



## Master Services Agreement (General Terms and Conditions)

This Master Services Agreement (the "Agreement") is made between Stratus Technologies Ireland Limited, with offices at Blanchardstown Unit 275, Block F, Blanchardstown Corporate Park 2, Ballycoolin, Dublin 15, Ireland ("Stratus") and Williamson County, Texas, a political subdivision of the State of Texas ("Customer" or "you"). Stratus agrees to provide the services, as defined in the applicable Service Addenda (the "Services"), subject to the terms and conditions contained in this Agreement, for the supported hardware ("Supported Hardware" or "Hardware") and supported software products ("Supported Software" or "Software") comprising the system(s) listed in your Service Schedule(s) (each a "System" or "Covered System"). Stratus' obligations to provide Services are subject to your compliance with all of your obligations under this Agreement.

**Eligibility:** Systems first placed under Service within ninety (90) days from the System shipment date are automatically deemed Service Ready and eligible for coverage under this Agreement. Systems first placed under Service more than ninety (90) days from the System shipment date must first be inspected and certified by Stratus or its authorized service representative as Service Ready. Additionally, Systems, Service coverage for which has lapsed for a period of ninety (90) days or more, will be subject to inspection and certification, at your expense, before Service coverage will be reinstated. Such inspection and certification will be at Customer's expense based on Stratus' then prevailing rates. Any work required to bring the System up to a Service Ready condition will also be at Customer's expense.

**Stratus Affiliates:** The Services shall be provided by Stratus or its affiliates. As used herein affiliates means, legal entities that are owned by Stratus or which are under common ownership with Stratus. In providing such Services Stratus and its affiliates may engage the services of sub-contractors. The foregoing however shall not relieve Stratus of its primary obligations under this Agreement.

**Service Hours:** Except as otherwise specified in this Agreement, a Service Schedule, Service Level Addendum, or an Optional Service Addendum, all Services required of Stratus under this Agreement shall be provided only during the hours of 9:00 A.M. to 5:00 P.M., Monday through Friday, excluding locally observed holidays.

### 1. TERM AND TERMINATION

**1.1. Term.** Unless otherwise agreed, the initial term for Services shall commence on the Delivery Date of Hardware and shall continue for a period of one (1) year. Thereafter, the term for Services shall automatically renew for successive terms of one (1) year each unless either party gives written notice to the other of its intention not to renew at least sixty (60) days prior to the commencement of the next term; provided, however, Customer may terminate this Agreement at any time after the first year by giving sixty (60) days prior written notice of termination to Stratus.

**1.2. Termination for Breach.** Either party (the "Non-breaching Party") may terminate this Agreement in the event the other party (the "Breaching Party") breaches any of its material obligations (each a "Material Breach") under this Agreement and fails to cure said Material Breach within thirty (30) days of Breaching Party's receipt of written notice of the Material Breach from the Non-breaching Party. Material Breach" shall also be deemed to include any instance in which the Breaching Party files a voluntary petition in bankruptcy or under any similar insolvency law, makes an assignment for the benefit of its creditors, has filed against it any involuntary petition in bankruptcy or under any similar insolvency law, or a receiver is appointed for, or a levy or attachment is made against, substantially all of its assets, if any such petition is not dismissed or such receiver or levy or attachment is not discharged within sixty (60) days after the filing or appointment.

### 2. PRICING, INVOICING AND TAXES

**2.1. Service Charges:** The service charges that will apply to the Products supported under this Agreement are as set forth in the applicable Service Schedule. Updates to the Service Schedule may be provided by contacting your local service representative. Unless otherwise specified in a particular Service Schedule, your service charges will be billed semi-annually, with the first payment being due within on the Delivery Date of Hardware and the second payment being due on the one hundred eightieth (180<sup>th</sup>) day thereafter. Such semi-annual payments are payable as set forth in Section 3 below. In the event this Agreement is renewed following the first term, the first semi-annual payment shall be due on the first day of each successive term and the second semi-annual payment shall be due on the one hundred eightieth (180<sup>th</sup>) day thereafter. Any prepaid service charges shall be non-refundable upon termination of the Agreement, unless termination is due to Stratus' breach. Stratus' obligation to provide these services is contingent upon your prompt payment of the invoice and any other applicable charges. Payment of any amount invoiced under this Agreement constitutes your agreement to all of the terms and conditions contained herein, to the exclusion of all others.

