

F.#2017R00353

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

Cr. No. 17-698 (KAM)

KEPPEL OFFSHORE &  
MARINE USA, INC.

Defendant.

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The United States of America, by and through the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section"), and the United States Attorney's Office for the Eastern District of New York (the "Office"), and Keppel Offshore & Marine USA, Inc. (the "Defendant"), by and through its undersigned attorneys, and through its authorized representative, pursuant to authority granted by the Defendant's Board of Directors hereby submit and enter into this plea agreement (the "Agreement"), pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. The terms and conditions of this Agreement are as follows:

TERM OF THE DEFENDANT'S OBLIGATIONS UNDER THE AGREEMENT

1. Except as otherwise provided in Paragraph 11 below in connection with the Defendant's cooperation obligations, the Defendant's obligations under the Agreement shall last and be effective for a period beginning on the date on which the Information is filed and ending three years from the date on which the Information is filed (the "Term"). The Defendant agrees, however, that, in the event the Fraud Section and the Office determine, in their sole discretion, that the Defendant has failed specifically to perform or to fulfill completely each of the Defendant's obligations under this Agreement, an extension or extensions of the Term may be

imposed by the Fraud Section and the Office, in their sole discretion, for up to a total additional time period of one year. Any extension of the Term extends all terms of this Agreement for an equivalent period.

#### RELEVANT CONSIDERATIONS

2. The Fraud Section and the Office enter into this Agreement based on the individual facts and circumstances presented by this case, including:
  - a. the Defendant's parent company, Keppel Offshore & Marine Ltd. ("KOM") is entering into a deferred prosecution agreement ("the KOM DPA") and agreed to pay a total criminal penalty of \$422,216,980, simultaneously to the Defendant entering this guilty plea;
  - b. the Defendant and its parent company did not voluntarily disclose to the Fraud Section and the Office the conduct described in the Statement of Facts, attached hereto as Attachment B (the "Statement of Facts"). Although the Defendant and its parent notified the Fraud Section about publicly-reported allegations in Brazil prior to the Fraud Section and the Office contacting the Defendant, because the Fraud Section and the Office were already aware of the allegations, the Defendant was not eligible for voluntary disclosure credit;
  - c. the Defendant and its parent company received full credit for their substantial cooperation with the Fraud Section and the Office's investigation, including conducting a thorough internal investigation, meeting the Fraud Section and the Office's requests promptly, proactively identifying issues and facts that would likely be of interest to the Fraud Section and the Office, making regular factual presentations to the Fraud Section and the Office, agreeing to make foreign-based employees available for interviews in the United States, producing documents to the Fraud Section and the Office from foreign countries in ways that did

not implicate foreign data privacy laws, and collecting, analyzing, and organizing voluminous evidence and information for the Fraud Section and the Office;

d. the Defendant and its parent company provided to the Fraud Section and the Office all relevant facts known to them, including information about the individuals involved in the misconduct, which assisted the Fraud Section's and the Office's prosecution of individuals in this case;

e. the Defendant's parent company engaged in extensive remedial measures, including: taking disciplinary action against 17 former or current employees in relation to the misconduct described in the Statement of Facts attached to the KOM DPA; causing seven employees who participated in the misconduct described in the Statement of Facts attached to the KOM DPA to separate from KOM; issuing demotions and/or written warnings to seven employees who failed to detect the misconduct and/or failed to take appropriate steps to mitigate corruption and compliance risks; imposing approximately \$8.9 million in financial sanctions on 12 former or current employees as part of the disciplinary process; and conducting individualized anti-corruption and compliance training for six employees;

f. the Defendant's parent company has enhanced and has committed to continuing to enhance its compliance program and internal controls, including by implementing heightened controls and additional procedures and policies relating to third parties; instituting a compliance governance framework, including a formal compliance function; developing a comprehensive anticorruption training program; conducting ongoing reviews of its compliance program with the assistance of outside advisors, and ensuring that its compliance program satisfies the minimum elements set forth in Attachment C to the KOM DPA (Corporate Compliance Program);

- g. The nature and seriousness of the offense conduct, including the involvement of high-level executives of the Defendant and its parent company;
- h. the Defendant has no prior criminal history;
- i. the Defendant and its parent company have agreed to continue to cooperate with the Fraud Section and the Office in any ongoing investigation of the conduct of the Defendant and its officers, directors, employees, agents, business partners, and consultants relating to violations of the Foreign Corrupt Practices Act of 1977 (“FCPA”); and
- j. accordingly, after considering (a) through (i) above, the Defendant and its parent company received full cooperation and remediation credit of 25 percent off the bottom of the applicable United States Sentencing Guidelines (the “Sentencing Guidelines” or “USSG”) fine range.

#### THE DEFENDANT’S AGREEMENT

3. The Defendant agrees to knowingly waive indictment and its right to challenge venue in the United States District Court for the Eastern District of New York, and pursuant to Fed. R. Crim. P. 11(c)(1)(C), to plead guilty to a one-count criminal Information charging the Defendant with conspiracy to commit offenses against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the FCPA, as amended, Title 15, United States Code, Sections 78dd-2 and 78dd-3 (the “Information”). The Defendant further agrees to persist in that plea through sentencing.

