

STRATUS TECHNOLOGIES ftServer® SOFTWARE END-USER LICENSE AGREEMENT

THIS END-USER LICENSE AGREEMENT (“EULA”) CONSTITUTES THE LEGAL AGREEMENT BETWEEN THE LICENSEE (“YOU”) AND STRATUS TECHNOLOGIES IRELAND LIMITED (“STRATUS”) FOR THE STRATUS® ftServer® SOFTWARE PRODUCTS, CERTAIN THIRD PARTY SOFTWARE PRODUCTS* AND RELATED MEDIA, MATERIALS AND DOCUMENTATION (“PRODUCTS”). BY INSTALLING THE PRODUCT OR RETAINING IT FOR MORE THAN TEN (10) DAYS, YOU AGREE TO BE BOUND BY THIS EULA. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT USE THE PRODUCTS AND YOU MUST RETURN THE UNUSED PRODUCTS WITHIN TEN (10) CALENDAR DAYS OF RECEIPT FOR A FULL REFUND OF ANY PAID PRODUCT USE FEES. CONTACT YOUR PRODUCTS SUPPLIER OR VENDOR FOR RETURN INSTRUCTIONS. IF YOU RECEIVED THE PRODUCTS DIRECTLY FROM STRATUS, REFER TO THE STRATUS WEB SITE AT “www.stratus.com” OR CONTACT YOUR LOCAL STRATUS SALES OFFICE FOR RETURN INSTRUCTIONS. IF STRATUS PROVIDES YOU WITH AN UPDATE TO ANY PRODUCT FURNISHED UNDER THIS EULA, YOU AGREE TO DESTROY THE PREVIOUS VERSION PRODUCT WITHIN A REASONABLE TIME AND USE ONLY THE PRODUCT’S UPDATED VERSION.

THE PERSON ENTERING INTO THIS EULA REPRESENTS AND WARRANTS THAT HE IS AUTHORIZED TO ENTER INTO A BINDING AGREEMENT ON BEHALF OF HIS EMPLOYER AS THE LICENSEE.

***This EULA applies to the Stratus Software Products and any third party software programs (such as EMC software products) that are supplied by Stratus or its resellers but that are not packaged with a separate end-user license agreement (the Stratus Software Products and such third party software programs collectively hereinafter referred to as the “Products”).**

- 1 **Software License.** Except for the limited use right set forth in this Section 1, Stratus and its licensors (“Licensors”) shall own all right, title and interest in and to the Products and any copies of the Products. The Products are licensed, not sold. Any updates, supplements, corrections or bug fixes for the Products will be governed by the terms of this EULA.
 - 1.1 You acknowledge that you have only a non-exclusive and limited right to use the object code version of the Products on a single ftServer system and the applicable peripheral devices (including without limitation storage equipment) sold to you by Stratus or its authorized distributor or reseller (collectively, the “System”) in accordance with this EULA. You may make a single copy of the Products in object code form for archival or backup purposes. You may not remove or obscure any proprietary rights notice, Restricted Rights legend (as defined in section 1.4 below) or other notice (collectively, “Notices”) included with the Products. You must include all Notices on all copies of the Products. You may not reverse engineer, decompile or disassemble the Products or attempt to gain access to the source code for the Products, except and only to the extent that it is expressly permitted by applicable law, and, to the extent applicable law permits contractual waiver of such right, you hereby waive your rights to do so.
 - 1.2 Provided you have not breached any of your duties or obligations under this EULA, you may permanently transfer the Products and all rights under this EULA only as part of a one-time sale or transfer of the System on which the Products are installed and only to a transferee who agrees to be bound by all of the terms and conditions set forth in this EULA. Upon such transfer, you agree that you will (1) transfer all of the Products with the System, (2) retain no copies of the Products, and (3) assign all rights and delegate all obligations under this EULA to your transferee. You will not otherwise transfer or assign the Products or this EULA and/or any rights or obligations hereunder without the prior written consent of Stratus.
 - 1.3 Without prejudice to any other rights, Stratus has the right to terminate this EULA and refuse to ship any Products if you fail to pay any relevant license fees or other charges. Your rights under this EULA will automatically terminate if you breach any of your material obligations under this EULA. Upon any termination of this EULA, you will return to Stratus or its designee, or if instructed by Stratus to do so, destroy all copies of the Products promptly after such termination.
 - 1.4 The Products include commercial computer software that has been developed entirely at private expense and is regularly used for non-governmental purposes and licensed to the public. All software provided to the U.S. Government is provided with "Restricted Rights" as provided in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR 48 CFR 252.227-7013 (OCT 1988), as applicable. All rights not expressly granted are reserved.
- 2 **Confidentiality.** You acknowledge that the Products embody trade secrets and proprietary information and materials of Stratus and its Licensors (“Confidential Information”). You agree not to disclose such Confidential Information to any third party. Without limiting the foregoing, you agree to treat the Confidential Information with at least the same degree of care with which you treat your own confidential information of like importance, but in no event will you

