



When you submit devices for testing at Kyrio your company and Kyrio agrees to the following:

1. **Agreement to the terms of the final proposal we submitted to you:** These terms generally cover what we (“we” being Kyrio) are going to test, how we are going to test it, how long it will take to test it, what type of testing results you will receive, and how much the testing will cost. When you (“you” being your company) submit equipment to Kyrio for testing, Kyrio is relying upon your authority to bind your company to the terms of the proposal and these terms. If there is a conflict between a term in the proposal and these terms the terms of the proposal will govern.
2. **Proposal Validity Period:** If the Proposal we sent you is not signed by both you and Kyrio within 30 days from the date on the front page of the Proposal then Kyrio automatically withdraws the Proposal without liability.
3. **Ownership and Use of Test Results:** The report Kyrio provides to you with your test results belongs to you as a “Work for Hire” as defined in U.S. copyright law. You provide a no-cost, irrevocable, unlimited license to Kyrio for Kyrio to copy, modify and distribute, in whole or in part, your report. Since the report is your report you may use it without restriction. However, Kyrio does not recommend using the information in the report beyond the context of the report. For example, using the report as the basis for generalized comparative advertising would be inappropriate without providing the testing context.
4. **Payment to Kyrio:** When we bill your company for the testing service, the bill is exclusive of any sales, use, value added, excise, income tax, withholding tax, and any other taxes or charges (other than, of course, Kyrio’s income tax, payroll taxes, or taxes directly related to Kyrio’s business). Your company is responsible for paying any of those other taxes or other government charges such as taxes and charges in connection with this Agreement that may be imposed upon your company or Kyrio by taxing authorities other than the United States. Such taxes include all sales, use, value added, excise, income tax, withholding tax, or any additional taxes. Payment to Kyrio is net 30 days from the date of invoice.
5. **Non-Disclosure:** Kyrio will not disclose the equipment your company sent to Kyrio for testing or the testing process (“testing information”) without your company’s written permission unless:
 - the testing information becomes public knowledge through no fault of Kyrio;
 - Kyrio or its parent company, Cable Television Laboratories, Inc. had already conducted similar testing, in which case any public disclosure shall only be in relation to the tests Kyrio or Cable Television Laboratories, Inc. already performed;
 - Kyrio has received similar testing results on an unrestricted basis from a third party who acquired the testing information lawfully; or
 - Kyrio is legally required to disclose the testing information.

While your company may publicly disclose the testing results your company may not disclose the Kyrio testing methodology, including Kyrio’s testing environment and techniques without Kyrio’s prior written permission.

6. **If Your Company or Kyrio needs to terminate Kyrio testing:**

Your Company Terminates: Your company may terminate this Agreement, with or without a specified reason. To terminate this Agreement, please provide a written notice, such as

an email, to Kyrio that states your company wishes to terminate the testing. Upon receipt of your written notice Kyrio will no longer reserve its testing services for your company or will cease conduct its tests for your company, as is appropriate. Your company may terminate this Agreement without being charged if your company terminates prior to 30 days before the start date of the testing described in the proposal. However, if your company terminates this Agreement less than 30 days before the start date of the testing described in the proposal, your company will pay a fee that represents the reasonable cost and lost revenue to Kyrio resulting from your cancellation so close to the start of the testing. The following fee retainer schedule will apply: 29 to 21 days prior to the commencement of testing, 5% of the fee; 21 days to 11 days, 10% of the fee; 11 to 1 day(s), 20% of the fee. These payments are to compensate Kyrio for lost opportunity due to the reservations of its testing facility for your company and not as a penalty. There is no refund if your company's request to terminate is received after Kyrio has commenced testing.

Kyrio Terminates: Kyrio may terminate this Agreement if your company materially breaches this Agreement and this breach is not corrected within thirty days of Kyrio's written notice to your company of the breach, or where your company has no ability to remedy the breach. Termination shall be upon your receipt of Kyrio's written notice, such as an email. A material breach includes, but is not limited to (1) failing to make a payment for testing services within the required time period or (2) your company disclosing Kyrio's testing techniques to people outside of your company. Kyrio may also terminate this Agreement if your company or Kyrio 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.

What Happens on Termination: Upon termination your company is to pay Kyrio to return the equipment your company submitted for testing. Kyrio will prepare the equipment to be shipped back to your company, with your company making arrangements and paying for transportation and, so long as there are no disputes as to payment, provide your company with the test results for any testing done prior to the receipt of the termination notice.

7. **Kyrio Does Not Guarantee Your Test Results: TO THE MAXIMUM EXTENT ALLOWABLE BY LAW: WHILE KYRIO WILL PERFORM THE AGREED UPON TESTS COMPETENTLY KYRIO DOES NOT GUARANTEE THE ACCURACY OR USEFULNESS OF THE TEST RESULTS. THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES.**
8. **Your Company Agrees to Indemnify or Hold Harmless Kyrio for Any Lawsuits Brought by an Independent Party:** Your company agrees to hold harmless Kyrio 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 your company to indemnify Kyrio, Kyrio must notify your company in writing of any such claims and your company will have the sole control of the defense and all negotiations for any settlement or compromise of such claim, provided that Kyrio may participate in such defense using counsel of its own choice and at its sole expense.
9. **Kyrio Agrees to Indemnify or Hold Harmless Your Company for Any Lawsuits Brought by an Independent Party for Intellectual Property Claims:** Kyrio agrees to hold your company, 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 Kyrio uses on the device your company submitted for

testing. In the event that an Independent Party brings a claim against your company for intellectual property infringement due to Kyrio's testing or test results, Kyrio may, at its option and with no expense to your company: (i) procure the right for your company 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 you the portion of your company's payment for the infringing test or test result to you.

10. **Limited Liability and Damages:** To the maximum extent allowable by law: in no event shall either Kyrio or your company be liable to each other for any damages other than damages directly arising from Kyrio's testing services for your company. Neither Kyrio nor your company 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 the Kyrio or your company's particular circumstances even if the damage was foreseeable or if Kyrio or your company was told that the damage was possible. In no event shall either Kyrio or your company be liable under this Agreement to each other for any amount that exceeds the fees actually received by Kyrio for the testing services for your company. With the exception of disclosing Kyrio's testing techniques or misuse of Kyrio's test results Kyrio and your company's damages to each other for each proposal are limited to the amount your company paid for testing in that proposal.

Neither your company nor Kyrio are liable to the other if either one of us is unable to meet the terms this Agreement due to an unforeseen event, such as, but not limited to, governmental action, acts of war, a fire, flood, or tornado.

11. **Government Contracts:** Your company has informed Kyrio that the testing it provides to your company is not necessary to or part of the fulfillment of any contract with the federal government. In the event your company fails to inform Kyrio that the testing is necessary to or part of the fulfillment of any contract with the federal government then your company shall be liable for any and all penalties, fees, and costs Kyrio incurs due to its failure to comply with governmental regulations for providing services to your company.
12. **In Case of Disaster:** If due to unforeseeable circumstances beyond such Kyrio's reasonable control, including but not limited to war, strike, riot, crime, acts of nature, or shortages of resources, or equipment failure, Kyrio 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, Kyrio will contact you so we may come to agreement about next steps.
13. **Publicity:** Kyrio shall have the right to refer to your company as a reference and disclose that Kyrio provides testing services for your company. In the event your company wants to make a public announcement regarding Kyrio testing Kyrio must agree to the public announcement arising from or related to Kyrio testing services prior to publication. Failure to first obtain Kyrio's permission for public announcements may result in (i) Kyrio issuing its own clarifying announcement and/or (ii) Kyrio's refusal to provide additional testing services or Kyrio requiring additional terms or payment for any further testing services.
14. **This Document Constitutes Our Entire Agreement and Supersedes Any Other Prior Discussions:** This Agreement and the proposal makes up our entire agreement with respect to the Kyrio's testing services for your company and merges or supersedes all prior discussions or agreements between your company and Kyrio. Any changes to this Agreement or the proposal must be in a signed writing between your company and Kyrio.

15. **If Any Part of This Agreement or the Proposal Turns Out to be Invalid, the Remaining Parts of the Agreement and the Proposal Remain in Force:** If any provision(s) of this Agreement or the proposal is determined to be invalid, illegal or unenforceable, all remaining provisions of this Agreement and the Proposal shall not be affected in any way, and will remain enforceable. Waiver of a breach by your company or Kyrio does not mean that Kyrio or your company waives a subsequent or other breach.
16. **In the Event of a Dispute:** If there is a dispute between Kyrio and your company arising from or related to this Agreement, Kyrio and your company 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, was received by the non-disputing party. If we are unable to resolve the dispute between ourselves then either Kyrio or your company may submit the dispute for binding arbitration. If your company 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 your company 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).
17. **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. Les parties aux présentes ont exigé que cette entente et tous autres documents qui y sont reliés par les présentes soient rédigés en anglais.