

Document Name: NIJ CTP Applicant Agreement	Approval Date: dd mmm yyyy
Revision: 20 Jun 2012	Implementation Date: dd mmm yyyy
OMB Number: 1121-0321	Expires: dd mmm yyyy

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 to administer a product conformity assessment program for products used by law enforcement and correctional officers. This information and the associated products are voluntarily submitted under the Compliance Testing Program.

PRIVACY ACT NOTICE: See Clause 6 of this document for nature and extent of confidentiality.

This National Institute of Justice Compliance Testing Program Applicant Agreement pertains to all applicants seeking to voluntarily participate in the National Institute of Justice Compliance Testing Program (hereafter, the NIJ CTP). Any reference to the NIJ CTP as an organization includes elements of both National Institute of Justice (NIJ) and the National Law Enforcement and Corrections Technology Center - National (NLECTC-National).

This NIJ CTP Applicant Agreement shall constitute the entire agreement that governs the NIJ CTP's actions pertaining to the Applicant and shall supersede all other agreements between the NIJ CTP and the Applicant.

Please provide business headquarters information below.

Applicant Name: _____

Applicant Address: _____

Telephone: _____

The Applicant hereby expressly acknowledges and agrees as follows:

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Part I Application and Evaluation

1. Scope of NIJ CTP Actions

Participation in the NIJ CTP is voluntary. The NIJ CTP is an organization whose primary function is, on Applicant request, to perform conformity assessment on a product.

The Applicant acknowledges and agrees that the NIJ CTP is not a designer, manufacturer, marketer, supplier, endorser, guarantor or insurer of any product. The NIJ CTP is not assuming any obligation toward the Applicant or toward any third party in any way related to this agreement. The Applicant acknowledges and agrees that the Applicant is solely responsible for research, development testing, manufacture, marketing and sale of any product(s) submitted to the NIJ CTP for conformity assessment. Furthermore, the Applicant expressly acknowledges and agrees that (a) NIJ CTP activities are not intended to supplant the Applicant's examination and testing of such product(s), (b) by its performance of NIJ CTP activities, the NIJ CTP is not assuming any duty that the Applicant might otherwise have to examine and/or test the design of such product(s) or system(s), either before or after manufacture or sale, (c) the NIJ CTP is not in any way endorsing or warranting the safety or performance of such product(s) or system(s) and (d) the NIJ CTP does not intend to supply, and is not supplying, information for the guidance of the Applicant in the conduct of its business.

2. Terms and Conditions

The NIJ CTP performs conformity assessment at the request of Applicants. Conformity assessment entails determining that specified requirements relating to a product are fulfilled; these may include testing, inspection and certification. The Terms and Conditions pertaining to a specific product are supplemented in a separate NIJ CTP Manufacturing Locations and Model Application document. The Applicant acknowledges and agrees that the supplemental terms and conditions are expressly incorporated by reference herein and are an integral part hereof.

3. Payment Terms

a. Conformity Assessment

There shall be no fees paid by the Applicant to the NIJ CTP. This is not to imply that participation in the NIJ CTP is without cost. For each product submitted to the NIJ CTP, the Applicant is responsible for all expenses related to shipping, testing and inspections required to demonstrate initial and continued compliance with the NIJ CTP.

b. Type Testing

The Applicant shall use an NIJ Approved test laboratory and shall be responsible for all expenses related to shipping and testing.

c. Surveillance

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The Applicant is responsible for all costs associated with surveillance including onsite inspection, testing, shipping and any associated administrative fees.

4. Applicant Information

The Applicant represents and warrants that all information and/or data provided to the NIJ CTP by the Applicant, or on the Applicant's behalf, are complete and accurate and that the NIJ CTP may rely thereon when performing conformity assessment of a related product. If any information and/or data provided to the NIJ CTP by the Applicant or on the Applicant's behalf are either incomplete or inaccurate, the NIJ CTP 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 NIJ CTP's sharing the information and data provided by the Applicant with technical experts and staff in order for the NIJ CTP to: (i) perform the conformity assessment or (ii) act in the interest of officer safety. The Applicant further represents and warrants that all information and data provided to the NIJ CTP 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 NIJ CTP without restriction.

5. Ownership of Work Product

The NIJ CTP shall retain all rights, title and interest in, and to, the evaluation package and any other documents in any form whatsoever conceived, prepared or used by the NIJ CTP in the performance of its conformity assessment.

6. Confidentiality

The NIJ CTP shall use reasonable efforts to maintain confidential all information identified as "Confidential Commercial Information" that it obtains from the Applicant. Confidential Commercial Information shall not include information that is (a) publicly available; (b) subsequently acquired by the NIJ CTP from other sources in a manner that does not constitute a breach of this Agreement; (c) disclosed by the NIJ CTP when deemed, at its sole discretion, to be necessary to the NIJ CTP's performance of the requested conformity assessment; (d) required to be produced pursuant to an order or command of any judicial or regulatory authority; (e) required by any common law or statutory duty; or (f) disclosed in the interest of officer safety.

