



ROUTINES API LICENSE AGREEMENT
NYQUIST SOFTWARE

THIS ROUTINES API LICENSE AGREEMENT DESCRIBES THE TERMS BY WHICH BOGEN COMMUNICATIONS LLC ("BOGEN") IS WILLING TO PERMIT YOU, WHETHER AS AN INDIVIDUAL OR AS THE LEGAL ENTITY YOU REPRESENT ("LICENSEE" OR "YOU"), TO RECEIVE ACCESS TO CERTAIN BOGEN SOFTWARE.

BY ACCESSING THE BOGEN SOFTWARE, YOU ACKNOWLEDGE AND AGREE THAT YOU ARE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT ACCESS THE BOGEN SOFTWARE.

1. DEFINITIONS

- a. "API" means the Nyquist Routines API application programming interface and other materials that Bogen may make available to you for use to interface your software or systems with the Nyquist Software.
- b. "API key" means the bearer token that Bogen or a customer of the Nyquist Software makes available for you to access the API.
- c. "Documentation" means any manuals, drawings, technical information, and other materials that Bogen may provide to Licensee for or relating to the API or the Nyquist Software.
- d. "Licensee Applications" means any of Licensee's software applications or systems that will interact with the API.
- e. "Nyquist Software" means Bogen's Nyquist E7000 or C4000 software, as applicable.

2. LICENSE

- a. License Grant. Subject to and conditioned on Licensee's compliance with all terms of this Agreement, Bogen grants to Licensee a limited, non-exclusive, non-sublicensable, non-transferable, royalty-free license during the term of this Agreement to use the API solely for Licensee's internal business purposes, and solely to enable the Licensee Applications to send and receive data from one or more instances of the Nyquist Software installed by a Bogen customer. You may not use the API or Documentation for any other purpose without Bogen's prior written consent.
- b. No use of Bogen Marks. This Agreement does not give Licensee any right to any Bogen trademarks, service marks, or brand makes, nor does it give Licensee a right to advertise that its systems are able to interface with any Bogen software or system.
- c. Use of API Key. As a condition of using an API Key or accessing the API, Licensee must

execute and submit to Bogen a copy of this API License Agreement. Licensee may not share the API Key with any third party. Licensee must keep the API Key and all API access information secure, and Licensee must use the API Key as Licensee's sole means of accessing the API.

- d. No Support. This Agreement does not entitle Licensee to any support for the API.

3. RESTRICTIONS ON USE

Licensee shall not, directly or indirectly, and shall not cause any third party to:

- (i) copy, modify or create any derivative work of any part of the API or the Documentation;
- (ii) rent, sell, lease, loan, sub-license, distribute, assign or transfer the API or the Documentation;
- (iii) remove or modify any copyright, confidential or proprietary markings, legends or restrictions that are in the API or Documentation;
- (iv) use the API in any way that could infringe or violate the intellectual property, brand, license or other rights of another party, except if the owner gives you its written authorization;
- (v) combine or integrate the API with any software, technology, services, or materials not authorized in writing by Bogen;
- (vi) design or permit any Licensee Application to disable, override or otherwise interfere with any Bogen-implemented communications to end users, consent screens, user settings, alerts, warnings or the like;
- (vii) use the API in or with any application that replicates or attempts to replace the user experience of the Nyquist Software;
- (viii) attempt to cloak or conceal Licensee's identity or the identity of the Licensee Applications when requesting authorization to use the API;
- (ix) export the API to any country that is subject to an embargo or applicable sanction imposed by the U.S. government, and other than in full compliance with all laws, regulations, orders and other restrictions of any governmental agencies; and
- (x) transmit any virus, Trojan, worms or other destructive elements through or with use of the API.

4. LICENSEE RESPONSIBILITIES. Licensee agrees that Bogen is agreeing to permit Licensee to use the API in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the limitations of liability and indemnity obligations set forth in this Agreement, as well as the following:

- a. Licensee is responsible and liable for all uses of the API resulting from access provided by Licensee, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.
- b. Licensee is responsible and liable for all uses of the Licensee Applications.

c. Licensee shall comply with all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may apply to Licensee's activities or the Licensee Applications. Licensee is solely responsible for posting any privacy notices and obtaining any consents from Licensee's end users required under applicable laws, rules, and regulations for their use of the Licensee Applications.

d. Licensee will use commercially reasonable efforts to safeguard the API from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee will promptly notify Bogen if Licensee becomes aware of any infringement of any intellectual property rights in the API, the Nyquist Software, or the Documentation and will fully cooperate with Bogen in any legal action taken by Bogen to enforce Bogen's intellectual property rights.

e. Bogen may collect certain information through the API. By accessing, using, and providing information to or through the API, Licensee consents to all actions taken by Bogen with respect to Licensee's information in compliance with the then-current version of Bogen's privacy policy and data protection requirements, available at www.bogen.com.

5. OWNERSHIP. The API is only licensed, not sold, to Licensee. Bogen and its suppliers and licensors reserve all rights not expressly granted to Licensee in this Agreement. Title and intellectual property rights to the API and Documentation remain with Bogen or its third party licensors.

