



Participation Agreement for Intertek NFPA 1851 Verification Program

THIS AGREEMENT made the 16th day of March, 2023, by and between:
INTERTEK TESTING SERVICES NA, INC. having offices at 3933 US Route 11, Industrial Park,
Cortland, New York 13045 USA ("Intertek") and Lexington Fayette Urban County Government
(Participant Legal Name) having a principal place of business at 200 East Main St.
Lexington, KY 40507 (Participant Official
Address including Street, City, State/Province, Zip Code, and Country) ("Participant").

RECITALS

Intertek sponsors a **NFPA 1851 Verification Program** ("Program") which provides for verification of a Participant's inspection, cleaning and fabric repair process as conforming to Intertek Requirements. Subject to the terms of this Agreement, a Participant whose processes are found to be in compliance with the Program by Intertek may be permitted to access and display the Intertek's ETL Verified Mark.

Participant desires to submit specific processes followed by the Participant for evaluation by Intertek in order that the processes may be considered for the Program.

This Agreement setting forth the terms and conditions to which the parties must adhere shall be executed by Intertek and Participant.

NOW THEREFORE, for and in consideration of the mutual covenants herein expressed and other lawful and valuable consideration, the parties hereto agree as follows:

1. **DEFINITIONS** The words and phrases used in this Agreement shall have the same meaning as those defined in the Procedural Guide, with the following additional explanations:
 - 1.1 **Participant.** The term Participant shall mean the firm, corporation, or other business entity which is listed at the beginning of this Agreement and which has applied to participate in the Program
 - 1.2 **Program.** The term Program shall mean the inspection, cleaning and fabric repair verification program sponsored by Intertek.
 - 1.3 **Procedural Guide.** The term Procedural Guide refers to the procedural guide which describes the current requirements of the Program, but which may hereafter be amended, modified, or revised from time to time by Intertek.
 - 1.4 **Intertek Requirements.** The term Intertek Requirements shall mean (a) the requirements contained in the Procedural Guide; (b) the standard(s), if any, applicable to the Program; (c) the terms of this Agreement; and (d) any third party requirements separately applied as a condition of the Program.
 - 1.5 **Verified Inspection, Cleaning and Repair Process.** The term Verified Inspection, Cleaning and Repair Process shall mean the inspection, cleaning and repair process verified by Intertek as conforming to the requirements of the Procedural Guide.
 - 1.6 **Authorization to Mark.** The term Authorization to Mark ("ATM") shall mean a written document from Intertek that authorizes the Participant to utilize an Intertek verification mark.
 - 1.7 **Verification Mark.** The term Verification Mark ("Mark") shall refer to any common law or registered trademark owned by Intertek, or its affiliates, used in the verification of inspection, cleaning and repair processes.
 - 1.8 **Listing.** The term Listing shall mean the process of preparing and including the Participant in a published on-line Program Directory which includes the Participant's name, location, the inspection, cleaning and repair processes and materials meeting the requirements of the Program.

Participation Agreement for Intertek NFPA 1851 Verification Program

2. VERIFICATION

2.1 Evaluation. In addition to the Limitations identified in the Procedural Guide, Intertek is an independent laboratory providing evaluation services to determine whether representative processes comply with designated national and international standards, specifications, and/or codes. Intertek does not publish standards, specifications, and/or codes, or warrant to the Participant that the standard used for the evaluation is adequate. Participant understands and agrees that Intertek has only evaluated the submitted processes and does not guarantee or warrant the quality or compliance of all services provided by the Participant. Participant further acknowledges that as an independent laboratory, Intertek assumes no responsibility for the design or use of the Participant's processes.

2.2 Participant Obligations. Participant understands its obligations pursuant to this Agreement in order to maintain eligibility for the Program, and warrants that it shall comply with the following provisions:

