

Document Name: NIJ CTP Applicant Agreement	Approval Date: 15 Jul 2016
Revision: 15 July 2016	Implementation Date: 22 Jul 2016
OMB Number: 1121-0321	Form Expires: 31 Jul 2019

## National Institute of Justice Compliance Testing Program Applicant Agreement

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This information is being requested pursuant to 6 U.S.C. 162(b)(4) and 6 U.S.C. 162(b)(6)(B). The disclosure is voluntary. The information provided on this form will be used by the National Institute of Justice (NIJ) to administer the NIJ Compliance Testing Program (NIJ CTP), a Conformity Assessment program for products used by criminal justice practitioners. This information and the associated products are submitted voluntarily.

**PRIVACY ACT NOTICE:** See section 1.6 of this document for nature and extent of confidentiality.

This NIJ CTP Applicant Agreement is dated when signed by the Applicant Signatory, and is between the Applicant and the Conformity Assessment Body ("CAB"), which consists of both NIJ and the recipient of Cooperative Agreement Number 2014-IJ-CX-K004 issued by the Office of Justice Programs, NIJ.

The CAB implements the functions of the NIJ CTP, a program funded by NIJ, which in turn is part of the U.S. Department of Justice (DOJ), Office of Justice Programs. NIJ monitors and directs the administration of the NIJ CTP.

This agreement shall constitute the entire agreement that governs the CAB's relationship to the Applicant pertaining to the Applicant's participation in the NIJ CTP, and shall supersede all previous NIJ CTP Applicant Agreements between the CAB and the Applicant.

Please provide business headquarters information below.

Applicant Name (Listee): \_\_\_\_\_

Applicant Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

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The Applicant expressly acknowledges and agrees as follows:

## **Article 1 General**

**1.1 Scope of CAB Actions.** (a) The CAB performs product Conformity Assessment at the request of Applicants. The CAB is not assuming any obligation toward the Applicant other than what is explicitly stated in this agreement. The CAB does not intend to supply, and is not supplying, information for the guidance of the Applicant in the conduct of its business.

(b) Regarding all products submitted by the Applicant to the CAB for Conformity Assessment:

- (1) the Applicant is solely responsible for research, development testing, manufacture, marketing, and sale of those products;
- (2) the CAB is not assuming any responsibility that the Applicant may have to examine or test the design of those products, either before or after manufacture or sale;
- (3) the CAB is not a designer, manufacturer, marketer, supplier, endorser, guarantor, or insurer of those products;
- (4) the CAB does not in any way endorse those products or warrant either the safety or performance of those products; and
- (5) CAB activities are not intended to, and do not, supplant the Applicant's examination or testing of those products.

**1.2 Applicant Participation.** (a) Applicant participation in the NIJ CTP is voluntary. By executing this agreement, the Applicant agrees to comply with all CAB requirements for participating in the NIJ CTP and respond to CAB inquiries in what the CAB determines to be an appropriate timeframe. The applicant also agrees to immediately inform the CAB of any changes that may affect its ability to conform to CAB requirements.

(b) CAB requirements for participating in the NIJ CTP are documented in this agreement and separate documents identified by the CAB as the NIJ CTP Product Conformity Assessment System. If the NIJ CTP Product Conformity Assessment System conflicts with this agreement, this agreement has precedence.

**1.3 NIJ CTP Product Conformity Assessment System.** (a) The "NIJ CTP Product Conformity Assessment System" consists of a top level document containing general requirements and subordinate scheme documents organized by product type. The CAB shall make the NIJ CTP Product Conformity Assessment System available on request.

(b) The CAB may make changes to the NIJ CTP Product Conformity Assessment System at any time and the Applicant hereby agrees to comply with future revised requirements by the implementation date set by the CAB or request to terminate the impacted product's participation in the NIJ CTP.

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(c) NIJ alone shall make all final decisions concerning the interpretation of NIJ CTP Product Conformity Assessment System requirements.

**1.4 Terminating a Product's Participation in the NIJ CTP.** (a) The Applicant may terminate a product's participation in the NIJ CTP at any time by providing Notice to the CAB. The CAB may also terminate a product's participation in the NIJ CTP at any time by notifying the Applicant using the most recently supplied contact information.

(b) Terminating a product's participation in the NIJ CTP also withdraws all previous authorizations contained in the product's NIJ Notice of Compliance. The Applicant shall immediately:

- (1) stop applying any markings to the product or its packaging that indicate the product is compliant with NIJ CTP requirements,
- (2) cease and desist all advertising or statements claiming the compliance status of the affected product,
- (3) stop distribution of NIJ Notices of Compliance for the affected product, and
- (4) enforce these requirements regarding any multiple Listees.

