

## **ELECTRONIC FILER AGREEMENT**

This Electronic Filer Agreement (the "Agreement") is made by and between DII Silica Trust ("DII Silica Trust"), with offices at 1007 North Orange Street, Wilmington, Delaware 19801-3023, and the law firm of \_\_\_\_\_, with offices at \_\_\_\_\_. (Collectively, "the Parties.") \_\_\_\_\_ is a partner, member or other principal of the law firm on whose behalf this Agreement is executed and has the authorization of the law firm to enter into this Agreement and shall be designated as the "Primary Counsel".

### **Recitals**

DII Silica Trust is a qualified settlement Trust, established in part to process, settle and pay silica personal injury claims to persons injured by exposure to silica containing materials manufactured or sold by Mid-Valley, Inc., DII Industries, LLC, Kellogg Brown & Root, Inc., KBR Technical Services, Inc., Kellogg Brown & Root Engineering Corporation, Kellogg Brown & Root International, Inc. (a Delaware corporation), Kellogg Brown & Root International, Inc. (a Panamanian corporation), and BPM Minerals, LLC. Inc.; and

the Primary Counsel is a lawyer who files silica personal injury claims on behalf of the Primary Counsel's clients ("Claimants"); and

it is mutually beneficial to DII Silica Trust and the Primary Counsel to settle silica personal injury claims by communicating information to each other electronically, to 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 undersigned Parties agree, with each other, as follows:

#### **1. Electronic Claims Filing**

- 1.1 Access to Silica Online. DII Silica Trust will provide the Primary Counsel with access to DII Silica Trust's on-line claim system (Silica Online), through which Primary Counsel may view, submit and modify silica injury claims submitted to DII Silica Trust in electronic format. The Primary Counsel will have access to Silica Online for the sole purpose of filing and settling silica claims utilizing on-line claim review. The Primary Counsel will have access to information through Silica Online only regarding the Primary Counsel's own on-line claim review, and will be authorized to act through Silica Online only in regard to the Primary Counsel's own on-line claim review.
- 1.2 Filing Methods, Media, and Format. DII Silica Trust will accept claim data from the Primary Counsel using one or more methods and electronic media that DII Silica Trust will from time to time specify, in formats that DII Silica Trust will from time to time specify. The methods, media, and formats which DII Silica

Trust will specify will be among those then in general use among businesses transferring information electronically.

- 1.3 Proprietary System. The Primary Counsel acknowledges that the Silica Online concept, including all enhancements thereto and all screens and formats used in connection therewith, are the exclusive proprietary property of DII Silica Trust, and the Primary Counsel shall not publish, disclose, display, provide access to or otherwise make available any software, hardware or any other products associated with Silica Online, or any screens, formats, reports or printouts used, provided, produced from or in connection therewith, to any person or entity other than an employee or principal of the Primary Counsel, without the prior written consent of DII Silica Trust, with the exception that the Primary Counsel may publish, disclose, display, provide access to or otherwise make available to a Claimant represented by the Primary Counsel any screens, reports or printouts which contain information relating solely to that Claimant's claim.

## **2. User Identification**

- 2.1 Firm Administrator. The Primary Counsel's access to Silica Online will be managed by an individual under the Primary Counsel's employ, management or control whom the Primary Counsel identifies to serve as the Firm Administrator on the Primary Counsel's behalf. The Primary Counsel must be a licensed, practicing attorney who is partner or other principal in the law firm on whose behalf he or she executes this Agreement. The Firm Administrator, however, need not be an attorney. A Firm Administrator will be permitted to identify additional individuals under the Primary Counsel's employ, management or control as authorized to access Silica Online on the Primary Counsel's behalf. Some Silica Online users will be limited in the functions they can perform on the system; a Firm Administrator will have the power to designate the level of authority which each of the Primary Counsel's other Silica Online users will have on the system. At all times the Primary Counsel and the Firm Administrator will remain responsible for oversight and supervision of the additional individuals authorized to access the system, and will at all times remain responsible for the accuracy and non-fraudulent nature of the information submitted.
- 2.2 Limited Access. DII Silica Trust will assign a unique Silica Online password to the Firm Administrator. The Firm Administrator will then create accounts for users within the Primary Counsel's employ, management or control. DII Silica Trust will provide access to Silica Online only upon entry of a Silica Online password. DII Silica Trust may deny access to its system following failed log-ins. Individuals with access to Silica Online may not share their passwords with others, and the Primary Counsel will not permit any individual to use a Silica Online password that is not assigned to that individual. DII Silica Trust will limit each user's access to the system to correspond with the level of authority specified by the Primary Counsel's Firm Administrator. DII Silica Trust also retains the right to temporarily deny access to proper passwords for any reason, including,

but not limited to, system resources, bandwidth constraints, and fraud or security concerns.

- 2.3 Notice of Changes. When a change is made to any user account within Primary Counsel's organization, the system will send an email to the Primary Counsel.
- 2.4 Reliance on Primary Counsel Communications. DII Silica Trust is entitled to rely on communications and instructions it receives from persons using Silica Online user accounts and passwords assigned by the Firm Administrator and purporting to act on behalf of the Primary Counsel and, except if DII Silica Trust has acted with gross negligence, will not be held liable for such reliance.
- 2.5 Acceptance of Terms and Conditions. Each time the Firm Administrator, or his approved designees, enters the Silica Online system, he will be required to review a pop-up screen that will affirm that all on-line submissions to DII Silica Trust will conform to the terms of this agreement and will be true and accurate to the best of the individual user's, Firm Administrator's, and Primary Counsel's knowledge, information and belief. The pop-up screen will have a hyperlink to an electronic copy of this Agreement. The pop-up screen will also require the user to assent to these terms and conditions by clicking "I Agree" or other similar language. The requirement of assenting to the terms and conditions before entering the system shall not in any way affect the validity or binding effect of this Agreement once executed.

