

PENGUIN SOLUTIONS

SOFTWARE END-USER LICENSE AGREEMENT

Last revised: July 22, 2026

This End-User License Agreement ("EULA"), including the Product Schedule and all applicable Third-Party Software licenses incorporated herein, is entered into between Penguin Solutions (PENG) Ireland Limited ("Penguin Solutions") and the individual or entity licensing the Software ("End User" or "you"). This EULA constitutes the exclusive agreement for the licensing and use of the Software, unless End User and Penguin Solutions have executed a separate master software products agreement or other written license agreement that expressly governs the licensing of such Software, in which case the terms of that separate agreement shall govern to the extent of any conflict with this EULA.

BY DOWNLOADING, INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE, END USER ACKNOWLEDGES THAT END USER HAS READ, UNDERSTOOD, AND AGREES TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS EULA. By installing the Software, registering the applicable system or unit, retaining the Software for more than ten (10) days, or otherwise using the Software, End User agrees to be bound by this EULA. IF END USER IS ACCEPTING THIS EULA ON BEHALF OF A COMPANY, ORGANIZATION, OR OTHER LEGAL ENTITY, THE INDIVIDUAL ACCEPTING REPRESENTS AND WARRANTS THAT HE OR SHE HAS FULL AUTHORITY TO BIND THAT ENTITY AND ITS AFFILIATES TO THE TERMS OF THIS EULA. IN SUCH EVENT, "END USER" AND "YOU" SHALL REFER TO THAT ENTITY AND ITS AFFILIATES.

IF END USER DOES NOT AGREE TO ALL TERMS AND CONDITIONS OF THIS EULA, END USER SHALL NOT DOWNLOAD, INSTALL, COPY, OR USE THE SOFTWARE. End User must cease all use of the Software and return or destroy all copies of the Software and Documentation within ten (10) business days following the date on which End User first received the Software. Upon timely return or certified destruction of the Software, End User may request a refund of any license fees actually paid to Penguin Solutions for the unused Software. Refund requests must be submitted in writing to Penguin Solutions within the same ten (10) business day period.

This EULA applies to the following Software product lines, each of which is subject to the product-specific terms set forth in the Product Schedule attached hereto:

- (a) Stratus everRun Software
- (b) Stratus ftServer Software
- (c) Stratus VOS Software
- (d) Stratus ztC Edge Software
- (e) Stratus ztC Endurance Software

The terms and conditions that follow constitute the master agreement body of this EULA, containing universal terms applicable to all Software product lines. The Product Schedule appended to this EULA sets forth per-product variables, including the Licensed System definition, License Term, transfer rights, and other product-specific provisions. In the event of a conflict between the master agreement body and the Product Schedule, the Product Schedule shall govern with respect to the applicable Software product line.

1. DEFINITIONS

As used in this EULA, the following capitalized terms shall have the meanings set forth below:

- (f) "Affiliate" means any legal entity that is owned by, or is under common ownership with, Penguin Solutions (PENG) Ireland Limited. For purposes of this definition, "ownership" means direct or indirect control of more than fifty percent (50%) of the voting interests of the entity.
- (g) "Authorized Reseller" means a party authorized by Penguin Solutions or its authorized distributor to market, promote, and sell licenses and/or Support for the Software.
- (h) "Confidential Information" means all technical, financial, and business information disclosed by a party ("Discloser") to the other party ("Recipient"), including trade secrets, know-how, techniques, data, specifications, software, programs, documentation, training materials, product roadmaps, business plans, business operations and systems information, strategies, and information marked or identified as confidential or proprietary, or which, given the nature of the information and circumstances surrounding disclosure, should reasonably be understood to be confidential.
- (i) "Documentation" means the then-current end user manuals, installation and operating instructions, online knowledge base, and help files as provided generally to end users of the Software.
- (j) "License Key" means a specific sequence of numbers and/or letters provided to End User by Penguin Solutions or its Authorized Reseller that allows End User to activate and use the Software.
- (k) "License Term" means the period during which End User is authorized to use the Software, as set forth in the applicable Order or Product Schedule.
- (l) "Licensed System" means the specific computer system(s) or unit(s) on which the Software is authorized to be installed, as defined in the Product Schedule for each product line.
- (m) "License Type" means the applicable type of license End User has purchased for the Software as more fully described in Penguin Solutions' then-current price list or the applicable Order.
- (n) "Licensor" means Penguin Solutions and the licensors of Third-Party Software.
- (o) "Open-Source Software" or "OSS" means third-party software that is incorporated into or distributed with the Software and that is licensed under separate open source or free software license terms, such as GPL, LGPL, Apache, BSD, MIT, or similar licenses approved by the Open-Source Initiative.
- (p) "Order" means an ordering document for the license and/or support of the Software issued to and accepted by Penguin Solutions or its Affiliates. All Orders are subject to this EULA whether or not referenced in the Order.
- (q) "Pass Through Product" means third-party software that is not incorporated into the Software and that is licensed to End User directly by the licensor thereof under separate license terms.
- (r) "Product Schedule" means the schedule attached to this EULA setting forth product-specific terms for each Software product line.
- (s) "Published Software" means software owned by Penguin Solutions and licensed under the GNU General Public License version 2 or such other open-source license as Penguin Solutions may elect.