treat such Confidential Information with less than reasonable care. Notwithstanding the above, you will have no liability with regard to any Confidential Information that (1) was in the public domain at the time it was disclosed or has entered the public domain through no fault of you, (2) was known to you, without restriction, at the time of disclosure, (3) was independently developed by you without any use of or reference to the Confidential Information, or (4) is disclosed pursuant to a valid order or requirement of a court, administrative agency, or other governmental body, provided that you promptly furnish to Stratus notice of such requirement or order enabling Stratus and its Licensors to seek a protective order or otherwise prevent or restrict such disclosure.

3 Infringement Indemnity.

- 3.1 Stratus will defend any claim brought against you alleging that the Products infringe a patent or copyright in your jurisdiction, and will indemnify you against all damages and costs finally awarded against you provided that Stratus is notified promptly in writing of the claim and given full authority, information and assistance for the defense and/or settlement of such claim, which defense and/or settlement will be under the sole control of Stratus. If a claim has occurred, or in Stratus' opinion is likely to occur, you agree to permit Stratus, at its sole option and expense, to (1) procure for you the right to continue using the Products, or (2) to replace or modify the Products so that they are non-infringing. If in Stratus' sole judgment neither of the foregoing alternatives is commercially practicable, Stratus may terminate this license, remove the Products and refund to you the product use fees as depreciated or amortized by an equal annual amount over the lifetime of the Products taking into account generally accepted accounting practices.
- 3.2 Neither Stratus, nor its affiliates, subsidiaries nor the Licensors will have any liability for any claim based upon or arising out of (1) the combination, operation or use of the Products with (a) any Microsoft or other third party software programs, (b) any equipment, devices or software not supplied by Stratus, or (2) the alteration or modification of any Products. **To the full extent permitted by law, this section states the entire liability of Stratus, its affiliates, subsidiaries and the Licensors and your sole remedy with respect to any claim of infringement.**

4 Limited Warranty.

- 4.1 Stratus warrants that the media containing each Product will be free from defects in material and workmanship for thirty (30) days from the date of receipt. Stratus' sole liability and your exclusive remedy for such defective Product media will be to replace the defective media free of charge. You may obtain information for reporting warranty defects from your Products supplier or vendor or from the Stratus web site at "www.stratus.com".
- 4.2 Stratus does not represent or warrant that the Products will operate without interruption or will be error free. This warranty does not apply to defects attributable to (1) modification or alteration of the Products made without the prior written approval of Stratus, (2) accident, neglect, misuse or abuse, or (3) exposure to conditions outside the range of the environmental, power and operating specifications provided by Stratus.

5 Disclaimer And Limitation of Liability:

- 5.1 **Except as expressly set forth in this EULA, neither Stratus, its affiliates, subsidiaries nor the Licensors make any other warranties, express or implied, including any implied warranties of merchantability and fitness for a particular purpose. Stratus, its affiliates, subsidiaries and the Licensors expressly disclaim all warranties not stated in this EULA. Any implied warranties that may be imposed by law are limited to the terms contained in this EULA to the maximum extent permitted by law.**
- 5.2 **Except for damages or losses related to death or bodily injury, in no event will Stratus, its affiliates, subsidiaries or the Licensors, be liable for any special, indirect, punitive, incidental or consequential damages or losses (including without limitation loss of use, data, profit, savings or business), whatever the basis of the claim or action (such as breach of warranty, condition, contract, infringement and tort, including strict liability and negligence, or other legal theory) even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. To the maximum extent permitted by law, the liability of Stratus, its affiliates, subsidiaries and the Licensors for damages or losses for any cause whatsoever, and regardless of the basis of the claim or action will be limited to the amount you actually paid for the specific Product that caused the damages or losses.** Because some states or countries do not allow a limitation on the duration of an implied warranty or the exclusion of incidental or consequential damages, the above limitations and/or exclusions may not apply to you.

- 6 **Import / Export.** You acknowledge that the Products are of U.S. origin and are subject to U.S. Export Administration, international and national import and export control laws and regulations, including end-user, end-use and destination restrictions issued by the U.S. and other governments ("Import and Export Controls"). You agree that you will not export, import, directly or indirectly, re-export, divert, or transfer the Product or, any materials, items or

technology relating to Stratus' or the Licensors' business or related technical data or any direct product thereof to any destination, company or person restricted or prohibited by the Import and Export Controls.

