

Judge Robert S. Lasnik

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY BOWSER,

Defendant.

NO. CR20-127 RSL

PLEA AGREEMENT

The United States of America, by and through Nicholas W. Brown, United States Attorney for the Western District of Washington, Francis Franze-Nakamura and Brian Werner, Assistant United States Attorneys for said District, Kenneth A. Polite, Jr., Assistant Attorney General for the United States Department of Justice's Criminal Division, Lindsay Baxter and Anand B. Patel, Trial Attorneys for said Division, and Defendant Gary Bowser, by and through his attorneys, Michael Filipovic and Christopher Sanders, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A).

1 1. **The Charges.** Defendant, having been advised of the right to have this
2 matter tried before a jury, agrees to waive that right and enters a plea of guilty to each of
3 the following charges contained in the indictment.

4 a. Conspiracy to Circumvent Technological Measures and to Traffic in
5 Circumvention Devices, as charged in Count 6, in violation of Title 18, United States
6 Code, Section 371.

7 b. Trafficking in Circumvention Devices, as charged in Count 9, in
8 violation of Title 17, United States Code, Sections 1201(a)(2)(A) and 1204(a)(1).

9 By entering a plea of guilty, Defendant hereby waives all objections to the form of
10 the charging document. Defendant further understands that before entering any guilty
11 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
12 may be used by the United States in a prosecution for perjury or false statement.

13 2. **Elements of the Offense(s).** The elements of the offenses to which
14 Defendant is pleading guilty are as follows:

15 a. The elements of Conspiracy to Circumvent Technological Measures
16 and to Traffic in Circumvention Devices, as charged in Count 6, are as follows:

17 **First**, there was an agreement between two or more persons to commit at least one
18 crime as charged in the indictment;

19 **Second**, the defendant became a member of the conspiracy knowing of at least one
20 of its objects and intending to help accomplish it; and,

21 **Third**, one of the members of the conspiracy performed at least one overt act for
22 the purpose of carrying out the conspiracy.

23 The elements of Trafficking in Circumvention Devices (Title 17, United States
24 Code, Sections 1201(a)(2)(A) and 1204(a)(1)) are as follows:

25 **First**, the defendant acted willfully;

26 **Second**, the defendant manufactured, imported, offered to the public, provided, or
27 otherwise trafficked in any technology, product, service, device, component, or part
28 thereof;

1 **Third**, the technology, product, service, device, component, or part thereof that
2 was primarily designed or produced for the purpose of circumventing protection afforded
3 by a technological measure that effectively controlled access to a copyrighted work; and

4 **Fourth**, the defendant acted for commercial advantage or private financial gain.

5 The elements of Circumventing a Technological Measure (Title 17, United States
6 Code, Sections 1201(a)(1)(A), and 1204(a)(1)) are as follows:

7 **First**, the defendant acted willfully;

8 **Second**, the defendant circumvented a technological measure;

9 **Third**, the technological measure effectively controlled access (i.e., was an access
10 control);

11 **Fourth**, the access control was to a copyrighted work; and

12 **Fifth**, the act of circumvention was for the purpose of commercial advantage or
13 private financial gain.

14 A technological measure “effectively controls access to a work” if the measure, in
15 the ordinary course of its operation, requires the application of information, or a process
16 or a treatment, with the authority of the copyright owner, to gain access to the work.

17 The term “circumvent a technological measure” means to descramble a scrambled
18 work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or
19 impair a technological measure, without the authority of the copyright owner.

20 b. The elements of Trafficking in Circumvention Devices, as charged
21 in Count 9, are as follows:

22 **First**, the defendant acted willfully;

23 **Second**, the defendant manufactured, imported, offered to the public, provided, or
24 otherwise trafficked in any technology, product, service, device, component, or part
25 thereof;

26 **Third**, the technology, product, service, device, component, or part thereof that
27 was primarily designed or produced for the purpose of circumventing protection afforded
28 by a technological measure that effectively controlled access to a copyrighted work; and

1 **Fourth**, the defendant acted for commercial advantage or private financial gain.