(t) "Stratus" refers to the brand name under which certain Software products are marketed by Penguin Solutions. References to "Stratus" in product names, Documentation, or the Product Schedule refer to products of Penguin Solutions.

(u) "Software" means the software identified in the applicable Product Schedule and Order, including any updates, supplements, corrections, or bug fixes provided under this EULA, comprised of: (a) Unpublished Software owned by Penguin Solutions and/or its licensors and licensed under this EULA; (b) Published Software; and (c) Open-Source Software.

(v) "Third Party Software" means the Open-Source Software, Published Software, and Pass-Through Products that are licensed under separate software license terms.

(w) "Unpublished Software" means proprietary software owned by Penguin Solutions and/or its licensors and licensed under the terms of this EULA.

2. SOFTWARE LICENSE GRANT

2.1 License Grant. Subject to the terms of this EULA and payment of all applicable license fees, Penguin Solutions grants End User a nonexclusive, personal, non-sublicensable, and nontransferable (except as provided in Section 2.3) license to use the Software: (i) in object code form only; (ii) on the Licensed System identified in the applicable Product Schedule; (iii) solely for End User's internal business purposes; and (iv) subject to the limitations and restrictions associated with the License Type purchased by End User, as applicable, as set forth in the applicable Order and Product Schedule. No license is granted under this EULA to any trademark, service mark, or trade name of any Licensor or its Affiliates.

2.2 Restrictions. End User shall not, and shall not permit any third party to: (a) sell, lease, license, rent, loan, or otherwise transfer the Unpublished Software or Documentation; (b) permit any third party to access or use the Unpublished Software; (c) permit any third party to benefit from the use or functionality of the Unpublished Software via timesharing, service bureau, or other arrangement; (d) reverse engineer, decompile, or disassemble the Software or attempt to gain access to the source code, except to the extent expressly permitted by applicable law (and to the extent applicable law permits contractual waiver of such rights, End User waives such rights); (e) modify or create derivative works based on the Unpublished Software; (f) reproduce the Unpublished Software or Documentation except as expressly permitted herein; (g) remove, alter, or obscure any proprietary notices or labels on the Software or Documentation; or (h) use the Unpublished Software for any purpose other than as permitted under this EULA. (i) use any portions or files of the Unpublished Software except in connection with the entire Software program as provided under this EULA. End User may make one (1) copy of the Software in object code form for archival or backup purposes, provided that such copy retains all proprietary rights notices contained on the original.

2.3 Transfer. End User may permanently transfer the Software and all rights under this EULA only as part of a one-time sale or transfer of the Licensed System on which the Software is installed, and only to a transferee who agrees in writing to be bound by all terms of this EULA. Upon such transfer, End User shall (i) transfer all copies of the Software with the Licensed System, (ii) retain no copies of the Software, (iii) assign all rights and delegate all obligations under this EULA to the transferee, and (iv) promptly notify Penguin Solutions in writing of the transferee's name and address and the date of transfer. End User shall not otherwise transfer or assign the Software or this EULA without the prior written consent of Penguin Solutions. Product-specific transfer rights or restrictions are set forth in the Product Schedule.

2.4 Benchmarking. End User may use the Software to conduct internal performance testing and benchmarking studies; however, End User may not directly or indirectly publish or publicly disseminate the results of any such study without the prior written approval of Penguin Solutions.

