

STOP! BEFORE YOU INSTALL OR USE THIS SOFTWARE

Broadcom Code: StoreLib API and StoreLib Testing Tool in binary form and StoreLib Test in source form

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NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained in this Agreement, the parties hereby agree as follows:

1. Definitions

- 1.1 "Authorized Use for Binary Code" means use of the Broadcom Binary Code solely for the purpose of developing, integrating and/or testing Licensee Products to interface with Broadcom Devices properly obtained by Licensee and authorized for such interface and for no other application, use or purpose.
- 1.2 "Authorized Use for Source Code" means to permit Licensee **only** to create a binary library from the Broadcom Source Code to communicate with Broadcom Devices for use in Licensee's testing applications and equipment and to create Licensee Derivative Works, which may only be used in association with Broadcom Devices and for no other application, use or purpose.
- 1.3 "Broadcom Binary Code" means the following in binary form only (i) the technology identified as "Binary Code" in Exhibit A attached hereto now or as amended; (ii) any other machine readable materials (including, but not limited to, libraries, source files, header files, and data files), updates and new versions provided hereunder by Broadcom.
- 1.4 "Broadcom Code" means Broadcom Source Code and Broadcom Binary Code, excluding Licensee Derivative Works.
- 1.5 "Broadcom Devices" means those BROADCOM controller products compatible with the Broadcom Code.
- 1.6 "Broadcom Source Code" means in source code form the Broadcom technology identified as "Source Code" in Exhibit A, attached hereto now or as amended, including, but not limited to, libraries, source files, header files, and data files, updates and new versions provided hereunder by Broadcom.
- 1.7 "Derivative Works" means the following modifications:
 - (a) for copyrightable or copyrighted material, any translation (including translation into other computer languages), port, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment or other form in which an existing work may be recast, transformed or adapted; or
 - (b) for patentable or patented material, any improvement thereon; and
 - (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret.
- 1.8 "Documentation" means explanatory, technical and informational materials or documentation relating to the Broadcom Code provided by Broadcom in printed or electronic format, including without limitation, manuals, program guides, descriptions, user and/or installation instructions, diagrams, printouts, listings, flowcharts and training materials, contained on visual media such as paper or photographic film, or on other physical storage media in machine-readable form. For the avoidance of doubt, Documentation does not include any Broadcom Code. See Exhibit A for further description and express identification of the Documentation.
- 1.9 "Effective Date" means the date on which Licensee clicks to accept the terms hereof or on which Licensee installs, copies or uses the Broadcom Code whichever is sooner.
- 1.10 "End User" means all Licensee customers through any channel, including but not limited to resellers, end users, and OEMs.
- 1.11 "Intellectual Property Rights" means (by whatever name or term known or designated) copyrights, trade secrets, patents, moral rights and any other intellectual and industrial property and proprietary rights (excluding trademarks) including registrations, applications, renewals and extensions of such rights anywhere in the world.
- 1.12 "Licensee Products" means the hardware and software (and related Licensee documentation) that may be developed by or for Licensee utilizing the AVAGO Code or Licensee Derivative Works for the purpose of interfacing with Broadcom Devices.
- 1.13 "Open Source Software Terms" means terms in any license for software which require, as a condition of use, modification or distribution of such software or other software incorporated into, incorporating, derived from, distributed or used in conjunction with such software, any of the following: (i) the making available to any third party of source code, object code, or design information regarding such software, (ii) the granting of permission to any third party for creating derivative works regarding such software, or (iii) the granting of a license to any third party under Intellectual Property Rights embodied in such software. Such licenses and distribution models include but are not limited to the GNU General Public License (GPL), the GNU Lesser or Library GPL (LGPL), the Mozilla Public License (MPL) or any similar open source, free software or community licenses

1.14 "Related Company" means any corporation, company or other business entity which: (a) is Controlled by a party hereto; (b) Controls a party hereto; or (c) is under common Control with a party hereto. For this purpose, "Control", "Controlled" and "Controls" mean that all the controlled entity's share or ownership interest representing the right to make decisions for such entity are owned or controlled, directly or indirectly, by the controlling entity. An entity is considered to be a Related Company only so long as such Control exists.