### **3. Technical Capabilities**

- 3.1 Compatible Equipment. In order to file claims through Silica Online, the Primary Counsel will provide its own compatible computer equipment that meets technical standards that DII Silica Trust will from time to time announce. The standards that DII Silica Trust will set for this purpose will be among those then in general use among businesses transferring information electronically.
- 3.2 Reports. DII Silica Trust will make available to the Primary Counsel through DII Silica Trust's web site the ability to download specified data and to generate reports summarizing information regarding the Primary Counsel's on-line claim review.
- 3.3 Continuous Access. Silica Online system will be available to the Primary Counsel seven days per week, with the exception that availability will be interrupted nightly for approximately one hour to synchronize data with DII Silica Trust processing systems and at any time as a result of system failure or when necessary for system upgrades, adjustments, maintenance or other operational considerations. When reasonably possible, DII Silica Trust will notify the Primary Counsel in advance of any foreseen interruption of availability, and at all times DII Silica Trust will use its best efforts to minimize the length and frequency of interruptions in Silica Online availability. Notwithstanding any

other provision of this Agreement, DII Silica Trust shall not be liable for any damages resulting directly or indirectly from system unavailability.

- 3.4 Security. DII Silica Trust will maintain physical, electronic, and procedural safeguards that will protect the information the Primary Counsel transmits through on-line claim review.

**4. Rules and Procedures**

- 4.1 Adherence to TDP. The Primary Counsel will assure that any submissions made to DII Silica Trust through Silica Online will conform to the rules and procedures established by DII Silica Trust and contained in its Silica Personal Injury Trust Distribution Procedures 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 Silica Personal Injury Trust Distribution Procedures. This Agreement does not create any rights to claim payment beyond those set forth in the Silica Personal Injury Trust Distribution Procedures.

**5. Claim Information**

- 5.1 Complete and Accurate Information. Consistent with the Primary Counsel's legal and professional responsibilities and the terms of this Agreement, the Primary Counsel, the Firm Administrator and individual users will provide complete and accurate information in any on-line claim review. DII Silica Trust is not obligated to take any action on a claim until it has received all the complete information as required by its Silica Personal Injury Trust Distribution Procedures.

- 5.2 Maintenance of Supporting Documents. The Primary Counsel will timely provide to DII Silica Trust hard copies of documents relied upon in Silica Online whenever instructed to do so by DII Silica Trust. Whenever DII Silica Trust does not instruct the Primary Counsel to provide copies of documents relied upon as part of the Silica Online claim review, the Primary Counsel will maintain a copy of each document so relied upon, in either paper or electronic format, and thereafter will timely provide copies of such documents to DII Silica Trust upon request.

- 5.3 Pursuant to Section 4 of the Trust Distribution Procedures, "all materials, records and information submitted by claimants, including that provided with medical audits under Section 4.8, are confidential, submitted solely for settlement purposes." Accordingly, any electronic submissions to the DII Silica Trust under this Agreement shall remain confidential and will not be submitted to any third-party except in response to a valid subpoena or upon prior written consent of the claimant.

**6. Miscellaneous**

- 6.1 Limited Damages. Except as specifically provided in this Agreement, or as otherwise required by law, no officer, director, trustee, employee, contractor, or agent of DII Silica Trust will be held liable for any indirect, incidental, special or consequential damages by reason of Primary Counsel's use of Silica Online.
- 6.2 No Assignment. Neither 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 party.
- 6.3 Termination. Either Party may terminate this Agreement upon written notice to the other Party. Upon effective date of termination of this Agreement, DII Silica Trust will cease providing the Primary Counsel with access to its system, and the Primary Counsel will cease making on-line claim submissions or having access to Silica Online claim review.
- 6.4 Disputes. Any dispute between the Parties relating to the appropriate categorization or settlement value of a claim submitted by the Primary Counsel to DII Silica Trust will be resolved pursuant to DII Silica Trust's dispute resolution procedures.
- 6.5 Force Majeure. Neither 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 party prompt notice of such cause, and (b) uses reasonable efforts to correct promptly such failure or delay in performance.
- 6.6 Applicable Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Delaware.
- 6.7 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 will have the force of an original signature.
- 6.8 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.
- 6.9 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 either party to exercise or enforce its rights under this Agreement shall not act as a waiver of subsequent breaches.

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

*(Primary Counsel)*

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*(print)*

Email: \_\_\_\_\_

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*(for DII SILICA TRUST)*

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

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*(print)*

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 for the first time:

By clicking the “I AGREE” box below the user affirms that all on-line submissions to DII Silica Trust conform to the terms of the Electronic Filer Agreement executed by the Primary Counsel for the law firm and the DII Silica Trust. User further affirms that all submissions made during this on-line session are true and accurate to the best of the individual user’s, User Administrator’s, and Primary Counsel’s knowledge, information and belief. In order to have access to this system you must click the “I AGREE” button below indicating your assent to these terms and conditions. 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**