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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA

CRIMINAL NO. 20-20099-TWP

v.

VIOLATION: 18 U.S.C. § 1343

SK ENGINEERING & CONSTRUCTION CO.,  
LTD.

**PLEA AGREEMENT**

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 Western District of Tennessee (together, the "United States"), and the Defendant, SK Engineering & Construction Co., Ltd., 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:

**The Defendant's Agreement**

1. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Defendant agrees to waive its right to grand jury indictment and its right to challenge venue in the United States District Court for the Western District of Tennessee, and the Defendant agrees to plead guilty to a one-count criminal Information charging the Defendant with one count of wire fraud, in violation of Title 18, United States Code, Section 1343. The Defendant further agrees to persist in that plea through sentencing and, as set forth below, to cooperate fully with the United States in its investigation into the conduct described in this Agreement.

2. The Defendant understands that, to be guilty of this offense, the following essential elements of the offense must be satisfied:

- a. the Defendant knowingly participated in, devised, or intended to devise a scheme to defraud in order to obtain money or property;
- b. the scheme involved a material misrepresentation or concealment of a material fact;
- c. the defendant had the intent to defraud;
- d. the defendant used wire, radio, or television communications, or caused another to use wire, radio, or television communications in interstate or foreign commerce in furtherance of the scheme;
- e. each element of the offense listed above was committed by one or more of the Defendant's employees or agents;
- f. the employee or agent intended, at least in part, to benefit the Defendant;  
and
- g. the employee or agent was acting within the course and scope of the agent's or employee's employment.

3. The Defendant understands and agrees that this Agreement is between the United States and the Defendant and 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. Nevertheless, the United States will bring this Agreement and the nature and quality of the conduct, cooperation and remediation of the Defendant, its direct or indirect affiliates, subsidiaries, and joint ventures, to the attention of other prosecuting authorities or other agencies, as well as debarment authorities, if requested by the Defendant.

4. 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 Executive Committee of the Board of Directors in the form attached to this Agreement as Exhibit 1, 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 Executive Committee, on behalf of the Defendant.

5. 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.

6. The United States enters into this Agreement based on the individual facts and circumstances presented by this case and the Defendant, including:

a. the Defendant has agreed to resolve its criminal and civil liability related to the United States' parallel criminal and civil investigations into a fraud and bribery scheme in connection with the award of certain U.S. Army Corps of Engineers construction contracts to Defendant at U.S. Army Garrison – Humphreys in South Korea.

b. the Defendant is currently in negotiations with the U.S. Department of Justice's Civil Division, Commercial Litigation Branch, Fraud Section ("the Civil Division") to resolve its civil liability for related civil claims, including under the federal False Claims Act ("the Civil Division Settlement Agreement"). Consistent with JM 1-12.100 (Coordination of Corporate Resolution Penalties in Parallel and/or Joint Investigations and Proceedings Arising from the Same Misconduct), the United States agrees to:

- (1) recommend to the Civil Division that it credit the restitution amount paid by the Defendant pursuant to this Agreement towards the civil

settlement amount in the related Civil Division Settlement Agreement; and

- (2) offset the agreed-upon statutory maximum fine amount of \$65,778,847.08 by the punitive portion of the civil settlement amount (up to \$5,200,000) that is paid by the Defendant pursuant to the related Civil Division Settlement Agreement. In the event that the Defendant has not paid the civil settlement amount before the sentencing in this case, the Defendant shall pay the agreed-upon statutory maximum fine amount of \$65,778,847.08.

c. the Army has suspended the Defendant by order dated November 17, 2017 from “future contracting throughout the executive branch of the U.S. Government, pursuant to Federal Acquisition Regulation (FAR) § 9.407”;

d. the Defendant did not receive voluntary disclosure credit because it did not voluntarily and timely disclose to the United States the conduct described in the Statement of Facts attached hereto as Exhibit 2 (“Statement of Facts”);

e. the Defendant did not receive any credit for cooperation with the United States’ investigation, and instead, frustrated the United States’ investigation by withholding requested documents and information such as the calculation of profits earned by the Defendant as a result of the conduct described in the Statement of Facts, destroying documents relevant to a pending federal investigation; and attempting to persuade a potential witness not to cooperate with the investigation;

f. the Defendant did not provide to the United States all relevant facts known to it, including information about the individuals involved in the conduct described in the attached Statement of Facts prior to the Agreement;

g. the Defendant did not engage in any significant remedial measures. Specifically, the Defendant did not demonstrate a thorough analysis of causes of the underlying misconduct and remediate to address the root causes; the Defendant did not discipline any employees responsible for the misconduct, either through direct participation or failure in oversight, or those with supervisory authority over the area in which the criminal activity occurred; and the Defendant failed to retain business records and otherwise failed to prohibit the improper destruction and deletion of business records;

h. although the Defendant had an inadequate compliance program during the period covered by the Statement of Facts, the Defendant has endeavored to enhance and has committed to continuing to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Exhibit 3 to this Agreement (Corporate Compliance Program);

