

# PENGUIN SOLUTIONS

## SERVICE TERMS AND CONDITIONS

### FOR STRATUS FTSERVER™ PRODUCTS

Unless you have a signed master agreement with (i) Penguin Solutions (PENG) Ireland Limited or an affiliate ("Penguin Solutions") or (ii) a Penguin Solutions authorized Service Provider, Penguin Solutions will provide the support services as described in this Agreement ("Services") for the Service Level (Service Level Table is at the end of this document) and the ftServer Products listed in your order. Penguin Solutions obligation to provide these Services is contingent upon your prompt payment of Penguin Solutions invoices (not later than 30 days from receipt) and your compliance with your other obligations as listed below.

BY ACCEPTING THE SERVICES DESCRIBED YOU AGREE TO ACCEPT AND BE BOUND BY THESE TERMS AND CONDITIONS (THE "AGREEMENT"). IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT CLICK ACCEPT AS YOU MAY NOT PROCEED.

#### 1. **Definitions:**

- 1.1. **"Active Service Network" or "ASN"** is the secure method in which the Stratus-branded Products can be configured to enable Penguin Solutions personnel to monitor and report on Software and Hardware faults over the internet 24x7x365.
- 1.2. **"Covered System"** means the ftServer System(s) listed in your order and service invoice.
- 1.3. **"Customer Assistance Center" or "CAC"** means the resources through which Penguin Solutions delivers support and services.
- 1.4. **"Customer Replaceable Units" or "CRUs"** mean Hardware that requires no formal training to achieve replacement. Replacement can be performed using Penguin Solutions provided procedural documents.
- 1.5. **"Hardware" or "Parts"** means the Penguin Solutions supplied Stratus Products and any associated components.
- 1.6. **"Optional Service(s)"** means supplemental services available for purchase with a Service Level.
- 1.7. **"Problem(s)"** means an instance where the Product does not substantially conform to the published documentation delivered by Penguin Solutions as part of the Product.
- 1.8. **"Products"** means all supplied Stratus ftServer Hardware and Software products.
- 1.9. **"Service(s)" or "Support"** means all activities prescribed herein to the undertaken by Penguin Solutions, in accordance with the applicable Service Level you selected for your Covered System.
- 1.10. **"Service Level"** refers to the packaged Service offerings that you purchase from Penguin Solutions for your ftServer Systems. Descriptions of Penguin Solutions current Service Levels and Optional Services are available on the Penguin Solutions website at <https://www.penguinsolutions.com>.
- 1.11. **"Software" or "Supported Software"** means the then-current Penguin Solutions supported versions of the Operating System, Stratus Automated Uptime Layer ("AUL") Software and other supported Stratus-branded Software.
- 1.12. **"Updates"** means a release of Software that contains fixes produced over a period-of-time.
- 1.13. **"Upgrade"** means a new release of Software that contains significant new functionality or features over the Software Product's previous release.

2. **System Eligibility:** Systems placed under Service within 90 days from initial system shipment date are automatically eligible for coverage under this Agreement. Systems placed under Service after this 90 day period must first be inspected and certified by Penguin Solutions or its authorized service representative as service ready. Such an inspection and certification will be at your expense based on Penguin Solutions then prevailing rates. Any work required to bring the System up to a service ready condition will also be at your expense.

#### 3. **Your Responsibilities:** You agree to do the following:

- 3.1. Upon escalation to Penguin Solutions, provide Penguin Solutions all relevant Product information reasonably requested by Penguin Solutions including a description of the reported problem and the Product site identification number.
- 3.2. Maintain the Covered System(s) per the applicable manufacturers specifications, guidelines, and environmental conditions.
- 3.3. Replace Customer Replaceable Units under the remote direction of the Penguin Solutions CAC, Customer Engineer, or Penguin Solutions Authorized Service Representative.
- 3.4. Be responsible for performing backups of any data stored on the Product. Penguin Solutions is not responsible for your failure to do so, or for the cost of reconstructing data stored on disks, tapes, or other media that are lost or damaged during the performance of Services.