**2.2. Price Changes:** At any time, and from time to time after expiration of a Service Schedule, Stratus may increase the service charges not to exceed 3% annually by giving you ninety (90) days advance written notice. The price change will apply on the first day of the applicable invoice period on or after the effective date specified in the Stratus price change notice. Hourly rates, travel charges and one-time charges are subject to change with prior written notice.

**2.3. Additional Charges:** You may incur additional charges for any Services provided by Stratus for the following reasons: (i) because of fire, natural disaster, neglect, misuse, abuse and war or other events or causes of force majeure; and (ii) unauthorized modifications; use of non-Stratus supplied equipment or software; damage resulting from environmental considerations such as electrical power, heat, cold, or humidity outside the published product specifications; or operating the System in other than the fully redundant mode of operation; and (iii) if we are required to travel beyond fifty (50) miles or eighty (80) kilometers of the nearest Stratus service location or use other than private automobile or scheduled local public transportation to provide Services to you.

### 3. PAYMENT

Customer shall pay all amounts in accordance with Chapter 2251 of the Texas Government Code. Invoices shall be paid by Customer within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. Interest charges for any late payments shall be paid by Customer in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late

payment is the rate in effect on September 1 of Customer's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, Customer shall notify Stratus of such discrepancy. Following Customer's notification of any discrepancy as to an invoice, Stratus must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. Customer shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. Customer's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31<sup>st</sup>) day following the Williamson County Auditor's receipt of the corrected or revised invoice. Except in the case of termination for Stratus' material breach, any and all payments of amounts due under this Agreement are non-refundable. Customer also agrees to pay amounts equal to any applicable taxes resulting from any transaction under this Agreement that Stratus is obligated to pay upon Customer's behalf, except that Customer shall not be liable for taxes based on Stratus' net income or taxes to which Customer is exempt.

**3.1. Suspension of Service** If Customer's account is ten (10) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, Stratus reserves the right to suspend Services until such amounts are paid in full; provided however that no suspension shall take effect until and unless Stratus has provided Customer at least five (5) business days prior written notice that Customer's account is overdue.

**3.2.** Customer agrees to pay Stratus, on demand, interest at the rate specified above, with any collection and attorney's fees and expenses Stratus incurs in the collection of such overdue amounts.

**4. CUSTOMER'S OBLIGATIONS** Customer agrees to ensure that, at all times during the term of this Agreement Customer shall:

- For each installation site or System, assign and maintain, a technically skilled employee or agent who will serve as your primary contact with Stratus for each Covered System; and
- Provide the names and phone numbers of up to four (4) individuals who are authorized to submit calls under this Agreement; and
- Maintain the Covered System(s) in a manner consistent with all applicable product specifications provided by Stratus or the manufacturer; and
- Provide at no charge to Stratus access to and use of suitable telecommunications equipment needed to establish data communication over the Stratus Service Network; and
- Execute diagnostic routines and provide the results to Stratus; and
- Access and make appropriate use of Stratus' Internet home page for technical support information; and
- Notify Stratus of any configuration changes to the original Covered System configuration; and
- Where appropriate, use the provided Stratus hardened drivers; and
- Replace customer replaceable units under the remote direction of the Stratus CAC, Customer Engineer or Stratus Authorized Service Representative; and
- Perform housekeeping services, such as, cleaning, replacing expendable parts (e.g.: batteries, printer ribbons), performing regular operating checks and providing necessary supplies pertaining to these services; and
- Ensure that all of the data stored on the Covered System(s) is adequately duplicated, documented and protected. Stratus is not responsible for failure to do so, or for the cost of reconstructing data stored on disks, tapes, or other media that are lost or damaged during the performance of Services; and
- Ensure that (1) all software installed on the Covered System(s) is properly licensed for use; (2) all non-supported hardware and software products are fully-compatible with the Stratus-supported hardware and software installed on each Covered System and are fully year-2000 compliant; (3) all Covered System(s) are adequately protected against computer viruses; and
- Install Software product updates and upgrades as made available; and
- Maintain and operate at all times all Covered Systems in a fully redundant mode of operation.

