

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM823386

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Holcim Solutions and Products US, LLC		11/28/2022	Limited Liability Company: INDIANA
RECEIVING PARTY DATA			
Name:	Holcim AG		
Street Address:	GRAFENAUWEG 10		
City:	6300 ZUG		
State/Country:	SWITZERLAND		
Postal Code:	64114-0310		
Entity Type:	Corporation: SWITZERLAND		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Serial Number:	97346893	SES APPROVED CONTRACTOR	
Serial Number:	97346895	SES APPROVED CONTRACTOR	
Serial Number:	97346896	SES	
Serial Number:	97346899	SES POLYURETHANE SYSTEMS	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	404-253-6276		
Email:	uspt@polsinelli.com, jdesilva@polsinelli.com		
Correspondent Name:	Eric Hanson		
Address Line 1:	PO Box 140310		
Address Line 4:	Kansas City, MISSOURI 64114-0310		
ATTORNEY DOCKET NUMBER:	116953-725763		
DOMESTIC REPRESENTATIVE			
Name:	Polsinelli PC		
Address Line 1:	PO Box 140310		
Address Line 4:	Kansas City, MISSOURI 64114-0310		

CH \$115.00 97346893

NAME OF SUBMITTER:	June A. De Silva, Paralegal
SIGNATURE:	/June A. De Silva/
DATE SIGNED:	07/10/2023
Total Attachments: 10 source=HOFI - SES Assignment agreement signed#page1.tif source=HOFI - SES Assignment agreement signed#page2.tif source=HOFI - SES Assignment agreement signed#page3.tif source=HOFI - SES Assignment agreement signed#page4.tif source=HOFI - SES Assignment agreement signed#page5.tif source=HOFI - SES Assignment agreement signed#page6.tif source=HOFI - SES Assignment agreement signed#page7.tif source=HOFI - SES Assignment agreement signed#page8.tif source=HOFI - SES Assignment agreement signed#page9.tif source=HOFI - SES Assignment agreement signed#page10.tif	

SES Assignment Agreement

This assignment agreement (the **Agreement**) is made on November 28, 2022 with effect from October 3, 2022

BETWEEN:

1. **Holcim Solutions and Products US, LLC**, (f/k/a) Firestone Building Products, LLC incorporated under the laws of the State of Indiana, United States of America and registered offices at 26 Century Blvd. Suite 205, Nashville, TN 37214, USA (**Holcim S&P US**); and
2. **Holcim AG**, incorporated under the laws of Switzerland, with company registration number CHE-100.136.893 and registered offices at Grafenauweg 10, 6300 Zug, Switzerland (**HOLCIM**),

(each a **Party** and together the **Parties**).

WHEREAS:

- (A) Holcim US Group (as defined below) acquired SES Foam LLC (**SES**) and related IPR (as defined below) and merged SES into Holcim S&P US on July 29, 2022.
- (B) Holcim S&P US is the sole owner of the Assigned IPR (as defined below).
- (C) The Parties hereto have agreed that Holcim S&P US shall assign the Assigned IPR (as defined below) to HOLCIM on the terms set out in this Agreement.

IT IS AGREED:

1. Definitions

1.1. In this Agreement

- 1.1.1. **Affiliate** means, in relation to any person, any other person that directly or indirectly Controls, or is under common Control with, or is Controlled by such person, it being specified that when used in relation to a fund, portfolio companies held or managed by or on behalf of such fund shall not be deemed to be an Affiliate;
- 1.1.2. **Agreement** means this assignment agreement;
- 1.1.3. **Assigned IPR** means all IPR subsisting in the SES Trademarks as well as the SES Domains;
- 1.1.4. **Assignment** has the meaning given to it in clause 2.1;
- 1.1.5. **Assignment Date** means October 3, 2022;
- 1.1.6. **Consideration** has the meaning given to it in clause 3.1;
- 1.1.7. **Control** including with its correlative meanings, **Controlled by** and **under common Control** with, means, when used in respect of a person, the power and authority to manage such person, whether directly or indirectly, through the holding of equity interests, or the possession of voting power through a contract or otherwise; it being specified that when used in respect of a fund, **Control**, including with its correlative meanings, **Controlled by** and **under common Control with**, means the power to advise or manage such fund;
- 1.1.8. **SES Domains** means the internet domains, which are set out in schedule 2;

