

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney
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3 ROSS W. NADEL (CSBN 87940)
Chief, Criminal Division
4 CANDACE KELLY (CSBN 191473)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102
7 Telephone: (415) 436-6962

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,) No. CR 01-0315-PJH
14 Plaintiff,)
15 v.) PLEA AGREEMENT
16 BERKELEY NUCLEONICS)
CORPORATION,)
17 Defendant.)
18 _____)

19
20 Berkeley Nucleonics Corporation, also known as BNC Corp. (“BNC”), and the United
21 States Attorney's Office for the Northern District of California (hereafter “the government”) enter
22 into this written plea agreement (the “Agreement”) pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C)
23 of the Federal Rules of Criminal Procedure:

24 The Defendant’s Promises

25 1. BNC agrees to plead guilty to count two of the captioned indictment charging
26 BNC with willfully violating a license, order or regulation promulgated under Chapter 35 of Title
27 50 -- International Emergency Economic Powers; specifically, exporting an item subject to the
28 Export Administration Regulations (“EAR”) to a country that requires a license, in violation of

PLEA AGREEMENT
CR 01-0315-PJH

1 Title 50, United States Code, § 1705(b) and 15 Code of Federal Regulations §§ 736.2 and 764.2.

2 I agree that the elements of the offense and the maximum penalties are as follows: (1) the
3 defendant willfully exported an item, (2) the export of that item required a license under the EAR
4 based on either the nature of the item or the end-user and (3) the defendant did not obtain a
5 license before exporting the item.

- | | | | |
|---|----|------------------------------|------------|
| 6 | a. | Maximum fine | \$ 500,000 |
| 7 | b. | Maximum term of probation | 5 years |
| 8 | c. | Mandatory special assessment | \$ 400 |

9 2. BNC agrees that BNC is guilty of the offense to which it will plead guilty, and
10 BNC agrees that the following facts are true: On December 31, 1998, the employees of BNC
11 shipped an 8020 pulse generator to the Bhaba Atomic Research Center (BARC), Department of
12 Atomic Energy, Mumbai, India. At the time of the shipment, the BNC employees knew that
13 shipments of the 8020 pulse generator were controlled by the EAR, because the 8020 pulse
14 generator was on the EAR's Commerce Control List (CCL), and had been given an Export
15 Classification Control Number (ECCN). The employees of BNC also knew that exports to
16 BARC, which is on the Department of Commerce's Entities List, required a license. Despite
17 knowing of these licensing requirements, the employees of BNC shipped the 8020 pulse
18 generator without applying for or obtaining an export license. Before shipping the pulse
19 generator, the employees directly involved with the shipment consulted with other individuals at
20 BNC including certain officers and directors of the corporation. BNC agrees that with respect to
21 this shipment, the conduct of its employees is imputed to the corporation by operation of law.
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25 3. BNC agrees to give up all rights that it would have if it chose to proceed to trial,
26 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
27 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
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1 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
2 to pursue any affirmative defenses and present evidence.

3
4 4. BNC agrees to give up its right to appeal its conviction, the judgment, and orders
5 of the Court. BNC also agrees to waive any right it may have to appeal its sentence.

6 5. BNC agrees not to file any collateral attack on its conviction or sentence,
7 including a petition under 28 U.S.C. §2255, at any time in the future after it is sentenced, except
8 for a claim that its constitutional right to the effective assistance of counsel was violated.

9
10 6. BNC agrees not to ask the Court to withdraw its guilty plea at any time after it is
11 entered, unless the Court declines to accept the sentence agreed to by the parties. BNC agrees
12 that the government may withdraw from this agreement if the Court does not accept the agreed
13 upon sentence set out below.

14
15 7. BNC agrees that Section 2M5.1 of the United States Sentencing Guidelines is the
16 appropriate section to determine the base offense level for a violation of Title 50, United States
17 Code, § 1705. BNC also agrees that the Sentencing Commission has not promulgated guidelines
18 for determining the fine for violations that fall under Section 2M5.1. (U.S.S.G. §8C2.10
19 commentary). Accordingly, under Section 8C2.10, the fine amount should be determined based
20 on the general statutory provisions governing sentencing, or Title 18, United States Code, §§
21 3553 and 3572. BNC agrees that the appropriate sentence is a \$300,000 fine, a 5 year term of
22 probation and a \$400 mandatory special assessment.

