

**STRATUS TECHNOLOGIES  
SERVICE TERMS AND CONDITIONS  
FOR AVANCE SOFTWARE**

Unless you have signed a Stratus Avance Services Agreement (General Terms and Conditions) with Stratus Technologies Ireland Limited (“Stratus” or “we”), Stratus will provide the maintenance services described below for the Stratus Avance Software listed in your order. Stratus’ obligation to provide these Services is contingent upon your prompt payment of Stratus’ invoices and your compliance with your other obligations as listed below. **BY ACCEPTING THE SERVICES DESCRIBED ON YOUR INVOICE AND YOUR PURCHASE ORDER, 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 Avance Software to be linked with Customer’s, Stratus’ and other authorized third-party vendors’ customer support centers.
- 1.2. “Avance Software”** means the then current Stratus supported version of software owned by Stratus or its licensors that is available for license to the general public under the label “Avance”.
- 1.3. “Bug Fix”** means a change in the object code of the Avance Software intended to correct a defect in the implementation of the Avance Software.
- 1.4. “Generally Available”** means that Stratus has made the Avance Software (or particular version or revision level of the Avance Software) available for license to the general public.
- 1.5. “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.
- 1.6. “Maintenance Release”** means a release of Avance Software that contains Bug Fixes identified by the THIRD digit following the Avance Software name.
- 1.7. “Major Release”** means a release of Avance Software identified by the FIRST digit following the Avance Software name. A Major Release will generally be created when significant changes to the Avance Software are required to enable it to support new OS functionality or hardware platforms.
- 1.8. “Service(s)”** means all activities prescribed in this Agreement to be undertaken by Stratus. Service applies only to the Avance Software running on hardware related products that are listed on Stratus’ Compatibility Matrix, which you can obtain from your local Stratus office.
- 1.9. “Avance Software Updates”** means a release of Avance Software that contains all applicable Maintenance Releases produced over a specific period of time.

**2. Your Responsibilities:** You agree to do all of the following:

- 2.1. Properly train your personnel in the use and application of the Avance Software and any computers on which the Avance Software is used.
- 2.2. Provide at no charge to Stratus, access to and use of suitable telecommunications equipment needed to establish data communications over the Stratus Active Service Network; and
- 2.3. Execute diagnostic routines and provide the results to Stratus; and
- 2.4. Access and make appropriate use of Stratus’ internet home page for technical support information; and
- 2.5. Install Avance Software Updates as made available.

**3. Payment:** You agree to pay all amounts within thirty (30) days of your receipt of Stratus’ invoice. You also agree to pay an amount equal to any applicable taxes resulting from any transaction under this Agreement 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 incurs 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.**

**4. Reinstatement of Avance Services:**

4.1. If Avance Services have terminated because of non-renewal or non-payment, and Customer desires to reinstate Services, Stratus will reinstate such Services only after completion of all of the following:

4.1.1. Updating of the licensed Avance Software to a serviceable revision; and

4.1.2. Customer pays Stratus: (a) all undisputed invoices, (b) the annual Service fee for at least the next one year period, and (c) a reinstatement fee equal to the amount Customer would have paid Stratus for the period of time in which the Services have lapsed.

**5. Avance Software Support:** We will provide access to the Stratus Customer Assistance Center for assistance with Avance Software problems related to the currently supported version of the Avance Software. Stratus technical support engineers will provide problem diagnosis, available Avance Software Updates and Bug Fixes as well as information and assistance related to Avance Software features. We will provide this service during the coverage hours as listed in the table below.

**6. Remote Support and Monitoring** is provided on a 7x24 basis through the ASN and the Stratus CAC and includes one or more of the following:

6.1. Avance Software problem auto notification. The Avance Software will automatically generate a call to Stratus' Customer Assistance Center notifying us of an Avance Software failure; and

**6.2.** Access to on-line diagnostic routines; and

6.3. Avance Software report auto notification initiated by and relating to Avance Software installations and reboots.

**7. Avance Software Version Support:**

7.1. We will provide service for the then current Maintenance Release of the then current Major Release and the last Maintenance Release of the immediately preceding Major Release of the Stratus Avance Software.

7.2. We will provide Avance Software Updates to the Avance Software, which are made generally available.

**8. Web Portal:** We will provide 7x24 access to the Stratus Avance Web Portal, which includes Service Issue Logging and Monitoring, the Stratus technical Knowledgebase, Frequently Asked Questions and Electronic Avance Software Downloads.

**9. Limitations and Exclusions:** This Agreement is of limited duration and coverage. This Agreement extends only to the original purchaser of the Avance Software and only to uses for which the Software was designed.

**10. Purchases From Avance Services Resellers.** If You purchase Services from a party other than Stratus (an "Avance Reseller"), You acknowledge and agree (i) that your obligations regarding payment for the Services is subject to the payment provisions of the agreement between You and the Avance Reseller (the "Avance Reseller Agreement") and (ii) that in all other respects the provisions of this Agreement, shall apply to delivery and use of the Services notwithstanding anything to the contrary in the Avance Reseller Agreement 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 Avance 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 suspension or termination of Services and You shall look solely and exclusively to the Avance Reseller for any and all damages and liability associated with such suspension or termination of Services.

**11. 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 Avance Software 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.

**12. Limited Warranty.**

12.1. STRATUS WARRANTS THAT THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMAN LIKE MANNER.

12.2. 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 AVANCE SOFTWARE OR THAT ALL AVANCE SOFTWARE ERRORS OR DEFECTS WILL BE CORRECTED.

**13. LIMITATION OF LIABILITY.**

13.1. 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.

13.2. 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 AVANCE 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.

#### **14. General Terms:**

- 14.1. 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.
- 14.2. Term and Termination: The initial term for Services shall commence on the date mutually agreed by the parties 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. Customer may also terminate this Agreement at any time after the first year by giving sixty (60) days prior written notice of termination to Stratus. 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 and failed to cure that breach within thirty (30) days of receipt of written notice thereof from Stratus.
- 14.3. 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 Avance Service Table:**

	<b><u>Avance Service Coverage</u></b>
<b><i>Avance Software Support</i></b>	
Unlimited Incident Support via Email/Web/Phone	7x24
<b>Service Response Times</b>	
<i>Critical (Avance Software is completely unavailable to users)</i>	
Initial Response**	1 hour Available 7x24
<i>Serious (Avance Software is substantially impaired)</i>	
Initial Response**	4 Local Business Hours
<i>Moderate (Avance Software is not substantially impaired)</i>	
Initial Response**	24 Local Business Hours*
<i>Minor (Avance Software is not impaired. Non-conforming behavior that can be avoided or ignored.)</i>	
Initial Response**	24 Local Business Hours*
<b><i>Remote Support &amp; Monitoring</i></b>	7x24
<b><i>Avance Software Maintenance Releases/Upgrades</i></b>	Yes
<b><i>Web Based Support Portal Access</i></b>	7x24

\* "Local Business Hours" are 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.