### REVISION 2013-MARCH-26

STRATUS TECHNOLOGIES AVANCE SOFTWARE END-USER LICENSE AGREEMENT

Stratus Avance © Software is a trademark or registered trademark of Stratus Technologies Bermuda Ltd., in the United States and/or other countries.

PLEASE READ THIS END USER LICENSE AGREEMENT ("EULA") CAREFULLY. THIS EULA CONSTITUTES THE LEGAL AGREEMENT BETWEEN YOU AND STRATUS (i) FOR THE USE OF THE STRATUS AVANCE SOFTWARE ("AVANCE SOFTWARE") AND ANY COLLATERAL SOFTWARE (AS HEREINAFTER DEFINED) AND THEIR ASSOCIATED MATERIALS AND DOCUMENTATION AND (ii) TO THE TERMS AND CONDITIONS FOR THE PROVISION OF SUPPORT FOR THE SOFTWARE (THE "STRATUS SUPPORT TERMS"). THE AVANCE SOFTWARE, COLLATERAL SOFTWARE AND THEIR ASSOCIATED MATERIALS AND DOCUMENTATION ARE COLLECTIVELY REFERED TO AS THE "SOFTWARE".

COLLATERAL SOFTWARE MEANS ANY PORTION OF THE SOFTWARE THAT IS LICENSED TO YOU UNDER ITS OWN SEPARATE LICENSE TERMS, SUCH AS THE GPL LICENSE, OPEN SOURCE LICENSE OR OTHER THIRD PARTY LICENSE AGREEMENT. THESE SEPARATE LICENSE TERMS CAN BE FOUND BELOW (THE "COLLATERAL SOFTWARE"). IN ADDITION, THE WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS EULA SHALL ALSO APPLY TO THE COLLATERAL SOFTWARE. FOR THE COLLATERAL SOFTWARE, IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF THIS EULA AND THE COLLATERAL SOFTWARE TERMS, THE ORDER OF PRECEDENCE SHALL BE AS FOLLOWS: THE WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY PROVISIONS OF THIS EULA, THE COLLATERAL SOFTWARE TERMS AND THIS EULA.

BY CLICKING THE "I ACCEPT" BUTTON OR BY DOWN LOADING, INSTALLING OR USING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF AND AGREE TO BE BOUND BY AND COMPLY WITH THIS EULA, THE COLLATERAL SOFTWARE TERMS AND THE STRATUS SUPPORT TERMS POSTED ON STRATUS' WEB SITE AT https://ftquote.stratus.com/AvanceServicetandc.pdf IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU SHOULD NOT CLICK THE "I ACCEPT" BUTTON AND YOU CANNOT COPY, INSTALL, USE OR OTHERWISE HAVE ANY RIGHT IN AND TO ANY OF THE SOFTWARE.

YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS BINDING EULA, THE COLLATERAL SOFTWARE TERMS AND THE STRATUS TECHNOLOGIES SERVICE TERMS AND CONDITIONS FOR AVANCE SOFTWARE ON YOUR OWN BEHALF, OR ON BEHALF OF THE ENTITY THAT YOU REPRESENT.

### 1. Software License.

1.1 Stratus and its licensors ("Licensors") shall own all title, copyright and other intellectual property rights in and to the Software and any copies. Stratus grants You the following rights for the Software, conditioned on your compliance with all the terms

#### and conditions of this EULA.

- 1.2 You acknowledge that You have only a non-exclusive, personal, nontransferable license, without the right to sublicense, to use only one copy of the Software, in object code form only, on a single Licensed System and only for your internal business purposes. You may transfer the Software to another single Licensed System for your internal use. After this transfer you must completely remove the Software from the former Licensed System. As used herein Licensed System means the 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 as permitted above. You may not rent or lease the Software, 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.
- 1.3 You may not reverse engineer, decompile or disassemble the Software or attempt to gain access to the source code for the Software except to the extent that the foregoing rights are expressly permitted in Section 4 below or by applicable law. To the extent applicable law permits contractual waiver of such rights, You hereby waive your rights to do so.
- 1.4 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.
- 1.5 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.
- 1.6 Stratus shall have the right to immediately 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 return to Stratus or its designee, or if instructed by Stratus to do so, destroy all copies of the Software promptly after such termination and provide Stratus written certification as to the destruction or return of the Software and all copies thereof.
- 2. Evaluation License. If the Software has been provided to You for no cost evaluation purposes, You may use the Software internally only to evaluate the suitability of the Software for licensing on a for-fee-basis and only for a period of sixty (60) days from your receipt of the Software (the "Evaluation Period") unless otherwise agreed to by Stratus in writing. Stratus has no duty to provide support to You during the Evaluation Period. SOFTWARE FOR EVALUATION PURPOSES IS PROVIDED TO YOU ON AN AS-IS BASIS WITHOUT WARRANTY OF ANY KIND; STRATUS SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF, OR IN CONNECTION WITH, THE USE OR PERFORMANCE OF THE SOFTWARE. Except as provided above, and excluding Sections 3, 6, and 7 of this EULA, the terms of this EULA will apply to the Software during the Evaluation Period. Promptly following the Evaluation Period, You must return or destroy the Software as provided in Section 1.6 above, unless You

purchase a license and pay Stratus the applicable license fee for the Software, in which case your continued use of the Software will be subject to the terms and conditions of this EULA in all respects.

