STRATUS TECHNOLOGIES
SERVICE TERMS AND CONDITIONS
FOR everRun SOFTWARE

Unless you have signed a separate services agreement for the Software with Stratus Technologies Ireland Limited or its Affiliate ("Stratus" or "we"), or a Stratus authorized Service Provider, this Service Agreement sets forth the exclusive terms and conditions under which Stratus is willing to make available to and provide you with Services for the Software. Our obligations to provide Software Services are subject to your compliance with all of your obligations under this Agreement and the Stratus end user license agreement (EULA) for the Software. In providing Software Services Stratus may engage the services of its Affiliates and/or sub-contractors. The foregoing however shall not relieve Stratus of its primary obligations under this Agreement. **BY ACCEPTING THE SERVICES FOR THE SOFTWARE, YOU AGREE TO ACCEPT AND BE BOUND BY THESE TERMS AND CONDITIONS (THE "AGREEMENT").**

1. **Definitions:**
    1.1. **"Active Service Network" or "ASN"** is a secure worldwide network that allows the Software to be linked with Customer's, Stratus' and other authorized third-party vendors' customer support centers.
    1.2. **"Affiliate"** means a legal entity that is owned by or under common ownership with Stratus Technologies Ireland Limited.
    1.3. **"Reseller"** means an independent third party authorized by Stratus to sell Software licenses and Software Services.
    1.4. **"Customer" (or "you"),** means the ultimate licensee of the Software that has ordered Software Support.
    1.5. **"Software"** means GA versions of everRun® Software. For purposes of Service entitlement, Software includes any third party software (including open system software) that is incorporated into the Software as supplied by Stratus.
    1.6. **"Bug Fix"** means a change in the object code of the Software intended to correct a defect in the implementation of the Software.
    1.7. **"Update"** means a GA release of the Software that contains all applicable Maintenance Releases produced over a specific period of time. Update releases are identified by the first digit following the decimal point (e.g. Software 2.1).
    1.8. **"Generally Available" (or "GA")** means versions or releases of the Software that are generally available for license to the general public, as determined by Stratus.
    1.9. **"Incident"** means a single issue or problem that cannot be broken down into subordinate problems. If a problem consists of subordinate problems, each subordinate problem shall be considered a separate Incident.
    1.10. "**Maintenance Release**" means a GA release of the Software that contains only Bug Fixes. Maintenance releases are identified by the SECOND digit following the decimal point (e.g. Software 2.01).
    1.11. **"Major Release"** means a GA release of the Software containing significant changes required to enable the Software to support new operating system functionality or hardware platforms. Major Releases are identified by a change in the FIRST digit preceding the decimal point (e.g. Software 3.0.
    1.12. **"Pass Through Product"** means any Software licensed to you directly by the Licensor and that is not incorporated into the Software. This Agreement does not cover, and Stratus is not responsible for any warranty, support or other services for Pass Through Products. All such support and/or service for Pass Through Products are provided directly by the licensor.
    1.13. **"Services"** means all applicable activities to be undertaken by Stratus. The Services purchased by you from Stratus, (or its Affiliates, or its Authorized Resellers), applies only to the Software running on hardware related products and/or Operating Systems that are listed on Stratus' Compatibility Matrix, which you can obtain from the Stratus web site at http://www.stratus.com/Services/CustomerSupport.

2. Term and Termination. Unless otherwise agreed, the initial term for Support shall commences on the earlier of (i) the date you activate the Software by downloading the Software (ii) or sixty (60) days from delivery of the Software license key. Thereafter, Service shall automatically renew for successive terms of one (1) year each unless either party notifies to the other in writing of its intention not to renew at least sixty (60) days prior to the commencement of the next term. Customer may also terminate this Agreement at any time after the first year by giving Stratus sixty (60) days prior termination written notice. Stratus may terminate this Agreement with immediate effect in the event that you have breached one or more of your material obligations under this Agreement or the Software EULA, and fail to cure that breach within thirty (30) days of receipt of written notice thereof from Stratus.

3. <u>Your Responsibilities:</u> You agree to do all of the following:
  3.1. Properly train your personnel in the use and application of the Software and any computers on which the Software is used;
  3.2. Provide at no charge to Stratus, access to and use of suitable telecommunications equipment needed to establish data communications over the Stratus ASN;
  3.3. Execute diagnostic routines and provide the results to Stratus;
  3.4. Access and make appropriate use of Stratus' internet home page for technical support information; and
  3.5. Install Software Updates as made available to you. .

4. <u>Payment:</u> You agree to pay all service and other fees due hereunder within thirty (30) days of your receipt of Stratus' invoice, together with any applicable taxes resulting from any transaction hereunder that Stratus is obligated to pay on your behalf, except that you will not be liable for taxes based on Stratus' net income. You agree to pay Stratus, on demand, interest at the rate of one and one half percent (1.5%) per month or the maximum legal rate in effect, whichever is less, on all overdue amounts together with any collection and attorney's fees and expenses Stratus may incur in the collection of such overdue amounts. **Prepaid service fees are non-refundable in the event of any termination of this Agreement unless due to Stratus' uncured material breach.**

5. <u>Reinstatement of Services:</u> If Software Services have terminated because of non-renewal or non-payment, and you desire to reinstate Services, Stratus will reinstate such Services only after completion of all of the following; (i) updating of the licensed Software to a serviceable revision and (ii) Pay Stratus; (a) all undisputed outstanding invoices, (b) the annual Service fee for at least the next one year period, and (c) a reinstatement fee equal to the amount you would have paid Stratus for the period of time in which the Services have lapsed.

6. <u>Software Services:</u> In consideration of the payment of the Service fees. Stratus will provide you the following Services during the coverage hours as listed in the table below. These Services are only available for each of (i) the GA Maintenance Release of a GA Major Release and (ii) most recent Maintenance Release of the Major Release immediately preceding the GA Maintenance Release.

  6.1 <u>Customer Assistance Center ("CAC") Access:</u> Access to Stratus' CAC for (i) assistance with Software problems related to a supported version of the Software, (ii) problem diagnosis, (iii) available Software Updates and Bug Fixes; and (iv) information and assistance related to Software features;

6.2 <u>Remote Support and Monitoring</u>:   Secure remote support and monitoring of the Software on a 7x24 basis through the ASN and the CAC of one or more of the following; (i) automatic calls to our CAC notifying us of Software problems; (ii) Access to on-line diagnostic routines; and (iii) Software report auto notification initiated by and relating to Software installations and reboots.;

6.3 <u>Updates:</u> Generally available Updates for the Software

6.4 <u>Web Portal</u>: 7x24 access to the Stratus Web Portal. Such access includes (i) Service Issue Logging and Monitoring, (ii) technical Knowledge base; (iii) Frequently Asked Questions and (iv) electronic Software downloads.

7. **Service Options:** You may purchase additional packaged Services from Stratus for the Software. Descriptions of Stratus' current Service Options are available on the Stratus Website at http://www.stratus.com/Services/SupportServices.

8. **Limitations and Exclusions:** This Agreement is of limited duration and coverage. This Agreement extends only to the original purchaser of the Software.

9. **Software Purchased From Authorized Resellers**. If You purchase a Software License and Software Services from a Reseller, you acknowledge and agree that (i) your payment obligations for the Services are subject to the provisions of the agreement between you and the Authorized Reseller and (ii) in all other respects the terms and conditions of this Agreement apply exclusively to delivery and use of the Services notwithstanding anything to the contrary in the agreement with your Reseller, your purchase order(s) for the Software license and the Software Services or any other agreement. Stratus shall not be liable to you for any representations, warranties, indemnities or damages beyond those set forth in this Agreement. You acknowledge that to the extent Stratus does not receive payment for the Services from the Reseller, Stratus shall have the right to suspend or terminate Services until such payment is received. Stratus shall have no liability to you for such Service suspension or termination and you shall look solely and exclusively to the Reseller for any and all damages and liability associated with such Service suspension or termination.

10. **Limited Warranty.** STRATUS WARRANTS THAT THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMAN LIKE MANNER. THE FOREGOING WARRANTIES ARE IN LIEU OF AND STRATUS DISCLAIMS 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 THE SOFTWARE OR THAT ALL SOFTWARE ERRORS OR DEFECTS WILL BE CORRECTED.

11. **LIMITATION OF LIABILITY.**
11.1.   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.

11.2.　　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 PREVIOUS TWELVE (12) MONTHS OF SERVICE FOR THE EVERRUN SOFTWARE THAT IS THE SUBJECT OF THE CLAIM. 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.

12. <u>General Terms</u>:

12.1. This Agreement constitutes the entire agreement between you and Stratus 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. This Agreement 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.

12.2.　Assignment: Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempt to make any such assignment or transfer without the other party's express written consent will be deemed void. Notwithstanding the foregoing, 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.

Stratus Technologies
everRun Software Service Table

Software Support	*Service Coverage*
Unlimited Incident Support via Web/Phone	7x24
Service Response Times	
Critical *(A condition whereby the everRun Software is substantially inoperable in a production instance with a high impact to a majority or all users of the site.)*	
Initial Response**	1 hour Available 7x24
Serious *(A condition whereby a substantial everRun Software feature noted in the documentation is not working or a substantial everRun Software-related performance problem exists which causes the everRun Software to perform poorly, impacting many or all users.)*	
Initial Response**	4 Hours During Local Business Day
Moderate *(A condition whereby the everRun Software malfunctions in deviation from the documentation but user operation is not substantially impacted. Also appropriate for "How-to Questions" and other low impact everRun Enteprise Software inquiries.)*	
Initial Response**	1 Local Business Day*
Minor (*A condition whereby a cosmetic everRun Software or documentation error exists and user operation is not substantially impacted. Also appropriate for everRun Software enhancement requests.)*	
Initial Response**	1 Local Business Day*
Remote Support & Monitoring	7x24
everRun Software Maintenance Releases/Upgrades	Yes
Web Based Support Portal Access	7x24

* "Local Business Day" is defined as 8:00am to 5:00pm, Monday through Friday, excluding Stratus observed holidays.

** "Initial Response" is defined as acknowledgement of receipt of a problem.

Services are provided in the English language.