4. The Defendant understands that, to be guilty of this offense, the following essential elements of the offense must be satisfied: An unlawful agreement between two or more individuals to violate the FCPA existed; specifically,

- a. being a domestic concern, to make use of the mails and means and

instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, to a foreign political party and official thereof, and to a person while knowing that all or a portion of such money and thing of value would be offered, given, and promised to a foreign official and to a foreign political party and official thereof, for purposes of: (i) influencing acts and decisions of such foreign official, foreign political party and official thereof in his, her or its official capacity; (ii) inducing such foreign official, foreign political party and official thereof, to do and omit to do acts in violation of the lawful duty of such official and party; (iii) securing any improper advantage; and (iv) inducing such foreign official, foreign political party and official thereof to use his, her or its influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist KOM and others in obtaining and retaining business for and with, and directing business to, KOM and others, contrary to Title 15, United States Code, Section 78dd-2; and

b. while in the territory of the United States, corruptly to make use of the mails and means and instrumentalities of interstate commerce or to do any act in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, to a foreign political party and official thereof, and to a person while knowing that all or a portion of such money and thing of value would be offered, given, and promised to a foreign official and to a foreign political party and official thereof, for purposes of: (i) influencing acts and decisions of such foreign official, foreign political party and official thereof in his, her or its official capacity; (ii) inducing such foreign official, foreign political party and official thereof to do and omit to do

acts in violation of the lawful duty of such official and party; (iii) securing any improper advantage; and (iv) inducing such foreign official, foreign political party and official thereof to use his, her or its influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist KOM and others in obtaining and retaining business for and with, and directing business to, KOM and others, contrary to Title 15, United States Code, Section 78dd-3;

c. the Defendant knowingly and willfully joined that conspiracy;

d. one of the members of the conspiracy knowingly committed or caused to be committed, in the Eastern District of New York or elsewhere in the United States, at least one of the overt acts charged in the Information; and

e. the overt acts were committed to further some objective of the conspiracy.

5. The Defendant understands and agrees that this Agreement is between the Fraud Section, the Office, and the Defendant and does not bind any other division or section of the Department of Justice or any other federal, state, local, or foreign prosecuting, administrative, or regulatory authority. Nevertheless, the Fraud Section and the Office will bring this Agreement and the nature of the conduct, the nature and quality of the cooperation and remediation of the Defendant and its parent company, its direct or indirect affiliates, subsidiaries, and joint ventures, to the attention of other law enforcement, regulatory, and debarment authorities, as well as those of Multilateral Development Banks (“MDBs”), if requested by the Defendant. By agreeing to provide this information to such authorities, the Fraud Section and the Office are not agreeing to advocate on behalf of the Defendant or its parent company, but rather are agreeing to provide facts to be evaluated independently by such authorities.

6. 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 Defendant's Board of Directors, in the form attached to this Agreement as Attachment A ("Certificate of Corporate Resolutions"), authorizes the Defendant to enter into this Agreement and take all necessary steps to effectuate this Agreement, and that the signatures on this Agreement by the Defendant and its counsel are authorized by the Defendant's Board of Directors, on behalf of the Defendant.

7. The Defendant agrees that it has the full legal right, power, and authority to enter into and perform all of its obligations under this Agreement.

8. The Defendant agrees to abide by all terms and obligations of this Agreement as described herein, including, but not limited to, the following:

- a. to plead guilty as set forth in this Agreement;
- b. to abide by all sentencing stipulations contained in this Agreement;
- c. to appear, through its duly appointed representatives, as ordered for all court appearances, and obey any other ongoing court order in this matter, consistent with all applicable U.S. and foreign laws, procedures, and regulations;
- d. to commit no further crimes;
- e. to be truthful at all times with the Court;
- f. to pay the applicable fine and special assessment;
- g. to cooperate fully with the Fraud Section and the Office as described in Paragraph 11; and
- h. to implement a compliance program as described in Paragraph 9 and Attachment C to the KOM DPA.

9. The Defendant and its parent company represent that they have implemented and will continue to implement a compliance and ethics program throughout their operations, including those of their affiliates, agents, and joint ventures, and those of their contractors and subcontractors whose responsibilities include interacting with foreign officials or other activities carrying a high risk of corruption, designed to prevent and detect violations of the FCPA and other applicable anti-corruption laws. Where necessary and appropriate, the Defendant will adopt new or modify existing policies and procedures in order to ensure that the Defendant maintains a rigorous anti-corruption compliance program that incorporates relevant policies and procedures designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. The compliance program will include, but not be limited to, the minimum elements set forth in Attachment C to the KOM DPA.

10. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Defendant and its parent company agree that in the event that, during the Term of the Agreement, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Defendant's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the Statement of Facts, as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the Fraud Section's and the Office's ability to declare a breach under this Agreement is applicable in full force to that entity. The Defendant agrees that the failure to include these provisions in the transaction will make any



such transaction null and void. The Defendant shall provide notice to the Fraud Section and the Office at least 30 days prior to undertaking any such sale, merger, transfer, or other change in corporate form. If the Fraud Section and the Office notify the Defendant prior to such transaction (or series of transactions) that they have determined that the transaction or transactions have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined in the sole discretion of the Fraud Section and the Office, the Defendant agrees that such transaction or transactions will not be consummated. In addition, if at any time during the Term of the Agreement the Fraud Section and the Office determine in their sole discretion that the Defendant has engaged in a transaction or transactions that have the effect of circumventing or frustrating the enforcement purposes of this Agreement, they may deem them a breach of this Agreement pursuant to Paragraphs 24 to 27 of this Agreement. Nothing herein shall restrict the Defendant from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the Fraud Section and the Office.

