

Brocade End User License Agreement

BROCADE END USER LICENSE AGREEMENT

PLEASE READ THIS END USER LICENSE AGREEMENT ("Agreement") CAREFULLY BEFORE DOWNLOADING, INSTALLING, OR USING THIS SOFTWARE AND ACCOMPANYING DOCUMENTATION ("Software"). BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN AND DO NOT USE THE SOFTWARE. YOUR RIGHT TO RETURN THE SOFTWARE EXPIRES 30 DAYS AFTER YOUR PURCHASE AND APPLIES ONLY TO THE ORIGINAL PURCHASER.

Single User License. Subject to the terms and conditions of this Agreement and payment of the applicable license fees, Brocade Communications Systems, Inc. ("Brocade") and its suppliers grant to you ("End User") a non-exclusive, non-transferable license to use the Software in object code form solely for the purpose of operating Brocade storage area networking switches and solely on the number of Brocade storage area networking switches for which End User is licensed to use this Software. End User may make such backup copies of the Software as may be necessary for End User's lawful use, provided End User affixes to such copies all trademark, copyright, patent, and notices of other proprietary rights that appear on the original. Open Source Software. Certain components of the Software may incorporate "open source" software.

Open source software is subject to the applicable open source license (e.g., the GNU General Public License) and is not subject to this Agreement. To obtain a copy of the source code and applicable licensing terms for the open source software used by Brocade, please see http://www.brocade.com/support/oscd.jsp.

Limitations. Except as otherwise expressly provided in this Agreement, End User shall have no right, and End User specifically agrees not to, and not to permit third parties to: (i) modify, adapt, or create derivative works based upon the Software; (ii) copy, in whole or in part; (iii) decompile, translate, reverse engineer, disassemble or otherwise reduce the Software to human-readable form; or (iv) use the Software on any Brocade storage area networking switches in excess of the maximum number of Brocade storage area networking switches for which End User is licensed.

Upgrades and Additional Copies. For purposes of this Agreement, "Software" shall also include any upgrades, updates, bug fixes or modified versions ("Upgrades") provided to End User by Brocade or an authorized distributor and for which End User had paid the applicable license fees, and any backup copies of the Software. Notwithstanding the foregoing, End User acknowledges and agrees that Brocade and its resellers and distributors shall have no obligation to provide any Upgrades. If Upgrades or additional copies of the Software are provided, End User acknowledges and agrees that it has no license or right to use such additional copies or Upgrades unless End User, at the time of acquiring such copy or Upgrade, already holds a valid license and the corresponding software keys to the original Software for the applicable number of copies.

No Support. Brocade may, but is not required to, provide technical support for this Software.

Security Notice. Software may include security features that End User can use, along with other security tools, to implement increased security in End User's storage area network ("SAN"). However, use of the security features of the Software does not guarantee the security of End User's SAN or overall network. There are numerous factors that affect the security of a SAN, including, without limitation, correct installation and setup of the security features of Software and all related requirements, correctly configured security policies, selection of hardware and software (including network security tools), correct installation, configuration, and maintenance of the hardware and software, the interoperability of the various components of End User's SAN and End User's network, and a physically and electronically secure operating environment. In addition, Software may utilize digital certificates in connection with its access control features. Although digital certificates are a useful authentication security measure that improves overall security, they do not guarantee authenticity or security. To help End User evaluate the digital certificate functionality of Software, End User can obtain details from the Certification Practices Statement, which is included with the documentation End User received with this product or which End User can view at http://www.switchkeyactivation.com/cps. In designing the security of End User's SAN, it is End User's responsibility to evaluate all of these factors to ensure End User's SAN meets End User's security requirements. End User's experience may vary based on these and other factors. End User's use of Software, including the digital certificates, is subject to and governed by the terms of this license agreement and to End User's compliance with the policies and procedures for the use of the security features of Software and digital certificates, which may be made available to End User by Brocade from time to time. If Brocade becomes aware of a breach of the security of its digital certificate infrastructure, Brocade reserves the right to re-issue digital certificates. In that event, End User will be required to submit new certificate signing requests and install reissued certificates across End User's SAN. End User should plan for any network disruption that this may cause. END USER ACKNOWLEDGES THAT END USER HAS ACCESS TO SUFFICIENT INFORMATION TO ENSURE THAT END USER CAN MAKE AN INFORMED DECISION AS TO THE EXTENT TO WHICH END USER CHOOSES TO RELY ON DIGITAL CERTIFICATES AND OTHER SECURITY FEATURES IN SOFTWARE ("SECURITY").

Disclaimer of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BROCADE PROVIDES THE SOFTWARE "AS IS" WITHOUT WARRANTY OF

ANY KIND. BROCADE DOES NOT WARRANT THAT THE SOFTWARE IS ERROR FREE OR THAT END USER WILL BE ABLE TO OPERATE THE SOFTWARE WITHOUT PROBLEMS OR INTERRUPTIONS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BROCADE AND ITS SUPPLIERS, DISTRIBUTORS, AND RESELLERS DISCLAIM ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

Limitation of Liability. IN NO EVENT WILL BROCADE OR ITS SUPPLIERS, RESELLERS, OR DISTRIBUTORS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE EVEN IF BROCADE OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BROCADE'S OR ITS SUPPLIERS', RESELLERS', OR DISTRIBUTORS' TOTAL LIABILITY TO END USER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE PRICE PAID BY END USER. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO END USER.

Proprietary Rights. The Software, including all intellectual property rights therein, is and will remain the sole and exclusive property of Brocade or its suppliers.

Term and Termination. This Agreement is effective until terminated. End User's license rights under this Agreement will terminate immediately without notice from Brocade if End User fails to comply with any provision of this Agreement. Upon termination, End User must destroy all copies of Software and the corresponding software keys in its possession or control.

Compliance With Law. Each party agrees to comply with all applicable laws, rules and regulations in connection with its activities under this Agreement. Without limiting the foregoing, End User acknowledges and agrees that the Software, including technical data, is subject to United States export control laws, including the United States Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. End User agrees to comply strictly with all such regulations and acknowledges that End User has the responsibility to obtain licenses to export, re-export, or import the Software.

Restricted Rights. The Software under this Agreement is commercial computer software as that term is described in 48 C.F.R. 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48

C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFAR") and its successors.

General. This Agreement will bind and inure to the benefit of each party's successors and assigns, provided that End User may not assign or transfer this Agreement, in whole or in part, without Brocade's written consent. This Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights. If any portion hereof is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter.