



5. I understand that I may ask permission to withdraw my pleas of guilty at any time before they are actually accepted by the military judge. I also understand that I may ask to withdraw my pleas of guilty after they have been accepted but before sentence is announced, and the military judge may permit me to do so at his/her discretion.

6. I understand that this pretrial agreement may become null and void, and that the convening authority can withdraw from this agreement, if any of the following occur:

- a. I fail to plead guilty as set forth in this agreement;
- b. The court refuses to accept my plea/any of my pleas of guilty;
- c. The court sets aside my plea/any of my pleas of guilty for any reason (including upon my request) before a sentence is announced;
- d. I fail to satisfy any material term of this agreement; or
- e. I fail to plead guilty as required by this agreement at a rehearing, should one occur.

7. I understand that if this agreement becomes null and void, then my offer to plead guilty and to enter into this agreement cannot be used against me in any way to prove whether I am guilty or not guilty of the charge(s) alleged against me at this court-martial. In this regard, the offer to plead guilty includes any statement or proffer made in the course of plea discussions with the convening authority or any counsel for the Government, whether in oral or in a written form. 7

8. Specially Negotiated Provisions. As consideration for this agreement and after having fully discussed the issue with my defense counsel:

- a. I agree to request and to elect trial and sentencing by military judge alone, and I waive my right to a trial by members, including enlisted members; and
- b. I agree not to request, at Government expense, the presence of any witness located more than 50 miles from the court-martial location. This provision does not interfere with my ability to present an effective case in extenuation and

mitigation. If I have further material to present, I intend to use alternative means to present this material.

(\*See Appendix 1 for other commonly used specially negotiated provisions for the accused.)

9. Notification Provisions. I have been advised of the following potential consequences of my plea(s) of guilty and resultant convictions:

(\*See Appendix 1 for commonly used notification provisions that may be applicable for the accused.)

PLEAS OF THE ACCUSED

CHARGE

PLEAS

Charge I: Violation of Article _____	GUILTY/NOT GUILTY
Specification _____ : Language of Spec.	GUILTY/NOT GUILTY

**SIGNATURE PAGE**

By my signature below I acknowledge that I have read this agreement completely, I have discussed it with my counsel, I understand it in all respects, and I am prepared to abide by its terms.

Accused: \_\_\_\_\_ Date: \_\_\_\_\_  
(Accused)  
(Rank)  
(USN) (USMC)

Defense Counsel: \_\_\_\_\_ Date: \_\_\_\_\_  
(Defense Counsel)  
(Rank)  
(JAGC, USN) (USMC)

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

Convening Authority: \_\_\_\_\_ Date: \_\_\_\_\_  
(Convening Authority)  
(Rank)  
(USN) (USMC)  
Commanding

**GENERAL/SPECIAL COURT-MARTIAL**  
**NAVY-MARINE CORPS TRIAL JUDICIARY**  
**JUDICIAL CIRCUIT**

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UNITED STATES	)	
	)	
v.	)	<b>MEMORANDUM OF</b>
	)	<b>PRETRIAL AGREEMENT</b>
(Accused)	)	<b>(Part II)</b>
(Rank)	)	
xxx xx xxxx	)	
U.S. (Navy) (Marine Corps)	)	

The convening authority in this case may approve and order executed any lawfully adjudged sentence awarded by this court-martial, or any automatic sentence or portion thereof, except as specifically limited below:

1. **Punitive Discharge:** May be approved as adjudged.
2. **Confinement:** May be approved as adjudged.
3. **Forfeiture or Fine:** May be approved as adjudged.
4. **Reduction:** May be approved as adjudged.
5. **Other lawful punishments:** May be approved as adjudged.

**\*See Appendix II for commonly used specially negotiated provisions**

**SIGNATURE PAGE**

I fully understand, and have discussed with my counsel, how this agreement will affect any sentence that I may be awarded by the court-martial.

