

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
EGENERA, INC.**

EGENERA LICENSE, WARRANTY AND SUPPORT TERMS

DEFINITIONS

"Affiliate" means, with respect to a party, any entity that is controlled by, is under common control with or controls such party (with "control" meaning ownership of more than fifty percent (50%) of the outstanding voting equity interest).

"Order" means a document (e.g., Ordering Activity's purchase order) issued by Ordering Activity to Contractor that specifies the Products and Services that Ordering Activity wishes to purchase from Contractor.

"Products" means the products described in an Order accepted by Egenera.

"Services" means Egenera's generally available support services described in an Order accepted by Egenera.

"Egenera Hardware" means the Egenera-labeled hardware, including spares, parts and hardware components, acquired by Ordering Activity from Egenera or one of its authorized distributors.

"Egenera Software" means the Egenera-owned software, in object code form, including certain of the firmware that is embedded in the Egenera Hardware and improvements, enhancements, revisions, updates or upgrades provided by Egenera or one of its authorized distributors, and certain related documentation (including CD-ROM duplicates), accompanying the Egenera Hardware or licensed to Ordering Activity from Egenera or one of its authorized distributors for use on Egenera Hardware.

"Egenera Products" means Egenera Hardware and Egenera Software.

"Licensed Software" means any Egenera Software and Third Party Software, including user and other related documentation (including user manuals and any technical and training related documentation) and improvements, enhancements, revisions, and updates, and any Software Upgrades and Maintenance Updates that may be provided by directly or indirectly Egenera from time to time.

"Maintenance Update" means a generally available software patch, bug fix, and update provided by Egenera that is intended to correct errors in the Egenera Software.

"Products" means Egenera Hardware, Egenera Software and unless differentiated, Third Party Software.

"Open Source Software" means Third Party Software that is licensed under the terms of various published open source software license agreements (such as the GNU Public License) or copyright notices accompanying such software.

"Services" means Egenera's installation, support and training services generally available from time to time from Egenera or its authorized service providers, excluding any services Egenera may provide as part of its limited warranty coverage.

"Software Upgrade" means either (i) a generally available "Major Release", which is intended to provide significant functionality enhancements as well as incorporate cumulative Maintenance Updates since the most recent release of the Egenera Software, or (ii) a generally available "Minor Release", which is intended to provide incremental functionality enhancements as well as incorporate cumulative Maintenance Updates since the most recent release.

"Third Party Software" means software provided by Egenera or one of its authorized distributors or service providers that is labeled as being provided by a third party and/or is owned other than by Egenera. Linux™ software is an example of both Third Party Software and Open Source Software.

Limited License. Contractor own and shall retain all title to, ownership of and all applicable rights in patents, copyrights, trade secrets, trademarks, trade names and all other intellectual property and proprietary rights in and to the Licensed Software. Subject to Attachment A, Ordering Activity is hereby granted a non-exclusive, non-transferable, non-sublicensable, limited license to use, in object code form only, the Licensed Software solely for Ordering Activity's own internal use and only on, and the associated documentation only with, the Egenera Hardware for which it was supplied. This license is not a sale of any rights in the Licensed Software.

Copies. Ordering Activity may make a reasonable number of copies of software included in the Licensed Software (exclusive of the documentation supplied therewith) solely for backup or archival purposes or when copying is an essential step in the authorized use of the associated Products.

Additional Restrictions. Except to the extent expressly permitted in this Attachment A or applicable law, Ordering Activity may not: (a) modify, translate, reverse engineer, decompile, disassemble, otherwise attempt to obtain the source code of, or create derivative works based on or otherwise tamper with, any Licensed Software or any firmware, circuit board, or integrated circuit; (b) copy (including copying onto a bulletin board or similar system) the Licensed Software (c) rent, lease, time share, grant a security interest in, or otherwise transfer or sublicense rights to, any Licensed Software; (d) modify, disable, attempt to circumvent or otherwise

interfere with any software procedures or other mechanisms that enforce use restrictions and/or that may disable the functionality of such software upon violation of the terms of this license (and Ordering Activity acknowledges that any attempt to do so may be a violation of applicable law); (e) remove, alter or fail to retain any proprietary notices or labels on any Licensed Software or any copies thereof; or (f) disclose or otherwise make available any Licensed Software in any form to any third party.

SERVICES

Ordering Activity's Obligations. Ordering Activity is responsible for supplying and maintaining an appropriate environment (including power, network and telephone connections, etc.) for the Products, providing Contractor with remote access to each system you purchase from Contractor and providing an IP address, login and password for Contractor to establish access to such system. Failure to provide remote access may affect Contractor's response and resolution time. If such remote access is not provided and as a result a Contractor support engineer is required on site, Contractor shall invoice Ordering Activity and Ordering Activity shall pay Contractor's prevailing time and material charges, inclusive of all travel related expenses, for the on-site service. Contractor may require your assistance in recreating a Product problem. Contractor agrees to provide sufficient, free and safe access to Ordering Activity's facilities and systems to enable Contractor to fulfill its obligations. Ordering Activity agree to allow Contractor to install mandatory engineering changes (such as those required for safety) on a Product. The inability to recreate the problem and to provide such assistance as may be necessary may prevent Contractor from resolving the problem.

