

**FRASER’S BOILER LIQUIDATING TRUST**  
**AMENDED CLAIM VALUATION PROCESS**

This Fraser’s Boiler Liquidating Trust Amended Claim Valuation Process (the “CVP”) provides a process for resolving all Potential Asbestos-Related Trust Claims against Fraser’s Boiler Service, Inc. (“FBS”).

The Plan and Trust Agreement establish the Liquidating Trust. The Liquidating Trustee of the Liquidating Trust shall implement and administer this CVP in accordance with the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Trust Agreement.

**SECTION I**

**Definitions**

The following definitions will apply to the listed terms wherever those terms appear in this CVP. Unless otherwise specified, each defined term stated in singular form shall include the plural form, and each defined term stated in plural form shall include the singular form. The terms “includes” and “including” wherever used in this CVP shall mean both includes or including, both without limitation.

- 1.1 “Claim Submission Fee”** means a fee of \$1,000 payable in connection with any Trust Claim submitted after the Effective Date to the Liquidating Trust.
- 1.2 “Debtor”** means Fraser’s Boiler Service, Inc.
- 1.3 “Exposure Requirements”** means the asbestos exposure requirements set forth in Section 4.3 of the CVP.
- 1.4 “Liquidating Trust”** means the Fraser’s Boiler Liquidating Trust.
- 1.5 “Notice Address”** means a mailing address that will be listed on a website maintained by the Liquidating Trust on and after the Liquidating Trust’s formation for

the purpose of receiving formal claims notifications and other legal notices provided for in this CVP. The Liquidating Trust may also list an email or electronic address for receiving formal claim notices or other legal notices and may condition use of such alternate electronic address upon such provisions as the Liquidating Trust deems appropriate.

**1.6 “Plan”** means the Fifth Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code of the Debtor dated as of October 14, 2020.

**1.7 “Trust Agreement”** means that Liquidating Trust Agreement executed as of December 17, 2020 by and among the Debtor and the Liquidating Trustee.

**1.8 “Trust Claim”** means a Potential Asbestos-Related Trust Claim that is allowed by the Liquidating Trust or a Class 3 Claim that was settled in mediation and approved by the Court prior to the Effective Date.

## **SECTION II**

### **Introduction**

**2.1 Purpose.** This CVP has been adopted in connection with the Liquidating Trust. It is designed to utilize the funds received from insurance settlements to resolve and pay Potential Asbestos-Related Trust Claims for as long as the Liquidating Trust has assets available to pay such claims. The purpose of the Liquidating Trust is to provide meaningful compensation to asbestos victims for whom FBS would have been the principal source of tort system recovery. A Potential Asbestos-Related Trust Claim is therefore based upon an asbestos exposure history in which more than 40% of the total lifetime asbestos exposure of the claimant or, if a Potential Asbestos-Related Trust Claim is based on exposure to an occupationally exposed person, such as a family member (a

“Secondary Exposure”), the total lifetime asbestos exposure of the relevant occupationally exposed person, occurred: 1) in direct proximity to FBS contractors removing and/or installing asbestos on boilers at a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement; or 2) while working directly on specific boilers in which FBS previously installed asbestos containing materials on a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement. The Liquidating Trust is intended to pay claims consistent with historic tort system values until its assets are exhausted and this CVP is not designed to preserve distributable assets for asbestos-related claims that might arise or that might be established as Trust Claims after the Liquidating Trust has exhausted its assets. The Liquidating Trust is instead designed to promptly and efficiently distribute fair compensation to Trust Claims consistent with historical tort system values until it has exhausted its assets.

**2.2 Interpretation.** Nothing in this CVP shall be deemed to create a substantive right for any claimant or injured person.

