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Attorneys for the United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	No. CR 03 20182
Plaintiff,	)	PLEA AGREEMENT
v.	)	
MEMORY X, a.k.a.	)	
MEMORY X, INC.,	)	
Defendant.	)	

Memory X, also known as Memory X, Incorporated (hereinafter Defendant), a California organization, and the United States Attorney's Office for the Northern District of California (hereinafter "the government") enter into this written plea agreement (hereinafter the "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

The Defendant's Promises

1. Defendant agrees to plead guilty to count one of the captioned information charging it with mail fraud, in violation of 18 U.S.C. § 1341. Defendant agrees that the elements of the offense and the maximum penalties are as follows:

Elements

a. Defendant knowingly made up or participated in a scheme or plan for obtaining

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NORTHERN DISTRICT OF CALIFORNIA

1 money by making false statements;

2 b. Defendant knew that the statements were false;

3 c. The statements were material, that is they would reasonably influence a person to  
4 part with money;

5 d. Defendant acted with the intent to defraud; and

6 e. Defendant used, or caused to be used, the mails to carry out an essential part of the  
7 scheme.

8 Penalties

9 As an organization, Defendant may be fined the maximum amount of \$500,000, or twice  
10 the gross gain or gross loss, whichever is greater, and/or a term of probation, and a special  
11 assessment in the amount of \$400 to be paid at the time of sentencing.

12 2. Defendant agrees that it is guilty of the offense to which it will plead guilty, and  
13 agrees that the following are true:

14 Beginning in January 1998 and continuing through January 1999, Defendant, a  
15 company engaged in the business of exporting computer devices for sale in the  
16 United Kingdom, knowingly devised, participated in, and aided and abetted  
17 activities to defraud Customs officials of the United Kingdom and Tax officials of  
18 the United Kingdom by employing a fraudulent undervaluing scheme in which  
19 Defendant issued from its offices in San Jose, California "double invoices" for  
20 merchandise shipped to companies doing business in the United Kingdom. One  
21 invoice, quoting a fraudulently low value for goods listed, was created for the  
22 purpose of fraudulently lowering the assessed value of goods on which a Value  
23 Added Tax (VAT) was due upon importation to the United Kingdom. A second  
24 invoice, reflecting the true value of such goods was also created to be sent to  
25 purchasing companies for use by those companies in making full payment, via  
26 international wire transfer, to Defendant for goods sold.

21 On January 7, 1999, in Santa Clara County, the Northern District of California, in  
22 furtherance of this scheme and in order to carry it out, Defendant did knowingly  
23 deposit and cause to be deposited matters and things to be sent and delivered by  
24 Federal Express, a private and commercial interstate carrier, to the office of  
25 Microtech European, Ltd., located in the United Kingdom, with a fraudulent  
26 invoice representing the shipment's value at \$17,000, while the true invoice  
27 showed the value as \$82,500. This action caused a loss, i.e., VAT evasion, of  
28 \$11,462.50.

26 3. Defendant agrees to give up all rights that it would have if it chose to proceed to  
27 trial, including the right to a jury trial with the assistance of an attorney; to confront and cross-  
28 examine government witnesses; to remain silent or present testimony; to move to suppress

1 evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the  
2 government, as may be limited by United States v. Ruiz 421 F.3d 1157 (9<sup>th</sup> Cir. 2001); and to  
3 pursue any affirmative defenses and present evidence.

4           4. Defendant agrees to give up its right to appeal the conviction , the judgement, and  
5 orders of the court. Defendant also agrees to waive any right it may have to appeal its sentence.  
6 In particular, Defendant acknowledges and agrees that for the limited purpose of entering a guilty  
7 plea to count one of the information pursuant to the Agreement, it has waived certain affirmative  
8 defenses which could be raised with respect to the specific transaction described in the  
9 information, including, but not limited to, the assertion of (1) the presumption against the  
10 extraterritorial application of laws of the United States; (2) the “revenue rule,” providing that the  
11 courts of one jurisdiction will not enforce the revenue rules of a different jurisdiction; and (3)  
12 applicable provisions of international law.