11. The Defendant and its parent company shall, subject to applicable law and regulations, cooperate fully with the Fraud Section and the Office in any and all matters relating to the conduct described in this Agreement and the Statement of Facts, and any individual or entity referred to therein, as well as any and all matters relating to corrupt payments, until the later of the date upon which all investigations, prosecutions and proceedings, arising out of such conduct are concluded, or the end of the Term. At the request of the Fraud Section and the Office, the Defendant shall also cooperate fully with other domestic or foreign law enforcement

and regulatory authorities and agencies, as well as the MDBs in any investigation of the Defendant, its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the Statement of Facts and any other conduct relating to corrupt payments under investigation by the Fraud Section or the Office at any time during the three-year period. The Defendant agrees that its cooperation pursuant to this Paragraph shall include, but not be limited to, the following, subject to local law and regulations, including relevant data privacy and national security laws and regulations:

a. The Defendant shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities, those of its parent company and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Defendant has any knowledge or about which the Fraud Section and the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Defendant to provide to the Fraud Section and the Office, upon request, any document, record or other tangible evidence about which the Fraud Section and the Office may inquire of the Defendant.

b. Upon request of the Fraud Section and the Office, the Defendant shall designate knowledgeable employees, agents or attorneys to provide to the Fraud Section and the Office the information and materials described in Paragraph 11(a) above on behalf of the Defendant. It is further understood that the Defendant must at all times provide complete, truthful, and accurate information.

c. The Defendant shall use its best efforts to make available for interviews or testimony, as requested by the Fraud Section and the Office, present or former officers, directors, employees, agents and consultants of the Defendant. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Defendant, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Fraud Section and the Office pursuant to this Agreement, the Defendant consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government, as well as the MDBs, of such materials as the Fraud Section and the Office, in their sole discretion, shall deem appropriate.

12. In addition to the obligations in Paragraph 11, during the Term, should the Defendant learn of any evidence or allegation of conduct that may constitute a violation of the FCPA anti-bribery provisions had the conduct occurred within the jurisdiction of the United States, the Defendant shall promptly report such evidence or allegation to the Fraud Section and the Office. Thirty days prior to the end of the Term, the Defendant, by the Chief Executive Officer of the Defendant and the Chief Financial Officer of the Defendant, will certify to the Fraud Section and the Office that the Defendant has met its disclosure obligations pursuant to this Paragraph. Each certification will be deemed a material statement and representation by the Defendant to the executive branch of the United States for purposes of 18 U.S.C. § 1001, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

13. The Defendant agrees that any fine or restitution imposed by the Court will be due and payable within 10 business days of sentencing, and the Defendant will not attempt to avoid or delay payment, except as otherwise specified in Paragraph 21 below. The Defendant further agrees to pay to the Clerk of the Court for the United States District Court for the Eastern District of New York the mandatory special assessment of \$400 (pursuant to 18 U.S.C. § 3013(a)(2)(B)) within 10 business days from the date of sentencing.

THE UNITED STATES' AGREEMENT

14. In exchange for the guilty plea of the Defendant and the complete fulfillment of all of its obligations under this Agreement, the Fraud Section and the Office agree that they will not file additional criminal charges against the Defendant or any of its direct or indirect subsidiaries or joint ventures, except for the deferred prosecution agreement entered into with KOM on December 22, 2017, relating to any of the conduct described in the Statement of Facts or the Information filed pursuant to this Agreement. The Fraud Section and the Office, however, may use any information related to the conduct described in the Statement of Facts against the Defendant: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by the Defendant. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with the Defendant. The Defendant agrees that nothing in this Agreement is intended to release the Defendant from any and all of the Defendant's tax liabilities and reporting obligations for any and all income not properly reported and/or legally or illegally obtained or derived.

## FACTUAL BASIS

15. The Defendant is pleading guilty because it is guilty of the charges contained in the Information. The Defendant admits, agrees, and stipulates that the factual allegations set forth in the Information and the Statement of Facts are true and correct, that it is responsible for the acts of its officers, directors, employees, and agents described in the Information and the Statement of Facts, and that the Information and the Statement of Facts accurately reflect the Defendant's criminal conduct. The Defendant stipulates to the admissibility of the Statement of Facts in any proceeding by the Fraud Section and the Office, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the attached Statement of Facts at any such proceeding.

## THE DEFENDANT'S WAIVER OF RIGHTS, INCLUDING THE RIGHT TO APPEAL

16. Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 limit the admissibility of statements made in the course of plea proceedings or plea discussions in both civil and criminal proceedings, if the guilty plea is later withdrawn. The Defendant expressly warrants that it has discussed these rules with its counsel and understands them. Solely to the extent set forth below, the Defendant voluntarily waives and gives up the rights enumerated in Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Specifically, the Defendant understands and agrees that any statements that it makes in the course of its guilty plea or in connection with the Agreement are admissible against it for any purpose in any U.S. federal criminal proceeding if, even though the Fraud Section and the Office have fulfilled all of their obligations under this Agreement and the Court has imposed the agreed-upon sentence, the Defendant nevertheless withdraws its guilty plea.

17. The Defendant is satisfied that the Defendant's attorneys have rendered effective assistance. The Defendant understands that by entering into this Agreement, the Defendant surrenders certain rights as provided in this Agreement. The Defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings;
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and
- e. pursuant to Title 18, United States Code, Section 3742, the right to appeal the sentence imposed.

Nonetheless, the Defendant knowingly waives the right to appeal or collaterally attack the conviction and any sentence within the statutory maximum described below (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever except those specifically excluded in this Paragraph, in exchange for the concessions made by the Fraud Section and the Office in this plea agreement. This Agreement does not affect the rights or obligations of the Fraud Section and the Office as set forth in Title 18, United States Code, Section 3742(b). The Defendant also knowingly waives the right to bring any collateral challenge challenging either the conviction, or the sentence imposed in this case. The Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any

records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a. The Defendant waives all defenses based on the statute of limitations and venue with respect to any prosecution related to the conduct described in the Information and the Statement of Facts including 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) the Defendant violates this Agreement; or (c) the plea is later withdrawn, provided such prosecution is brought within one year of any such vacation of conviction, violation of the Agreement, or withdrawal of plea plus the remaining time period of the statute of limitations as of the date that this Agreement is signed. The Fraud Section and the Office are free to take any position on appeal or any other post-judgment matter. The parties agree that any challenge to the Defendant's sentence that is not foreclosed by this Paragraph will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) this waiver. Nothing in the foregoing waiver of appellate and collateral review rights shall preclude the Defendant from raising a claim of ineffective assistance of counsel in an appropriate forum.