- 3.5. Install Software Product Updates and Upgrades as made available. Supported versions is subject to Penguin Solutions standard published policies.
- 3.6. Other than when replacing a CRU (which should be done as soon as possible), maintain and operate Covered Systems in a fully redundant mode of operation at all times.
- 3.7. Install any security vulnerability patches that resolve security vulnerabilities in the Operating System. Penguin Solutions is not responsible for its inability to receive and respond to automated problem notifications as a result of the loss of connection between the Covered System and the ASN due to the foregoing.
4. **Term and Termination:** The initial term for Services shall commence as stated on your service quote and shall continue for a period of one (1) year or for the period as otherwise agreed ("Initial Term"). Thereafter, the term for Services shall automatically renew for successive terms of one (1) year each ("Renewal Term") at Penguin Solutions then current rates, 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.
5. **Payment:** If the Initial Term of a Service Level is purchased and invoiced to you by a Penguin Solutions Reseller, then payment shall be made to that Penguin Solutions Reseller. Payment for any renewal term shall be made to Penguin Solutions and be due within thirty (30) days of your receipt of Penguin Solutions invoice. You also agree to pay an amount equal to any applicable taxes resulting from any transaction under this Agreement that Penguin Solutions is obligated to pay on your behalf, except that you will not be liable for taxes based on Penguin Solutions net income. You agree to pay Penguin Solutions, 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 Penguin Solutions 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 Penguin Solutions uncured material breach.**
6. **Problem Escalation to Penguin Solutions:** Subject to the purchased Service Level described in the table below, you may escalate Problems to Penguin Solutions by telephone or through the Penguin Solutions Service Portal based on the following:
  - 6.1. Telephone Support. Penguin Solutions provides access to the Penguin Solutions CAC for support on Supported Products.
    - Phone - Penguin Solutions Support can be reached at US Toll-Free: 800-221-6588 or International: +1 602-852-3200. For a complete list of international numbers for contacting Penguin Solutions Support please go to <https://www.penguinsolutions.com/services-support/customer-support>.
  - 6.2. Penguin Solutions Service Portal Support.
    - Penguin Solutions provides escalation Support on Supported Products via the Penguin Solutions Service Portal.
    - Penguin Solutions Service Portal - Penguin Solutions Support can be reached via <https://www.penguinsolutions.com/services-support/customer-support>.
  - 6.3. All communication between you and Penguin Solutions will be in the English language. Where and when available, local language may be provided.
7. **Remote System Support and Monitoring of Covered Systems** is provided on a 24x7 basis through the ASN and the Penguin Solutions CAC and includes one or more of the following:
  - 7.1. System monitoring of hardware faults for the supported Hardware.
  - 7.2. System monitoring of major faults of the Penguin Solutions supported operating system.
  - 7.3. System generated Alarms transmitted to Penguin Solutions through the Penguin Solutions ASN and evaluated by the Penguin Solutions Customer Service team resulting in either:
    - 7.3.1. Alarm determined to be informational and/or not requiring action by Penguin Solutions support.
    - 7.3.2. Alarm determined to be actionable and requiring Penguin Solutions support. A support case is created and assigned to a service engineer per the response times listed in the Service Level Table below.
  - 7.4. System Monitoring does NOT include monitoring of the following:
    - Guest operating system.
    - Non-Stratus-branded applications installed and running on the system.
    - Network security and intrusion detection and
    - Anti-virus and malware detection.
8. **Software Support:** Penguin Solutions will provide technical support which shall include, where applicable, Product Updates and Upgrades. Penguin Solutions will use commercially reasonable efforts to respond, based on the severity of the problem and in accordance with the Service Level purchased as indicated in the Service Level Table below. Software Support applies to the then currently supported version of the Supported Software. Resolution of problems

may consist of the provision of a workaround, fix, or upgrade. An upgrade to a later version of the Product may be required in cases where a fix is not possible.

8.1. **Supported Versions:** Support on versions of software will be provided based on Penguin Solutions published support policy which can be found at <https://www.penguinsolutions.com/services-support/customer-support>.

8.2. **Stratus Automated Uptime Layer Software (“AUL”):** Penguin Solutions technical support engineers will provide problem relief if technically feasible and necessary, available Updates, Upgrades and “Bug Fixes” (*a change in the object code intended to correct a defect in the implementation of the Software*) as well as information and assistance related to Software features. Updates and Upgrades are available online at <https://www.penguinsolutions.com/services-support/customer-support>.

