Tool Developer Program Terms

Welcome to the StratusCore Tool Developer Program (the "Developer Program") where Developers may offer their proprietary software applications to users via the StratusCore web-based marketplace platform (including all updates and enhancements thereto and Intellectual Property Rights therein, the "Platform").

1. General.

1.1   Overview. These Tool Developer Program Terms (these "Terms") are entered into by and between StratusCore and the entity or person agreeing to these terms ("you" or the "Developer"). These Terms. These Terms together with any Accelerator Tool Developer Program Agreement (the "Program Agreement") you may have agreed to or will agree to when you registered to become a StratusCore Tool Developer or later, govern your access to and involvement in the Developer Program.

1.2   Effective when you click Accept. These Terms are effective as of the date you click to accept and agree to these terms and click to create an account (the "Effective Date"). If you are an individual accepting on behalf of an entity Developer, you represent and warrant that: (i) you have full legal authority to bind Developer to these Terms; (ii) you have read and understand these Terms; and (iii) you agree on behalf of Developer to the terms of these Terms. If you do not have the legal authority to bind Developer, do not click to accept. These Terms will thereafter remain effective in accordance with Section 8 below. The effective date of the Program Agreement will be as set forth in the Program Agreement, if any.

If you do not agree to these Terms, do NOT click "I Accept" and do not access or otherwise use any of our Services.

1.3   Modifications to these Terms. StratusCore may make changes to these Terms from time to time as StratusCore deems reasonably necessary to address changes in applicable law and/or the StratusCore services offering. StratusCore will provide notice to you, via the email you provide when registering to be a Tool Developer of any material changes to these Terms. Unless otherwise agreed to in writing by StratusCore, changes to these Terms will become effective 30 days after they are posted and if the changes are material, 30 days after notice is emailed to you. Notwithstanding the foregoing, if the changes apply to new functionality or where the failure to make such changes will result in a violation of applicable law, the changes will be effective immediately.

1.4   Offline Terms. Except as set forth in this Section 1.4, your agreement with StratusCore includes these Terms, the Program Agreement plus any other terms agreed to in writing offline and executed by you and StratusCore (an "Offline Agreement") If the provisions of this Agreement conflict with an Offline Agreement, the Offline Agreement will control.

If you signed an Offline Agreement with StratusCore that expressly excludes applicability of all or any portion of these terms to you, then these Terms or the applicable portion herein will not apply to your use and access of the Services

2.   Definitions.

"Developer Application" shall mean each individual host application, plug-in, script(s), workflow or other program that Developer makes available to Users via the Platform, as listed in Schedule 1 to the Program Agreement ("Schedule 1"). For the sake of clarity, each Developer Application shall be considered Developer Software hereunder.

"Developer Intellectual Property" shall mean the Developer Software, the Developer Materials and the Developer Confidential Information.

"Developer Launch" shall be the date that the Developer Software is first made generally commercially available to Users via the Platform in accordance with these Terms and the Program Agreement.

"Developer('s) Software" shall mean any and all of Developer's and its suppliers' computer programs listed in Schedule 1 (including without limitation any third party products licensed by Developer and embedded in or integrated with Developer's Software) and any updates, new versions, and enhancements thereto.

"Developer TOU" shall mean Developer's written end user license agreement and privacy policy.

"Intellectual Property Rights" shall mean all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names,

copyrights, moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may exist anywhere in the world.

"StratusCore Application Fee" shall mean the percentage of User Fees to be retained by StratusCore in accordance with the Program Agreement.

"Users" shall mean end use customers who have registered to obtain access to use the Platform and the Developer Software, and who maintain their compliance with all terms applicable thereto.

"User Fees" shall mean the fees charged a User for access to and use of a Developer Application via the Platform.

3.   Participation in the StratusCore Accelerator Tool Developer Program.

3.1   Delivery; Testing; Launch. Developer shall deliver the Developer Software in accordance with the written delivery and launch instructions provided by StratusCore to Developer. Commencing no later than the Testing Start Date defined in Schedule 1, the parties shall exercise commercially reasonable efforts to test and confirm compatibility of the Developer Software with the Platform. In the event that (i) the parties are unable to mutually confirm compatibility within two weeks of the Testing Start Date, and/or (ii) the Developer Launch fails to occur within 30 days of determination of compatibility, then either party shall have the right to terminate these Terms without liability of any kind to the other party with respect to such termination. Prior to launching in the StratusCore Software Marketplace for commercial use and rental, it is understood that StratusCore has the right and authority to test and trial the Tool Developer's software with its customers in a private or public venue with no cost to the customer or StratusCore to ascertain market feedback and interest.

