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F5, INC.
END USER SERVICES AGREEMENT

Last Updated: December 15, 2022

This End User Services Agreement (this "**Agreement**") is entered into as of the date of the last signature below (the "**Effective Date**") by and between **F5, Inc.** or one of its Affiliates, as further defined below ("**F5**," "**we**," or "**us**"), and San Bernardino County, ("**you**" or "**Customer**"). F5 and Customer are sometimes referred to herein individually as a "**Party**" and collectively, as the "**Parties**." Unless otherwise defined in this Agreement, capitalized terms have the meanings provided in Section 1.

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that this Agreement, together with all exhibits and appendices attached hereto, applies to the F5 Services ordered by you from us or from an Authorized Distribution Partner, as applicable.

1. **Definitions**. Unless otherwise defined in this Agreement, the following definitions apply:

1.1. "**Acceptable Use Policy**" means the acceptable use policy located at https://www.f5.com/pdf/customer-support/eusa-aup.pdf (or any successor or related locations designated by us).

1.2. "**Account**" means your online account used to access the F5 Services.

1.3. "**Affiliates**" means, with respect to either Party, any individual, company, corporation, partnership or other entity, directly or indirectly, controlling, controlled by, or under common control with, such Party, where "control" is defined as the ownership of at least fifty percent (50%) of the equity or beneficial interests of the entity.

1.4. "**Aggregated Data**" means Customer Data and Usage Data that has been aggregated and de-identified such that the Customer Data and Usage Data no longer identifies you or your end users.

1.5. "**Authorized Distribution Partner**" means an entity who is authorized by us to resell F5 Services.

1.6. "**Customer**" means, (i) in the case of an individual accepting this Agreement on his or her own behalf, such individual, or (ii) in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement.

1.7. "**Customer Application**" means any application that is owned or operated by you and configured to interact with the any of the F5 Services pursuant to this Agreement

1.8. "**Customer Data**" means software, data, text or image files, or information provided or uploaded or input by you or your End Users into the F5 Services or otherwise made available by you or your End Users to the applicable F5 Services.

1.9. "**Customer Dashboard**" means the online dashboard application that we make available to you under this Agreement, that enables you or your End Users, as applicable, to configure and/or monitor the performance of the F5 Services.

1.10. "**Documentation**" means any user manuals, help files, technical information, materials, or other documentation, in whatever form, which are provided by us and made available to you for use of F5 Services, as updated by us from time to time.

1.11. "**DPA**" means the data protection addendum at https://www.f5.com/pdf/customer-support/eusa-dpa.pdf (as may be updated).

1.12. "**End Users**" means your end user clients or customers who visit a website or mobile application owned or operated by you.

1.13. "**F5**" means (a) F5 Networks Ltd. if your primary place of business is located in Europe, the Middle East or Africa ("**EMEA**"); (b) F5 Networks Singapore Pte Ltd if your primary place of business is located in the Asia-Pacific region ("**APAC**"); or (c) F5, Inc. if your primary place of business is located in a region outside of EMEA or APAC

1.14. "**F5 Services**" means, collectively, the SaaS Offerings, any hardware, any Software, and SDKs (defined in Section 2.5), provided by us to you, as set forth in your Order and as further described in the Service Policies.

1.15. "**Feedback**" means any ideas for suggested improvements, modifications, or other feedback about the F5 Services.

1.16. "**Free Services**" means F5 Services that we make available to you free of charge. Free Services exclude Trials as well as F5 Services that are available for purchase under an Order.

1.17. "**Intellectual Property Right(s)**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.18. "**MY Subscription**" means a multi-year consumption subscription for F5 product offerings as governed by the program terms located at https://www.f5.com/pdf/customer-support/program-terms.pdf ("**Program Terms**"), or such other agreement between you and us. MY Subscriptions are not available for all F5 Services.

1.19. "**Object Code**" means a form of software in a language that a computer can execute directly but is not generally readable by humans without reverse assembly, reverse compiling or reverse engineering.