2 3. **The Penalties.** Defendant understands that the statutory penalties
3 applicable to the offense(s) to which Defendant is pleading guilty are as follows:

4 a. For the offense of Conspiracy to Circumvent Technological
5 Measures and to Traffic in Circumvention Devices, as charged in Count 6: A maximum
6 term of imprisonment of up to five years, a fine of up to \$250,000, a period of
7 supervision following release from prison of up to three years, and a mandatory special
8 assessment of \$100. If a probationary sentence is imposed, the probation period can be
9 for up to five years.

10 b. For the offense of Trafficking in Circumvention Devices, as charged
11 in Count 9: A maximum term of imprisonment of up to five years, a fine of up to
12 \$500,000, a period of supervision following release from prison of up to one year, and a
13 mandatory special assessment of \$100. If a probationary sentence is imposed, the
14 probation period can be for up to five years.

15 Defendant understands that supervised release is a period of time following
16 imprisonment during which Defendant will be subject to certain restrictive conditions and
17 requirements. Defendant further understands that, if supervised release is imposed and
18 Defendant violates one or more of the conditions or requirements, Defendant could be
19 returned to prison for all or part of the term of supervised release that was originally
20 imposed. This could result in Defendant serving a total term of imprisonment greater
21 than the statutory maximum stated above.

22 Defendant understands that as a part of any sentence, in addition to any term of
23 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
24 restitution to any victim of the offense, as required by law.

25 Defendant further understands that the consequences of pleading guilty may
26 include the forfeiture of certain property, either as a part of the sentence imposed by the
27 Court, or as a result of civil judicial or administrative process.

28

1 Defendant agrees that any monetary penalty the Court imposes, including the
2 special assessment, fine, costs, or restitution, is due and payable immediately and further
3 agrees to submit a completed Financial Disclosure Statement as requested by the United
4 States Attorney's Office.

5 **4. Immigration Consequences.** Defendant recognizes that pleading guilty
6 may have consequences with respect to Defendant's immigration status if Defendant is
7 not a citizen of the United States. Under federal law, a broad range of crimes are grounds
8 for removal, and some offenses make removal from the United States presumptively
9 mandatory. Removal and other immigration consequences are the subject of a separate
10 proceeding, and Defendant understands that no one, including Defendant's attorney and
11 the Court, can predict with certainty the effect of a guilty plea on immigration status.
12 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any
13 immigration consequences that Defendant's guilty pleas may entail, even if the
14 consequence is Defendant's mandatory removal from the United States.

15 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
16 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 17 a. The right to plead not guilty and to persist in a plea of not guilty;
18 b. The right to a speedy and public trial before a jury of Defendant's
19 peers;
20 c. The right to the effective assistance of counsel at trial, including, if
21 Defendant could not afford an attorney, the right to have the Court appoint one for
22 Defendant;
23 d. The right to be presumed innocent until guilt has been established
24 beyond a reasonable doubt at trial;
25 e. The right to confront and cross-examine witnesses against Defendant
26 at trial;
27 f. The right to compel or subpoena witnesses to appear on Defendant's
28 behalf at trial;

1 g. The right to testify or to remain silent at trial, at which trial such
2 silence could not be used against Defendant; and

3 h. The right to appeal a finding of guilt or any pretrial rulings.

