



**END-USER LICENSE AGREEMENT
NYQUIST C4000 SOFTWARE PLATFORM**

THIS END-USER LICENSE AGREEMENT (“EULA”) DESCRIBES THE TERMS BY WHICH BOGEN COMMUNICATIONS LLC (“BOGEN”) IS WILLING TO LICENSE CERTAIN SOFTWARE TO YOU, WHETHER AS AN INDIVIDUAL OR AS THE LEGAL ENTITY YOU REPRESENT (“LICENSEE” OR “YOU”).

BY INSTALLING, USING OR OTHERWISE ACCESSING THE BOGEN SOFTWARE, YOU ACKNOWLEDGE AND AGREE THAT YOU ARE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS EULA, DO NOT INSTALL THE PLATFORM AND MAKE NO FURTHER USE OF THE BOGEN SOFTWARE.

1. DEFINITIONS

- a. “API” has the meaning stated in [Section 2.g](#) below.
- b. “Documentation” means any manuals, drawings, technical information, and other for or relating to the Platform.
- c. “Open Source Components” means components (including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) of the Platform that are made available from third parties under a free or open source software licensing model.
- d. “Platform” means the Nyquist C4000 software platform, for use with the Nyquist C4000 Series communication system.
- e. “Proprietary Components” means those components of the Platform owned or licensed by Bogen, excluding the Open Source Components.
- f. “Third Party Licensors” and “Third Party Software” have the meanings stated in [Section 2.e](#) below.

2. LICENSE GRANT

- a. License. Subject to the terms and conditions of this EULA, Bogen grants to Licensee a limited, non-exclusive, non-sublicensable, non-transferable license to install and use the Platform, in executable form only, on a single network and single server solely for Licensee’s internal business purposes and only in connection with equipment supplied by or on behalf of Bogen.
- b. Support. Licensee may access such support as Bogen makes available to all licensees of the Platform in accordance with, and for the time period stated in, the applicable [Bogen Software Product Support Policy](#).
- c. Software Updates. Bogen may offer Licensee the opportunity to purchase a subscription to software updates in accordance with Bogen’s [Software Update Subscription terms](#). This EULA applies to all updates to the Platform, unless Bogen provides other terms along with the updates. Bogen may require Licensee, as a condition of receiving any update, to reaffirm acceptance of this EULA or accept an updated end user license agreement.



d. Open Source Components. The Platform may include Open Source Components. Open Source Components included with the Platform are redistributed by Bogen under the terms of the applicable Open Source Component license for such component. Copies of the Open Source Component licenses for Open Source Components included with the Platform are included with or referenced in the Documentation. To the extent there is a conflict between the license terms covering the Open Source Components and this EULA, the terms of such license will apply in lieu of the terms of this EULA with respect to such Open Source Components. To the extent the terms of the licenses applicable to Open Source Components prohibit any of the restrictions in this EULA with respect to such Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of the licenses applicable to Open Source Components require Bogen to make an offer to provide source code for such Open Source Component, such offer is made and you may exercise it by contacting Bogen at: Bogen Communications LLC, 1200 MacArthur Blvd., Suite 304, Mahwah, New Jersey 07430-2331. This Platform uses unmodified code of FFmpeg licensed under the LGPLv2.1. The LGPLv2.1 license is available in the Documentation (as defined below). FFmpeg and its source code are available at www.ffmpeg.org. Bogen does NOT own FFmpeg or its source code, ownership information is available at www.ffmpeg.org.

e. Third-Party Software. The Platform may include software that is licensed to Bogen by third-party licensors ("*Third Party Software*"). Third Party Software is redistributed by Bogen under the terms of the applicable license for such Third Party Software. Any of Bogen's licensors of Third Party Software (collectively, "*Third Party Licensors*") will not be responsible for any liability arising from your use of the Platform, and will not provide any support or information relating to the Platform. The Third Party Licensors are third party beneficiaries of this Agreement.

f. Audio. The Platform may include Third Party Software that is used to generate text-to-speech audio output that results when inputs are applied to the Platform ("*Audio*"). The license agreement for such Third Party Software states that Licensee may distribute the Audio on a noncommercial basis to third parties for the third parties' own internal purposes. The license agreement for such Third Party Software states that Licensee may distribute the Audio on a commercial basis solely where the Audio is directly output from inputs to the Platform by a third party for the third party's own internal purposes. Licensee shall not distribute the Audio on a commercial basis for any purpose other than as permitted by this paragraph. Licensee is solely responsible for obtaining copyright and such other rights as may be required for the content of the Audio. Bogen shall have no responsibility or liability relating to the Audio.

g. API Access Requirements. Licensee may permit third party providers of other of Licensee's software or systems to enable such systems to send or receive data from the Platform using the Bogen Routines API application programming interface ("*API*") if, and only during the period that, such third party providers have accepted and agreed to Bogen's [Routines API License Agreement](#) that applies to the Platform. Licensee must share the API License Agreement with the third-party provider and confirm that the third party accepts the terms of that agreement prior to accessing and using the API. Licensee is responsible for the third party's compliance with all terms of the API License Agreement.