Accused: \_\_\_\_\_ Date: \_\_\_\_\_  
(Accused)  
(Rank)  
(USN) (USMC)

Defense Counsel: \_\_\_\_\_ Date: \_\_\_\_\_  
(Defense Counsel)  
(Rank)  
(JAGC, USN) (USMC)

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

Convening Authority: \_\_\_\_\_ Date: \_\_\_\_\_  
(Convening Authority)  
(Rank)  
(USN) (USMC)  
Commanding Officer

## **Examples of Commonly Used Specially Negotiated Provisions:**

### **[Witness considerations]**

#### **[1. Stipulation of extenuation & mitigation witness testimony ]**

I agree not to request, at Government expense, the presence of any witness. In return, the Government agrees to enter into mutually agreed upon stipulation of testimony regarding those potential witnesses. I understand that the stipulation does not admit the truth of the testimony, which may be attacked, contradicted, or explained in the same way as any other testimony. This provision has not interfered with my selection of witnesses or in presenting a complete case in extenuation and mitigation. I agree to provide these stipulations to the trial counsel at least five (5) business days before trial.

#### **[2. Call certain witnesses only]**

I intend to request the presence of \_\_\_\_\_ as a witness(es) at my court-martial at Government expense. Provided that the convening authority agrees to produce these witnesses, I will not request any other witnesses at Government expense. This provision has not interfered with my selection of witnesses or in presenting a (defense/case in extenuation and mitigation). If I have further material to present, I intend to use alternative means to present this material.

#### **[3. Call no witness or call only local witnesses]**

I agree not to request, at Government expense, the presence of any witness located (out of the area) (more than 50 miles from the court-martial location). This provision does not interfere with my ability to present an effective (defense/case in extenuation and mitigation). If I have further material to present, I intend to use alternative means to present this material. (The Government specifically agrees not to object to the admission into evidence of written statements in extenuation and mitigation from witnesses located (out of the area) (more than 50 miles from the court-martial location)).

### **[Agreement not to object to evidence offered]**

#### **[1. Telephonic testimony]**

The Government and I agree to not object to the Court receiving telephonic testimony in lieu of live testimony offered during the sentencing proceeding. This provision does not preclude objections to the content of the testimony offered.

**[2. Certain evidence presented in sentencing]**

The Government and I agree not to object to (relevant service record documents, relevant medical or autopsy reports, relevant command investigation materials, relevant Naval Criminal Investigative Service evidentiary material, relevant statements offered by the defense in extenuation and mitigation, or relevant statements offered by the Government in aggravation to include written, audio, or videotaped statements or telephonic testimony of any victim or relevant witness, or relevant unsworn testimony offered by a victim in accordance with the R.C.M.s) being offered by either party in the presentencing phase of the trial on the basis of (foundation, hearsay, lack of confrontation, or authenticity). Each party will provide the other party final witness and exhibit lists covered by this paragraph at least five (5) calendar days prior to the scheduled presentencing proceeding. This provision does not interfere with my ability to present an effective and complete case in extenuation and mitigation.

**[Trial date]**

I agree, and am fully prepared, to go to trial and offer to go to trial no later than (date). I understand that this agreement will not be deemed to have been breached if the Government is unprepared or the judiciary cannot schedule the trial by that date.

**[Waive administrative discharge board]**

I agree to waive any administrative discharge board that is based on any act or omission reflected in the charge(s) and specification(s) that are the subject of this agreement. I understand that any administrative discharge will be characterized in accordance with service regulations and may be under other-than-honorable conditions. I fully understand the nature and purpose of an Administrative Discharge Board and the rights that I would have at such a Board. (IF ACCUSED IS NEAR OR PAST HIS/HER EAS, ADD THE FOLLOWING: I specifically agree to remain on active duty past my projected End of Active Obligated Service (EAS) (EAOS) date of \_\_\_\_\_ so that the Government can administratively separate me.) (I agree to deliver to trial

counsel not later than one business day prior to trial the completed and signed waiver.)

**[Motion consideration - the specific motions waived need to be specified - the language "all waivable motions" is unacceptable]**

**[1. Single motion]**

I agree not to raise a motion pursuant to R.C.M. [redacted] to [redacted]. I have not been compelled to waive my right to due process, the right to challenge the jurisdiction of the court-martial, the right to a speedy trial, the right to raise the issue of unlawful command influence, or any other motion that cannot be waived.

**[2. Multiple motions]**

I specifically agree not to raise the following waivable motions:

(1) Relief based on defects in the Article 32 hearing or Article 34 advice;

(2) Relief from pretrial confinement for violations of R.C.M. 305 and Article 13, UCMJ;

(3) Relief based on multiplicity and unreasonable multiplication of charges; and

(4) Suppression of my statement given to [redacted] on [redacted].

