

**STRATUS TECHNOLOGIES
CLICK-TO-ACCEPT
SERVICE TERMS AND CONDITIONS
FOR ftServer™ PRODUCTS**

Unless you have a signed master agreement with (i) Stratus Technologies Ireland Limited or an affiliate (“Stratus Technologies”) or (ii) an authorized service partner of Status Technologies, Stratus Technologies will provide the support services as described in this Agreement (“Services”) for the Service Level (**Service Level Table is at the end of this document**) and the ftServer Products listed in your order (“Products”). Stratus Technologies’ obligation to provide these Services is contingent upon your prompt payment of Stratus Technologies’ invoices (not later than 30 days from receipt) and your compliance with your other obligations as listed below. **BY ACCEPTING THE SERVICES DESCRIBED YOU AGREE TO ACCEPT AND BE BOUND BY THESE TERMS AND CONDITIONS (THE “AGREEMENT”).**

1. Definitions:

- 1.1. **“Hardware” or “Parts”** means the Stratus Technologies supplied ftServer systems and any associated components.
- 1.2. **“Software”** means the then-current Stratus Technologies supported versions and components of the Operating System, Stratus Technologies Automated Uptime Layer (“AUL”) Software and other Stratus supported Software.

2. Your Responsibilities: You agree to do all of the following:

- 2.1. Assign and maintain a technically skilled employee as your primary contact with Stratus Technologies.
- 2.2. Maintain the “Covered System(s)” (*the ftServer System(s) listed in your order and service invoice*) in a manner consistent with all applicable product specifications provided by Stratus Technologies or the manufacturer.
- 2.3. Provide Stratus Technologies, at no charge, use of suitable telecommunications equipment to establish data communications over Stratus Technologies secure worldwide **Active Service Network (“ASN”)** that allows Covered Systems to be linked with Partner, Stratus Technologies and other authorized third-party vendors’ Customer Assistance Centers (“CAC”). **Stratus Technologies will not be responsible for its inability to receive and respond to automated problem notifications as a result of, (i) no connection, or (ii) the loss of connection, between the Covered System and the ASN.**
- 2.4. Execute provided diagnostic routines and provide the results to Stratus Technologies.
- 2.5. Access and make appropriate use of Stratus Technologies’ service portal.
- 2.6. Where appropriate, use the Stratus Technologies provided hardened drivers.
- 2.7. Replace Customer Replaceable Units (“CRUs”) under the remote direction of the Stratus Technologies.
- 2.8. Perform housekeeping services, including, but not limited to cleaning, replacing expendable parts and batteries, and performing regular operating checks and providing related supplies.
- 2.9. Ensure that all data on the Covered System(s) is adequately backed-up, duplicated or protected. Stratus Technologies is not responsible for loss of any data or the cost of reconstructing data lost or damaged during the performance of Services.
- 2.10. Install all Software product updates and upgrades as made available or as soon as reasonably possible.
- 2.11. Other than when replacing a CRU (which should be done as soon as possible), **maintain and operate Covered Systems in a fully redundant mode of operation at all times.**
- 2.12. Install all provided security vulnerability patches or Service Packs.

3. Term and Termination: The initial term for Services shall commence as stated on your service quote and shall continue for a period of one (1) year or for the period as otherwise agreed (“Initial Term”). Thereafter, the term for Services shall automatically renew for successive terms of one (1) year each (“Renewal Term”), at Stratus Technologies then current rates, 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.

4. System Eligibility: Systems placed under service within 90 days of initial system shipment are automatically eligible for coverage under this Agreement; after 90 days a system must be inspected and re-certified, at your cost, before becoming eligible.

5. What you Get:

A. Remote System Support and Monitoring of Covered Systems will be provided on a 24x7 basis **through the ASN** and the Stratus Technologies CAC and includes one or more of the following:

- Automatic Hardware problem notification;
- Automatic Parts replacement;
- An initial response from Stratus Technologies’ CAC following receipt of a support case;
- Access to Software downloads, uploads and on-line diagnostic routines; and
- Auto notification initiated by the Covered System relating to Software installations and system reboots.