8.3. **Operating System Support**

| Operating System                               | Total Assurance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Other Service Levels                                                                                                                                                                                      |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Windows<br>or<br>Red Hat Linux<br>or<br>VMware | <p>Service for Critical and Serious problems related to the Penguin Solutions supported version of the applicable Operating System. Penguin Solutions technical support experts will troubleshoot and work to resolve problems and provide root cause determination. If required, Penguin Solutions will work collaboratively with the Operating System support provider.</p> <p>With Red Hat Linux and VMware, collaboration support requires you to establish the connection between Penguin Solutions and your Operating System support provider. This can be accomplished through your Red Hat Linux / VMware Subscription Service.</p> | Isolate the problem up to the Stratus Hardware/Software or the Operating System. If the problem pertains to the Operating System, you shall be advised to contact your Operating System support provider. |

8.3.1. Operating System support examples include technical assistance with general questions or problems pertaining to the OS, how to use a specific feature of the OS running on the Covered System, resolving an error condition as it relates to the Covered System, technical assistance with installation of the OS and related updates, information about the installation process, troubleshooting problems or failures during installation.

8.3.2. Operating System Support excludes expertise and support for routine Operating System problems or for systems administration issues such as assistance with system administration tasks, administering user passwords and permissions, creation or configuration of virtual machines, import and export of virtual machines, troubleshooting and root cause of guest operating systems, system backup or snap-shot procedures, creation of, troubleshooting or ongoing maintenance of data stores, storage management and maintenance activities including local disk storage, Storage Area Network (SAN) or Network attached Storage (NAS), network configuration & troubleshooting including virtual networking, isolating performance issues, system security settings and best practices

9. **Penguin Solutions Service Portal:** Penguin Solutions will provide you 24x7 access to the Penguin Solutions Service Portal, which is a web-based application that provides on-line, real-time case management and communication functionality. The Service Portal includes access to:

- Penguin Solutions knowledge base
- Frequently asked questions
- Product video tutorials
- Bug fixes
- Technical documents

10. **Hardware Services:**

10.1. **Parts Replacement.** Advanced Parts Exchange: We will use commercially reasonable efforts to provide same business day, pre-paid shipment of a replacement part for an automatic or telephone call-in Parts request that is received before 3:00 P.M local time. Restrictions may apply in certain countries. Replacement part shipments will include shipping material and a pre-paid freight bill for return of the defective part. You must return the defective

part to us within fourteen (14) calendar days from the date of the Parts request, otherwise you will be billed and must pay us the Penguin Solutions list price for the replacement part(s) shipped. Penguin Solutions assumes all risk of loss or damage to Parts that are in transit to and, provided you properly packed them for transportation, from your location.

- 10.2. **CRU Replacement:** You must remove and install CRUs a) per the instructions provided with the replacement part; b) under the direction of the Penguin Solutions CAC; or c) under the direction of an Authorized Penguin Solutions Service Representative.

**11. On-Site Services (applies to Hardware and AUL Software only):** Penguin Solutions will provide on-site support only under the following circumstances:

- 11.1. **Emergency On-Site Services:** Penguin Solutions will provide emergency on-site service if the Product experiences a Critical problem and cannot be restored to operational status through remote support means.
- 11.2. **Next Business Day On-Site Services:** Penguin Solutions will provide next business day on-site service if the Product experiences a Serious problem and cannot be restored to operational status through remote service means.
- 11.3. Penguin Solutions obligation to provide On-Site Hardware Services is subject to the following conditions:
- 11.3.1. While Penguin Solutions is on-site, you must provide Penguin Solutions with all reasonable assistance and cooperation and must allow Penguin Solutions to work without interruption or interference.
- 11.3.2. Subject to Penguin Solutions reasonable judgment, on-site Services will be provided until such time as the Product is operational or if reasonable progress is being made.
- 11.3.3. Work may be suspended if additional parts or resources are required.
- 11.3.4. Any after hours, weekend, holiday and CRU on-site services requested by you will be provided at Penguin Solutions prevailing rates and other charges.
- 11.3.5. Travel expenses incurred in traveling to and from your site located more than fifty (50) miles or eighty (80) kilometers from the nearest Penguin Solutions service center will be charged to you and must be paid within thirty (30) days of receipt of Penguin Solutions invoice.