This provision in no way limits my right to raise any motion. I have not been compelled to waive my right to due process, the right to challenge the jurisdiction of the court-martial, the right to a speedy trial, the right to raise the issue of unlawful command influence, or any other motion that cannot be waived. I have no motions other than those I have previously filed or waived above.

**[3. All waivable motions]**

I specifically agree to waive all motions except those that are otherwise non-waivable pursuant to R.C.M. 705(c)(1)(B).

**[Article 32 waiver as part of agreement/GCM only]**

I agree to waive my right to an Article 32, UCMJ, preliminary hearing. I fully understand the nature and purpose of an Article 32 preliminary hearing and the rights that I would have at such a hearing. I understand that upon acceptance of this agreement, the charge(s) and specification(s) may be referred to trial by general court-martial without an Article 32 preliminary hearing.

**[Withdrawal of language and/or charges and specifications to which Accused pled not guilty]**

I understand and agree that, in return for my pleas of guilty, and following the military judge's acceptance of my pleas as set forth below, the convening authority will withdraw the language and/or charge(s) and specification(s) to which I have pled not guilty. After announcement of the sentence by the military judge, the withdrawn language, charge(s) and/or specification(s) will be dismissed by the convening authority without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence have been upheld.

**[Government going forward on not guilty pleas]**

I understand and agree that the convening authority, through the assigned trial counsel, may go forward on the (charge(s)) (language) to which I have entered pleas of not guilty.

**[Stipulation of fact]**

**[1. Stipulation agreed to when PTA signed]**

I agree to enter into the Stipulation of Fact contained in Prosecution Exhibit #1 for use by the military judge during the (providence inquiry) (on the merits) and during the pre-sentencing proceeding. I have reviewed the stipulation completely, agree the facts therein are true and admissible, and have no objections.

**[2. Stipulation to be agreed upon after PTA is signed]**

I agree to enter into a stipulation of fact for use during the (providence inquiry) (on the merits) and during the pre-sentencing proceeding, which describes the facts and circumstances surrounding the offenses to which I am pleading guilty to include (the aggravating circumstances) (extenuation

and mitigation). If I have any objections to the admissibility of any matters contained in the stipulation of fact, I will notify trial counsel prior to signing it. I understand that the failure of the parties to reach a mutually agreed upon stipulation of fact may result in either side withdrawing from this Agreement.

**[Conditional plea(s)]**

I agree, upon written consent of the Government and approval of the military judge, to enter a conditional plea of guilty in writing as to (list applicable Charges and Specifications), preserving the right to review or appeal of any adverse determination on my motion (specify nature of the motion). I understand that if I prevail on further review or appeal, I will be allowed to withdraw my conditional plea(s) of guilty in accordance with R.C.M. 910(a)(2).

**[Confessional stipulation]**

I agree to enter into a confessional stipulation of fact in writing as to all elements of (list applicable Charge(s) and Specification(s)) to which I have entered pleas of not guilty. I understand that a confessional stipulation is tantamount to a guilty plea when it establishes directly, or by reasonable inference, every element of a charged offense and when I and my counsel do not present any evidence to contest any potential remaining issue(s) on the merits of my case. I also understand that this confessional stipulation will relieve the Government and the trial counsel of the burden of proving my guilt beyond a reasonable doubt as to this (these) Charge(s) and Specification(s) and that I may be found guilty of this (these) offense(s) based solely upon this stipulation and be subjected to the punishment(s) authorized for it (them).

**[Sex offender treatment program]**

If pursuant to the adjudication of a sentence, I meet eligibility criteria established by Navy Personnel Command (PERS-00D1), HQMC (PSL), or other applicable authority and the confinement facility, the convening authority will recommend in writing to the applicable authority that contact be established with PERS-00D1, the brig I am confined in, and the Naval Consolidated Brig Miramar, San Diego, California, within 10 days to recommend that I be placed in the Naval Consolidated Brig Miramar, San Diego, California, which is a military facility with a non-violent sex offender treatment program, to serve the period of confinement. I understand that my placement in a

military facility with a non-violent sex offender treatment program can be recommended by the convening authority, but that my placement in such a facility cannot be guaranteed. I further agree to voluntarily participate in any sex offender treatment program offered to me to include truthful admissions of my misconduct required for rehabilitation.

