

ioXt, LLC
OPPORTUNITY TESTER AGREEMENT

THIS IOXT OPPORTUNITY TESTER AGREEMENT (the “AGREEMENT”) IS MADE AND ENTERED INTO BY AND BETWEEN IOXT, LLC, A DELAWARE LIMITED LIABILITY COMPANY HAVING AN ADDRESS AT 660 NEWPORT CENTER DRIVE, SUITE 200, NEWPORT BEACH, CALIFORNIA 92660 (“IOXT”), AND YOU (“CUSTOMER”). BY CLICKING YOUR ACCEPTANCE ACKNOWLEDGMENT OR OTHERWISE USING THE PRODUCTS BY IOXT (OR AUTHORIZING ANY OTHER PERSON TO DO SO), CUSTOMER CONSENTS TO BE BOUND BY AND WILL BE A PARTY TO THIS AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER DOES NOT HAVE ANY RIGHT TO ANY BENEFIT INCLUDED HEREIN. Each of Alliance and Customer is referred to herein as a “Party” and collectively as the “Parties”.

In consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the Parties hereto mutually agree as follows:

1. DEFINITIONS.

1.1 “**Affiliate**” means any entity that, directly or indirectly, controls, is controlled by, or is under common control with Company.

1.2 “**Certification Dispute Payment**” means the monetary amount to be paid by Company after receipt of a Certification Dispute Report and upon Company’s verification of the Test Services Data. For any individual Test Service, the Certification Dispute Payment amount will be described in the ioXt Fee Schedule, the current version of which will be made available at www.ioxt.com (“**ioXt Fee Schedule**”).

1.3 “**Certification Dispute Report**” means a report provided by Tester to Company related to a Product’s (as defined below) non-compliance with the security specifications and standards with respect to the same category of product(s) (“**Specifications**”) set forth from time to time by ioXt Alliance, Inc. (the “**Alliance**”).

1.4 “**Confidential Information**” means all non-public information and materials provided to or accessible by Tester in connection with this Agreement. Confidential Information includes any information designated as confidential as well as information that, due to its character and nature, a reasonable person under like circumstances would understand to be confidential, including business, financial and technical information.

1.5 “**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world: (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights and copyrightable subject matter, including all applications and registrations related to the foregoing; (c) trade secrets, and confidential information and know-how; (d) patents and patent applications; (e) websites and internet domain name registrations; and (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

1.6 “**Product**” means the hardware and software components, and related information provided by the manufacturer of such hardware and/or software components (“**Manufacturer**”).

1.7 “**Test Services**” means research and testing services associated with a specific, single Product certified as of the Effective Date to be compliant with the Specifications and rendered by Tester to verify whether such Product continues to comply with the Specifications.

1.8 “**Test Services Data**” means data and information generated, created, provided, or derived (a) by Tester to Company prior to the Effective Date that relates to Tester’s security testing of the specific, single Product that is the subject of the Test Services under this Agreement and (b) by Tester in connection with Test Services, including any such data and information set forth in a Certification Dispute Report.

2. TEST SERVICES; CERTIFICATION DISPUTE PAYMENT.

2.1 **Test Services.** Prior to the Effective Date, Tester informed Company of the potential non-compliance with the Specifications of a specific, single Product certified to be compliant with the Specifications. During the Term of this Agreement, Tester will perform the Test Services with respect to such Product. Tester acknowledges and agrees that Company entered into this Agreement to retain Tester to perform the Test Services personally. Test Services are unique to Company and are not to be performed by other individuals or entities without the written consent of Company. When Tester determines in its sole discretion that it has completed the Test Services, Tester will submit to Company a Certification Dispute Report.

2.2 **Company Evaluation and Sole Discretion.** After receipt of Tester’s Certification Dispute Report, Company will evaluate the Test Services Data provided therein by Tester and investigate the alleged noncompliance with the Specifications identified therein. Tester acknowledges that Manufacturers have the ability to dispute the conclusions drawn in the Certification Dispute Report and to appeal Company’s determination (should Company make it) that the specific Product is noncompliant with the Specifications. Tester acknowledges that any payment of a Certification Dispute Payment or evaluation of performance of the Test Services is at the sole discretion of Company.