#### PENALTY

18. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371, is: a fine of \$500,000 or twice the gross pecuniary gain or gross pecuniary loss resulting from the offense, whichever is greatest, Title 18, United States Code, Section 371 and Title 18, United States Code, Section 3571(c), (d); five years' probation, Title 18, United States Code, Section 3561(c)(1); a mandatory special assessment of \$400 per count, Title 18, United States Code, Section 3013(a)(2)(B), and restitution as ordered by the

Court. In this case, the parties agree that the gross pecuniary gain resulting from the offense is \$3,231,088. Therefore, pursuant to 18 U.S.C. § 3571(d), the maximum fine that may be imposed is twice the gross gain, or approximately \$6,462,176 per offense.

SENTENCING RECOMMENDATION

19. 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 Sentencing Guidelines. The Court will then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in Title 18, United States Code, Section 3553(a). The parties' agreement herein to any guideline sentencing factors constitutes proof of those factors sufficient to satisfy the applicable burden of proof. The Defendant also understands that if the Court accepts this Agreement, the Court is bound by the sentencing provisions in Paragraph 18.

20. The Fraud Section, the Office and the Defendant agree that a faithful application of the Sentencing Guidelines to determine the applicable fine range yields the following analysis:

- a. The 2016 USSG are applicable to this matter.
- b. Offense Level—Bribery Conduct (Highest Offense Level). Based upon USSG § 2C1.1, the total offense level is 30, calculated as follows:

(a)(2)	Base Offense Level	12
(b)(1)	More than One Bribe	+2
(b)(2)	Value of Benefit more than \$1,500,000	+16
<b>Total Offense Level</b>		<b>30</b>
- c. Base Fine. Based upon USSG §§ 8C2.4(a) and (e), the base fine is \$10,500,000.



d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 3, calculated as follows:

(a)	Base Culpability Score	5
(g)(2)	Cooperation and Acceptance	-2
	<b>TOTAL</b>	<u>3</u>

Calculation of Fine Range:

Base Fine (USSG § 8C2.4(a), (e))	\$10,500,000
Multipliers (USSG § 8C2.6)	0.60 (min)/ 1.2 (max)
Fine Range (USSG § 8C2.7)	\$6,300,000 (min)/ \$12,600,000 (max)

21. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the Fraud Section, the Office and the Defendant agree that the following represents the appropriate disposition of the case:

a. Disposition. Pursuant to Fed. R. Crim, P. 11(c)(1)(C), the Fraud Section, the Office and the Defendant agree that the appropriate disposition of this case is as set forth above, and agree to recommend jointly that the Court, at a hearing to be scheduled at an agreed upon time, impose a sentence requiring the Defendant to pay a criminal fine, as noted below. Specifically, the parties agree, based on the application of the United States Sentencing Guidelines, that the appropriate total criminal penalty is \$4,725,000 (“the recommended sentence”). This reflects a 25 percent discount off the bottom of the applicable Sentencing Guidelines fine range. The parties agree that, in light of the KOM DPA, which requires KOM to pay a Total Criminal Penalty of \$422,216,980 (including a contemplated \$4,725,000 fine on behalf of the Defendant), as a result of the misconduct committed by both KOM and the

Defendant, as well as the factors cited herein and in the KOM DPA, a \$4,725,000 fine should be imposed on the Defendant.

b. The Defendant shall not seek or accept directly or indirectly reimbursement or indemnification from any source, other than KOM, with regard to the fine, penalty, forfeiture, or disgorgement amounts that Defendant pays pursuant to the Agreement or any other agreement entered into with an enforcement authority or regulator concerning the facts set forth in the Statement of Facts. The Defendant further acknowledges that no tax deduction may be sought in connection with the payment of any part of this fine. The Fraud Section and the Office believe that a disposition that includes a fine of \$4,725,000 is appropriate based on the factors outlined in Paragraph 6 above and those in 18 U.S.C. § 3553(a).

c. Mandatory Special Assessment. The Defendant shall pay to the Clerk of the Court for the United States District Court for the Eastern District of New York within 10 days of the time of sentencing the mandatory special assessment of \$400.

22. This Agreement is presented to the Court pursuant to Fed. R. Crim. P. 11(c)(1)(C). The Defendant understands that, if the Court rejects this Agreement, the Court must: (a) inform the parties that the Court rejects the Agreement; (b) advise the Defendant's counsel that the Court is not required to follow the Agreement and afford the Defendant the opportunity to withdraw its plea; and (c) advise the Defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the Defendant than the Agreement contemplated. The Defendant further understands that if the Court refuses to accept any provision of this Agreement, neither party shall be bound by the provisions of the Agreement.

23. The Defendant, the Fraud Section and the Office waive the preparation of a Pre-Sentence Investigation Report and intend to seek a sentencing by the Court immediately

following the Rule 11 hearing in the absence of a Pre-Sentence Investigation Report. The Defendant understands that the decision whether to proceed with the sentencing proceeding without a Pre-Sentence Investigation Report is exclusively that of the Court. In the event the Court directs the preparation of a Pre-Sentence Investigation Report, the Fraud Section and the Office will fully inform the preparer of the Pre-Sentence Investigation Report and the Court of the facts and law related to the Defendant's case.

#### BREACH OF AGREEMENT

24. If the Defendant (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information; (c) fails to cooperate as set forth in Paragraphs 11 and 12 of this Agreement; (d) fails to implement a compliance program as set forth in Paragraph 9 of this Agreement and Attachment C to the KOM DPA; (e) commits any acts that, had they occurred within the jurisdictional reach of the FCPA, would be a violation of the FCPA; or (f) otherwise fails specifically to perform or to fulfill completely each of the Defendant's obligations under the Agreement, regardless of whether the Fraud Section and the Office become aware of such a breach after the Term, the Defendant shall thereafter be subject to prosecution for any federal criminal violation of which the Fraud Section and the Office have knowledge, which may be pursued by the Fraud Section, the Office or any other United States Attorney's Office that has venue over the conduct. Determination of whether the Defendant has breached the Agreement and whether to pursue prosecution of the Defendant shall be in the Fraud Section and the Office's sole discretion. Any such prosecution may be premised on information provided by the Defendant or its personnel. Any such prosecution relating to the conduct described in the Information and the attached Statement of Facts or relating to conduct known to the Fraud Section and the Office prior to the

date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Defendant, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term of the Agreement plus one year. Thus, by signing this Agreement, the Defendant agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term of the Agreement plus one year. The Defendant 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 to the extent that such defenses existed as of the date of the signing of this Agreement. In addition, the Defendant agrees that the statute of limitations as to any violation of federal law that occurs during the term of the cooperation obligations provided for in Paragraph 11 of the Agreement will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Fraud Section and the Office are made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

25. In the event the Fraud Section and the Office determine that the Defendant has breached this Agreement, the Fraud Section and the Office agree to provide the Defendant with written notice of such breach prior to instituting any prosecution resulting from such breach. Within 30 days of receipt of such notice, the Defendant shall have the opportunity to respond to the Fraud Section and the Office in writing to explain the nature and circumstances of such breach, as well as the actions the Defendant has taken to address and remediate the situation,

which explanation the Fraud Section and the Office shall consider in determining whether to pursue prosecution of the Defendant.

26. In the event that the Fraud Section and the Office determine that the Defendant has breached this Agreement: (a) all statements made by or on behalf of the Defendant to the Fraud Section and the Office or to the Court, including the Information and the Statement of Facts, and any testimony given by the Defendant before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Fraud Section and the Office against the Defendant; and (b) the Defendant shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Defendant prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Defendant, will be imputed to the Defendant for the purpose of determining whether the Defendant has violated any provision of this Agreement shall be in the sole discretion of the Fraud Section and the Office.

27. The Defendant acknowledges that the Fraud Section and the Office have made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Defendant breaches this Agreement and this matter proceeds to judgment. The Defendant further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

## PUBLIC STATEMENTS BY THE DEFENDANT

28. The Defendant expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Defendant make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above or the facts described in the Information and the Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Defendant described below, constitute a breach of this Agreement, and the Defendant thereafter shall be subject to prosecution as set forth in Paragraphs 24 to 27 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Information or the Statement of Facts will be imputed to the Defendant for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Fraud Section and the Office. If the Fraud Section and the Office determine that a public statement by any such person contradicts in whole or in part a statement contained in the Information or the Statement of Facts, the Fraud Section and the Office shall so notify the Defendant, and the Defendant may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. The Defendant shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Information and the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Information or the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Defendant in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Defendant.

29. The Defendant agrees that if it or any of its direct or indirect subsidiaries or affiliates over which the Defendant exercises control issues a press release or holds any press conference in connection with this Agreement, the Defendant shall first consult the Fraud Section and the Office to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Fraud Section, the Office and the Defendant; and (b) whether the Fraud Section and the Office have any objection to the release or statement.

[INTENTIONALLY LEFT BLANK]

COMPLETE AGREEMENT


30. This document, 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 Agreement shall be valid only if set forth in writing in a supplemental or revised plea agreement signed by all parties.

AGREED:

**FOR KEPPEL OFFSHORE & MARINE USA, INC.:**


Date: 22/12/17

By: \_\_\_\_\_

  
Nicholas Choo Kwang Hui  
Corporate Secretary  
Keppel Offshore & Marine USA, Inc.

Date: 12/22/2017

By: \_\_\_\_\_


  
Sean Hecker  
David A. O'Neil  
Debevoise & Plimpton LLP  
Outside counsel for Keppel Offshore &  
Marine USA, Inc.

**FOR THE U.S. DEPARTMENT OF JUSTICE:**

BRIDGET M. ROHDE  
United States Attorney  
Eastern District of New York

SANDRA L. MOSER  
Chief, Fraud Section  
Criminal Division  
U.S. Department of Justice

  
\_\_\_\_\_  
Patrick T. Hein  
Assistant U.S. Attorney

  
\_\_\_\_\_  
Derek J. Ettinger  
David M. Fuhr  
Trial Attorneys

Date: \_\_\_\_\_

12 / 22 / 17



COMPANY OFFICER'S CERTIFICATE

I have read the plea agreement between Keppel Offshore & Marine U.S.A., Inc. (the "Defendant") and the United States of America, by and through the United States Department of Justice, Criminal Division, Fraud Section, and the United States Attorney's Office for the Eastern District of New York (the "Agreement") and carefully reviewed every part of it with outside counsel for the Defendant. I understand the terms of the Agreement and voluntarily agree, on behalf of the Defendant, to each of its terms. Before signing the Agreement, I consulted outside counsel for the Defendant. Counsel fully advised me of the rights of the Defendant, of possible defenses, of the United States Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

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


No promises or inducements have been made other than those contained in the Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing the Agreement on behalf of the Defendant, in any way to enter into the Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the

Corporate Secretary for the Defendant and that I have been duly authorized by the Defendant to execute the Agreement on behalf of the Defendant.

Date: 18/12/17

KEPPEL OFFSHORE & MARINE U.S.A., INC.

By:

  
\_\_\_\_\_  
Nicholas Choo Kwang Hui  
Corporate Secretary  
Keppel Offshore & Marine U.S.A., Inc.

CERTIFICATE OF COUNSEL

I am counsel for Keppel Offshore & Marine U.S.A., Inc. (the "Defendant") in the matter covered by the plea agreement between the Defendant and the United States of America, by and through the Department of Justice, Criminal Division, Fraud Section, and the United States Attorney's Office for the Eastern District of New York (the "Agreement"). In connection with such representation, I have examined relevant documents and have discussed the terms of the Agreement with the Board of Directors. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Defendant has been duly authorized to enter into the Agreement on behalf of the Defendant and that the Agreement has been duly and validly authorized, executed, and delivered on behalf of the Defendant and is a valid and binding obligation of the Defendant. Further, I have carefully reviewed the terms of the Agreement with the Board of Directors and the officers of the Defendant. I have fully advised them of the rights of the Defendant, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into the Agreement. To my knowledge, the decision of the Defendant to enter into the Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: 12/19/2017

By: Sean Hecker  
Sean Hecker  
Debevoise & Plimpton LLP  
Counsel for Keppel Offshore & Marine U.S.A., Inc.

**ATTACHMENT A**

CERTIFICATE OF CORPORATE RESOLUTIONS

I, Kim Foong Lee, do hereby certify that I am the President of Keppel Offshore & Marine USA, Inc. (the "Company"), a company incorporated in Delaware, and that the following are true, complete, and correct copies of resolutions adopted by written consent on ~~19 DECEMBER, 2017~~ by the Board of Directors of the Company:

WHEREAS, the Company has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section") and the United States Attorney's Office for the Eastern District of New York (the "Office") regarding issues arising in relation to certain improper payments to foreign officials to assist in obtaining business for the Company; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the Fraud Section and the Office; and

WHEREAS, the Company's outside counsel, Sean Hecker and David A. O'Neil, have advised the Company's Board of Directors of its rights, possible defenses, the Sentencing Guidelines' provisions, and the consequences of entering into such agreement with the Fraud Section and the Office;

Therefore, the Board of Directors has RESOLVED that:

1. The Company acknowledges the filing of the one-count Information charging the Company with a violation of 18 U.S.C. §371;

2. The Company waives indictment on such charges and enters into a plea agreement with the Fraud Section and the Office (the "Plea Agreement");

3. The Company agrees to pay a fine of \$4,725,000 with respect to the conduct described in the Information in the manner described in the Plea Agreement;

4. The Company admits the court's jurisdiction over the Company and the subject matter of such action and consents to the judgment therein;

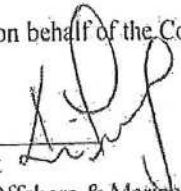
5. The Company accepts all terms and conditions of the Plea Agreement, including, but not limited to, (a) a knowing waiver of its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) a knowing waiver, for purposes of the Plea Agreement and any charges by the United States arising out of the conduct described in the Statement of Facts attached to the Plea Agreement, of any objection with respect to venue and consents to the filing of the Information, as provided under the terms of the Plea Agreement, in the United States District Court for the Eastern District of New York; and (c) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the Statement of Facts or relating to the conduct known to the Fraud Section and the Office prior to the date on which the Plea Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of the Plea Agreement;

6. Nicholas Choo Kwang Hui, Secretary of the Company, is hereby authorized, empowered and directed, on behalf of the Company, to execute the Plea Agreement substantially in such form as reviewed by this Board of Directors, with such changes as Nicholas Choo Kwang Hui may approve;

7. Nicholas Choo Kwang Hui, Secretary of the Company, is hereby authorized, empowered and directed to take any and all actions as may be necessary or appropriate and to approve the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions, including, but not limited to waiving indictment on behalf of the Company, appearing on behalf of the Company in any proceedings related to the Plea Agreement and the matters to which the Plea Agreement relates, execute and deliver any documents necessary to enter into the proposed settlement with the Fraud Section and the Office, enter a guilty plea before the United States District Court for the Eastern District of New York, and accept the sentence of the said court on behalf of the Company; and

8. All of the actions of Nicholas Choo Kwang Hui, Secretary of the Company, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.

Date: 19 DECEMBER 2017

By:   
President  
Keppel Offshore & Marine USA, Inc.

## **ATTACHMENT B**

### **STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the Plea Agreement (the "Agreement") between the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section"), the United States Attorney's Office for the Eastern District of New York (the "Office"), and the defendant Keppel Offshore & Marine USA, Inc. ("KOM USA" or the "Company"), and the parties hereby agree and stipulate that the following information is true and correct. Certain of the facts herein are based on information obtained from third parties by the Fraud Section and the Office through their investigation and described to the Company. KOM USA admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below.

#### **The Foreign Corrupt Practices Act**

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1 et seq. ("FCPA"), was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person.

#### **Relevant Entities and Individuals**

2. The defendant KOM USA was a corporation based in Houston, Texas and incorporated in Delaware, whose executives supervised operations in, among other locations, Brazil. KOM USA was a wholly-owned subsidiary of Keppel Offshore & Marine Ltd. ("KOM"), a Singapore-based corporation that operated shipyards in Asia, the Americas, and Europe. KOM USA's and KOM's business consisted primarily of building mobile offshore



drilling rigs and handling repairs, conversions, and upgrades of shipping vessels. KOM USA was a “domestic concern,” as that term is defined in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1).

3. KOM JV USA was a joint venture between an engineering company and KOM USA incorporated in Delaware. KOM JV USA was a “domestic concern,” as that defined is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1).

4. Petróleo Brasileiro S.A. (“Petrobras”) was a Brazilian state-controlled oil company headquartered in Rio de Janeiro, Brazil, that operated to refine, produce and distribute oil, oil products, gas, biofuels and energy. At all relevant times, the Brazilian government directly owned more than 50% of Petrobras’s common shares with voting rights. Petrobras was controlled by Brazil and performed government functions, and thus was an “agency” and “instrumentality” of a foreign government, as those terms are used in the FCPA, Title 15, United States Code, Sections 78dd-2 and 78dd-3.