2.5 Automated Data Collection. The Software may contain programmatic components and subroutines that perform automated collection of system data or automated software updating services. System data collected through such programs may be used by Penguin Solutions, its Affiliates, subcontractors, and service delivery partners for the purpose of providing improved Software or remote system services. Such system data may include hardware configuration, system performance metrics, software version information, and error diagnostic data. Such system data does not include personal data, End User's business data, or the content of End User's files or communications.

2.6 Updates and Upgrades. All updates, supplements, corrections, bug fixes, upgrades, and other revisions and improvements to the Software provided by Penguin Solutions or its Affiliates (whether provided under Software Support or otherwise) will be deemed Software for purposes of this EULA and will be subject to all terms and conditions hereof. If Penguin Solutions provides End User with an update to any Software furnished under this EULA, End User agrees to destroy the previous version of the Software within a reasonable time and use only the updated version.

3. THIRD PARTY SOFTWARE

3.1 Open-Source Software and Published Software are not subject to the license restrictions set forth in Sections 2.1 and 2.2 of this EULA. Each item of Open-Source Software and Published Software is instead licensed under the terms of the applicable open-source license accompanying such software. Nothing in this EULA limits End User's rights under, or grants End User rights that supersede, the terms of any applicable open-source license. The warranty disclaimer and limitation of liability provisions contained in Sections 5, 6, and 7 of this EULA also apply to all Third-Party Software. Except for those disclaimers and limitations, to the extent the terms of this EULA conflict with the terms of any applicable open source license, the applicable open source license shall prevail with respect to the relevant Third-Party Software.

3.2 If permitted or required by the applicable open-source license, End User may obtain a copy of the source code corresponding to the binaries for the Open-Source Software by contacting Penguin Solutions at the address or contact point specified for the applicable product line in the Product Schedule. This offer is valid for three (3) years from the date End User acquired the Software or for the period specified in the applicable open source license, whichever is longer. End User may be charged a nominal fee to cover the cost of physical media and distribution, to the extent permitted by the applicable open source license.

3.3 End User acknowledges that Third-Party Software may be subject to license terms that impose obligations or restrictions different from those in this EULA. End User is solely responsible for reviewing and complying with all applicable Third-Party Software license terms. Penguin Solutions makes no representation or warranty regarding the completeness, accuracy, or applicability of any Third-Party Software license terms, and Penguin Solutions shall have no liability arising from End User's failure to comply with such terms.

3.4 To the extent any Third-Party Software license requires Penguin Solutions to make available certain notices, attributions, or license texts, such notices, attributions, and license texts are either included with the Software, referenced in the Documentation, or available upon request at the contact points identified in the Product Schedule.

3.5 Pass Through Products are licensed to End User directly by the applicable third-party licensor under separate license terms. This EULA does not cover, and Penguin Solutions shall have no responsibility or liability for, any warranty, support, or other services for Pass Through Products. End User acknowledges that (i) Penguin Solutions' provision of Open-Source Software does not imply that the licensors of such software endorse Penguin Solutions or the Software, and (ii) the licensors of Open-Source Software do not provide support for the Open-Source Software through Penguin Solutions.

4. CONFIDENTIALITY

End User acknowledges that the Software embodies trade secrets and proprietary information of the Licensors ("Confidential Information"). End User agrees that it will limit disclosure of and access to the Software only to its employees or other authorized contractors or agents on a need-to-know basis and only for End User's internal business purposes. End User shall ensure that the Software is not used for any purpose other than as authorized under this EULA. End User 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. End User also agrees 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 4 will not apply to any information End User can demonstrate: (i) was already known to End User at the time of receipt without any obligation of confidentiality; (ii) is or became generally available to the public through no act or omission of End User; (iii) was rightfully received by End User from a third party without restriction on disclosure; or (iv) was independently developed by End User without use of or reference to the Confidential Information. If End User is compelled by a valid order of a court, governmental body, or regulatory authority to disclose Confidential Information, End User may make such disclosure, provided that End User gives Penguin Solutions prompt written notice of such compelled disclosure to the extent legally permitted, so that the Licensors may seek a protective order or other appropriate remedy.

5. LIMITED WARRANTY

5.1 Software Warranty. Penguin Solutions warrants to End User that the Software will perform substantially in accordance with the Documentation for a period of thirty (30) days from the date of delivery or installation, whichever occurs first (the "Warranty Period"). If End User reports in writing a nonconformance with this warranty during the Warranty Period, Penguin Solutions shall use reasonable efforts to remedy such nonconformance. The foregoing constitutes End User's sole and exclusive remedy, and Penguin Solutions' sole obligation and liability, with respect to any warranty claim relating to the Software.