3.2   License to Users; Satisfaction of Demand. Subject to these Terms, the Program Agreement and all terms applicable to User's access to the Platform, commencing on the Developer Launch, StratusCore shall make the Developer Software available to Users via the Platform. Developer shall make available sufficient licenses of the Developer Software to satisfy User demand.

3.3   Incompatibility. If at any time after the Developer Launch, StratusCore determines that an incompatibility has arisen, or that Developer has violated these Terms or the Program Agreement, then StratusCore shall have the right to, with written notice to Developer and without liability to StratusCore, remove, disable or conceal the Developer Software from the Platform. The parties shall exercise commercially reasonable efforts to mutually resolve the issue within a reasonable period of time. If any such incompatibility remains unresolved 30 days after the date of StratusCore's notice, either party shall have the right, with 30 days' additional written notice to the other party, to terminate these Terms. Under no circumstances will StratusCore be liable, directly or indirectly, for any failure of the Developer Software to be compatible with the Platform, regardless of any action or inaction StratusCore takes in connection therewith.

3.4   Support. StratusCore shall support Developer's use of the Platform in accordance with the support services terms (if any) set forth in the Developer Business Requirements.

3.5   Other Services. If Developer requires any additional StratusCore services not expressly contemplated under these Terms then, subject to StratusCore's agreement to provide such services and to mutual agreement as to the scheduling, nature and extent of such additional services, StratusCore shall provide such additional services at its then current rates for such services.

3.6   Limitations. Except as expressly permitted by these Terms, Developer shall not make the Platform or any software or services incorporated therein available to any third parties as part of any rental, leasing, time-sharing, ASP, or service bureau arrangement, modify, publish, network, rent, lease, loan, transmit, perform, display or in any way exploit the Platform or any services offered thereon. Developer shall not interfere with the Platform or any StratusCore or third-party services offered on the Platform, or the tools incorporated by StratusCore or any third party thereon. Use of the Platform to violate, tamper with or circumvent the security of any computer network, software, passwords, encryption codes, technological protection measures or to otherwise engage in any kind of illegal activity, or to enable others to do so, is expressly prohibited. Developer shall not exploit the Platform or any products or services offered thereon in any unauthorized way, including but not limited to by trespass, burdening network capacity or using the Platform other than for purposes authorized in writing by StratusCore.

3.7   StratusCore Data. Developer hereby grants to StratusCore a non-exclusive, worldwide, royalty free license to link to, store, reproduce, reformat, transmit, display (publicly or privately), perform, provide access to, use, distribute, and to license to third parties Developer Data for the purpose of carrying out StratusCore's rights and responsibilities under these Terms and to create, own and use, in any manner, StratusCore Data. "Developer Data" means all information, data and materials provided directly or indirectly by Developer in connection with

these Terms or through its or User's access to or use of the Developer Software. "StratusCore Data" means data that (i) is created by StratusCore and (ii) incorporates Developer Data without direct or indirect reference to Developer or Users.

3.8   Reservation of Rights. Except to the extent incorporating the Developer Software, the Platform and any and all StratusCore products and services, StratusCore interfaces, the StratusCore Data (defined below) and any other data and reports generated by StratusCore in connection with these Terms and/or operation of the Platform, technical documentation, the StratusCore Confidential Information, and all Intellectual Property Rights incorporated or referenced therein (individually and collectively, the "StratusCore Intellectual Property"), are owned by StratusCore and its suppliers, partners and third party developers.

4.   Developer Products and Services.

4.1   Developer Terms of Use. Developer shall require that every User who accesses the Developer Software via the Platform affirmatively clicks to accept and, throughout the Term, maintains compliance with, the Developer TOU. The Developer TOU shall comply with all applicable laws and regulations and the minimum StratusCore EULA terms set forth in the Developer Business Requirements, as may be updated by StratusCore from time to time with written notice to Developer. Developer must also have a privacy policy that is prominently displayed to Users, and it must adhere to this policy

4.2   User Relationship. Because Users will be joint customers of Developer and StratusCore, when Users access the Developer Software, Developer must make clear the nature of the relationship between the User and Developer, including that Developer's TOU, privacy policy and other legal terms govern the User's use of the Developer Software, StratusCore's legal terms govern the User's use of the Platform and StratusCore may shut down the User's access to the Platform and the Developer Software at any time.