- 1.1.9. **Holcim US Group** means Holcim Participations (US) Inc., a Delaware corporation with registered offices at 6211 N. Ann Arbor Road, Dundee, Michigan 48131 and any of its Affiliates;
- 1.1.10. **IPR** means copyright and neighbouring and related rights, moral rights, business names and the right to use domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off and unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 1.1.11. **License Agreements** has the meaning given to it in clause 7.1;
- 1.1.12. **Registration** has the meaning given to it in clause 4.1;
- 1.1.13. **SES Trademarks** means the registered and unregistered trademarks and pending applications for trademarks, as well as any registered and unregistered service marks and trade names and pending applications for trade names, the particulars of which are set out in schedule 1;
- 1.1.14. **Upkeep Costs** has the meaning given to it in clause 4.4.
- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. The schedules to this Agreement form part of this agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this agreement includes the schedules.
- 1.5. References to clauses and schedules are to the clauses and schedules of this Agreement.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. This Agreement shall be binding on, and inure to the benefit of, the Parties and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.9. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Assignment

- 2.1. Pursuant to and for the consideration set out in clause 3.1 of this Agreement, Holcim S&P US hereby assigns to HOLCIM all its right, title and interest in and to the Assigned IPR, including, but not limited to
- 2.1.1. the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the SES Trademarks;

2.1.2. all goodwill attaching to the SES Trademarks and that part of Holcim S&P US's business that relates to the goods and/or services in respect of which the SES Trademarks are registered or used; and

2.1.3. the right to bring, make, oppose, defend, appeal proceedings, claims or actions and to obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Assigned IPR, whether occurring before, on, or after the date of this Agreement

as per the Assignment Date (the **Assignment**).

2.2. As of the Assignment Date, the Parties hereto agree to do or cause to be done all acts or things necessary to implement and carry into effect the Assignment to its full extent, including any kind of (public) deed or official document which could be required according to the laws of Switzerland or to any other law applying to the Parties, to this Agreement or to the Assigned IPR.

2.3. Following the Assignment, on a world-wide basis and for the legal duration of protection of the Assigned IPR provided by Swiss and foreign legislation and by the international conventions, including future time extensions, HOLCIM will be the sole or joint (as applicable) owner of the rights to reproduce, represent, translate, adapt, modify, proceed to the reverse engineering/decompilation, distribute, commercialize, license or communicate to the public the Assigned IPR, directly or indirectly, in extracts or as a whole, on any known or yet unknown medium, in any format, whatever the technical process used, in as many copies as it will deem suitable, whatever the goal or purpose contemplated, including for derivative products or works.

3. Consideration

3.1. In consideration of the Assignment, HOLCIM shall pay an amount of USD 12'750'000.00 (United States Dollars 12.75 Million), VAT excluded (the **Consideration**) to Holcim S&P US on November 28, 2022.

3.2. HOLCIM shall pay the Consideration to the following bank account:

Account name:	HOLCIM SOLUTIONS AND PRODUCTS US, LLC
Account number:	5259959
SWIFT Code:	CHASUS33
General Bank Reference Address:	JPMorgan Chase New York, NY 10017
Bank Routing Number:	021000021

4. Registration and Upkeep Costs

4.1. The Parties agree that HOLCIM shall proceed with the recordation and registration of the Assignment before any applicable intellectual property office (the **Registration**).

4.2. Upon HOLCIM's request, Holcim S&P US shall render to HOLCIM all assistance and support, which might be necessary for enabling HOLCIM to complete the Registration.

4.3. Any costs in connection with the Registration shall be borne by HOLCIM.

4.4. Before the Assignment Date, all fees, costs, charges and expenses incurred in order to obtain maintain and protect any part of the Assigned IPR capable of registration (the **Upkeep Costs**) shall be borne by Holcim S&P US. As of the Assignment Date, the Upkeep Costs shall be borne by HOLCIM.