4 6. **United States Sentencing Guidelines.** Defendant understands and
5 acknowledges that, before accepting the terms of this Plea Agreement, the Court must
6 consider the sentencing range calculated under the United States Sentencing Guidelines,
7 and possible departures under the Sentencing Guidelines together with the other factors
8 set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and
9 circumstances of the offense or offenses; (2) the history and characteristics of Defendant;
10 (3) the need for the sentence to reflect the seriousness of the offense or offenses, to
11 promote respect for the law, and to provide just punishment for the offense or offenses;
12 (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the
13 need for the sentence to protect the public from further crimes of Defendant; (6) the need
14 to provide Defendant with educational and vocational training, medical care, or other
15 correctional treatment in the most effective manner; (7) the kinds of sentences available;
16 (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted
17 sentence disparity among defendants involved in similar conduct who have similar
18 records. Accordingly, Defendant understands and acknowledges that:

19 a. The Court will determine Defendant's applicable Sentencing
20 Guidelines range at the time of sentencing;

21 b. After consideration of the Sentencing Guidelines and the factors in
22 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
23 maximum term authorized by law; and

24 c. Except as provided in the paragraph containing the stipulation of the
25 parties pertaining to sentencing, Defendant may not withdraw a guilty plea solely because
26 of the sentence imposed by the Court.

27 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
28 guaranteed what sentence the Court will impose.

1 8. **Statement of Facts.** The parties agree on the following facts. Mr. Bowser
2 admits that he is guilty of the charges in counts 6 and 9.

3 a. Defendant, GARY BOWSER, aka “GaryOPA,” knowingly and
4 willfully participated in a cybercriminal enterprise that hacked leading gaming consoles
5 and that developed, manufactured, marketed, and sold a variety of circumvention devices
6 that allowed the enterprise’s customers to play pirated versions of copyrighted video
7 games, commonly referred to as “ROMs.” Mr. Bowser knowingly and willfully
8 participated in the illegal enterprise from no later than June 2013 until his arrest on
9 September 28, 2020.

10 b. The enterprise included a core group of individuals, including, but
11 not limited to, co-defendants, Max Louarn and Yuanning Chen. Among other things, Mr.
12 Bowser’s role was to market the enterprise’s products, post news releases about new
13 products and updates to products, and work with retailers who distributed the enterprise’s
14 products. Mr. Bowser would also post replies to inquiries from customers of these illegal
15 circumvention devices on Maxconsole.com.

16 c. The enterprise used various names and brands, including, among
17 others, “Team Xecuter,” “Axiogame.com,” “Maxconsole.com,” and “China
18 Distribution,” to facilitate the sale of the circumvention devices

19 d. The enterprise designed, marketed, and distributed a wide variety of
20 illegal circumvention devices including, but not limited to, the Gateway 3DS, the
21 Stargate 3DS, the TrueBlue Mini, the Classic2Magic, and the SX OS line of devices.
22 The devices either hacked an existing console or facilitated the playing of pirated copies
23 of video games that were to be played on legitimate consoles. The following chart
24 identifies a selection of the illegal devices the enterprise developed and sold, the
25 approximate date range the enterprise distributed these products before charges were filed
26 in this case, and a non-exhaustive list of the impacted console manufacturers:
27
28

Product	Date Range	Impacted Console Manufacturer
Gateway 3DS	June 2013 to August 19, 2020	Nintendo
Stargate	August 2017 to August 19, 2020	Nintendo
TrueBlue Mini	May 2019 to August 19, 2020	Sony, Sega, C64
Classic2Magic	August 2018 to August 19, 2020	Nintendo, Atari, Sega
SX OS / SX Pro	May 2018 to August 19, 2020	Nintendo
SX OS / SX Lite / SX Core	June 2020 to August 19, 2020	Nintendo

e. The enterprise's development, sale, and distribution of the circumvention devices involved the interstate and international transmission of electronic communications about the devices, in addition to the interstate and international shipment of the actual devices, to locations in the Western District of Washington and elsewhere.

f. The devices created and sold by the enterprise circumvented technological measures in a manner that allowed users to play pirated ROMs. The devices mimicked legitimate gameplay on consoles, and in certain instances, surreptitiously accessed Nintendo's servers and online gaming ecosystem without authorization.

g. The commercial success of the enterprise's circumvention devices depended primarily on the availability of pirated ROMs. The enterprise created and supported ROM libraries of games that could be used by the enterprise's customers. The enterprise directed users to the ROM libraries through the enterprise's websites, including maxconsole.com. Additionally, some of the enterprise's resellers sold circumvention

1 devices as a package with ROMs of game titles or otherwise offered ROMs directly or
2 indirectly to customers.