2. Grant Of License

2.1 Broadcom Binary Code. Subject to the terms herein, Broadcom grants to Licensee a nonexclusive, world-wide, non-transferable limited license, without a right to sublicense except as provided herein, solely to:

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- (c) Solely where Broadcom Binary Code or related Documentation is indicated in Exhibit A with a "Yes" under the title "*User Distribution Rights Granted*", display and distribute the Broadcom Binary Code or Documentation as incorporated in or restricted only for use with Licensee Products utilizing Broadcom Devices to its End Users including through multiple tiers of distribution and subject to the terms set forth in Exhibit B.

2.2 Broadcom Source Code. Subject to the terms herein, Broadcom grants to Licensee a nonexclusive, worldwide, non-transferable limited license, without a right to sublicense, solely to:

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- (b) Make copies of the Broadcom Source Code and related Documentation for archival and backup purposes and to support the Authorized Use for Source Code; and
- (c) Solely where Broadcom Source Code is indicated in Exhibit A with a "Yes" under the title "*Modification Rights Granted*", modify and prepare Derivative Works thereof for the Authorized Use for Source; and
- (d) Distribute such Derivative Works created pursuant to Section 2.2 (c) above, in binary code format only as incorporated in or restricted only for use with Licensee products utilizing Broadcom controller products.

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3.1 The Licenses granted in Section 2 for Broadcom Code and Documentation are subject to the following restrictions:

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- b) Licensee shall reproduce all copyright notices and other proprietary markings or legends contained within or on the Broadcom Code and Documentation on any copies it makes;
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3.3 Broadcom Derivative Works. Nothing contained herein shall prevent Broadcom from creating any Derivative Works of any Broadcom Code at any time. Licensee further agrees that Broadcom may independently create a Derivative Work similar to or in competition with any Licensee Derivative Work of the Broadcom Code and may use that Derivative Work for any purpose.

3.4 U.S. Government End Users. All Broadcom Code and Documentation qualifies as "commercial items," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 CFR 52.227-19, 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. Subject to the terms of this Agreement, Licensee shall provide U.S. Government end users of the Broadcom Code with only those rights set forth herein that apply to non-governmental end users. Use of Broadcom Code constitutes agreement by the government entity that the computer software and computer software documentation is commercial and constitutes acceptance of the rights and restrictions herein.

- 3.5 No Implied Licenses.** Except for the express and limited licenses granted herein for specific purposes, no rights or licenses are granted by Broadcom under this Agreement, by implication, inducement, estoppel or otherwise with respect to any proprietary information or to any Intellectual Property Rights or trademarks owned or controlled by Broadcom. Any further licenses must be express, in writing and signed by an authorized representative of Broadcom and Licensee.
- 3.6 Open Source Software Terms.** In no event shall Licensee integrate any software subject to Open Source Software Terms within its modifications or Derivative Works of the Broadcom Code such that the Broadcom Code and/or any Derivative Works thereof are made subject to Open Source Software Terms.

4. Confidentiality

- 4.1** During performance of this Agreement, the parties may disclose or furnish to each other proprietary marketing, technical, or business confidential information ("Confidential Information"). Confidential Information provided in tangible form shall be clearly marked as confidential. Confidential Information provided orally shall be considered confidential, if the disclosing party identifies it as confidential at the time of oral disclosure and summarizes such Confidential Information in a writing to the receiving party within thirty (30) days of the initial disclosure thereof. Regardless of any markings or identification as confidential, the parties agree that the Broadcom Code and Documentation are Confidential Information under this Agreement.
- 4.2** The receiving party shall: (i) hold Confidential Information in confidence using the same degree of care as it normally exercises to protect its own Confidential Information, but no less than reasonable care; (ii) subject to and in accordance with the license grants herein, restrict disclosure and use of Confidential Information to employees, and as applicable End Users on a need-to-know basis and not disclose it to any other parties; (iii) advise those employees and End Users of their obligations with respect to the Confidential Information; (iv) not copy, duplicate, reverse engineer or decompile Confidential Information except as authorized herein; (v) use the Confidential Information only in furtherance of performance under this Agreement or as authorized under this Agreement; and (vi) upon expiration or termination of this Agreement, return all Confidential Information to the disclosing party or at the request of the disclosing party, destroy such Confidential Information. The receiving party shall have no obligation to keep Confidential Information that: (i) was previously known to it free of any confidentiality obligation; (ii) was independently developed by it; (iii) is or becomes publicly available other than by unauthorized disclosure; (iv) is disclosed to third parties by the disclosing party without restriction; or (v) is received from a third party without violation of any confidentiality obligation. If a party is faced with legal action or a requirement under government regulations to disclose or make available Confidential Information received hereunder, such party shall forthwith notify the disclosing party and, upon request of the latter, cooperate in contesting such action or requirement at the disclosing party's expense.
- 4.3** The disclosing party makes no warranty as to the accuracy of any Confidential Information, which Confidential Information is furnished "**AS IS**" with all faults. In no event shall either party be liable for the accuracy or completeness of the Confidential Information. Each party agrees that **for a period of five (5) years from the date of disclosure** it shall not disclose Confidential Information received from the disclosing party to any third party, and shall use such Confidential Information solely for the purpose stated herein. **Notwithstanding the foregoing, any information which is a trade secret or source code shall remain confidential in perpetuity and Licensee shall not disclose it to any third party without the express written consent of Broadcom.**

