

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source, and does more than merely affect the credibility of other witnesses.”

(eee) R.C.M. 705(a) is revised to read as follows:

“(a) *In general.* Subject to such limitations as the Secretary concerned may prescribe, an accused and the convening authority or the accused and special trial counsel, as applicable, may enter into a plea agreement in accordance with this rule. In cases over which special trial counsel has exercised authority and has not deferred, an agreement may only be entered into between special trial counsel and the accused; however, any such agreement may bind convening authorities and other commanders subject to such limitations as prescribed by the Secretary concerned.”

(fff) R.C.M. 705(b) is amended to read as follows:

“(b) *Nature of agreement.* A plea agreement may include:

(1) A promise by the accused to plead guilty to, or to enter a confessional stipulation as to, one or more charges and specifications, and to fulfill such additional terms or conditions that may be included in the agreement and that are not prohibited under this rule; and

(2) A promise by the convening authority or special trial counsel, as applicable, to do one or more of the following:

(A) Refer the charges to a certain type of court-martial;

(B) Refer a capital offense as noncapital;

(C) Withdraw one or more charges or specifications from the court-martial;

(D) Have trial counsel present no evidence as to one or more specifications or

portions thereof; and

(E) Limit the sentence that may be adjudged by the court-martial for one or more charges and specifications in accordance with R.C.M. 705(d); or

(3) A promise by either the convening authority or special trial counsel to take other action within their authority.”

(ggg) R.C.M. 705(c)(2) is amended to read as follows:

“(2) *Permissible terms and conditions.* R.C.M. 705(c)(1)(A) and (1)(B) do not prohibit the convening authority, special trial counsel, or the accused from proposing the following additional conditions:

(A) A promise to enter into a stipulation of fact concerning offenses to which a plea of guilty or to which a confessional stipulation will be entered;

(B) A promise to testify as a witness in the trial of another person;

(C) A promise to provide restitution;

(D) A promise to conform the accused’s conduct to certain conditions of probation before action by the convening authority in a summary court-martial or before entry of judgment in a general or special court-martial as well as during any period of suspension of the sentence, provided that the requirements of R.C.M. 1108 must be complied with before an alleged violation of such terms may relieve the Government of the obligation to fulfill the agreement;

(E) A promise to waive procedural requirements such as the Article 32 preliminary hearing, the right to trial by a court-martial composed of members, the right to request trial by military judge alone, the right to elect sentencing by members if applicable, or the opportunity to obtain the personal appearance of witnesses at presentencing proceedings;