B. Software Support: Stratus Technologies will provide, as indicated in the table below, unlimited access to the Stratus Technologies CAC for assistance with software problems related to the then currently supported version of the Stratus

Technologies Software and supported non-Stratus Technologies Software identified in your order. Software support may apply to one or more of the following:

Stratus Technologies Software:

- Stratus Technologies technical support engineers will provide problem relief if technically feasible and necessary, available Software Updates and “Bug Fixes” (*a change in the object code intended to correct a defect in the implementation of the Software*) as well as information and assistance related to Software features.
- Stratus Technologies will maintain Supported Stratus Technologies Software such that it will inter operate with the then Stratus Technologies-supported release of the operating system as stated below. **Operating System support excludes expertise and support for routine Operating System problems or for systems administration issues.**

Operating System	Total Assurance	Other Service Levels
<p>Windows or Red Hat Linux Operating System or VMware Operating System</p>	<p>Service for Critical and Serious problems related to the Stratus Technologies supported version of the applicable Operating System.</p> <p>Priority access to Stratus Technologies engineers certified on the applicable operating system, who will work collaboratively with the supplier of the operating system.</p> <p>For customers purchasing Total Assurance with Subscription, Stratus will provide Level 1 support for the applicable third-party operating system purchased (Windows Server, Red Hat Linux, VMWare) according to the service levels defined. Support consists of troubleshooting and resolution for server interoperability issues and problems encountered with general use and administration of the operating system. Stratus Customer Service will further escalate and engage the appropriate operating system provider on behalf of the customer as required.</p> <p>If applicable, Red Hat or VMware Support and Subscription Service <u>must be purchased with the applicable Service Level.</u></p>	<p>Isolate the problem up to the Stratus Technologies Hardware/Software or the Operating System. If the problem pertains to the Operating System, Customer shall be advised to contact its Operating System support provider.</p> <p>If applicable, Red Hat or VMware Support and Subscription Service <u>must be purchased with the applicable Service.</u></p>

C. Service Portal: Stratus Technologies will provide you 24x7 access to the Service Portal, which includes the following:

- Service event call logging and monitoring;
- Stratus Technologies’ technical Knowledgebase;
- Software downloads;
- Product and service notifications

D. Hardware Remedial Services: Depending upon the Service Level purchased, Stratus Technologies will provide one or more of the following:

- Advanced Parts Exchange: We will use commercially reasonable efforts to provide same business day, pre-paid shipment of a replacement part for an automatic or telephone call-in Parts request that is received before 3:00 P.M local Stratus Technologies time. Restrictions may apply in certain countries. Replacement part shipments will include shipping material and a pre-paid freight bill for return of the defective part. **You must return the defective part to us within 14 calendar days from the date of the Parts request, otherwise you will be billed and must pay us the Stratus Technologies list price for the replacement part(s) shipped.** Stratus Technologies assumes all risk of loss or damage to Parts that are in transit to and, provided you properly packed them for transportation, from your location.
- CRU Replacement: You must remove and install CRUs. You may contact Stratus Technologies if you need assistance.

- c. On-Site Hardware Services: Stratus Technologies will provide on-site Hardware support **only** under the following circumstances:
- i. **Field Replaceable Unit** (“FRU”) Replacement on a scheduled basis during local business hours.
 - ii. **Same Day Emergency On-Site Services** if the Covered System experiences a Critical problem and cannot be restored to operational status through remote support means.
 - iii. **Next Business Day On-Site Services** if the Covered System experiences a Serious problem and cannot be restored to operational status through remote service means.
- d. Our obligation to provide On-Site Hardware Services is subject to the following conditions:
- You must provide us with all reasonable assistance and cooperation and must allow us to work without interruption or interference.
 - On-site Services will be provided until such time as the Covered System is operational or as long as reasonable progress is being made.
 - Work may be temporarily suspended if additional Parts or resources are required.
 - Any after hours, weekend, holiday and CRU on-site services requested by you will be provided at our prevailing rates and other charges.
 - **Travel expenses incurred in traveling to and from a Covered System site located more than fifty (50) miles or eighty (80) kilometers from the nearest Stratus Technologies service center will be charged to you and must be paid within thirty (30) days of receipt of Stratus Technologies’ invoice.**

E. Media Retention (optional). You may elect to not return failed disks to Stratus for replacement.

F. RENEWAL OF SERVICES. Service renewal will occur automatically, unless earlier terminated by either party with at least sixty (60) days written notice prior to the expiration of the current term.

Reinstatement of Services.

If Support has terminated because of non-renewal or non-payment, and you desire to reinstate Support, Stratus will reinstate such Support only after completion of all the following:

- 1) At your cost, update the Product to a service ready condition; and
- 2) Pay Stratus: (a) all undisputed invoices, (b) the annual Support fee for at least the next one-year period, and (c) the amount equal to what you would have paid Stratus for the period of time in which the Support has lapsed, and (c) a reinstatement fee.

G. Limitations and Exclusions: This Agreement is of limited duration and coverage. This Agreement extends only to the original end user of the Covered System and only to uses for which the System was designed. Stratus Technologies is not obligated to repair any Covered System, subassembly, or component part which has been damaged as a result of: (i) fire, natural disaster, pandemic, neglect, misuse, or other events or causes of force majeure, (ii) unauthorized modifications, use of non-Stratus Technologies supplied equipment or software, damage resulting from environmental considerations outside the published product specifications, or operating the Covered System in an other than the fully redundant mode.

H. Limited Warranty:

- a. STRATUS WARRANTS THAT THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMAN LIKE MANNER.
- b. 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.

I. LIMITATION OF LIABILITY:

- a. IN NO EVENT SHALL STRATUS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES (INCLUDING WITHOUT LIMITATION LOSS OF USE, DATA, PROFIT OR BUSINESS), WHATEVER THE BASIS OF THE CLAIM OR ACTION (SUCH AS BREACH OF WARRANTY, CONDITION, CONTRACT, INFRINGEMENT OR TORT, INCLUDING WITHOUT LIMITATION STRICT LIABILITY AND NEGLIGENCE OR OTHER LEGAL THEORY) EVEN IF IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE.
- b. TO THE MAXIMUM EXTENT PERMITTED BY LAW, STRATUS’ LIABILITY FOR DAMAGES OR LOSSES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE BASIS OF THE CLAIM OR

ACTION WILL BE LIMITED TO THE AMOUNT PAID TO STRATUS FOR THE SPECIFIC SERVICE OPTON COVERING THE PRODUCT(S) 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.

J. General Terms:

- a. These terms and conditions together with all applicable Service Level descriptions constitute the entire agreement between you and Stratus Technologies regarding the subject matter hereof and supersedes all previous and contemporaneous written and oral representations, proposals and communications, including, without limitation, the terms and conditions of any purchase order or other similar document.
- b. These terms and conditions and all transactions hereunder shall be governed by and enforced in accordance with the laws of the Commonwealth of Massachusetts without giving effect to the choice of law principles thereof.
- c. Location of Service: We will provide Maintenance Services only at the locations(s) specified upon purchase unless we agree otherwise, in writing.
- d. Except as otherwise specified in this Agreement, all Services required of Stratus Technologies under this Agreement shall be provided only during the hours of 9:00 A.M. to 5: 00 P.M, Monday through Friday, local time, excluding locally observed holidays.
- e. **Assignment:** Neither party may assign or transfer any of its rights or obligations under this Agreement except that either party may assign all of its rights and delegate all of its obligations hereunder to one of its affiliates or to the party that acquires all or substantially all of its assets.

SERVICE LEVEL TABLE IS ON THE NEXT PAGE

Stratus Technologies Service Level Table:

	Total Assurance	System Assurance	Extended Platform Support	Platform Support
Service Response Times				
Customer Assistance Center Availability	24x7	24x7	24x7	24x7
Critical: is a condition whereby the Supported Product or the operating environment is substantially inoperable and or severely impacts the customer business operation and no procedural avoidance exists. Some examples include, Stratus Product or Software components is inoperable, hung or unavailable; A problem resulting in data corruption or data loss; Unexpected shutdown or reboot; and Severe performance problem resulting in application instability impacting business operations.				
Initial Response***	30 minutes	1 hour	2 hours	2 local business hours
Remedial Efforts‡	Engineer On-Going Work Effort	Engineer On-Going Work Effort	Engineer On-Going Work Effort	Engineer On-Going Work Effort
Serious: is a condition in which Product functionality or performance problems are experienced with various degrees of business impact. Some examples include, loss of redundancy from a software/hardware failure, system is degraded but not disruptive (no outage); Expired software/hardware license; Transient performance issues.				
Initial Response***	2 local business hours	4 local business hours	6 local business hours	6 local business hours
Remedial Efforts	During local business hours	During local business hours	During local business hours	During local business hours
Moderate: is a condition in which the Product operation is not substantially impacted but does require attention. Appropriate for low impact issues, how to questions and low impact performance issues with a workaround.				
Initial Response***	8 local business hours	8 local business hours	8 local business hours	8 local business hours
Remedial Efforts	As Agreed by Stratus*	As Agreed by Stratus*	As Agreed by Stratus*	As Agreed by Stratus*
Minor: means general usage or information requests, future product enhancements or modifications. There is no impact to the quality, performance or functionality of the Product.				
Initial Response***	12 local business hours	12 local business hours	12 local business hours	12 local business hours
Remedial Efforts	As Agreed by Stratus*	As Agreed by Stratus*	As Agreed by Stratus*	As Agreed by Stratus*
Proactive System Monitoring				
Automatic Parts Replacement	Yes	Yes	Yes	Yes
Access to Software downloads and on-line diagnostic tools	Yes	Yes	Yes	Yes
System report auto notification initiated by system re-boots	Yes	Yes	Yes	Yes
Software Support				
AUL Software Support	Yes	Yes	Yes	Yes
AUL Software Updates/Upgrades	Yes	Yes	Yes	Yes
AUL Software Root Cause Determination	Yes	Yes	No	No
Windows Operating System Support and Updates	Yes	Yes**	Yes**	Yes**
Red Hat Linux Operating System Support and Updates/Upgrades	Yes	Optional****	Optional****	Optional****
VMware Operating System Support and Updates/Upgrades	Yes	Optional****	Optional****	Optional****
Operating System Root Cause Determination	Yes	Not Available	Not Available	Not Available
Part Repair/Replacement				
Advanced Parts Exchange† - Delivery	Next Business Day	Next Business Day	Next Business Day	Next Business Day
On-Site FRU Replacement Services	Scheduled during local business hours only	Scheduled during local business hours only	Scheduled during local business hours only	Scheduled during local business hours only
Same Day Emergency On-Site Service for Critical Problems†	24 Hours	24 Hours	Not Available	Not Available
Next Business Day On-Site Services for Serious Problems†	Local Business Hours	Local Business Hours	Not Available	Not Available
Media Retention	Optional****	Optional****	Optional****	Optional****

<i>Uptime Guarantee†</i>	Yes	No	No	No
* Available during local business hours only. Local business hours mean 8:00 a.m. until 5:00 p.m. local time (excluding Stratus observed holidays).				
** Problem identification and available Updates. Does not include new bug fixes				
*** Initial Response means time from receipt of call to time work commences.				
**** Available for purchase with a Service Level.				
‡ Restoration of system to service/restoration of substantially all system functionality				
† See Uptime Guarantee Addendum below.				

UPTIME GUARANTEE ADDENDUM

Eligibility: Coverage under this Guarantee is available only for Systems, for which Service coverage has been purchased under the **Total Assurance Service Option**, 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 Customer’s 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 and not development purposes.
 - (2) Coverage under this addendum for Systems running the Microsoft Windows Server Operating System, Red Hat Linux Operating System or VMware Operating System that are covered under the Total Assurance Service Option applies only to the extent that a System Failure occurs as the result of the Stratus Hardware, the Stratus ftServer AUL Software, or the Stratus supported version of the applicable operating system.
 - (3) 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.
 - (4) Coverage is limited to the first instance of a problem for the single System which first experienced the System Failure. Coverage does not apply to problems that occur on more than one occasion or that affect more than one System.
 - (5) Coverage does not apply where a System Failure results in connection with (a) any planned event; (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.