- (a) Participant shall be governed by and comply with the requirements of the Procedural Guide in connection with Participant's participation in the Program. The Procedural Guide is incorporated by reference as if fully rewritten herein. Participant acknowledges and agrees that Intertek may amend, change, modify, or revise the Procedural Guide from time to time as Intertek deems necessary or desirable. Participant shall receive notification of said changes from Intertek. If there is a conflict between the Procedural Guide and this Agreement, this Agreement shall govern.
- (b) If Participant repairs any protective garments that are compliant with NFPA 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, it shall perform all obligations of this Agreement and all obligations of the Procedural Guide with respect to the repair processes it uses.
- (c) Participant shall continue to use inspection, cleaning and repair processes verified by Intertek, which are at least equivalent to those used for samples initially or subsequently verified by Intertek as conforming to the requirements of the Procedural Guide. In addition, Participant shall establish and maintain a program of production and inspection to ensure that its inspection, cleaning and repair processes shall continue to meet all requirements of the Procedural Guide.
- (d) Participant agrees that the Program and the inspections, surveys, tests, and other service performed by Intertek in connection with the Program are intended only to serve as a check on Participant's qualification for inclusion in the Program and are not intended to, and do not in fact, relieve Participant of responsibility for the conformance of its Verified Inspection, Cleaning and Repair Processes.
- (e) Participant shall not alter or change the procedures or materials of Verified Inspection, Cleaning and Repair Processes except in compliance with the provisions of the Procedural Guide.
- (f) Participant shall allow authorized representatives of Intertek free and complete access during regular business hours to such parts of Participant's facility as may be necessary to determine the adequacy of quality control facilities and procedures, to make product selections, to conduct factory surveys and resurveys, and to perform periodic follow-up services as dictated by the Procedural Guide or as required by Intertek.
- (g) Participant shall pay fees to Intertek, in the manner and per the schedules as specified in Appendix A of the Procedural Guide. Intertek's fees shall be in accordance with the schedule of fees then in effect at the time of each such billing as a result of the Participant's participation in the Program. The schedule of Intertek's fees may be changed from time to time with 30 days written notice to the Participants.
- (h) Participant shall submit all information to Intertek required by this Agreement and the Procedural Guide in a timely fashion.
- (i) Participant agrees that if the Participant wishes to modify or change the process such that the process no longer meets the requirements of the Procedural Guide, Participant must first either obtain the approval of Intertek in accordance with the terms of the Procedural Guide or discontinue use of the Mark. The process may no longer be

Participation Agreement for Intertek NFPA 1851 Verification Program

eligible for the Program if it has been modified or changed by the Participant after Intertek's evaluation or inspection.

- (j) Participant agrees to notify Intertek in writing of any claims, demands or judgments it receives of serious personal injury or property damage involving product which was repaired under the Program.
- (k) If re-evaluation and/or investigation of the process is required as a result of modification to the process without prior notification by the Participant and approval by Intertek, the Participant shall be subject to applicable fees for these services.
- (l) If corrective action is required to be taken pursuant to the terms of the Procedural Guide due to the failure of a repaired product to meet verification requirements, Participant shall be responsible for all costs associated with that corrective action.

2.3 Revision or Withdrawal of the Intertek Requirements. Intertek reserves the right, upon reasonable notice to the Participant, to revise or withdraw the Intertek Requirements to the extent required by applicable statutory guidelines or standards. If the Intertek Requirements are revised, the Participant shall be entitled to continue Listing and use of the Mark upon a demonstration to the satisfaction of Intertek that their process complies with the revised Intertek Requirements. If the Intertek Requirements are withdrawn, the Participant's right to the Listing and use of the Mark shall terminate pursuant to the terms of Section 5 of this Agreement. In the case of a revision or withdrawal of Intertek Requirements, Intertek shall provide a notice specifying a reasonable date by which the process must meet the revised Intertek Requirements or for such termination.

2.5 Third Parties. Participant agrees that Intertek has entered into a contractual relationship with the Participant. Intertek agrees to perform such services with due care. Intertek does not guarantee or warrant that third parties will accept or recognize the results obtained by Intertek or the Intertek verification of the Applicant's processes.

3. LISTING AND USE OF MARK

3.1 Ownership of the Mark. Ownership of the Mark and all trademark rights in the Mark remain in Intertek, even if it is used by Applicant. Except as provided within this Agreement, any other use of the Mark, or the Intertek name, is expressly prohibited.

3.2 Authorization to Use Mark. All use of the Mark by Participant pursuant to this Agreement shall be with the prior written authorization of Intertek, which alone shall own the Mark and rights created by such use.

3.3 Advertising and Use of Mark. Subject to Participant's continued satisfaction of the requirements of Section 2.2 of this Agreement and in consideration therefore, Intertek hereby grants to Participant the right and license to use the ETL Verified Mark (hereinafter the "Mark") in connection with such of Participant's processes as qualified under the Program, and upon Participant's sales promotional literature, catalogues, advertisements, publications, and other materials in connection with the promotion and sale of its repair processes. Participant agrees that it will use the Mark only in connection with those repair processes that comply with the Program. Participant shall not use the Mark in connection with any processes which are not compliant with the Program, or which have been delisted, denied, suspended, or withdrawn from the Program. Participant shall not use the Mark or Intertek's name in such a manner as may confuse or mislead the public into believing that such mark, symbol, or name refers to fabric repair processes as verified under the Program when in fact such processes have not been so verified.