(c) After a product's participation is terminated, the CAB may continue to publish information regarding the product's NIJ CTP compliance status. Products that have terminated participation in the NIJ CTP may be referred to as "Inactive".

(d) Stopping NIJ CTP Surveillance activities regarding a terminated product may take up to 30 days.

**1.5 Payment Terms.** There shall be no fees paid by the Applicant to the CAB for participation in the NIJ CTP. This is not to imply that participation in the NIJ CTP is without cost. For each product submitted to the CAB, the Applicant is responsible for all expenses related to samples, shipping, testing, and surveillance activities required to demonstrate both initial and continued compliance with the NIJ CTP's requirements.

**1.6 Release and Waiver.** In consideration of this agreement to perform Conformity Assessment for the Applicant, the Applicant expressly waives, releases, and exempts the CAB and its managers, employees, technical experts, and subcontractors from any and all liability, claims, demands, actions, or causes of action whatsoever for any alleged loss, damage, or injury. This release and waiver is intended to, and does, cover all claims arising in tort as well as those arising under any state or federal statute that in any way arise out of, or relate to, the CAB's Conformity Assessment or to the CAB's performance and/or alleged non-performance under this agreement.

**1.7 Confidentiality.** (a) The CAB shall use reasonable efforts to maintain as confidential all information identified as "Confidential Commercial Information" that it obtains from the Applicant. Confidential Commercial Information shall not include information that is:

- (1) publicly available;

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- (2) subsequently acquired by the CAB from other sources in a manner that does not constitute a breach of this agreement;
- (3) disclosed by the CAB when deemed, at its sole discretion, to be necessary to the performance of the requested Conformity Assessment;
- (4) required to be produced pursuant to an order or command of any judicial or regulatory authority;
- (5) required by any common law or statutory duty; or
- (6) disclosed in the interest of criminal justice practitioner safety.

(b) The CAB shall take reasonable steps to safeguard Applicant data within the CAB systems prior to external transmission and may transmit the Applicant's Confidential Commercial Information and data to the Applicant through the Internet or any public network, unless otherwise directed in writing by the Applicant.

1.8 **Definitions.** In this agreement, the following definitions apply:

- (1) "Attestation" refers to the issue of a statement, based on a decision following Review, that fulfillment of specified requirements has been demonstrated;
- (2) "Certification" refers to the Attestation of compliance related to products;
- (3) "Conformity Assessment" refers to activities used to determine that specified requirements are fulfilled;
- (4) "Determination" refers to assessment activities such as testing, measuring, inspection, design appraisal, and auditing to provide information regarding the product's compliance with requirements as input to the Review and Attestation functions;
- (5) "Listee" refers to the business name that appears with a Model Designation on the compliant product list;
- (6) "Model Designation" refers to a unique product identification for a specific design defined by the Applicant in documentation and samples provided to the CAB prior to Certification;
- (7) "Review" refers to the verification of the suitability, adequacy, and effectiveness of Selection and Determination activities, and the results of these activities with regard to fulfillment of specified requirements by an object of Conformity Assessment;
- (8) "Scheme" refers to the specified conformity assessment requirements related to a specific product or program;
- (9) "Selection" refers to the planning and preparation activities in order to collect or produce all the information and input needed for the subsequent Determination function;
- (10) "Surveillance" refers to the systematic iteration of Conformity Assessment activities as a basis for maintaining the validity of the statement of conformity;

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(11) “Variation” refers to the state of one or more product samples that are not representative of the samples or information used by the CAB to certify the Model Designation with which it is associated.

1.9 **Export Control.** The Applicant represents and warrants that it:

- (1) will not cause the CAB to violate any export, trade, or other economic sanction law; and
- (2) will promptly advise the CAB in writing if a project involves technology that is subject to any government controls, including U.S. export controls, and will promptly supply all information needed to comply with those controls.

1.10 **Waiver.** Any failure by the CAB to insist on the performance of any provision of this agreement shall not constitute a waiver of any rights under the agreement or a waiver of any right to future performance of that provision. For any waiver of any provision of this agreement to be effective, it must be set forth in writing and executed by authorized agents for both parties.

1.11 **Limitation of Remedies Available to Applicant.** The CAB will perform Conformity Assessment in accordance with professional standards of conduct generally applicable to Conformity Assessment service organizations. The CAB makes no other representation or warranty, whether expressed or implied.

1.12 **Representations and Modifications.** The Applicant acknowledges and agrees to name at least one authorized legal representative who is qualified and authorized to respond on the Applicant’s behalf to questions from the CAB relating to product(s) submitted for Conformity Assessment. The Applicant agrees to notify the CAB of any changes in writing by executing a revised Applicant Agreement with updated information.

1.13 **Severability.** If any provision of this agreement is held invalid, void, or unenforceable for any reason, all other provisions of this agreement shall remain valid to the extent permissible under law.