Upgrades and Updates. Contractor's limited warranty coverage includes Maintenance Updates but does not include Software Upgrades. During or after the applicable Egenera Software limited warranty period, Ordering Activity may purchase Contractor's standard support Services in order to obtain Contractor's most current Software Upgrades. Contractor provides support Services for only the two most recent Major Releases of Egenera Software (i.e., the then-current Release and one Major Release back).

Professional Services. Any unique or nonstandard custom software design, development, and related support and/or integration, project management, and consulting services that Ordering Activity may Order hereunder shall be more fully described in a mutually agreed upon written "Professional Services Work Order."

LIMITED WARRANTY

Contractor Product Limited Warranty. Contractor warrants that the Egenera Products will, for a period of one (1) year after the date on which the Egenera Products are first delivered to Ordering Activity, substantially and materially perform in accordance with Contractor's publicly available written specifications in effect at the time of such delivery. The limited warranty period for non-standard custom software provided as part of a Professional Services Work Order is sixty (60) days from the date of acceptance. Egenera Hardware upgrades are warranted until the end of the original warranty period of the Egenera Hardware to which they are added. Any replacement Egenera Hardware part provided as part of Contractor's limited warranty coverage will be warranted for the greater of the remainder of the replaced original part's limited warranty period and ninety (90) days. All replaced parts shall be returned to and become the property of Contractor. If a replaced part is not received by Contractor within thirty (30) calendar days of Ordering Activity's receipt of its corresponding replacement part, Contractor will invoice Ordering Activity and Ordering Activity shall pay the list price of the replacement part. Contractor is responsible for the shipping and insurance charges on replacement and replaced parts shipped to and from Ordering Activity as part of Contractor's limited warranty coverage. Contractor's liability and obligation under this limited warranty shall be as follows: if, during an applicable limited warranty period, Ordering Activity report in reasonable detail in writing and Contractor subsequently verifies that an Egenera Product does not conform to its limited warranty described in this Attachment A, then Contractor shall at its option (a) provide replacement parts and service necessary to repair the Egenera Hardware and use reasonable efforts to modify the Egenera Software to make it conform to its limited warranty, (b) replace the nonconforming Egenera Product with Egenera Product that conforms to this limited warranty, or (c) if unable to make such repair or replacement after a reasonable number of attempts, refund the net amount Contractor was paid for the nonconforming Product in exchange for its return.

Contractor Services Limited Warranty. Services shall be provided in a professional, workmanlike manner and in accordance with generally accepted industry standards. Contractor's liability and obligation under this limited warranty shall be as follows: if Ordering Activity notify Contractor in writing within thirty (30) days after the date a Service was rendered, and Contractor subsequently determines, that Contractor has failed to provide the Service or a component thereof in accordance with this limited warranty, then Contractor shall at its option (a) re-perform the Service, or (b) if after a reasonable number attempts, Contractor is unable to provide the Service so that it conforms to this limited warranty, refund to Ordering Activity the net amount Contractor was paid for the non-conforming portion of the Service.

Exclusions. The limited warranties set forth in this Attachment A do not apply to problems that arise from accident or abuse, interoperation with other non-Contractor-labeled products, improper installation or modification other than by Contractor, use in an environment or in a manner or for a purpose for which a Product was not designed, third party software not supplied by Contractor or Ordering Activity's failure to implement all previously supplied Maintenance Updates or Software Upgrades. Contractor does not warrant that the operation of the Products will be uninterrupted or error free, or that all defects can be corrected. Third Party Software is provided by Contractor "AS-IS". With respect to Egenera's BladeFrame® product lines, Contractor shall not be responsible for (and its limited warranty coverage and support Services shall not apply to) any problems or errors that arise or result from or relate to Ordering Activity's running or having run any software on the Control Blades™ of such products other than (a) software provided as part of Egenera's base BladeFrame software package (including upgrades thereof or updates thereto provided by Contractor) or (b) other software specifically approved by Contractor in writing for running on such Control Blades.

Contractor makes the warranties described in this Attachment A solely to the first Ordering Activity to which Contractor or its authorized distributor delivers the Products; these warranties are not for the benefit of any other party; and no Ordering Activity rights under this Attachment A are assignable or transferable, directly or indirectly, by operation of law or otherwise.

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS ATTACHMENT A, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR (a) PROVIDES THE PRODUCTS OR SERVICES WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, AND (b) ON BEHALF OF ITSELF AND ITS THIRD PARTY SUPPLIERS EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. Ordering Activity acknowledge that the Products are not designed, licensed or intended for use in the operation or maintenance of any nuclear facility, mass transit system, aviation system, life support or monitoring system or other inherently dangerous application. Contractor and its licensors disclaim any express or implied warranty of fitness for such uses, and neither Contractor nor its licensors shall be liable to Ordering Activity, in whole or part, for any claims arising from any such use.