3. **RESTRICTIONS ON USE**

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

- (i) copy the Platform or the Documentation; provided, however, that Licensee may make one copy of the Platform for backup and archival purposes only;



- (ii) use or reproduce any portion of the Platform in source code format (with the exception of the API as permitted by [Section 2.g](#) above, and the Open Source Components as permitted by the applicable open source licenses);
- (iii) translate, reverse engineer, decompile, or disassemble the Platform, except to the extent the foregoing restriction is expressly prohibited by applicable law, and with exceptions for the Open Source Components as permitted by the applicable open source licenses;
- (iv) rent, sell, lease, loan, sub-license, distribute, assign, or transfer the Platform;
- (v) modify the Proprietary Components, create any derivative work from the Proprietary Components or Documentation, or merge all or any part of the Proprietary Components with another program;
- (vi) distribute, disclose or allow use of the Platform or Documentation in any format, through any time-sharing service, network or by any other means, to or by any third parties (with the exception of the API as permitted by [Section 2.g](#) above, and the Open Source Components as permitted by the applicable open source license);
- (vii) remove or modify any copyright, confidential or proprietary markings, legends or restrictions that are in the Platform or Documentation;
- (viii) download, publish, send by e-mail, or transmit any information or contents through the Platform 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;
- (ix) export the Platform 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 the Platform.

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

5. **CONFIDENTIALITY.** Licensee agrees that the Proprietary Components and the Documentation, and all components and elements thereof, including, without limitation, the specific design and structure of individual programs, constitute 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, except with respect to the API as permitted by [Section 2.g](#) above. Licensee will keep the Confidential Information confidential and protect such 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. Licensee is responsible for the compliance of all users of the Platform with these confidentiality obligations and shall cause all users of the Platform to comply with these obligations.

6. **TERM; TERMINATION.** Bogen may terminate this EULA at any time if Licensee has breached any provision of this EULA, or if Bogen is required to do so by law. This EULA will expire if Licensee discontinues use of the Platform. Absent the above, effective upon receipt by Bogen of payment in full for all amounts due for the Platform and associated equipment, this EULA will remain in effect on a fully paid-up basis.

7. **LIMITED WARRANTY.** Bogen warrants that, for a period of ninety (90) days from the date of download, the Platform will perform substantially in accordance with the current versions of the applicable Documentation, which can be found on [Bogen's website](#). Any updates to the Platform provided to Licensee after the expiration of the ninety (90) day warranty period are not covered by any warranty or condition, express, implied or statutory. BOGEN EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF



MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. **LIMITATION OF LIABILITY.** If the Platform does not perform substantially in accordance with the applicable documentation during the limited warranty period described in Section 7, Bogen's liability is limited to repair or replacement of the Platform. The foregoing warranty is void if failure of the Platform is the result from accident, abuse, misapplication, abnormal use, or a virus. Any replacement Platform will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL BOGEN'S, ITS EMPLOYEES', DIRECTORS', AFFILIATES', AGENTS', SUPPLIERS', DISTRIBUTORS', RESELLERS' OR SUBCONTRACTORS' LIABILITY TO YOU OR ANY THIRD PARTY EXCEED THE PRICE PAID BY YOU FOR THE PLATFORM. IN NO EVENT SHALL BOGEN, ITS EMPLOYEES, DIRECTORS, AFFILIATES, AGENTS, SUPPLIERS, DISTRIBUTORS, RESELLERS OR SUBCONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, OR OTHER LOSS ARISING OUT OF OR IN ANY WAY RELATED TO THE OPERATION OF, USE OF, INTERFACE WITH, ASSOCIATION WITH, OR INABILITY TO USE THE PLATFORM. IN ADDITION, BOGEN'S THIRD PARTY LICENSORS DISCLAIM, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, SPECIAL, INDIRECT, OR CONSEQUENTIAL. BOGEN AND ITS SUPPLIERS AND THIRD PARTY LICENSORS DO NOT WARRANT THAT THE OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE PLATFORM WILL MEET LICENSEE'S SPECIFIC REQUIREMENTS. THE LIMITATIONS AND EXCLUSIONS ABOVE ARE A FUNDAMENTAL BASIS OF THE BARGAIN UNDER THIS EULA.

9. **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, which such parties may incur arising from or relating to: (i) a breach of this EULA by Licensee; (ii) Licensee's use of the Platform or Documentation; or (iii) any third party's use of the API to interface with the Platform or Licensee's systems. 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 9 shall survive expiration or termination of this EULA.

10. **EXPORT LAWS.** The terms of this EULA are subject to any and all laws, regulations, orders or other restrictions with respect to the export from the United States of America. The Platform may be subject to the U.S. Export Administration Act and its associated regulations and international import and export regulations, and Licensee agrees to comply with such Act and regulations. Licensee shall not export or re-export the Platform 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.

11. **GOVERNMENT RESTRICTED RIGHTS.** If Licensee uses the Platform on behalf of the U.S. Government, the following provisions apply: (i) if the Platform 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 EULA; and (ii) if the Platform 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.

12. GENERAL

a. Entire Agreement. This EULA is the entire agreement between Licensee and Bogen relating to the Platform and Documentation, and it supersedes all prior or contemporaneous oral or written communications with respect to the Platform or any other subject matter covered by this EULA. Bogen may make changes to this EULA, by posting such changes on [the Bogen website](#). Licensee's continued use of the Platform shall be deemed consent of the most recent terms.

b. Authority. If the Platform is installed on computers owned by a corporation or other legal entity, then this EULA is formed by and between Bogen and such entity. The individual agreeing to the terms and conditions of this EULA represents and warrants to Bogen that they have the authority to bind such entity to the terms and conditions of this EULA.

c. Assignment. Licensee shall not have the right to assign, transfer, or sublicense any obligations or benefits under this EULA (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 EULA.

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

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

UPDATED: March 3, 2023