

## ELECTRONIC FILER AGREEMENT

This Electronic Filer Agreement (the “**Agreement**”) is made by and among the Delaware Claims Processing Facility, LLC (the “**Facility**”), with offices at 1007 North Orange Street, Wilmington, Delaware 19801, The Flintkote Asbestos Trust, a Delaware Trust (the “**Flintkote Trust**”), and \_\_\_\_\_ (the “**Claimant**”), who resides at \_\_\_\_\_ (each a “**Party**” and, collectively, the “**Parties**”).

### Recitals

WHEREAS, the Facility currently processes asbestos personal injury claims on behalf of various trusts, including the Flintkote Trust;

WHEREAS, the Claimant is an individual who has filed or intends to file an asbestos personal injury claim on his/her own behalf without representation of counsel against the Flintkote Trust; and

WHEREAS, it is mutually beneficial to the Flintkote Trust, the Facility and the Claimant to settle the asbestos personal injury claim by communicating information to each other electronically and thereby speed claim processing and lower transactional costs.

NOW, THEREFORE, in consideration of the promises and undertakings described herein, the sufficiency of which consideration is hereby acknowledged, the Parties agree, with each other, as follows:

#### 1. Electronic Claims Filing

- 1.1 Access to Trust Online. Subject to the terms hereof, the Facility shall provide the Claimant access to the Facility’s proprietary Online, electronic claims filing system (“**Trust Online**”) for the limited purpose of electronically filing and settling Claimant’s asbestos personal injury claim with the Flintkote Trust. (When the context permits, as used herein, “access to Trust Online” may also refer to access to the claims information electronically submitted by the Claimant in connection with his/her asbestos personal injury claim filed against the Flintkote Trust.) The Claimant shall be permitted access through Trust Online to information regarding only the Claimant’s claim filed against the Flintkote Trust, and the Claimant shall be authorized to act through Trust Online in regard only to the Claimant’s claim filed against the Flintkote Trust.
- 1.2 Filing Methods, Media, and Format. The Flintkote Trust shall accept, through Trust Online, claim information from the Claimant using one or more electronic methods, media, and formats that the Facility will from time to time specify. The methods, media, and formats that the Facility will specify will be among those then in general use among businesses transferring information electronically.
- 1.3 Proprietary System. The Claimant acknowledges that Trust Online, including all enhancements thereto and all screens and formats used in connection therewith, are the exclusive proprietary property of the Facility. The Claimant agrees that it shall not publish, disclose, display,

provide access to, or otherwise make available any software or any other products associated with Trust Online, or any screens, formats, reports, or printouts used, provided, or produced in connection therewith, to any person.

## **2. User Identification**

- 2.1 **Limited Access.** The Facility will assign a unique Trust Online password to the Claimant. The Facility will provide access to Trust Online only upon entry of the Claimant's user name and password. The Facility recommends that passwords be changed frequently. The Claimant may not share the password with anyone, and the Claimant shall keep the user name and password confidential. The Facility may deny any the Claimant access to Trust Online following failed log-ins. The Facility also retains the right to temporarily deny the Claimant access to Trust Online for any reason, including, but not limited to, system resources, bandwidth constraints, fraud, or security concerns; but the Facility shall not be responsible for any failure on its part to deny access to Trust Online to the Claimant.
- 2.2 **Reliance on Claimant Communications.** The Facility is entitled to rely on communications and instructions it receives from the Claimant and, unless the Facility acts with gross negligence, the Facility shall not be held liable for such reliance.
- 2.3 **Reaffirmation of Terms and Conditions.** Each time the Claimant accesses Trust Online, the Claimant will be required to review a pop-up screen in the form set forth on **Attachment 1** hereto that will request a reaffirmation of the Agreement and a certification that the Claimant has reviewed all information submitted to the Flintkote Trust through the Facility in support of the claim, that to the best of the Claimant's belief, under penalty of perjury, the information submitted is accurate and complete, and that such information is submitted, subject to the terms of this Agreement. The pop-up screen will have a hyperlink to an electronic copy of this Agreement. The pop-up screen will require the Claimant to evidence such reaffirmation and certification by clicking "I AGREE" or other similar language. The requirement of reaffirming the terms and conditions of this Agreement before accessing Trust Online shall not in any way affect the validity or binding effect of this Agreement once the Parties have entered into it. For the purposes of this Agreement only, the Parties agree the phrase "shall comply in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure" on the pop-up screen shall be interpreted to mean "to the best of the Claimant's belief, under penalty of perjury, the information submitted is accurate and complete."