3 h. While the enterprise attempted to cloak its illegal activity with a
4 purported desire to support homebrew enthusiasts who wanted to design their own
5 games, the predominant and primary design of the enterprise's products was to allow
6 purchasers to play pirated ROMs.

7 i. Mr. Bowser was put in charge of the website, maxconsole.com, by
8 Max Louarn and took directions from Max Louarn about the content of the site. It served
9 as a central location for the enterprise to publish reviews and advertisements and to host
10 customer support forums. The website was a significant part of the enterprise's efforts to
11 use a variety of websites to market and sell its devices, and to engage in copyright and
12 trademark infringement. The mission statement for the website explained that the
13 website contained "vast resources for Retro Gamers, with total scene coverage on all the
14 things that matter like ROMs, FlashCarts, Modding, Homebrew and emulators." The
15 website acted as a central clearinghouse for information about the enterprise's products.
16 The website also posted numerous "reviews" of the enterprise's products, which Mr.
17 Bowser had solicited from distributors and other individuals associated with the
18 development and sale of those products. The website also had numerous forums devoted
19 to circumvention devices and software piracy.

20 j. On maxconsole.com, Mr. Bowser regularly posted announcements
21 for products created and distributed by the illegal enterprise. Mr. Bowser also posted
22 articles regarding Team Xecuter's response to Nintendo's enforcement actions. For
23 example, on approximately July 17, 2020, Mr. Bowser posted a statement from Team
24 Xecuter describing countermeasures that the enterprise was taking in response to
25 software updates that Nintendo instituted to combat piracy. The enterprise described
26 Team Xecuter's countermeasures as part of a "Cat & Mouse" game between Nintendo
27 and Team Xecuter.

1 k. Team-Xecuter.com, served as the official website for Team Xecuter.
2 That brand name was purchased by Max Louarn in approximately 2015, and the
3 enterprise began using that website in approximately 2016 and expanded it to include
4 information concerning circumvention devices related to Nintendo products. The website
5 attempted to portray Team Xecuter as a legitimate company that embraced “honesty and
6 integrity.” The website marketed each of the Team Xecuter-branded products and
7 provided information regarding the installation and use of the products. The website did
8 not directly sell the enterprise’s products. Instead, the website offered links to
9 “authorized” retailers who were responsible for distributing those products around the
10 world. The website also hosted numerous product support forums. Mr. Bowser was
11 knowingly involved in these activities on Team-Xecutor.com after it was purchased by
12 Max Louarn.

13 1. In addition to the websites above, the enterprise created marketing
14 websites for each of its main products. For example, the enterprise created a marketing
15 website for the Classic2Magic circumvention device that allowed users to illegally play a
16 wide variety of ROMs. The website contained a link to ROM libraries that were
17 identified in posts on maxconsole.com. These posts, in turn, linked to 18 ROM libraries
18 that were hosted on or linked to from a website Mr. Bowser administered called rom-
19 bank.com. Collectively, these ROM libraries contained illegal copies of 13,630
20 individual video game titles.