**[Testify in another case]**

(If I am provided a grant of testimonial immunity,) I agree to testify truthfully if called as a witness in any proceeding regarding Name of 3<sup>rd</sup> Party Accused, and against any other individual who may be subsequently charged or investigated for offenses arising out of (the incidents that are the subject of the charges or investigation). I further agree to fully and truthfully cooperate in any proceeding, to include in-person interviews with appropriate law enforcement authorities and the trial and defense counsel involved in these cases, as well as any other reasonable request made of me. I also agree to testify fully and truthfully at all such proceedings relating to such persons (subsequent to my being given a grant of immunity) if ordered to do so by the cognizant convening authority or other person authorized to give me an order to so testify. I understand that failure to cooperate on my part constitutes a material breach of this pretrial agreement. The Government agrees to make all reasonable efforts to coordinate in advance, fund, and obtain the physical presence of at least one of my military counsel at all proceedings where I am required to testify under oath. If reasonable efforts fail or scheduling conflicts prevent my military counsel from physically attending one of these events, the Government retains the right to go forward on the date of the scheduled event. I understand I will be allowed to contact one of my military counsel in that event should the need arise.

**[Polygraph]**

I agree to submit to any interview and polygraph examination requested by the Government at any time pre or post-trial for a period of five (5) years from the signing of this Agreement by the convening authority. If an interview or polygraph examination under this provision is conducted pretrial, I understand that any statements elicited are inadmissible at any trial pursuant to M.R.E. 410. If an interview or polygraph examination under this provision is

conducted post-trial, the Government agrees to grant me testimonial immunity prior to asking any questions.

(1) I agree that during the polygraph test I will truthfully answer questions about (insert areas to be discussed).

(2) I agree to complete and waive my rights on the polygraph rights waiver form pursuant to DoD Directive 5210.48, DoD Regulation 5210.48-R, or any other required DoD issuances.

(3) I understand and agree that I may request the presence of my counsel only during the initial rights advisement prior to the polygraph test, but during the polygraph examination, neither my counsel nor any persons other than the polygrapher and me will be permitted to be in the room.

(4) I agree to cooperate with investigators to resolve any inconclusive or "no opinion" findings. If the polygraph examination results in a (deceptive) (inconclusive, "no opinion," or deceptive) finding to any question, such a finding may be the basis for the convening authority to seek to withdraw from the Agreement.

**[Agree to join charges post-arraignment]**

I agree not to object to the referral of the additional charge preferred on DD Month YYYY to the same court-martial as the original charges preferred on DD Month YYYY. I understand that after arraignment upon the original charges that no additional charges may be referred to the same court-martial without my consent and I hereby waive such an objection.

**[Forfeiture of property]**

**[ 1. Forfeiture personal property - 18 U.S.C. § 2253; *United States v. Henthorn*, 58 M.J. 556 (N-M Ct. Crim. App. 2003) (unpublished opinion) (for use in cases where computers and drives contained the child pornography or other forfeitures) ]**

I agree to forfeit to the United States immediately and voluntarily the following assets: [redacted], which are in the possession of the Naval Criminal Investigative Service. I agree to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any documents necessary to pass title

to the United States before sentencing. I understand and agree that this provision is not "punishment" as described in R.C.M. 1003, nor does it require me to waive a fundamental right at trial or a fundamental post-trial right. I further hereby waive any claim that I may have that the forfeiture of the aforementioned assets constitutes an excessive fine.

**[ 2. Assignment of any profits or proceeds from publicity - high visibility case or significant media attention expected ]**

I agree to assign to the United States any profits or proceeds which I may be entitled to receive in connection with any publication or dissemination of information relating to my person, my work with the Navy, my criminal activities, the facts and circumstances leading to my arrest and conviction, or acquired from Navy files, and agree that any such profits and/or proceeds constitutes the proceeds of my (criminal activities) for purposes of [insert offense(s) pleading guilty to]. This assignment shall include all profits and proceeds for my benefit, regardless of whether such profits and proceeds are payable to myself or to others, directly or indirectly, for my benefit or for the benefit of my associates or a current or future member of my family. I shall not circumvent this assignment by assigning the rights to my story to an associate or to a current or future member of my family, or to another person or entity who would provide some financial benefit to me, to my associates, or to a current or future member of my family. Moreover, I shall not circumvent this assignment by communicating with an associate or a family member for the purpose of assisting or facilitating their profiting from a public dissemination, whether or not such an associate or other family member is personally or directly involved in such dissemination.