**12. Media Retention (Optional Service):** You may elect to not return failed disks to Penguin Solutions for replacement.

**13. Renewal of Services:** Service renewal will occur automatically, unless earlier terminated by either party with at least sixty (60) days written notice prior to the expiration of the current term.

- 13.1. **Reinstatement of Services.** If Support has terminated because of non-renewal or non-payment, and you desire to reinstate Support, Penguin Solutions will reinstate such support only after completion of all the following:
- 13.1.1. At your cost, update the Product to a service ready condition; and
- 13.1.2. Pay Penguin Solutions: (a) all undisputed invoices, (b) the annual support fee for at least the next one-year period, and (c) the amount equal to what you would have paid Penguin Solutions for the period of time in which the Support has lapsed, and (c) a reinstatement fee.

**14. End of Support Life for Supported Product:** In the event Penguin Solutions determines that it will no longer support a Product, that Product is said to enter an "End of Support" or "EOS" status. In such event, Penguin Solutions will provide one hundred eighty days (180) prior written notice. Penguin Solutions obligations hereunder, with respect to any such Product, shall terminate effective on the date specified in the EOS notice and that Product shall cease to be a Supported Product.

**15. Limitations and Exclusions:** This Agreement is of limited duration and coverage. This Agreement extends only to the original purchaser of the Covered System and only to uses for which the System was designed. Penguin Solutions is not obligated to repair any Covered System, subassembly, or component part which has been damaged as a result of: (i) fire, natural disaster, neglect, misuse, abuse and war or other events or causes of force majeure, (ii) unauthorized modifications, use of non-Penguin Solutions supplied equipment or software, damage resulting from environmental considerations such as electrical power, heat, cold, or humidity outside the published product specifications, or operating the Covered System in an other than the fully redundant mode.

**16. Limited Warranty:**

- 16.1. PENGUIN SOLUTIONS WARRANTS THAT THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMAN LIKE MANNER.
- 16.2. THE FOREGOING WARRANTIES ARE IN LIEU OF 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 A SYSTEM OR THAT ALL PRODUCT ERRORS OR DEFECTS WILL BE CORRECTED.

**17. LIMITATION OF LIABILITY:**

- 17.1. IN NO EVENT SHALL PENGUIN SOLUTIONS 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.
- 17.2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PENGUIN SOLUTIONS 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 PENGUIN SOLUTIONS FOR THE SPECIFIC SERVICE OPTION COVERING THE PRODUCT(S) 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.

**18. General Terms:**

- 18.1. These terms and conditions together with all applicable Service Level descriptions constitute the entire agreement between you and Penguin Solutions 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.
- 18.2. These terms and conditions 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.
- 18.3. Location of Service: We will provide Maintenance Services only at the locations(s) specified upon purchase of a Service Level unless we agree otherwise, in writing.
- 18.4. Except as otherwise specified in this Agreement, all Services required of Penguin Solutions under this Agreement shall be provided only during the hours of 9:00 A.M. to 5:00 P.M, Monday through Friday, local time to the Covered System, excluding locally observed holidays.
- 18.5. **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.

**SERVICE LEVEL TABLE IS ON THE NEXT PAGE**

## Service Level Table

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Total Assurance                 | System Assurance                | Extended Platform Support       | Platform Support§               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <b>Service Response Times</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                 |                                 |                                 |                                 |
| <b>Customer Assistance Center Availability</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 24x7                            | 24x7                            | 24x7                            | 24x7                            |
| <b>Critical:</b> is a condition whereby the Supported Product or the operating environment is substantially inoperable and or severely impacts the customer business operation and no procedural avoidance exists. Some examples include Stratus-branded Product or Software components is inoperable, hung, or unavailable; A problem resulting in data corruption or data loss; Unexpected shutdown or reboot; and Severe performance problem resulting in application instability impacting business operations. |                                 |                                 |                                 |                                 |
| Initial Response**                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 30 minutes                      | 1 hour                          | 2 hours                         | 2 local business hours          |
| Remedial Efforts‡                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Engineer On-Going Work Effort   | Engineer On-Going Work Effort   | Engineer On-Going Work Effort   | Engineer On-Going Work Effort   |
| <b>Serious:</b> is a condition in which Product functionality or performance problems are experienced with various degrees of business impact. Some examples include loss of redundancy from a software/hardware failure, system is degraded but not disruptive (no outage); Expired software/hardware license; Transient performance issues.                                                                                                                                                                       |                                 |                                 |                                 |                                 |
| Initial Response**                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 2 local business hours          | 4 local business hours          | 6 local business hours          | 6 local business hours          |
| Remedial Efforts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | During local business hours     | During local business hours     | During local business hours     | During local business hours     |
| <b>Moderate:</b> is a condition in which the Product operation is not substantially impacted but does require attention. Appropriate for low impact issues, how to questions and low impact performance issues with a workaround.                                                                                                                                                                                                                                                                                   |                                 |                                 |                                 |                                 |
| Initial Response**                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 8 local business hours          | 8 local business hours          | 8 local business hours          | 8 local business hours          |
| Remedial Efforts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | As Agreed by Penguin Solutions* | As Agreed by Penguin Solutions* | As Agreed by Penguin Solutions* | As Agreed by Penguin Solutions* |