7 General Terms and Conditions.

- 7.1 This EULA constitutes the entire agreement between you and Stratus with respect to the subject matter hereof and supersedes all previous and contemporaneous written and oral representations, proposals, negotiations and communications, including, without limitation, the terms and conditions of any purchase order. You acknowledge that the terms and conditions of this EULA are intended to inure to the benefit of Stratus' affiliates, subsidiaries and the Licensors as third party beneficiaries of the EULA, any and all of which will be entitled to invoke such terms and conditions on their behalf and enforce such terms and conditions against you. You further acknowledge that Stratus' affiliates, subsidiaries and the Licensors accept their third party beneficiary rights and that such rights will be deemed irrevocable.
- 7.2 Stratus may assign this EULA or any of the rights or obligations hereunder, and any causes of action arising hereunder, to any third party without necessity or obligation of notice to you. The waiver or failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further right hereunder. The invalidity or unenforceability of any provision of this EULA will not affect the validity or enforceability of any other provision, the remaining provisions being deemed to continue in full force and effect.
- 7.3 Stratus will not be responsible for any failure to perform its obligations under this EULA due to circumstances beyond its reasonable control, including without limitation acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, fire, flood or accidents. You agree that Stratus will be entitled to all legal and equitable remedies otherwise available to it to protect the intellectual property, proprietary rights and Confidential Information of itself and its Licensors, including, without limitation, the right to seek and obtain injunctive relief and enforce the same against you without the necessity of having to post bond or other such guarantee.
- 7.4 Sections 1.1, 1.3, 1.4, 2, 3.2, 5, 6, and 7 will survive any termination of this EULA. Except and only to the extent prohibited by applicable law, this EULA will in all respects, be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the United States of America, excluding the choice of law principles thereof. The United Nations Convention on the International Sale of Goods will not apply to this EULA or the Products. You consent to the jurisdiction and venue of the state and federal courts in and for Suffolk County, Massachusetts, U.S.A. for the resolution of any dispute arising under or related to this EULA or the Products; provided, however, that Stratus, its affiliate, subsidiaries and the Licensors may initiate legal action in any court with jurisdiction over you for the enforcement of this EULA.

The following provisions apply to you and your use of the Products in addition to or in lieu of certain provisions of this EULA in the event that you acquired the Products in one of the jurisdictions identified below.

AUSTRALIA

The limitations on Stratus' liability under this EULA are made to the full extent permitted by law. Nothing in this EULA restricts the effect of any conditions or warranties which may be implied by the Australian Trade Practices Act 1974 ("the Act") or any other law which cannot be excluded, restricted or modified, either at all or except to a limited extent. Subject to those laws and to the extent to which it is lawful to do so, Stratus' liability for a breach of any condition or warranty or similar statutory right implied by the Act or any similar legislation (other than a term, condition or warranty implied by section 69 of the Act) will be limited, at Stratus' option, to any one or more of the following:

- (1) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (2) in the case of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

You acknowledge that neither Stratus nor its Affiliates or their agents or representatives have made any representations to you about any Products on which you have relied in deciding to acquire them or to enter into this EULA. You warrant that you have relied on your own skill and judgment or that of your advisers in relation to these matters.

Stratus' liability under this EULA, whether in contract, tort, (including negligence), strict liability in tort or by statute or otherwise, will be reduced by the extent (if any) to which you or your employees, agents or subcontractors, caused or contributed to the loss or damage, or the event giving rise to the loss or damage.

CANADA

The following provision supplements Section 7.1 of the EULA:

It is the express wish of the parties that this EULA and/or any related documents have been drawn up in a language other than French. French translation: Il est de la volonté expresse des parties que le présent contrat et/ou tous les documents qui s'y rattachent soient rédigés dans une langue autre que le français.

ENGLAND

The following provision replaces Section 3.1 of the EULA:

Status will defend any claim brought against you alleging that the Products infringe any intellectual property right in your jurisdiction and shall indemnify you against all damages and costs finally awarded against you provided that Stratus is notified promptly in writing of the claim and given full authority, information and assistance for the defense and/or settlement of such claim, which defense and/or settlement shall be under the sole control of Stratus. If a claim has occurred, or in Stratus' opinion is likely to occur, you agree to permit Stratus, at its sole option and expense, to (1) procure for you the right to continue using the Products, or (2) to replace or modify the Products so that they are non-infringing. If in Stratus' sole judgment neither of the foregoing alternatives is reasonably practicable, Stratus may terminate this license, remove the Products and refund to you the product use fees as depreciated or amortized by an equal annual amount over the lifetime of the Products taking into account generally accepted accounting practices.