5.2 Exclusions. Penguin Solutions does not warrant that the Software will operate without interruption or be error-free. The warranty set forth in Section 5.1 does not apply to any defect or nonconformance attributable to:

- (x) modification or alteration of the Software without the prior written approval of Penguin Solutions;
- (y) accident, neglect, misuse, or abuse; or
- (z) use of the Software outside the specifications provided by Penguin Solutions or in a manner not authorized under this EULA.

5.3 Prohibited Uses. The Software is not designed, licensed, or intended for use in the design, construction, operation, or maintenance of any nuclear facility. The Software is not designed, licensed, or intended for use in aviation applications, including navigation or communication of aircraft or ground support equipment. Penguin Solutions and its Licensors disclaim any express or implied warranty of fitness for such uses. If End User uses the Software for any such purpose, End User agrees to indemnify and hold the Licensors harmless from and against any and all claims, losses, costs, damages, expenses, or liability arising out of or in connection with such use, including reasonable attorneys' fees.

6. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

6.1 EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, NEITHER PENGUIN SOLUTIONS, ITS AFFILIATES, SUBSIDIARIES, NOR THE LICENSORS MAKE ANY OTHER WARRANTIES, EXPRESS

OR IMPLIED, INCLUDING ANY WARRANTIES OF CONDITION, QUALITY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES NOT STATED IN SECTION 5.1 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 APPLICABLE LAW.

6.2 EXCEPT FOR DAMAGES OR LOSSES RELATED TO DEATH OR BODILY INJURY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PENGUIN SOLUTIONS, ITS AFFILIATES, SUBSIDIARIES, NOR THE LICENSORS SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, PRIVACY, DATA, PROFIT, SAVINGS, BUSINESS, OR COST OF RECOVERY OF DATA OR PROCUREMENT OF SUBSTITUTE PRODUCTS), 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. The aggregate liability of the licensors of Third-Party Software may be further limited as set forth in the applicable Third-Party Software license.

6.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF PENGUIN SOLUTIONS, ITS AFFILIATES, SUBSIDIARIES, AND THE LICENSORS FOR DAMAGES OR LOSSES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE BASIS OF THE CLAIM OR ACTION, SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY END USER FOR THE SPECIFIC SOFTWARE THAT CAUSED THE DAMAGES OR LOSSES.

6.4 BECAUSE SOME JURISDICTIONS DO NOT ALLOW A LIMITATION ON THE DURATION OF AN IMPLIED WARRANTY OR THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO END USER.

6.5 No action arising out of or in connection with this EULA may be brought by either party more than eighteen (18) months after the cause of action has arisen, except for an action for non-payment.

7. INFRINGEMENT INDEMNITY

7.1 Defense and Indemnification. Penguin Solutions will defend any claim brought against End User by a third party alleging that the Software infringes a patent, trademark or copyright in End User's jurisdiction, and will indemnify End User against all damages and costs finally awarded by a court of competent jurisdiction or agreed to in a settlement approved by Penguin Solutions, provided that End User: (i) gives Penguin Solutions prompt written notice of the claim; (ii) provides reasonable information and assistance for the defense and settlement of the claim; and (iii) grants Penguin Solutions sole control of the defense and settlement. Penguin Solutions shall have no liability for any settlement made, or any costs incurred by End User, without Penguin Solutions prior written approval.

7.2 Remedies for Infringement. If a claim of infringement has occurred, or in Penguin Solutions' opinion is likely to occur, End User agrees to permit Penguin Solutions, at its sole option and expense, to: (a) procure for End User the right to continue using the Software; or (b) replace or modify the Software so that it becomes non-infringing. If, in Penguin Solutions' sole judgment, neither alternative is commercially practicable, Penguin Solutions may terminate this license and refund to End User (i) the Software license fees paid, depreciated on a straight-line basis over a three (3) year useful life beginning on the date the Software was delivered to End User, and (ii) any prepaid service fees attributable to Software Support to be delivered after the date such Software Support is stopped.