- 3. Support Services. You are required to purchase from Stratus Technologies Ireland Limited ("Stratus Ireland") or its authorized Avance services reseller ("Avance Reseller"), support services for the Software for the initial twelve (12) month period beginning on the date of your installation of the Software. All such support services will be provided to You under the separate document Stratus Technologies Service Terms and Conditions for Avance Software (the "Stratus Support Terms") posted on Stratus' web site at https://ftquote.stratus.com/AvanceServicetandc.pdf BY CLICKING THE "I ACCEPT BUTTON" YOU ARE ACKNOWLEDGING AND AGREEING (I) THAT ALL SUPPORT SERVICES FOR THE SOFTWARE WILL BE PROVIDED TO YOU BY STRATUS IRELAND (OR ITS REPRESENTATIVE) AND (II) TO THE STRATUS SUPPORT TERMS WHETHER SUCH SUPPORT SERVICES ARE PURCHASED FROM STRATUS IRELAND OR AN AVANCE RESELLER AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY AGREEMENT BETWEEN YOU AND THE AVANCE RESELLER. YOU ALSO AGREE THAT ANY UPDATES, UPGRADES, NEW VERSIONS OR RELEASES OF THE SOFTWARE YOU RECEIVE ARE LICENSED TO YOU UNDER THE TERMS AND CONDITIONS OF THIS EULA.
- 4. Collateral Software. All Collateral Software is made available and is licensed to You under the separate Collateral Software Terms and the Warranty Disclaimer and Limitation of Liability provisions of this EULA. BY CLICKING THE "I ACCEPT" BUTTON YOU ARE ALSO ACCEPTING THESE TERMS. For Collateral Software licensed to You under the GNU General Public License as published by the Free Software Foundation ("GPL"), You may obtain a copy of the source code corresponding to the binaries for such Collateral Software by downloading the applicable source file for the Collateral Software from the appropriate link below. This offer to obtain a copy of the source code is valid for three years from the date You acquired the Collateral Software subject to GPL from Stratus or its authorized representative.
- 5. Confidentiality. You acknowledge that the Software embodies trade secrets and proprietary information and materials of Stratus and its Licensors ("Confidential Information"). You agree that You will limit disclosure and access to the Software only to your employees or other authorized contractors or agents on a need to know basis and only for your internal business purposes. You agree that all employees and other authorized persons having access to the Software will be legally bound to preserve the confidential nature of the Software and comply with the other 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. Except as set forth herein, or as may be permitted in writing by Stratus, You may not provide, transmit or otherwise make available, the Software or any part or copies thereof to any other persons or third party.
- 6. Limited Warranty. Stratus warrants that the media on which the Software is provided to You by Stratus (or its reseller) will be free from defects in material and workmanship and that the Software will substantially conform to the applicable Stratus Software published specifications in effect at the time of shipment. These warranties will remain in effect through the date of installation or thirty (30) days from the date of shipment, whichever occurs first. Stratus will, at its option and expense, repair or replace such media that it finds to be defective and shall use its reasonable

efforts to remedy any such nonconformance in the Software that You report in writing to Stratus during the warranty period. These are your sole and exclusive remedies, and Stratus' sole obligation and liability, regarding warranty of the Software.

Stratus does not represent or warrant that the Software will operate without interruption or will be error free. This warranty does not apply to defects attributable to (1) modification or alteration of the Software made without the prior written approval of Stratus, (2) accident, neglect, misuse or abuse, or (3) exposure to conditions outside the range of the environmental, power and operating 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 Stratus and its 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 Stratus harmless from any claims for 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.

7. Warranty Disclaimer and Limitation of Liability. EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA, NEITHER STRATUS, ITS AFFILIATES, SUBSIDIARIES NOR THE LICENSORS MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OFCONDITION. QUALITY. MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. STRATUS, ITS AFFILIATES, SUBSIDIARIES AND THE LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES NOT STATED IN THIS EULA. 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.

