

IOLO TECHNOLOGIES FIELD TEST AGREEMENT

IF YOU (“PARTICIPANT”) ELECT TO PARTICIPATE IN IOLO’S FIELD TEST PROGRAM, THIS AGREEMENT WILL BECOME A LEGALLY BINDING AGREEMENT BETWEEN PARTICIPANT AND IOLO TECHNOLOGIES, LLC (“IOLO”). IF PARTICIPANT DOES NOT AGREE TO OR WISH TO BE BOUND BY THIS AGREEMENT, DO NOT PARTICIPATE IN THE FIELD TEST PROGRAM.

1. Definitions

- a) Field Test Survey. "Field Test Survey" means the survey form related to the Software that iolo delivers or presents to Participant.
- b) Confidential Information. "Confidential Information" means the Software, the documentation associated with the Software, information regarding the Software, including its features, capabilities, pricing, and other information, Participant’s results, impressions, conclusions and experiences from using the Software (including without limitation any information recorded in Participant’s Field Test Survey), any Feedback, and any other information or material that Participant obtains from iolo or as a result of Participant’s participation in iolo’s field test program for the Software, provided that Confidential Information shall not include information that is: (i) known by Participant before Participant’s participation in iolo’s field test program and not subject to any other non-disclosure agreement between the parties to this Agreement; (ii) now, or that hereafter becomes, generally known to the industry through no fault of Participant, or that is later published or generally disclosed to the public by iolo; or (iii) otherwise lawfully and independently developed by Participant, or lawfully acquired by Participant from a third party, without any obligation of confidentiality.
- c) Effective Date. "Effective Date" means the date that Participant accepts this Agreement.
- d) EULA. "EULA" has the meaning provided in Section 3(a).
- e) Evaluation Period. "Evaluation Period" means the period of time during which Participant is authorized to use the Software in connection with the field test thereof.
- f) Feedback. "Feedback" means Participant’s requirements, inputs, comments, responses, impressions, opinions, feedback and errata, whether oral or written, concerning or relating to the Software, that are provided by Participant to iolo.
- g) Software. "Software" means any computer software program that iolo authorizes Participant to test or evaluate and that Participant elects to test or evaluate as part of iolo’s field test program.

2. Acknowledgement of Development Status of the Software

Participant hereby acknowledges that the Software is currently under development and testing by iolo. iolo desires to obtain input from Participant to assist iolo in its ongoing development of the Software. Participant is willing to provide such input and desires to have pre-release experience with the Software. Accordingly, Participant acknowledges that: (i) the Software likely contains “bugs” and other errors that could adversely affect the use or performance of the Software; (ii) the Software may contain inoperable features; (iii) the Software may contain errors and may be incomplete; and (iv) Participant should take extra care in preserving its data in order to avoid any loss of data as a result of using the Software.

3. End User License Agreement; Exceptions.

- a) The Software includes an End User License Agreement that is presented during the process of installing the Software (the “EULA”). You hereby accept and irrevocably acknowledge that you are bound in all respects by the EULA with respect to the Software; provided that, in the event of any conflict or inconsistency between the EULA and this Agreement, this Agreement shall control.
- b) Notwithstanding anything to the contrary in the EULA:
 - Participant’s right to use the Software shall terminate upon termination or expiration of the Evaluation Period. If in connection with Participant’s participation in the field test program iolo presented Participant with a specific period for which the Evaluation Period would continue, then the Evaluation Period shall commence on the Effective Date and continue for the duration of such specific period. If iolo did not present Participant with such a specific period, then the Evaluation Period shall commence on the Effective Date hereof and continue for ninety (90) days thereafter. Notwithstanding the foregoing, either party may terminate the Evaluation Period at any time upon written notice to the other party.
 - The Software may be installed and used only on computers that Participant owns and controls (“Your Computers”) and may be used only by Participant and its employees that have agreed in writing to abide by the provisions of this Agreement, including, without limitation, Section 5 and 6 hereof. If in connection with Participant’s participation in the field test program iolo presented Participant with a specific number of computers on which Participant could use the Software in connection with the field test, then, during the Evaluation Period, Participant may use the Software on that number of Your Computers. If iolo did not present Participant with such a specific number of computers, then Participant may use the Software on ten (10) of Your Computers. Participant may in no event use the Software on any computers that are not Your Computers.
 - *Participant acknowledges that the Software may contain a time lock or other*

disabling mechanism that will prevent the use of some or all features of the Software and that the Software may become unusable at any time, including without limitation during the Evaluation Period. Participant acknowledges that it is prepared for the Software to become disabled and to cease to operate at any time, with or without notice, and that Participant will suffer no damage and iolo shall have no liability or obligation arising out of or in connection with any loss of the ability to use the Software or any functionality thereof.