21 m. One of the most lucrative products made by Team Xecuter was the
22 SX OS line of circumvention devices designed to defeat technological measures on
23 various models of the Nintendo Switch. The SX OS was a custom operating system that
24 Team Xecuter developed to hack the Nintendo Switch. The SX OS was regularly paired
25 with a hardware device that facilitated the circumvention of the technological measures
26 on the Nintendo Switch and permitted users to, among other things, access and
27 manipulate the copyrighted Nintendo Switch operating system and play pirated ROMs.
28

1 n. To enable the SX OS to play pirated ROMs, a user generally would
2 need to connect the Switch console to the internet to purchase a “license” from Team
3 Xecuter to unlock the full features of the operating system. The SX OS license allowed
4 users to forego purchasing a game cartridge from a retailer or a digital game from
5 Nintendo’s eShop because the full-featured SX OS bypassed the normal operation of
6 technological measures that were designed to limit the use of the console to legitimately
7 purchased games. Among other technological measures, the SX OS circumvented an
8 authentication process that used cryptographic keys to ensure that only authorized games
9 were played on a particular Switch console.

10 o. The enterprise designed the SX OS to insert itself into the legitimate
11 firmware of the Switch console. In doing so, the SX OS surreptitiously co-opted
12 functions and processes that Nintendo implemented to support legitimate gameplay on
13 the Switch consoles. Notably, the SX OS used, without authorization, and in violation of
14 the Switch console’s end user agreement, servers that Nintendo maintained to facilitate
15 internet connectivity and to authenticate the use of genuine Nintendo software. The SX
16 OS was designed to falsely represent to Nintendo’s servers that the Nintendo Switch on
17 which it was operating was using a legitimate version of the Nintendo operating system
18 and legitimate Switch videogames. In this manner, the enterprise designed the SX OS to
19 generate criminal proceeds from the fraudulent use of Switch consoles and the Nintendo
20 servers that were dedicated to support legitimate gameplay on those consoles.

21 p. Nintendo undertook various efforts to combat the enterprise’s
22 release of the SX Pro and SX OS. In response, Team Xecuter released new devices or
23 updated the enterprise’s software to permit further circumvention. For example, in or
24 around June 2018, Nintendo released a new version of the Nintendo Switch with updated
25 technological measures to prevent the console from being hacked by the SX Pro and SX
26 OS. Furthermore, in or around September 2019, Nintendo released a new console, the
27 Nintendo Switch Lite, that was produced with the updated technological measures to,
28 among other things, address circumvention devices such as the SX Pro and SX OS. On

1 or about December 28, 2019, the enterprise responded by announcing the development of
2 new circumvention devices and posting a video to their blog, team-xecuter.com, showing
3 the SX OS purportedly running on the Nintendo Switch Lite.

4 q. In or around April 2020, the enterprise announced they would begin
5 accepting pre-orders for new circumvention devices, called “SX Core” and “SX Lite.”
6 The enterprise designed the SX Core to circumvent the technological measures in pre-
7 and post-June 2018 Nintendo Switch consoles. The enterprise designed the SX Lite to
8 circumvent the technological protection measures in the Nintendo Switch Lite. Unlike
9 the SX Pro, these circumvention devices need to be installed inside the casing of the
10 console.

11 r. The enterprise generated at least tens of millions of dollars of
12 proceeds from the sale of its circumvention devices. Mr. Bowser understood that his
13 participation in the illegal enterprise harmed copyright and trademark holders, console
14 manufacturers, and others who were entitled to the revenue from not only the use of the
15 circumvented consoles, but also from the purchase and playing of copyrighted video
16 games. For the purposes of this plea agreement only, the parties stipulate that – during
17 Mr. Bowser’s participation in the cybercriminal enterprise – the enterprise caused more
18 than \$65,000,000 and less than \$150,000,000 in losses to its victims.

19 s. Based on a review of his financial records, Mr. Bowser reports that
20 the enterprise regularly paid him approximately \$500-1000 a month from 2013 to the
21 date of his arrest in September 2020 for operating and administering team-xecuter.com
22 and maxconsole.com. In addition, Mr. Bowser was allowed to keep revenue generated
23 from advertisements placed on the websites. Some of these advertisements were for
24 retailers who sold the enterprise’s products and some were advertisements unrelated to
25 the enterprise. Mr. Bowser estimates that he made a total of approximately \$320,000
26 from his involvement in the enterprise, comprised of the monthly payments he received
27 from the enterprise, the advertising revenue from the enterprise’s retailers, and unrelated
28

1 sources of advertising revenue that he was allowed to keep as a benefit for running
2 maxconsole.com.