## **5. WARRANTIES**

**5.1.** WE WARRANT THAT WE WILL PROVIDE, IN A GOOD AND WORKMAN LIKE MANNER, THE SERVICES DESCRIBED IN THIS AGREEMENT AND IN EACH SERVICE SCHEDULE AND ANY ADDENDA ATTACHED THERETO.

**5.2.** THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABLE QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF A SYSTEM OR THAT ALL PRODUCT ERRORS OR DEFECTS WILL BE CORRECTED.

**6. LIMITATION OF LIABILITY** IN NO EVENT SHALL STRATUS, ITS AFFILIATES OR THEIR RESPECTIVE SUB-CONTRACTORS BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, PROFIT OR BUSINESS, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY. EXCEPT WITH RESPECT TO LOSSES OR DAMAGES ARISING FROM BODILY INJURY (UP TO AND INCLUDING DEATH), BREACH OF CONFIDENTIALITY OBLIGATIONS, GROSS NEGLIGENCE AND WILFULL MISCONDUCT, THE LIABILITY OF STRATUS', ITS AFFILIATES, AND THEIR RESPECTIVE SUB-CONTRACTORS FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT), SHALL BE LIMITED TO THE AMOUNT THAT CUSTOMER WOULD HAVE PAID TO STRATUS FOR THE PREVIOUS TWELVE (12) MONTHS OF SERVICE FOR THE PRODUCT (S) THAT IS THE SUBJECT OF THE CLAIM.

**7. STRATUS PROPERTY** Support software, including diagnostic routines, Active Service Network or Remote Service Network Agents and SNMP Agents, as well as support tools, and documentation ("Property"), which we supply under this Agreement, are and shall at all times remain Stratus' exclusive property. Except where required by law, you agree not to make such Property available or disclose the contents thereof to any third parties other than your employees and contractors who are performing services for you and have a need to access such Property in relation to the Systems covered under this Agreement. You agree to take appropriate action, by instruction or agreement with your employees

and contractors who are permitted access, to satisfy your obligations under this Agreement. Further, you agree to immediately return all such Property to us upon the expiration or termination of this Agreement and or applicable Service Schedule.

**8. CHANGES TO THE AGREEMENT TERMS** In order to maintain flexibility in the manner, in which we provide service, we may, after the initial term of a Service Schedule, change the terms and conditions under which the Products listed on that Service Schedule are serviced under this Agreement, including any Addenda, by giving you not less than ninety (90) days prior written notice. These will only apply as of the effective date we specify in the notice. You have thirty (30) days from receipt of a change notice in which to reject, in writing the change, and thereby terminate this Agreement and all affected Service Schedules. Except as stated above, for a change to be valid it must be in writing and signed by both of us. Additional or different terms in any order or written communication from you are void.

## **9. CONFIDENTIALITY**

**9.1.** "Confidential Information" shall mean any information held disclosed in confidence by one party (the "Discloser") to the other party ("Recipient") in connection with this Agreement. Confidential Information shall be so designated by Discloser in writing at the time of disclosure and if disclosed orally or in any form other than documentation marked with a legend designating it as such, shall be identified by Discloser as confidential or proprietary and reduced to writing and provided to the Recipient within fifteen (15) days of the date of the oral disclosure.

**9.2.** Recipient shall not disclose to any third party the other party's Confidential Information and shall limit access and use to those of its employees and agents who require such access and use in connection with its rights and obligations under this Agreement. Recipient shall take appropriate action with its employees and agents to satisfy its obligations hereunder and shall protect Discloser's Confidential Information as it protects its own Confidential Information of like significance, but in any event with not less than a reasonable degree of care.

