

Document Name: NIJ CTP Applicant Agreement	Approval Date: dd mmm 2015
Revision: 29 May 2015	Implementation Date: dd mmm 2015
OMB Number: 1121-0321	Expires: 31 Mar 2016

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 the 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 (OJP). 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 other agreements between the CAB and the Applicant concerning participation in the NIJ CTP.

Please provide business headquarters information below.

Applicant Name: _____

Applicant Address: _____

Telephone: _____

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The Applicant expressly acknowledges and agrees as follows:

Article 1 General

1.1 **Applicant Participation.** Applicant participation in the NIJ CTP is voluntary. By executing this agreement, the Applicant shall actively participate in all aspects of the NIJ CTP by both responding to CAB requests in a timely manner and complying with all aspects of the NIJ CTP requirements described in this agreement.

1.2 **Scope of CAB Actions.** (a) The CAB performs product Conformity Assessment as defined in section 1.5 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 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.

1.3 **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.

1.4 **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.

1.5 **Definitions.** For the purposes of this agreement, the following definitions apply:

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- (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 requirements as input to the Review and Attestation functions;
- (5) “Evaluation” refers to the combination of the Selection and Determination functions of Conformity Assessment activities;
- (6) “Listee” refers to the business name that appears with a model on the compliant product list;
- (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) “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;
- (9) “Surveillance” refers to the systematic iteration of Conformity Assessment activities as a basis for maintaining the validity of the statement of conformity;
- (10) “Suspend” refers to the suspension of an Applicant’s authorization to apply the NIJ Mark to newly manufactured products due to program compliance issues;
- (11) “Variation” refers to the state of a product that is not representative of the samples or information used by the CAB to certify the model with which it is associated.

1.6 **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;
- (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

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(6) disclosed in the interest of officer 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.

1.7 **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.

1.8 **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.

1.9 **Limitation of Remedies Available to Applicant.** The CAB will perform Conformity Assessment hereunder 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.

1.10 **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.

1.11 **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.

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

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1.13 Complaints and Appeals Resolution Process. All Applicant complaints or disputes that may arise in connection with this agreement shall be settled in accordance with the following procedures. 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. The request for 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.

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

1.15 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.

1.16 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.

1.17 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.

1.18 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.

1.19 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.

1.20 Indemnification As to Third Party Claims. The Applicant acknowledges and agrees to indemnify the CAB and its officers, directors, staff, technical experts and

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subcontractors from any and all loss or liability (including reasonable attorney fees) arising from any and all claims related to the Applicant's products.

Article 2 NIJ Mark

2.1 **NIJ Conformity Assessment Mark.** An example of the NIJ Conformity Assessment Mark ("NIJ Mark") appears below. Additional details regarding its appearance when used by Applicants are available from the CAB.



2.2 **Ownership.** (a) The "NIJ Mark" is a registered trademark of the federal government, which retains exclusive rights to control its use. Applicants have no rights regarding the NIJ Mark except those provided for in this agreement.

(b) Applicants may be authorized by NIJ to utilize the NIJ Mark as described in this agreement. Usage of the NIJ Mark outside of the limits provided for in this agreement is misrepresentation and infringement of the NIJ Mark. Any misuse of the NIJ Mark will cause irreparable injury and is potentially actionable. The CAB or its representatives may confiscate all unauthorized NIJ Marks. At the CAB's discretion, confiscation of unauthorized NIJ Marks may also include confiscation of the products or medium to which they have been applied or affixed.

2.3 **Purpose of NIJ Mark.** The purpose of the NIJ Mark is NOT to provide an endorsement of any kind, but rather to identify products that are manufactured under the oversight of the applicable NIJ CTP Surveillance program, in order to provide confidence that those products will perform similarly to those items they represent that were tested and examined by the CAB.

2.4 **Authorization to Use the NIJ Mark.** Completion of this agreement does not authorize the Applicant to apply or reference the NIJ Mark. Authorization to apply and reference the NIJ Mark can only be granted by both completion of this agreement, and the receipt of an NIJ Notice of Compliance that is signed by an NIJ staff member who is properly authorized to do so.

2.5 **Conditions of Use.** (a) Following authorization, the Applicant may only use the NIJ Mark in association with the specific product model identified in a NIJ Notice of Compliance. The NIJ Mark may only be applied at facility locations authorized by the CAB. The NIJ Mark shall stand by itself and shall not be combined with any other logo, symbol, or graphic. The NIJ Mark shall be directly applied to each product, unless the physical size of the product does not permit application of the NIJ Mark. The NIJ Mark may then be applied on the package or other accompanying information.

