## Silicon Graphics, Inc. - Software License Agreement

## TERMS AND CONDITIONS

PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE INSTALLING THE DATA MIGRATION FACILITY SOFTWARE WITH WHICH THIS LICENSE AGREEMENT IS PACKAGED. BY INSTALLING THE SOFTWARE, CUSTOMER IS ACCEPTING AND AGREEING TO THE TERMS OF THIS LICENSE AGREEMENT AND FURTHER ACKNOWLEDGES HAVING READ THIS LICENSE AGREEMENT, UNDERSTOOD IT AND AGREED TO BE BOUND BY ITS PROVISIONS. IF CUSTOMER IS NOT WILLING TO BE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT, CUSTOMER SHOULD PROMPTLY RETURN THE SOFTWARE AND DOCUMENTATION FOR A REFUND OF THE AMOUNT PAID.

## **DATA MIGRATION FACILITY 2.6 SOFTWARE LICENSE AGREEMENT**

## **EVALUATION LICENSE AGREEMENT**

- 1. GENERAL: THIS LICENSE AGREEMENT SHALL GOVERN THE USE BY YOU (THE "CUSTOMER") OF THE SILICON GRAPHICS, INC ("SGI") DATA MIGRATION FACILITY SOFTWARE THAT YOU OBTAIN THROUGH THIS WEB SITE (THE "SOFTWARE"), AND THE ACCOMPANYING ON-LINE AND WRITTEN DOCUMENTATION (THE "DOCUMENTATION"). THIS LICENSE AGREEMENT REPRESENTS THE ENTIRE AGREEMENT CONCERNING THE SOFTWARE AND DOCUMENTATION BETWEEN SGI AND CUSTOMER, AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION. NO CUSTOMER PURCHASE ORDER OR OTHER COMMUNICATION SHALL BE CONSTRUED AS, OR CONSTITUTE, A WAIVER OF THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT, OR ACCEPTANCE OF ANY ADDITIONAL TERMS, CONDITIONS OR SPECIFICATIONS, AND SGI HEREBY OBJECTS TO ANY SUCH ADDITIONAL OR CONTRARY TERMS, CONDITIONS OR SPECIFICATIONS.
- 2. **TERM:** This License Agreement is effective upon installation of the Software and shall continue until for a period of thirty (30) days. However, the Software will not be usable until SGI provides a code key to Customer. The code key will allow Customer access to the Software. The code key will be e-mailed to the customer as part of this process. This License Agreement shall automatically terminate upon the breach by Customer of any term hereof. In addition, Customer may terminate this License Agreement at any time by returning to SGI the Software and Documentation. Upon termination or expiration of this License Agreement, Customer shall return to SGI or destroy the Software and Documentation. Customer's obligations shall survive any termination of this License Agreement. THE SOFTWARE CONTAINS A TIME-BASED DEVICE DESIGNED TO TERMINATE THE FUNCTIONALITY OF THE SOFTWARE AND RENDER THE SOFTWARE UNUSABLE AT THE END OF THE TERM OF THIS AGREEMENT. ANY DATA CONTAINED WITHIN THE SOFTWARE WILL BECOME INACCESSIBLE TO CUSTOMER AS OF THAT TIME. CUSTOMER SHOULD TAKE ANY NECESSARY PRECAUTION TO PREVENT THE LOSS OF ANY CUSTOMER DATA. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY SUCH LOSS.
- 3. LICENSE: SGI grants, and Customer accepts, a single, non-transferable and non-exclusive license to use the Documentation, and the Software in object code form only, subject to all the terms and conditions of this License Agreement. The Software is comprised of a server portion that is designed to be installed on one host server computer system, and a client portion that is designed to be installed on an unlimited number of client computer systems that are connected to the host server by a computer network. Customer may install and use the server portion of the Software on one host server system and may install the client portion of the Software on any number of client computer systems that are connected to the host server by a computer network. Customer shall have the right to use one copy of the Documentation. The license manager incorporated in the Software is configured to maintain the connection of each user of the Software for a predetermined period of time. As a result, the Software will be unavailable to new users until that time has expired for each previous user. Technical limitations in the Software may prohibit the concurrent use of the Software by large numbers of users.

007-4230-001

- 4. WARRANTY AND LIMITATION OF LIABILITY: THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED "AS IS", AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND FREEDOM FROM VIOLATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE HEREBY EXCLUDED. SGI WILL NOT BE LIABLE IN ANY EVENT FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SOFTWARE OR ITS USE BY CUSTOMER OR ANY OTHER PERSON, OR ANY FAILURE OF SGI IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS LICENSE AGREEMENT (INCLUDING LIABILITY FOR NEGLIGENCE) EXCEPT FOR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SGI.
- 5. **APPLICABLE LAW:** This License Agreement is governed by the laws of the State of Minnesota, excluding the United Nations Convention of the International Sale of Goods, and without reference to its provisions on the conflicts of laws. Any dispute, claim or controversy arising out of or relating to this License Agreement shall be resolved in the courts of the State of Minnesota, to the nonexclusive jurisdiction of which the parties hereby submit themselves.
- 6. **INDEMNIFICATION:** Customer agrees to indemnify and hold SGI harmless in respect to any and all claims of or liability to third parties arising from the use of the software or the output of the Software.
- 7. **EXPORT:** Customer shall not dispose of any software, know-how, technical data, documentation or other materials furnished to it pursuant to this License Agreement, to any party or in any manner which would constitute a violation of the export control laws of the United States.
- 8. **RESTRICTED RIGHTS LEGEND:** If the Software is acquired for use by the US Government, such use shall be subject to "Restricted Rights" as that term is defined in the Federal Acquisition Regulations ("FAR"), Part 52.227-14 and the DoD FAR Supplement, Part 252.227-7013, as augmented by this License Agreement.