5. Warranties

- 5.1. As at the date of this Agreement, each Party warrants that it has obtained all corporate authorisations required to empower it to enter into and perform its obligations under this Agreement.
- 5.2. As at the date of this Agreement, each Party warrants that entry into and performance of this Agreement will not
 - 5.2.1. breach any provision of its memorandum and articles of association, by-laws or equivalent constitutional documents; or
 - 5.2.2. result in a breach of any applicable laws or regulations in its jurisdiction of incorporation or of any order, decree or judgment of any court or any governmental or regulatory authority; or
 - 5.2.3. result in a breach of any agreements, to which that Party is a party to;

where (in each case) the breach would adversely affect to a material extent its ability to enter into or perform its obligations under this Agreement.

- 5.3. Holcim S&P US makes the following representations and warranties to HOLCIM:
 - 5.3.1. Holcim S&P US is the legal, beneficial and sole owner of all right, title and interest in the Assigned IPR.
 - 5.3.2. The Assigned IPR are transferred by Holcim S&P US to HOLCIM "as they are". HOLCIM declares having sufficient knowledge about the existence, quality and possibilities of use of the Assigned IPR, and Holcim S&P US does not give any additional warranty about the quality or possibilities of use of the Assigned IPR to HOLCIM.

6. Indemnity

- 6.1. Holcim S&P US shall indemnify HOLCIM against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by HOLCIM arising out of or in connection with:
 - 6.1.1. any breach of the warranties contained in clause 5; or
 - 6.1.2. the enforcement of this Agreement.
- 6.2. At the request of HOLCIM and at Holcim S&P US's own expense, Holcim S&P US shall provide all reasonable assistance to enable HOLCIM to resist any claim, action or proceedings brought against HOLCIM as a consequence of that breach.
- 6.3. This indemnity shall apply whether or not Holcim S&P US has been negligent or at fault.
- 6.4. If a payment due from Holcim S&P US under this clause is subject to tax (whether by way of direct assessment or withholding at its source), HOLCIM shall be entitled to receive from Holcim S&P US such amounts as shall ensure that the net receipt, after tax, to HOLCIM in respect of the payment is the same as it would have been were the payment not subject to tax.
- 6.5. Nothing in this clause shall restrict or limit HOLCIM's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

7. License agreements

- 7.1. HOLCIM is aware that some of the Assigned IPR has been licensed to third-parties; a list of the respective license agreements between Holcim S&P US and the third-parties re the Assigned IPR is set out in schedule 3 (the **License Agreements**). Holcim S&P US does not warrant that all of the License Agreements are automatically transferable and assignable to HOLCIM.
- 7.2. HOLCIM represents and warrants that it has reviewed the License Agreements and that it agrees to be substituted into Holcim S&P US's rights and obligations, as regards the SES Trademarks and SES Domains only, provided under these License Agreements.
- 7.3. As of the Assignment Date, Holcim S&P US will make its best efforts to support and assist HOLCIM in HOLCIM's efforts to cause that the relevant License Agreements be transferred and assigned to HOLCIM and that the relevant consent from any relevant third-party be obtained. As of the Assignment Date, Holcim S&P US shall promptly transfer any license fees, royalties or other payments received under the License Agreements to HOLCIM.

8. Further assurances and inter parties-effect

- 8.1. Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement, including:
 - 8.1.1. registration of HOLCIM as proprietor, registrant or applicant (as applicable) of the Assigned IPR; and
 - 8.1.2. assisting HOLCIM in obtaining, defending and enforcing the Assigned IPR, and assisting with any other proceedings which may be brought by or against HOLCIM against or by any third-party relating to the Assigned IPR.
- 8.2. Holcim S&P US hereby gives full powers to HOLCIM, in as much as necessary, to proceed to any formality, which it may deem necessary for the protection of the Assigned IPR, in Switzerland and abroad, and undertakes, both during the Agreement and after its termination or end for any reason whatsoever, to provide any documents and signatures, which might be necessary in that respect.
- 8.3. Holcim S&P US undertakes to refrain, during the Agreement as well as after its termination or end for any reason whatsoever, from proceeding, either in its own name or on behalf of a third-party, to any filing, registration and to any formality with any registries for trademarks, patents, models and/or other similar registries, whether in Switzerland or abroad, for all the Assigned IPR, without the prior written approval of HOLCIM.
- 8.4. The Parties expressly agree that in case that the enforceability of this Agreement was contingent to any ancillary action, such as but not limited to any registration of filing procedure, any potential delay in completion shall have no inter partes-effect on the validity and enforceability of this Agreement and the assignment contained herein and therefore this assignment contained herein shall in all cases be effective as of the Assignment Date by disregarding any other date on which this Agreement and the assignment contained herein may display its effects of become actionable towards any third-parties, including, but not limited to, any authorities or state offices.