(b) The Applicant may only apply or affix the NIJ Mark to a product item that:

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- (1) represents the model identified on the label that has been certified as compliant by the CAB as represented by a valid NIJ Notice of Compliance that has not been withdrawn,
- (2) is manufactured under the oversight of the applicable NIJ CTP Surveillance program and has not been withdrawn,
- (3) is not currently suspended or on production hold;
- (4) is produced to the same specifications as test items that the CAB found by the initial testing to be in conformity with the standard, and
- (5) is produced to the same specifications as described in evidence provided by the Applicant.

(c) The NIJ Mark may only be used when placed adjacent to:

- (1) the model designation as it appears on the Notice of Compliance,
- (2) the Listee name as identified on the CPL,
- (3) the applicable standard as it appears on the Notice of Compliance, and
- (4) if applicable, the type or performance level as it appears on the Notice of Compliance.

(d) The NIJ Mark shall not be used in a manner that brings NIJ into disrepute or misrepresents the purpose of the mark. The NIJ Mark shall not be used in such a way that a direct relationship is implied between the NIJ Mark and any one or combination of the following:

- (1) a general product type or group of products,
- (2) the Applicant,
- (3) a manufacturing location, or
- (4) a test laboratory.

(e) Before usage, all applications of the NIJ Mark must be approved by the CAB to verify appearance and compliance with this agreement. All changes and additional NIJ Mark applications must receive additional approval from the CAB.

(f) Failure to comply with these conditions shall be considered unauthorized use of the NIJ Mark and unsatisfactory participation in the associated NIJ CTP Surveillance Program.

2.6 Additional Responsibilities. The Applicant shall:

- (1) cooperate with NIJ in maintaining, renewing, enforcing, and protecting the NIJ Mark;
- (2) not directly or indirectly challenge the NIJ Mark or NIJ's ownership of it;
- (3) not seek to register the NIJ Mark, or any similar marks, anywhere in the world; and

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- (4) notify the CAB promptly if Applicant becomes aware of any infringement or misuse involving the NIJ Mark or any conflicting trademark.

Article 3 Certification

3.1 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: (1) perform the Conformity Assessment, or (2) 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.

3.2 Specific Requirements. The specific requirements applicable to the Applicant's product are contained in separate documents made available by the CAB. NIJ alone shall make all final decisions concerning the interpretation of specific requirements. Those interpretations, including methods for demonstrating compliance, shall be communicated by the CAB.

3.3 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.

3.4 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) After testing is completed, a test report and a sample of test items shall be provided by the test laboratory to the CAB. At NIJ's discretion, test items provided to the CAB for inspection may be returned to the Applicant, held by the NIJ CTP for future reference, or disposed of when they are no longer needed.

3.5 Certification. (a) Following a favorable Evaluation and Review of the applicable evidence of compliance, NIJ may certify that a model design complies with specified requirements. No party has a right to NIJ Certification.

(b) Following NIJ Certification of a model, the Applicant agrees to not make any changes to a certified product model's design, materials, material suppliers, or manufacturing process without first notifying the CAB. The applicant also agrees that

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changes to the model are outside the scope of the model's previous NIJ Notice of Compliance until those changes are approved in writing by the CAB.

(c) NIJ reserves the right to decline Certification for any model that successfully completes the Conformity Assessment process when it is determined by NIJ to be either in the best interests of criminal justice practitioners or the model contains features not fully addressed by the specific requirements. In these cases, NIJ notifies the Applicant in writing that Certification for the model is denied and provides any reasons for the denial. Certification appeals shall be made in accordance with the appeals process provided in section 1.13 of this document.

3.6 NIJ Notice of Compliance. NIJ Certification of a model 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 apply the NIJ Mark in compliance with this agreement.

3.7 Model Withdrawal from Certification Process. The Applicant may withdraw a product model from the NIJ CTP Certification process at any time by providing notification to the CAB. The CAB may also remove the Applicant from the NIJ CTP Certification process if the Applicant fails to respond appropriately to CAB inquiries in what the CAB determines to be an appropriate timeframe.

Article 4 Surveillance

4.1 Surveillance Activities. (a) All products certified by NIJ shall be enrolled in the applicable NIJ CTP Surveillance. NIJ CTP Surveillance activities may consist of any one or combination of the following:

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

(b) 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. 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.