3 The parties agree that the Court may consider additional facts contained in the
4 Presentence Report (subject to standard objections by the parties) and/or that may be
5 presented by the United States or Mr. Bowser at the time of sentencing, and that the
6 factual statement contained herein is not intended to limit the facts that the parties may
7 present to the Court at the time of sentencing.

8 **9. Sentencing Factors.** The parties agree that the following Sentencing
9 Guidelines provisions apply to this case:

10 a. A base offense level of 8 pursuant to USSG § 2B5.3.

11 b. A 24-level increase pursuant to USSG § 2B5.3(b)(1) and USSG
12 § 2B1.1(b)(1)(M) because the loss in this case was more than \$65,000,000 and less than
13 \$150,000,000.

14 c. A 2-level increase pursuant to USSG § 2B5.3(b)(3) because the
15 offense involved the manufacture, importation, or uploading of infringing items and
16 because the defendant was convicted under 17 U.S.C. §§ 1201 and 1204 for trafficking in
17 circumvention devices.

18 The parties agree they are free to present arguments regarding the applicability of
19 all other provisions of the United States Sentencing Guidelines. In particular, Defendant
20 understands that the Government will request, among other possible adjustments, a 3-
21 level increase pursuant to USSG § 3B1.1 because the Government alleges that Defendant
22 was a manager or supervisor in the Team Xecuter cybercriminal enterprise.

23 Defendant understands, however, that at the time of sentencing, the Court is free to
24 reject these stipulated adjustments, and is further free to apply additional downward or
25 upward adjustments in determining Defendant's Sentencing Guidelines range.

26 **10. Acceptance of Responsibility.** At sentencing, *if* the Court concludes
27 Defendant qualifies for a downward adjustment for acceptance of responsibility pursuant
28 to USSG § 3E1.1(a) and Defendant's offense level is 16 or greater, the United States will

1 make the motion necessary to permit the Court to decrease the total offense level by three
2 levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the United
3 States by timely notifying the United States of Defendant's intention to plead guilty,
4 thereby permitting the United States to avoid preparing for trial and permitting the Court
5 to allocate its resources efficiently.

6 11. **Restitution.** Defendant shall make restitution to Nintendo of America in
7 the apportioned amount of \$4,500,000 (which shall not be joint and several with any
8 other defendant).

9 a. The full amount of restitution shall be due and payable immediately
10 on entry of judgment and shall be paid as quickly as possible. If the Court finds that the
11 defendant is unable to make immediate restitution in full and sets a payment schedule as
12 contemplated in 18 U.S.C. § 3664(f), Defendant agrees that the Court's schedule
13 represents a minimum payment obligation and does not preclude the United States
14 Attorney's Office from pursuing any other means by which to satisfy the defendant's full
15 and immediately-enforceable financial obligation, including, but not limited to, by
16 pursuing assets that come to light only after the district court finds that the defendant is
17 unable to make immediate restitution.

18 b. Defendant agrees to disclose all assets in which Defendant has any
19 interest or over which Defendant exercises control, directly or indirectly, including those
20 held by a spouse, nominee, or third party. Defendant agrees to cooperate fully with the
21 United States' investigation identifying all property in which Defendant has an interest
22 and with the United States' lawful efforts to enforce prompt payment of the financial
23 obligations to be imposed in connection with this prosecution. Defendant's cooperation
24 obligations are: (1) before sentencing, and no more than 30 days after executing this Plea
25 Agreement, truthfully and completely executing a Financial Disclosure Statement
26 provided by the United States Attorney's Office and signed under penalty of perjury
27 regarding Defendant's and Defendant's spouse's financial circumstances and producing
28 supporting documentation, including tax returns, as requested; (2) providing updates