2.3 **Certification Dispute Payment.** Payment of a Certification Dispute Payment will be based exclusively on a determination by Company, in its sole discretion as described in Section 2.2, that the information in a Certification Dispute Report is complete and valid. Company will pay Tester the Certification Dispute Payment set forth in the ioXt Fee Schedule, in accordance with the payment schedule set forth in the ioXt Fee Schedule. Company will make the Certification Dispute Payment to Tester using PayPal or similar electronic payment method. Tester must provide certain information as requested in Section 2.5 below in order to receive payment of any Certification Dispute Payment.

2.4 **Taxes.** Tester acknowledges and agrees that Tester is obligated to report as income all compensation received by Tester pursuant to this Agreement, and Tester agrees to and acknowledges the obligation to pay all self-employment and other taxes thereon and that he will not be eligible for any Company employee benefits (nor does Tester desire any of them) and expressly waives any entitlement to such benefits.

2.5 **Documentation.** Certification Dispute Payments cannot be processed until Tester has submitted to Company a completed IRS form W-9 (U.S. residents) or IRS form W-8BEN (non-U.S. residents).

3. INTELLECTUAL PROPERTY.

3.1 **Ownership of Intellectual Property.** Company retains full ownership of Company's Intellectual Property. Tester agrees that nothing in this Agreement shall give to Tester any right, title, or interest in any of Company's Intellectual Property.

3.2 **Restrictions.** Tester will not, and will not, directly or indirectly, permit any third party to: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the any Company Intellectual Property available to any third party; (b) copy, modify, duplicate, reproduce, translate, or otherwise create derivative works based on the Products or any Company Intellectual Property; (c) reverse engineer, decompile, disassemble, re-program, or analyze the Products or any Company Intellectual Property (each, in whole or in part) or otherwise attempt to reconstruct, identify or discover the source code, object code or underlying structure, ideas or algorithms of the Product or any Company Intellectual Property (except to the extent such restriction is prohibited by law); (e) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to any of the Products or their related systems, hardware or networks or any content or technology incorporated in any of the foregoing, except pursuant to the Test Services; (f) remove or obscure any proprietary notices or labels of Company, its members, licensors or subcontractors or any Manufacturer on the Company Intellectual Property or Products, as applicable; (g) use the Products or any information contained therein or otherwise provided by Company or its licensors or subcontractors for the purposes of developing, or having developed, any products or services competitive with the Products; or (h) otherwise access or use the Products or Company Intellectual Property in a manner inconsistent with this Agreement or applicable law.

3.3 **Test Services Data.** Tester shall disclose to Company all Test Services Data. Further, Tester hereby assigns to Company all rights, title and interest in and to the Test Services Data to Company. To the extent any portion of the Test Services Data cannot be assigned to Company hereunder, Tester hereby grants Company a perpetual, irrevocable, paid-up, royalty-free, exclusive, worldwide license (with the full right to sublicense directly, or indirectly through multiple tiers) to (a) copy, distribute, display, perform, and create derivative works of the Test Services Data, in whole or in part; and (b) use or otherwise exploit the Test Services Data, in whole or in part.

4. TESTER REPRESENTATIONS, WARRANTIES, COVENANTS AND RESPONSIBILITIES.

4.1 **Authority.** Tester represents, warrants and covenants to Company that Tester (a) will comply with all applicable local, state and federal laws, and at all times conduct its activities under this Agreement in a lawful manner and in accordance with this Agreement; (b) has full power and authority to enter into this Agreement and perform its obligations hereunder. and (c) is at least eighteen (18) years old as of the Effective Date.

4.2 **Additional Documentation and Assistance.** Tester covenants to Company that it will reasonably provide additional documentation or instructions to provide confirmation, validate or substantiate the Certification Dispute Report at no extra cost to Company. Tester acknowledges that such additional documentation or instructions may be required in order for Company to validate a Certification Dispute Report. Tester covenants to Company that Tester will use its best efforts to produce complete and valid Certification Dispute Reports.

4.3 **No Misuse.** Tester represents, warrants and covenants to Company that Tester will not use any information provided by Company or a Manufacturer, or a Product itself, or otherwise access or manipulate any equipment utilized in conjunction with the performance of the Test Services in a manner

that violates any published Company policy or any applicable law. Tester agrees that any violation of the foregoing will result in an incurable breach of this Agreement and any Certification Dispute Payments related to such misuse will be subject to forfeiture at Company's sole discretion.

4.4 **Tester Expertise.** Tester represents and warrants to Company that with respect to any Test Services it provides to Company, (a) Tester has the necessary skill, experience and expertise to render such Test Services; (b) Tester is free from control and direction of Company and Manufacturer in connection with the Test Services; and (c) Tester is customarily engaged in performing services similar to Test Services.

4.5 **No Fraud.** Tester covenants to Company that Tester will not manipulate any Products, Test Services Data or the Test Services, or otherwise access or manipulate any equipment utilized in conjunction with the performance of the Test Services in a manner that results in a fraudulent determination of non-compliance with the Specifications. Tester agrees that such manipulation will result in an incurable breach of this Agreement and any Certification Dispute Payments related to such manipulation will be subject to forfeiture at Company's sole discretion.

4.6 **Avoidance of Conflict of Interest.** Tester represents and warrants to Company that Tester has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude Tester from fully complying with the provisions hereof, and further certifies that Tester will not enter into such conflicting agreement during the term of this Agreement. Tester will advise Company at such time as any activity of either the Company or another business presents Tester with a conflict of interest or the appearance of a conflict of interest. Tester will take action to resolve any conflict or appearance of conflict.

5. INDEMNIFICATION.

5.1 Tester shall indemnify, defend (with counsel selected by Company) and hold harmless Company, its Affiliates, and the Alliance and each of its and their managers, members, shareholders, officers, directors, employees, representatives, Manufacturers, independent contractors, and agents, representatives, successors and assigns as the case may be ("**Company Indemnitees**"), from and against any and all claims and all losses or damages, liabilities, claims, demands, suits, judgments, settlements, damages, fines, interest, penalties, (including losses and expenses and those owed under a third party claim), including reasonable costs and expenses relating thereto (including reasonable attorneys' fees) (collectively, "**Losses**"), incurred or suffered by a Company Indemnitee arising out of, or resulting from (i) any breach or inaccuracy of any representation, warranty, covenant, obligation, undertaking, or other agreement contained in this Agreement; (ii) any injury or death of persons or damage to property, or any other damage or loss relating to the Product or Tester's use or access to the Product, or (iii) Company's provision of or access to any Test Services Data or use thereof. If a Company Indemnity becomes subject to a claim for which it is entitled to defense or indemnification hereunder, such Company Indemnity will have the right to reasonably participate, at its own expense, in the defense or settlement of any such claim. Tester will not settle or compromise any claim hereunder without Company's prior written consent, which may not be unreasonably withheld.

6. TERM.

6.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue thereafter, until terminated as provided below ("**Term**").

7. TERMINATION.

7.1 **Termination for Breach.** If either Party shall, at any time during the Term of this Agreement, breach any obligation under this Agreement, and, if such breach is capable of cure, such breach is not cured within fifteen (15) business days after written notice from the other Party specifying the nature of the breach, the other Party may terminate this Agreement in its entirety upon written notice of such termination.

7.2 **Termination Without Cause.** Company may terminate this Agreement at any time without cause upon written notice to Tester. Tester may terminate this Agreement upon thirty (30) days written notice to Company.

7.3 **Termination for Completion.** This Agreement will automatically terminate upon payment of any Certification Dispute Payment.

7.4 **Effects of Termination; Survival.** Notwithstanding the termination of this Agreement, Sections 1, 3, 4, 5, 7.4, 8, 9 (with Section 9.3 surviving only pursuant to its terms) and 10 and any other Sections hereof which expressly or by their nature survive termination of this Agreement shall continue in full force and effect.

8. DISCLAIMERS; LIMITATION OF LIABILITY.

8.1 TESTER EXPRESSLY ACKNOWLEDGES AND AGREES THAT PROVIDING TEST SERVICES IS AT TESTER'S OWN RISK, THAT THE PRODUCT PROVIDED BY COMPANY OR THE APPLICABLE MANUFACTURER IS PROVIDED "AS IS" AND THAT THERE ARE NO REPRESENTATIONS, GUARANTEES OR WARRANTIES OF ANY KIND REGARDING ANY OF THE FOREGOING OR OTHERWISE REGARDING THIS AGREEMENT.

8.2 TESTER FURTHER ACKNOWLEDGES THAT THERE ARE NO REPRESENTATIONS, GUARANTEES OR WARRANTIES BY COMPANY THAT PERFORMANCE OF THE TEST SERVICES BY TESTER WILL BE FREE FROM INFRINGEMENT OF INTELLECTUAL PROPERTY HELD BY THIRD PARTIES, THAT THE TESTER'S PERFORMANCE OF THE TEST SERVICES WILL HAVE OR WILL NOT HAVE ANY EFFECT ON TESTER OR ITS BUSINESS, OR THAT THE PRODUCT AND OTHER MATERIALS AND DOCUMENTATION PROVIDED UNDER THIS AGREEMENT ARE FIT FOR ANY PARTICULAR PURPOSE ARISING BY LAW OR OTHERWISE.