i. based on the fact that on November 17, 2017 the Department of the Army suspended the Defendant from doing business with the U.S. federal government and the Defendant has further agreed not to pursue U.S. federal government contracts from the effective date of this Agreement through the conclusion of the three-year term of probation (the "Term"), and as well as the Defendant's agreement to report to the United States as set forth in Exhibit 4 to this Agreement (Corporate Compliance Reporting), the United States determined that an independent compliance monitor was unnecessary;

j. the nature and seriousness of the offense conduct, including the payment of things of value to a U.S. Department of Defense contracting official involved in a sensitive military construction project, the creation of a fraudulent construction subcontractor as a means to conceal these payments to the contracting official, the submission of false claims to the Department of Defense to facilitate these payments; and the subsequent obstruction of criminal investigations;

k. the Defendant has no prior criminal history; and

l. the Defendant has agreed to cooperate with the United States as described in Paragraph 9 below.

7. 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 not pursue U.S. federal government contracts between the execution of this Agreement through the conclusion of the three-year term of probation, except that this period may be reduced to two years as described in paragraph 19(d);

h. to continue to implement a compliance and ethics program designed to prevent and detect violations of U.S. federal law throughout its operations, including but not be limited to the minimum elements set forth in Exhibit 3 of this Agreement; and

i. to report to the United States annually during a term of three years, beginning on the date of sentencing, regarding remediation and implementation of the compliance measures described in Exhibit 3, prepared in accordance with Exhibit 4 of this Agreement.

8. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Defendant agrees that in the event that, during the three-year term of the reporting requirements attached hereto as Exhibit 4, the Defendant 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 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 United States' ability to determine 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 United States at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The United States shall notify the Defendant prior to such transaction (or series of transactions) if it determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. If at any time during the Term the

Defendant engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the United States may deem it a breach of this Agreement pursuant to Paragraphs 23-26. 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 United States.

9. The Defendant shall cooperate fully with the United States in any and all matters relating to the conduct described in this Agreement and the Statement of Facts and other conduct under investigation by the United States at any time during the Term, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the conclusion of the Term. At the request of the United States, the Defendant shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the Defendant, its parent company or 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 Statement of Facts and other conduct under investigation by the United States at any time during the Term. The Defendant's cooperation pursuant to this Paragraph is subject to applicable law and regulations, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, the Defendant must provide to the United States a log of any information or cooperation that is not provided based on an assertion of law, regulation, or privilege, and the Defendant bears the burden of establishing the validity of any such assertion. The Defendant agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:



a. The Defendant shall truthfully disclose all factual information 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 United States may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Defendant to provide to the United States, upon request, any document, record, or other tangible evidence about which the United States may inquire of the Defendant.

b. Upon request of the United States, the Defendant shall designate knowledgeable employees, agents, or attorneys to provide to the United States the information and materials described in Paragraph 9(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 United States, 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 United States pursuant to this Agreement, the Defendant consents to any and all disclosures to other governmental authorities including United States authorities and those of a foreign government of such materials as the United States, in its sole discretion, shall deem appropriate.

10. During the term of the cooperation obligations provided for in Paragraph 9 of the Agreement, should the Defendant learn of any evidence or allegation of a violation of U.S. federal law, the Defendant shall promptly report such evidence or allegation to the United States. Thirty days prior to the end of the term of the cooperation obligations provided for in Paragraph 9 of the Agreement, the Defendant, by the Chief Executive Officer of the Defendant and the Chief Financial Officer of the Defendant, will certify to the United States 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 1519, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

11. The Defendant agrees that any fine or restitution imposed by the Court will be due and payable in full within ten business days of the entry of judgment following such sentencing hearing, and the Defendant will not attempt to avoid or delay payment. The Defendant further agrees to pay the Clerk of the Court for the United States District Court for the Western District of Tennessee the mandatory special assessment of \$400 within ten business days from the date of sentencing.

#### **The United States' Agreement**

12. In exchange for the guilty plea of the Defendant and the complete fulfillment of all of its obligations under this Agreement, the United States agrees it will not file additional criminal charges against the Defendant or any of its direct or indirect affiliates, subsidiaries, or joint ventures relating to any of the conduct described in the Statement of Facts. This Paragraph does not provide any protection against prosecution for any crimes made in the future by the Defendant or by any of its officers, directors, employees, agents, or consultants, whether or not disclosed by

the Defendant pursuant to the terms of this Agreement. This Agreement does not close or preclude the investigation or prosecution of any natural persons, including any officers, directors, employees, agents, or consultants of the Defendant or its direct or indirect affiliates, subsidiaries, or joint ventures, who may have been involved in any of the matters set forth in the Information, the Statement of Facts, or in any other matters. The Defendant agrees that nothing in this Agreement is intended to release the Defendant from any and all of the Defendant's excise and income tax liabilities and reporting obligations for any and all income not properly reported and/or legally or illegally obtained or derived.

#### **Factual Basis**

13. The Defendant is pleading guilty because it is guilty of the charge 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's Waiver of Rights, Including the Right to Appeal**

14. 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 United States has fulfilled all of its obligations under this Agreement and the Court has imposed the agreed-upon sentence, the Defendant nevertheless withdraws its guilty plea.

15. 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 United States in this Agreement. This Agreement does not affect the rights or obligations of the United States 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 Statement of Facts or the Information, 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 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 United States is 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**

16. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1343, the sole count in the Information, 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 3571(c), (d); five years' probation, Title 18, United States Code, Section 3561(c)(1); and a mandatory special assessment of \$400 per count, Title 18, United States Code, Section 3013(a)(2)(B). In this case, the parties agree that the gross pecuniary gain resulting from the offense is \$32,889,423.54. Therefore, pursuant to 18 U.S.C. § 3571(d), the maximum fine that may be imposed is \$65,778,847.08 per offense, or in this case a total of \$65,778,847.08.

### **Sentencing Recommendation**

17. 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 United States 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 19.

18. The United States and the Defendant agree that a faithful application of the United States Sentencing Guidelines (U.S.S.G.) to determine the applicable fine range yields the following analysis:

- a. The 2014 U.S.S.G. are applicable to this matter.
- b. Offense Level. Based upon U.S.S.G. § 2C1.1, the total offense level is 38, calculated as follows:

(a)(2)	Base Offense Level	12
(b)(2)	Amount of Loss/Gain	+22

(b)(3)	Offense Involved Public Official in a high-level decision-making or sensitive position	+4
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<b>TOTAL</b>		<b>38</b>
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c. Base Fine. Based upon U.S.S.G. § 8C2.4(a)(2), the base fine is \$72,500,000. Under U.S.S.G. § 8C2.4(a), the base fine is the greater of either the amount from the Offense Level Fine Table or the pecuniary loss or gain from the offense. The base fine for a Total Offense Level of 38 is \$72,500,000, while the pecuniary gain to the Defendant from the offense is \$32,889,423.54.

d. Culpability Score. Based upon U.S.S.G. § 8C2.5, the culpability score is 12, calculated as follows:

(a)	Base Culpability Score	5
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(b)(1)	The organization had which the offense was committed had 5,000 or more employees and an individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense	+5
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(e)	Obstruction of Justice	+3
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(g)(3)	The organization clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct	- 1
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<b>TOTAL</b>		<b>12</b>
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Calculation of Fine Range:

Base Fine	\$72,500,000
Multipliers	2.00(min)/4.00 (max)
Guidelines Fine Range § 8C2.7:	\$145,000,000 (min)/ \$290,000,000 (max)
Statutory Maximum Fine 18 U.S.C. § 3571(d):	\$65,778,847.08
Imposed Fine § 8C3.1(b)	\$65,778,847.08

19. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that the appropriate disposition of this case is as set forth below, taking into consideration all of the relevant considerations outlined in Paragraph 6 and in 18 U.S.C. §§ 3553(a) and 3572, and agree to jointly recommend that the Court, at a hearing to be scheduled at an agreed upon time, impose the recommended sentence:

a. Restitution. The Defendant agrees, pursuant to Title 18 U.S.C. § 3663A to pay \$2,601,883.86 in restitution to the United States Army. In addition, the parties agree to submit a joint proposed restitution order to the Court. The Defendant agrees not to seek or accept, directly or indirectly, reimbursement or indemnification from any external source with regard to the restitution amounts that the Defendant pays pursuant to this Agreement and the Court's restitution order. The Defendant further agrees not to seek any tax deduction in connection with the payment of any part of this \$2,601,883.86 restitution.

b. Fine. The United States and the Defendant agree that the \$65,778,847.08 fine, which is the statutory maximum fine amount set forth in Paragraph 18 above, would be appropriate in this case, but agree that this fine amount should be offset by the punitive portion of the civil settlement amount (up to an amount of \$5,200,000) that the Defendant has agreed to pay pursuant to the civil settlement agreement in the related civil case. In the event that the Defendant has not paid the civil settlement amount before the sentencing in this case, the Defendant shall pay the agreed-upon statutory maximum fine amount of \$65,778,847.08. The Defendant further agrees not to seek or accept, directly or indirectly, reimbursement or indemnification from any source with regards to the fine or penalty amounts that the Defendant pays (1) pursuant to this Agreement, or (2) any other agreement entered into with an enforcement authority or regulator concerning the



facts set forth in Exhibit 2. The Defendant further acknowledges that no tax deduction may be sought in connection with the payment of any part of this \$65,778,847.08 fine.

c. Special Assessment. The Defendant shall pay to the Clerk of the Court for the United States District Court for the Western District of Tennessee within ten days of the time of sentencing the mandatory special assessment of \$400.

d. Probation. The United States and the Defendant agree that a term of organizational probation for a period of three years shall be imposed on the Defendant pursuant to 18 U.S.C. §§ 3551(c)(1) and 3561(c)(1). The parties agree, pursuant to U.S.S.G. § 8D1.4, that the term of probation shall include as conditions the obligations set forth in Paragraphs 7 and 9 above as well as the payment of restitution and fine amounts set forth in Paragraph 19(a) and 19(b). With respect to the condition of probation that the Defendant agrees not to pursue U.S. federal government contracts between the execution of this Agreement through the conclusion of the three-year term of probation, the United States, in its sole discretion, may choose to reassess this condition with the Probation Office and the Court after a period of two years.

20. 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.

21. The United States and the Defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the Defendant at the plea and sentencing hearings, will provide sufficient information concerning the Defendant, the crime charged in this case, and the Defendant's role in the crime to enable a meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553(a).

22. The United States and the Defendant agree, subject to the Court's approval, to waive the requirement for a presentence 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 and to seek sentencing by the Court immediately following the Rule 11 plea hearing. However, the parties agree that in the event the Court orders that the entry of the guilty plea and sentencing occur at separate proceedings, such an order will not affect the agreement set forth herein. Additionally, if the Court directs the preparation of a presentence report, the United States and the Defendant will have the right to inform the Court and the Probation Office of all facts, circumstances, and law related to the Defendant's case, and to respond to any questions from the Court and the Probation Office, and to any misstatements of law or fact. At the time of the plea hearing, the parties will suggest mutually agreeable and convenient dates for the sentencing hearing with adequate time for any objections to the presentence report, and consideration by the Court of the presentence report and the parties' sentencing submissions.

#### **Breach of Agreement**

23. 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 9 and 10 of this Agreement; (d) commits any acts that, had

they occurred within the jurisdictional reach of the United States, constitute a violation of U.S. federal law; or (e) otherwise fails specifically to perform or to fulfill completely each of the Defendant's obligations under the Agreement, regardless of whether the United States becomes aware of such a breach after the term specified in Paragraph 7(i) of the Agreement, the Defendant shall thereafter be subject to prosecution for any federal criminal violation of which the United States has knowledge, including, but not limited to, the charge in the Information described in Paragraph 1, which may be pursued by United States in the United States District Court for the Western District of Tennessee or any other appropriate venue. Determination of whether the Defendant has breached the Agreement and whether to pursue prosecution of the Defendant shall be in the United States' sole discretion. Any such prosecution may be premised on information provided by the Defendant. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the United States 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 described in Paragraph 7(i) 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 described in Paragraph 7(i) 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 9 of the Agreement will be tolled from the date upon which the violation occurs until the earlier of the date upon which the United States is 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.

24. In the event the United States determines that the Defendant has breached this Agreement, the United States agrees to provide the Defendant with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Defendant shall have the opportunity to respond to the United States 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 United States shall consider in determining whether to pursue prosecution of the Defendant.

25. In the event that the United States determines that the Defendant has breached this Agreement: (a) all statements made by or on behalf of the Defendant to the United States or to the Court, including the attached 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 United States 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 United States.

26. The Defendant acknowledges that the Fraud Section has 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**

27. 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 23-26 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 United States. If the United States determines 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 United States 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.

28. The Defendant agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Defendant shall first consult the United States 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 United States and the Defendant; and (b) whether the United States has any objection to the release or statement.

**Complete Agreement**

29. This document 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 SK ENGINEERING & CONSTRUCTION CO., LTD.:**

Date: April 2, 2020

By: 

Jae Dong Shin  
Head of International Legal Team  
SK ENGINEERING &  
CONSTRUCTION CO., LTD.

Date: 3/17/20

By: Stevan E Bunnell  
Stevan Bunnell  
O'Melveny & Myers LLP  
Counsel for SK ENGINEERING &  
CONSTRUCTION CO., LTD.

Date: 3/17/20

By: Maurice Bellan / Tom Firestone  
Maurice Bellan  
Thomas Firestone  
Baker McKenzie  
Counsel for SK ENGINEERING &  
CONSTRUCTION CO., LTD.

**FOR THE DEPARTMENT OF JUSTICE:**

ROBERT ZINK  
Chief, Fraud Section  
Criminal Division, U.S. Dept. of Justice

Justin D. Weitz  
Justin D. Weitz, Assistant Chief  
Danny Nguyen, Trial Attorney

Michael Dunavant by David Pritchard  
D. MICHAEL DUNAVANT  
United States Attorney  
Western District of Tennessee

Tony Arvin by David Pritchard  
Tony Arvin  
Assistant United States Attorney

## EXHIBIT 1

### CERTIFICATE OF CORPORATE RESOLUTION

WHEREAS, SK Engineering & Construction Co., Ltd. ("SKEC" or the "Company") has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section, and the United States Attorney's Office for the Western District of Tennessee (together the "United States") regarding issues arising in relation to fraud, false claims, payments to a U.S. public official, and obstruction of justice surrounding U.S. Government contracts at United States Army Garrison – Humphreys, located in the Republic of Korea; and