23
24 BNC agrees that, regardless of any other provision in this agreement, the
25 government may and will provide to the Court and the Probation Office all information relevant
26 to the charged offenses or the sentencing decision.
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1 8. BNC agrees that it will make a good faith effort to pay any fine, forfeiture or
2 restitution it is ordered to pay. BNC agrees that it will make annual payments in the amount
3 of \$60,000 per year beginning on July 1, 2004, and on July 1 of each year thereafter for
4 five years, until the total fine amount including any interest that has accrued under
5 operation of Title 18, United States Code, § 3612 has been paid. Such payments shall be
6 made by check or money order to the Clerk of the Court, Clerk of the Court, 450 Golden
7 Gate Avenue, Box 36060, San Francisco, California, 94102. BNC may, if it chooses and
8 is financially able to, accelerate the payments without any penalty.

9
10
11 Before or after sentencing, BNC will, upon request of the Court, the government,
12 or the U.S. Probation Office, provide accurate and complete financial information, submit sworn
13 statements and give depositions under oath concerning BNC's assets and ability to pay, surrender
14 assets BNC obtained as a result of its crimes, and release funds and property under its control in
15 order to pay any fine, forfeiture, or restitution. BNC agrees to pay the special assessment at the
16 time of sentencing.

17
18 9. BNC agrees not to commit or attempt to commit any crimes before sentence is
19 imposed. BNC also agrees not to violate the terms of its pretrial release (if any); intentionally
20 provide false information to the Court, the Probation Office, Pretrial Services, or the government;
21 or fail to comply with any of the other promises it has made in this Agreement. BNC agrees that,
22 if it fails to comply with any promises it has made in this Agreement, then the government will
23 be released from all of its promises in this agreement, including those set forth in paragraphs 13
24 through 17 below, but BNC will not be released from its guilty plea.

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26 10. BNC waives the preparation of a Presentence Report.
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1 11. BNC agrees that this Agreement contains all of the promises and agreements
2 between the government and BNC, and BNC will not claim otherwise in the future.

3 12. BNC agrees that this Agreement binds the U.S. Attorney's Office for the Northern
4 District of California only, and does not bind any other federal, state, or local agency.

5
6 The Government's Promises

7 13. The government agrees to move to dismiss any open charges pending against
8 BNC in the captioned indictment at the time of sentencing.

9 14. The government agrees not to file or seek any additional charges against BNC that
10 could be filed as a result of the investigation that led to the captioned indictment.

11 15. The government agrees that the appropriate sentence in this case should be
12 as set forth in paragraph 7 above, unless the defendant violates the agreement as set forth
13 in paragraph 9 above.
14

15 16. The government waives preparation of a Presentence Report.

16 17. The government agrees that it will not object to a recommendation by the
17 Probation Office of early termination of probation upon completion of payment of the fine.
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20 The Defendant's Affirmations

21 18. BNC confirms that it has had adequate time to discuss this case, the evidence, and
22 this Agreement with its attorney, and that he has provided BNC with all the legal advice that was
23 requested by BNC.
24

25 19. BNC confirms that an Action by Written Consent Of The Sole Shareholder Of
26 BNC Corp. consented to a resolution that authorizes and directs Melvin Brown to execute this
27 plea agreement. BNC also confirms that while Melvin Brown considered signing this
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1 Agreement, and at the time he agreed to it, he was not under the influence of any alcohol, drug,
2 or medicine.

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4 20. BNC confirms that its decision to enter a guilty plea is made knowing the charges
5 that have been brought against BNC, any possible defenses, and the benefits and possible
6 detriments of proceeding to trial. BNC also confirms that its decision to plead guilty is made
7 voluntarily, and no one coerced or threatened BNC or its representatives to enter into this
8 agreement.
9

10
11 Dated: _____

Melvin Brown, Chief Financial Officer
BNC Corp.

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13
14 _____
KEVIN V. RYAN
United States Attorney

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16 Dated: _____

CANDACE KELLY
Assistant United States Attorney

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20 I have fully explained to my client all the rights that a criminal defendant has and all the
21 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
22 and all the rights he is giving up by pleading guilty, and, based on the information now known to
23 me, his decision to plead guilty is knowing and voluntary.
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26 Dated: _____

JOSEPH P. RUSSONIELLO
Attorney for Defendant

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