

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABB INC.,

Defendant.

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§

CRIMINAL NO. H-10-

664

PLEA AGREEMENT

PLEA AGREEMENT

The United States of America, by and through Denis McInerney, Chief, and Nicola J. Mrazek, Senior Trial Attorney, of the Fraud Section, Criminal Division, United States Department of Justice (the “Fraud Section”), and the defendant, ABB Inc., and the defendant’s counsel, Laurence Urgenson, Laura Fraedrich, and Audrey Harris of Kirkland and Ellis LLP, pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

The Defendant’s Agreement

1. The defendant agrees to plead guilty to Counts One and Two of the Criminal Information filed with this agreement, which charges defendant with conspiracy to violate the laws of the United States in violation of Title 18, United

States Code, Section 371, specifically, violation of the Foreign Corrupt Practices Act (“FCPA”), Title 15 United States Code, Section 78dd-2 and violation of the FCPA, Title 15 United States Code, Section 78dd-2. The defendant further agrees to persist in that plea through sentencing and, as set forth below, to fully cooperate with the United States. The defendant, by entering this plea, agrees that it is waiving indictment on these charges and any right to have the facts that the law makes essential to the punishment of the offenses charged in the Criminal Information proved to a jury or proved beyond a reasonable doubt.

2. This plea agreement is between the Fraud Section and the defendant ABB Inc., and thus does not bind any other division or section of the Department of Justice or any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement does not apply to any other charges other than those specifically mentioned herein. However, the Fraud Section will bring this Agreement and the extraordinary cooperation of ABB Inc., its affiliates, subsidiaries, and parent corporation, to the attention of other prosecuting authorities or other entities, if requested.

3. The defendant agrees that this Agreement will be executed by an authorized corporate representative. The defendant further agrees that a Resolution duly adopted by the Board of Directors of ABB Inc., in the form attached to this

Agreement as Attachment B, or in a substantially similar form, represents that the signatures on this Agreement by ABB Inc. and its counsel are authorized by the Board of Directors of ABB Inc.

4. The defendant ABB Inc. and ABB Ltd, on behalf of ABB Inc., agree that each has the full legal right, power, and authority to enter into and perform all of its obligations under this Agreement.

5. The defendant agrees that any fine or restitution imposed by the Court will be due and payable within ten (10) business days from the date of sentencing, and the defendant will not attempt to avoid or delay payments. The defendant further agrees to pay the Clerk of the Court of the United States District Court for the Southern District of Texas the mandatory special assessment within ten (10) business days from the sentencing date.

6. The defendant agrees to make a complete financial disclosure by truthfully executing a sworn financial statement prior to sentencing if it is required to do so.

7. The defendant agrees that if it or its parent corporation issues a press release in connection with this Agreement, the defendant shall first consult the Fraud Section to determine whether the text of the release is acceptable, and shall only issue a release that has been deemed acceptable to the Fraud Section.

8. The defendant agrees to abide by all terms and obligations of this Agreement as described herein, including the obligations described in Attachment C (Corporate Compliance Program) and Attachment D (Enhanced Compliance Obligations) attached hereto and incorporated herein.

9. The defendant agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, the defendant shall include in any contract for sale, merger, or transfer a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this Agreement, including the obligations described in Attachment C (Corporate Compliance Program) and Attachment D (Enhanced Compliance Obligations) attached hereto and incorporated herein.

THE UNITED STATES' AGREEMENT

10. In exchange for the corporate guilty plea of ABB Inc. and the complete fulfillment of all of its obligations under this Agreement, the Fraud Section agrees not to file any additional criminal charges against ABB Inc. for any of the corrupt payments described in the Statement of Facts, attached as Attachment A-1. This Agreement will not close or preclude the investigation or prosecution of any natural persons, including any officers, directors, employees,

agents, or consultants of ABB Inc. who may have been involved in any of the matters set forth in the Criminal Information, Statement of Facts, or in any other matter.

11. With respect to ABB Inc.'s present reliability and responsibility as a government contractor, the Fraud Section agrees to cooperate with ABB Inc., in a form and manner to be agreed, in bringing facts relating to the nature of the conduct underlying this Agreement and to ABB Inc.'s extraordinary cooperation and remediation to the attention of governmental and other debarment authorities, including the MDBs, as requested.

FACTUAL BASIS

12. The defendant, ABB Inc., is pleading guilty because it is guilty of the charges contained in Counts One and Two of the Criminal Information. The defendant agrees and stipulates that the factual allegations set forth in the Criminal Information are true and correct and accurately reflect its criminal conduct. The defendant further stipulates and agrees to the Statement of Facts attached hereto and incorporated herein as Attachment A-1.

