

PENGUIN SOLUTIONS

SERVICE TERMS AND CONDITIONS

FOR STRATUS ztC Edge™ PRODUCTS

Penguin Solutions (PENG) Ireland Limited or an affiliate ("Penguin Solutions Technologies") will provide the maintenance services ("Services") described below for the ztC Edge™ unit you are registering. Penguin Solutions obligation to provide these Services is contingent upon your prompt payment of Penguin Solutions invoices (no 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").**

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 "Critical Severity" 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.
- 1.3 "Customer Assistance Center" or "CAC" means the resources through which Penguin Solutions delivers Support and Services.
- 1.4 "Customer Replaceable Unit" or "CRU" means Hardware that requires no formal training in order to achieve replacement.
- 1.5 "Hardware" or "Parts" means the Penguin Solutions supplied Products and any associated components.
- 1.6 "Moderate Severity" 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.
- 1.7 "Minor Severity" means general usage or information requests, future product enhancements or modifications. There is no impact to the quality, performance, or functionality of the Product.
- 1.8 "Optional Service" means supplemental services available for purchase with a Service Level.
- 1.9 "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.
- 1.10 "Penguin Solutions Service Portal" is a Penguin Solutions 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 and technical documents.
- 1.11 "Serious Severity" 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.
- 1.12 "Service(s)" or "Support" means all applicable activities prescribed herein to be undertaken by Penguin Solutions, in accordance with the applicable Service Level subscribed by you.
- 1.13 "Service Level" means that level of Service for which you have subscribed with Penguin Solutions in connection with a Supported Product as currently described in the table in Attachment 1.
- 1.14 "Software" or "Supported Software" means the then-current Penguin Solutions supported version of the Stratus Redundant Linux Operating System.
- 1.15 "Supported Products" or "Products" means the Stratus ztC Edge unit, and any associated components (hardware and software) supplied by Penguin Solutions that is covered under a Support agreement

with Penguin Solutions.

- 1.16 "Updates" means a release of Software that contains fixes produced over a period-of-time.
- 1.17 "Upgrade" means a new release of Software that contains significant new functionality or features over the Software Product's previous release.

- 2. **SERVICE TERM.** 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.

3. YOUR RESPONSIBILITIES.

- 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 Replace Customer Replaceable Units under the remote direction of the Penguin Solutions CAC, Customer Engineer or Penguin Solutions Authorized Service Representative.
- 3.3 Maintain the Products per the applicable manufacturer's specifications, guidelines, and environmental conditions.
- 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 Unless the specific Product is designed to run in a simplex mode, Product must be maintained and operated in a fully redundant mode of operation.
- 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 Product and the ASN due to the foregoing.

- 4. **PROBLEM ESCALATION TO PENGUIN SOLUTIONS.** Subject to the Service Level described in the table in Attachment 1, you may escalate Problems to Penguin Solutions by telephone or through the Penguin Solutions Service Portal based on the following:

- 4.1 **Telephone Support (applies to 24x7 Service Level only).** 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>.

- 4.2 **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>.

- 4.3 All communication between you and Penguin Solutions will be in the English language. Where and when available, local language may be provided.

5. PENGUIN SOLUTIONS SUPPORT OBLIGATIONS.

- 5.1 **Software Support.** Penguin Solutions will be responsible for providing technical support which shall

include Product Updates and Upgrades. Penguin Solutions will use best commercial efforts to respond, based on the severity of the problem, and in accordance with the Service Level purchased as indicated in the table in Attachment 1. 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.

5.1.1 **Software Updates and Upgrades.** Penguin Solutions will provide Updates and Upgrades, which Penguin Solutions makes generally available. Updates and Upgrades are made available online at <https://www.penguinsolutions.com/services-support/customer-support>.

5.1.1.1 **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>.

6. **OPTIONAL SERVICES.** You may elect to purchase any of the following additional services, subject to payment of additional fees.

6.1 **Remote System Monitoring** is provided through the ASN and the Penguin Solutions CAC and includes the following:

6.1.1 System monitoring of hardware faults for the Supported Product.

6.1.2 System monitoring of major faults of the Penguin Solutions Host Operating System.

6.1.3 System generated Alarms transmitted to Penguin Solutions through the Penguin Solutions ASN and evaluated by the Penguin Solutions Customer Service team resulting in either:

6.1.3.1 Alarm determined to be information and/or not requiring action by Penguin Solutions support.

6.1.3.2 Alarm determined to be informational and/or not requiring action by Penguin Solutions support.

6.1.3.3 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 table in Attachment 1.