6. CONFIDENTIALITY. Licensee agrees that all elements of the API and the Documentation are confidential information and trade secrets of Bogen (the "*Confidential Information*"). Licensee agrees not to disclose, provide or otherwise make available the Confidential Information in any form to any third party. Licensee will keep the Confidential Information confidential and protect the Confidential Information in the same manner as Licensee maintains Licensee's own highly confidential information, and in no event with less than a reasonable degree of care.

7. TERM; TERMINATION. This Agreement will expire if Licensee discontinues use of the API. In addition, Bogen may terminate this Agreement if Licensee breaches this Agreement in any material way.

8. DISCLAIMER OF WARRANTIES. THE API AND DOCUMENTATION ARE PROVIDED "AS IS", AND BOGEN SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. BOGEN ALSO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. BOGEN MAKES NO WARRANTY OF ANY KIND THAT THE API OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF LICENSEE'S OR ANY THIRD PARTY'S SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

9. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL BOGEN, ITS EMPLOYEES, DIRECTORS, AFFILIATES, AGENTS, SUPPLIERS, LICENSORS, DISTRIBUTORS, RESELLERS OR SUBCONTRACTORS BE LIABLE TO LICENSEE OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY

FOR (i) ANY LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER DAMAGES OF ANY KIND ARISING OUT OF THE OPERATION OF, USE OF, INTERFACE WITH, OR INABILITY TO USE THE API; (ii) ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES; OR (iii) ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF TEN DOLLARS, IN EACH CASE EVEN IF BOGEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR BOGEN WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS AND EXCLUSIONS ABOVE ARE A FUNDAMENTAL BASIS OF THE BARGAIN UNDER THIS AGREEMENT.

10. **INDEMNITY.** Licensee agrees to defend, indemnify, and hold harmless Bogen, its employees, directors, affiliates, agents, suppliers, licensors, distributors, resellers, and subcontractors harmless against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and court costs, arising from or relating to (a) Licensee's use or misuse of the API, (b) Licensee's breach of this Agreement, or (c) the Licensee Applications. Licensee may not enter into any third-party agreement that would, in any manner whatsoever, constitute an admission of fault by Bogen or bind Bogen in any manner, without Bogen's prior written consent. Bogen reserves the right, at Bogen's option and in Bogen's sole discretion, to assume full control of the defense of claims with legal counsel of Bogen's choice, and Licensee shall retain responsibility for payment of reasonable attorneys' fees and costs incurred by Bogen. If Bogen assumes control of the defense of such claim, Bogen will not settle any such claim requiring payment from Licensee without Licensee's prior written approval. The obligations of the Parties set forth in this Section 10 shall survive expiration or termination of this Agreement.

11. **EXPORT LAWS.** The terms of this Agreement are subject to any and all laws, regulations, orders or other restrictions with respect to export from the United States of America. The API may be subject to the U.S. Export Administration Act and its associated regulations and international import and export regulations, Licensee agrees to comply with such Act and regulations. Licensee shall not export or re-export the API without full compliance with such laws, regulations, orders and other restrictions, including, without limitation, obtaining all necessary approval from all required governmental agencies and without the prior written consent of Bogen.

12. **GOVERNMENT RESTRICTED RIGHTS.** If Licensee uses the API on behalf of the U.S. Government, the following provisions apply: (i) if the API or any portion thereof is supplied to the Department of Defense or any related agency or service, such software will be classified as "Commercial Computer Software" and the Government is acquiring only rights as set forth in this Agreement; and (ii) if the API or any portion thereof is supplied to any other unit or agency of the United States Government, such software will be considered "restricted computer software" and the Government's rights in such software are set forth in the Federal Acquisition Regulations. The Contractor for the Programs is Bogen Communications LLC, 1200 MacArthur Blvd., Suite 304, Mahwah, NJ 07430-2331.

13. GENERAL

a. **Entire Agreement.** This Agreement is the entire agreement between Licensee and Bogen relating to the API and Documentation, and it supersedes all prior or contemporaneous oral or written communications with respect to the API, Documentation or any other subject matter covered by this Agreement. Bogen may make changes to this Agreement by posting such changes on its website at

<http://www.bogen.com/>. Licensee’s continued use of the API shall be deemed consent of the most recent terms.

b. Authority. The individual agreeing to the terms and conditions of this Agreement represents and warrants to Bogen that they have the authority to bind such entity to the terms and conditions of this Agreement.

c. Assignment. Licensee shall not assign, transfer, or sublicense any obligations or benefits under this Agreement (including by operation of law) without Bogen’s prior written consent.

d. Third Party Beneficiaries. Bogen’s suppliers and licensors are third party beneficiaries to this Agreement.

e. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

f. Governing Law. This Agreement is governed by the laws of the State of Delaware, without reference to any conflict of laws principles.

ACCEPTANCE

SIGNATURE: _____

DATE: _____

PRINTED NAME: _____

TITLE: _____

COMPANY NAME: _____

Please email a copy of the completed form to: api-license@bogen.com