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

WHEREAS, the Company's President, Jae Hyun Ahn, together with outside counsel for the Company, have advised the Executive Committee of the Board of Directors, which has been established by the Board of Directors of the Company, of its rights, possible defenses, the provisions of the United States Sentencing Guidelines, and the consequences of entering into such agreement with the United States;

WHEREAS, the Company's President Jae Hyun Ahn and the Executive Committee of the Board of Directors have been advised by U.S. counsel of the relevant provisions of Rules 11, 32, and 43 of the Federal Rules of Criminal Procedure relating to the entry of guilty pleas and sentencing, including Rule 11(b)(1), which requires that the court address the defendant personally in open court, Rule 32(i)(4)(A)(ii), which requires that the court address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence, and Rule 43(b)(1) which provides that an organizational defendant need not be physically present in court if represented in court by counsel; and



WHEREAS, due to the unique circumstances arising from the outbreak of 2019 novel coronavirus (COVID-19) and the U.S. Department of Health and Human Services' determination that a public health emergency exists (COVID-19 Declaration), which may impact the ability of Company employees to travel to the United States for the Rule 11 hearing and sentencing hearing, the United States and the Company have agreed that it is prudent for the Company to: (1) authorize several Company employees to enter the guilty plea on behalf of the Company and to appear on behalf of the Company at sentencing, as set forth in Paragraph 5, below; and (2) authorize several outside counsel to enter the guilty plea on behalf of the Company and to appear on behalf of the Company at sentencing, as set forth in Paragraph 6, below. The United States and the Company have agreed that outside counsel may enter the guilty plea on behalf of the Company and appear on behalf of the Company at sentencing only if the authorized Company employees are unable to travel to the United States for reasons related to the COVID-19 outbreak;

The Executive Committee of the Board of Directors has RESOLVED that:

1. The Company (a) acknowledges that the United States will file a one-count Information charging the Company with wire fraud, in violation of Title 18, United States Code, Section 1343; (b) agrees to waive its right to grand jury indictment on such charge and enters into a plea agreement (the "Agreement") with the United States; (c) agrees to pay \$2,601,883.86 in restitution; and (d) agrees to pay a fine of \$65,778,847.08, and acknowledges that the United States has agreed to offset this fine amount by \$5,200,000 (the punitive portion of the civil settlement amount in the related civil case) if the Company pays the civil settlement amount prior to the sentencing in this case;

2. The Company accepts the terms and conditions of the Agreement, including but not limited to, the waiver of rights set forth in Paragraphs 14 and 15 of the Agreement;

3. The Head of the Company's International Legal Team, Jae Dong Shin, is hereby

authorized, empowered and directed, on behalf of the Company, to execute the Agreement substantially in such form as reviewed by the Executive Committee of the Board of Directors with such changes as the President of the Company, Jae Hyun Ahn, may approve;

4. The President of the Company, Jae Hyun Ahn, is hereby authorized, empowered and directed to take any and all actions as may be necessary or appropriate in connection with the Agreement, 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;


5. The following Company employees are hereby authorized and empowered to enter the guilty plea on behalf of the Company in open court and to appear on behalf of the Company at sentencing: Corporate Secretary, Head of Legal In Kee Lee; Vice-President / General Counsel Casey Jung; Head of the Company's International Legal Team, Jae Dong Shin; and International Legal Team Counsel, Sang Yong Park;

6. If the authorized Company employees identified in Paragraph 5, above, are unable to travel to the United States for reasons related to the COVID-19 outbreak, the following outside counsel for the Company are hereby authorized to enter the guilty plea on behalf of the Company in open court and to appear on behalf of the Company at sentencing: Stevan Bunnell, O'Melveny & Myers LLP; Maurice Bellan, Baker McKenzie; and Thomas Firestone, Baker McKenzie; and

7. In accordance with the Company's By-Laws, the Corporate Secretary, In Kee Lee, is authorized to sign this Certificate of Corporate Resolution on behalf of the Executive Committee of the Board of Directors.

Date: 04 02 2020

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

  
In Kee Lee  
Corporate Secretary  
SK ENGINEERING & CONSTRUCTION  
CO., LTD.