4.3   Unauthorized Use. In the event that Developer becomes aware of any unauthorized use of the Developer Software or the Platform by any User, Developer shall immediately notify StratusCore in writing and shall cooperate with StratusCore to terminate and prevent further occurrences of such unauthorized use. Without limitation of the foregoing, StratusCore shall have the right to suspend or terminate access to the Platform to any User who fails to comply with the Developer TOU and/or StratusCore terms applicable to such User or whose access may violate applicable laws. If Developer commences any legal proceeding in connection with a User's unauthorized or noncompliant use of the Developer Software or the Platform, then StratusCore may, at StratusCore's option and expense, participate in any such proceeding. In addition, Developer and StratusCore shall each provide the other with such authority, information and assistance related to such proceeding as may be reasonably necessary to safeguard StratusCore's interests and Developer's rights under these Terms.

4.4   Computer Viruses. Developer will exercise commercially reasonable efforts to ensure that the Developer Software does not and will not contain any "computer viruses" or other malicious computer code.

4.5   Support. Developer shall provide first line technical support to Users and StratusCore in connection with availability of the Developer Software on the Platform, which shall satisfy the requirements of the Developer Minimum Support Program Requirements set forth in these Terms. Without limitation of the foregoing, such support shall, at minimum, include the same level of support that Developer provides to users who access and/or use the Developer Software outside the scope of these Terms.

4.6   StratusCore License. Developer hereby grants StratusCore a limited, royalty-free license to, during the term of these Terms, use the Developer Intellectual Property for the purpose of carrying out StratusCore's rights and responsibilities under these Terms.

4.7   Developer Materials and Cooperation. Developer shall make available all data, materials, information, technology and assistance as StratusCore may reasonably request in connection with StratusCore's performance of its rights and responsibilities under these Terms, including but not limited to the Developer Launch and ongoing availability of the Developer Software on the Platform and including but not limited to the marketing and other Developer Materials Listed (the "Developer Materials") listed on Schedule 1. In addition, Developer shall carry out its business in a manner that reflects positively on StratusCore and shall not engage in any action or inaction that harms StratusCore, its reputation or business.

4.8   Applicable Laws. Developer acknowledges that it is Developer's exclusive responsibility to analyze laws applicable to availability of the Tool Developer Software throughout the world. Developer shall provide in Schedule 1 a list of all countries or other geographic areas where applicable law or regulation restricts availability of the Developer Software. In addition, during the Term, Developer shall notify StratusCore in writing of any laws or regulations that limit where or to whom Developer Software may be made available. StratusCore shall have no liability in connection with Developer's failure to fulfill its responsibilities under this Section.

5. Co-Marketing.

5.1 Marketing Works. Each party hereby grants the other party the right to use the other's party's name, logo, and supporting quotes (as provided by the other party) in press releases, customer lists, website(s), white papers, case studies, and other sales and marketing materials (collectively, "Marketing Works") for public distribution. Such Marketing Works may describe non-confidential aspects of the Developer's use of the Platform such as speed to launch, effect on business performance, ease of use, and return on investment. Each party shall have the right, reasonably and with advance notice, to require the other party to modify any such Marketing Works which may be published or otherwise issued by the other party.

5.2 Trademarks. Subject to compliance with the other party's written trademark usage guidelines (as may be updated with written notice from time to time), each party shall have the right to use the other party's trademarks listed on Schedule 1, and such other trademarks as may be agreed to by a party from time to time (individually and collectively, "Trademarks"), for co-marketing purposes and in direct connection with making the Developer Software available on the Platform.

5.3 StratusCore Marketing Programs. From time to time, Developer may, in StratusCore's discretion, have the opportunity to participate in other StratusCore marketing programs. StratusCore may, in its sole discretion, discontinue Developer's involvement in any such activities at any time without liability to StratusCore.

6. Confidentiality. Each party agrees to treat the other party's information provided in the performance of this Agreement that is identified as confidential or proprietary or reasonably appears to be confidential or proprietary ("**Confidential Information**") with the same care as it uses with its own confidential information, but no less than a commercially reasonable standard of care, and restrict access to such information to those employees who need specific Confidential Information to carry out its rights and responsibilities under this Agreement. Notwithstanding the foregoing, Confidential Information shall not include information which (i) is or becomes part of the public domain, (ii) is rightfully in the recipient's possession without an obligation of confidentiality prior to receipt from the disclosing party in connection with this Agreement, or (iii) is independently developed by the receiving party.

7. Intellectual Property Restrictions. Neither party shall remove, obscure or alter any notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on the other party's Intellectual Property and shall ensure that every copy of all or any portion of the other party's Intellectual Property includes such notices. Neither party shall decompile, reverse engineer, disassemble or attempt to derive the source code of any software or security components of the other party's Intellectual Property (except as and only the extent any foregoing restriction is prohibited by applicable law). Except for the limited license expressly granted to the other party herein, each party retains all Intellectual Property Rights in and to its products, services and Confidential Information.

8. Term; termination.
8.1 These Terms shall commence on the Effective Date and continue for the Initial Term and any Renewal Term(s) defined in the Program Agreement, except that if Developer and StratusCore do not enter into a Program Agreement, these Terms shall be effective for (individually and collectively the "Term"), unless earlier terminated in accordance with this Section. In the event of a material breach of these Terms or the Program Agreement by either party, the non-breaching party may terminate the Program Agreement and these Terms with two weeks prior written notice in the event that such breach is not cured within the two week notice period. Upon expiration of the Initial Term and any Renewal Term(s), these Terms and the Program Agreement shall automatically renew for additional Renewal(s) Term unless either party terminates with 30 days written notice prior to expiration of the applicable Term. Termination of the Program Agreement shall result in termination of these Terms
8.2 Sections 3.7, 3.8, 4.3, 6, 7, 8.2, and 9-12 shall survive termination of these Terms.

9. Warranties.
9.1 StratusCore Warranties. StratusCore warrants to Developer that StratusCore has all rights necessary to provide Developer access to the Platform and the StratusCore Trademarks for use in accordance with these Terms. Notwithstanding anything set forth in this Section 9.1 or otherwise, Developer acknowledges and agrees that StratusCore will not be responsible for any issues arising from or related to any Developer or third party tools, applications or other facilities, or data, materials or content used or accessed directly or indirectly in connection with the Platform, including but not limited to 3rd party tools installed by Users or other parties in connection with their use or access of the Platform.
9.2 Developer Warranties. Developer warrants to StratusCore that (i) Developer has all rights necessary to license to StratusCore the Developer Intellectual Property for use in accordance with these Terms, and (ii) the

Developer Software and any corresponding Developer services will not violate third party rights or applicable laws and will be performed in a professional manner, in accordance with industry standards.

9.3   Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 3.6 AND 9, AND WITHOUT LIMITATION OF A PARTY'S RESPONSIBILITIES UNDER SECTION 10 AND APPLICABLE LAW, THE PLATFORM AND ALL PRODUCTS AND SERVICES PROVIDED BY STRATUSCORE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USAGE OF TRADE OR COURSE OF DEALING. STRATUSCORE GRANTS NO WARRANTIES TO DEVELOPER'S PARTNER, AFFILIATES OR END USERS, AND DEVELOPER SHALL NOT PASS THROUGH TO ANY THIRD PARTY ANY OF THE WARRANTIES SET FORTH IN THE AGREEMENT

10.   Indemnification. Each party will defend and indemnify the other from and against any and all losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) arising from any claim, action or proceeding (collectively "Claims") brought by any third party arising out of or relating to the other's breach of these Terms and/or the Program Agreement, gross negligence, willful misconduct or failure to comply with applicable law. Each party will give the other prompt written notice of any such Claim and provide the indemnifying party reasonable assistance, at the indemnifying party's expense, in the defense of the Claim. StratusCore shall have the right, with written notice to Developer, to assume primary control of the defense and settlement of any Claim, provided that Developer may participate at its own cost and expense.