1.14 **Notice.** “Notice” under this agreement must be made by mail, courier service, or email transmission using the contact information provided in this agreement. Notice shall be effective on confirmed receipt or five business days after the Notice is transmitted. The NIJ CTP’s contact information is provided below:

Email: nijctp@justnet.org  
Address: 700 N. Frederick Ave.,  
Bldg. 181, Room 1L30  
Gaithersburg, MD 20879  
Phone: (800) 248-2742

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1.15 **Complaints and Appeals Resolution Process.** (a) All Applicant complaints or disputes that may arise in connection with this agreement shall be settled in accordance with the following procedures.

(b) Any complaints expressed by the Applicant in writing to the CAB will be investigated, and action will be taken by the CAB to respond. If resolution to a complaint is not satisfactory to the Applicant, the Applicant may request an appeal.

(c) An appeal shall be in writing, signed, and addressed to the CAB with any evidence pertinent to the appeal. At NIJ's discretion, a Special Review Committee of technical experts and practitioners may be convened to review the appeal and provide NIJ an opinion. NIJ alone shall make all final decisions concerning appeals.

1.16 **Governing Law/Jurisdiction.** This agreement shall be governed by the laws of the United States of America.

1.17 **English Language.** The parties hereby acknowledge that they have mutually required that this agreement, and all documentation, notices, judicial proceedings, dispute resolution, and arbitration entered into, given, instituted pursuant to, or relating to this agreement be drawn up in the English language. Any translations of documents provided to the Applicant will be made solely for the purpose of convenience, and, in all cases, the original, English language version of such documents shall govern.

1.18 **Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations due to elements of nature, acts of war, terrorism, riots, civil disorder, rebellions, or other similar cause beyond the reasonable control of the party affected, provided such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented, and provided further that the party hindered or delayed immediately notifies the other party describing the circumstances causing delay.

1.19 **Independence.** The parties are, and intend to be, independent with respect to the Conformity Assessment described herein. Neither party shall act as an agent of the other, nor shall it be entitled to enter into any agreements or incur any obligations on behalf of the other party. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or created hereby. As an independent organization, the CAB shall be solely responsible for determining the means and methods for performing the Conformity Assessment.

1.20 **No Assignment.** Neither the Applicant nor the CAB may assign any of its rights or obligations under this agreement in whole or in part to any other person without the other party's express written consent.

1.21 **No Third Party Beneficiaries.** The Applicant is not an agent for an undisclosed third party. The CAB is not assuming any obligation toward any third party in any way related to this agreement. No provisions of this agreement shall in any way provide a third party any benefit, rights, or cause of action.

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1.22 **Indemnification as to Third Party Claims.** The Applicant acknowledges and agrees to indemnify the CAB and its officers, directors, staff, technical experts and subcontractors from any and all loss or liability (including attorney fees) arising from any and all claims related to the Applicant's products.

## **Article 2 Initial Conformity Assessment**

2.1 **Activity Scope.** Initial Conformity Assessment includes application, Selection, Determination, Review, and Certification.

2.2 **Applicant Information.** The Applicant represents and warrants that all information and/or data provided to the CAB by the Applicant, or on the Applicant's behalf, are complete and accurate and that the CAB may rely thereon when performing Conformity Assessment of a related product. If any information and/or data provided to the CAB by the Applicant or on the Applicant's behalf are either incomplete or inaccurate, the CAB shall not be liable in any manner for any performance or alleged non-performance of Conformity Assessment under this agreement. The Applicant agrees and consents to the CAB's sharing the information and data provided by the Applicant with technical experts and staff in order for the CAB to perform the Conformity Assessment or act in the interest of officer safety. The Applicant further represents and warrants that all information and data provided to the CAB by the Applicant are properly owned or licensed by the Applicant and do not infringe on the intellectual property rights of any third party, and that the Applicant is allowed to provide such information to the CAB without restriction.

2.3 **Ownership of Work Product.** NIJ shall indefinitely retain all rights, title, and interest to the Evaluation package and any other documents in any form whatsoever conceived, prepared, or used by the CAB in the performance of its Conformity Assessment.

2.4 **Testing.** (a) The Applicant shall select an NIJ Approved Test Laboratory and make appropriate arrangements for testing to demonstrate compliance with the applicable requirements. Applicant observation of testing must be discussed with the individual test laboratory in light of that laboratory's own policies and procedures.

(b) The Applicant shall instruct the test laboratory to comply with applicable requirements contained in the NIJ CTP Product Conformity Assessment System.

2.5 **Certification.** (a) Following a favorable Review of the applicable evidence of compliance, NIJ may certify that a product complies with specified requirements. No party has a right to NIJ Certification.