4. Field Test Survey

Participant shall keep complete, true and accurate records of the results of its use, evaluation and tests of the Software, in a manner which will enable Participant to fully and competently respond to the questions contained in the Field Test Survey. Participant shall complete the Field Test Survey within thirty (30) days of the end of Participant's evaluation of the Software hereunder, and shall cooperate fully with iolo and its agents in the process of gathering information regarding the use, evaluation and test of the Software.

5. Feedback

Participant grants to iolo a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully-paid-up, transferable license under Participant's rights in or relating to the Feedback, with the right to sublicense, to create derivative works and improvements based upon the Feedback and to use, copy, disclose, distribute, display, perform, modify, make, sell, license and import, in any way and for any purpose, the Feedback and any such derivative work or improvement and any product or service that incorporates, embodies or is based to any extent on the Feedback or any such derivative work or improvement.

6. Confidentiality

Participant shall hold the Confidential Information in strict confidence using such care to protect the Confidential Information as Participant uses to protect its own sensitive and valuable proprietary information. Participant shall not use the Confidential Information for any purpose other than to participate in the field test and respond to the Field Test Survey and shall not disclose the Confidential Information to any person or entity other than Participant's employees that participate in the field test. Participant represents and warrants that it shall not use, in the course of its performance under this Agreement, and shall not disclose to iolo, any confidential information or other intellectual property of any third party (including competitors of iolo or Participant) unless Participant is expressly authorized in writing by such third party to do so, and discloses such use and/or disclosure to iolo.

7. Term and Termination

The term of this Agreement shall commence as of the Effective Date and shall continue until the end of the Evaluation Period. Upon termination of this Agreement for any reason whatsoever, Participant shall erase or otherwise destroy all copies the Software in Participant's possession or under its control. Sections 2, 3, 5, 6, 7 and 8 shall survive termination of this Agreement and shall remain fully enforceable thereafter.

8. Miscellaneous

- a) Entire Agreement. This Agreement and the EULA together constitute the entire understanding and agreement, and supersede any and all prior or contemporaneous representations, understandings and agreements, between the parties to this Agreement with respect to the subject matter of this Agreement and the EULA. It is expressly understood and agreed that no employee, agent or other representative of iolo has any authority to bind iolo with regard to any statement, representation, warranty or other expression unless the same is specifically set forth or incorporated by reference in this Agreement or the EULA. It is expressly understood and agreed that, there being no expectation of the contrary between the parties to this Agreement, no usage of trade or custom and practice within the industry, and no regular practice or method of dealing between the parties to this Agreement, shall be used to modify, interpret, supplement or alter in any manner the express terms of this Agreement or the EULA.
- b) Waiver. No waiver of any provision of this Agreement, or any rights or obligations of either party to this Agreement under this Agreement, shall be effective, except pursuant to a written instrument signed by the party or parties to this Agreement waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.
- c) Amendments. All amendments or modifications of this Agreement shall be binding upon the parties to this Agreement despite any lack of consideration so long as such amendments or modifications are in writing and executed by the parties to this Agreement in accordance with the other terms of this Agreement regarding modifications.
- d) Severability of Provisions. In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- e) Assignment. Participant shall not have the right to, and shall not, assign or transfer this Agreement, or any rights, duties or obligations of Participant under this Agreement, and this Agreement may not be involuntarily assigned or assigned by Participant by operation of law. During the term of this Agreement, Participant shall promptly notify iolo of any transfer of twenty-five percent (25%) or more of the ownership interest in, or outstanding voting stock of, Participant, or the merger of Participant into or with any other third party or entity, or any sale by Participant of substantially all of its assets.
- f) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the state of California applicable to contracts entered into and performed in California by residents thereof.