### **SECTION III**

#### **Overview**

**3.1 Treatment of Trust Claims.** This CVP contemplates that many Class 3 Claims will have been resolved by mediation and approved by the Court before the Effective Date and such claims will be Trust Claims. Other Potential Asbestos-Related Trust Claims, including all unliquidated Class 3 Claims, will be submitted, liquidated, and paid by the Trust as set forth in Sections IV and V. As detailed in Sections IV and V, the value of each Potential Asbestos-Related Trust Claim will be determined by

negotiation, mediation, and in certain instances arbitration. The process for valuing each Potential Asbestos-Related Trust Claim also provides guidelines for the Liquidating Trustee in negotiations. These guidelines are designed to allow Potential Asbestos-Related Trust Claims to be valued based on FBS's historical tort system values of similarly situated cases and resolved through negotiation, mediation and, if necessary, binding arbitration.

**3.2 Annual Payment Caps.** To ensure that the Liquidating Trust has assets available to pay Trust Claims for at least four years, payments during the first six months of the Trust's existence toward Trust Claims allowed on the Effective Date shall not exceed 75% of the Liquidating Trust's available cash after payment of Allowed Administrative Expense Claims and Class 1 Claims and costs related to the Liquidating Trust's administration. Thereafter, in any calendar year, payments by the Liquidating Trust toward Trust Claims shall not exceed 75% of the Liquidating Trust's available cash as of the first day of the 14<sup>th</sup> month after the Effective Date or the subsequent anniversary of that date (the "Payment Cap"). In each year, the Liquidating Trustee shall evaluate the newly valued claims and determine if it is feasible without substantially risking the Liquidating Trust's ability to provide all Trust Claims a similar pro rata payment. If the Liquidating Trustee concludes that a distribution is possible without such a substantial risk, then the Liquidating Trustee will make further pro rata payments to all Trust Claims. However, in the absence of a strong likelihood that all Trust Claims will be able to receive pro rata distributions at the end of the Liquidating Trust's life, the Liquidating Trustee will defer further distributions until after the fourth year after the Effective Date. In the fourth year after the Effective Date, there will be no Payment Cap and the

Liquidating Trustee may utilize the remaining Trust Assets to equalize the pro rata payments made on all Trust Claims and make further pro rata payments on Trust Claims.

## SECTION IV

### Claims Submission

**4.1 Submission of Claims.** All claimants holding a Potential Asbestos-Related Trust Claim—whether the claimant is the injured person or bringing a claim on behalf of an injured person—may initiate action by the Liquidating Trust by sending to the Liquidating Trust at the Notice Address the completed claim form that the Liquidating Trustee will promulgate (“Claim Form”), together with supporting documentation as the Claim Form may request and with the Claim Submission Fee.

**4.2 Claimant’s Burden to Submit Credible Claim Information.**

Information submitted in support of a Trust Claim must comply with recognized medical standards (including but not limited to standards regarding equipment, testing methods, and procedures) and/or legal evidentiary and authenticity standards. While the Liquidating Trust will not strictly apply rules of evidence, information provided in support of claims must be reliable and credible so that the Liquidating Trust is fully informed regarding the foundations for facts asserted in support of claims.

Evidence of an injured person’s asbestos-related disease must include a diagnosis by either (1) a Board-Certified physician in appropriate specialties, or (2) a medical expert who is not Board-Certified, but who the Liquidating Trust determines has equivalent medical experience (in which case the Liquidating Trust may consider the lack of evidence from a Board-Certified physician as a factor in valuing a Trust Claim). The diagnosis must be made to a level of reasonable medical probability, and a finding that an

injured person's health is "consistent with" asbestos-related disease will not, standing alone, be sufficient evidence of an injured person's asbestos-related disease.