11.   Limitation of Liability. EXCEPT IN THE EVENT OF A PARTY'S BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIAL INFORMATION AND FULFILLMENT OF ITS INDEMNIFICATION RESPONSIBILITIES UNDER SECTION 10, (i) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, DATA, OR USE, RELATED TO THESE TERMS, THE PROGRAM AGREEMENT, THE PERFORMANCE OF ANY SERVICES, IMPAIRMENT OF ASSETS, OR USE OF THE SERVICES, WHETHER IN AN ACTION IN CONTRACT, BREACH OF WARRANTY OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, and neither party's liability arising out of these Terms shall in any event exceed Five Hundred Thousand US dollars (US $500,000), regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

12.   General.
12.1   Governing Law. These Terms shall be governed by and interpreted in accordance with the internal laws of the State of Washington. In the event of any controversy or claim arising out of or relating to these Terms, or the breach or interpretation thereof, the parties shall submit to the exclusive jurisdiction of and venue in the Superior Court of King County, Washington, or the Federal District Court for the Western District of Washington, and appeal courts therefrom. Each party hereby waives all defenses of lack of personal jurisdiction and forum nonconveniens.
12.2   Assignment. Developer may not assign any of its rights or responsibilities under these Terms without StratusCore's prior written consent. Subject to the foregoing restriction on assignment by Developer, these Terms shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
12.3   Entire Agreement; Agency. These Terms, including all schedules and web-based terms referenced herein, is the entire agreement between the parties with respect to the subject matter set forth herein. These Terms supersedes all prior or contemporaneous agreements, whether oral or written, of the parties with respect to the subject matter of these Terms. These Terms may not be modified unless expressly agreed to in writing by both parties. Nothing in these Terms or via participation in the StratusCore Accelerator Marketplace creates a legal partnership or agency relationship with StratusCore and Developer agrees not to represent otherwise.
12.4   Waiver; Severability. No waiver of or with respect to any provision of these Terms, nor consent by a party to the breach of or departure from any provision of these Terms, shall in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver shall be effective only in the specific instance and for the purpose for which given. If any provision of these Terms is held to be invalid, such invalidity shall not render invalid the remainder of these Terms or the remainder of which such invalid provision is a part. If any provision of these Terms is so broad as to be held unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

12.5   Notices. Any notice or other communication under these Terms given by either party to the other party shall be deemed to be properly given if given in writing and delivered by (i) US Mail, certified or registered, return receipt requested, or (ii) nationally recognized air express courier (e.g., Federal Express), properly addressed and prepaid, to the recipient at the address identified on the signature page of these Terms. Notice periods shall run from the day following delivery. Either party may from time to time change its address by giving the other party notice of the change in accordance with this Section.

12.6   Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of these Terms, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out of these Terms, such party's reasonable attorneys' and other experts' (including without limitation accountants) fees, costs and expenses.

12.7   Equitable Relief. Each of Developer and StratusCore acknowledges that damages will be an inadequate remedy if the other violates the terms of these Terms pertaining to protection of a party's Intellectual Property Rights or Confidential Information. Accordingly, each of them shall have the right, in addition to any other rights each of them may have, to obtain in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in these Terms.

12.8   Force Majeure. If the performance of these Terms is adversely restricted or if either party is unable to conform to any warranty by reason of any circumstances beyond the reasonable control and without the fault or negligence of the party affected, then, except with respect to obligations to pay Fees, the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

12.9   Captions and Headings. The captions and headings are inserted in these Terms for convenience only, and shall not be deemed to limit or describe the scope or intent of any provision of these Terms.

12.10   Third Party Beneficiaries. Except as expressly set forth in these Terms, no provisions of these Terms are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party. Notwithstanding the foregoing, StratusCore's third party suppliers of products and services delivered in connection with the Platform shall enjoy the same disclaimers of warranty, limitations on liability and similar exculpatory provisions with respect to such products and services as does StratusCore.

12.11   Arm's Length Negotiation. These Terms is the product of an arm's length negotiation between the parties and no party shall be deemed to be the drafter of either all or part of it; therefore, no part of these Terms shall be construed against any party on the basis of that party's identity as a drafter. Each of the parties has signed these Terms after consulting with its counsel.

12.12   Audit Rights. During the Term and for a period of one year after termination of this Agreement, Developer shall maintain, and StratusCore shall have the right with at least 30 days prior written notice to audit, sufficient books and records of Developer related to assessment and collection of the Additional App Fee. If any such audit reveals any under-reporting and/or under-payment related to the Additional App Fee, then Developer will pay the unpaid Additional App Fee, within ten days of StratusCore's invoice. The cost of such audit will be borne by StratusCore, unless the audit identifies an under-reporting of fees by Tool Developer of more than 5%.