

INSTRUMENT APPLICATION PROGRAM INTERFACE LICENSE AGREEMENT: FREQUENTLY ASKED QUESTIONS

The Instrument Application Program Interface License Agreement (the “Agreement”) is a legally binding contract between your organization and Thermo Finnigan LLC (together with its Affiliates, “Thermo”) governing your organization’s use of the instrument application programming interface (IAP), and the terms of the Agreement should be read carefully and understood before signing. To assist in your review, below please find a list of frequently-asked questions (FAQs) regarding the Agreement and the corresponding answers. Please note that this list is being provided only as an informational guide, and that the terms in the Agreement will control over any conflicting language in these FAQs.

1. What rights are granted by the Agreement?

The Agreement grants your organization a license to do the following using the IAP:

- Develop software code for controlling the operation of and/or processing data by your mass spectrometer instrument
- Execute third-party software code on your instrument

These rights are limited to the instrument(s) specified by serial number(s) and instrument ID(s) on your Agreement. If you want to use the IAP on another instrument within your organization, you must request and sign another IAP agreement specifying that instrument.

2. What can’t I do with the IAP?

Under the Agreement, your organization **cannot** do the following:

- Distribute software code developed by you using the IAP to others outside your organization, except with Thermo’s express permission (see question 3, below)
- Develop or execute Restricted Works. A Restricted Work is software code that adds a feature that is not included in the instrument specified on the Agreement, but which is available on a different instrument sold by Thermo. For example, code that adds real-time search capability to an Orbitrap Fusion, Orbitrap Fusion Lumos or Exactive series instrument would be considered to be a Restricted Work, since this capability is available on the Orbitrap Eclipse instrument.

3. What should I do if I want to distribute programs developed using the IAP to people outside of my organization?

Thermo will review requests for distribution of IAP-developed programs on a case-by-case basis. If we decide to approve your request, you will be required to sign a distribution agreement governing the terms and conditions under which you can distribute the program to others. Please direct any distribution requests by email to info.iAPI@thermofisher.com.

4. When does the Agreement expire?

The Agreement expires on the one-year anniversary of the Effective Date, but may be extended or renewed by Thermo for an additional period at Thermo’s discretion. Requests to extend the Agreement may be sent to info.iAPI@thermofisher.com. Upon expiration of the Agreement, you will be required to stop using the IAP.

5. Who owns IP rights in programs that I develop using the IAPI?

Your organization will own the copyright in any code that you develop using the IAPI. If your organization secures patent rights in technology embodied in the IAPI-developed code, it cannot (per §3.6 of the Agreement) assert such patent rights against Thermo or its customers in connection with the manufacture and use of Thermo instruments.

6. Does using the IAPI void the instrument warranty?

Installation and use of the IAPI does not, by itself, void the instrument warranty. However, Thermo will not be responsible for repairing instruments or restoring performance/loss of functionality for problems that arise from your use of the IAPI in a manner that causes the instrument to operate outside of its normal parameters.

7. Does the Agreement cover updates and fixes to the IAPI?

The IAPI is licensed by Thermo on an “as is” basis, and Thermo has no obligation to fix defects. At its discretion, Thermo may make updates or revisions to the IAPI available on the code repository site from time to time, but no notifications will be sent regarding their availability. Your use of any updated or revised versions of the IAPI will be subject to the terms and conditions of the Agreement.

Thermo does not provide technical support for the IAPI.

8. What is the export control classification number for the IAPI?

The U.S. Department of Commerce’s Export Control Classification Number (ECCN) for the IAPI is EAR99. The IAPI licensing tool utilizes an encryption function, but is not controlled under Category 5, Part 2 of the Commerce Control List.

Per §12.2 of the Agreement, you must fully comply with all export license restrictions and requirements as well as all laws and regulations governing importation of the IAPI, both in the U.S. and in any foreign jurisdictions in which the IAPI is used.

9. Who needs to sign the Agreement?

The Agreement should be signed by a person having appropriate authority to bind your organization to its terms.

10. My employer is a governmental entity (for example, a state university) and cannot by law accept indemnification and other routine terms. Can we get a version of the Agreement that is intended for such entities?

§12.6 of the Agreement provides that, for licensees that are governmental organizations, the indemnification (§9) and governing law (§12.5) terms are given effect only to the extent permitted by the limitations imposed by constitutional or statutory law. We believe that this should adequately address the concerns of governmental entities as licensees.

11. Can I request changes to the terms of the Agreement?

Due to the high number of parties seeking access to the IAPI, the burden of negotiating agreements on an individual basis, and our desire to keep the terms of the Agreement uniform and consistent across all users, we cannot accommodate any requests for changes to the terms of the Agreement.