The Liquidating Trust normally will accept copies instead of authenticated copies of x-ray reports, laboratory tests, medical examinations, other medical records and reviews that otherwise comply with recognized medical and/or legal standards unless circumstances indicate that the information submitted is unreliable. The Liquidating Trust normally will accept copies instead of authenticated copies of deposition testimony, invoices, affidavits, business records, deck logs, military service records (including leave records) or other credible indirect or secondary evidence in a form otherwise acceptable to the Liquidating Trust that establishes an injured person's occupation, occupational history, business or other losses or the injured person's presence at a particular ship, facility, job site, building, or other location as required by Section 4.3, unless circumstances indicate that the information submitted is unreliable.

Examples of unreliable information include where the circumstances raise questions of authenticity of copies or where persons authoring or verifying facts offered in support of a claim lack direct knowledge of such facts but fail to reveal and describe what facts, and how and from what sources they learned those facts, or what they relied upon as the basis for their assertion of such facts. Under these circumstances, the Liquidating Trust shall apply the rules of evidence to exclude evidence where the witness or verifying party declines to provide such foundational information, e.g., on grounds that the information relied upon is privileged or confidential.

### **4.3 Information Requirements Regarding Certain Jobsite Exposures.**

The Liquidating Trust will only allow claims arising from exposure aboard ships or at jobsites that FBS previously acknowledged as potential exposure sites by settling tort system litigation at greater than nominal value or acknowledged potential exposure sites pursuant to an administrative settlement agreement.

Claimants asserting injuries arising from exposure aboard ships or at jobsites must demonstrate that their claim meets the following Exposure Requirements: (a) the injured person was exposed to FBS's asbestos-containing products or operations at a ship or jobsite during the date range that FBS has recognized and/or paid on in the tort system; (b) if a claimant asserts that the injured person's FBS exposure was on a ship, the claimant must demonstrate through meaningful and credible evidence that the injured person worked in the engineering areas of the ship during or after the period that FBS performed work on the particular vessel; and (c) if a claimant asserts that an injured person's exposure occurred at a non-ship jobsite, claimant must demonstrate through meaningful and credible evidence the injured person's presence in the general area where FBS performed work within the date range for which FBS has acknowledged responsibility and/or paid on in the tort system.

If a claimant asserts that an injured person's exposure occurred solely from a Secondary Exposure, the claimant must demonstrate through meaningful and credible evidence that (a) the injured person was exposed to an occupationally exposed person who meets the Exposure Requirements, and (b) the injured person's own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to FBS's asbestos-containing products or operations.

**4.4 Incomplete Claims Submissions.** If a claimant submits a Claim Form without properly completing the form or without all necessary supporting documentation, the Liquidating Trust will notify the claimant within 90 days of such deficiencies and the claimant may correct the noted deficiencies. The Claim Form will be deemed submitted for the purposes of processing when all necessary supporting documentation has been furnished.

## SECTION V

### **Resolution of Trust Claims**

**5.1 Valuation of Trust Claims.** The Liquidating Trustee will perform an individual review of each Trust Claim and assign each Trust Claim to one of two categories—Presumptively Disallowed Claims or Generally Allowable Claims—based on an injured person’s exposure and other basic qualification criteria, as set forth in Sections 5.1(i)–5.1(ii). Once a Trust Claim is assigned to a category, a liquidation value will be determined through negotiation and mediation based on the qualification criteria and related factors, as set forth in Sections 5.1(i)–5.1(ii). These factors are intended to parallel the considerations that would typically add or subtract value to cases in the tort system or in related settlement negotiations outside the context of a post-bankruptcy trust with the ultimate goal of this evaluation process being to value claims based upon the settlement the particular claim would have received had it been filed in the tort system.