6.1.4 System Monitoring **does NOT** include monitoring of the following:

6.1.4.1 Guest operating system.

6.1.4.2 Non-Stratus-branded applications installed and running on the system.

6.1.4.3 Network security and intrusion detection; and
Anti-virus and malware detection.

6.2 **Advanced Parts Replacement.**

6.2.1 Parts Exchange: Penguin Solutions 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 Penguin Solutions within fourteen (14) calendar days from the date of the Parts request, using the packaging provided with the replacement part, otherwise you will be billed and must pay Penguin Solutions 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.

6.2.1.1 **CRU Replacement:** You are required to remove and install CRUs either 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.

6.3 **Media Retention.**

6.3.1 You may elect to not return failed disks to Penguin Solutions for replacement. In the event of a failure within the ztC Edge unit, you will remove disk drive from the Penguin Solutions ztC Edge

unit using the specific procedure provided by Penguin Solutions Customer Service and return the entire ztC Edge unit to Penguin Solutions. Penguin Solutions will deliver to you a replacement ztC Edge unit with disk drive.

7. **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.

7.1 **Reinstatement of Services.**

7.1.1 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:

- 7.1.1.1 At your cost, update the Product to a service ready condition; and
- 7.1.1.2 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.

8. **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.

9. **IMPORTANT LEGAL TERMS**

9.1 **LIMITED WARRANTY**

- 9.1.1 PENGUIN SOLUTIONS WARRANTS THAT THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMAN LIKE MANNER.
- 9.1.2 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.

10. **LIMITATION ON LIABILITY.**

- 10.1 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.
 - 10.2 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 SUPPORTED PRODUCT 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.
11. **FORCE MAJEURE.** Penguin Solutions is not obligated to repair any Supported Product, which has been damaged as a result of: (i) fire, natural disaster, pandemic, 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

Supported Product in an other than the fully redundant mode

12. **GOVERNING LAW/JURISDICTION.** These terms and conditions together with all applicable Service 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. 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. You agree that Massachusetts is an appropriate jurisdiction for any disputes that might arise under this agreement.

ATTACHMENT 1 - Penguin Solutions Service Level

The following tables summarize the current Services for the applicable Service Level purchased by you:

<u>Service</u>	ztC Edge 24x7	ztC Edge 8x5
Service Response Times		
Customer Assistance Center Availability	24x7	8x5
Critical Severity		
Initial Response**	30 minutes	30 minutes local business hours
Remedial Efforts†	Engineer On-Going Work Effort.	Engineer On-Going Work Effort.
Serious Severity		
Initial Response**	2 local business hours	2 local business hours
Remedial Efforts	During local business hours	During local business hours
Moderate Severity		
Initial Response	8 local business hours	8 local business hours
Remedial Efforts	As Agreed by Penguin Solutions*	As Agreed by Penguin Solutions*
Minor Severity		
Initial Response**	12 local business hours	12 local business hours
Remedial Efforts	As Agreed by Penguin Solutions*	As Agreed by Penguin Solutions*
Remote System Monitoring		
System Monitoring of Hardware	Optional	Optional
System Monitoring of Major Faults of Operation System	Optional	Optional
System Generated Alarms	Optional	Optional
Software Support		
Stratus Redundant Linux	Yes	Yes
Operating System Root Cause Determination	Host Operating System Only	Host Operating System Only
Stratus Redundant Linux Operating System Updates/Upgrades	Yes	Yes
Service Portal	24x7	24x7
Advanced Parts Replacement		
Delivery 3 Business Days	Optional ***	Optional ***
Media Retention	Optional	Optional
* Available during local business hours only. Local business hours mean 8:00 a.m. until 5:00 p.m. local time to where the End User resides (excluding Penguin Solutions observed holidays).		
** Initial Response means time from receipt of call to time work commences.		
*** Applies to Penguin Solutions Supported Countries Only (see table below).		
† Restoration of system to service / restoration of substantially all system functionality		

SUPPORTED COUNTRIES
All European Union (European Free Trade Agreement 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.