4. INDEMNIFICATION AND LIABILITY

4.1 Indemnification. To the extent allowable by law, Participant agrees to hold Intertek harmless and to defend and indemnify Intertek and its respective officers, employees, agents, and representatives against any liability, loss, or damage from claims, demands, actions, damages, losses, penalties, obligations, costs and expenses (including, without limitation, reasonable legal and expert fees), or judgments arising out of or relating to:

- (a) Participant's fabric repair process;
- (b) violation by Participant of any provision of this Agreement or any provision of the Procedural Guide then in effect;
- (c) any misuse, improper use or unauthorized use of the Mark;
- (d) any negligent or intentional acts of the Participant; or
- (e) claims from third parties relating to

Participation Agreement for Intertek NFPA 1851 Verification Program

the Verified Inspection, Cleaning and Repair Processes, the repaired product, or arising from the use of the Mark. Participant shall have no liability under this provision for any omission, failure, fault, or negligence by Intertek in connection with but limited to Intertek's assigned functions under the Program as set forth in the Procedural Guide and in this Agreement. This shall not be deemed a waiver of sovereign immunity or any other third party defense available to Participant.

4.2 Liability. Participant agrees to limit Intertek's liability arising from Intertek's professional activity, errors, or omissions, such that the total aggregate liability of Intertek shall not exceed Intertek's total fee for the services rendered to the Participant in the year of the claim, except in the case of a finding of gross negligence or willful misconduct on the part of Intertek by a court of competent jurisdiction. Intertek shall not be liable for any claim, demand, damage, loss, cost, or expense which results from any error or omission in the Program Directory, provided Intertek corrects any such error or omission in a timely manner. Intertek shall not, under any circumstances, be liable to the Participant for any indirect, special, punitive, or consequential damages, or any third party claims which may arise as a result of the services provided in this Agreement, regardless of the nature of this fault, whether it was committed by Intertek, its employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

4.3 Unauthorized Use of Mark. Participant acknowledges and agrees that its use of the Mark or Intertek's name, other than as expressly authorized in this Agreement, would mislead the public and would result in irreparable injury to Intertek. Participant further acknowledges and agrees that in any such event, Intertek's remedy at law would not be adequate. Accordingly, Participant agrees that in any such event, any court having jurisdiction may, at the request of Intertek, enter a temporary restraining order and/or preliminary injunction prohibiting Participant from misusing, improperly using, or using without authorization the Mark and from manufacturing, marketing, selling, distributing, delivering, or promoting any process which is not verified through any use of the Mark. The entry of such a restraining order or injunction shall not affect Intertek's right to recover compensatory or punitive damages from Participant for any misuse, improper use, or unauthorized use of the Mark or Intertek's name.

4.4 Public Notice. In the event that Intertek has confirmed evidence that the Participant has not conformed with the authorized use of the Intertek name and/or the Mark, including but not limited to use of the Intertek name or Mark in connection with any processes which are not compliant with the Program or which have been delisted, denied, suspended, or withdrawn from the Program, Intertek reserves the right to contact appropriate government agencies and/or issue public notifications advising of the unauthorized use.

5. TERMINATION OF THE AGREEMENT

5.1 Termination By Either Party. Either party may, for any reason, terminate this Agreement upon not less than sixty (60) days written notice to the other party. Such notice shall designate a termination date and the notice period shall be deemed to commence upon the date of mailing of the notice to the other party by registered or certified mail, return receipt requested or by courier with confirmed delivery.

5.2 Intertek Right To Terminate. Intertek may terminate this Agreement upon written notice, without prejudice to any other rights or remedies that Intertek may have, upon any of the following:

- (a) Participant fails to maintain operations in the Verified Inspection, Cleaning and Repair Process for a period of two (2) years;
- (b) Participant is in default pursuant to Section 6.3;
- (c) Participant makes any misuse, unauthorized use, or improper use of the Mark or of Intertek's name; or
- (d) Thirty (30) days after the Participant receives written notice in the event of: (i) the filing of a voluntary or involuntary petition in bankruptcy by the Participant; (ii) the making of any arrangement or composition with creditors by the Participant; (iii) the appointment of a receiver for the Participant; or (iv) the voluntary or involuntary liquidation of the business of the Participant. The Participant will notify Intertek within seven (7) days of notice of one of these events.

Further, Participant agrees that in the event the Agreement is terminated and Participant engages in

Participation Agreement for Intertek NFPA 1851 Verification Program

improper or unauthorized use of the Mark, Intertek may, without incurring any liability to Participant, notify third parties, including but not limited to vendors, customers, potential users, and government authorities, that Participant is using the Mark improperly or without authorization.