1.20. "**Open Source Software**" means any software that is distributed as "free software" or "open source software" or is otherwise distributed under distribution models that (i) require the licensing or distribution of Source Code to licensees, (ii) prohibit or limit the receipt of consideration in connection with sublicensing or distributing any software, (iii) except as specifically permitted by applicable law, allow any licensee to decompile, disassemble or otherwise reverse-engineer any software, or (iv) require the licensing of any software to any other licensee for the purpose of making derivative works (including, but not limited to, software that is licensed under any version of the GNU Affero General Public License, the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, or the Common Public License).

1.21. "**Order**" means any ordering document or online order that identifies the F5 Services and/or services licensed or sold and any applicable subscription or licensing parameters and is subject to this Agreement.

1.22. "**Portal**" means the applicable F5 portal site through which you can access and update your Account.

1.23. "**SaaS Offerings**" means the cloud service offerings provided to you by us under this Agreement, as set forth in each Order and as further described in the Service Policies. SaaS Offerings includes the applicable Customer Dashboard.

1.24. **"Service Level Agreement"** means, for all SaaS Offerings the service level agreement available at http://www.f5.com/pdf/customer-support/eusa-sla.pdf (or any successor or related locations designated by us), as it may be updated by us from time to time.

1.25. "**Service Policies**" means the Acceptable Use Policy, Service-Specific Terms, DPA, Service Level Agreement, Documentation and any other policy or terms referenced in or incorporated into this Agreement.

1.26. "**Service-Specific Terms**" means the additional terms and conditions applicable to specific F5 Services and any additional terms and conditions applicable thereto available at https://www.f5.com/pdf/customer-support/eusasst.pdf (or any successor or related locations designated by us), as they may be updated from time to time.

1.27. "**Software**" means the object code version of F5's proprietary computer programs made available by F5 for download by Customer for use in connection with any SaaS Offerings, including any Updates.

1.28. "**Source Code**" means software in a human-readable format.

1.29. "**Support Services**" means the support services provided by us in accordance with our then-current support policy.

1.30. "**Third-Party Applications**" means certain third-party products, services or software that are not owned or operated by F5.

1.31. "**Updates**" means any correction, update, upgrade, patch, or other modification or addition made by us to specific Software.

1.32. "**Usage Data**" means information about your access and use of the F5 Services, including but not limited to usage and performance information.

1.33. "**Usage Metrics**" means any user, account, device, or other product-specific licensed capacity or usage metrics for the applicable F5 Services.

1.34. "**Users**" means individuals authorized by you to access the F5 Services on your behalf. Users may include, for example, your and your Affiliates' authorized employees, consultants, contractors, agents, and third parties with which you do business.

2. Proprietary Rights.

2.1. **Rights and Licenses Granted to Customer**.

2.1.1. SaaS Offerings, Documentation, Software. Subject to the terms and conditions of this Agreement, any applicable Orders, and the Service Policies, during the applicable Service Term (defined below), we grant you a limited, revocable, non-exclusive, non-transferable, non-sublicensable (a) right to access and use the SaaS Offerings and Documentation, and (b) license to install and use any Software, all of which solely in connection with your internal business purposes. You may permit your Affiliates to use the F5 Services; provided that (i) you warrant that you have the ability to bind such Affiliates under this Agreement; (ii) you are fully liable and responsible for all acts and omissions of such Affiliates under this Agreement; (iii) we consent to the usage by such Affiliate in writing; and (iv) if an Affiliate that is permitted to use the F5 Services ceases to be your Affiliate, you will promptly provide written notice to us and we may terminate the F5 Services with respect to such Affiliate. You may not copy or translate the Documentation without our prior written consent.

2.1.2. Hardware. If the F5 Services include hardware, we will provide you the right to use such hardware in accordance with the terms of this Agreement and the applicable Service-Specific Terms. Fees for hardware are in addition to any applicable subscription fees.

2.2. **Reservation of Rights**. We and our suppliers and licensors retain all right, title and interest in and to the F5 Services and any software or other technology used by us in the provision of the F5 Services and all modifications and derivative works thereof; all trademarks, names, logos; and all Documentation for the F5 Services, including without limitation, all rights to patent, copyright, trade secret and other Intellectual Property Rights. Other than as specifically described in Section 2.1, you have no right under the Agreement to any of the F5 Services, Documentation, or to any of our trademarks, patents, copyrights, or other Intellectual Property Rights. We retain all rights not granted herein. This includes any information we collect from your use of the F5 Services, including Aggregated Data or Usage Data. Subject to the foregoing, you retain all rights to Customer Data.