4.2 Compliant Products List. The Compliant Products List (CPL) is a directory of product models that have been certified by NIJ as compliant with specified requirements, and which continue to be satisfactorily produced by the Applicant in compliance with the applicable NIJ CTP Surveillance program.

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4.3 Compliance Status. (a) Following a product model's Certification by NIJ and until that model is withdrawn from NIJ CTP Surveillance, the Applicant or Applicant's multiple Listees may use the phrase "certified by NIJ" as an indication of a model's compliance status.

(b) The phrase may only be used when placed adjacent to:

- (1) a single model designation as it appears on the Notice of Compliance;
- (2) the Listee name as identified on the CPL;
- (3) the applicable standard as it appears on the Notice of Compliance; and
- (4) if applicable, the type or performance level as it appears on the Notice of Compliance.

(c) The phrase shall not be:

- (1) applied or affixed directly to individual products;
- (2) used in any way that, in the opinion of the CAB, is misleading, unauthorized, inaccurate, or brings the CAB into disrepute; or
- (3) used to imply applicability to the Applicant, a general product type or group of products, a manufacturing location, or a test laboratory.

4.4 Manufacturing Location Inspections. (a) Applicant agrees to notify the CAB of all locations where construction of the certified product model takes place and where the NIJ Mark will be applied, so that the CAB can decide where inspections should take place.

(b) The CAB shall identify an appropriate inspection body to perform inspections at all of the Applicant's certified product model manufacturing locations. In order to satisfactorily participate in the applicable NIJ CTP Surveillance program, the Applicant must:

- (1) make arrangements with the inspection body to perform inspections at all manufacturing locations where the product model is produced,
- (2) make all necessary arrangements for the inspection body representative to have access to all manufacturing locations of the listed product during the normal working hours of the facility involved in order to inspect the production process, examine records, and select samples for Surveillance testing and inspection; and
- (3) accept responsibility for ongoing costs related to participation in the Surveillance program.

4.5 NIJ Marked Products. (a) The CAB has an inherent interest in all products that bear the NIJ Mark for the life of that product. The Applicant shall cooperate with both the CAB's investigation, and subsequent removal of, the NIJ Mark from Applicant products that may have had the NIJ Mark applied in violation of this agreement. Investigations may include any one or combination of the following:

- (1) halts to production,

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

(b) The Applicant shall keep a record of all complaints made known to it concerning products that bear the NIJ Mark, and:

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

4.6 Changes in Requirements. (a) The CAB reserves the right to make changes to requirements applicable to products covered by this agreement or Conformity Assessment requirements or both at any time and set associated implementation deadlines. The CAB shall notify Applicants of any changes and implementation times.

(b) Following any changes, it is the Applicant's responsibility to communicate the Applicant's intent to the CAB regarding all product models currently on the CPL, and demonstrate compliance with revised requirements by any models the Applicant would like to remain on the CPL. Demonstration of compliance with revised requirements may require the Applicant to repeat all or portions of the Conformity Assessment process using the revised requirements.

(c) Product models that have not demonstrated compliance with revised requirements before the implementation deadline provided by the CAB shall be withdrawn from NIJ CTP Surveillance.

4.7 Withdrawal of Model's NIJ Certification. A model's NIJ Certification may be withdrawn and the product withdrawn from Surveillance by NIJ at any time that NIJ determines that:

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

4.8 Withdrawal of Model from NIJ CTP Surveillance. (a) Product models withdrawn from Surveillance are removed from the CPL and are no longer authorized to

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have the NIJ Mark applied to them. Product models may be withdrawn from Surveillance by Applicants or the CAB at any time with a notification to the other party.

(b) Following withdrawal of a model from NIJ CTP Surveillance, the CAB:

- (1) shall stop scheduling Surveillance inspections,
- (2) shall remove the model and associated brand labeled models from the CPL, and
- (3) may post and distribute notices concerning the model or Applicant.

(c) Following withdrawal of a model from NIJ CTP Surveillance, the Applicant shall immediately:

- (1) cease and desist all advertising or statements claiming the compliance status of the affected product, and
- (2) stop distribution of NIJ Notices of Compliance for affected model, and
- (3) destroy all reproductions of the NIJ Mark not related to models currently on the CPL, and
- (4) enforce these requirements regarding any multiple Listees.

4.9 **Multiple Listee.** The Applicant may request permission to include additional Listees or brand names on the CPL and apply them to models for which it 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 shall be both controlled by, and the responsibility of, the Applicant. The Listee shall not attempt to reproduce the NIJ Mark.

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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