**[Refer case as noncapital]**

As an inducement for acceptance of this Agreement, the convening authority will authorize trial counsel (pre/post arraignment) to strike through the language "To be tried as a capital case" from the special instructions in the referral block of the charge sheet, and substitute the language "Pursuant to a pretrial agreement, capital punishment is not authorized". If the convening authority withdraws from this Agreement as provided for in Paragraph 11 above, I understand the Convening Authority or trial counsel by direction of the Convening Authority may strike through the language "Pursuant to a pretrial agreement, capital punishment is not authorized" and reinsert the "To be

tried as a capital case" language in the referral block of the charge sheet.

**[Protective order]**

I agree to avoid any contact with \_\_\_\_\_. This prohibition includes, but is not limited to unofficial physical, verbal, telephonic, text messaging or communicating with any electronic device, and making contact through third parties (i.e., friends, family, etc.), and written contact. If I come into contact with, or am inadvertently in the physical presence of any of the above-listed members, whether at a residence, restaurant, club, bar, tavern, in the workplace, or any other location, I will immediately vacate the area. I will not enter the residence, home, or apartment of the above-listed personnel, or any other residence, apartment, or building in which the aforesaid individual(s) may be located, or go within one block of the residence, apartment, or building (as measured by the nearest four intersections to the residence.

**[Restitution: select from one of the following 3 paragraphs]**

**[1. Has means to make restitution prior to date of trial]**

I agree to make restitution by [cashier's check/money order] in the amount of \$ \_\_\_\_\_, made payable to the economic victim of my misconduct, (Name(s) of Victim(s)). The [cashier's check/money order] will be delivered to the trial counsel at least seven calendar days prior to the date of trial. I fully understand that failure on my part to meet this obligation may serve as the basis for the convening authority to seek to withdraw from this Agreement, making the Agreement ineffective.

**[OR]**

**[2. Will have means to make restitution after trial]**

I agree to make restitution by [cashier's check/money order] in the amount of \$ \_\_\_\_\_, made payable to the economic victim of my misconduct, (Names(s) of Victim(s)). I understand that my paying restitution to the victim is a material term of this agreement. The [cashier's check/money order] will be delivered to the trial counsel by DD Month YYYY. I fully understand that failure on my part to meet this obligation may serve as the basis for the convening authority to seek to withdraw from this Agreement, making the Agreement ineffective, or may serve as the basis for the convening authority to vacate any or all previously

suspended portions of my sentence, causing me to have to serve that previously suspended sentence.

[OR]

**[3. Make restitution in installments]**

I agree to make restitution in the amount of \$ [REDACTED], to the economic victim of my misconduct, (Name(s) of Victim(s)), by DD Month YYYY. I expressly represent that I will have the economic means to make full restitution by DD Month YYYY. I will provide the trial counsel or staff judge advocate with a [cashier's check/money order] made payable to (Name(s) of Victim(s)), no later than the second working day following the 1st and 15th of each month, in the amount of \$ [REDACTED]. These partial payments will begin on DD Month YYYY and will be completed by DD Month YYYY. I fully understand that failure on my part to meet this obligation may serve as the basis for the convening authority to seek to withdraw from this Agreement, making the Agreement ineffective, or may serve as the basis for the convening authority to vacate any or all previously suspended portions of my sentence, causing me to have to serve that previously suspended sentence.

**[Deployed case]**

As inducement to the convening authority for acceptance of this agreement, I agree to request deferment of my confinement from the date of trial to the date that I arrive at a military detention facility in the United States. I understand that the time in transit from the (Deployment - MARCENT AOR) to the United States will not be credited towards any confinement I may receive at court-martial.