2.3. **Feedback**. If you provide us with any Feedback, we may use, disclose, or otherwise exploit such Feedback without restriction or further obligation to you.

2.4. **Support Services**. During the Term, we will provide Support Services to you in accordance with our then-current support policy, and as identified in an Order. In the event that the level of support is not identified in the Order, we

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will provide the basic level of support that is available for the applicable F5 Service. We may update or modify our support policy at any time, but any updates or modifications to the Support Services will not materially diminish our responsibilities under the support policy during the Term.

2.5. **Software Development Kit License.** If, in connection with your use of applicable F5 Services, we provide access to our proprietary software development kits ("**SDK**"), the following terms will apply.

2.5.1. Development License. Subject to the terms and conditions of this Agreement, we grant to you a limited, nonexclusive, royalty-free, non-sublicensable, non-transferable, license to reproduce the Source Code for the SDK solely for (i) your own internal use, and (ii) the purpose of compiling such Source Code into Object Code for distribution to third parties under Section 2.5.2 below.

2.5.2. Distribution License. Subject to the terms and conditions set forth herein, we grant to you a limited, nonexclusive, royalty-free, non-sublicensable, non-transferable, license to (i) compile the Source Code of the SDK into Object Code, and (ii) reproduce and distribute such Object Code solely as part of, and solely as integrated into, a mobile application and solely for your internal business purposes.

2.5.3. Distribution Agreements. Any distribution of Object Code by you under Section 2.5.2 above must be under the terms of distribution agreements and end user agreements containing the following minimum terms: (i) a provision that prohibits title to the distributed Object Code from passing to the end user or any third party; (ii) a provision that prohibits transfer or duplication (except for back-up and archival copies) of the distributed Object Code; and (iii) a provision that prohibits causing or permitting the reverse engineering, disassembly, decompiling or any other attempt to derive Source Code of the distributed Object Code, except to the extent the laws of the end user's jurisdiction give the end user the right to do so to obtain information necessary to render the applicable Object Code interoperable with other software or hardware. You will enforce each such agreement with at least the same degree of diligence that you use to enforce similar agreements for other products or services, but in no event with less than reasonable effort. You will not (and will not authorize or knowingly permit any third party to) identify us as the source of any software contained in any of your applications.

2.5.4. Open Source Software. You will not (and will not authorize or knowingly permit any third party to) incorporate any Open Source Software into, or link (statically or dynamically) any Open Source Software with, any of your mobile applications into which any portion of the Object Code of the SDK is integrated.

2.5.5. Source Code Restrictions. You will not (and will not authorize or knowingly permit any third party to): (i) disclose all or any portion of the Source Code for the SDK or related Documentation to anyone other than your employees on a need-to-know basis solely for purposes authorized under this Agreement, provided such employees are expressly bound by the nondisclosure obligations equally as protective as those in this Agreement; (ii) reproduce all or any portion of the Source Code for the SDK, in any form or medium, except as necessary for exercising your rights under this Agreement; (iii) allow hard copy printouts of any portion of the Source Code for the SDK to exist except within secured locations; (iv) allow soft copy versions of any portion of the Source Code for the SDK to reside on computers or networks unless such computers or networks are password protected (with such passwords only being made available to such employees); or (v) use any portion of the Source Code for the SDK for any purpose not specifically authorized in this Agreement. You will advise all employees with access to any portion of the Source Code for the SDK of their responsibilities under this Agreement and their respective individual confidentiality agreement both at the time such person's access to the Source Code for the SDK commences, and at the time such access terminates. You will be responsible for any breach of the requirements in this Section by any of your employees.

2.5.6. Users. You may authorize other Users to access and use the SDK as granted to you hereunder; provided, however that you will be responsible for all the acts and omissions of such Users as if they were your own acts or omissions.

2.6. **Trials**. We may provide certain F5 Services that are available for purchase under an Order at no charge for evaluation (each such evaluation, a "**Trial**"). This Agreement applies to Trials, except for the following different or additional terms: (i) unless otherwise agreed to in writing by the Parties, the term for a Trial is 30 days, which may be extended upon our written consent; (ii) Trials are provided "as is", without warranty of any kind, and we disclaim

all warranties, indemnities, and all other liabilities for Trials; (iii) the term for a Trial shall commence on the date that we enable you to access the F5 Services that are the subject of the Trial; (iv) you are not entitled to any support and maintenance services or any updates for a Trial; and (vi) either Party can terminate a Trial subscription upon five days' written notice to the other Party. In the event of a conflict between this Section and any other portion of this Agreement, this Section shall control.

2.7. **Free Services**. We may make Free Services available to you. Use of Free Services is subject to the terms of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control. Free Services are provided to you without charge up to certain limits as described in the Service Policies. Usage over these limits requires your purchase of additional resources or services. You agree that we, in our sole discretion and for any or no reason, may terminate your access to the Free Services or any part thereof and delete or destroy any Customer Data associated with Free Services. You agree that any termination of your access to the Free Services and/or deletion or destruction of Customer Data may be without prior notice, and you agree that we will not be liable to you or any third party for such termination and/or deletion or destruction. THE FREE SERVICES AND ANY OUTPUT GENERATED THEREFROM ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND WE DISCLAIM ALL WARRANTIES AND SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE SERVICES OR ANY OUTPUT GENERATED THEREFROM UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE F5's LIABILITY WITH RESPECT TO THE FREE SERVICES SHALL NOT EXCEED $100.00. The foregoing provisions of this subsection shall also apply to F5 Services that are designated by us as "Preview", "Beta", "Early Access", "Early Release", or "Limited Access" ("**Preview Services**"). Unless otherwise specified in such Service Policies applicable to such Preview Services, you shall use such Preview Services only for your internal demonstration, test, or evaluation purposes and not in a production environment.

2.8. **Terms Applicable to Data**.

2.8.1. Customer Data. You hereby grant us a non-exclusive right and license to use the Customer Data in connection with any F5 Service to which you subscribe to provide the F5 Services purchased by you. You represent and warrant that you have the right to disclose and provide to us any data provided through your use of and access to the F5 Services, and that no Customer Data will violate or infringe upon the rights of any third party.

2.8.2. You acknowledge and agree that certain of the F5 Services may rely on timely submission of complete and accurate Customer Data and you will submit all required Customer Data as specified in an Order, the Service-Specific Terms or Documentation.

2.8.3. Usage Data. In connection with the F5 Services, we may collect Usage Data. We may use Usage Data to operate our business, including to support your Account and support, improve, and enhance the F5 Services.

2.8.4. Aggregated Data. We may use Aggregated Data derived from the F5 Services to support and improve our products and services, including in the development of new features, products, tools, and content, and for other commercial purposes.

2.9. **Third-Party Software**. We may in our sole discretion, make available third-party software ("**Third-Party Software**") embedded in, or otherwise provided with, the F5 Services. Third-Party Software is expressly excluded from the defined term "F5 Services," as used throughout this Agreement. Your use of the Third-Party Software is subject to the applicable third-party license terms, which we will make available to you on request, and such Third-Party Software is not licensed to you under the terms of this Agreement. If you do not agree to abide by the applicable license terms for the Third-Party Software, then you may not access or use the F5 Services or the Third-Party Software. Additionally, the F5 Services may allow you to connect to and/or integrate certain Third-Party Applications. The access and use of such Third-Party Applications in connection with the F5 Services is governed solely by the license agreement between the applicable third party and you governing your use of such Third-Party Applications, and F5 does not endorse, is not responsible for, and makes no representations as to such Third-Party Applications. We are not liable for any damage or loss caused or alleged to be caused by or in connection with the access or use of any such Third-Party Applications.

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3. Your Obligations.