## **3. Technical Capabilities**

- 3.1 **Compatible Equipment.** In order to file claims through Trust Online, the Claimant will use Claimant's own compatible computer equipment. The Facility shall have no responsibility for a failure of Claimant's computer equipment to be compatible with Trust On-line.

- 3.2 Reports. Through the Facility, the Flintkote Trust will make available to the Claimant (through the Facility's web site or Trust Online), the ability to download specified data and to generate reports summarizing information regarding the Claimant's claim.
- 3.3 Continuous Access. The Trust Online system will be available to the Claimant seven days a week, with the exception that availability will be interrupted nightly for approximately one hour to synchronize data with the Facility processing systems and at any time as a result of system failure or when necessary for system upgrades, maintenance, or other operational considerations. At all times, the Facility shall use its best efforts to minimize the length and frequency of such interruptions. Notwithstanding any other provision of this Agreement, the Facility shall not be liable for any damages resulting directly or indirectly from system unavailability.
- 3.4 Security. The Facility and the Flintkote Trust will maintain physical, electronic, and procedural safeguards that will protect the information that the Claimant transmits through Trust Online.

#### **4. Rules and Procedures**

- 4.1 Adherence to TDP. Electronic filing through Trust Online shall not affect the requirements of the Flintkote Trust and its Trust Distribution Procedures ("TDP"), as may be amended from time to time.
- 4.2 Payment Criteria Unchanged. This Agreement is not intended to alter and does not supersede the claim payment criteria contained in the TDP, nor does this Agreement create any additional rights to claim payment beyond those set forth in the TDP.

#### **5. Claim Information**

- 5.1 Claimant Certification. The Claimant hereby represents, and in connection with the submission of any claim shall certify, that the Claimant has reviewed the information and materials submitted in connection with a claim filed through Trust Online with the Flintkote Trust and that to the best of the Claimant's belief, under penalty of perjury, the information submitted is accurate and complete.
- 5.2 Complete Information Required. The Facility is not obligated to take any action on an electronically filed claim until it has received the complete information required by the TDP.
- 5.3 Tolling. Assignment of a claim number by Trust Online shall constitute filing of a claim for purposes of any applicable statute of limitations or repose provisions in the TDP. The Claimant acknowledges and agrees that although the Trust Online system permits an electronic claim filing to be saved prior to its electronic submission, such action does not constitute a valid claim filing for any purpose, including tolling of any applicable statute of limitations or repose, and the Facility will not have, and in no case will be deemed to have, any record of such an entry. If the Trust

Online system refuses, or otherwise does not accept, the submission of an electronic filing for any reason, including a Trust Online system failure, this too shall not constitute a tolling of any applicable statute of limitations or repose.

5.4 Maintenance of Supporting Documents. The Claimant shall maintain a copy of each document relied upon in connection with Claimant's claim electronically filed through Trust Online. Copies may be retained in either paper or electronic format. The Claimant will timely provide copies of such documents to the Facility upon request made on behalf of the Flintkote Trust.

5.5 Confidential Information. Any claim information that the Claimant submits through Trust Online pursuant to this Agreement, shall remain confidential information submitted for settlement purposes only. In the event that the Claimant directs another asbestos trust to transmit to the Flintkote Trust any information from such trust for the purpose of settling a claim filed against the Flintkote Trust (collectively, the "**Claimant's Prior Data**"), such Claimant's Prior Data may be used in processing the Claimant's claim against the Flintkote Trust.

## **6. Settlement Offer, Acceptance, and Payment**

6.1 Settlement Offers. After its review of a claim submitted electronically, the Facility, acting on behalf of the Flintkote Trust, shall communicate any settlement offer to the Claimant through Trust Online. In the event the Claimant desires to accept any such settlement offer, Trust Online shall prompt the Claimant to either electronically generate a customized release through Trust Online for use in documenting acceptance of the settlement offer (the "**Release**"), or request that the Facility mail a Release to the Claimant. If the Claimant elects to generate the Release through Trust Online, the system will prompt the Claimant to electronically view/print the Release in a portable document file (.pdf) format. The Release shall not be modified in any manner from the customized form that the Facility provides through Trust Online or mails to the Claimant.