8.3 NEITHER COMPANY NOR COMPANY'S AFFILIATES OR THE ALLIANCE SHALL HAVE ANY OBLIGATION OR LIABILITY TO TESTER, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT, OR OTHERWISE, FOR LOSS OF USE, REVENUE, OR PROFIT OR FOR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO THIS AGREEMENT (INCLUDING ANY NONCONFORMANCE OR DEFECT IN THE PRODUCT OR ANY OTHER MATERIALS AND DOCUMENTATION PROVIDED UNDER THIS AGREEMENT). THE TOTAL LIABILITY OF COMPANY, COMPANY'S AFFILIATES, AND THE ALLIANCE, AND THE TESTER'S SOLE REMEDY AGAINST SAME, FOR ALL CLAIMS OF ANY KIND, ARISING OUT OF OR RELATED TO THIS AGREEMENT IS LIMITED TO THE RECOVERY OF GENERAL MONETARY DAMAGES NOT EXCEEDING THE AMOUNTS PAID TO TESTER BY COMPANY UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING ANY SUCH CLAIM.

8.4 SOME JURISDICTIONS RESTRICT DISCLAIMERS OR EXCLUSIONS OF WARRANTIES OR LIMITATIONS OF LIABILITY, SO THE ABOVE DISCLAIMERS, EXCLUSIONS AND/OR LIMITATIONS OF LIABILITY MAY NOT APPLY TO TESTER. IF ANY PART OF THE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS SET FORTH IN THIS SECTION IS UNENFORCEABLE UNDER APPLICABLE LAW, THE INVALIDITY OF SUCH PART SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PARTS AND COMPANY'S AGGREGATE LIABILITY TO TESTER WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

9. CONFIDENTIAL INFORMATION.

9.1 **Confidential Information Terms and Conditions.** In connection with performance of its obligations hereunder (including the Test Services), Tester may receive or have access to Company's Confidential Information.

9.2 **Safeguard of Confidential Information.** Tester shall safeguard Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its own Confidential Information and no less than a reasonable degree of care. Tester will not, in whole or in part, disclose, transfer, use (except as necessary to perform its obligations under this Agreement), reverse engineer, or otherwise make available Confidential Information. Tester shall promptly notify Company in writing of any actual or anticipated unauthorized use or disclosure of Confidential Information and use reasonable efforts to prevent further use or disclosure. Tester acknowledges that the provisions contained in this section are reasonable and necessary to protect the legitimate business interests of Company. Tester agrees that time is of the essence with regard to any potential breach of the confidentiality obligations and Company is entitled to seek and obtain all forms of equitable relief (independent of any monetary damages), including injunctive relief.

9.3 **Non-Disclosure of Test Services Data.** Tester represents, warrants and covenants to Company that they have not prior to the Effective Date, in whole or in part, disclosed, transferred, or otherwise made available, and will not until a full 90 days has lapsed (such period, the "Non-Disclosure Period"), in whole or in part, disclose, transfer, or otherwise make available, the Test Services Data to any third party, except as provided below, in order to give Company sufficient time to disclose the information to Manufacturer, and allow Manufacturer to either create and circulate a remedy, or dispute the information. Additionally, Company and/or Manufacturer may require other special disclosure instructions related to the disclosure of the Test Services Data. If no such instructions are provided to Tester, then the Non-Disclosure Period expires 90 days after the Effective Date with respect to the Test Services Data and Tester may freely disclose the Test Services Data.

9.4 **Destruction of Confidential Information.** Upon termination of this Agreement, for whatever reason, or upon Company's request, Tester will, at Company's option, either return to Company or destroy all Confidential Information in its or its representatives' possession or control, with such destruction being certified in writing to Company upon request. Notwithstanding the foregoing, Tester may retain Confidential Information that is contained in an archived computer system backup in accordance with any applicable law or regulation, it being understood that any such retained Confidential Information shall continue to be bound by the terms and conditions herein.

10. ADDITIONAL TERMS.

10.1 **Publicity.** Tester will not issue any publicity materials, press releases, or make any other disclosures regarding this Agreement or its terms or the nature or existence of any relationship between

the Parties, or use any trade name, trademark, service mark or logo of Company in any advertising, promotions or otherwise without Company's express written agreement in each instance.