**5.1(i) Presumptively Disallowed Claims.** A Trust Claim will be categorized as a Presumptively Disallowed Claim if, based on the Liquidating Trustee’s review of the documentation provided, a claimant cannot credibly demonstrate all of the following:

5.1(i)(a): The Potential Asbestos-Related Trust Claim was presented to the Liquidating Trust less than three years after the date of FBS' dissolution following Plan Confirmation;

5.1(i)(b): The Potential Asbestos-Related Trust Claim was presented to the Liquidating Trust less than three years after the injured person's diagnosis of asbestos disease or death, whatever is earlier;

5.1(i)(c): The Potential Asbestos-Related Trust Claim is based on either exposure at a ship or jobsite. or a Secondary Exposure satisfying the Exposure Requirements;

5.1(i)(d): A latency period of at least 20 years between first exposure and the manifestation of a disease;

5.1(i)(e): The Potential Asbestos-Related Trust Claim is based upon a diagnosis of (a) mesothelioma, (b) lung cancer, (c) other cancer that has been recognized by FBS prior to the Effective Date as a basis for valid settlements at greater than nominal value, or (d) pulmonary asbestosis by a board-certified pathologist or pulmonologist.

5.1(i)(f): The Potential Asbestos-Related Trust Claim is, for deceased claimants, presented by an individual that has obtained letters testimony appointing such individual as the personal representative to file claim on behalf of estate.

5.1(i)(g): The Potential Asbestos-Related Trust Claim is based upon an asbestos exposure history in which more than 40% of the total lifetime asbestos exposure of the claimant or, if the claimant asserts a Secondary Exposure, the total lifetime asbestos exposure of the relevant occupationally exposed person occurred: 1) in

direct proximity to FBS contractors removing and/or installing asbestos on boilers at a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement; or 2) while working directly on specific boilers in which FBS previously installed asbestos containing materials on a jobsite or ship for which FBS has previously paid settlements in the tort system or pursuant to an administrative settlement agreement.

A Presumptively Disallowed Claim will generally be valued at \$0. However, the Liquidating Trustee has the authority to allow a Presumptively Disallowed Claim with unusual circumstances within the settlement range of \$100.00 to \$6,000.00.

**5.1(ii) Generally Allowable Claims.** A Trust Claim will be categorized as a Generally Allowable Claim if, based on the Liquidating Trustee's review of the documentation provided, a claimant can credibly demonstrate each of the requirements set forth in Section 5.1(i)(a)–(g). In negotiating a settlement of a Generally Allowable Claim, the Liquidating Trustee shall seek to replicate the settlement value that FBS paid for similarly situated claims in the tort system. In valuing Generally Allowable Claims, the Liquidating Trustee shall consider, among other factors: (a) the site where the injured person was exposed to FBS operations or products; (b) the strength of the injured person's exposure evidence; (c) the asbestos disease that the injured person has experienced and whether the injured person was living with this disease at the time his or her Trust Claim was initiated; (d) the injured person's age, number of dependents, loss of earnings or pension, and medical and funeral expenses; (e) the injured person's smoking history (if applicable based on the injured person's disease); (f) the injured person's occupation (or other circumstances that relate to the duration of the injured person's

exposure and the amount of exposure to which the injured person was subject); (g) the percentage of the injured person's asbestos exposure that occurred due to FBS's products and operations; (h) the length of time the injured person was exposed to asbestos due to FBS's products or operations; and (i) the length of time that has passed between (1) the time that FBS last performed operations at the jobsite and (2) the time the injured person or, if a Trust Claim is based on Secondary Exposure, the relevant occupationally exposed person, was exposed at the jobsite. In valuing Generally Allowable Claims the Liquidating Trustee may also consider the likely time that would have existed in the tort system between the Liquidating Trust valuation and a likely available trial date in the tort system and the impact such a delay would have on a tort system settlement valuation.<sup>1</sup>

**5.2 Processing of Potential Asbestos-Related Trust Claims.** Potential Asbestos-Related Trust Claims shall be placed by the Liquidating Trustee into the two categories set forth in Section 5.1 on a rolling basis as they are received by the Liquidating Trust. Once a Potential Asbestos-Related Trust Claim has been assigned to a category, the Liquidating Trustee shall issue a settlement offer based on the valuation guidelines as described in Section 5.1 if it is a Generally Allowable Claim. Claimants may accept the Liquidating Trustee's settlement offer or request mediation of the Potential Asbestos-Related Trust Claim in the next round of mediations as described below. Claimants with a Presumptively Disallowed Claim may accept disallowance of their claims, negotiate directly with the Liquidating Trustee regarding resolution of their