The NIJ CTP shall take reasonable steps to safeguard Applicant data within the NIJ CTP 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.

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7. Samples

At the applicant's expense, samples shall be provided for initial type testing as required by the specific product certification scheme.

The shipping of samples shall be at the Applicant's expense.

At the discretion of the NIJ CTP, samples may be returned to the Applicant at the Applicant's expense or held indefinitely.

8. Export Control

The Applicant represents and warrants that it: (a) will not cause the NIJ CTP to violate any export, trade or other economic sanction law; and (b) will promptly advise the NIJ CTP 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.

9. No Assignment

The Applicant acknowledges and agrees that neither the Applicant nor the NIJ CTP 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.

10. No Third Party Beneficiaries

The Parties intend that no provisions of this Agreement shall in any way benefit any third party, and that no third party shall have any rights or cause of action under this Agreement. Neither Party is an agent for an undisclosed principal. The Parties acknowledge and agree that any such undisclosed principal would have no rights or causes of action against the NIJ CTP for any conformity assessment requested by, or provided to, the Applicant under this Agreement.

11. Waiver

Any failure by the NIJ CTP or the Applicant 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.

12. Limitation of Remedies Available to Applicant

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The NIJ CTP will perform conformity assessment hereunder in accordance with professional standards of conduct generally applicable to conformity assessment service organizations. The NIJ CTP makes no other representation or warranty of any kind whatsoever, whether express or implied, with respect to its provision of conformity assessment hereunder.

13. Release and Waiver

In consideration of the NIJ CTP's agreement to perform conformity assessment for the Applicant hereunder, the applicant hereby expressly waives, releases and exempts the NIJ CTP 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 express release and waiver is intended to, and does cover, all claims arising in tort (including, but not limited to, negligence, product liability, strict liability, negligent misrepresentation, intentional misrepresentation, tortuous breach of contract, unfair competition, defamation, tortuous interference with an actual or prospective contract, business relationship or economic advantage) as well as those arising under any state or federal statute, that in any way arise out of, or relate to, the NIJ CTP's conformity assessment or to the NIJ CTP's performance and/or alleged non-performance under this agreement.

14. Indemnification As to Third Party Claims

The Applicant acknowledges and agrees to hold the NIJ CTP, NLECTC-National and its officers, directors, staff, technical experts and subcontractors harmless and indemnify them from any and all loss or expense (including reasonable attorney fees) arising from any and all claims with respect to the Applicant's listed products, to the NIJ CTP, to the NIJ compliance statement and/or violation of the terms and conditions of this agreement.

15. 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 NIJ CTP relating to product(s) submitted for conformity assessment. The Applicant agrees to notify the NIJ CTP in writing by executing a current Applicant Agreement with updated information.

This Agreement, its explicitly incorporated Terms and Conditions, and any and all related documents, constitute the entire, complete and fully integrated agreement between the parties. This Agreement may be modified only in writing and only if such writing is duly executed by authorized representatives for the NIJ CTP and the Applicant.

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16. Termination

This Agreement will continue in effect until terminated by either the NIJ CTP or the Applicant, with or without cause, on 30 days' prior written notice to the other ("Termination Notice"). In the event of any breach of this Agreement, either Party may terminate this Agreement, effective immediately on the other party's receipt of the Termination Notice.

The Applicant acknowledges and agrees that failure to comply with the provisions or terms of this agreement immediately on such request by the NIJ CTP, its agents and/or designees constitutes grounds for suspension or revocation of NIJ compliance status and/or removing the Applicant from the program.

17. Notice

Notice under this Agreement must be made by hand delivery, courier service, mail, facsimile or e-mail transmission at the Applicant's designated place of business. Notice delivered by facsimile or e-mail shall be effective on confirmed receipt, and by mail or courier on the earlier of (i) receipt or (ii) five business days after the notice is deposited in the mail.

The NIJ CTP's contact information is provided below:

- E-mail: bactp@justnet.org
- Address: 2277 Research Blvd., MS 8J, Rockville, MD 20850
- Phone: (800) 248-2742
- Website: www.justnet.org/NIJ BA CTP

18. 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.

19. Complaint Resolution and Appeals Process.

Any complaints expressed by the Applicant in writing to the NIJ CTP will be investigated, and action will be taken by the NIJ CTP to respond. If resolution to a complaint is not satisfactory to the Applicant, the Applicant may request an appeal. The request for appeal shall be in writing, signed and addressed to the NIJ CTP with any evidence the Applicant feels should be considered. The NIJ CTP will arrange for an independent Special Review Committee of technical experts and practitioners to be convened to evaluate the appeal. The committee will review the matter and make a recommendation for resolution to NIJ, and NIJ shall make a final decision.