**9.3. Exceptions.** The obligations set forth in this Section shall not apply to information (a) known to Recipient prior to disclosure; or (b) which is or becomes publicly known through no wrongful act of Recipient; or (c) received from a third party under no confidentiality obligation with respect to the Confidential Information; or (d) required to be disclosed under the Texas Public Information Act, other administrative or court order, or in an arbitration or litigation arising out of a dispute between the parties or their successors or assigns. If Recipient is legally required to disclose any Confidential Information, it shall, to the extent allowed and practicable, provide Discloser prompt notice of such requirement so that Discloser may seek a protective order or other appropriate remedy or waive compliance with respect to that disclosure.

**9.4. Remedies.** Each party agrees that, in addition to any other remedies available, the other shall be entitled to injunctive relief to enforce the terms of this Section 9.

**10. Indemnity.** SUBJECT TO SECTION 6, LIMITATION OF LIABILITY, STRATUS SHALL INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS CUSTOMER, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF STRATUS OR ANY OF ITS EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT.

## **11. GENERAL**

**11.1.** We will provide Service only at the location(s) specified in the Service Schedule unless we agree otherwise, in writing.

**11.2. Expenses.** Customer will reimburse Stratus for actual travel and living expenses that Stratus incurs in providing Customer with services under this Agreement. Such travel and living expenses will be reimbursed in accordance with the provisions relating to direct and reimbursable expenses of the Williamson County Budget Order, as amended and in effect at the time expenses are incurred. Stratus' travel and expense will be invoiced on a monthly basis in arrears and due and payable as set forth herein. Expenses in connection with this Agreement shall be identified separately and described in each Invoice for Payment. All expenses must be approved in writing and in advance by Customer to be eligible for payment.

**11.3. Remedies.** Notwithstanding any provision herein to the contrary, either party to this Agreement may avail itself of any and all remedies available at law or in equity and neither party hereto waives its right to do so.

**11.4. Assignment.** Neither party may assign or transfer any of its rights or obligations under this Agreement without the other party's express written consent. Any attempt to make any such assignment or transfer without the express written consent of the other party will be deemed void. Notwithstanding the foregoing, either party shall have the right to assign this Agreement to any of its affiliates or in connection with the sale or transfer of all or substantially all of its assets.

**11.5. Waiver.** The waiver or failure of either Party to exercise in any respects any right provided for herein shall not be deemed a waiver of that or any other right hereunder.

**11.6. Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: Delivered personally; sent by United States registered or certified mail, return receipt requested; transmitted by facsimile confirmed by United States first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown below, or to such other place as the party may subsequently designate for its receipt of notices.

Stratus: Stratus Technologies, Inc.  
111 Powdermill Rd.  
Maynard, MA 01754

Customer: Williamson County, TX  
c/o: Williamson County ITS  
301 S.E. Inner Loop Rd, Suite 105  
Georgetown, TX 78626



### 3. Selected Service Levels for the Microsoft Windows Operating System

DESCRIPTION OF SERVICES	OPTION SELECTED	SYSTEM(s)			System Location	Service Charges
		Model #	Qty	Site ID		
<b>SERVICE LEVEL:</b>						
<b>Assured Availability Plus</b>	XX					
*Assured Availability Guarantee	XX					
<b>Assured Availability</b>						
*Assured Availability Guarantee						
<b>System Availability</b>						
<b>OPTIONAL SERVICES:</b>						
Extended Business Hours Field Service FRU Replacement (12x5)						
Extended Business Hours Field Service FRU Replacement (24x5)						
Saturday Field Service FRU Replacement (8x6)						
Weekend/Holiday Field Service FRU Replacement (8x7)						
Weekend/Holiday Field Service FRU Replacement (24x7)						
Full CRU/FRU Onsite Replacement, Normal Service Levels (8x5)						
Full CRU/FRU Onsite Replacement, Normal Service Levels (24x5)						
Full CRU/FRU Onsite Replacement, Normal Service Levels (24x7)						
Technical Account Management Services (NTAM)						
Expedited Parts Delivery (Same Day)						

