



SEI Participant Agreement USDA BioPreferred® Program

This SEI Participant Agreement (“Agreement”) effective _____ (the Effective Date), between The Safety Equipment Institute (“SEI”), a nonprofit corporation, having its principal place of business at 1307 Dolley Madison Blvd, McLean, VA 22101 USA and _____ (“Participant”), having its principal place of business at: _____.

Witnesseth

WHEREAS, SEI is a nonprofit corporation that has been awarded a contract by the U.S. Department of Agriculture (“USDA”) to provide a certification program supporting the USDA’s Biobased Product Labeling Program (“the Program”);

WHEREAS, Participant has applied to USDA for acceptance of its product (“Product”) in the Program and has agreed to enter into this Agreement and submit its Product to SEI for certification approval;

WHEREAS, A product approved through the SEI procedures is tested by an SEI accepted third-party laboratory to determine the product’s biobased content in accordance with the current edition of ASTM Standard D6866 Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis (“the ASTM Standard”);

WHEREAS, in pursuant to the USDA contract, a program-specific Operations Manual for Biobased Products Certification (available at www.seinet.org) (“which provides for an independent third-party laboratory (“Laboratory”) testing of the Participant’s product to determine the percentage of biobased content of their submitted Products;

WHEREAS, Participant has been determined eligible by USDA to participate in the Program, and desires to have its product tested by a designated laboratory, obtain certification approval from SEI (on behalf of USDA) for its Product and agrees to fully comply with the SEI Procedures;

WHEREAS, SEI will, if Participant and its Product(s) meet the requirements of this Agreement, report to USDA that Participant’s Product(s) has been found to be in conformance with the SEI Procedures and the ASTM Standard; and

NOW, THEREFORE, for consideration of its Product for testing and approval and other valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, Participant agrees as follows:

1. Incorporation of WHEREAS Clauses

The parties incorporate by reference the WHEREAS clauses set forth above as if fully set forth herein.

2. Scope of Performance

- 2.1. SEI will provide a list of accepted laboratories that will provide testing of Participant’s Product to determine the Product’s biobased content in accordance with the Standard and monitor the validity of the biobased testing results. SEI will report the results of this testing to USDA and Participant.
- 2.2. Participant will supply the Laboratory, at Participant’s expense, with current, representative samples of the Product that are in conformance with the requirements of the Operations Manual for Biobased Product Certification Program. Participant will also supply the Laboratory with the SEI Documentation of Sample Selection, Shipping and Disposal by Manufacturer Vendor Form.
 - 2.2.1. Participant recognizes that unused Product samples will be disposed of by the Laboratory unless the Laboratory chooses to return any unused sample to the Participant at the Participant’s expense.

- 2.3. **Reservation of Rights**—USDA may, as part of its Program, implement a random sampling, testing, and inspection of Products to monitor the validity of the biobased content test results and the presence of product labels, matched with those certifications, in the marketplace. SEI reserves the right, upon reasonable written notice to Participant, to have the Product retested/reevaluated at the Participant's expense. This reevaluation may be the result of random selection or from other information that raises a question concerning the continued conformance of the Product to the Program or SEI Procedures. Participant acknowledges that USDA or SEI has the right to change the requirements for acquiring or maintaining Product approval, at any time.

3. Participant's Warranties and Responsibilities

- 3.1. Participant accepts the terms stated herein and agrees to abide by the terms of the SEI Procedures and this Agreement.
- 3.2. Participant agrees that, if granted, it will claim certification only in connection with Products covered in its USDA application and approved by SEI and not to make any claims concerning the approval/certification that are inaccurate or misleading.
- 3.3. Participant warrants and represents to the best of its knowledge that:
- (a) Participant is the responsible manufacturer or vendor of the Product and is responsible for ensuring that the Product complies with the SEI Procedures and the terms of this Agreement;
 - (b) Products are submitted pursuant to the terms of this Agreement;
 - (c) The Products are safe if properly used in accordance with Participant's written instructions and that all legally necessary disclosures to the public have been included in the packaging associated with the Products.
- 3.4. Participant and Participant's approved Product(s) must comply with changes to the Program, SEI's Procedures and/or the ASTM Standard within a period of not more than 60 days from the date of receipt of written notification to Participant of such changes. Participant has the right to sell through any existing product and packaging that contains the original label, provided the labeled product meets the prior ASTM certification requirements of the Program changes. If the changes require that the Participant's Product(s) be retested, the Participant must have the testing completed within a time period announced by USDA.
- 3.5. The Participant shall not bring any false accusations, nor slander, nor libel, nor disrepute to SEI. Participant also agrees not to challenge SEI's rights under the Program, SEI Procedures, or this Agreement.
- 3.6. Participant understands and agrees that SEI has only had tested or evaluated Product samples and does not guarantee or warrant the quality or compliance of all units of the Product manufactured or produced by the Participant. Participant further acknowledges that as an independent entity, SEI, ASTM, USDA, nor the Laboratory, assume any responsibility or liability for the design of the Product.
- 3.7. Participant agrees that if Participant wishes to modify or change the Product, Participant must notify USDA in writing. Participant must demonstrate to USDA that the changes do not impact its Program approval. If USDA is not satisfied, USDA will withdraw its Program approval.
- 3.8. Participant agrees to notify USDA in writing of any complaints that Participant receives of the Product failing to meet the ASTM Standard, SEI Procedures, or the Program requirements.
- 3.9. Participant shall notify USDA of any approved Product that has left the control of Participant that does not comply with Program requirements or the SEI Procedures.
- 3.10. Participant is required to keep all records required by the rules, regulations, and/or statutes of any jurisdiction into which it sells or distributes Products participating in the Program, as well as those required by the Program and SEI Procedures.
- 3.11. Participant will immediately provide to SEI the name and address of any entity that Participant believes is misrepresenting SEI approval of its products related to the Program.

4. Evaluation Activities

- 4.1. The Participant shall make certain that the Products covered by the SEI approval at all times conform to the SEI Procedures and the ASTM Standard upon which the Product was approved.
- 4.2. Participant agrees that if it makes changes to its manufacturing process, quality control, and/or inspection procedures or changes the specifications for the Product, it will notify USDA immediately and will warrant that all future Products are still in conformance with the Program requirements to which they were tested.
- 4.3. If at any time SEI is notified that the Product(s) fail to conform to the processes, standards of quality, and specifications as set forth in Program and SEI Procedures, SEI shall so notify USDA and the Participant.

5. Insurance

- 5.1. Participant shall maintain at its own expense, in full force and effect at all times during which the certification is approved and for three years thereafter, with an approved insurance carrier with, at least one million dollars (\$1 million) per occurrence/\$3 million aggregate products liability and comprehensive general liability insurance policy with respect to the products.
- 5.2. Participant shall include SEI as an additional insured and will provide at least 30 days prior written notice to SEI of the cancellation or any substantial modification to the policy that participant would affect either party.

6. Indemnity

- 6.1. Participant agrees to defend, indemnify, and hold harmless SEI (its members, directors, officers, employees, agents, subsidiaries and representatives) and the Laboratory against any and all liability, loss, costs, damages, attorneys' fees, and expenses of whatever kind or nature that they may sustain or incur by reason of any claim against them resulting from any acts or omissions of the Participant or that relate in any way to this Agreement, the Program, or SEI Procedures which claims are due to Participants gross negligence or willful misconduct. The provisions of this Section survive the termination of this Agreement.
- 6.2. Participant's obligations to defend, indemnify, and hold harmless shall be subject to SEI providing prompt (within 30 days) written notice to the Participant of all claims and the commencement of any suit, action, or proceeding in respect of which indemnity may be sought. The Participant shall have control of the selection of counsel (with advice and consent of SEI or Laboratory) and the defense of all claims. SEI and/or Laboratory shall cooperate at the request and cost of the Participant in the defense of all claims for which indemnification is sought.

7. Confidentiality of Information

- 7.1. All technical information provided by or to SEI and the Participant in connection with this Agreement shall be treated as confidential and not disclosed to the public, and any technical or proprietary information provided by either party shall remain the property of the provider of that information and shall not be permitted to be used for any other Product without the prior written consent of the originating party of that information, unless that information shall become publicly available by means other than the violation of this paragraph by SEI or Participant.

8. Termination or Nonrenewal

- 8.1. This Agreement may be terminated by either party, with or without cause, upon 90 days' written notice to the other party.
- 8.2. This Agreement may be terminated for cause by SEI, upon thirty (30) days' written notice, if Participant fails to comply with any material provision of SEI Procedures or this Agreement.
- 8.3. Once the Agreement is terminated, all rights granted by SEI to Participant shall immediately cease and end. However, Participant's obligations under Paragraphs 3.5, 3.6, 3.10, 6, 7, 8, 9, 10 and 11 of this Agreement shall continue indefinitely beyond termination or nonrenewal.
- 8.4. Once terminated, Participant must immediately cease any representations or advertising that contain any reference to the SEI certification approval of the Product. Participant has the right to sell through any existing finished goods inventory and printed packaging that contains the label, provided the labeled product meets the original SEI certification requirements.