## EXHIBIT 2

### STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Plea Agreement between the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the Western District of Tennessee (the "United States") and SK Engineering & Construction Co., Ltd. ("SKEC" or the "Company"), and the parties hereby agree and stipulate that the following information is true and accurate. SKEC admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. Had this matter proceeded to trial, SKEC acknowledges that the United States would have proven beyond a reasonable doubt, by admissible evidence, the facts alleged below and set forth in the criminal Information:

#### Background

1. The United States Army Corps of Engineers – Far East District ("FED") was an agency of the United States Department of Defense ("DOD"), and part of the United States Government. FED was based in Seoul, Republic of Korea ("South Korea" or "ROK"). FED supervised contracting and construction on U.S. military installations in South Korea and elsewhere.
2. FED payments to contractors and subcontractors were sent via bank wire transfer from Department of Defense offices housed at Naval Support Activity Mid-South, which was located in Millington, Tennessee.
3. Since the 1950s, the United States has maintained a substantial military presence in South Korea. The United States presently stations approximately 28,000 active duty troops in South Korea, in addition to civilian personnel.
4. Beginning in the mid-2000s, DOD and the ROK government created a plan to consolidate U.S. military bases in South Korea. This plan was referred to as the Yongsan Relocation Plan, or YRP. The majority of the YRP was funded by the ROK government. As part of the YRP, the U.S. prepared to expand Camp Humphreys, a large military facility located near the city of Pyeongtaek, about 50 miles south of Seoul, ROK's capital. DOD designated FED as the contracting representative to award contracts, manage construction, and supervise technical matters related to the YRP.

*The Defendant and Other Entities and Individuals*

5. Defendant SK Engineering & Construction Co., Ltd. (“SK E&C”) was a corporation with its headquarters in South Korea. Defendant SK E&C performed construction and engineering services in South Korea and around the world.
6. Defendant SK E&C acted through its agents and employees. Hyeong-Won Lee was a managing director and senior employee at defendant SK E&C, who also used the title “vice president.” Dong-Guel Lee was an employee of defendant SK E&C. C.W.K. and S.H.J., were employees of defendant SK E&C. At all times relevant to this Information, these individuals acted within the scope of their employment for defendant SK E&C, and to benefit themselves and defendant SK E&C.
7. Duane Nishiie was a United States citizen, who served as a contracting officer with FED until in or about 2012, and owed a fiduciary duty to the United States Army. From in or about 2012 through in or about 2014, Nishiie assisted defendant SK E&C in pursuing DOD contracts.
8. S&Teoul was a small Korean company whose president was Seung-Ju Lee. S&Teoul was primarily used to facilitate payments to Nishiie.

*SK E&C Obtains DOD Contracts*

9. In 2008, FED prepared to award a large contract for the YRP. The request for proposals sought bidders for a large land development, utilities, and infrastructure (LDUI) project which would cover the improvement of land and installation of utilities on an area of Camp Humphreys known as Parcel 2A. The contract was referred to as the “LDUI-Parcel 2A” contract (the “LDUI Contract”).
10. The LDUI Contract was one of the first large contracts awarded by FED as part of the YRP. Nishiie, in his official capacity at FED, was one of the individuals who was involved in evaluating bids and recommending which bidder would receive the contract.
11. In or about November 2008, defendant SK E&C submitted a bid for the LDUI Contract. Defendant SK E&C had never before received a large FED contract.
12. On or about December 19, 2008, Nishiie helped to prepare a “Source Selection Decision” for his superiors, recommending the award of the LDUI Contract to defendant SK E&C.
13. The “Source Selection Decision” rated defendant SK E&C’s bid more favorably than any other bid and recommended defendant SK E&C’s selection for the LDUI Contract. On or about December 24, 2008, FED awarded the LDUI Contract to defendant SK E&C. The

total value of the contract at the time was approximately 460 billion Korean won, equivalent to approximately \$400,000,000.

14. Defendant SK E&C has performed work on the LDUI Contract since 2009, and the total value of contract was increased due to change orders requested by FED. Defendant SK E&C has billed DOD approximately 730 billion Korean won, or approximately \$700,000,000 for work on the contract. These payments were made in the form of wire transfers from the Western District of Tennessee to ROK.
15. In or about 2010, FED, alongside the Korean Ministry of Defense, managed the process for awarding a contract for construction of a project management office at Camp Humphreys. The contract was referred to as Joint Task Order 16 ("JTO-16"). JTO-16's initial value was estimated to be approximately over 6 billion Korean won, or approximately \$6,000,000.
16. Nishiie was the primary U.S. Government official supervising the solicitation of bids and award of the contract related to JTO-16. Nishiie took steps, in his official capacity, to influence the JTO-16 award process and assist defendant SK E&C in obtaining the JTO-16 contract.
17. On or about March 22, 2010, defendant SK E&C submitted a bid for construction under JTO-16. Defendant SK E&C was the sole bidder for the JTO-16 project. Defendant SK E&C was awarded the JTO-16 contract, and was ultimately paid more than \$6,000,000 for its work on the contract.