1 with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within
2 seven days of the event giving rise to the changed circumstances; (3) authorizing the
3 United States Attorney's Office to obtain Defendant's credit report before sentencing; (4)
4 providing waivers, consents or releases requested by the United States Attorney's Office
5 to access records to verify the financial information; (5) authorizing the United States
6 Attorney's Office to inspect and copy all financial documents and information held by
7 the U.S. Probation Office; (6) submitting to an interview regarding Defendant's Financial
8 Statement and supporting documents before sentencing (if requested by the United States
9 Attorney's Office), and fully and truthfully answering questions during such interview;
10 and (7) notifying the United States Attorney's Office before transferring any interest in
11 property owned directly or indirectly by Defendant, including any interest held or owned
12 in any other name, including all forms of business entities and trusts.

13 c. The parties acknowledge that voluntary payment of restitution prior
14 to the adjudication of guilt is a factor the Court considers in determining whether
15 Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a). In
16 addition, in any event, the government will consider Defendant's cooperation regarding
17 restitution in making its sentencing recommendation.

18 12. **Abandonment of Contraband.** Defendant also agrees that, if any federal
19 law enforcement agency seized any illegal contraband that was in Defendant's direct or
20 indirect control, Defendant consents to the federal administrative disposition, official use,
21 and/or destruction of that contraband.

22 Defendant further agrees to abandon his interest in, if any, and consents to the
23 destruction of, the following electronic devices and any data contained within, and
24 additional items that were seized from his residence in the Dominican Republic:

- 25 a. ULTRA PC tower, black, with three hard drives attached, open case design,
26 no S/N
27 b. HP Chrome device, turquoise, no S/N visible /
28 c. WD 500GB hard drive, S/N WCC2EARY7661

- 1 d. Seagate 1TB hard drive, S/N 9VP0D534
- 2 e. Western Digital 12TB hard drive, S/N QGHWNG5T
- 3 f. Western Digital 12TB hard drive, S/N 5PGYPKGF
- 4 g. Samsung 1000GB hard drive, S/N S1Y5J90SB24158
- 5 h. OPA self-inking stamp
- 6 i. Rocketek flash drive, Verbatim flash drive, Hitachi flash drive, SanDisk
- 7 flash drive, black flash drive, 200GB SD card in adapter, 256MB compact
- 8 flash in reader
- 9 j. 1TB Seagate portable hard drive, S/N NA7NKG72, and cord
- 10 k. Sony PlayStation Classic, AH310955991, with cords
- 11 l. SNES mini
- 12 m. Arris cable modem, S/N 9C22D577D200102
- 13 n. Nintendo Switch with dock and screen protector, S/N XAW70001523792
- 14 o. Five TrueBlue Mini modchips
- 15 p. Three SX OS modchips in package
- 16 q. White Samsung smart phone (no S/N visible)
- 17 r. LG smart phone (no S/N visible)
- 18 s. Blue RCA tablet with attached keyboard, S/N PPJD8Z1209L0
- 19 t. HP laptop, S/N TJ1541GNWG
- 20 u. ZTE AT&T smart phone (no serial number visible)
- 21 v. MSI laptop, S/N GS702PE-010US-GC747116G1T0DX81M with power
- 22 supply
- 23 w. A 32GB micro SD card (previously found in Texas Instruments command
- 24 module, S/N 9874684)

25 **13. Dismissal of Charges.** As part of this Plea Agreement, the United States
26 Attorney's Office for the Western District of Washington and the Computer Crime and
27 Intellectual Property Section of the United States Department of Justice will move to
28 dismiss the remaining counts in the Indictment against Defendant at the time of

1 sentencing. Defendant agrees, however, that for purposes of preparing the Presentence
2 Report, the government will provide the United States Probation Office with evidence of
3 all conduct committed by Defendant.