9. Miscellaneous

- 9.1. **Governing Law**—This Agreement shall be interpreted according to the laws of the Commonwealth of Virginia, and Participant agrees to personal jurisdiction in the Virginia (federal) and/or state courts for any breach or disagreement concerning the terms of this Agreement.
- 9.2. **Binding Arbitration and Consent to Virginia Federal Court**—Both parties agree that any contractual dispute arising from, relating to, or concerning this Agreement shall be submitted to binding arbitration by the American Arbitration Association (“AAA”) at its McLean, Va. office, providing, however, in the event that USDA or SEI claims the Participant has engaged in the unauthorized use of the certification approval, either may file a complaint immediately in a federal court in the Commonwealth of Virginia for a temporary, preliminary, and permanent injunction. Participant consents to the personal jurisdiction and service of process from and the venue in all federal courts in the Commonwealth of Virginia.
- 9.3. **Notice**—All notices, demands, waivers, consents, and requests that may be or are required to be given by either party to the other under the terms of this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:
- 9.4. **Execution in Counterparts**—For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- 9.5. **Assignment of Rights or Agreement**—Neither the Agreement nor any rights granted herein may be assigned, directly or indirectly, by any party hereto without the prior written consent of the other party, which consent may be denied in the other party's total discretion. This Agreement shall be binding upon and inure to the benefit of any assignee permitted hereunder.
- 9.6. **Bankruptcy**—If either party shall become bankrupt or insolvent, or if either party's business shall be placed in the hands of a receiver or trustee, whether by voluntary act of such party or otherwise, this Agreement shall, at the option of the other party, immediately terminate.
- 9.7. **Severability**—If any clause, provision, or term of this Agreement is declared illegal, invalid, or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected and that, in lieu of any such clauses, provision, or term, there shall be added as a part hereof a substitute clause, provision, or term as similar in substance to such illegal, invalid, or unenforceable clause, provision, or term as may be possible.
- 9.8. **Waiver**—Any waiver by any party of any right arising from any breach of any term of this Agreement shall not be construed as a continuing waiver of any other breach of the same term or any other term of this Agreement by the other party.
- 9.9. **Independent Contractors**—The parties are independent contractors, and nothing herein contained shall constitute or be construed to create a partnership, agency, or joint venture between the parties.
- 9.10. **Amendment**—No amendment or modification of this Agreement shall be valid and binding upon the parties unless made in writing and signed by the President of SEI and an authorized representative of Participant.
- 9.11. **Prior Drafts**—The parties acknowledge and agree that no interpretation of this agreement shall be based on any additions, deletions, or modifications to any prior draft of this Agreement, and that SEI shall not be bound or precluded in the future by virtue of making any of the foregoing changes.

1307 Dolley Madison Blvd
McLean, VA
22101
USA

Questions?
Contact
Tel. +1.610.832.9765
cert@astm.org
www.seinet.org

- 9.12. **No Restraint on Trade**—Notwithstanding any of the foregoing covenants and agreements, it is expressly understood between the parties that nothing in this Agreement or any other agreement by and between parties shall be construed or interpreted as an agreement, promise, or commitment to limit, eliminate, or otherwise restrict the production, of any Product covered by the Program.

10. No Warranty by SEI

SEI PROVIDES THE SERVICES GRANTED HEREUNDER WITHOUT ANY WARRANTY OF ANY KIND. SEI EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. UNDER NO CIRCUMSTANCES WILL SEI BE RESPONSIBLE FOR ANY LOSS OR DAMAGE, INCLUDING PERSONAL INJURY OR DEATH, RESULTING FROM USE OF ANY CERTIFIED PRODUCT(S), ANY PRODUCT(S) BEARING THE CERTIFICATION MARK, OR CONDUCT OR REPRESENTATIONS OF ANY USERS OF THE WEBSITE OR ACCREDITED BUSINESS, WHETHER ONLINE OR OFFLINE. SEI MAKES NO REPRESENTATION ABOUT ANY CERTIFIED PRODUCT OR ANY PRODUCTS BEARING THE CERTIFICATION MARK AND EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OF THE SAME. SEI CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF ANY CERTIFIED PRODUCT OR ANY PRODUCT(S) BEARING THE CERTIFICATION MARK.

11. Limitation of Liability

IN NO EVENT SHALL SEI BE LIABLE TO PARTICIPANT OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS ARISING FROM, OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR ANY ALLEGED BREACH OF ANY REPRESENTATION, WARRANTY, OR OTHER PROVISION HEREIN, REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIMS ARE BASED AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

12. SEI Product certification is not transferable; any such attempted transfer is void and of no effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Participant:

| | |
|---------------------|-------------|
| Company Name | |
| Company Address | |
| City | |
| State | Postal Code |
| Country | |
| Tel | Email |
| Representative Name | |
| Signature: | |

SEI:

Tim Brooke
1307 Dolley Madison Blvd
McLean, VA 22101 USA
tel .1.610.832.9729
tbrooke@astm.org

| |
|------------|
| Signature: |
|------------|

**Return completed agreement to
The Safety Equipment Institute (cert@astm.org)**