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20. Governing Law/Jurisdiction

This Agreement shall be governed by the laws of the state of Maryland, United States of America, without reference to Maryland's choice of law principles. The Parties consent to the sole and exclusive jurisdiction in the state courts and federal courts that have jurisdiction over Rockville, Md., for any claims.

21. English Language

The Parties hereby acknowledge that they have mutually required that this Agreement, and all documentation, notices, judicial proceedings and 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 are done solely for convenience, and, in all cases, the English language version of such documents shall govern.

22. 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.

23. 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 NIJ CTP shall be solely responsible for determining the means and methods for performing the conformity assessment.

Part II Certification

24. Attestation of Compliance and Compliant Product List

The NIJ CTP may issue an attestation of compliance and post the model to the Compliant Product List (CPL) if:

- The NIJ CTP's evaluation determines that evidence demonstrates a product complies with the applicable requirements, and

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- the product does not contain any features unanticipated by the applicable requirements such that the NIJ CTP determines that an unacceptable risk is present, and
- the applicant fully complies with and participates in the applicable Surveillance Program.

Compliance status of a model is granted and maintained at the discretion of NIJ. The decision as to whether or not to grant compliance status for a product shall be made by NIJ on the basis of the information gathered during the evaluation process and any other relevant information. No party has a legal right to compliance status. NIJ grants or suspends compliance status with the primary purpose of ensuring that law enforcement and corrections officers have the best information available about the performance of equipment tested by the CTP. NIJ reserves the right to decline to issue compliance status for any equipment model that successfully completes the compliance testing process when it is determined by NIJ to be in the best interests of the law enforcement and corrections communities. In these cases, NIJ notifies the applicant in writing that compliance status for the model is denied and provides the reason(s) for the denial. Appeals shall be made in accordance with the established procedures.

25. Revocation

Revocation of the Attestation of Compliance may occur if at any time the NIJ CTP determines that any aspect required for the issuance of the Attestation of Compliance (including compliance with this document) is no longer true.

The Applicant agrees that in the event the NIJ CTP revokes an Attestation of Compliance, the Applicant shall immediately cease and desist any and all advertising or statements claiming the compliance status of the affected product(s).

Part III Surveillance

26. Description

Once the armor model is listed on the NIJ Compliant Products List, ongoing compliance will be monitored via a conformity assessment surveillance process that may involve any or all of the following: periodic sampling, testing and/or inspection of production products.

27. Participation

Satisfactory participation in the Surveillance Program is required:

- To prevent revocation of the Attestation of Compliance.
- To continue listing on the CPL.
- In order to include the NIJ statement of compliance on a product.

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Failure to satisfactorily participate in the Surveillance Program is grounds for removal of any or all of the Applicant's products from the CPL and/or revocation of the associated Attestation of Compliance(s).

28. NIJ Compliance Status

- a. The Applicant acknowledges and agrees that the NIJ is the sole and exclusive owner of all rights, title and interest in and to the NIJ name and compliance statements referencing NIJ. Except for the Applicant's right to use NIJ compliance statements as specifically granted in this Agreement, the Applicant has no rights or interest in or to such statements.
- b. The Applicant acknowledges and agrees to not use any product's compliance status in a way that, in the opinion of NIJ:
 - i. Is inconsistent with the scope of the model's compliance status.
 - ii. Brings the credibility of NIJ, its agents or designees or the NIJ CTP into question.
 - iii. Is misleading or inaccurate.
- c. The Applicant acknowledges and agrees on expiration, withdrawal, suspension or revocation of compliance status to immediately cease and desist any and all advertising or statements claiming the compliance status of the affected product(s).
- d. The Applicant acknowledges and agrees to use the compliance status only in the manner for which it was issued and reference only the requirements of the specific standard to which the product was found to be compliant.
- e. The Applicant acknowledges and agrees not to create or otherwise publish in any form (written, electronic or via the Internet) any document, advertisement, product literature or brochure that references the NIJ in a manner that is not consistent with this agreement.
- h. The Applicant acknowledges and agrees to use the compliance status only in reference to the model identification provided to NIJ.
- i. A list shall be maintained of products that NIJ has determined as having demonstrated compliance with the current applicable requirements of the conformity assessment program.
- j. It is the responsibility of the Applicant to identify any possible errors on the CPL and notify the NIJ CTP.

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Applicant Signatory

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

(Name/Title): _____
 Telephone Number: _____
 E-mail: _____

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.

 Applicant Signatory Date

NLECTC-National Representative Acknowledgement:

 Signature Date

 Name (Please print/type)