(b) Following NIJ Certification of a product, the Applicant agrees to not make any changes to the product's design, materials, material suppliers, or manufacturing process without first notifying the CAB. The applicant also agrees that changes to the product's design are outside the scope of the product's previous NIJ Notice of Compliance until those changes are approved in writing by the CAB.

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(c) NIJ reserves the right to decline Certification for any product that successfully completes the Conformity Assessment process when it is determined by NIJ that either it is in the best interests of criminal justice practitioners or the product contains features not fully addressed by the specific requirements.

**2.6 NIJ Notice of Compliance.** NIJ Certification is documented using an Attestation of compliance in the form of a written “NIJ Notice of Compliance” that indicates the outcome of the CAB’s product Conformity Assessment of samples and materials provided to the CAB. The NIJ Notice of Compliance does not indicate the status of individual products that have not been directly tested and examined by the CAB. The Applicant shall not reproduce the NIJ Notice of Compliance unless the reproduction is complete and unedited. The NIJ Notice of Compliance shall authorize the Applicant to begin marking products in compliance with this agreement and the NIJ CTP Product Conformity Assessment System.

**2.7 Withdrawal of Product’s NIJ Certification.** A product’s NIJ Certification may be withdrawn and the product’s participation in the NIJ CTP terminated by NIJ at any time that NIJ determines that:

- (1) the initial conformity assessment process was performed incorrectly,
- (2) the initial conformity assessment process was based on inaccurate or incomplete information, or
- (3) the Certification is reconsidered because of information not available during the initial Evaluation process.

### **Article 3 Surveillance**

**3.1 Surveillance Activities.** (a) All products certified by NIJ shall be enrolled in NIJ CTP Surveillance as documented in the applicable NIJ CTP Product Conformity Assessment System. NIJ CTP Surveillance activities may consist of any one or a combination of the following:

- (1) documentation review,
- (2) testing and inspection of samples from the open market,
- (3) testing and inspection of samples from the factory,
- (4) assessment and inspection of the production process, and
- (5) management system audits.

(b) The Applicant agrees to participate in the applicable surveillance program for as long as the product participates in the NIJ CTP.

(c) The Applicant shall provide Notice to the CAB, without delay, of changes that may affect its ability to conform to the requirements of this agreement.

(d) The Applicant shall not create or otherwise publish in any form (written, electronic or via the Internet) any document, advertisement, product literature, or brochure that references NIJ in a manner that is inconsistent with this agreement.



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3.2 **Compliant Products List.** The CAB shall maintain a directory of products that have been both certified by NIJ as compliant with specified requirements and has participated in the applicable NIJ CTP Surveillance program.

3.3 **Communicating Compliance Status.** The NIJ CTP Product Conformity Assessment System documents provide acceptable methods for indicating a product's compliance status in advertising.

3.4 **NIJ CTP Marked Products.** (a) All products participating in the NIJ CTP shall be marked according to the NIJ CTP Product Conformity Assessment System to indicate its NIJ CTP status.

(b) The CAB has an inherent interest in all products that are marked with compliance marks or phrases to indicate compliance with the NIJ CTP. The Applicant shall cooperate with both the CAB's investigation, and subsequent removal of, compliance marks from Applicant's products that may have been marked in violation of this agreement. Investigations may include any one or combination of the following:

- (1) halts to production,
- (2) root cause investigations,
- (3) corrections to products containing Variations,
- (4) corrective actions to prevent reoccurrence of Variations,
- (5) communications to end users,
- (6) recalls, and
- (7) disposition of products containing Variations.

(c) The Applicant shall keep a record of all complaints made known to it concerning products marked in compliance with the NIJ CTP program, and:

- (1) take appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with requirements;
- (2) document the actions taken;
- (3) make these records available to the CAB when requested.

3.5 **Multiple Listee.** The Applicant may request permission to include additional Listees or brand names on the CPL and apply them to product's for which the Applicant is responsible. The Applicant must have an enforceable agreement with Listees that requires the Listees to comply with the applicable requirements of this agreement. The Applicant shall be held responsible by the CAB for Listees' actions that violate this agreement. The Applicant represents that it has permission from the owner of the Listee name to engage in brand labeling. All labeling indicating NIJ CTP compliance shall be both controlled by, and the responsibility of, the Applicant. The Listee shall not attempt to apply NIJ CTP compliance marks to products.

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**Applicant Signatory**

(An officer or representative of the Applicant who has the authority to bind it)

(Name/Title): \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_  
 Email: \_\_\_\_\_

The Applicant agrees to the terms of this agreement and warrants that it has made no alterations to its text. The undersigned represents and warrants that he/she is authorized to execute this agreement on behalf of the Applicant and is signing this agreement on the date stated opposite the Applicant's agreement.

\_\_\_\_\_  
 Applicant Signatory

\_\_\_\_\_  
 Date