5. Sete Brasil Participacoes S.A. (“Sete Brasil”) was a privately held corporation headquartered in Rio de Janeiro, Brazil, that specialized in portfolio management of assets related to the offshore oil and gas sector.

6. The Workers’ Party of Brazil (“Workers’ Party”) was a political party in Brazil that formed part of the federal government of Brazil in or about and between 2003 and 2016. The Workers’ Party was a political party as that term is used in the FCPA, Title 15, United States Code, Sections 78dd-2(a)(2) and 78dd-3(a)(2).

7. Consultant, a citizen of Brazil whose identity is known to the United States and KOM USA, was an agent of KOM in or about and between 2000 and 2016 who facilitated bribe payments from KOM to public officials of Brazil and the Workers’ Party.

8. KOM Executive 1, a citizen of Singapore whose identity is known to the United States and KOM USA, was a senior executive of KOM from 2002 to 2014.

9. KOM Executive 2, a citizen of Singapore whose identity is known to the United States and KOM USA, was a senior executive of a wholly-owned, Singapore-based subsidiary of KOM in or about and between 1989 and 2009 and a senior executive of KOM in or about and between 2013 and 2017.

10. KOM Executive 3, a citizen of Singapore and legal permanent resident of the United States in or about and between 2002 and 2013, whose identity is known to the United States and KOM USA, was a senior executive of KOM USA in or about and between 2002 and 2011 and a senior executive of KOM in or about and between 2011 and 2017. Thus, in or about and between 2002 and 2011, KOM Executive 3 was an “employee” and “agent” of a domestic concern, as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-2.

11. KOM Executive 4, a citizen of Singapore whose identity is known to the United States and KOM USA, was an executive at KOM in or about and between 2002 and 2017. He was an executive at KOM USA in or about and between 2011 and 2017. Thus, in or about and between 2011 and 2017, KOM Executive 4 was an “employee” and “agent” of a domestic concern, as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-2.

12. KOM Executive 5, a legal permanent resident of the United States since 2015, whose identity is known to the United States and KOM USA, held executive positions at multiple KOM subsidiaries in Brazil in or about and between 2003 and 2017. He also held an executive position at KOM and at KOM USA in or about and between 2012 and 2017. Thus, in or about and between 2012 to 2017, KOM Executive 5 was an “employee” and “agent” of a domestic concern, as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-2.

13. KOM Executive 6, a United States citizen whose identity is known to the United States and KOM USA, held various senior positions in the legal department of KOM in or about and between 1990 and 2017. KOM Executive 6 was a “domestic concern,” as that term is defined in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1).

14. Brazilian Official 1, a citizen of Brazil whose identity is known to the United States and KOM USA, was an employee of Petrobras in or about and between 2003 and April 2011. During that time, Brazilian Official 1 was a “foreign official,” as that term is defined in the FCPA, Title 15, United States Code, Sections 78dd-2(h)(2)(A) and 78dd-3(f)(2)(A).

Brazilian Official 1 had responsibility for, among other things, the bidding process organized by a division of Petrobras. In or about and between April 2011 and August 2013, Brazilian Official 1 was an employee of Sete Brasil with responsibility for overseeing operations, during which time Brazilian Official 1 was not a “foreign official,” as that term is defined in the FCPA, Title 15, United States Code, Sections 78dd-2(h)(2)(A) and 78dd-3(f)(2)(A).

15. Brazilian Official 2, a citizen of Brazil whose identity is known to the United States and KOM USA, was an employee of Petrobras with responsibility over the bidding of certain projects in or about and between 2003 and April 2012. During that time, Brazilian Official 2 was a “foreign official,” as that term is defined in the FCPA, Title 15, United States Code, Sections 78dd-2(h)(2)(A) and 78dd-3(f)(2)(A).

16. Party Official, a citizen of Brazil, whose identity is known to the United States and KOM USA, was a senior official in Brazils’ Workers’ Party. Party Official was a “foreign official,” as that term is defined in the FCPA, Title 15, United States Code, Sections 78dd-2(h)(2)(A) and 78dd-3(f)(2)(A).

## Overview of the Bribery Scheme

17. For a number of years, executives and employees of Petrobras with responsibility over the bidding of certain large projects – including Brazilian Official 1 and Brazilian Official 2 – and politicians and political parties in Brazil, including the Workers’ Party, engaged in a scheme to secure corrupt payments equal to a percentage of a contract’s value from the companies awarded those projects.

18. In or about and between 2007 and 2014, KOM USA, together with others, including KOM, knowingly and willfully conspired to pay approximately \$8.8 million corruptly for the benefit of foreign officials, including Brazilian Official 1, Brazilian Official 2, and the Workers’ Party to secure improper advantages and to influence those foreign officials and the Workers’ Party to obtain and retain business in Brazil.

19. In or about and between 2007 and 2014, KOM USA, together with its co-conspirators, including KOM, paid bribes relating to a Tension-Leg Platform project in Brazil tendered by Petrobras (the “P-61 project”).

20. To facilitate the payment of bribes and to conceal their purpose, in or about November 2009, KOM and KOM USA executives created and executed an agreement on behalf of a KOM subsidiary with a consulting company controlled by Consultant.

21. In or about and between 2010 and 2014, under the guise of the consulting agreement, a KOM subsidiary funded the bribes by making payments to a bank account in the United States in the name of a company controlled by Consultant.

22. KOM and its related entities, including KOM USA, earned profits totaling approximately \$159.9 million from the P-61 project.<sup>1</sup>

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<sup>1</sup> The profits from the P-61 project directly attributable to KOM USA amount to \$3,231,088.

