

STRATUS TECHNOLOGIES ftServer® SOFTWARE END-USER LICENSE AGREEMENT

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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.

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 - 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.