5.3 Participant Obligations Upon Termination. Upon termination of this Agreement, Participant shall:

- (a) Discontinue the use of the Mark or any other mark, symbol, or name of Intertek.
- (b) Promptly destroy all supplies of sales promotional literature, catalogues, advertisements, and publications bearing the Mark that are on hand, all electronic files of the same and any other electronic files containing the Intertek Mark, and provide Intertek written certification of such destruction and the date the Mark was last used.
- (c) Continue to honor the terms of Section 4 of this Agreement concerning indemnification and liability, which terms shall survive the termination of this Agreement.
- (d) Immediately pay any remaining outstanding charges owing to Intertek.

6. ADMINISTRATIVE PROVISIONS

6.1 Confidentiality. Without written authorization from the Participant, Intertek will not voluntarily disclose to third parties confidential and proprietary information which Participant provides to Intertek including Participant's information, documents, memoranda, writings, and test results. Intertek and representatives of Intertek who have observed the testing shall not disclose the same to any other participant, except as provided in this Agreement or in the Procedural Guide. This obligation shall not apply to information which is already available to the public, or acquired from other sources without confidentiality restrictions, or for which the Participant has provided written authorization, or is required to be disclosed by Intertek to Regulatory Authorities responsible for the acceptance of the Verified Inspection, Cleaning and Repair Processes. Intertek agrees that this obligation to maintain confidentiality shall survive the termination of this Agreement.

6.2 Subpoena. If Intertek is served with a Subpoena, Court Order, or similar document requesting the disclosure of confidential or proprietary information supplied to Intertek by the Participant or other documentation which would be subject to an obligation of confidentiality, Intertek shall promptly notify the Participant. In the event that the Participant chooses to contest the request, Intertek shall cooperate with the Participant. The responsibility for contesting the request shall rest solely with the Participant. If the Participant declines to contest the request or is not successful in contesting the request, Intertek will provide the requested information. Any costs incurred by Intertek in responding to the request, including reasonable attorney's fees, shall be reimbursed by the Participant immediately upon invoicing by Intertek.

6.3 Fees. Fees for participating in the Program and licensing of the Verification Mark will be prepaid or billed to the Participant or a designated payor. Payment shall be due upon presentation of invoices and the Participant shall be considered in default if the charges are not paid within thirty (30) days. Intertek reserves the right to adjust the billing rates and to issue reasonable charges in the event additional costs are incurred by Intertek as a result of Participant's failure to adhere to the Intertek Requirements. Additional costs include, but are not limited to, penalty fees for misuse of Mark and costs associated with Intertek's investigation. Fees are non-refundable.

6.4 No Assignment. The rights running to the Participant under this Agreement may not be assigned to or acquired by any other person or corporation without Intertek's written authorization.

6.5 Term. This Agreement shall remain in full force and effect from the date identified on the first page until superseded by a new agreement or until termination as provided in Section 6; provided, however, that the indemnification provisions and the limitation of liability of Section 4 of this Agreement shall remain in full force and effect


6.6 Jurisdiction. This Agreement shall be interpreted in accordance with and governed by the laws of the ~~Commonwealth of Kentucky~~ State of New York, USA. If the Client is located in China, any dispute or claim arising from or in connection with this Agreement, its breach, its performance or non-performance shall be submitted to the China International Economic and Trade Arbitration Commission ("CIETAC") Beijing Office for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the


Participation Agreement for Intertek NFPA 1851 Verification Program

time of applying for arbitration. The arbitral tribunal shall consist of three (3) arbitrators. Intertek on the one part and the Client on the other part shall each appoint one arbitrator. The parties shall appoint the third arbitrator. If the parties fail to agree on the third arbitrator within fifteen (15) days from the date on which the respondent receives the notice of arbitration, the parties hereby designate the Chairman of CIETAC as the appointing authority hereunder provided that the Chairman shall select an arbitrator who satisfies the qualifications in the preceding sentence. The language to be used in the arbitral proceedings shall be Chinese and English. Each version shall have the equal validity and legal effect. The arbitral award is final and binding upon both parties.

6.7 Superseded Agreement. This Agreement supersedes any and all prior agreements between Intertek and Participant relating to the Intertek NFPA 1851 Verification Program.

This Agreement is accepted and duly executed by:

INTERTEK TESTING SERVICES NA, INC.
BY: 
(Authorized Intertek Signature)
Print Name: Judd Underwood
Title: Sales
Date: 3-8-2023

Participant Company Name: 
BY: _____
(Proprietor, Partner or Authorized Officer - Signature)
Print Name: Linda Gorton
Title: Major
Date: 3/16/2023