13           5. Defendant agrees not to file in the courts of the United States, any collateral attack  
14 on its conviction or sentence, including a petition under 28 U.S.C. § 2255, at any time in the  
15 future after it is sentenced, except for a claim that its constitutional right to the effective  
16 assistance of counsel was violated.

17           6. Defendant agrees not to ask the court to withdraw its guilty plea at any time after  
18 it is entered, unless the court declines to accept the sentence agreed to by the parties. Defendant  
19 agrees that the government may withdraw from this agreement if the court does not accept the  
20 agreed upon sentence set out below.

21           7. Defendant agrees that the period between the signing date of this agreement and  
22 the sentencing date of this case shall be tolled and excluded from any calculation of time  
23 concerning any applicable statute of limitations under the laws of the United States as it relates to  
24 any criminal matters under investigation by the United States pertaining to Defendant’s activities  
25 between 1998 and 1999.

26           8. Defendant agrees that its sentencing should be calculated using the 1998 edition  
27 of the United States Sentencing Guidelines by reference to U.S.S.G. § 8, governing the  
28 sentencing of organizations, and that the Sentencing Guidelines should be calculated as follows:

1 **Fine Determination**  
(U.S.S.G. § 8C2.1(a), referencing U.S.S.G. § 2F1.1)

2 Base offense level: 6  
3 (U.S.S.G. § 2F1.1(a))

4 Specific offense characteristics

5 Amount of loss\*: +3  
6 (U.S.S.G. § 2F1.1(b)(1)(D))

7 \* The government and Defendant specifically agree and stipulate that  
the loss by the specific criminal conduct described in count one of the  
information is more than \$10,000 and less than \$20,000.

8 More than minimum planning: +2  
9 (U.S.S.G. § 2F1.1(b)(2))

10 Scheme conducted outside of the United States involving sophisticated means: +2  
11 (U.S.S.G. § 2F1.1(b)(5)(B) and (C))

12 Adjusted offense level: 13

13 Base fine: \$60,000  
14 (U.S.S.G. § 8C2.4(d))

14 **Culpability Score**

15 Base level: 5  
16 (U.S.S.G. § 8C2.5(a))

17 Acceptance of responsibility: -2  
18 (U.S.S.G. § 8C2.5(g)(2))

19 Adjusted culpability score: 3

19 **Fine Multipliers**

20 Culpability score of 4 or less .60 - 1.20  
21 (U.S.S.G. § 8C2.6)

21 **Guideline Fine Range\*:** \$36,000 - 72,000

22 \* The parties specifically agree and stipulate that, recognizing the Guideline Fine Range  
23 as calculated above, Defendant is to pay a fine of \$36,000 as part of the agreed sentence  
24 in resolution of the criminal charge contained in the captioned information.

25 9. In April of 1999, pursuant to valid seizure warrants, the United States Customs  
26 Service seized funds in the amounts of \$432,735.14 from Bank of America, Account Number  
27 11863-22226, and \$404,561.76 from Bank of America, Account Numbers 11863-22226, 06480-  
28 11857 and 12620-13203. (Total: \$837,296.90) Defendant agrees that the fine of \$36,000 for the

1 criminal conduct to which it is entering a guilty plea will be paid from the \$837,296.90 seized.  
2 Defendant also agrees that the remaining seized funds, \$801,296.90, are subject to forfeiture in  
3 its entirety pursuant to 18 U.S.C. § 981(a). Defendant and its current Chief Executive Officer  
4 (CEO) Kenneth Olsen abandon and withdraw any and all claims to said funds and consent to the  
5 forfeiture of same by the Bureau of Customs and Border Protection, United States Department of  
6 Homeland Security, without further notice to Defendant and or its CEO Kenneth Olsen.