|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <b>Minor:</b> means general usage or information requests, future product enhancements or modifications. There is no impact to the quality, performance, or functionality of the Product. |                                 |                                 |                                 |                                 |
| Initial Response**                                                                                                                                                                        | 12 local business hours         | 12 local business hours         | 12 local business hours         | 12 local business hours         |
| Remedial Efforts                                                                                                                                                                          | As Agreed by Penguin Solutions* | As Agreed by Penguin Solutions* | As Agreed by Penguin Solutions* | As Agreed by Penguin Solutions* |
|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
| <b>Remote System Monitoring</b>                                                                                                                                                           |                                 |                                 |                                 |                                 |
| System Monitoring of Hardware                                                                                                                                                             | Yes                             | Yes                             | Yes                             | Yes                             |
| System Monitoring of Major Faults of Operating System                                                                                                                                     | Yes                             | Yes                             | Yes                             | Yes                             |
| System Generated Alarms                                                                                                                                                                   | Yes                             | Yes                             | Yes                             | Yes                             |
|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
| <b>Software Support</b>                                                                                                                                                                   |                                 |                                 |                                 |                                 |
| AUL Software Support                                                                                                                                                                      | Yes                             | Yes                             | Yes                             | Yes                             |
| AUL Software Updates/Upgrades                                                                                                                                                             | Yes                             | Yes                             | Yes                             | Yes                             |
| AUL Software Root Cause Determination                                                                                                                                                     | Yes                             | Yes                             | No                              | No                              |
| Windows / Red Hat Linux / VMware Operating System Support                                                                                                                                 | Yes                             | Not Available                   | Not Available                   | Not Available                   |
| Operating System Root Cause Determination                                                                                                                                                 | Yes                             | Not Available                   | Not Available                   | Not Available                   |
|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
| <b>Service Portal</b>                                                                                                                                                                     | 24x7                            | 24x7                            | 24x7                            | 24x7                            |
|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
| <b>Part Repair/Replacement</b>                                                                                                                                                            |                                 |                                 |                                 |                                 |
| Advanced Parts Exchange**** - Delivery                                                                                                                                                    | Next Business Day               | Next Business Day               | Next Business Day               | Next Business Day               |
|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
| <b>On-Site Services§§</b>                                                                                                                                                                 |                                 |                                 |                                 |                                 |
| Emergency On-Site Service for Critical Problems                                                                                                                                           | Within 24 Hours                 | Within 24 Hours                 | Not Available                   | Not Available                   |
| Next Business Day On-Site Services for Serious Problems                                                                                                                                   | Local Business Hours            | Local Business Hours            | Not Available                   | Not Available                   |
|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
| <b>Media Retention</b>                                                                                                                                                                    | Optional***                     | Optional***                     | Optional***                     | Optional***                     |
|                                                                                                                                                                                           |                                 |                                 |                                 |                                 |
| <b>Uptime Guarantee†</b>                                                                                                                                                                  | Yes                             | No                              | No                              | No                              |
| * Available during local business hours only. Local business hours mean 8:00 a.m. until 5:00 p.m. local time (excluding Penguin Solutions observed holidays).                             |                                 |                                 |                                 |                                 |
| ** Initial Response means time from receipt of call to time work commences.                                                                                                               |                                 |                                 |                                 |                                 |
| *** Available for purchase with a Service Level.                                                                                                                                          |                                 |                                 |                                 |                                 |
| ****Applies to Penguin Solutions Supported Countries Only (see Supported Countries Table below).                                                                                          |                                 |                                 |                                 |                                 |
| † See Uptime Guarantee Addendum below.                                                                                                                                                    |                                 |                                 |                                 |                                 |
| ‡ Restoration of system to service/restoration of substantially all system functionality.                                                                                                 |                                 |                                 |                                 |                                 |
| § Available only in select countries.                                                                                                                                                     |                                 |                                 |                                 |                                 |
| §§ Applies to Hardware and AUL Software only.                                                                                                                                             |                                 |                                 |                                 |                                 |