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<sup>1</sup> For many Generally Allowable Claims, this consideration may reflect somewhat lower settlement values than similar claims settled in the pre-confirmation settlement program that had in many cases already been pending in the tort system for several years and were close to trial dates and had obtained relief from the stay and were then entitled to proceed with tort system litigation.

claims or may pursue binding arbitration with Judicial Dispute Resolution in Seattle or an alternative arbitrator proposed by the claimant and approved by the Liquidating Trustee.

The Liquidating Trust will organize a mediation process annually at about the anniversary of the Effective Date for any unresolved Generally Allowable Claims. All Potential Asbestos-Related Trust Claims categorized as Generally Allowable Claims that are ready for mediation by the time of such mediations will be mediated in these annual sessions. The mediation sessions will be collective, in that, for efficiency, multiple Potential Asbestos-Related Trust Claims will be scheduled for resolution at individual mediation sessions, at the discretion of the Liquidating Trustee. The Liquidating Trust and the claimant will share equally the allocated costs of mediation. A claimant that has mediated its claim without resolution may elect to pursue binding arbitration.

Arbitration, if elected, will be with Judicial Dispute Resolution in Seattle or an alternative arbitrator proposed by the claimant and approved by the Liquidating Trustee. Any such arbitration proceeding shall be a “baseball arbitration” in which the arbitrator’s decision is solely based on the valuation factors set forth in Section 5.1. The cost of this arbitration shall be divided equally between the Liquidating Trust and the claimant.

**5.3 Alternative Resolution / Payment Mechanism.** With the consent of any Potential Asbestos-Related Trust Claim holder, and subject to any limitations as the claimant and the Liquidating Trustee may agree will apply, the Liquidating Trustee may tender an unresolved claim to any Insurer that is not a Settled Insurer and authorize the claimant to initiate a suit against the Liquidating Trust as the successor to FBS’s Insurance Rights. Such a claimant will be permitted to assert their claim against the Liquidating Trust in the place of FBS in a court of competent jurisdiction. If such a claim

is allowed by judgment, such claimant may pursue collection of such claim against any unsettled Insurers whose policy rights are triggered by such claim, subject to the reduction of judgment provisions of the Plan.

**5.4 Payment of Trust Claims.** All Trust Claims resolved prior to the Effective Date will be paid their pro rata share of a total distribution amount that is equal to 75% of the Liquidating Trust's available cash after payment of Allowed Administrative Claims and Class 1 Claims and costs related to the Liquidating Trust's administration with the balance to be paid in subsequent years as funds permit.

All Trust Claims resolved by negotiation, mediation, or arbitration on or before the first day of the 14<sup>th</sup> calendar month after the Effective Date, and on each successive anniversary of that date, will be paid from the then available Trust Assets subject to the Payment Caps. In each year, the Liquidating Trustee will use the available funds permitted by the Payment Cap to make pro rata distributions to newly valued claims until all Trust Claims have received a similar pro rata payment and then may, within the Liquidating Trustee's discretion, make further pro rata payments to all Trust Claims. In the fourth year after the Effective Date, there will be no Payment Cap and the Liquidating Trustee may utilize the remaining Trust Assets to equalize the pro rata payments made on all Trust Claims and make further pro rata payments on Trust Claims.

## **SECTION VI**

### **CVP Administration**

**6.1 Liquidating Trustee Administrators.** Pursuant to the Plan and the Trust Agreement, the Liquidating Trust and this CVP shall be administered by the Liquidating Trustee.