\*The Assured Availability Program Guarantee (the "Guarantee") is subject to the following additional terms and restrictions: (1) only Systems covered under Assured Availability Plus or Assured Availability Service Level coverage qualify for the Guarantee; and (2) the Guarantee must be selected at time of initial System purchase; and (3) if the qualifying System is covered under the Assured Availability service level, then coverage under the Guarantee is limited to outages caused solely by the Stratus Software, the Stratus Hardware or both; coverage under the Guarantee excludes outages caused in whole or in part by the Microsoft operating system; and (4) the Guarantee is subject to the terms and conditions set forth in the Assured Availability Program Guarantee Addendum.

#### OPTIONAL SERVICES

**Selected Optional Services (if applicable).** You may supplement your selected Service Level coverage by purchasing additional on-site and technical support services offered by Stratus as described above. These services are provided as part of a Service Level and may not be purchased on a standalone basis.

IN WITNESS WHEREOF, the parties have agreed to the terms and conditions of this Service Schedule as indicated below.

  
Customer

Stratus Technologies Ireland Limited

By: \_\_\_\_\_

By: 

Name: Ann Gaffis

Name: BILL O'DWYER

Title: County Judge

Title: Operations Manager

Date: 3-30-10

Date: 23rd March 2010

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(Wilco Atty Redline v2)

## SERVICE ADDENDUM

### Assured Availability Plus Service Level for Stratus Systems Running the Microsoft Windows Operating System

All definitions and terms contained in the Master Service Agreement and the Service Schedule apply to this Addendum. The terms of this Addendum shall control in the event of inconsistencies.

#### 1. Severity Level Definitions

- 1.1. **Critical:** A problem that causes your System to become completely unavailable to users.
- 1.2. **Serious:** A problem that substantially impairs System operation.
- 1.3. **Moderate:** A problem that does not substantially impair System operation.
- 1.4. **Minor:** A problem that does not impair the operation of your System. It is non-conforming behavior that can be avoided or ignored.

#### 2. Customer Assistance Centers (CAC) Services: Stratus will use best commercial efforts to provide remote and telephone Hardware and Software support within the times described below, depending on the severity of the problem, for problems reported by you via telephone or e-mail.

- 2.1. **Critical:** Stratus will acknowledge receipt of the problem within thirty (30) minutes. Stratus will provide CAC services (i) on a continuous basis until the System is restored to service; and (ii) on a priority basis until a suitable workaround is provided or until all material aspects of the System's functionality are restored.
- 2.2. **Serious:** Stratus will acknowledge receipt of the problem within two (2) hours. Stratus will provide CAC services on a priority basis until the System's functionality is restored or a suitable workaround is found.
- 2.3. **Moderate:** CAC services will be provided during local business hours only. Stratus will acknowledge receipt of the problem within four (4) hours. Stratus will use reasonable efforts to resolve the problem or provide a work around within seven (7) calendar days.
- 2.4. **Minor:** CAC services will be provided during local business hours only. Stratus will acknowledge receipt of the problem within four (4) hours. Minor problems will be corrected in a manner and within a time frame as determined by Stratus in its sole discretion.

#### 3. Remote System Support and Monitoring: Stratus will provide 7x24 remote system support and monitoring of Covered Systems through an electronic connection between each such Covered System and the Stratus CAC, using the Active Service Network. Remote System Support, if applicable, may include one or more of the following:

- 3.1. Hardware problem auto notification. The System will automatically generate a call to Stratus CAC notifying us of a Hardware failure; and
- 3.2. Automatic parts replacement: Stratus' CAC will disburse a part replacement based on the System's automatically generated calls;
- 3.3. Access to Software downloads, uploads and on-line diagnostic routines; and
- 3.4. System report auto notification initiated by and relating to Software installations and system reboots.