5. Ownership

- 5.1** Broadcom reserves all right, title, ownership and interest in and to the Broadcom Code and Documentation existing prior to and after the Effective Date, or created or generated by Broadcom at any time, subject to any licenses granted. Broadcom reserves all right, title, ownership and interest in and to any Derivative Works it or any of its Related Companies creates at any time to the Broadcom Code and Documentation, subject to any licenses granted.

6. Support

- 6.1** Broadcom is under no obligation to provide support services to Licensee or any third parties (including without limitation End Users).
- 6.2** If Licensee becomes aware of anything which Licensee considers an error in the Broadcom Code, Licensee shall notify Broadcom so that Broadcom can, in its sole discretion, make corrections to the Broadcom Code or to future revisions of the Broadcom Code.

7. Term and Termination

- 7.1 Term.** This Agreement shall continue for five (5) years from the Effective Date unless previously terminated by a party upon notice pursuant to this Section.
- 7.2 Termination for Convenience.** Broadcom may terminate this Agreement for its convenience upon at least five (5) days' prior written notice.
- 7.3 Termination for Breach.** If Licensee breaches any material provision of this Agreement, Broadcom shall, in addition to any and all other remedies available at law or equity, have the right to terminate this Agreement, including all licenses granted hereunder unless Licensee cures such breach within twenty (20) days ("Cure Period") after receiving written notice of the breach by Broadcom. Licensee shall make best efforts to cure the material breach in the least amount of time possible within the Cure Period.
- 7.4 Insolvency.** If either party: (a) becomes substantially insolvent; (b) makes an assignment for the benefit of creditors; (c) files or has filed against it a petition in bankruptcy or seeking reorganization; (d) has a receiver appointed; or (e) institutes any

proceedings for liquidation or winding up or have such proceedings instituted against it; then the other party may, in addition to other rights and remedies it may have, terminate this Agreement immediately by written notice.

7.5 Consequences. Upon termination or expiration of this Agreement for any reason whatsoever, the licenses, rights, and covenants granted hereunder and any obligations imposed hereunder shall cease except as otherwise expressly set forth herein as surviving termination or expiration.

7.6 Survival. In the event of expiration or termination of this Agreement for any reason, the following sections of this Agreement shall survive: 1, 3, 4, 5, 7.5, 7.6, 8, 9, and 10. Termination shall not prejudice either party right to require performance of any obligation due at the time of termination. All then current End User licenses granted by Licensee in accordance with this Agreement shall survive and continue in full force and effect in accordance with their terms.

8. Disclaimer of all Warranties

8.1 THE PARTIES AGREE THAT BROADCOM FURNISHES THE BROADCOM CODE AND DOCUMENTATION TO LICENSEE "AS IS," UNSUPPORTED, WITHOUT WARRANTY OF ANY KIND. BROADCOM DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, INCLUDING ANY THAT MAY ARISE FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE. BROADCOM SHALL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN THE BROADCOM CODE OR DOCUMENTATION. BROADCOM MAKES NO WARRANTY OR REPRESENTATION THAT THE BROADCOM CODE OR DOCUMENTATION WILL MEET ANY OF LICENSEE'S, ITS RELATED COMPANIES', OR THEIR END USERS' REQUIREMENTS OR WILL WORK IN COMBINATION WITH ANY HARDWARE OR SOFTWARE APPLICATION.

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8.3 BROADCOM DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION WITH LICENSEE'S CREATION AND USE OF AUTHORIZED DERIVATIVE WORKS OF THE BROADCOM CODE. LICENSEE SHALL INDEMNIFY, DEFEND, AND HOLD BROADCOM HARMLESS AGAINST ANY LOSS, LIABILITY, OR DAMAGE OF ANY KIND THAT BROADCOM INCURS IN CONNECTION WITH LICENSEE'S DERIVATIVE WORKS OF BROADCOM CODE.

9. Limitation of Liability

IN NO EVENT SHALL BROADCOM OR ITS RELATED COMPANIES, OR THEIR EMPLOYEES, AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY LOST PROFITS, REVENUE, SALES OR DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, INTERRUPTION, LOSS OF BUSINESS INFORMATION OR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, ECONOMIC OR PUNITIVE DAMAGES, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHER THEORY OF LIABILITY, ARISING OUT OF THE USE OR INABILITY TO USE THE BROADCOM CODE, LICENSEE DERIVATIVE WORKS AND DOCUMENTATION, EVEN IF BROADCOM OR ITS RELATED COMPANIES, OR THEIR EMPLOYEES, AFFILIATES OR SUPPLIERS ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT THE APPLICABLE JURISDICTION DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, BUT DOES ALLOW LIABILITY TO BE LIMITED, THE LIABILITY OF BROADCOM, ITS RELATED COMPANIES, THEIR EMPLOYEES, AFFILIATES, AND SUPPLIERS IN SUCH CASES, SHALL BE LIMITED TO ONE-HUNDRED US DOLLARS (\$100).

10. General

10.1 Assignment. Licensee shall not assign this Agreement or any of its rights or delegate any of its duties under this Agreement without the prior written consent of Broadcom. Subject to the foregoing, this Agreement shall be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assigns. Any attempted assignment in violation of this Section 10.1 shall be null and void.

10.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the law of the State of California without reference to its conflicts-of-law principles.

10.3 Exclusive Jurisdiction. All disputes arising out of or related to this Agreement shall be subject to the exclusive jurisdiction and venue of the California state courts of Santa Clara County, California in United States District Court for the Northern District of California, and the parties consent to the personal and exclusive jurisdiction of these courts, waives all defenses thereto including that of forum nonconveniens.

10.4 Injunctive Relief. In the event of a breach by Licensee of this Agreement, Broadcom shall be entitled to seek applicable injunctive relief and to all remedies available in equity and law to prevent Licensee from disassembling, de-compiling, reverse engineering, disclosing or using the Broadcom Code in whole or in part.

10.5 Export Control. Licensee shall comply with U.S. and other applicable laws and regulations. Broadcom may suspend

performance if Licensee is in violation of applicable laws or regulations. Licensee acknowledges that any software, and/or technical information (including, but not limited to services and training) provided hereunder may be subject to export controls, including but not limited to export controls administered under the U.S. Export Administration Regulations (EAR). Upon delivery of such software and/or technical information (including, but not limited to services and training), Licensee shall be responsible for ensuring compliance with all applicable export laws and regulations relating to the export thereof, and shall not export or re-export any software and/or technical information (including, but not limited to services and training) received from Broadcom in violation of any applicable law. Licensee agrees that none of such items, nor any direct product therefrom, is being or shall be acquired for, shipped, transferred, or re-exported, directly or indirectly, to prohibited or embargoed countries, nor be used for any prohibited end-use, such as nuclear activities, chemical/biological weapons, or missile projects, unless expressly authorized by the U.S. Government. If requested, Licensee agrees to sign written assurances and other export-related documents as may be required to comply with U.S. export regulations or any other governmental regulatory agency requirement. Licensee warrants that in performance of this Agreement it has complied with and shall comply with all applicable federal, state, local laws, regulations and ordinances now or hereafter enacted.

