of the indictment and find him [her] guilty of the offence expressed in that Count [those Counts]. The Defendant is referred to the Probation Department for the preparation of a Presentence Report. Defense Counsel will please acknowledge receiving a copy of the referral sheet from the Clerk, and take the Defendant to the Probation Department immediately to begin the process.

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