**Notification provisions**

**[\* Make sure each subparagraph is labeled with lower case letters for easier reference \*]**

**[Rape/sex assault pleas]**

a. My defense counsel has advised me that a guilty plea to the offense of rape, sexual assault, rape of a child, sexual assault of a child, forcible sodomy, or an attempt to commit any of these offenses, requires the sentencing authority to adjudge a dishonorable discharge/dismissal.

**[Lautenberg Amendment - use in the following cases: (1) if a crime of domestic violence; or (2) if the maximum punishment for**

**one of the offenses in the chart at Appendix 12 is a dishonorable discharge or more than one (1) year.]**

b. My defense counsel has advised me that my guilty pleas to the Charges and Specifications contained in this agreement may preclude me from the ownership, receipt, or transport of any firearm that has been transported in interstate or foreign commerce under 18 U.S.C. § 922(g).

**[Repayment for advanced education - use if Accused received advanced financial education assistance and could be discharged prior to fulfilling service obligation.]**

c. My defense counsel has advised me that my guilty pleas to the Charges and Specifications contained in this agreement may result in my discharge from the (Navy) (Marine Corps) for misconduct, either by punitive or administrative means. This may require me to repay the Government for any and all advanced educational assistance benefits that I have received in accordance with JAGMAN § 0171 and 10 U.S.C. § 2005. This repayment will occur in the case that my early separation from the (Navy) (Marine Corps) precludes me from fulfilling any additional service requirements that were required as consideration for this advanced educational assistance.

**[Sex offender registration - Use if Accused pleading guilty to sex offense/kidnapping. See *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006); *United States v. Riley*, 72 M.J. 115 (C.A.A.F. 2013).]**

d. My defense counsel has advised me that, as a result of my pleas, I may be required to register as a sexual offender in any state in which I am domiciled. I have reviewed DoD Instruction 1325.07 (series) with my counsel and understand that I am entering a plea of guilty to an offense requiring sex offender registration processing within the meaning of Appendix 4 to Enclosure 2 of that instruction. Further, my counsel has advised me that, in accordance with 42 U.S.C. § 14071(d), my information in the offender registry may be accessible by the public.

**[Retirement/VA benefits - use if Accused is close to or retirement eligible.]**

e. My defense counsel has advised me that any punitive discharge that is adjudged and ultimately approved in my case may adversely affect my ability to receive retirement pay and

any and all other veterans benefits accrued as a result of my military service.

f. My defense counsel has advised me that any punitive discharge that is adjudged and ultimately approved in my case may adversely affect my ability to receive veteran's and all other benefits accrued as a result of my military service.

**[Hiss Act, 5 U.S.C § 8312 - use if Accused pleading guilty to case involving classified information or giving defense information to unauthorized person, and Accused is close to or retirement eligible.]**

g. My defense counsel has advised me that my plea(s) of guilty may adversely affect my ability to receive retirement pay and any and all other benefits accrued as a result of my military service under the Hiss Act, 5 U.S.C. § 8312.

**[Padilla v. Kentucky, 130 S.Ct. 1473 (U.S. 2010) - Use if Accused is not a citizen of the United States or if eligible for revocation of citizenship pursuant to 18 USC § 1439(f).**

h. My defense counsel has advised me that my plea(s) of guilty may adversely affect my ability to naturalize, may cause my citizenship to be revoked, or may result in other unfavorable immigrant status in the United States, and the United States could initiate deportation proceedings against me.

**[Examples of pleas w/exceptions and substitutions]**

Spec __ : Unauthorized absence Terminated by Apprehension	Guilty, except for the words terminated by apprehension"; of the excepted words, Not Guilty; of the Specification as excepted, Guilty.
Spec__ : Between 22 Jun and 29 Jun 11, at an unknown location, wrongfully use cocaine.	Guilty, except for the word "unknown location" substituting therefore the words "Norfolk, Virginia"; of the excepted words, Not Guilty; of the substituted words, Guilty of the Specification as excepted and substituted, Guilty.

[ Examples of pleas w/LIOs]

Charge __: Violation of Art 123a	Not Guilty, but guilty of a violation of Article 134
Spec __: Uttering checks w/out sufficient funds	Not Guilty, but guilty to the LIO of dishonorable failure to maintain funds.

**Examples of commonly negotiated provisions for Part II of the PTA:**

1. **Punitive Discharge:** May be approved as adjudged. However, if a dishonorable discharge is adjudged, the convening authority agrees to approve only a bad conduct discharge.