10.6 Waiver. No failure or delay on the part of either party in the exercise of any right or privilege hereunder shall operate as a waiver thereof or of the exercise of any other right or privilege hereunder, nor shall any single or partial exercise of any such right or privilege preclude other or further exercise thereof or of any other right or privilege.

10.7 Notice. Any notice or claim provided for herein shall be in writing and addressed as set forth below, and shall be given (i) by personal delivery, effective upon delivery or (ii) by first class mail, postage prepaid, addressed as set forth below, effective three (3) business day after proper deposit in the mail. For Broadcom Notices shall be addressed to *Avago Technologies U.S. Inc., 1320 Ridder Park Drive, San Jose, California 95131, USA - Attn. Legal Department - Important Legal Notice*. For Licensee notices shall be addressed to Licensee's address first set forth herein. Either party may update their address for notices upon notice.

10.8 Severability. If any term, condition, or provision of this Agreement, or portion of this Agreement, is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that shall preserve, as far as possible, the intentions expressed in this Agreement. Such invalid term, condition or provision shall be severed from the remaining terms, conditions and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

10.9 Other Rights. Nothing contained in this Agreement shall be construed as conferring by implication, estoppel, or otherwise upon either party or any third party any license or other right except, solely as to the parties hereto, the rights expressly granted hereunder.

10.10 Integration; Modification. This Agreement, together with the Exhibits hereto, embodies the final, complete and exclusive statement of the terms agreed upon by the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous representations, descriptions, courses of dealing, or agreements in regard to such subject matter. No amendment or modification of this Agreement or any Exhibit hereto shall be valid or binding upon the parties unless stated in writing and signed by an authorized representative of each party.

10.11 Publicity. All publicity concerning this transaction referring to the other party shall require the other party's prior written approval which shall not be unreasonably withheld.

10.12 Relationship of the Parties. The relationship of the parties hereto is that of independent contractors. Neither party, nor its agents or employees, shall be deemed to be the agent, employee, joint venture partner, partner or fiduciary of the other party. Neither party shall have the right to bind the other party, transact any business on behalf of or in the name of the other party, or incur any liability for or on behalf of the other party.

EXHIBIT A

Deliverable Description	Deliverable Format	Modification Rights Granted	User Distribution Rights Granted
• StoreLib Test Source Code	Source Code	Yes	No
• StoreLib API	Binary Code	No	Yes
• StoreLib Testing Tool	Binary Code	No	No
• StoreLib API Documentation	Documentation	No	No
• StoreLib Test Source Code Documentation	Documentation	No	No

EXHIBIT B

MINIMUM REQUIRED TERMS FOR AN END USER LICENSE AGREEMENT FOR THE STORELIB API

To the extent distribution is permitted under the Agreement, Licensee shall and shall ensure that the Broadcom Binary Code is distributed to End-Users only subject to an agreement which includes terms substantially conforming to those set forth in this Exhibit B. The agreement may satisfy the requirement of the preceding sentence either by express provisions in the agreement or by reliance on applicable law of the governing jurisdiction. However, if Licensee or its licensees do not include terms in its form of agreement that substantially conform to all of the terms in this Exhibit, and that omission results in damage to Broadcom that would have been prevented by expressly including those terms, then Licensee shall be liable to Broadcom for those damages.

1. Licensee shall make no representations or warranties on behalf of Broadcom with respect to the Broadcom Code and Documentation or any other matter, and shall, on Broadcom's behalf, specifically disclaim any warranties as well as any implied warranties (including the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement) with respect to the Broadcom Code and Documentation and any other matters.

2. Licensee shall, on behalf of Broadcom, make an exclusion of liability for direct, special, incidental and consequential damages and high risk uses with respect to the Broadcom Code and Documentation.

3. Licensee shall include license restrictions substantially similar to those in Section 3 in the Agreement.

4. Licensee shall include a provision stating that the Broadcom and its suppliers/licensors retain all right, title and interest in and to the Broadcom Code and Documentation and all derivative works thereof.

5. Licensee shall include a provision stating that the Broadcom Code and Documentation is confidential information, and restricting use and disclosure of the same, which provision is at least as protective as Section 4 of the Agreement.