Please read this end user license agreement (“EULA”) carefully. This EULA is the exclusive agreement for (i) the use of the Stratus’ everRun brand of software products and associated Documentation (collectively the “Software”) and (ii) the terms and conditions for support for the Software, (the "Support Terms"). The Support Terms can be found at http://www.stratus.com/assets/everRunTandC.pdf.

If you do not agree to all of these terms, do not click the “I ACCEPT” button, or download, install, or use the Software in any manner. If you do not agree to all of these terms you must delete or return the Software (and Documentation), to the company you ordered it from within thirty (30) days after your non-acceptance and request a refund of the license fee you paid (if any) for the Software and any prepaid Software Support.

**Evaluation License.** Software provided to you for no cost evaluation purposes, may be used internally, for the period limited by the License Key (“Evaluation Period”) to evaluate the Software for the purchase of a fee based license. SOFTWARE FOR EVALUATION PURPOSES IS PROVIDED ON AN AS-IS BASIS WITHOUT WARRANTY OR SUPPORT. STRATUS IS NOT LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE DURING THE EVALUATION PERIOD. Promptly following the Evaluation Period, you must return or destroy the Software unless you purchase a license and pay the applicable license fee, in which case your continued use of the Software will be subject to the terms and conditions of this EULA in all respects.

**Definitions.**

Affiliate means a legal entity that is owned by or under common ownership with Stratus Technologies Ireland Limited.

Authorized Reseller means a party authorized by Stratus or by its authorized distributor to market, promote, and sell licenses and/or Support for the Software.

Documentation means the then current end user manuals, installation and operating instructions, on line knowledge base and help files as provided generally to End Users of the Software.

DR License means a license for a disaster recovery software product ("DR Product") purchased from Stratus or its Authorized Reseller.

End User, (also referred to herein as “you”), means the ultimate party acquiring and using the Software for its internal business purposes.

License Key means a specific sequence of numbers and/or letters provided to you by Stratus or your Authorized Reseller that allows you to activate and use the Software.

Licensed System means the single physical computer or a single pair of tightly coupled physical computers operating in a virtual environment on which the Software is first installed or to which the Software has been transferred in accordance with Section 1.2.
License Term means the period that you are authorized to use the Software as set forth in the Order.

License Type means the applicable type of license you have purchased for the Software as more fully described in Stratus’ price list.

“Licensor” means Stratus and the licensors of Third Party Software.

Order means your or your Authorized Reseller’s order or other ordering document for the license and/or support of the Software issued to and accepted by Stratus or its Affiliates. All Orders for the Software and Software Support are subject to the terms and conditions, of this EULA and the Support Terms whether or not referenced on the Order, to the exclusion of all other terms and conditions set forth on the Order or any accompanying documentation.

OSS means third party software that is incorporated into the Software and that is licensed to you under separate license terms, such as under versions of the general public license approved by the Open Source Initiative, or similar open source or free software licenses terms.

“Pass Through Product” means third party software that is not incorporated into the Software and that is licensed to you directly by the Licensor under separate license terms. This Agreement does not cover, and Stratus is not responsible for any warranty, support or other services for Pass Through Products.

Software Support means the remedial, update and other services for the type of services purchased for the Software from Stratus or your Authorized Reseller as more fully described in the Support Terms.

Support Terms has the meaning set forth in the preamble.

Third Party Software means the OSS and Pass Through Products that are licensed to you under separate software license terms.

1. Software License Grant.

1.1 The Licensors retain ownership of the copyrights and other intellectual property rights in the Software and any copies thereof. Subject to your compliance with the terms of this EULA and payment of the applicable license fees, Stratus grants to you, for the License Term, a nonexclusive, personal, non-sublicensable and nontransferable (except as provided below) license to use the Software (i) in object code form, (ii) on a single Licensed System (except as provided below), (iii) only for your internal business purposes, and (iv) subject to the limitations and restrictions associated with the License Type you purchased.

1.2 You may install the Software only on a single Licensed System. You may transfer the Software to another single Licensed System for your internal use; provided that promptly after this transfer you must completely remove the Software from the former Licensed System.

1.3 Each DR License shall permit you to use the Software for your internal business purposes on any number of computer systems that are interconnected with theLicensed System for disaster recovery purposes.

1.4 You may not rent, lease, sublicense, or transfer the Software except as expressly permitted above. You may make a single copy of the Software in object code form for archival or backup purposes, provided the copy retains all proprietary rights notices, restricted rights legends and other notices included with or on the Software.
1.5 You may not reverse engineer, decompile or disassemble the Software or attempt to gain access to the source code except to the extent that the foregoing rights are expressly permitted or by applicable law. To the extent applicable law permits contractual waiver of such rights, you hereby waive your rights to do so.

