

RESOLUTION No. 2007-53-560

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN SERVICE AGREEMENT WITH STRATUS TECHNOLOGIES IRELAND LIMITED, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, previously the City Council authorized the issuance of bonds to be used for capital expenditures in establishing the City of Miami Gardens Police Department, and

WHEREAS, the City Council has approved the purchase of public safety software from Sungard THE, Inc., and

WHEREAS, in order to operate the computer-aided dispatch software which is being supplied by Sungard THE, Inc., it is necessary that the City also purchase a Stratus ftServer to accommodate the CAD software, and

WHEREAS, the cost for the Stratus ftServer is \$33,016.52 with \$9,655.17 for the first year of maintenance, which cost is included in the Sungard THE, Inc., Agreement total cost,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Service Agreement with Stratus Technologies Ireland Limited, a copy of which is attached hereto as **Exhibit A**.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Stratus Technologies Ireland, Limited, and with one to be directed to the Office of City Attorney.

Section 4 EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MARCH 14, 2007.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilwoman Pritchett
SECONDED BY: Councilman Bratton

SKD/teh

VOTE: 5-1

Mayor Shirley Gibson
Vice Mayor Oscar Braynon, II

(Yes) (No)
 (Yes) (No) Excused Absence

Resolution No. 2007-53-560

Councilman Melvin L. Bratton
Councilman Aaron Campbell
Councilman André Williams
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson

<u> x </u> (Yes)	<u> </u> (No)
<u> x </u> (Yes)	<u> </u> (No)
<u> x </u> (Yes)	<u> </u> (No)
<u> </u> (Yes)	<u> x </u> (No)
<u> x </u> (Yes)	<u> </u> (No)



Stratus ftServer™
MASTER SERVICE AGREEMENT
(General Terms and Conditions)

Stratus Technologies Ireland Limited, with offices at Blanchardstown Industrial Park, Blanchardstown, Dublin 15, Ireland ("Stratus") agrees to provide to the City of Miami Gardens Florida ("Customer" or "you") the Services described below under the terms and conditions contained in this Agreement for the Hardware and Software comprising the ftServer system(s) listed in each Service Schedule(s) as may be executed from time to time by the Parties, and attached hereto (collectively "System(s)" and/or "Covered System(s)"). Stratus' obligation to provide Services under any Service Schedule or Optional Service Addendum is 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. 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.

- 1.0 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, Eastern Standard Time, Monday through Friday, excluding locally observed holidays.
- 2.0 Stratus Responsibilities:** During the term of this Agreement, and with respect to each Service Schedule signed by the Parties, Stratus will provide Services in accordance with the terms of this Agreement, the selected Service Level Addendum, and any selected Optional Service Addendum.
- 3.0 Customer's Responsibilities: You agree to do all of the following:**
- (1) For each installation site or System as appropriate, assign and maintain, a technically skilled employee or agent who will serve as your primary contact with Stratus for each Covered System.
 - (2) Provide the names and phone numbers of up to four (4) individuals who are authorized to submit calls under this Agreement.
 - (3) Maintain the Covered System(s) in a manner consistent with all applicable product specifications provided by Stratus or the manufacturer.
 - (4) Provide at no charge to Stratus access to and use of suitable telecommunications equipment needed to establish data communication over the Stratus Service Network.
 - (5) Execute diagnostic routines and provide the results to Stratus.
 - (6) Access and make appropriate use of Stratus' Internet home page for technical support information.
 - (7) Notify Stratus of any configuration changes to the original Covered System configuration.
 - (8) Where appropriate, use the provided Stratus hardened drivers.
 - (9) Replace customer replaceable units under the remote direction of the Stratus CAC, Customer Engineer or Stratus Authorized Service Representative.
 - (10) 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.
 - (11) 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.

- (12) 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.
- (13) Install Software product updates and upgrades as made available.
- (14) Maintain and operate at all times all Covered Systems in a fully redundant mode of operation.

4.0 Service Charges and Price Changes:

- (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 and any associated Optional Service Addenda. 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 annually and are payable as set forth in Section 6.0 below. Upon termination of this Agreement as defined in Section 7.0, Customer shall be refunded any prepaid service charges on a prorated basis, and Customer shall only be liable for service charges up to the date of termination. 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) **Price Changes:** At any time, and from time to time after expiration of a Service Schedule, Stratus may increase the service charges 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 without notice.

5.0 Additional Charges: You may incur additional charges for any Services provided by Stratus for the following reasons:

- (1) because of fire, natural disaster, neglect, misuse, abuse and war or other events or causes of force majeure.
- (2) 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 an other than fully redundant mode.
- (3) 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. We will not charge an additional amount if we are required to travel beyond fifty (50) miles or eighty (80) kilometers of a Stratus service location as a result of our relocation of an existing service location subsequent to the effective date of this Agreement.
- (4) for royalties on Microsoft Windows and other royalty based Software Product Releases, Upgrades, and/or Updates, that we are obligated to pay on your behalf.

6.0 Payment: Customer shall pay all amounts within thirty (30) days of receipt of an invoice. 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. Late payments will bear interest at the maximum rate permitted by applicable law.

7.0 Term and Termination:

- (1) **Term:** Unless otherwise agreed, the initial term for Services shall commence on the Effective date of this Agreement 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.

- (2) **Termination for Non-payment:** Stratus may, at its sole option, terminate Service, a Service Schedule or this Agreement if Customer fails to pay any amount invoiced by Stratus within ten (10) days of the date on which it was due.
- (3) **Termination for Material Breach:** Either Party may terminate a Service Schedule (including any applicable service option Addendum) at any time if the other Party (the "Breaching Party") is in breach of any of its material obligations (each a "Material Breach") under this Agreement regarding that Service Schedule and fails to cure the breach within thirty (30) days Breaching Party's receipt of written notice from the non breaching Party. If the Material Breach affects multiple Service Schedules or the Agreement as a whole, the non-breaching Party shall have the right to terminate this Agreement and /or all affected Service Schedules. "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.
- (4) Any term of this Agreement, which by its nature extends beyond its termination shall remain in effect until fulfilled.

8.0 Warranties:

- (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.
- (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.

9.0 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.(2)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, TORT OR BASED ON INFRINGEMENT), SHALL BE LIMITED TO THE AMOUNT THAT CUSTOMER WOULD HAVE PAID TO STRATUS FOR THE TWELVE (12) MONTHS OF SERVICE FOR THE PRODUCT (S) THAT IS THE SUBJECT OF THE CLAIM.

10.0 Stratus Property: Support software, including diagnostic routines, ASN 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

11.0 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. If you terminate this Agreement, you shall be refunded any prepaid service charges on a prorated basis, and you shall only be liable for service charges up to the date of termination. Failure to reject the change indicates your conclusive acceptance of the change. 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.

12.0 General:

- (1) We will provide Service only at the location(s) specified in the Service Schedule unless we agree otherwise, in writing.
- (2) Neither Party may assign or transfer any of its rights or obligations under this Agreement without the other Parties express written consent. Any attempt by you to make any such assignment or transfer without our express written consent will be deemed void. However, Stratus shall have the right to assign this Agreement in connection with the sale or transfer of all or substantially all of its assets.
- (3) 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.
- (4) 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.
- (5) This Agreement, the transactions occurring and services provided hereunder shall in all respects be governed by and enforced in accordance with the laws of the jurisdiction where our affiliate delivering the Services is organized. If Services are delivered by our affiliate in the United States, the laws of the State of Florida (except for the conflict of law principles thereof) shall govern and control.

13.0 Indemnification. Except with respect to software products licensed under any version of the GNU General Public License Agreement or any other open-source license agreement, Stratus shall defend any claim, brought against Customer so far as it is based on a claim that any product furnished by Stratus hereunder infringes a United States patent or copyright of a third party, and shall indemnify the Customer against all damages and costs finally awarded therein against Customer, 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 Stratus' sole control. If a claim has occurred, or in Stratus' opinion is likely to occur, Customer agrees to permit Stratus, at its option and expense, to procure for Customer the right to continue using the product or to replace or modify the same so that it becomes non-infringing, or, if neither of the foregoing alternatives is reasonably available, remove the product, and refund Customer the purchase price thereof as depreciated or amortized by an equal annual amount over the lifetime of the product taking into account normal accounting practices. Stratus shall have no liability for any claim based upon or arising out of the combination, operation or use of any product supplied hereunder with equipment, devices or software not supplied by Stratus. Stratus has no liability for any claim based upon alteration or modification of any product. The foregoing states the entire obligation of Stratus with respect to infringement or the like.

Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the Customer may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

14.0 Venue. In the event of any litigation between the two parties hereto, venue in Miami-Dade County, Florida.

15.0 Insurance. Stratus shall obtain insurance of the types described below:

- 15.1 Worker' Compensation Insurance – as required by law and Employer's Liability Insurance - \$1,000,000.00. The city of Miami Gardens will not accept filed certificates of exemption forms for Worker's Compensation Insurance.
- 15.2 Fidelity/Dishonesty Coverage - \$500,000.00 per occurrence.
- 15.3 General Liability Insurance - \$1,000,000.00 for each occurrence, general aggregate, personal injury and products/completed operations.
- 15.4 Automobile Liability Insurance for owned vehicles, non-owned vehicles & hired vehicles - \$1,000,000.00 combined single limit.

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A. M. Best's Insurance Guide.

Agreed to by and between the authorized representatives of Customer and of Stratus Technologies Ireland Limited this 14th day of March, 2007.

City of Miami Gardens Florida
Customer

Stratus Technologies Ireland Limited

By: [Signature]

By: GRAINIO KEALY

Name: Danny O. Crew

Name: GRAINIO KEALY

Title: City Manager

Title: FINANCE MANAGER

Date: March 14, 2007

Date: 4th March 2007

Approved as to form and legal sufficiency

[Signature]
Senja K. Dickens, City Attorney

**Stratus ftServer™
SERVICE SCHEDULE**

This Service Schedule is subject to and made a part of the Master Service Agreement between Stratus Technologies Ireland Limited and the City of Miami Gardens Florida. 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 selected Service Level Addendum and any Optional Services selected below for the System (Hardware and Software) listed below.**

1. Effective Date: [Date of installation or other date agreed date] _____.

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:
Address: _____ _____ _____
Phone: ()
Email:
Facsimile: ()

Named Contact Name (1):	Named Contact Name (2):
Address: _____ _____ _____	Address: _____ _____ _____
Phone: ()	Phone: ()
Email:	Email:
Facsimile: ()	Facsimile: ()
Named Contact Name (3):	Named Contact Name (4):
Address: _____ _____ _____	Address: _____ _____ _____
Phone: ()	Phone: ()
Email:	Email:
Facsimile: ()	Facsimile: ()

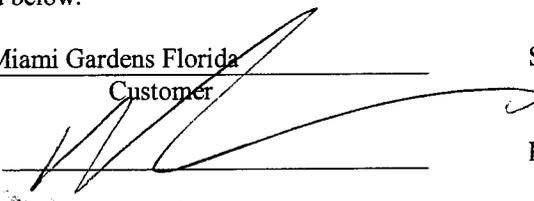
3. Selected Services Level, Optional Services and Service Costs

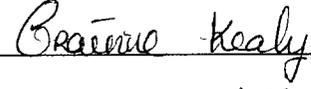
DESCRIPTION OF SERVICES	OPTION SELECTED	SYSTEM(s)			
		Model #	Qty	Site ID	Location
1. SERVICE LEVEL: select only one					
Assured Availability/Plus	X				
Assured Availability Guarantee	INCL	4300 2-way	1		Miami Gardens FL
Collaboration Services					
Assured Availability					
Assured Availability Guarantee					
System Availability					
2. OPTIONAL SERVICES					
	NA				
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)					

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

City of Miami Gardens Florida
Customer

Stratus Technologies Ireland Limited

By: 

By: 

Name: D. Crew

Name: GRAINNE KEALY

Title: City Manager

Title: FINANCE MANAGER

Date: March 14, 2007

Date: 17 March 2007

Approved as to form and legal sufficiency



Sonja K. Dickens, City Attorney



Stratus ftServer™

ASSURED AVAILABILITY PLUS SERVICE LEVEL ADDENDUM

This addendum ("Addendum") is subject to and made a part of the Stratus Service Schedule ("Service Schedule"). 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.

This Addendum describes the specific responsibilities, services, fees, and other terms applicable to the Covered System(s) identified in the above referenced Service Schedule for which you have elected the Assured Availability Plus level of service.

1.0 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. You may report Problems with your System either by telephone or e-mail, depending upon the severity of the Problem.

- (1) Critical: Stratus will acknowledge receipt of the problem within thirty (30) minutes. Stratus will provide CAC services on (i) 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) 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.
- (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.
- (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.

2.0 Problem Definitions

- (1) Critical: A Problem that causes your System to become completely unavailable to users.
- (2) Serious: A Problem that substantially impairs the operation of your System.
- (3) Moderate: A Problem that does not substantially impair System operation.
- (4) Minor: A Problem that does not impair System Operation. It is non-conforming behaviour that can be avoided or ignored.

3.0 Remote System Support and Monitoring: We will provide you 7x24 remote system support and monitoring. You hereby authorize Stratus and its service representatives or agents, the right to access the Covered System(s) and authorize us and them to use remote diagnostic and support tools in connection with providing such Services. We will provide remote support and monitoring of the System through a secure electronic connection between your Covered System and our CAC using the Stratus Active Service Network (ASN) provided you furnish for our use, free of charge, all necessary telephone, data and any other communications equipment we require. All such telephone, data and other equipment must at all times function at optimal levels. Remote System Support means:

- (1) Hardware Problem auto notification. Your System will automatically generate a call to Stratus CAC notifying us of a Hardware failure,
- (2) Automatic parts replacement: our CAC will disburse a part replacement based on your System's automatically generated calls;
- (3) An initial response telephone call back, by our CAC personnel, during Stratus business hours, within 4 hours of receiving an automatically-generated call;
- (4) Access to Software downloads, uploads and on-line diagnostic routines;
- (5) System reports auto notification initiated by and relating to Software installations and system reboots.

4.0 Telephone Support: We will provide you with 7 x 24, unlimited, toll free access, to the Stratus CAC for assistance with software problems related to the Stratus Software 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 patches as well as information and assistance related to Software features.

- (1) Stratus Software: We will maintain Stratus Software such that it will inter operate with the then Stratus supported release of the Windows operating system and any then third-party Supported Software.
- (2) Microsoft Windows Support: For Critical and Serious problems related to the Microsoft Windows operating system kernel, we will provide you priority access to Windows certified Stratus engineers, who will work collaboratively with Microsoft support personnel to address problems traced to a Microsoft product.

5.0 Active Service Manager Services: Customer will have access to the following Stratus' 7x24 electronic support services:

- (1) Service event call logging and monitoring;
- (2) Stratus' technical Knowledgebase;
- (3) Software downloads;
- (4) Product and service notifications; and
- (5) Security management

6.0 Hardware Remedial Services

- (1) **Advanced Parts Exchange - Next Business Day:** We 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 call-in 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 your 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. You must return the defective part 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 your location.
- (2) **On-Site Hardware Support:** If Stratus determines that it is necessary to do so, we will provide on-site Hardware support Services at our cost and expense including labor, parts and material necessary to repair your System.

- (3) Same Day Emergency On-Site Services: We will provide same day emergency on-site service if your System experiences a Critical problem and it cannot be recovered through remote support means.
- (4) Next Business Day On-Site Services: We will provide next business day on-site service if your System experiences a Serious problem and cannot be recovered through remote service means.
- (5) Hardware On-Site Support Services Conditions:
 - (a) 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.
 - (b) Upon arrival at the site, subject to Stratus' reasonable judgment, on-site Services will be provided until such time as 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.
 - (c) Travel expenses incurred in traveling to and from a System site located more than fifty (50) miles [eighty (80) kilometers] from the nearest Stratus service center will be charged to and paid by you.

7.0 Technical Account Management Services: If you purchase Stratus' optional Technical Account Management services, Stratus will assign a named technical account manager ("NTAM") who will have responsibility to coordinate and deliver services to meet your service needs. The NTAM's services will be available weekdays, during local Stratus business hours, excluding local Stratus holidays.



Stratus ftServer™
ASSURED AVAILABILITY PROGRAM GUARANTEE ADDENDUM
for
ASSURED AVAILABILITY PLUS AND ASSURED AVAILABILITY SERVICE LEVEL
COVERED SYSTEMS

This addendum ("Addendum") is subject to and made a part of the Service Schedule ("Service Schedule"). It applies to and is available only for Systems covered under the Assured Availability Plus and Assured Availability Service Addendums. All definitions and terms of the Master Service Agreement and the Service Schedule shall apply to this Addendum. This option must be selected contemporaneously with and at the time of initial purchase of the Covered System. In the event of conflict, the terms of this Addendum shall prevail. The effective date of this Addendum shall be the Effective Date of the referenced Service Schedule.

1. **Service Charge Credit:** If the System described in the referenced 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) use of the Covered Systems exclusively for production purposes as opposed to development purposes.
 - (2) Coverage under this addendum for systems covered under an Assured Availability Plus Service Level Agreement applies only to the extent that System Failure occurs as the result of Stratus Hardware, Stratus Software, the Stratus supported version(s) of the Microsoft Windows Operating System kernel or other Stratus-Supported Software as listed in the referenced Service Schedule.
 - (3) Coverage under this addendum for systems covered under an Assured Availability Service Level Agreement applies only to the extent that System Failure occurs as the result of Stratus Hardware, or Stratus Software. The Stratus supported version(s) of the Microsoft Windows Operating System kernel or other Stratus-Supported Software does not apply for coverage.
 - (4) The Covered Systems must consist exclusively of Stratus-certified hardware components, all of which must have been installed by Stratus or its authorized agent.
 - (5) 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.
 - (6) Coverage is limited to the single System, which experienced the System Failure.
 - (7) Coverage does not apply to problems that occur on more than one occasion or that affect more than one System.
 - (8) 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 force majeure and other events of the type described in section 5.0 of the Agreement.

3. Stratus' Responsibilities:

- (1) Stratus will provide you with notification, in writing or over the Stratus Active Service Network (ASN), 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) Ensure that all changes to System configuration are made by Stratus or its Authorized Service Representative.
- (4) Ensure that Customer neither install nor authorizes the installation on any Covered System of any products, whether hardware or software, that are not Stratus supported products.
- (5) 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.
- (6) 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.