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By

Kyrio, Inc.

2023 5G Challenge: Advanced Interoperability

Participant Agreement

Prepared for: {{INDIVIDUAL/ORGANIZATION NAME}}

{{Today}} Inc.

{{Today}}

# Preamble

This Agreement defines the boundaries of the interactions between contestants and the host lab during the 2023 5G Challenge: Advanced Interoperability(“Event”) and assigns IP rights to data transmitted during the event. Acceptance of this Participation Agreement is mandatory for participation in this prize event.

Each individual (whether participating singly or in a group) and entity participating in this contest must comply with all terms and conditions of the Official Rules. Participation in this contest constitutes each contestant’s full and unconditional agreement to abide by these rules.

# Scope

By signing below, [INDIVIDUAL or ORGANIZATION NAME] (“Contestant”) agrees to the terms of this 5G Challenge Preliminary Event Participation Agreement (“Agreement”) between itself and Cable Television Laboratories, Inc. (“CableLabs”) and Kyrio, Inc., a tradename of NetworkFX, Inc. (“Kyrio”), jointly the “5G Challenge Test Team,” to conduct testing on Contestant supplied combined vRAN CU and DU (“CU+DU") or RU subsystem (“DUT Subsystem”) for testing as defined in the test plan noted below for the Event sponsored by the National Telecommunications and Information Administration’s Institute for Telecommunication Sciences (“NTIA/ITS") and Department of Defense Under Secretary for Research and Engineering (“DoD OUSD(R&E)"), jointly the “U.S. Government.” Contestant agrees that the test results will be shared with U.S. Government with no obligation of confidentiality. After Contestant and 5G Challenge Test Team have signed below, the testing activities will be conducted as follows:

* Contestant will provide DUT Subsystem to 5G Challenge Test Team for testing. If applicable, Contestant will ship DUT Subsystem to be tested directly to 5G Challenge Test Team and will be responsible for all customs, shipping, and insurance fees to and from 5G Challenge Test Team’s location(s).
* 5G Challenge Test Team will provide reasonable, as determined by 5G Challenge Test Team, support with the initial set-up and integration of the DUT Subsystem in the test lab.
* 5G Challenge Test Team will conduct the tests per the U.S. Government approved subsystem test plan. If any issues are found during the testing, the team will provide Contestant with the necessary details (e.g., log files, error messages, configurations) for Contestant to troubleshoot the issue(s).
* 5G Challenge Test Team will provide Contestant and the U.S. Government with the results and scoring of the testing.

While 5G Challenge Test Team will provide support in the troubleshooting of errors or issues found during the testing process, it is Contestant’s responsibility to diagnose and correct any issues found with Subsystem as necessary to complete the testing.

## Contestant Responsibilities:

* Contestant agrees to the NTIA 5G Challenge Official Rules, as made available to Contestant via http://5gchallenge.ntia.gov, including all contestant responsibilities therein.
* Contestant may not disclose the details of the test procedures outside their direct team members. Improper disclosure may result in disqualification from the Event.
* Contestant will also employ commercially reasonable practices to monitor and secure its systems (hardware and/or software) during the testing including, but not limited to, proper access control and regular maintenance and patching of vulnerabilities and to ensure no harm shall occur to 5G Challenge Test Team facilities.

# Testing Schedule

Contestants will be assigned a specific testing window by 5G Challenge Test Team. Integration and testing of Contestant Subsystems will occur per the following schedule:

|  |  |
| --- | --- |
| **Milestone** | **Timeline/Duration** |
| Contestant receives Test Plan | No later than March 20, 2023. |
| Delivery, set-up, and integration | Contestant Subsystem may be delivered up to 5 business days prior to the Test Window Start Date.  Contestant can begin setting up and integrating Subsystem starting on the Test Window Start Date. Five (5) business days are allocated for this period. |
| Testing | Testing will commence on the start date for your test window, or when delivery, set-up and integration is complete.  Up to fifteen (15) business days are allocated to complete the testing of Subsystem per the Stage Two test plan.  If Contestant Subsystem is advanced to Stage Three, up to an additional 15 to 30 business days (depending on pairing type) are allocated to complete testing of the paired system per the Stage Three test plan and depending on the pairing configuration (i.e., 15 days for Type A, 20 days for Type B, or 30 days for Type C) as defined in the Rules.  If Contestant Subsystem is advanced to Stage Four, up to an additional 30 business days are allocated to complete testing of the paired systems per the Stage Four test plan. |
| Results supplied to Contestant: | Within (5) business days of completion of Testing |

Testing schedules are subject to change (including extensions) depending on lab availability and compatible test partners.

# Additional Terms

## Agreement to the terms of the Event Participation Agreement between 5G Challenge Test Team and Contestant:

Contestant warrants that the signatory on this Participation Agreement has the authority to bind Contestant to the terms of this Agreement.

