

**SILICON GRAPHICS INTERNATIONAL CORP. ("SGI")**  
END USER LICENSE AGREEMENT ("License")

CAUTION! THIS LICENSE APPLIES TO SOFTWARE WHICH IS IN ACCOMPANYING PACKAGING, INCLUDED WITH SGI HARDWARE PRODUCTS OR DOWNLOADED FROM AN SGI SITE OR SITE EXPRESSLY AUTHORIZED BY SGI (collectively, the "**Licensed Software**"). OPENING THE LICENSED SOFTWARE'S PACKAGING, DOWNLOADING THE SOFTWARE FROM AN SGI SITE OR SGI AUTHORIZED SITE, CLICKING "ACCEPT" OR YOUR USE OR INSTALLATION OF THE LICENSED SOFTWARE INDICATES YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS LICENSE. References herein to "**You**" or "**Your**" refer to both you and such person or entity on whose behalf you act, if any, as the licensee of the Licensed Software and original owner of the SGI hardware product(s).

1. **General.** The Licensed Software consists of a software program protected by copyright and other applicable intellectual property laws and treaties. Certain Licensed Software programs as defined in Section 10 below may be wholly or partially subject to other licenses. The Licensed Software is licensed, not sold, to You subject to these terms. SGI transfers no ownership interest in the Licensed Software. SGI and its licensors reserve all rights not expressly granted herein. Your acceptance of the Licensed Software occurs when the Licensed Software is made available to You for downloading or upon installation of Licensed Software, whichever first occurs.

2. **Grant of License; Reservation of Rights; Restricted Software Use Restrictions.** Subject to applicable restrictions herein, SGI hereby grants You a limited, revocable, non-exclusive, non-transferable license to install, run and use one copy (or other quantity, if expressly agreed in writing by SGI) of the Licensed Software in conformance with this License and the Licensed Software's accompanying documentation in written or electronic format. You shall not, in whole or in part: (a) modify, reverse engineer, decompile or disassemble the Licensed Software; (b) except in the case of that Licensed Software specified on [www.sgi.com/support/licensing/exceptions.html](http://www.sgi.com/support/licensing/exceptions.html) or as may otherwise be agreed by SGI, install or use the Licensed Software on any hardware other than hardware manufactured by SGI; (c) copy the Licensed Software, other than onto the accompanying system's storage medium and CPU memory, or otherwise as may be agreed by SGI; (d) copy the accompanying documentation, other than copying on-line documentation for archival purposes; (e) remove, change or obscure any notices of intellectual property or other proprietary rights; (f) use the Licensed Software in connection with actual construction, maintenance, and/or operation of any nuclear facility, aircraft (including missiles or spacecraft), aircraft communication or aircraft ground support system, life support system, or surgical procedure ("High Risk Use") except with the express written permission of SGI; and (g) make the Licensed Software available in any way on an application service provider basis, as a hosted and/or managed application, or as a bureau service. Certain Licensed Software requires a license key for activation and you agree to obtain such license key only from SGI or a third party authorized by SGI. You shall not disassemble, decompile, modify or reprogram such license key. Your use of certain Licensed Software may be restricted or subject to limitations as to number of users, data capacity, authorized installation sites, or otherwise, as set forth in SGI's quotation and/or invoice, and if you exceed any such limitation, or the restrictions set forth herein, you will be in violation of the terms of this License and SGI may revoke Your license rights and terminate this License.

3. **Transfer Restrictions.** This License is personal to You. You may not transfer the Licensed Software and/or assign this License to any third party. If You attempt to transfer or assign any portion of this License, such transfer or assignment will be void and without effect.

4. **Enforcement of Terms; Termination.** This License will terminate upon the earlier of: (i) Your breach of any material obligation under this License, without cure within 30 days; (ii) Your termination of this License; and (iii) SGI's termination at its convenience in the event You received the Licensed Software at no charge. Any licensors to SGI of portions of the Licensed Software are third-party beneficiaries of this License, and may enforce it in relation to their own intellectual property within the Licensed Software, if any. Within 30 days of termination, You will deliver to SGI or render unusable all of the Licensed Software and any copies thereof. SGI and/or its licensors may pursue all available legal and equitable remedies, without the necessity of posting any security.

5. **Export Restrictions.** You agree that You will not export or re-export any Licensed Software or accompanying documentation (or any copies thereof) or any products utilizing the Licensed Software or such documentation in violation of any applicable laws or regulations of the U.S. or the country in which You obtained them.

6. **Governing Law; Disputes.** Except as set forth in Sections 7 or 11 below, This License is governed by and interpreted under the laws of California, excluding choice of law rules. In the event that any dispute or controversy between the parties arises out of or is related to this License, whether in contract or tort, and/or the performance or termination

thereof, such dispute or controversy shall be subject to and the parties expressly consent to the exclusive jurisdiction of the California state courts in and for Santa Clara County, California (or, if there is federal jurisdiction, the U.S. District Court for the Northern District of California, San Jose), and the prevailing party shall recover all of its costs, including reasonable attorneys' fees.