DEFENDANT'S OBLIGATIONS

13. ABB Inc. agrees:
- a. To plead guilty as set forth in this Agreement;

- b. To abide by all sentencing stipulations contained in this Agreement;
- c. To (i) appear, through its duly appointed representatives, as ordered for all court appearances; and (ii) obey any other ongoing order in this matter;
- d. To commit no further crimes in violation of U.S. federal, state, or local law;
- e. To be truthful with the Court;
- f. To pay the applicable fine and special assessment;
- g. To comply with the compliance provisions set forth in Attachments C and D, attached hereto, and incorporated herein; and
- h. To ensure that in the event ABB Inc. sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, ABB Inc. shall include in any contract for sale, merger, or transfer a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the obligations described in this Agreement,

including the obligations described in Attachments C (Corporate Compliance Program) and Attachment D (Enhanced Compliance Obligations) attached hereto and incorporated herein.

14. ABB Inc. further agrees to cooperate fully with the Fraud Section as directed and with any other U.S. federal, state, local, or foreign law enforcement agency at the request of the Fraud Section and consistent with applicable law and regulation and the attorney-client privilege or work product doctrine. This cooperation requires the defendant to:

- a. Provide full disclosure of all information concerning corrupt payments known to the defendant or its outside counsel as of the date of this Agreement;
- b. Produce voluntarily all documents, records, or other tangible evidence relating to such payment about which the Fraud Section, or its designee, inquires;
- c. Provide and/or ensure that the Fraud Section is given access to all ABB Inc. officers, directors, employees, agents, and consultants for interviews and testimony in the United States relating to such payments;

- d. Provide access to copies of original documents and records relating to such payments;
- e. Provide access to defendant's outside accounting consultants as well as the records, reports, and documents of those outside accounting consultants relating to such payments disclosed to the Fraud Section as of the date of this Agreement; and
- f. Upon request by the Fraud Section, provide all memoranda of interviews compiled and prepared by ABB Inc.'s counsel, outside counsel, consultants, accountants, or other agents of interviews with individuals relating to such payments disclosed to the Fraud Section as of the date of this Agreement.

WAIVER OF CONSTITUTIONAL RIGHTS

15. ABB Inc. knowingly, intelligently, and voluntarily waives its rights to appeal the conviction in this case. ABB Inc. similarly knowingly, intelligently, and voluntarily waives the right to appeal the sentence imposed by the court. In addition, ABB Inc. knowingly, intelligently, and voluntarily waives the right to bring a collateral challenge pursuant to Title 28, United States Code, Section 2255, challenging either the conviction or the sentence imposed on this case, except for a claim of ineffective assistance of counsel. ABB Inc. waives all defenses based on

the statute of limitations and venue with respect to any prosecution that is not time-barred on the date that this Agreement is signed in the event that: (a) the conviction is later vacated for any reason; (b) ABB Inc. violates this Agreement; or (c) the plea is later withdrawn. The Fraud Section is free to take any position on appeal or by other post-judgment matter.

PENALTY RANGE

16. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371 by a corporation is a fine of not more than \$500,000, or twice any pecuniary gain to the defendant or loss to the victim(s), whichever is greatest; 18 U.S.C. § 3571(c)(3) and (d); five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$800, 18 U.S.C. § 3013(a)(2)(B). The statutory maximum sentence that the Court can impose for a violation of Title 15, United States Code, Section 78dd-2 is a fine of \$2,000,000 or twice any pecuniary gain to the defendant or loss to the victim(s), whichever is greatest; 15 U.S.C. § 78dd-2(g)(1) and 18 U.S.C. 3571(d); five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$400, 18 U.S.C. § 3013(a)(2)(B). The statutory maximum sentences for multiple counts can be aggregated and run consecutively.

17. The Fraud Section and the defendant agree that an application of the United States Sentencing Guidelines (USSG) to determine the applicable fine range yields the following analysis:

- a. Guideline Manual The 2009 USSG are applicable.
- b. Base Offense Based upon USSG § 2C1.1, the total offense level is 34, calculated as follows:

§ 2C1.1(a)(2)	Base Offense Level	12
§ 2C1.1(b)(1)	Specific Offense Characteristic (More than one bribe)	+2
§ 2C1.1(b)(2)	Specific Offense Characteristic (Value of Benefit Received > \$7,000,000 based on profits received from ABB Inc.'s CFE contracts, Sitracen and Evergreen, totaling \$7,814,673), USSG § 2C1.1,comment (n. 3) and incorporating § 2B1.1(b)(1)(K)	+20
TOTAL		34
- c. Base Fine Based upon § 8C2.4(a)(1) and (d), the base fine is \$28,500,000 (fine corresponding to the Base Offense level of 34 as provided in Offense Level Table)
- d. Culpability Score Based upon § 8C2.5, the culpability score is 5, calculated as follows:

§ 2C2.5(a)	Base Culpability Score	5
§ 2C2.5(b)(3)(B)	The unit of the organization had more than 200 employees and an individual within high-level personnel of the unit participated in the offense.	+3

§ 2C2.5(c)(2)(A)	The organization or separately managed line of business committed a part of the instant offense less than five years after a criminal adjudication based on similar misconduct.	+2
§ 2C2.5(g)(1)	The organization prior to an imminent threat of disclosure or government investigation and within a reasonably prompt time after becoming aware of the offense, reported the offense to appropriate governmental authorities, fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.	- 5
TOTAL		<hr/> 5

e. Calculation of Fine Range

Base Fine	\$28,500,000
Multipliers	1.0 (min) / 2.0 (max)
Fine Range	\$28,500,000 / \$57,000,000

SENTENCING FACTORS

18. The parties agree that pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the Court must determine an advisory sentencing guideline range pursuant to the USSG. The court will then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in 18 U.S.C. § 3553(a). The parties' agreement herein to any

guideline sentencing factors constitutes proof of those factors sufficient to satisfy the applicable burden of proof.

SENTENCING RECOMMENDATION

19. Fine. Assuming ABB Inc. accepts responsibility as explained above, the parties will recommend the imposition of a fine in the amount of \$28,500,000 payable to the Clerk of the Court for the United States District Court for the Southern District of Texas. The parties further agree that this amount shall be paid as a lump sum within ten (10) business days after the imposition of sentencing in this matter.

20. The parties have agreed that the fine of \$28,500,000 for the defendant is an appropriate disposition of the case based on the following factors:

- a. By entering and fulfilling the obligations under this Agreement, the defendant has demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.
- b. The plea underlying this Agreement is the result of the voluntary disclosure made by ABB Ltd and ABB Inc., through its counsel, to the Fraud Section beginning in April 2005 and the disclosure of the extensive investigation its attorneys

conducted and continued to conduct into the operations of ABB Inc., its parents, affiliates, and subsidiaries.

- c. At the time of the initial disclosure, the conduct was unknown to the Fraud Section.
- d. The extraordinary cooperation of ABB Ltd and the defendant ABB Inc. has lead, in part, to the guilty plea by ABB Inc. agent Fernando Maya Basurto, 09-CR-325, and the indictment of former ABB Inc. General Manager John Joseph O'Shea, 09-CR-629.
- e. By entering into a deferred prosecution agreement with the Fraud Section, ABB Ltd has, among other things, agreed to: (i) implement a compliance and ethics program designed to detect and prevent violations of the FCPA, U.S. commercial bribery laws, and all applicable foreign bribery laws throughout its operations, including those of ABB Ltd's subsidiaries, affiliates, and successors; and (ii) agreed to enhanced compliance obligations.

21. The parties agree not to seek any adjustments to, or departures from, the agreed upon payment of \$28,500,000 as set forth herein.

22. Organizational Probation. The parties agree that organizational probation is appropriate in this case and shall include, as a condition of probation: (1) the creation and implementation of a Compliance Code as described in Attachment C, and (2) the fulfillment of the enhanced compliance obligations, as described in Attachment D. The parties recommend a three (3) year term of probation, which corresponds to the period of the deferred prosecution agreement of ABB Ltd, filed simultaneously with this Agreement.

23. Community Service. The parties agree that community service need not be ordered in this case.

24. Forfeiture. The parties agree that forfeiture need not be ordered in this case.

25. Special Assessment. The defendant agrees to pay the Clerk of the Court for the United States District Court for the Southern District of Texas within ten (10) business days of the time of sentencing the mandatory special assessment of \$400 per count.

26. Waiver of Presentence Report. The parties further agree, with the permission of the Court, to waive the requirement for a pre-sentence report pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A), based on a finding by the Court that the record contains information sufficient to enable the Court to

meaningfully exercise its sentencing power. However, the parties agree that in the event the Court orders the preparation of a presentence report prior to sentencing, such order will not affect the agreement set forth herein.

27. Entry of the Guilty Plea and Sentencing. The parties further agree to ask the Court's permission to combine the entry of the plea and sentencing into one proceeding. However, the parties agree that in the event the Court orders that the entry of the guilty plea and the sentencing hearing(s) occur at separate proceedings, such an order will not affect the agreement set forth herein.

28. Court Not Bound. The Court is not bound by the recommendation of the parties or those made in any presentence report. Because this Agreement is made under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, ABB Inc. may not withdraw any guilty plea or rescind this Agreement if the Court does not follow the agreements or recommendations herein.