6.2 Claimant Required to Deliver Signed Release. In the event a Claimant intends to accept a settlement offer communicated through Trust Online, the Claimant shall sign the Release and deliver the Release to the Facility. Delivery of the Release may be made in one of two ways: (a) the original, signed Release may be mailed to the Facility, or (b) an image of the original, signed Release may be uploaded to the Facility through Trust Online, or separately e-mailed or faxed to the Facility. In the event an image of the original, signed Release is delivered to the Facility, the Claimant shall maintain the original, signed Release for no less than five years. The Claimant will timely provide the original, signed Release to the Facility upon request made on behalf of the Flintkote Trust.

## **7. Limitation of Liability**

7.1 Limited Damages. Except as specifically provided in this Agreement, or as otherwise required by law, neither the Facility, the Flintkote Trust nor any

officer, director, trustee, employee, contractor, or agent of either of them will be held liable for any indirect, incidental, special, or consequential damages by reason of the Claimant's use of Trust Online.

7.2 THE FACILITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO THE CLAIMANT OR ANY THIRD PARTY, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED OR STATUTORY OR ARISING OUT OF CUSTOM OR COURSE OF DEALING OR USAGE OF OR IN THE TRADE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 8. Miscellaneous

- 8.1 No Assignment. No Party may assign or otherwise transfer in any way any of its rights and obligations arising out of this Agreement without the prior written consent of the other Parties, except the Facility may assign or otherwise transfer this Agreement to another entity that processes asbestos personal injury claims, provided such entity agrees to be bound by the terms of this Agreement.
- 8.2 Termination. Any Party may terminate this Agreement upon written notice to the other Parties. On the effective date of termination of this Agreement in its entirety, the Facility will cease providing the Claimant access to Trust Online, and the Claimant will cease having access to Trust Online.
- 8.3 Disputes. Any dispute among the Parties relating to the categorization or valuation of a claim submitted by the Claimant to the Facility will be resolved pursuant to the TDP.
- 8.4 Force Majeure. No Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of God, embargo, riot, sabotage, labor shortage or dispute, governmental act, or failure of Internet service, provided that the delaying Party (a) gives the other Parties prompt notice of such cause, and (b) uses reasonable efforts to promptly correct such failure or delay in performance.
- 8.5 Applicable Law. This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Delaware.
- 8.6 Binding Effect. Each of the undersigned persons represents and warrants that they are authorized to sign this Agreement on behalf of the Party they represent, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. A signature on a copy of this Agreement transmitted by facsimile machine or other electronic means will have the force of an original signature. The Claimant represents and warrants that he or she is either the injured party making the asbestos personal injury claim or, in the event the

injured party is now deceased or incompetent, the duly authorized legal representative of the deceased or incompetent injured party.

- 8.7 Claim Deferral. Nothing contained in this Agreement shall be construed to provide a substantive right of claim filing deferral contrary to the TDP.
- 8.8 Severability. If any term or provision of this Agreement should be declared invalid or unenforceable by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Agreement shall remain in full force and effect.
- 8.9 Entire Agreement and Waiver. This Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Parties. Any failure of a Party to exercise or enforce its rights under this Agreement shall not act as a waiver of subsequent breaches.

**CLAIMANT**

By: \_\_\_\_\_  
(Signature Required)

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

Name: \_\_\_\_\_  
(Print)

E-mail: \_\_\_\_\_

**THE FLINTKOTE ASBESTOS TRUST**

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

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

Title: \_\_\_\_\_

**DELAWARE CLAIMS PROCESSING FACILITY, LLC**

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

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

Title: \_\_\_\_\_

## ATTACHMENT 1 ELECTRONIC POP-UP SCREEN

The following will be imported into a pop-up screen that will appear each time a user logs on, and the phrase “shall comply in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure” on the pop-up screen shall be interpreted to mean “to the best of the Claimant’s belief, under penalty of perjury, the information submitted is accurate and complete.”:

In order to have access to this system, you must click the “I AGREE” button below. By clicking the “I AGREE” button below, the Claimant certifies that he/she is authorized to submit a claim, that all information submitted to the Flintkote Trust during this Online session shall comply in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure, and that such information is being submitted subject to the terms of the Electronic Filer Agreement. In the event you wish to review the full text of the [Electronic Filer Agreement](#), you may do so by clicking the hyperlink.

**I AGREE**



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