9. Taxes

Subject to any provisions of this Agreement stating otherwise, each Party shall bear any taxes (including any value added tax, levy, charge, duty, fee, or withholding which is assessed, levied, imposed or collected by any governmental authority in any jurisdiction) now or hereafter imposed on it in connection with the entering and/or performance of this Agreement.

10. General provisions

- 10.1. None of the provisions in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties and neither of the Parties shall have any authority to bind the other in any way.
- 10.2. Each Party shall be responsible for its own costs, charges and other expenses (including those of its Affiliates) incurred in connection with the preparation and execution of this Agreement.
- 10.3. No variation, amendment, modification or supplement to this Agreement shall be valid unless made in writing and signed by a duly authorised representative of each Party.
- 10.4. This Agreement sets out the whole agreement between the Parties in respect of the subject matter of this Agreement and supersedes and extinguishes any prior agreements, understandings, undertakings, arrangements, representations and warranties (whether oral or written) between them.
- 10.5. Except as expressly provided in this Agreement, no failure or delay by any Party in exercising any right or remedy relating to this Agreement shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.
- 10.6. Each of the provisions of this Agreement is severable. If any such provision is held to be or becomes invalid or unenforceable in any respect, it shall have no effect in that respect and the Parties shall use all reasonable endeavours to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

11. Governing law and jurisdiction

- 11.1. This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, Swiss law, without giving effect to its conflicts of laws and international treaties.
- 11.2. Any dispute arising in connection with this Agreement shall be submitted exclusively to a three-arbitrator arbitration administered in accordance with the Arbitration Rules of the International Chamber of Commerce. The seat of the arbitration shall be Zurich, Switzerland and the proceedings shall be conducted in the English language. Any arbitral award rendered pursuant to this clause shall be final and binding on the Parties and shall not be subject to appeal and shall be enforceable at any court of competent jurisdiction.

List of Schedules:

- Schedule 1 – SES Trademarks
- Schedule 2 – SES Domains
- Schedule 3 – Assigned IPR licensed to third-parties

Schedule 1 – SES Trademarks

Mark / Title	Status	App. No.	File Date	Country
SES APPROVED CONTRACTOR	Pending	97346893	04/05/2022	US
SES APPROVED CONTRACTOR & Design	Pending	97346895	04/05/2022	US
SES	Pending	97346896	04/05/2022	US
SES POLYERETHANE SYSTEMS & Design	Pending	97346899	04/05/2022	US

Schedule 2 – SES Domains

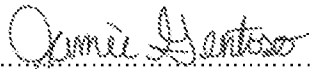
1. Sesfoam.com
2. Sesfoam.net
3. Sesfoam.app
4. Sesfoam.ca

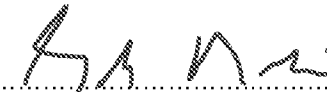
Schedule 3 – Assigned IPR licensed to third-parties

None.

IN WITNESS WHEREOF the Parties have each caused this Agreement to be signed and delivered by their respective duly authorised representatives.

For and on behalf of **Holcim Solutions and Products US, LLC**


.....
Name: Jamie Gentoso
Function: President


.....
Name: Ganesh Nayakwadi
Function:

For and on behalf of **Holcim AG**


.....
Name: Reto Gächter
Function: Officier


.....
Name: Laurent Jaques
Function: CFO, Holdings