29. Full Disclosure/Reservation of Rights. In the event the Court directs the preparation of a presentence report, the Fraud Section will fully inform the preparer of the presentence report and the Court of the facts and law related to ABB Inc.'s case. Except as set forth in this Agreement, the parties reserve all other rights to make sentencing recommendations and respond to motions and arguments by the opposition.

BREACH OF AGREEMENT

30. If ABB Inc. breaches the terms of this Agreement, or commits any new criminal offense between the signing of this Agreement and sentencing, the Fraud Section is relieved of its obligations under this Agreement but ABB Inc. may not withdraw its guilty plea. Whether the defendant has breached any provision of this Agreement shall be determined solely by the Fraud Section.

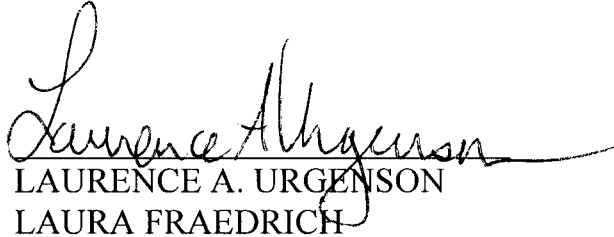
31. In the event of a breach of this Agreement by ABB Inc., should the Fraud Section elect to pursue criminal charges, or any civil or administrative action that was not filed as a result of this Agreement, then:

- a. ABB Inc. agrees that any applicable statute of limitations is tolled between the date of ABB Inc.'s signing of this Agreement and the discovery by the Fraud Section of any breach by the defendant; and
- b. ABB Inc. gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such prosecution or action, except that such defenses existed as of the date of the signing of this Agreement.

COMPLETE AGREEMENT

32. This plea agreement, including its attachments, states the full extent of the agreement between the parties. There are no other promises or agreements, express or implied. Any modification of this plea agreement shall be valid only if set forth in writing in a supplemental or revised plea agreement signed by all parties.

FOR ABB INC.



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FOR THE FRAUD SECTION

DENIS J. McINERNEY, Chief



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Filed in Houston, Texas on Sept. 29, 2010.

GENERAL COUNSEL'S CERTIFICATE

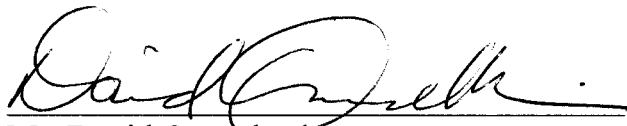
I have read this Agreement and carefully reviewed every part of it with outside counsel for ABB Inc. I understand the terms of this Agreement and voluntarily agree, on behalf of ABB Inc., to each of its terms. Before signing this Agreement, I consulted outside counsel for ABB Inc. Counsel fully advised me of the rights of ABB Inc., of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of ABB Inc. I have advised and caused outside counsel for ABB Inc. to advise the Board of Directors fully of the rights of ABB Inc., of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of ABB Inc., in any way to enter into this Agreement. I am also satisfied with outside counsels' representation in this matter. I certify that I am General Counsel for ABB Inc. and that I have been duly authorized by ABB Inc. to execute this Agreement on behalf of ABB Inc.

Date: Sept. 29, 2010

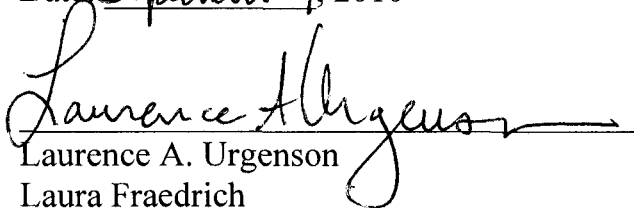
ABB Inc.

By: 
Mr. David Onuscheck

CERTIFICATE OF COUNSEL

We are counsel for ABB Inc. in the matter covered by this Agreement. In connection with such representation, we have examined relevant ABB Inc. documents and have discussed the terms of this Agreement with the ABB Inc. Board of Directors. Based on our review of the foregoing materials and discussions, we are of the opinion that the representative of ABB Inc. has been duly authorized to enter into this Agreement on behalf of ABB Inc. We have carefully reviewed the terms of this Agreement with the Board of Directors and the General Counsel of ABB Inc. We have fully advised them of the rights of ABB Inc., of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To our knowledge, the decision of ABB Inc. to enter into this Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: September 29, 2010

A handwritten signature in cursive script, appearing to read "Laurence A. Urgenson", written over a horizontal line.

Laurence A. Urgenson
Laura Fraedrich
Audrey L. Harris
Kirkland & Ellis, LLP
Counsel for ABB Inc.