### Details of the Bribery Scheme

23. In or about 2005, KOM USA and an engineering company formed the joint venture KOM JV USA. The purpose of the joint venture was to market tension leg platform technology.

24. On or about March 3, 2007, a KOM employee sent an email to KOM Executive 2, copying KOM Executive 1, KOM Executive 3 and others, stating that a joint venture manager had expressed concerns that Consultant would be retained for the P-61 project because under the joint venture partner's corporate governance rules it "cannot pay [Consultant] to pay government officials – Petrobras ???"<sup>2</sup>

25. On or about March 28, 2007, KOM Executive 2 sent an email to KOM Executive 4 and KOM Executive 6, copying KOM Executive 3, with the subject line, "Vetting process for [Consultant] – Brazil," stating:

I spoke to [Consultant]...he does not want to be tied in with any agency for US company (can understand why), He suggests way forward is that he is working on behalf of [a KOM subsidiary in Brazil] for these projects and any fees be built into [the KOM subsidiary's] price to the joint venture on the subcontract fabrication. In this way, in every meeting [the KOM subsidiary] is also present, so he can be present.

26. On or about April 6, 2007, KOM Executive 2 sent an email to KOM Executive 1, KOM Executive 4, KOM Executive 6, and another KOM employee, explaining that if the joint venture partner and the joint venture are "so hand tied to the US Code of Business Conduct, it would not be possible to involve [Consultant] which in reality diminishes our chances in the project. How we go?"

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<sup>2</sup> Unless bracketed, all quotations appear as in the original document, without corrections or indications of misspellings or typographical errors.

27. In or about 2008, KOM JV USA was invited to bid on the P-61 project along with at least two other companies.

28. In or about 2008, KOM JV USA submitted the first technical proposal to Petrobras for the P-61 project.

29. In or about 2008, after the invitation to bid, Consultant met with Brazilian Official 1, who told him that if KOM wanted to win the contract, it would need to pay a percentage of the contract value in bribes to Brazilian Official 1 and the Workers' Party.

30. On or about November 25, 2008, Consultant sent an email to KOM Executive 2, KOM Executive 3, KOM Executive 4, KOM Executive 5, and KOM Executive 6, copying KOM Executive 1, seeking confirmation, "based on our telecom, some days ago," that for his work on the P-61 project Consultant would be paid his regular commission, *i.e.* "rates actually used in the existing contract," plus an additional two percent comprised of 0.5 percent for "the party," 0.5 percent for "Group A" and one percent for "Group B." "The party" referred to in the email was the Workers' Party, "Group A" referred to Brazilian Official 1 and affiliated persons, and "Group B" referred to Consultant himself.

31. On or about November 25, 2008, KOM Executive 4 wrote to KOM Executive 2, KOM Executive 3, KOM Executive 5, and KOM Executive 6 in regard to Consultant's email referenced in Paragraph 30: "The problem is that when broken down the parts look reasonable, but the whole is something else ... how to deal with this? We have to get this past our partner somehow, else it will remain a matter of we stand alone (too risky) or no bid???"

32. On or about November 29, 2008, KOM Executive 4 responded to the email chain referenced in Paragraphs 30 and 31, including KOM Executive 2, KOM Executive 3, KOM Executive 5, and KOM Executive 6, stating:

[I]f the fees are not reasonably close to what is expected by the various interested parties, there is little incentive for anyone to push our offer. So what is 'expected'?? If we are not willing or able to offer similar to previous projects, we need to make a very unambiguous statement to those parties.

33. After discussions about limiting the scope of Consultant's services on the P-61 project in light of FCPA and bribery concerns expressed by the joint venture partner, on or about November 30, 2008, KOM Executive 5 emailed KOM Executive 2, KOM Executive 3, KOM Executive 4, and KOM Executive 6, stating, "[Consultant] also mentioned that [the joint venture] was originally not invited for this project until much lobbying with his friends help. And the fees were told to us sometime ago. If they perceive us as not honoring our commitment, it may be bad for future business."

34. In or about 2009, Consultant received authorization from KOM Executive 3 and an executive at a KOM subsidiary in Brazil to pay bribes equal to a percentage of the P-61 contract value to Brazilian Official 1 and the Workers' Party.

35. In or about 2009, a KOM subsidiary based in Singapore formed a joint venture with an offshore subsidiary of the joint venture partner (hereinafter "KOM JV Singapore").

36. On or about November 1, 2009, a KOM subsidiary entered into a Marketing and Sales Representation Agreement with Consultant (the "November 2009 contract") in connection with the contemplated P-61 project, for which KOM USA was a shareholder of one of the sub-contracting joint venture entities. While knowing that Consultant would pay bribes on behalf of KOM from commissions paid under the November 2009 contract, KOM Executive 2 signed and KOM Executive 3 witnessed the agreement in Houston, Texas.

37. In or about 2010, KOM JV Singapore won the P-61 project from Petrobras.

38. In or about 2010, KOM JV Singapore subcontracted a portion of the work on the P-61 project to KOM JV USA.

39. In or about and between July 2010 and September 2014, a KOM subsidiary based in Singapore made seven payments totaling approximately \$17.6 million to a bank account in Miami, Florida controlled by Consultant, pursuant to the November 2009 contract. Consultant subsequently transferred funds from that bank account in Florida to at least one bank account outside the United States in order to further the bribe scheme.

40. Using commissions received under the November 2009 contract, and with authorization from executives of KOM USA and KOM, Consultant paid approximately \$8.8 million in bribes to Brazilian Official 1 and the Workers' Party in connection with the P-61 project. Brazilian Official 1 shared some of the bribe money with Brazilian Official 2.