## Agreement Due Date:

This Agreement must be signed by both Contestant and 5G Challenge Test Team within 30 days from the date the contestant was notified of their acceptance to the Event, or the first date of their Testing Window (whichever comes first). If the Agreement is not signed by this date, 5G Challenge Test Team has the discretion to remove the contestant from the Event.

## Security:

5G Challenge Test Team will employ commercially reasonable security and network monitoring consistent with a testing laboratory during the Event. This includes, but is not limited to, the use of firewalls, role-based access controls, network monitoring and intrusion detection, anti-virus software and regular maintenance and patching of vulnerabilities. 5G Challenge Test Team reserves the right to disable Contestant systems and/or network traffic to/from Contestant systems if 5G Challenge Test Team considers the activity malicious or detrimental to 5G Challenge Test Team’s systems and/or detrimental to the ability to conduct the Event in a fair and equitable manner. If the Contestant does not employ commercially reasonable practices to monitor and secure its systems (hardware and/or software), 5G Challenge Test Team has the discretion to remove the contestant from the Event. Contestant is liable and indemnifies 5G Challenge Test Team for any damages arising from or related to its participation in the Event.

## Termination:

### Contestant Terminates:

Contestant may terminate this Agreement, with or without a specified reason. To terminate this Agreement, Contestant must provide a written notice, such as an email, to 5G Challenge Test Team that states Contestant wishes to terminate the testing. Upon receipt of Contestant's written notice, 5G Challenge Test Team will no longer reserve its testing services for Contestant or will cease to conduct its tests for Contestant, as is appropriate.

### 5G Challenge Test Team Terminates:

5G Challenge Test Team may terminate this Agreement if Contestant materially breaches this Agreement and this breach is not corrected within five days of 5G Challenge Test Team’s written notice to Contestant of the breach, or where 5G Challenge Test Team has determined Contestant has no ability to remedy the breach. Termination shall be upon Contestant’s receipt of 5G Challenge Test Team’s written notice, such as an email. A material breach includes, but is not limited to, Contestant disclosing 5G Challenge Test Team’s testing techniques to people outside of Contestant’s team. 5G Challenge Test Team may also terminate this Agreement if Contestant or 5G Challenge Test Team becomes insolvent, unable to pay debts when due, the subject of bankruptcy proceedings not terminated within thirty (30) days of any filing, makes a general assignment for the benefit of creditors, or if a receiver is appointed for substantially all its property. This Agreement may also be terminated if 5G Challenge Test Team is no longer supporting the Event.

### What Happens on Termination:

Upon termination Contestant is to pay 5G Challenge Test Team to return the equipment Contestant submitted for testing. 5G Challenge Test Team will prepare the equipment to be shipped back to Contestant, with Contestant making arrangements and paying for transportation and, so long as there are no disputes as to payment, provide Contestant with the test results for any testing done prior to the receipt of the termination notice.

## 5G Challenge Test Team Does Not Guarantee Contestant’s Test Results:

TO THE MAXIMUM EXTENT ALLOWABLE BY LAW: WHILE 5G CHALLENGE TEST TEAM WILL PERFORM THE AGREED UPON TESTS COMPETENTLY TO INFORM DECISIONS OF THE 5G CHALLENGE JUDGING PANELS, 5G CHALLENGE TEST TEAM DOES NOT GUARANTEE THE ACCURACY OR USEFULNESS OF THE TEST RESULTS FOR ANY OTHER PURPOSE. THE SERVICES ARE PROVIDED “AS IS” WITHOUT ANY WARRANTIES.

## Contestant Agrees to Indemnify or Hold Harmless 5G Challenge Test Team for Any Lawsuits Brought by an Independent Party:

Contestant agrees to hold harmless 5G Challenge Test Team and its respective directors, employees, owners, and agents, for any claims arising from or related to this Agreement, which are brought by individuals or other organizations that are independent of this Agreement (“Independent Party”). In order for Contestant to indemnify 5G Challenge Test Team, 5G Challenge Test Team must notify Contestant in writing of any such claims and Contestant will have the sole control of the defense and all negotiations for any settlement or compromise of such claim, provided that 5G Challenge Test Team may participate in such defense using counsel of its own choice and at its sole expense.

## 5G Challenge Test Team Agrees to Indemnify or Hold Harmless Contestant for Any Lawsuits Brought by an Independent Party for Intellectual Property Claims:

5G Challenge Test Team agrees to hold Contestant, its respective, directors, employees, and agents, harmless for any claims arising from or related to this Agreement which are brought by individuals or other organizations that are independent of this Agreement (“Independent Party”) and are for intellectual property infringement claims arising from the intellectual property in the tests 5G Challenge Test Team uses on the device Contestant submitted for testing. In the event that an Independent Party brings a claim against Contestant for intellectual property infringement due to 5G Challenge Test Team’s testing or test results, 5G Challenge Test Team may, at its option and with no expense to Contestant:

(i) procure the right for Contestant to continue using the test results; (ii) modify or replace the infringing portion of the test results to make it non-infringing; or (iii) in the case where (i) and (ii) are not possible, terminate this Agreement and return to Contestant the portion of Contestant's payment for the infringing test or test result to Contestant.