#### 4. Telephone Support: Stratus will provide 7 x 24, unlimited, toll free access, to the Stratus CAC for assistance with software problems related to the currently supported version of the Stratus Software, Operating System and supported non-Stratus Software identified in your Service Schedule (individually and/or collectively hereinafter referred to as "Supported Software"). Stratus technical support engineers will provide root cause problem determination and relief, available Software updates and bug fixes as well as information and assistance related to Software features. Telephone Software Support applies to the following:

- 4.1. **Stratus Software:** Stratus will maintain Supported Stratus Software such that it will inter operate with the then Stratus-supported release of the Windows operating system.
- 4.2. **Microsoft Windows Support:** For Critical and Serious problems related to the Microsoft Windows operating system kernel, Stratus will provide priority access to Windows certified Stratus engineers, who will work collaboratively with Microsoft support personnel to address problems traced to a Microsoft product.

#### 5. Active Service Manager Services: Stratus will provide user-authenticated access to the following Stratus 7x24 electronic support services:

- 5.1. Service event call logging and monitoring;
- 5.2. Stratus' technical Knowledgebase;
- 5.3. Software downloads; and
- 5.4. Product and service notifications

#### 6. Hardware Remedial Services: Stratus will provide Hardware Remedial Services, which may include one or more of the following:

- 6.1. **Advanced Parts Exchange - Next Business Day:** Stratus will use commercially reasonable efforts to ship Hardware replacement parts within the same business day of receiving an automatically-generated call through Remote System Support or by way of a Telephone request that is received prior to 5:00 P.M. local time. Restrictions may apply in certain countries. Stratus will pre-pay the cost of shipping the replacement part to the requested location. A next-business-day delivery carrier chosen by Stratus will make shipments. Each replacement part shipment will also include shipping material and a pre-paid freight bill for return of the defective part. The defective part must be returned to Stratus within fourteen (14) calendar days from the date of reported failure. If you fail to do so, Stratus will bill and you will pay the list price of the replacement part shipped. Stratus assumes all risk of loss or damage to parts that are in transit to and from the location.
- 6.2. **On-Site Hardware Support:** If Stratus determines that it is necessary to do so, Stratus will provide on-site Hardware support Services at its cost and expense including labor, parts and material necessary to repair the System, which may include one or more of the following:

- (1) **Same Day Emergency On-Site Services:** Stratus will provide same day emergency on-site service if the System experiences a Critical problem and it cannot be recovered through remote support means.
- (2) **Next Business Day On-Site Services:** Stratus will provide next business day on-site service if the System experiences a Serious problem and cannot be recovered through remote service means.

#### 6.3. Hardware On-Site Support Services Conditions:

- (1) You agree to render all reasonable assistance and to cooperate fully with Stratus' service representative or agent. Additionally, you agree to ensure his/her ability to work without interruption or interference.
- (2) Upon arrival at the site, subject to Stratus' reasonable judgment, on-site Services will be provided until the System is operational or as long as reasonable progress is being made. Work may be temporarily suspended if additional parts or resources are required, but will resume when they become available.
- (3) Travel expenses incurred in traveling to and from a System site from the nearest Stratus service center will be charged to and will be reimbursed by you in accordance with the terms of the Master Service Agreement.

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(Wilco Atty Redline v2)



## ASSURED AVAILABILITY PROGRAM GUARANTEE ADDENDUM

All definitions and terms contained in the Master Service Agreement, the Service Schedule and the Assured Availability Plus or Assured Availability Service Addendum apply to this Addendum. In the event of inconsistencies or ambiguities, the following order of precedence shall apply: (a) first, this Assured Availability Program Guarantee Addendum (the "Guarantee") shall govern and control; (b) next the Assured Availability Plus or Assured Availability Service Addendum; (c) the Service Schedule; and (d) the Master Service Agreement.

**Eligibility:** Coverage under this Guarantee is available only for Systems, for which Service coverage has been purchased under either the Assured Availability Plus or Assured Availability Service Addenda, and only if coverage under this Guarantee was subscribed contemporaneously with and at the time of initial purchase of the Covered System.