7.3 Exclusions. 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 Penguin Solutions; (ii) the alteration or modification of the Software without Penguin Solutions' prior written approval; (iii) use of the Software for a purpose or in a manner for which it was not designed or authorized under this EULA; or (iv) use of an older version of the Software when use of a newer revision, made available to End User by Penguin Solutions, would have avoided the infringement; or (v) the operation or use of any third-party software independent of its combination or use with the Software provided under this EULA.

7.4 Sole and Exclusive Remedy. To the full extent permitted by applicable law, this Section 7 states the entire liability of the Licensors, and End User's sole and exclusive remedy, with respect to any claim of infringement of third-party intellectual property rights.

8. TERM AND TERMINATION

8.1 Term. This EULA shall remain in effect for the License Term specified in the applicable Order or Product Schedule, unless earlier terminated in accordance with this Section 8.

8.2 Penguin Solutions shall have the right to terminate this EULA if End User fails to pay the license fee in full by the due date. Without prejudice to any other rights, Penguin Solutions shall also have the right to refuse to ship or deliver any additional Software if End User fails to pay any relevant license fees or other charges when due. End User's rights under this EULA will automatically terminate if End User breaches any of its material obligations under this EULA and fails to cure such breach within thirty (30) days after receiving written notice thereof from Penguin Solutions. In addition to termination, Penguin Solutions will have the right to pursue any other remedies available to it under law or in equity.

8.3 Discontinuance of Use. For Software licensed on a perpetual basis, this EULA shall automatically terminate if End User discontinues use of the Software on the Licensed System for more than six (6) consecutive months, unless the applicable Product Schedule provides otherwise.

8.4 Effect of Termination. Upon termination or expiration of this EULA for any reason, End User shall promptly: (i) return to Penguin Solutions, or destroy, all copies of the Software and Documentation in End User's possession or control, including all archival or backup copies; and (ii) provide Penguin Solutions with written certification confirming that all such copies have been returned or destroyed. Termination shall not relieve End User of any obligation to pay fees accrued prior to the effective date of termination, nor shall it excuse End User from fulfilling any other obligations that accrued prior to termination. For Software licensed on a subscription or term basis, the License Key may be deactivated by Penguin Solutions upon expiration of the License Term. If End User wishes to continue using the Software after expiration, End User must renew the license and pay the applicable renewal fees prior to expiration of the then-current License Term.

8.5 Survival. Any provision of this EULA that, by its nature, is intended to survive termination or expiration shall so survive, including, without limitation, Sections 1 (Definitions), 3 (Third Party Software), 4 (Confidentiality), 6 (Warranty Disclaimer and Limitation of Liability), 7 (Infringement Indemnity), and 10 (General Terms and Conditions).

9. EXPORT CONTROLS

9.1 Each party shall comply with all applicable export control laws and regulations, including the U.S. Export Administration Regulations (EAR, 15 C.F.R. Parts 730-774), the International Traffic in Arms Regulations (ITAR, 22 C.F.R. Parts 120-130), and the economic sanctions regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC, 31 C.F.R. Part 500 et seq.), as well as any comparable laws and regulations of other applicable jurisdictions.

9.2 Neither party shall export, re-export, transfer, or release, directly or indirectly, any technical data, Software, product, or service provided under this EULA to any prohibited or restricted destination, entity, or individual without first obtaining all required government authorizations. End User shall not remove or export from the United States, or allow the export or re-export of, the Software or any direct product thereof in violation of any restrictions, laws, or regulations of the United States or any other applicable jurisdiction.

9.3 Each party represents and warrants that: (i) it is not located in, under the control of, or a national or resident of any country or territory subject to U.S. comprehensive sanctions (including, as of the effective date of this EULA, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk regions of Ukraine, or any successor designations); (ii) it is not listed on any U.S. government denied-party, blocked-persons, or restricted-entity list, including the Specially Designated Nationals and Blocked Persons List maintained by OFAC, the Denied Persons List or Entity List maintained by the U.S. Department of Commerce Bureau of Industry and Security, or any equivalent list maintained by another applicable governmental authority; and (iii) it will not use the Software for any purpose prohibited by applicable export control laws, including the development, design, manufacture, or production of nuclear, chemical, or biological weapons, or missile technology.

9.4 End User shall, upon request, provide Penguin Solutions with all information reasonably necessary to verify compliance with this Section 9, including end-use certificates or other documentation required by applicable governmental authorities.