## Limited Liability and Damages:

To the maximum extent allowable by law: in no event shall either 5G Challenge Test Team or Contestant be liable to each other for any damages other than damages directly arising from 5G Challenge Test Team’s testing services for Contestant or the Contestant’s participation in the Event. Neither 5G Challenge Test Team nor Contestant will be liable for any other damages such as, but not limited to, (i) damages which reflect lost business, or (ii) profits or lost earnings or any damage that is suffered as a result of 5G Challenge Test Team or Contestant's particular circumstances even if the damage was foreseeable or if 5G Challenge Test Team or Contestant was told that the damage was possible. In no event shall either 5G Challenge Test Team or Contestant be liable under this Agreement to each other for any amount that exceeds the current value of the equipment damaged.

Neither Contestant nor 5G Challenge Test Team are liable to the other if either party is unable to meet the terms this Agreement due to an unforeseen event, such as, but not limited to war, strike, riot, crime, acts of nature, shortages of resources, infectious diseases, fire, flood, violent weather conditions, or equipment failure.

## In Case of Disaster:

If due to unforeseeable circumstances beyond 5G Challenge Test Team’s reasonable control, including but not limited to war, strike, riot, crime, acts of nature, shortages of resources, infectious diseases, fire, flood, violent weather conditions, or equipment failure, 5G Challenge Test Team will suspend and, if necessary, cancel testing for any period during which it is unable to conduct its testing. In the unlikely event this happens, 5G Challenge Test Team will contact Contestant so we may come to agreement about next steps.

## Publicity:

5G Challenge Test Team shall have the right to refer to Contestant as a reference, use Contestant’s likeness, and disclose that 5G Challenge Test Team provides testing services for Contestant.

In the event Contestant wants to make a public announcement regarding the Event, 5G Challenge Test Team must agree to the public announcement arising from or related to 5G Challenge Test Team testing services prior to publication. 5G Challenge Test Team must have at least 5 weekdays to review any such proposed public announcement. Failure to first obtain 5G Challenge Test Team’s permission for public announcements may result in (i) 5G Challenge Test Team issuing its own clarifying announcement and/or (ii) 5G Challenge Test Team’s refusal to provide additional testing services or 5G Challenge Test Team requiring additional terms or payment for any further testing services.

Section 9.3 of the Official Rules, published on https://5gchallenge.ntia.gov/resources, specifies publicity for 5G Challenge data.

## This Document Constitutes Our Entire Agreement and Supersedes Any Other Prior Discussions:

This Agreement comprises the entire agreement with respect to 5G Challenge Test Team’s testing services for Contestant and merges or supersedes all prior discussions or agreements between Contestant and 5G Challenge Test Team. Any changes to this Agreement or the proposal must be in a signed writing between Contestant and 5G Challenge Test Team.

## If Any Part of This Agreement Turns Out to be Invalid, the Remaining Parts of the Agreement Remain in Force:

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, all remaining provisions of this Agreement shall not be affected in any way and will remain enforceable. Waiver of a breach by Contestant or 5G Challenge Test Team does not mean that 5G Challenge Test Team or Contestant waives a subsequent or other breach.

## Export Control:

The export of commodities or technical data from the United States of America and/or the re-export from foreign countries of commodities or technical data or devices of United States of America origin, may be conditioned upon the issuance of an export license by the government of the United States of America. Contestant represents that Contestant will not export or re-export any commodities or technical data or direct devices in furtherance of or as a result of the test results or other information Contestant receives from 5G Challenge Test Team unless and until Contestant has complied in all respects with the United States of America Export Control Regulations. Contestant shall indemnify and hold 5G Challenge Test Team and its parent company, CableLabs, harmless for any violation of the export control laws.

## In the Event of a Dispute:

If there is a dispute between 5G Challenge Test Team and Contestant arising from or related to this Agreement, 5G Challenge Test Team and Contestant will first try to resolve the dispute between each other within 30 days from the date of a written notice, such as, but not limited to, an email, received by the non-disputing party. If we are unable to resolve the dispute between ourselves then either 5G Challenge Test Team or Contestant may submit the dispute for binding arbitration. If Contestant has an office in the United States, then arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. If Contestant does not have an office in the United States, then arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. Arbitration shall be in the city of New York and in English with three arbitrators applying the law of the state/country of the headquarters of the company not bringing the arbitration (the responding party).

## English Version.

In the event this Agreement is translated in any language other than the English language, then in the event of a conflict between the English language version and the translated version, the English language version shall prevail in all respects.

# Notices

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| --- | --- |
| **CableLabs/Kyrio Contact** | **Contestant Contact** |
| Name: | Name: |
| Title: | Title: |
| Street Address: | Street Address: |
| Email: | Email: |
| Telephone: | Telephone: |

|  |  |  |
| --- | --- | --- |
| **Cable Television Laboratories, Inc.** |  | {{INDIVIDUAL/ORGANIZATION NAME}} |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |