

ORIGINAL

WMP/DK:AES/JN  
F. #2016R00709

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

Cr. No. 16-644 (RJD)

BRASKEM S.A.,

Defendant.

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The United States of America, by and through the 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 "EDNY"), and Braskem S.A. (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 later of the date on which the Information is filed or the date on which the independent compliance monitor (the "Monitor") is retained by the Defendant, as described in Paragraphs 30 to 32 below (the "Term"). The Defendant agrees, however, that, in the event the Fraud Section and EDNY 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 EDNY, in their sole discretion, for up to a total additional time period of one year, without prejudice to the Fraud Section and EDNY's right to proceed as provided in Paragraphs 30 to 32 below. Any extension of the Term extends all terms of this Agreement, including the terms of the monitorship in Attachment D, for an equivalent period. Conversely, in the event the Fraud Section and EDNY find, in their sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the monitorship in Attachment D, and that the other provisions of this Agreement have been satisfied, the Term may be terminated early, except for the Defendant's cooperation obligations described in Paragraph 11 below.

#### RELEVANT CONSIDERATIONS

2. The Fraud Section and EDNY enter into this Agreement based on the individual facts and circumstances presented by this case, including:
  - a. the Defendant did not voluntarily disclose to the Fraud Section and EDNY the conduct described in the Statement of Facts, attached here to as Attachment B (the "Statement of Facts"). Although the Defendant notified the Fraud Section about publicly-reported allegations in Brazil prior to the Fraud Section and EDNY contacting the Defendant, because the Fraud Section and EDNY were already aware of the allegations, the Defendant was not eligible for voluntary disclosure credit;
  - b. the Defendant received partial cooperation credit for its cooperation with the Fraud Section and EDNY's investigation by reviewing, collecting and producing evidence located in foreign countries, analyzing and summarizing voluminous accounting records and providing those summaries to the Fraud Section and to EDNY, producing documents that were

provided to foreign authorities along with translations, facilitating the cooperation of its former executives in Brazil as part of the Brazilian leniency proceedings, providing multiple reports to the Fraud Section and EDNY summarizing information regarding Braskem's transfer of funds into the Odebrecht S.A. off-book accounting system, and providing non-privileged facts relating to individual involvement in the conduct described in the Statement of Facts and conduct disclosed to the Fraud Section and EDNY prior to the Agreement. Once the Defendant became aware of additional allegations, it expanded its internal investigation to include those allegations. The Defendant did not receive additional cooperation credit because the Defendant did not begin to fully cooperate until the Fraud Section and EDNY developed significant independent evidence of the Defendant's conduct. For example, the Defendant failed to produce any documents, information about witness statements, or information about the facts gathered from its internal investigation until seven months after its initial contact with the Fraud Section and EDNY;

c. the Defendant engaged in extensive remedial measures, including steps to improve its anti-corruption compliance program by, among other things, increasing the number of independent board members, creating a board-level compliance committee, hiring a chief compliance officer, instructing outside counsel to conduct a global anti-corruption compliance risk assessment and adopting the recommendations arising from that risk assessment, increasing the importance of anti-corruption compliance messaging within the company with regular statements from the company's new CEO, conducting an independent risk assessment of the company's financial controls and enhancing those controls, in conjunction with the parent company, developing a new comprehensive anti-corruption compliance policy, designing an enhanced anti-corruption third-party due diligence process, standardizing anti-corruption language in its contracts, and providing anti-corruption training to the board, senior management,

and other company employees. Because the senior management at the Defendant were in a position to discipline employees were themselves involved in the misconduct, the Defendant was unable to discipline wrongdoers until after the senior management resigned or were terminated, at which point there were no longer any employees left at the Defendant who had been engaged in the misconduct or had failed to effectively supervise or detect the misconduct;

d. although the Defendant had inadequate anti-corruption controls and little or no anti-corruption compliance program during the period of the conduct described in the Statement of Facts, the Defendant has been enhancing and has committed to continue to enhance its anti-corruption compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment C to this Agreement;

e. because the Defendant has not yet fully implemented or tested its compliance program, the Defendant has agreed to the imposition of an independent compliance monitor to reduce the risk of recurrence of misconduct (as set forth in Paragraphs 30 to 32 below);

f. the nature and seriousness of the offense including a scheme to pay \$250 million in improper payments to Brazilian government officials during the relevant period carried out by high-level executives and directors at the Defendant;

g. the Defendant has no prior criminal history;

h. the Defendant has agreed to continue to cooperate with the Fraud Section and EDNY 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



i. accordingly, after considering (a) through (h) above, the Defendant received an aggregate discount of 15 percent off of the bottom of the applicable U.S. Sentencing Guidelines fine range.