**7. Governing Law and Disputes for Non-U.S. Users.** If You are a Licensee whose operations are located entirely outside the United States, Section 7 above (Governing Law) is amended and states as follows: This License is governed by and interpreted under the laws of California, excluding choice of law rules. The U.N. Convention on the International Sale of Goods is not applicable and is expressly disclaimed. In the event that any dispute or controversy between the parties arises out of or is related to this License and/or the performance or termination thereof, whether in contract or tort, and including the arbitrability of disputes hereunder, such dispute or controversy shall be subject to, and the parties expressly consent to, binding arbitration, to be conducted in English, in accordance with the JAMS International Arbitration Rules, before a single arbitrator, such arbitration to be held in Santa Clara County, California, United States. The parties shall share equally the direct costs of arbitration, not including each party's own costs, provided however that a prevailing party shall recover all of its costs, including reasonable attorneys' fees. Notwithstanding the foregoing, the parties acknowledge that breach of this Agreement may cause irreparable damage to SGI and hereby agree that SGI may be entitled to seek injunctive relief under this Agreement in any court of competent jurisdiction.

**8. Disclaimer of Warranty.** THE LICENSED SOFTWARE IS PROVIDED "AS IS," WITHOUT EXPRESS, IMPLIED, OR STATUTORY WARRANTY OR CONDITION OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN TO YOU BY ANY SGI EMPLOYEE, REPRESENTATIVE, OR DISTRIBUTOR WILL CREATE A WARRANTY FOR THE SOFTWARE, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. SGI DOES NOT WARRANT OR GUARANTEE THAT USE OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

**9. Limitation of Liability.** IN CONNECTION WITH THE LICENSED SOFTWARE AND/OR THIS LICENSE: (A) IN NO EVENT SHALL SGI OR ITS LICENSORS BE LIABLE FOR ANY (1) CLAIMS OR DAMAGES ARISING FROM HIGH RISK USE; (2) SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM HIGH RISK USE, LOSS OF PROFIT, DATA, GOODWILL, USE, SAVINGS, REVENUE, OR PROPERTY DAMAGE), WHETHER OR NOT SGI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS; AND (B) LIABILITY OF SGI AND/OR ITS LICENSORS FOR ANY AND ALL CLAIMS COMBINED WILL NOT EXCEED THE AMOUNT OF ANY LICENSE FEE PAID FOR THE LICENSED SOFTWARE. THE FOREGOING APPLIES NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY CONTRACTUAL REMEDY. Some jurisdictions do not allow the exclusion of warranties and/or limitation of incidental or consequential damages, so the above exclusion or limitation may not apply to You. Notwithstanding anything to the contrary, You will indemnify, defend (with counsel approved in writing by SGI) and hold SGI harmless against any third party claims arising out of or in connection with Your High Risk Use; provided, however, that the foregoing indemnification obligation shall not apply if You are an agency or instrumentality of the U.S. Government.

**10. Other Software Licenses and/or Provisions.** Certain portions of the Licensed Software ("Other Licensed Software") may be subject to other licenses and/or provisions ("Other Licensed Software Provisions"), as indicated in accompanying licenses in printed and/or electronic format and/or in comments fields within source code to the Other Licensed Software, including open source licenses. This License is inapplicable to the extent it is contrary to such Other Licensed Software Provisions; provided, that to the extent permissible under such Other Licensed Software Provisions, Sections 6 through 12 hereof also apply to the Other Licensed Software.

**11. U. S. Government Users.** The provisions of this article apply to the license of software to the U.S. government and supersede any conflicting language herein. This Licensed Software was developed at private expense; it is licensed as "commercial computer software" as defined under FAR 2.101 and subject to the provisions of this License as specified in (a) FAR 52.227-19, or (b) DFAR 227.7202, except where licensed under a GSA Schedule contract, in which case the terms of such contract will apply. If the Licensed Software fails to meet the government's minimum needs or is inconsistent in any respect with federal procurement law, You agree to return the Licensed Software and documentation, unused, to Contractor/manufacturer SGI, at its corporate address found at [www.sgi.com](http://www.sgi.com).

The following articles of this License are amended for U.S. Government customers as follows.

a. For GSA Customers: (i) Opening paragraph: GSA schedule customers become bound by the terms of this License by placing an order for the Licensed Software under the applicable GSA schedule contract. References to "You" or "Your" refer to the entity placing the order (ordering activity); (ii) Article 4 (Enforcement of Terms; Termination: This License may be terminated

only in accordance with the terms and conditions of the GSA schedule contract and applicable federal regulations; and (iii) Article 12 (Complete Agreement): The software license in the applicable GSA schedule under which you placed an order for the Licensed Software constitute the entire understanding between you and SGI with respect to the subject matter of this License.

b. For All U.S. Government Customers: (i) Article 5 (Enforcement of Terms; Termination): This License may also be terminated in accordance with applicable Federal regulations; and (ii) Article 6 (Governing Law): As an agency or instrumentality of the U.S. Government, this License is government by and interpreted under the laws of the United States, and any dispute or controversy between the parties arising out of or related to this License, whether on contract or tort, and/or the performance or termination thereof, shall be resolved in a forum prescribed by the laws of the United States. In the absence of controlling Federal law or prescribed venue, the law of California shall apply, excluding choice of law rules, and the dispute shall be resolved in the U.S. District Court for the Northern District of California, San Jose. No legal fees or costs shall be payable by You except and to the extent expressly authorized by applicable Federal statute.

**12. Complete Agreement.** Subject to Sections 10, 11.a(iii) and the standard SGI Terms and Conditions of Sale (if applicable) this License constitutes the entire understanding between You and SGI with respect to the subject matter of this License, and supersedes all proposals, oral or written agreements, negotiations, understandings, conversations or discussions between the parties, and industry custom or past courses of dealing, with the exception of an agency or instrumentality of the U.S. government that placed an order for the Licensed Software under an applicable GSA Schedule contract.