1.6 The Software may contain programmatic components and subroutines that perform automated collection of system data and/or automated software updating services. System data collected through such programs may be used by Stratus, its Affiliates, subcontractors, and its service delivery partners for the purpose of providing improved Software or remote system services.

1.7 You may use the Software to conduct internal performance testing and benchmarking studies, however you may not, directly or indirectly, publish or publicly disseminate the study results without Stratus’ prior written approval.

1.8 Stratus shall have the right to terminate this EULA if you fail to pay the license fee in full by the due date or if you are not in compliance with any other material provision of this EULA. This license shall automatically terminate at such time as you discontinue the use of the Software on the Licensed System. Upon any termination of this EULA, you will, destroy all copies of the Software promptly after such termination and provide Stratus written certification as to the destruction of the Software and all copies thereof.

2. Support Services. You are required to purchase from Stratus, its Affiliates or their respective Authorized Resellers, Software Support for the initial period of twelve (12) month beginning on the earlier of (i) the date you download or install the Software and (ii) sixty (60) days of the date you purchased the Software license. All Software Support, including Software updates, revisions and improvements, that Stratus or its Affiliates may be obligated to provide you will be provided to you only under the Support Terms, which, can be found at Stratus Technologies Software Service Terms and Conditions. BY ACCEPTING THIS EULA AND/OR ACCEPTANCE OF THE SOFTWARE SUPPORT YOU ARE ACKNOWLEDGING AND AGREEING TO THE SOFTWARE SUPPORT TERMS.

3. Third Party Software.

3.1 The Third Party Software is licensed to you under the applicable Third Party Software licenses. The OSS and their associated licenses and notices can be found at http://download.stratus.com/ee/ee73/third_party_collateral.txt. In addition, the warranty disclaimer and limitation of liability provisions (collectively the “Disclaimers”) set forth in this EULA also apply to the Third Party Software. By using or not uninstalling Third Party Software after their initial installation, you acknowledge and agree to all such Third Party Software licenses and notices, including those provided only in the English language. The OSS EULAs are generally less restrictive than the license grant for the Software in Section 1 of this EULA, and may contain additional rights benefiting you. Except for the Disclaimers, to the extent the terms of this EULA conflict with any of the terms of an OSS license, the terms of the applicable OSS license shall prevail. You acknowledge and agree that (i) Stratus’ provision of the OSS does not imply that the Licensors of the OSS endorse Stratus or the Software and (ii) the Licensors of the OSS do not provide support for the OSS.

3.2 You may obtain a copy of the source code corresponding to the binaries for the OSS by sending email to everRun_sources@stratus.com requesting such source. This offer to obtain a copy of the source code is valid for three years from the date you acquired the OSS from Stratus or its Authorized Reseller.

4. Confidentiality. You acknowledge that the Software embodies trade secrets and proprietary
information of the Licensors ("Confidential Information"). You agree that you will limit disclosure of
and access to the Software only to your employees or other authorized contractors or agents
("Persons") on a need to know basis and only for your internal business purposes. You shall cause
all Persons having access to the Software to be legally bound to preserve the confidential nature of
the Software and comply with the applicable terms of this EULA. You also agree to take all necessary
measures to ensure that access to the Software or any part or copies thereof is safeguarded from
theft and unauthorized use. The obligations under this Section will not apply to any information if you
can demonstrate: (i) was already known to you at the time of receipt; (ii) was disclosed to you by a
third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or
through no fault of yours becomes generally available to the public; or (iv) was independently
developed by you without access to, or use of, the Confidential Information.

5. Limited Warranty

5.1 Stratus warrants that the Software will perform substantially in accordance with the
Documentation for a period of ninety (90) days from the date of receipt. Stratus shall use its
reasonable efforts to remedy any such nonconformance in the Software that is reported to Stratus
during the warranty period. These are your sole and exclusive remedies, and Stratus’ sole obligation
and liability, regarding warranty of the Software.

5.2 Stratus does not represent or warrant that the Software will operate without interruption or will
be error free. The warranty set forth in Section 5.1 does not apply to defects attributable to
(i) modification or alteration of the Software made without the written approval of Stratus, (ii) accident,
neglect, misuse or abuse, or (iii) use of the Software, outside the specifications provided by Stratus.
The Software is not designed, licensed or intended for use in the design, construction, operation or
maintenance of any nuclear facility nor for aviation applications such as but not limited to navigation
or communication of aircraft or ground support equipment and the Licensors disclaim any express or
implied warranty of fitness for such uses. If you use the Software for any of these purposes, you
agree to indemnify and hold the Licensors harmless from any claims and any loss, cost, damage,
expense or liability arising out of or in connection with the use and performance of the Software in
such nuclear or aviation applications.

6. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY.

6.1 Except as expressly set forth in Section 5.1 (or, with respect to licensors of Third Party
Software, except as expressly set forth in the applicable Third Party Software License), there
are no other warranties, express or implied, including any implied warranties of condition,
quality, merchantability, non-infringement and fitness for a particular purpose. All
warranties not stated in Section 5.1 (or, with respect to Licensors of Third Party Software,
except as expressly set forth in the applicable Third Party Software License) are expressly
disclaimed. 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.

6.2 In no event will the Licensors, be liable for any consequential, special, indirect,
punitive, exemplary, lost profits or incidental damages or losses (including without limitation
loss of use, privacy, data, savings or business cost of recovery of data), whatever the basis of
the claim or action (such as breach of warranty, condition, contract, infringement and tort,
including without limitation 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 aggregate liability of the Licensors for damages
or losses for any causes whatsoever, and regardless of the basis of the claim or action, will
be limited to the amount you actually paid for the specific Software that caused the damages or losses. The aggregate liability of the Licensors of the Third Party Software may be further limited as set forth in the applicable Third Party Software license. 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.

7. Infringement Indemnity.

7.1 Stratus will defend any claim brought against you by a third party alleging that the Software, infringes a patent, trademark or copyright, in each case, issued under the laws of the United States, Canada, Mexico, a European Union member country, Australia, China, Hong Kong, India, Japan, Korea, New Zealand, Singapore, South Africa, and will indemnify you against all damages and costs finally awarded against you to such third party by a court of competent jurisdiction or agreed to in a settlement, provided that you give Stratus (i) prompt written notice of the claim, (ii) reasonable information and assistance for the defense and/or settlement of such claim, and (iii) sole control of the defense and/or settlement of such claim. Stratus shall not have any liability or obligations for any settlement made or costs you incur without its prior written approval.

7.2 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 procure for you the right to continue using the Software or to replace or modify the Software so that it is non-infringing. If in Stratus’ sole judgment neither of the foregoing alternatives is commercially practicable, Stratus may terminate this license, and refund to you (i) the Software use fees, less an amount for depreciation calculated on a straight line basis over a three (3) year useful life beginning on the date the Software was delivered to you, and (ii) any pre-paid service fee attributable to related Software Support to be delivered after the date such Software Support is stopped. Nothing in this Section 7.2 will relieve Stratus of its obligation under Section 7.1 to defend and indemnify you, provided that you replace the allegedly infringing Software upon Stratus making alternate Software available to you and/or you discontinue using the allegedly infringing Software upon receiving notice from Stratus terminating the affected license.

7.3 The Licensors will not have any liability for any claim based upon or arising out of (i) the combination, operation or use of the Software with any equipment, devices or software not supplied by Stratus, (ii) the alteration or modification of any Software without Stratus’ written approval, (iii) use of the Software for a purpose or in a manner for which the Software was not designed or (iv) use of any older version of the Software when use of a newer revision made available to you, would have avoided the infringement. To the full extent permitted by law, this Section 7 states the entire liability of the Licensors and your sole and exclusive remedy, and Stratus’ sole obligation and liability, with respect to any claim of the infringement of any third party intellectual property rights.

8. Import / Export. You acknowledge that the Software is of U.S. origin and may contain certain export-controlled programs and subroutines (including without limitation cryptographic software components) that 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 must not export, import, directly or indirectly, re-export, divert, or transfer the Software or any materials, items, technical data or technology relating to the Software or any direct product thereof to any destination, company or person restricted or prohibited by the Import and Export Controls or for any purpose prohibited by these laws.

9. U.S. Government Users. The Software and accompanying documentation is deemed to be
10. **General Terms and Conditions.**

10.1 This EULA (including the Third Party Licenses and the Support Terms) constitutes the entire agreement between you and the Licensors 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 Order. You acknowledge that the terms and conditions of this EULA are intended to inure to the benefit of all 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 the Licensors accept their third party beneficiary rights and that such rights will be deemed irrevocable.

10.2 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.

10.3 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 the 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.

10.4 Except to the extent expressly stated herein, this EULA will in all respects be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts of 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 Software. You consent to the jurisdiction and venue of the State and Federal courts located in and for Suffolk County, Massachusetts, U.S.A. for the resolution of any dispute arising under or related to this EULA or the Software; provided, however, that the Licensors may initiate legal action in any court with jurisdiction over you for the enforcement of this EULA.

10.5 Electronically transmitted signatures or other indications of acceptance shall have the full force and effect of an original signature.

**LINKS TO:**

- Support Terms: Stratus Technologies Software Service Terms and Conditions