



Silicon Graphics, Inc.
2011 N. Shoreline Blvd.
Mountain View, CA 94039-7311

SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS DOCUMENT CAREFULLY. THIS IS A LEGAL AGREEMENT BETWEEN YOU AND SILICON GRAPHICS, INC. ("SGI"). BY OPENING THIS PACKAGE, AND USING THE SOFTWARE AND DOCUMENTATION ("SOFTWARE") CONTAINED IN THIS PACKAGE AND/OR INCLUDED ON THE SILICON GRAPHICS HARDWARE PRODUCT, YOU ARE AGREEING TO BECOME BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE SOFTWARE LICENSE AND DISCLAIMER OF SOFTWARE WARRANTY CONTAINED IN THIS AGREEMENT. THIS AGREEMENT REPRESENTS THE ENTIRE AND SOLE AGREEMENT CONCERNING THE SGI SOFTWARE, AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION OR UNDERSTANDING REGARDING THE SOFTWARE BETWEEN YOU AND SGI OR ANY OTHER PARTY. IF YOU (hereafter in this document you are referred to as "LICENSEE") ARE NOT WILLING TO BE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT, PLEASE DO NOT USE THIS SOFTWARE, AND NOTIFY SGI AS SOON AS POSSIBLE; UPON SUCH NOTICE SGI WILL ACCEPT THE RETURN OF THIS SOFTWARE.

TERMS AND CONDITIONS OF SOFTWARE LICENSE

- 1. GRANT OF LICENSE; USE RESTRICTIONS.** In consideration for the payment of a license fee (which may be a part of the price Licensee paid for the SGI hardware product), SGI grants to Licensee a personal, nontransferable (except as provided below) and nonexclusive right to use the SOFTWARE, solely for Licensee's internal business purposes, on a single SGI workstation, computer or server product ("Designated Machine"); under no circumstances may the SOFTWARE be used in any manner on more than one SGI workstation, computer or server product at one time. Licensee agrees that it shall not reverse compile or disassemble any portion of the SOFTWARE. Prior to disposing of any media or apparatus containing SOFTWARE, Licensee will ensure that any SOFTWARE contained by such media or stored in such apparatus has been completely erased or otherwise destroyed.
- 2. COPY RESTRICTIONS.** Licensee may reproduce the SOFTWARE in only those full or partial copies which are necessary for backup or archival purposes to support the right to use licensed herein, provided, however that in no event may any full or partial copies of SOFTWARE be stored on more than one SGI workstation, computer or server product at the same time. Licensee agrees that all copies of the SOFTWARE shall be owned by SGI, shall be considered SOFTWARE subject to this Agreement and shall include the same proprietary and copyright notices and legends as supplied by SGI and its licensors.
- 3. OWNERSHIP OF SOFTWARE.** Licensee agrees that no title to the SOFTWARE, or the intellectual property in any of the SOFTWARE, or in any SOFTWARE copy, is transferred to Licensee, and that all rights not expressly granted to Licensee hereunder are reserved by SGI. This license is not a sale of the original SOFTWARE or any copy thereof.
- 4. TRANSFER RESTRICTIONS.** If Licensee transfers ownership, or otherwise disposes, of a Designated Machine, provided that the transferee agrees to accept the terms and conditions of this Agreement, Licensee may transfer the SOFTWARE and all licenses and rights in SOFTWARE granted under this Agreement to such transferee (provided that all SOFTWARE copies are also transferred). Except as provided above, or with SGI's prior written consent, neither this Agreement nor any rights or obligations under this Agreement, in whole or in part, shall be sublicensed, assigned or otherwise transferred and any attempt to sublicense, assign or transfer this Agreement or any rights or obligation under this Agreement shall be null and void (except as aforesaid).
- 5. EXPORT RESTRICTIONS.** Licensee agrees that Licensee does not intend to, and will not, without the prior written approval, if required, of the Office of Export Administration of the U.S. Department of Commerce, Washington, D.C., 20230, transmit, either directly or indirectly, any portion of the SOFTWARE to any country for which such approval is required.
- 6. TERMINATION.** If Licensee fails to fulfill any of Licensee's material obligations under this Agreement, SGI may, at any time thereafter, and in addition to any other available remedies, terminate this Agreement and all licenses and rights granted to Licensee under this Agreement. Upon the termination of this Agreement, Licensee shall, within thirty (30) days after termination, deliver to SGI all removable media and documentation containing the SOFTWARE, and shall render unusable all SOFTWARE placed in any storage apparatus.
- 7. GOVERNING LAW; DISPUTES.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its choice of laws rules. The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, this Agreement, or relating to the products licensed hereunder shall be subject to the exclusive jurisdiction of the California state courts of Santa Clara County, California (or, if there is federal jurisdiction, the United States District Court for the Northern District of California), and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts. If Licensee is a state or state instrumentality, Licensee hereby expressly waives the benefits of the Eleventh Amendment to the Constitution of the United States, including without limitation its application to any claim or counterclaim brought under United States Copyright or Patent Laws.

LIMITED WARRANTY AND DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY.

SGI warrants that it has the authority and right to license the SOFTWARE, and that the SOFTWARE will conform to the material printed specifications thereof which are in effect on the date of original delivery of such SOFTWARE. SGI's warranty and obligation shall extend for a period of ninety (90) days after the date of the original delivery of SOFTWARE to Licensee by SGI, and is solely for the benefit of Licensee, who has no authority to assign or pass through this warranty to any other person or entity. Except as provided in this Section, the SOFTWARE is provided to Licensee on an "AS IS" basis, and SGI makes no other warranty of any kind, express or implied, with regard to the SOFTWARE licensed hereunder. SGI does not warrant or represent that the SOFTWARE will operate uninterrupted or error free or that all defects in the SOFTWARE are correctable or will be corrected. This warranty shall not apply if SOFTWARE is used other than in accordance with SGI's written instructions, or if any of Licensee's hardware equipment associated with the use of SOFTWARE malfunctions.

SGI's entire liability and Licensee's exclusive remedy for any defects in the SOFTWARE shall be to obtain SGI's SOFTWARE support service pursuant to SGI's then current standard terms and conditions of support.

THE FOREGOING WARRANTIES ARE IN LIEU OF, AND SGI DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Some states do not allow the exclusion of implied warranties, so the exclusion above may not apply to Licensee. This warranty gives Licensee specific legal rights, and Licensee may have other rights which vary from state to state.

IN NO EVENT SHALL SGI OR SGI'S LICENSORS BE LIABLE TO LICENSEE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR DATA AND PERSONAL INJURY), WHETHER OR NOT SGI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. In no event will SGI be liable for any claim against Licensee by a third party, and Licensee hereby agrees to indemnify and hold SGI harmless for any claims for cost, damage, expense or liability arising out of or in connection with the installation, use and performance of the SOFTWARE licensed hereunder, whether alone or in combination with any other product or service.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the limitation above may not apply to Licensee.

U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure of the SOFTWARE by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer SOFTWARE clause at 52.227-7013. Contractor/manufacturer is SILICON GRAPHICS, INC., 2011 N. Shoreline Blvd., Mountain View, CA 94039-7311.