#### THE DEFENDANT'S AGREEMENT

3. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), 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 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-1 (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:

a. An unlawful agreement between two or more individuals to violate the FCPA existed; specifically, as an issuer, 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, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her 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 the Defendant and its co-conspirators in obtaining and retaining business for and with, and directing business to, any person;

b. The Defendant knowingly and willfully joined that conspiracy;

c. 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

d. 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, EDNY 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 EDNY 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 and Multilateral Development Banks (“MDBs”), if requested by the Defendant. By agreeing to provide this information to such authorities, the Fraud Section and EDNY are not agreeing to advocate on behalf of the Defendant, 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 EDNY as described in Paragraph 11;
- h. to implement a compliance program as described in Paragraph 9 and Attachment C; and
- i. to retain an independent compliance monitor pursuant to Paragraphs 30 to 32 and Attachment D.



9. The Defendant represents that it has implemented and will continue to implement a compliance and ethics program throughout its operations, including those of its affiliates, agents, and joint ventures, and those of its 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. In order to address any deficiencies in its internal accounting controls, policies, and procedures, the Defendant represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal accounting controls, policies, and procedures regarding compliance with the FCPA and other applicable anti-corruption laws. Where necessary and appropriate, the Defendant will adopt new or modify existing internal controls, policies, and procedures in order to ensure that the Defendant maintains: (a) an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance program that incorporates relevant internal accounting controls, as well as policies and procedures designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. The compliance program, including the internal accounting controls system will include, but not be limited to, the minimum elements set forth in Attachment C. The Fraud Section and EDNY, in their sole discretion, may consider the Monitor's certification decision in assessing the Defendant's compliance program.

10. 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 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 and EDNY'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 EDNY at least 30 days prior to undertaking any such sale, merger, transfer, or other change in corporate form. If the Fraud Section and EDNY notify the Defendant prior to such transaction (or series of transactions) that it has determined that the transaction(s) has the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined in the sole discretion of the Fraud Section and EDNY, the Defendant agrees that such transaction(s) will not be consummated. In addition, if at any time during the Term of the Agreement the Fraud Section and EDNY determine in their sole discretion that the Defendant has engaged in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, it may deem it 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 EDNY.

11. The Defendant shall cooperate fully with the Fraud Section and EDNY 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, false books and records, the failure to implement adequate internal accounting controls, investment adviser fraud, mail, wire, securities, or bank fraud, false statements to a bank, obstruction of justice, and money laundering, subject to applicable law and regulations, until the later of the date upon which all investigations, prosecutions and proceedings, including those involving Odebrecht S.A. (“Odebrecht”), an entity with a controlling stake in the Defendant, arising out of such conduct are concluded, or the end of the Term. At the request of the Fraud Section and EDNY, 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, including Odebrecht and 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 corrupt payments, false books and records, the failure to implement adequate internal accounting controls, investment adviser fraud, mail, wire, securities, or bank fraud, false statements to a bank, obstruction of justice, and money laundering. 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 EDNY 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 EDNY, upon request, any document, record or other tangible evidence about which the Fraud Section and EDNY may inquire of the Defendant.

b. Upon request of the Fraud Section and EDNY, the Defendant shall designate knowledgeable employees, agents or attorneys to provide to the Fraud Section and EDNY 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 EDNY, 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 EDNY 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 EDNY, 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 would be a possible violation of the FCPA anti-bribery or accounting 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 EDNY. 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 EDNY 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. § 3103(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 EDNY agree that they will not file additional criminal charges against the Defendant or any of its direct or indirect subsidiaries or joint ventures relating to any of the conduct described in the Information or the Statement of Facts, except for the charges specified in the Information and Plea Agreement between the Fraud Section and EDNY and Odebrecht S.A. filed on December 21, 2016 ("Odebrecht Plea

Agreement”). The Fraud Section and EDNY, 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 EDNY, 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 EDNY 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 EDNY in this plea agreement. This Agreement does not affect the rights or obligations of the Fraud Section and EDNY 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 EDNY 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 15, United States Code, Section 78ff(a) and 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 \$465,165,688.83. Therefore, pursuant to 18 U.S.C. § 3571(d), the maximum fine that may be imposed is twice the gross gain, or approximately \$930 million 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 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 18.

20. The Fraud Section, EDNY 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 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 46, calculated as follows:
 

(a)(2)	Base Offense Level	12
(b)(1)	More than One Bribe	+2
(b)(2)	Value of Benefit more than \$250,000,000	+28
(b)(3)	High Level Official Involved	+4
<b>Total Offense Level</b>		46
- c. Base Fine. Based upon USSG § 8C2.4(a)(2), the base fine is \$465,165,688.83.
- d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 8, calculated as follows:
 

(a)	Base Culpability Score	5
(b)(1)(A)(i)	5,000 or More Employees and Participation by High-Level Personnel	+5
(g)(2)	Cooperation and Acceptance	-2
<b>TOTAL</b>		8



Calculation of Fine Range:

Base Fine (USSG § 8C2.4(a)(2))	\$465,165,688.83
Multipliers (USSG § 8C2.6)	1.6 (min)/ 3.2 (max)
Fine Range (USSG § 8C2.7)	\$744,265,102.13 to \$1,488,530,204.26

21. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the Fraud Section, EDNY 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, EDNY 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 \$632,625,336.81 (“Total Criminal Penalty”). This reflects a 15 percent discount off the bottom of the applicable Sentencing Guidelines fine range. The Fraud Section and EDNY believe that a disposition that includes a fine of \$632,625,336.81 and disgorgement of \$325 million is appropriate based on the factors outlined in Paragraph 2 of the Agreement and those in 18 U.S.C. § 3553(a).

b. The Fraud Section, EDNY and the Defendant further agree that the Defendant will pay the United States \$94,893,800.52, equal to 15 percent of the Total Criminal Penalty. The Defendant agrees to pay \$94,893,800.52 to the United States Treasury within 10 days of the entry of the judgment of Defendant’s sentence by the Court.

c. The Fraud Section, EDNY and the Defendant further agree that the remaining amount of the Total Criminal Penalty will be paid to Brazil, which will receive 70 percent of the remaining penalty, equal to \$442,837,735.77, and to Switzerland, which will receive 15 percent of the remaining penalty, equal to \$94,893,800.52, and that such amounts will be credited by the Fraud Section and EDNY. The Defendant's payment obligations to the United States will be complete upon the Defendant's payment of \$94,893,800.52, equal to 15 percent of the Total Criminal Penalty, so long as the Defendant pays the remaining amount of the Total Criminal Penalty to Brazil and Switzerland pursuant to their respective agreements. In addition, the Fraud Section, EDNY and the Defendant agree that the Defendant will pay \$325 million in disgorgement to the U.S. Securities and Exchange Commission, pursuant to their respective agreements with the Defendant, and to Brazil, and that such amounts will be credited by the Fraud Section and EDNY. The Defendant shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that the 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 the Total Criminal Penalty.

d. 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 EDNY 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 EDNY 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; (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 EDNY 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 EDNY have



knowledge, including, but not limited to, the charges in the Information described in Paragraph 3, which may be pursued by the Fraud Section, EDNY 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 EDNY'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 EDNY 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 EDNY 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 EDNY determine that the Defendant has breached this Agreement, the Fraud Section and EDNY 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 EDNY 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 EDNY shall consider in determining whether to pursue prosecution of the Defendant.

26. In the event that the Fraud Section and EDNY determine that the Defendant has breached this Agreement: (a) all statements made by or on behalf of the Defendant to the Fraud Section and EDNY 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 EDNY 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 EDNY.

27. The Defendant acknowledges that the Fraud Section and EDNY 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 EDNY. If the Fraud Section and EDNY 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 EDNY 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 EDNY 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, EDNY and the Defendant; and (b) whether the Fraud Section and EDNY have any objection to the release or statement.