9.5 The obligations set forth in this Section 9 shall survive any termination or expiration of this EULA.

10. GENERAL TERMS AND CONDITIONS

10.1 Entire Agreement. This EULA, including the Product Schedule and any applicable Third-Party Software licenses, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous and contemporaneous written and oral representations, proposals, negotiations, and communications, including the terms of any Order or purchase order. The terms and conditions of this EULA are intended to inure to the benefit of Penguin Solutions' Affiliates, subsidiaries, and the Licensors as third-party beneficiaries, any and all of which will be entitled to invoke and enforce such terms against End User. End User further acknowledges that such third-party beneficiary rights, once accepted, shall be deemed irrevocable.

10.2 Assignment. Neither party may assign or transfer any rights or delegate any obligations under this EULA without the other party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Penguin Solutions may assign this EULA to an Affiliate or to a successor following a Change of Control. "Change of Control" means the acquisition of fifty percent (50%) or more of the voting securities of a party, a business combination involving a party, or the transfer of substantially all of a party's assets. Any unauthorized assignment or transfer shall be void. This EULA shall bind and benefit the parties permitted successors and assigns.

10.3 Severability. If any provision of this EULA is determined to be invalid or unenforceable, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties. All other provisions shall remain valid and enforceable.

10.4 Waiver. No failure or delay in exercising any right or remedy under this EULA constitutes a waiver, nor does any partial exercise preclude further exercise thereof.

10.5 Force Majeure. Neither party will be responsible for any failure to perform its obligations under this EULA due to circumstances beyond its reasonable control, including acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, fire, flood, or accidents.

10.6 Equitable Remedies. End User agrees that Penguin Solutions will be entitled to all legal and equitable remedies otherwise available to protect the intellectual property, proprietary rights, and Confidential Information of itself and its Licensors, including the right to seek and obtain injunctive relief without the necessity of posting bond or other guarantee.

10.7 U.S. Government End Users. The Software is a "commercial item" as defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as used in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. All U.S. Government end users acquire the Software with only those rights set forth in this EULA. If for any reason End User is a U.S. Government agency to which the foregoing provisions do not legally apply, End User hereby acknowledges that the U.S. Government's rights to use, modify, reproduce, release, perform, display, or disclose the Software are limited to 'Restricted Rights' as defined in 48 C.F.R. 52.227-19(c)(1) and (2) (June 1987) or DFARS 252.227-7014(a)(14) (June 1995), as applicable.

10.8 Governing Law and Dispute Resolution. This EULA shall be governed by and construed in accordance with the laws of the State of California, United States of America, without giving effect to any choice of law or conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded and shall not apply. In the event of any dispute relating to this EULA ("Dispute"), the parties will first attempt resolution through good faith negotiations initiated by written notice. If unresolved within thirty (30) days, the Dispute will be resolved through binding arbitration administered by JAMS in San Francisco, California, with proceedings conducted in English. The arbitration shall be conducted by one (1) arbitrator; provided that if the amount in controversy exceeds five hundred thousand dollars (\$500,000), the arbitration shall be conducted by three (3) arbitrators. The prevailing party may recover reasonable attorneys' fees and expenses. Notwithstanding the foregoing, either party may seek interim or injunctive relief in any court of competent jurisdiction to protect intellectual property rights, enforce payment obligations, or prevent irreparable harm. All proceedings, documents, and communications related to any Dispute shall be treated as Confidential Information.

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

10.10 Notices. All notices under this EULA shall be in writing and sent to the addresses specified in the applicable Order or, in the absence of such specification, to the party's principal place of business. Notices shall be deemed given upon receipt if delivered personally, one (1) business day after deposit with a nationally recognized overnight courier, or three (3) business days after mailing by certified or registered mail, postage prepaid, return receipt requested.

PRODUCT SCHEDULE: PRODUCT-SPECIFIC TERMS

This Product Schedule is attached to and incorporated into the Penguin Solutions Software End-User License Agreement. Capitalized terms not defined herein have the meanings set forth in the EULA. Where a variable states "Standard terms apply," the corresponding provisions of the EULA govern without modification.