**[OR - Disapprove any punitive discharge]**

1. **Punitive Discharge:** If adjudged, any punitive discharge will be disapproved.

**[OR - Suspend the discharge for specified number of months after CA's action]**

1. **Punitive Discharge:** May be approved as adjudged. However, if a punitive discharge is adjudged, it will be suspended for a period of [REDACTED] months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

**[OR - Suspend the discharge until EAOS]**

1. **Punitive Discharge:** May be approved as adjudged. However, if a punitive discharge is adjudged, it will be suspended until my current end of obligated service (EAOS), at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

**[OR - Suspend discharge until ADSEP completed]**

1. **Punitive Discharge:** May be approved as adjudged. However, if I voluntarily waive my right to an administrative separation proceeding, the punitive discharge will be suspended until the administrative separation process is completed, and I have been discharged, at which time, unless sooner vacated, the suspended punitive discharge will be remitted without further action.

**[OR - reduce mandatory dishonorable discharge to a bad conduct discharge]**

1. **Punitive Discharge:** The mandatory adjudged dishonorable discharge will be commuted to a bad conduct discharge.

**[OR - Disapprove mandatory discharge in recognition of substantial assistance provided]**

1. **Punitive Discharge:** The mandatory adjudged [dishonorable discharge/dismissal] will be disapproved in accordance with the recommendation of the trial counsel in recognition for my substantial assistance in the investigation and prosecution of [REDACTED].

[OR - Suspension of mandatory discharge in recognition of substantial assistance provided]

1. **Punitive Discharge:** The mandatory adjudged [dishonorable discharge/dismissal] will be suspended until the completion of the court-martial of United States v. [REDACTED], provided that I testify truthfully at the court-martial and in accordance with my M.R.E. 410 proffer. The trial counsel agrees that my truthful testimony in accordance with the M.R.E. 410 proffer is recognized as substantial assistance in the prosecution of another individual. [consider use in conjunction with testimonial immunity paragraph above]

**2. Confinement:**

[Suspension:] May be approved as adjudged; however, all confinement in excess of [# days/months] will be suspended for a period of 12 months after the date of the convening authority's action, at which time, unless sooner vacated, the suspension portion will be remitted without further action. This agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement suspended pursuant to the terms of this agreement. The period of deferment will run from the date of sentence until the date the convening authority acts on the sentence.

2. **Confinement:** May be approved as adjudged.

[OR - Disapprove confinement]

2. **Confinement:** If adjudged, any confinement will be disapproved upon the convening authority's Action. This agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement awarded. The period of deferment will run from the date of sentence until the date the convening authority acts on the sentence.

[OR - Place a cap on confinement with the excess suspended]

2. **Confinement:** May be approved as adjudged. However, all confinement in excess of [\_\_\_ days/months/years] will be suspended for the period of confinement adjudged plus [REDACTED] months

thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action. This Agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement suspended pursuant to the terms of this Agreement. The period of deferment will run from the date of sentence of the court-martial until the date the convening authority acts on the sentence.

**[OR - Place a cap on confinement with the excess suspended only if a punitive discharge is awarded and Accused requests appellate leave]**

2. **Confinement:** May be approved as adjudged. However, if a punitive discharge is adjudged and I request voluntary appellate leave within \_\_\_ days of the sentence being adjudged, all confinement in excess of [ \_\_\_ days/months/years] will be suspended for the period of confinement adjudged plus \_\_\_\_\_ months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action. This Agreement constitutes my request for, and the convening authority's approval of, deferment of all confinement suspended pursuant to the terms of this Agreement. The period of deferment will run from the date of sentence of the court-martial until the date the convening authority acts on the sentence.

**3. Forfeiture or Fine:**

**a. Adjudged Forfeiture:** Any adjudged forfeiture will be disapproved upon the convening authority's action. This agreement constitutes my request for, and the convening authority's approval of, deferment of all forfeitures awarded. The period of deferment will run from the date of sentence until the date the convening authority acts on the sentence.