1. **Service Charge Credit:** If the System described in the Service Schedule fails as defined below ("System Failure"), Customer will be entitled to a credit against future Service payments in a prorated amount equivalent to one month's Service charge for the System that experienced the System Failure.

2. **General Conditions and Qualification applicable to this Addendum:**

For purposes of this addendum and subject to the following qualifications, a System Failure occurs when a Covered System that was previously functioning properly becomes unavailable, rendering Customers users unable to use it, provided that:

- (1) The System Failure must occur during, and as a result of, Customer's use of the Covered Systems exclusively for production purposes as opposed to development purposes.
- (2) Coverage under this addendum for Systems running the Microsoft Windows Server Operating System that are covered under the Assured Availability Plus Service Level applies only to the extent that a System Failure occurs as the result of the Stratus Hardware, the Stratus ftServer System Software, or the Stratus supported version(s) of the Microsoft Windows Server Operating System kernel.
- (3) Coverage under this addendum for Systems running the Microsoft Windows Server Operating System that are covered under the Assured Availability Service Level applies only to the extent that a System Failure occurs as the result of the Stratus Hardware or the Stratus ftServer System Software, but excludes System Failures that result from any other cause, including without limitation the Microsoft Windows Server Operating System kernel or any other Stratus-Supported Software.
- (4) Coverage under this addendum for systems covered under an Assured Availability Service Level for VOS or HP-UX applies only to the extent that a System Failure occurs as the result of Stratus Hardware, Stratus System Software, or the Stratus supported version(s) of the VOS or HP-UX Operating System.
- (5) Coverage under this addendum for systems running the Red Hat Linux Operating System that are covered under an Assured Availability Plus Service Level applies only to the extent that a System Failure occurs as the result of Stratus Hardware, Stratus System Software, and the Stratus supported version(s) and components of the Red Hat Linux Operating System as defined in the Assured Availability Plus Service Level Addendum.
- (6) Coverage under this addendum for systems running the Red Hat Linux Operating System that are covered under an Assured Availability Service Level applies only to the extent that a System Failure occurs as the result of Stratus Hardware, or Stratus System Software, but excludes System Failures that result from any other cause, including without limitation, the Red Hat Linux Operating System or any other Stratus-Supported Software.
- (7) The Covered Systems must have been running in the fully redundant mode of operation immediately prior to System Failure. Any system running a redundant component in simplex mode is ineligible for coverage under this Option, unless and until the component is restored to the fully redundant mode.
- (8) Coverage is limited to the single System, which experienced the System Failure.
- (9) Coverage does not apply to problems that occur on more than one occasion or that affect more than one System.
- (10) Coverage does not apply where a System Failure results in connection with (a) any planned event, whether initiated by either Stratus or you, such as a reboot, FCO installation, a software upgrade, hardware component installation or de-installation, or a firmware or similar system configuration changes; (b) any planned or unplanned event initiated by you outside the scope of your normal operation or use of the Covered System; (c) known defects or bugs; (d) outages due to security or network problems; or (e) the occurrence of one or more of the following: fire, natural disaster, neglect, misuse, abuse and war or other events or causes of force majeure, as well as unauthorized modifications, use of non-Stratus supplied equipment or software and damage resulting from environmental considerations such as electrical power, heat, cold, or humidity outside the published product specifications.

3. **Stratus' Responsibilities:**

- (1) Stratus will provide you with notification, in writing or over the Stratus Active Service Network (ASN) or Stratus Remote Service Network (RSN), of any known condition that could cause an availability problem.
- (2) When appropriate, the Stratus Service Manager will schedule a meeting to discuss qualification and eligibility of a service credit.

4. **Customer's Responsibilities:**

- (1) Operate the System in fully redundant mode.
- (2) Determine if there was an availability problem during any calendar month, prior to requesting a service credit.
- (3) Fully implement (within fourteen (14) days of your receipt of written notification from Stratus), any requested procedures (including without limitation, installation of software bug fixes) intended to avoid any known condition that could degrade system availability.
- (4) Notify Stratus in writing, of any request for service credit. You will have waived your right to any credit under this Addendum if you fail to notify Stratus of a System Failure within thirty (30) days of the System Failure.