SCHEDULE 1: STRATUS EVERRUN SOFTWARE

Variable	Product-Specific Terms
Licensed System	A 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 transferred per Section 2.3.
License Term	As set forth in the applicable Order.
Transfer	End User may transfer Software to another single Licensed System for internal use, provided End User completely removes the Software from the former system promptly after transfer.
Mandatory Support	Required. End User must purchase Software Support for an initial period of twelve (12) months beginning on the earlier of (i) the date End User downloads or installs the Software and (ii) sixty (60) days from the date End User purchased the Software license. All Software Support will be provided under the Software Support Terms and Conditions, which can be found at https://www.penguinsolutions.com/asset/software-service-t-c.pdf (the "Support Terms"). By accepting this EULA and/or accepting Software Support, End User acknowledges and agrees to the Support Terms.
Disaster Recovery License	Available. Each DR License permits use of the Software on any number of computer systems interconnected with the Licensed System for disaster recovery purposes.
Evaluation License	Software provided for no-cost evaluation may be used internally for the period limited by the License Key ("Evaluation Period"). SOFTWARE FOR EVALUATION PURPOSES IS PROVIDED ON AN AS-IS BASIS WITHOUT WARRANTY OR SUPPORT. PENGUIN SOLUTIONS IS NOT LIABLE FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE DURING THE EVALUATION PERIOD. End User must return or destroy the Software promptly following the Evaluation Period unless End User purchases a license.
Third Party Software Notices	https://download.stratus.com/ee/ee77/third_party_collateral.txt
OSS Source Code Contact	support@penguinsolutions.com

SCHEDULE 2: STRATUS FTSERVER SOFTWARE

Variable	Product-Specific Terms
Licensed System	A single ftServer system and applicable peripheral devices (including storage equipment) sold by Penguin Solutions or its authorized distributor or reseller.
License Term	Perpetual, unless terminated per Section 8.

SCHEDULE 3: STRATUS VOS SOFTWARE

Variable	Product-Specific Terms
Licensed System	The single Stratus computer system on which the Software is first installed. License extends to upgrades of the Licensed System per Penguin Solutions' then-current upgrade policy.
License Term	Perpetual, unless terminated per Section 8.
Transfer	Nontransferable. Temporary transfer to another single Stratus computer system is permitted only during equipment malfunction. No permanent transfer is authorized.
Mandatory Support	Not required; support available separately.
System Wide Software	Each license for Software identified as "System Wide Software" permits End User to extend use to any number of Stratus computer systems interconnected with the Licensed System using a Stratus StrataLink Product, for so long as such interconnection exists.
Anti-Commercialization	End User agrees to use the Software only for its business purposes and not to market or commercialize the Software by way of loaning, renting, leasing, time sharing, sub-licensing, or providing consultancy or computer bureau services, except with the prior written consent of Penguin Solutions.
Updates and New Releases	Updates and new releases of the Software may require payment of additional fees in accordance with Penguin Solutions' then-current terms and conditions of business. End User shall not be entitled to any update or new release until such fees have been paid.

SCHEDULE 4: STRATUS ZTC EDGE SOFTWARE

Variable	Product-Specific Terms
Licensed System	The ztC Edge unit upon which the Software is first installed.
License Term	Perpetual, unless terminated per Section 8.
Transfer	Standard terms apply (Section 2.3 only).
Mandatory Support	Not required; support available separately.
Third Party Software Notices	http://download.stratus.com/ztC/ztC300/ztc_third_party_collateral.txt
OSS Source Code Contact	support@penguinsolutions.com

SCHEDULE 5: STRATUS ZTC ENDURANCE SOFTWARE

Variable	Product-Specific Terms
Licensed System	The single Stratus system on which the Software is installed.
License Term	Perpetual, unless terminated per Section 8.
Transfer	Standard terms apply (Section 2.3 only). Temporary transfer to another single system is permitted during equipment malfunction.
Mandatory Support	Not required; support available separately.
Third Party Software Notices	GNU General Public License 3.0: https://www.gnu.org/licenses/gpl-3.0.en.html - GNU Lesser General Public License 3.0: https://www.gnu.org/licenses/lgpl-3.0.en.html - BSD 3-Clause License: https://opensource.org/license/bsd-3-clause/ - BSD 2-Clause License: https://opensource.org/license/bsd-2-clause/ - Apache 2.0 License: https://www.apache.org/licenses/LICENSE-2.0 - MIT License: https://opensource.org/license/mit/ - bzip2 and libbzip2 License: https://spdx.org/licenses/bzip2-1.0.6.html
OSS Source Code Contact	support@penguinolutions.com