#### *The Fraudulent S&Teoul Subcontract*

18. In or about 2010, employees of defendant SK E&C created a fraudulent construction subcontract for S&Teoul, which was used to direct payments to Nishiie while concealing the scheme. Defendant SK E&C and its employees understood that S&Teoul would not actually perform any work on the subcontract.
19. Seung-Ju Lee and others created S&Teoul, as a means to funnel payments from defendant SK E&C to Nishiie. Nishiie received payments through S&Teoul, in order to be influenced in connection with the LDUI Contract award process.
20. In or about 2010, defendant SK E&C agreed to create a construction subcontract with S&Teoul, with the understanding that S&Teoul would not actually perform any work.
21. In or about 2010, defendant SK E&C awarded two subcontracts to S&Teoul for construction work related to the YRP, valued at approximately \$2,600,000.
22. S&Teoul did not perform the work called for by the subcontracts. Rather, defendant SK E&C, and other subcontractors, performed the work that the subcontracts required of S&Teoul. Defendant SK E&C satisfied the requirements of the contract and completed the work in question.

23. Starting in October 2010, defendant SK E&C included S&Teoul as one of the subcontractors on its monthly tabulation of activity reports, which it submitted to FED.
24. These documents falsely represented monthly tabulation of activity reports and made it appear that S&Teoul was a legitimate subcontractor performing work on the LDUI Contract, when in fact, it was not a legitimate subcontractor on the LDUI Contract and had not performed any work on the LDUI Contract. Defendant SK E&C's employees submitted these false statements knowingly, willfully, and with the intent to defraud.
25. Neither defendant SK E&C nor any members of the scheme disclosed the material fact that the S&Teoul subcontracts were false and fraudulent, and were used as a mechanism for facilitating the payment of money to a U.S. Government employee.
26. Further, neither defendant SK E&C nor any members of the scheme disclosed the material fact that S&Teoul was not performing the work required by the subcontracts indicated in the monthly certifications.
27. In reliance on defendant SK E&C's representations, DOD transferred contract funds to defendant SK E&C.
28. Defendant SK E&C transferred U.S. government funds, obtained via payments made from the DOD in Millington, Tennessee, to S&Teoul.
29. To obtain these funds, defendant SK E&C employees submitted false certifications that S&Teoul had performed work on the YRP, although S&Teoul had not performed such work.
30. After U.S. government contracting funds entered S&Teoul bank accounts, Seung-Ju Lee transferred the funds into accounts nominally held by third parties. These third parties have stated that they were acting as nominees for Nishiie, and that Nishiie controlled the accounts.

*Document Destruction*

31. In or about early 2015, the U.S. Army – Criminal Investigative Command, Defense Criminal Investigative Service, and Federal Bureau of Investigation initiated investigations into criminal misconduct involving defendant SK E&C, Nishiie, and others relating to the LDUI Contract.
32. In or about March 2015, FED requested that defendant SK E&C employees collect documents related to the S&Teoul subcontract. Several days later, Hyeong-Won Lee called C.W.K. Hyeong-Won Lee ordered C.W.K. to destroy documents related to the S&Teoul subcontract. On or about April 3, 2015, C.W.K. and S.H.J. removed documents from the SK E&C worksite at Camp Humphreys, including documents related to the S&Teoul subcontract, took them to a remote location, and incinerated them to avoid having them discovered by FED or other government agencies.

Communications between Seung-Ju Lee and Dong-Guel Lee

33. On or about September 21, 2017, a grand jury in the District of Hawaii returned an indictment charging Nishiie and Seung-Ju Lee with crimes related to the scheme described herein. Seung-Ju Lee learned of the indictment, and understood that he was legally obligated to appear. An investigation was pending in the Western District of Tennessee as of September 2017.
34. From in or about October 2017 through in or about November 2017, Dong-Guel Lee and Seung-Ju Lee spoke on the telephone on several occasions. During these calls, Dong-Guel Lee repeatedly discussed the investigations into defendant SK E&C, Nishiie, and Seung-Ju Lee, and attempted to persuade Seung-Ju Lee not to travel to the United States to provide testimony or appear in the United States in person.
35. On or about October 6, 2017, Dong-Guel Lee told Seung-Ju Lee that Nishiie had called him a few days earlier. Dong-Guel Lee said that Seung-Ju Lee “absolutely shouldn’t come” to the United States, and that Nishiie had “begged” him to convey this message.
36. During this call, Dong-Guel Lee assured Seung-Ju Lee that defendant SK E&C would ensure Seung-Ju Lee’s wellbeing, stating that “if our company doesn't take care of you and stuff – that absolutely can’t happen.”
37. As a result of the scheme, defendant SK E&C derived pecuniary gain in the form of profits on the LDUI Contract. The gross gain derived by SK E&C as a result of the scheme was \$32,889,423.54.

### EXHIBIT 3

#### CORPORATE COMPLIANCE PROGRAM

In order to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with U.S. federal law, SK Engineering & Construction Co., Ltd. (“SKEC” or the “Company”) agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, the Company agrees to modify its compliance program, including internal controls, compliance policies, and procedures in order to ensure that it maintains an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts, as well as policies and procedures designed to effectively detect and deter violations of U.S. federal law. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of the Company’s existing internal controls, compliance code, policies, and procedures:

##### *High-Level Commitment*

1. The Company will ensure that its directors and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of federal law and its compliance code.