7 10. The Defendant agrees that an appropriate disposition of this case is as follows:

- 8 a. Payment of \$36,000 fine as determined in Paragraph 8 and described in  
9 paragraph 9 above;  
10 b. Forfeiture of \$801,296.90 as described in Paragraph 9 above; and  
11 c. Defendant will pay a special assessment of \$400 at the time of sentencing;  
12 and  
13 d. The payment of the fine, special assessment, and forfeiture of the funds  
14 seized as described in this paragraph will resolve all criminal and civil  
15 matters which are currently pending or may be brought by the United  
16 States based upon the conduct described in the Information.

17 11. Defendant agrees not to commit or attempt to commit any crimes before sentence  
18 is imposed. Defendant also agrees that it will not intentionally provide false information to the  
19 court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of  
20 the promises it has made in the Agreement. Defendant agrees that, if it fails to comply with any  
21 promises it has made in the Agreement, then the government will be released from all of its  
22 promises below, but Defendant will not be released from its guilty plea.

23 12. Defendant agrees that the Agreement contains all of the promises and agreements  
24 between it and the government and that it will not claim otherwise in the future.

25 13. Defendant agrees that the Agreement binds the U.S. Attorney's Office for the  
26 Northern District of California only, and does not bind any other federal, state, or local agency.

27 The Government's Promises

28 14. The government agrees not to file or seek any additional charges against  
Defendant, its officers, agents, employees, and/or related entities, that could be filed as a result of  
the investigation that led to the captioned information.

1           15.     The government agrees that the appropriate sentence in this case should be as set  
2 forth in paragraph 10 above, unless Defendant violates the agreement as set forth in paragraph 11  
3 above.

4 Defendant's Affirmations

5           16.     Defendant confirms that, through its current CEO Kenneth Olsen, it has had  
6 adequate time to discuss this case, the evidence, and the Agreement with its attorney, who has  
7 provided it with all the legal advice it has requested.

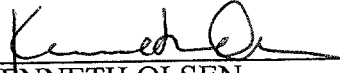
8           17.     Defendant confirms that its current CEO, Kenneth Olsen, while considering  
9 whether to sign the Agreement on Defendant's behalf, and at the time the Agreement was signed,  
10 was not under the influence of any alcohol, drug, or medicine.

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1 18. Defendant confirms that its decision to enter a guilty plea is made knowing the  
2 charge that has been brought against it, any possible defenses, and the benefits and possible  
3 detriments of proceeding to trial. Defendant also confirms that its decision to plead guilty is  
4 made voluntarily, and that it has not been coerced or threatened to enter into the Agreement.  
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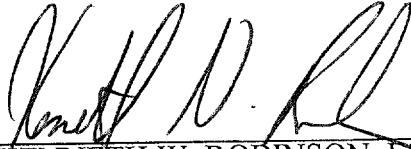
6 MEMORY X, a.k.a. MEMORY X, INC.

7  
8 Dated: 5 Jan 2004

  
9 KENNETH OLSEN  
Chief Executive Officer on behalf of Defendant  
10 MEMORY X, a.k.a. MEMORY X, INC.


11 I have discussed with and fully explained to my client, Memory X, a.k.a. Memory X, Inc.,  
12 through its current CEO, Kenneth Olsen, all the rights that a criminal defendant has and all the  
13 terms of the Agreement. In my opinion, my client, through its CEO, understands all of the terms  
14 of the Agreement and all the rights it is giving up by pleading guilty, and, based on the  
15 information now known to me, its decision to plead guilty is knowing, voluntary, and made with  
16 my consent.

17  
18 Dated: 1-5-2004

  
19 KENNETH W. ROBINSON, ESQ.  
Counsel for Defendant

20  
21 KEVIN V. RYAN  
United States Attorney

22  
23  
24 Dated: 1-5-2004

  
25 SCOTT C. TSUI  
Special Assistant United States Attorney