The following paragraphs replace Section 5.2 of the EULA:

Nothing in this EULA shall exclude or limit Stratus' liability for (i) any fraudulent misrepresentation (ii) any death or personal injury caused by its negligence (as such term is defined in the Unfair Contract Terms Act 1977) (iii) any breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982 or (iv) any liability which cannot be excluded by law.

For the avoidance of doubt, the limit on liability set out in Section 5.2 of this EULA shall apply to Stratus' liability for any misrepresentation as to a fundamental matter, including a matter fundamental to Stratus' ability to perform its obligations under this EULA.

Subject to Section 5.2 of this EULA as amended herein, Stratus shall have no liability for any of the following losses or damages (whether such losses or damages were foreseen, foreseeable, known or otherwise): loss of revenue; loss of actual or anticipated profits (including for loss of profits on contracts); loss of the use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss of, damage to or corruption of data; or any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, where such loss or damage is of the type already expressly specified in this paragraph).

Subject to paragraph Section 5.2 of this EULA as amended herein, Stratus' aggregate liability in connection with this EULA shall in no circumstances exceed a sum equal to the total license fees payable for the licensed program(s) to which the applicable claim or action relates (whether or not such fees have in fact been paid by you). The limitation of liability as modified herein has effect in relation both to any liability expressly provided for under this EULA and to any liability arising by reason of the invalidity or unenforceability of any term of this EULA.

The following provision replaces the first sentence of Section 7.1 of the EULA:-

This EULA sets forth the entire understanding and agreement of the parties regarding the subject matter hereof, and supersedes all prior agreements or representations oral or written regarding its subject matter (other than any fraudulent misrepresentations or misrepresentations as to any fundamental matter, including as to a matter fundamental to a party's ability to perform its obligations under this EULA).

You acknowledge that neither Stratus nor its Affiliates or their agents or representatives have made any representations to you about any Products on which you have relied in deciding to acquire them or to enter into this EULA. You warrant that you have relied on your own skill and judgment or that of your advisers in relation to these matters. Neither party shall have any remedy in respect of any untrue statement made by the other upon which it relied in entering into this EULA (unless such representation was made fraudulently or was a representation as to a fundamental matter, including as to a matter fundamental to a party's ability to perform its obligations under this EULA) and that party's only remedy shall be for breach of contract as provided in this EULA.

HONG KONG

You hereby acknowledge and agree that certain of the provisions of this EULA are expressed to be for the benefit of Stratus and the Affiliates and Licensors, and that Stratus, in entering into this EULA does so not only in its own right, but also as trustee and agent for the Affiliates and Licensors.

IRELAND

The following provision replaces the second sentence of Section 7.2 of the EULA:

You hereby acknowledge and agree that certain of the provisions of this EULA are expressed to be for the benefit of Stratus and the Affiliates and Licensors, and that Stratus, in entering into this EULA does so not only in its own right, but also as trustee and agent for the Affiliates and Licensors.

NEW ZEALAND

You acknowledge that neither Stratus nor its Affiliates or their agents or representatives have made any representations to you about any Products on which you have relied in deciding to acquire them or to enter into this EULA. You warrant that you have relied on your own skill and judgment or that of your advisers in relation to these matters.

Where Stratus or its Affiliate is a supplier (as that term is defined in the Consumer Guarantees Act 1993 ("CGA") of the Products, you confirm that the Products provided by us under or in connection with this EULA are acquired for the purposes of a business (as that term is defined in the CGA) and you agree that the CGA does not apply to the Products supplied by us.

Subject to this subsection, nothing in this warranty is otherwise intended to limit the rights of a “consumer” under the CGA where that Act applies, and the terms of this warranty are to be modified to the extent necessary to give effect to this intention. This provision shall survive termination or expiration of this EULA.

SINGAPORE

The following provision replaces the second sentence of Section 7.2 of the EULA:

You hereby acknowledge and agree that certain of the provisions of this EULA are expressed to be for the benefit of Stratus and the Affiliates and Licensors, and that Stratus, in entering into this EULA does so not only in its own right, but also as trustee and agent for the Affiliates and Licensors.

You acknowledge that neither Stratus nor its Affiliates or their agents or representatives have made any representations to you about any Products on which you have relied in deciding to acquire them or to enter into this EULA. You warrant that you have relied on your own skill and judgment or that of your advisers in relation to these matters.

You confirm that the Products provided by us under or in connection with this EULA are acquired in the course of your business and that you are not “dealing as a consumer” (as that term is defined in the Unfair Contracts Terms Act). Subject to this subsection, nothing in this warranty is otherwise intended to limit the rights of a person “dealing as a consumer”, and the terms of this warranty are to be modified to the extent necessary to give effect to this intention. This provision shall survive termination or expiration of this EULA.