IN NO EVENT WILL STRATUS, ITS AFFILIATES, SUBSIDIARIES OR THE BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL DAMAGES OR LOSSES (INCLUDING WITHOUT LIMITATION LOSS OF USE, PRIVACY, DATA, PROFIT, 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 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 LIABILITY OF STRATUS, ITS AFFILIATES, SUBSIDIARIES AND THE LICENSORS FOR DAMAGES OR LOSSES FOR ANY CAUSE 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. 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.

8. Import / Export. You acknowledge that the Software is of U.S. origin, 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 agree that You will 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 "commercial computer software" and "commercial computer software documentation," respectively, pursuant to U.S. Government procurement regulations, DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software by the U.S. Government shall be governed solely by the terms of this EULA. If for any reason You are a U.S. Government agency that the foregoing provisions do not legally apply, You hereby acknowledge that the Government's right to use, modify, reproduce, release, perform, display or disclose the Software are "Restricted Rights" as defined in CFR Section 52.227-19(c)(1) and (2) (June 1987) or DFARS 252.227-7014(a)(14) (June 1995), as applicable.

# 10. General Terms and Conditions.

10.1 This EULA (including the Collateral Software Terms and the Stratus Support Terms) constitutes the entire agreement between You and Stratus 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 purchase order. You acknowledge that the terms and conditions of this EULA are intended to inure to the benefit of Stratus' affiliates, subsidiaries and 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 Stratus' affiliates, subsidiaries and 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 itself and its 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 and 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 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 Stratus, its affiliates, subsidiaries and the Licensors may initiate legal action in any court with jurisdiction over You for the enforcement of this EULA.

# COLLATERAL SOFTWARE LINK TO COLLATERAL SOFTWARE TERMS

ruby

http://www.ruby-lang.org/en/about/license.txt

DRBD

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

Xen

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

CentOS

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

TCL

http://www.tcl.tk/software/tcltk/license.html Java/JVM

http://www.java.com/en/download/license.jsp

javax.servlet

http://www.java.com/en/download/license.jsp

Java Mail API

http://www.java.com/en/download/license.jsp

Java Tar Package

http://www.trustice.com/java/tar/

Apache

http://www.apache.org/licenses/LICENSE-2.0

Apache Tomcat

http://www.apache.org/licenses/LICENSE-2.0

apache-commons-httpclient

http://www.apache.org/licenses/LICENSE-2.0

ietty

http://www.apache.org/licenses/LICENSE-2.0

apache-commons-logging

http://www.apache.org/licenses/LICENSE-2.0

log4i

http://www.apache.org/licenses/LICENSE-2.0

apache-jakarta-chain

http://www.apache.org/licenses/LICENSE-2.0 apache-commons-codec

http://www.apache.org/licenses/LICENSE-2.0

Apache: XML-Security Library 1.4.2

http://www.apache.org/licenses/LICENSE-2.0

JTA

http://javatelnet.org/space/License+Agreement

Linux-HA

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html http://www.gnu.org/licenses/old-licenses/lgpl-2.1.html

Javascript: prototype

http://dev.rubyonrails.org/browser/spinoffs/prototype/trunk/LICENSE?format=raw

Javascript: scriptacioulous

http://wiki.github.com/madrobby/scriptaculous/license

Javascript: webfx

http://www.apache.org/licenses/LICENSE-2.0

Icons: Radiant (Basic + Database)

http://stockicons.com/legal

PHP5

http://www.php.net/license/3\_01.txt

**TightVNC** 

http://www.gnu.org/copyleft/gpl.html

JRobin

http://oldwww.jrobin.org/license.html

Antlr

http://www.antlr.org/license.html

OpenIPMI

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

xml-rpc

http://www.apache.org/licenses/LICENSE-2.0

iaxb

https://glassfish.dev.java.net/public/CDDL+GPL.html

XenAPI

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

jewelcli

http://jldap

https://olex.openlogic.com/licenses/oldap-v2\_8-bsd-like-license and

https://olex.openlogic.com/licenses/oldap-v2 0 1-license

# llip

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

# inotify-tools

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

#### vtun

http://www.gnu.org/licenses/old-licenses/gpl-2.0.html

# bnx2x: Broadcom 10G NIC driver

http://www.broadcom.com/support/ethernet\_nic/driver-sla.php?driver=NX2-10-2008-x8 6-64www.apache.org/licenses/LICENSE-2.0

IBM Advanced Settings Utility (ASU)

http://www-947.ibm.com/support/entry/portal/docdisplay?brand=5000004&Indocid=TOOL-ASU

# SUPPORT TERMS LINK TO SUPPORT TERMS

Stratus Technologies Service Terms and Conditions for Avance Software https://ftquote.stratus.com/AvanceServicetandc.pdf