4 Defendant agrees that any charges to be dismissed before or at the time of
5 sentencing were substantially justified in light of the evidence available to the United
6 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
7 with a basis for any future claims under the “Hyde Amendment,” Pub. L. No. 105-119
8 (1997).

9 **14. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
10 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
11 Agreement and Defendant may be prosecuted for all offenses for which the United States
12 has evidence. Defendant agrees not to oppose any steps taken by the United States to
13 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
14 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
15 Defendant has waived any objection to the re-institution of any charges that previously
16 were dismissed or any additional charges that had not been prosecuted.

17 Defendant further understands that if, after the date of this Plea Agreement,
18 Defendant should engage in illegal conduct, or conduct that violates any conditions of
19 release or the conditions of confinement (examples of which include, but are not limited
20 to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while
21 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
22 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement
23 to file additional charges against Defendant or to seek a sentence that takes such conduct
24 into consideration by requesting the Court to apply additional adjustments or
25 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
26 advisory Guidelines range, and/or by seeking an upward departure or variance from the
27 calculated advisory Guidelines range. Under these circumstances, the United States is
28

1 free to seek such adjustments, enhancements, departures, and/or variances even if
2 otherwise precluded by the terms of the Plea Agreement.

3 **15. Waiver of Appellate Rights and Rights to Collateral Attacks.**

4 Defendant acknowledges that, by entering the guilty plea(s) required by this Plea
5 Agreement, Defendant waives all rights to appeal from Defendant's conviction, and any
6 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the
7 judgment of conviction. Defendant further agrees that, provided the Court imposes a
8 custodial sentence that is within or below the Sentencing Guidelines range (or the
9 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
10 Court at the time of sentencing, Defendant waives to the full extent of the law:

11 a. Any right conferred by Title 18, United States Code, Section 3742,
12 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
13 restitution order, probation or supervised release conditions, or forfeiture order (if
14 applicable); and

15 b. Any right to bring a collateral attack against the conviction and
16 sentence, including any restitution order imposed, except as it may relate to the
17 effectiveness of legal representation.

18 This waiver does not preclude Defendant from bringing an appropriate motion
19 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
20 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

21 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
22 attacking (except as to effectiveness of legal representation) the conviction or sentence in
23 any way, the United States may prosecute Defendant for any counts, including those with
24 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
25 Agreement.

26 **16. Voluntariness of Plea.** Defendant agrees that Defendant has entered into
27 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
28

1 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
2 Agreement or set forth on the record at the change of plea hearing in this matter.

3 17. **Statute of Limitations.** In the event this Plea Agreement is not accepted
4 by the Court for any reason, or Defendant breaches any of the terms of this Plea
5 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
6 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the
7 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach
8 of the Plea Agreement by Defendant is discovered by the United States Attorney's
9 Office.

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1 18. **Completeness of Plea Agreement.** The United States and Defendant
 2 acknowledge that these terms constitute the entire Plea Agreement between the parties,
 3 except as may be set forth on the record at the change of plea hearing in this matter. This
 4 Plea Agreement binds only the United States Attorney’s Office for the Western District
 5 of Washington and the Computer Crime and Intellectual Property Section of the United
 6 States Department of Justice. It does not bind any other United States Attorney’s Office
 7 or any other office or agency of the United States, or any state or local prosecutor.

8 Dated this 20 day of October, 2021.

9 

10 _____
 11 GARY BOWSER
 12 Defendant

13 

14 _____
 15 MICHAEL FILIPOVIC
 16 CHRISTOPHER SANDERS
 17 Attorneys for Defendant

18 

19 _____
 20 FRANCIS FRANZE-NAKAMURA
 21 BRIAN WERNER
 22 Assistant United States Attorneys

23 

24 _____
 25 ANAND B. PATEL
 26 Trial Attorney, Computer Crime and
 27 Intellectual Property Section,
 28 U.S. Department of Justice