11.7. Force Majeure. Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

11.8. Choice of Law and Venue; Severability. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

11.9. Compliance with Laws. Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, salary and wage statutes and regulations, licensing laws and regulations.

11.10. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

11.11. Incorporation of Exhibits and Attachments. All of the Exhibits and Attachments, and Appendices referred to in this Agreement are incorporated by reference as if set forth verbatim herein.

11.12. Relationship of the Parties. Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

11.13. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Customer, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Customer does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

11.14. Customer's Right to Audit. Stratus agrees that Customer or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Stratus which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Stratus agrees that Customer shall have access during normal working hours to all necessary Stratus facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Customer shall give Stratus reasonable advance notice of intended audits.

11.15. Appropriation of Funds by Customer. Customer believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Stratus understands and agrees that the Customer's payment of amounts under this Agreement is contingent on the Customer receiving appropriations or other expenditure authority sufficient to allow the Customer, in the exercise of reasonable administrative discretion, to continue to make payments under this Agreement.


11.16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

11.17. No Waiver. A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

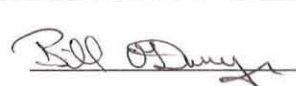
11.18. Entire Agreement. This Agreement as supplemented by the specific Service Schedule and any associated Addendum thereto as executed by the Parties, constitutes the entire agreement between the Parties for the subject matter hereof and supersedes all prior and contemporaneous written and oral representations, proposals, negotiations and communications. In the event of any inconsistency or conflict between this Agreement and a Service Schedule, the Service Schedule shall prevail.

IN WITNESS WHEREOF, the parties have agreed to the terms and conditions of this Agreement as indicated below.

Williamson County, Texas, a political subdivision of the State  
of Texas  
Customer

By:   
Name: Dan Gattis  
Title: County Judge  
Date: 3-30-10

Stratus Technologies Ireland Limited

By:   
Name: Bill O'Dwyer  
Title: Operations Manager  
Date: 23<sup>rd</sup> March 2010

## Stratus Master Services Agreement

### SERVICE SCHEDULE

This Service Schedule is subject to and made a part of the Master Services Agreement between Stratus Technologies Ireland Limited and Williamson County, Texas, a political subdivision of the State of Texas. The Effective Date of this Service Schedule shall be the date of initial installation of the following System(s) unless a different Effective Date has been agreed and listed below. Stratus agrees to provide and you agree to pay for the Services selected and described in the Agreement and any Optional Services selected below for the System (Hardware and Software) listed below.

#### 1. Effective Date: [Date of Installation]

#### 2. Customer Contacts:

Please provide full details for the Primary Contact and up to four Named Contacts. Any subsequent changes to the Named Contacts should be submitted to your local Stratus Representative.

Primary Contact Name: JAY SCHADE
Address: 301 SE INNER LOOP SUITE 105 GEORGETOWN, TX 78626
Phone: (512) 943-1456
Email:
Facsimile: (512) 943-1488

Named Contact Name (1): JEFF SMITH	Named Contact Name (2): RORY TIERNEY
Address: 301 SE INNER LOOP SUITE 105 GEORGETOWN, TX 78626	Address: 301 SE INNER LOOP SUITE 105 GEORGETOWN, TX 78626
Phone: (512) 943-1456	Phone: (512) 943-1457
Email:	Email:
Facsimile: (512) 943-1488	Facsimile: (512) 943-1488
Named Contact Name (3): RICHARD SEMPLE	Named Contact Name (4):
Address: 301 SE INNER LOOP SUITE 107 GEORGETOWN, TX 78626	Address:
Phone: (512) 943-1489	Phone: ( )
Email:	Email:
Facsimile: (512) 943-3737	Facsimile: ( )

Deleted: AA+ Service Agreement  
(Wilco Atty Redline v2)