#### INDEPENDENT COMPLIANCE MONITOR

30. Promptly after the Fraud Section and EDNY's selection pursuant to Paragraph 31 below, the Defendant agrees to retain the Monitor for the term specified in Paragraph 32. The Monitor's duties and authority, and the obligations of the Defendant with respect to the Monitor and the Fraud Section and EDNY, are set forth in Attachment D, which is incorporated by reference into this Agreement. No later than the date of execution of this Agreement, the Defendant will propose to the Fraud Section and EDNY a pool of three qualified candidates to serve as the Monitor. The parties will endeavor to complete the monitor selection process within 60 days of the execution of this agreement. The Monitor candidates or their team members shall have, at a minimum, the following qualifications:

a. demonstrated expertise with respect to the FCPA and other applicable anti-corruption laws, including experience counseling on FCPA issues;



b. experience designing and/or reviewing corporate compliance policies, procedures and internal controls, including FCPA and anti-corruption policies, procedures and internal controls;

c. the ability to access and deploy resources as necessary to discharge the Monitor's duties as described in the Agreement; and

d. sufficient independence from the Defendant to ensure effective and impartial performance of the Monitor's duties as described in the Agreement.

31. The Fraud Section and EDNY retain the right, in their sole discretion, to choose the Monitor from among the candidates proposed by the Defendant, though the Defendant may express its preference(s) among the candidates. If the Fraud Section and EDNY determine, in their sole discretion, that any of the candidates are not, in fact, qualified to serve as the Monitor, or if the Fraud Section and EDNY, in their sole discretion, are not satisfied with the candidates proposed, the Fraud Section and EDNY reserve the right to request that the Defendant nominate additional candidates. In the event the Fraud Section and EDNY reject all proposed Monitors, the Defendant shall propose an additional three candidates within 20 business days after receiving notice of the rejection. This process shall continue until a Monitor acceptable to both parties is chosen. The Fraud Section, EDNY and the Defendant will use their best efforts to complete the selection process within 60 calendar days of the execution of this Agreement. If, during the term of the monitorship, the Monitor becomes unable to perform his or her obligations as set out herein and in Attachment D, or if the Fraud Section and EDNY in their sole discretion determine that the Monitor cannot fulfill such obligations to the satisfaction of the Office, the Office shall notify the Defendant of the release of the Monitor, and the Defendant shall within 30

calendar days of such notice recommend a pool of three qualified Monitor candidates from which the Fraud Section and EDNY will choose a replacement.

32. The Monitor's term shall be three years from the date on which the Monitor is retained by the Defendant, subject to extension or early termination as described in Paragraph 1.

[INTENTIONALLY LEFT BLANK]

The Monitor's powers, duties, and responsibilities, as well as additional circumstances that may support an extension of the Monitor's term, are set forth in Attachment D. The Defendant agrees that it will not employ or be affiliated with the Monitor or the Monitor's firm for a period of not less than two years from the date on which the Monitor's term expires. Nor will the Defendant discuss with the Monitor or the Monitor's firm the possibility of further employment or affiliation during the Monitor's term.

COMPLETE AGREEMENT

33. 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 BRASKEM S.A.:

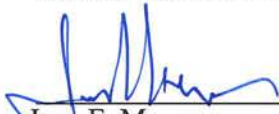
Date: \_\_\_\_\_


By:   
Fernando Musa  
Chief Executive Officer of Braskem S.A.

Date: 12/21/16

By:   
Gustavo Sampaio Valverde  
General Counsel of Braskem S.A.

Date: 21 December 2016

By:   
Joan E. Meyer  
John P. Rowley, III  
Baker & McKenzie LLP

  
John S. (Jay) Darden  
Robert D. Luskin  
Paul Hastings LLP  
Outside counsel for Braskem S.A.

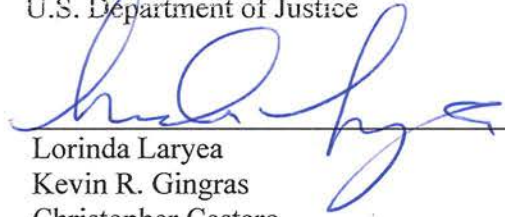
FOR THE U.S. DEPARTMENT OF JUSTICE:

ROBERT CAPERS  
United States Attorney  
Eastern District of New York



Alixandra Smith  
Julia Nestor  
Assistant U.S. Attorneys

ANDREW WEISSMANN  
Chief, Fraud Section  
Criminal Division  
U.S. Department of Justice



Lorinda Laryea  
Kevin R. Gingras  
Christopher Cestaro  
Trial Attorneys

Date: December 21, 2016



### COMPANY OFFICER'S CERTIFICATE

I have read the plea agreement between Braskem S.A. (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") 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 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 Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

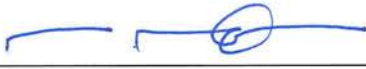
No promises or inducements have been made other than those contained in the Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing the Agreement on behalf of the Defendant, in any way to enter into the Agreement. I am also satisfied with outside counsel's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

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

Date: 12/21/16

BRASKEM S.A.

By:

  
\_\_\_\_\_  
Gustavo Sampaio Valverde  
General Counsel for Braskem S.A


CERTIFICATE OF COUNSEL

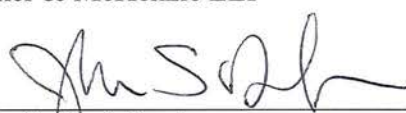
I am counsel for Braskem S.A. (the "Defendant") in the matter covered by the plea agreement between the Defendant and the United States of America, by and through the Department of Justice, Criminal Division, Fraud Section, and the United States Attorney's Office for the Eastern District of New York (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:

December 20, 2016

By:

  
\_\_\_\_\_  
Joan E. Meyer  
John P. Rowley, III  
Baker & McKenzie LLP

  
\_\_\_\_\_  
John S. (Jay) Darden  
Robert D. Luskin  
Paul Hastings  
Counsel for Braskem S.A.

ATTACHMENT A

CERTIFICATE OF CORPORATE RESOLUTIONS

A copy of the executed Certificate of Corporate Resolutions is annexed hereto as  
“Exhibit 1.”



# **EXHIBIT 1**

## CERTIFICATE OF CORPORATE RESOLUTIONS

WHEREAS, Braskem S.A. (the "Company") has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section and the U.S. Attorney's Office for the Eastern District of New York (collectively the "Fraud Section and EDNY" or the "Offices"), regarding issues arising in relation to certain improper corrupt payments to foreign officials in Brazil to assist in obtaining and/or retaining business for the Company, as well as related false books-and-records and inadequate internal accounting controls; and

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

WHEREAS, Fernando Musa, the Chief Executive Officer of the Company, Gustavo Valverde, the General Counsel of the Company, and Pedro Freitas, the Chief Financial Officer of the Company, together with outside counsel for the Company, have advised the Board of Directors of the Company of its rights, possible defenses, the Sentencing Guidelines' provisions, and the consequences of entering into such agreement with the Fraud Section and EDNY.

Therefore, the Board of Directors on this date has RESOLVED that:

1. The Company (a) acknowledges the filing of the one-count Information charging the Company 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 Foreign Corrupt Practices Act of 1977 ("FCPA"), Title 15, United States Code, Section 78dd-1, as amended; (b) knowingly waives indictment on such charges and enters into a plea agreement with the Fraud Section and EDNY (the "Plea Agreement" or "Agreement"); (c) agrees to accept a monetary penalty against the Company totaling \$\$632,625,336.81, of which \$94,893,800.52 will be paid to the United States Treasury, and to pay such penalty to the United States Treasury with respect to the conduct described in the Information; and (d) waives service of a summons and the complaint in such action and admits the court's jurisdiction over the Company and the subject matter of such action and consents to the judgment therein;
2. The Company accepts the 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 this Agreement and any charges by the United States arising out of the conduct described in the Statement of Facts, attached to the 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 and venue for any prosecution relating to the conduct described in the Statement of Facts or relating to the conduct known to the Offices prior to the date on which the Plea Agreement was signed that is not timebarred by the applicable statute of limitations on the date of the signing of this Agreement;
3. Fernando Musa, the Chief Executive Officer of the Company, Gustavo Valverde, the General Counsel of the Company, and Pedro Freitas, the Chief Financial Officer of the Company, are 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 at the meeting held today, with such changes as Fernando Musa, Gustavo Valverde, and Pedro Freitas may approve;