**b. Automatic Forfeiture:** Automatic forfeiture of any pay and allowances I am due during my enlistment (in the amount of \$ \_\_\_\_\_ per month) will be deferred and waived provided that I establish and maintain a dependent's allotment in the total amount of the deferred and waived forfeiture amount during the entire period of deferment. I understand that my enlistment is projected to end on \_\_\_\_\_ and that if I am in confinement after that date, I will not receive any pay and allowances pursuant to Paragraph 010402, Volume 7A, DoD 7000.14-R, Financial Management Regulations (series). This Agreement constitutes my request for, and the convening authority's approval of, deferment and waiver of automatic forfeitures (in the amount of \$ \_\_\_\_\_ per month) pursuant to Article 58b(a)(1), UCMJ. The period of deferment will run from the date automatic forfeiture would

otherwise become effective under Article 58b(a)(1), UCMJ, until the date the convening authority acts on the sentence. The deferred and waived forfeiture shall be paid to [REDACTED], who is my dependent. I must provide proof of this allotment to the convening authority before the convening authority acts to defer any adjudged forfeitures under this Agreement. I agree to notify the convening authority in writing if the Department of Defense fails to defer or waive the forfeitures. I understand that the period of waiver may not exceed six (6) months from the date of convening authority's action. The convening authority agrees that the period of waiver will run for \_\_\_ months from the date of the convening authority's action.

c. **Fine:** Any fine will be disapproved.

**[OR Adjudged forfeiture deferred and suspended and automatic deferred/waived and fine suspended]**

**3. Forfeiture or fine:**

a. **Adjudged Forfeiture:** See above.

b. **Automatic Forfeitures:** See above.

c. **Fine:** May be approved as adjudged; however, the adjudged fine will be suspended for [REDACTED months] from the date of the convening authority's action, at which time, unless sooner vacated, the suspended portion of the fine will be remitted without further action.

**[OR - Fine will be mitigated to forfeiture]**

c. **Fine:** May be approved as adjudged; however, the adjudged fine will be mitigated to forfeiture, which I shall pay in the amount of \$ [REDACTED] pay per month [note: cannot be more than 2/3rds pay per month if SPCM] for [REDACTED] months (until the entire amount of the originally adjudged fine has been satisfied).

**4. Reduction:**

a. **Adjudged Reduction:** May be approved as adjudged, however, any adjudged reduction (below the pay grade of E-[REDACTED]) will be disapproved.

b. **Automatic Reduction:** The automatic reduction (below the pay grade of E-[REDACTED]) will be remitted.

**[OR - Suspend adjudged and automatic]**

4. **Reduction:**

a. **Adjudged Reduction:** May be approved as adjudged; however, any adjudged reduction (below pay grade [redacted]) will be suspended for [redacted] months from the date of the convening authority's action, at which time, unless sooner vacated, the part of the adjudged reduction that was suspended will be remitted without further action. This Agreement constitutes my request for, and the convening authority's approval of, deferment of that adjudged reduction which is to be suspended pursuant to the terms of this Agreement and would otherwise become effective under Article 57(a) (1), UCMJ. The period of deferment will run from the date the adjudged reduction would otherwise become effective until the date of the convening authority's action.

b. **Automatic Reduction:** The automatic reduction in pay grade (below pay-grade [redacted]) will be suspended for [redacted] months from the date of the convening authority's action, at which time, unless sooner vacated, the part of the automatic reduction that was suspended will be remitted without further action.

**[OR - Disapprove other lawful punishments]**

5. **Other lawful punishments:** If adjudged, any other lawful punishment will be disapproved.

**[OR - Suspend other lawful punishments]**

5. **Other lawful punishments:** May be approved as adjudged, however any [restriction, hard labor without confinement, etc.] will be suspended for [redacted] months from the date of the convening authority's action, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

**[Bareback special provision - special courts-martial only]**

6. I fully understand that in return for my pleas of guilty as indicated in Part I of this Agreement, the only consideration that I will receive under this Agreement is the referral of the charges and specifications in my case to a special court-martial rather than a general court-martial. I also understand that in the event that I fail to plead guilty as indicated in Part I of this Agreement, or if I fail to comply with any of the material terms of this Agreement, or if the Agreement becomes null and void for any reason, then the convening authority is free to convene an Article 32, UCMJ, preliminary hearing concerning these charges and, ultimately, to refer all charges and specifications for trial before a general court-martial.