##### *Policies and Procedures*

2. The Company will develop and promulgate a clearly articulated and visible corporate policy against violations of federal law, which policy shall be memorialized in a written compliance code.



3. The Company will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of federal law and the Company's compliance code, and the Company will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of federal law by personnel at all levels of the Company. These policies and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of the Company. The Company shall notify all employees that compliance with the policies and procedures is the duty of individuals at all levels of the company.

4. The Company will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts. This system should be designed to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets.

*Periodic Risk-Based Review*

5. The Company will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of the Company.

6. The Company shall review these policies and procedures no less than annually and update them as appropriate to ensure their continued effectiveness.

*Proper Oversight and Independence*

7. The Company will assign responsibility to one or more senior corporate executives of the Company for the implementation and oversight of the Company's compliance code, policies, and procedures. Such corporate official(s) shall have the authority to report directly to independent

monitoring bodies, including internal audit, or the Company's sole member, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

#### *Training and Guidance*

8. The Company will implement mechanisms designed to ensure that its compliance code, policies, and procedures are effectively communicated to all directors, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, sales, legal, compliance, finance), and, where necessary and appropriate, agents and business partners; and (b) corresponding certifications by all such directors, officers, employees, agents, and business partners, certifying compliance with the training requirements.

9. The Company will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners, on complying with the Company's compliance code, policies, and procedures.

#### *Internal Reporting and Investigation*

10. The Company will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners concerning violations of federal law or the Company's compliance code, policies, and procedures.

11. The Company will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of federal law or the Company's compliance code, policies, and procedures.

*Enforcement and Discipline*

12. The Company will implement mechanisms designed to effectively enforce its compliance code, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

13. The Company will institute appropriate disciplinary procedures to address, among other things, violations of federal law and the Company's compliance code, policies, and procedures by the Company's directors, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived importance of, the director, officer, or employee. The Company shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code, policies, and procedures and making modifications necessary to ensure the overall compliance program is effective.

*Third-Party Relationships*

14. The Company will institute appropriate risk-based due diligence and compliance requirements pertaining to the retention and oversight of all agents and business partners, including:

a. properly documented due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;

b. informing agents and business partners of the Company's commitment to abiding by anti-corruption laws, and of the Company's anti-corruption compliance code, policies, and procedures; and

c. seeking a reciprocal commitment from agents and business partners.

15. Where necessary and appropriate, the Company will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of U.S. federal law, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of the anti-corruption laws, the Company's compliance code, policies, or procedures, or the representations and undertakings related to such matters.

#### *Mergers and Acquisitions*

16. The Company will develop and implement policies and procedures for mergers and acquisitions requiring that the Company conduct appropriate risk-based due diligence on potential new business entities.

17. The Company will ensure that the Company's compliance code, policies, and procedures regarding federal law apply as quickly as is practicable to newly acquired businesses or entities merged with the Company and will promptly train the directors, officers, employees, agents, and business partners consistent with Paragraph 8 above on the Company's compliance code, policies, and procedures.

*Monitoring and Testing*

18. The Company will conduct periodic reviews and testing of its compliance code, policies, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of federal law and the Company's code, policies, and procedures, taking into account relevant developments in the field and evolving international and industry standard.

## EXHIBIT 4

### CORPORATE COMPLIANCE REPORTING

SK Engineering & Construction Co., Ltd. (“SKEC” or the “Company”) agrees that it will report to the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney’s Office for the Western District of Tennessee (together “the United States”) periodically, at no less than twelve-month intervals during a three-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Exhibit 3. During this three-year period, the Company shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two (2) follow-up reviews and reports, as described below:

a. By no later than one year from the date this Agreement is executed, the Company shall submit to the United States a written report setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve the Company’s internal controls, policies, and procedures for ensuring compliance with U.S. federal law, and the proposed scope of the subsequent reviews. The report shall be transmitted to “Deputy Chief - MIMF Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, NW, Bond Building, Third Floor, Washington, D.C. 20530” and to “Tony Arvin, Assistant United States Attorney, United States Attorney for the Western District of Tennessee, 167 North Main Street, Suite 800, Memphis, TN 38103.” The Company may extend the time period for issuance of the report with prior written approval of the United States.

b. The Company shall undertake at least two follow-up reviews and reports, incorporating the United States’ views on the Company’s prior reviews and reports, to further

monitor and assess whether the Company's policies and procedures are reasonably designed to detect and prevent violations of federal law.

c. The first follow-up review and report shall be completed by no later than one year after the initial report is submitted to the United States. The second follow-up review and report shall be completed and delivered to the United States no later than thirty days before the end of the Term.

d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the United States determines in its sole discretion that disclosure would be in furtherance of the United States' discharge of its duties and responsibilities or is otherwise required by law.

e. The Company may extend the time period for submission of any of the follow-up reports with prior written approval of the United States.