10.2 Notices. The Parties will give all notices and communications between the Parties in writing by (a) personal delivery, (b) a nationally-recognized, next-day courier service, (c) first-class registered or certified mail, postage prepaid, to (with respect to Company) the address set forth in the preamble of this Agreement) and (with respect to Tester) the address set forth on the signature page hereto, or the such other address specified by the Parties pursuant to this Section 10.2. In addition, Company may send any notices and communications to Tester hereunder to the initial email address specified by Tester on the signature page hereto or the appropriate email address specified by Tester thereafter pursuant to this Section 10.2.

10.3 Assignment. This Agreement is personal to Tester and Tester may not assign this Agreement or delegate or subcontract any of its obligations hereunder, in whole or in part, including by operation of law or change of control, without Company's prior written consent. Any attempted assignment in violation of this Agreement shall be void and without effect. Company may freely assign this Agreement, in whole or in part, at its sole discretion. Subject to the foregoing, this Agreement will benefit and bind the Parties' successors and assigns.

10.4 Relationship of Parties. Nothing in this Agreement and its performance shall be construed as creating a joint venture, partnership, employer/employee relationship or agency between Company and Tester. Tester shall not bind, or attempt to bind, Company to any contract or performance of any other obligation, or represent to a third party that Tester has the right to enter into any binding obligation on the other entity's behalf. The Parties acknowledge and agree that this Agreement is an independent contractor agreement and is not intended to constitute or be construed as an employment agreement or a franchise agreement. Tester acknowledges and agrees that they will use their own discretion in performing the tasks assigned, within the scope of work specified by Company. Each Party shall be responsible for the timely reporting and payment of all taxes, including penalties and interest, arising out of that Party's activities in accordance with this Agreement, including federal and state income, social security, self-employment, unemployment and disability taxes.

10.5 Governing Law. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the laws of the State of California (excluding any conflict of laws provisions of the State of California that would refer to and apply the substantive laws of another jurisdiction). The Parties hereby submit to the jurisdiction of the courts located in Orange County, California and waive any objection that Tester might have to personal jurisdiction or venue in those courts.

10.6 Waiver. No delay or omission by either Party to exercise any right occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

10.7 Severability. If any provision of this Agreement should be held to be invalid, void or unenforceable, in whole or in part, the court so holding shall reform the provision to make it enforceable while maintaining the spirit and goal of the provision, and if the court finds that it cannot so reform that provision, such provision will be treated as severable, leaving valid the remainder of this Agreement.

10.8 **Entire Agreement; Modification.** This Agreement sets forth the entire, final and exclusive agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the Parties. No representation, undertaking or promise shall be taken to have been given by Company or Tester, or be implied from anything said or written in negotiations between the Parties except as specifically set forth in this Agreement. This Agreement may be modified only pursuant to a writing executed by authorized representatives of Company and Tester.

10.9 **Construction of Agreement.** Headings are included for convenience only and will not be used to construe this Agreement. All uses herein of the term “including” will be interpreted to mean “including without limitation.” The Parties acknowledge and agree that both Parties substantially participated in negotiating the provisions of this Agreement; therefore, both Parties agree that any ambiguity in this Agreement shall not be construed more favorably toward one Party than the other Party, regardless of which Party primarily drafted this Agreement.

10.1 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. Delivery of this Agreement bearing a signature by electronic means (including *DocuSign*) will have the same effect as physical delivery of the paper document bearing the original signature.

10.2 **Export Control.** Tester will not transfer, either directly or indirectly, any Product (including its software or documentation) or Company Intellectual Property, either in whole or in part, to any destination subject to export restrictions under United States law, unless prior written authorization is obtained from the appropriate United States agency and will otherwise comply with all other applicable import and export laws, rules and regulations. Tester represents and warrants that it: (a) will not cause Company to violate any export, trade or other economic sanction law; and (b) will promptly advise Company in writing if any Test Services 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.

10.3 **Defend Trade Secrets Act of 2016; Other Notices.** Tester understands that pursuant to the federal Defend Trade Secrets Act of 2016, Tester will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Tester further understands that nothing contained in this Agreement limits Tester’s ability to (A) communicate with any federal, state or local governmental agency or commission, including to provide documents or other information, without notice to Company, or (B) share compensation information concerning Tester or others, except that this does not permit Tester to disclose compensation information concerning others that Tester obtains because Tester’s job responsibilities require or allow access to such information.