## SECTION VII

### **General Provisions Related to Liquidating and Paying Trust Claims**

**7.1 Showing Required.** To establish a valid Trust Claim, a claimant must meet the requirements set forth in this CVP, including by supplying all the information requested on the Claim Form and any additional information that the Liquidating Trust may reasonably request to verify and evaluate such claim.

**7.2 Claimant Change of Address.** Following the submission of a Potential Asbestos-Related Trust Claim, if the claimant address associated with the claim changes, such claimant shall submit a change of address form to the Liquidating Trustee (via the Liquidating Trustee's website or by mail). Until the Liquidating Trustee receives such change of address notice, the Liquidating Trustee is entitled to use the last known address on file for the claimant for all purposes.

**7.3 Third-Party Services.** Nothing in this CVP shall preclude the Liquidating Trust from retaining counsel and/or contracting with a claims processing organization to respectively provide advice and services to the Liquidating Trust so long as decisions about the categorization and liquidated value of Trust Claims are made by the Liquidating Trust and based on the relevant provisions of this CVP.

**7.4 Medicare Act Obligations.**

a. Without taking any position as to whether any of the funders of the Liquidating Trust have reporting obligations for claims paid by the Liquidating Trust pursuant to 42 U.S.C. §1395y et seq. or any other similar statute or regulation, and its related rules or guidance ("MPSA"), including Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (P.L. 110-173), or any other similar statute or

regulation, and any related rules, regulations or guidance (“MMSEA”), the Liquidating Trust will act as a reporting agent for all funders of the Liquidating Trust and will register as a Responsible Reporting Entity (“RRE”).

b. The Liquidating Trust shall timely submit all reports that would be required to be made by any funder of the Liquidating Trust under MMSEA with respect to any claims settled, resolved, paid, or otherwise liquidated by the Liquidating Trust or with respect to contributions to the Liquidating Trust.

c. The Liquidating Trust, in its role as RRE shall follow all applicable guidance published by the Centers for Medicare & Medicaid Services of the United States Departments of Health and Human Services and/or any other successor entity charged with responsibility for monitoring, assessing, or receiving reports made under the MMSEA (collectively, “CMS”) to determine whether and how to report pursuant to MMSEA.

d. All documentation relied upon by the Liquidating Trust in deciding that any payment by the Liquidating Trust did not have to be reported to CMS shall be maintained for five (5) years.

e. The Liquidating Trust shall withhold from any settlement to a Medicare-eligible claimant funds sufficient to reimburse Medicare’s conditional payments and place those funds in a client trust, escrow account, or similar account until the Liquidating Trustee or his agent obtains written documentation from CMS that any such claim for reimbursement pursuant to MMSEA has been waived, satisfied, or otherwise released. To the extent such obligations exist, the Liquidating Trustee shall be responsible for any reimbursement and repayment obligations arising from Pre-Suit

Eligible Claim liquidation amounts and Litigation Claim Payment amounts under the Medicare Act for claim-related conditional payments made under Medicare Part A, B, C, and D or any state's Medicaid statute. Any amounts the Liquidating Trust may be required to pay as a result of any reimbursement and repayment obligations will reduce the amounts payable by the Liquidating Trust to the related claimant. To the extent such obligations exist, the Liquidating Trustee also shall be responsible for any reporting or financial obligations imposed by the Medicare Act or any state's Medicaid statute in connection with any payment to a claimant on a Trust Claim.

## **SECTION IX**

### **Miscellaneous**

8.1 **Amendments.** The Liquidating Trustee may amend, modify, delete, or add to any provisions of this CVP to conform this CVP to advances in scientific, medical, or other knowledge as may be essential to the successful operation of the Liquidating Trust, with notice to any known claimants who are asserting Potential Asbestos-Related Trust Claims and any then unpaid Trust Claims.

8.2 **Severability.** Should any provision contained in this CVP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this CVP.

8.3 **Governing Law.** Administration of this CVP shall be governed by, and construed in accordance with, the laws of the State of Washington.