| SUPPORTED COUNTRIES                                                |                |               |
|--------------------------------------------------------------------|----------------|---------------|
| All European Union<br>(European Free Trade Agreement<br>Countries) | Australia      | Canada        |
| Eastern China                                                      | Hong Kong      | India         |
| Japan                                                              | New Zealand    | South Africa  |
| Singapore                                                          | United Kingdom | United States |

The above list of countries is subject change. Please see <https://www.penguinsolutions.com> for any changes to the above list.

## UPTIME GUARANTEE ADDENDUM

**Eligibility:** Coverage under this Guarantee is available only for ftServer Covered Systems, for which Service coverage has been purchased under the **Total Assurance Service Option**, and only if coverage under this Guarantee **was subscribed contemporaneously with and at the time of initial purchase** of the Covered System.

**1. Service Charge Credit:** If the Covered System described in the Service Schedule fails as defined below ("System Failure"), Customer will be entitled to a credit against future Service payments in a prorated amount equivalent to one month's Service charge for the Covered System that experienced the System Failure.

**2. General Conditions and Qualification applicable to this Addendum:**

For purposes of this addendum and subject to the following qualifications, a System Failure occurs when a Covered System that was previously functioning properly becomes unavailable, rendering Customer's users unable to use it, provided that:

- (1) The System Failure must occur during, and as a result of Customer's use of the Covered Systems exclusively for production purposes and not development purposes.
- (2) Coverage under this addendum for Covered Systems running the Microsoft Windows Server Operating System, Red Hat Linux Operating System or VMware Operating System that are covered under the Total Assurance Service Option applies only to the extent that a System Failure occurs as the result of the Stratus-branded Hardware, the Stratus AUL Software, or the Penguin Solutions supported version of the applicable operating system.
- (3) The Covered Systems must have been running in the fully redundant mode of operation immediately prior to System Failure. Any Covered System running a redundant component in simplex mode is ineligible for coverage under this Option, unless and until the component is restored to the fully redundant mode.
- (4) Coverage is limited to the first instance of a problem for the single Covered System which first experienced the System Failure. Coverage does not apply to problems that occur on more than one occasion or that affect more than one Covered System.
- (5) Coverage does not apply where a System Failure results in connection with (a) any planned event; (b) any planned or unplanned event initiated by you outside the scope of your normal operation or use of the Covered System; (c) known defects or bugs; (d) outages due to security or network problems; or (e) the occurrence of one or more of the following: fire, natural disaster, neglect, misuse, abuse and war or other events or causes of force majeure, as well as unauthorized modifications, use of non-Penguin Solutions supplied equipment or software and damage resulting from environmental considerations such as electrical power, heat, cold, or humidity outside the published product specifications.

**3. Penguin Solutions Responsibilities:**

- (1) Penguin Solutions will provide you with notification, in writing or over the Penguin Solutions Active Service Network (ASN).
- (2) When appropriate, the Penguin Solutions Service Manager will schedule a meeting to discuss qualification and eligibility of a service credit.

**4. Customer Responsibilities:**

- (1) Operate the System in fully redundant mode.
- (2) Determine if there was an availability problem during any calendar month, prior to requesting a service credit.
- (3) Fully implement (within fourteen (14) days of your receipt of written notification from Penguin Solutions), any requested procedures (including without limitation, installation of software bug fixes) intended to avoid any known condition that could degrade system availability.
- (4) Notify Penguin Solutions in writing, of any request for service credit. You will have waived your right to any credit under this Addendum if you fail to notify Penguin Solutions of a System Failure within thirty (30) days of the System Failure.