3.1. **Use Restrictions**. You are responsible for all activities conducted by you and your Users with respect to the F5 Services, including violations of this Agreement and any Service Policies by any of your Users. You shall use the F5 Services strictly in compliance with this Agreement, the applicable Orders, Service-Specific Terms, Service Policies, and all applicable laws and shall not directly or indirectly: (a) copy, modify, or create derivative works of the F5 Services, any software component of the F5 Services, or Documentation; (b) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the F5 Services or Documentation except as expressly permitted under this Agreement; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the F5 Services; (d) remove any proprietary notices from the F5 Services or Documentation; (e) disassemble any hardware made available to you as part of the F5 Services; (f) use the F5 Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person, or that violates any applicable laws; (g) access or use the F5 Services or Documentation for purposes of competitive analysis thereof or the development, provision or use of a competing software service or product; (h) hack, manipulate, interfere with, disrupt, disable or circumvent the F5 Services, including, but not limited to, the security, integrity or performance of the F5 Services or otherwise attempt to gain unauthorized access to the F5 Services; or (i) take any action that imposes an unreasonably large load or excessive traffic demands on the F5 Services.

3.2. **Acceptable Use Policy**. You will use the F5 Services solely in accordance with the Acceptable Use Policy, and you agree that any breach of the Acceptable Use Policy shall be deemed an impermissible use of the F5 Services and constitute a material breach of this Agreement by you. You will use reasonable efforts to cooperate with us to resolve any such breach.

3.3. **Suspension; Discontinuation**. We reserve the right to suspend or limit your access to F5 Services if: (a) we reasonably believe you have violated or are about to violate the Acceptable Use Policy; (b) you have not paid the applicable fees for the F5 Services; (c) you are in material breach of any of the terms of the Agreement or the Service Policies; (d) we reasonably believe your use of the F5 Services poses a risk to us, the F5 Services, our other customers or third parties; or (e) you are using the F5 Services or our intellectual property for fraudulent or illegal activities. We will use commercially reasonable efforts to (x) provide you with written notice of any suspension of or limitation on your access (which may be no notice at all) and (y) resume providing access to the F5 Services as soon as reasonably possible after the event giving rise to the suspension or limitation is cured. We will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that you may incur as a result of a suspension or limitation imposed in accordance with this Section 3.3. We reserve the right to discontinue any or all of the F5 Services or change or remove functionality of any or all of the F5 Services from time to time. We will notify you of any discontinuation of the F5 Services to which you are subscribed.

4. Ordering; Fees and Payment.

4.1. **Ordering**. You shall order the desired F5 Services either directly with us or through an Authorized Distribution Partner using the ordering process described for each such F5 Service in the Service-Specific Terms. If you have purchased a MY Subscription, you may be subject to specific ordering, reporting and payment terms contained in the Program Terms.

4.2. **Fees and Payment Terms**.

4.2.1. Taxes. You are responsible for any fees, taxes, duties, withholdings, and other assessments based on your purchase of the F5 Services (not including those taxes based on our net income or those taxes for which you have provided a valid certificate confirming you are exempt).

4.2.2. Fees. Where applicable, fees are based on your specific usage of the F5 Services (e.g., for our cloud services SaaS Offerings). Notwithstanding the foregoing, the amount of fees for F5 Services will be set forth in each Order or the documentation for the applicable F5 Service. Unless specified in an Order, all fees will be billed in United States dollars. Specific payment terms for each SaaS Offering are set forth in the Service-Specific Terms for such SaaS Offering. Unless you have purchased a SaaS Offering with a committed fee structure for a specified period, we may adjust the fees applicable to any SaaS Offering by providing notice to you (which may be by publication within the Portal). Any adjustments to the F5 Services fees will not be effective until at least thirty (30) days after we provide notice to you.

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4.2.3. Payment via Cloud Provider. If you order a SaaS Offering through a cloud computing or similar environment provider ("**Cloud Provider**"), you will pay all usage or subscription fees plus any applicable sales and/or use taxes or other charges directly to the Cloud Provider. If you are required to pay any taxes based on any SaaS Offering subscriptions, you will pay such taxes with no reduction or offset in the amounts payable to the Cloud Provider.

4.2.4. Payment via Credit Card. If you provided us with credit card information for payments of amounts owed, you authorize us to immediately charge when due all fees, including all applicable sales or taxes or other charges, to the card number you provided. If you pay any fees with a credit card, we may seek preauthorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase. You authorize us to periodically charge until cancellation or termination of either the recurring payments or your account, all fees when due. Any recurring subscription payments will continue unless and until cancelled by you.

4.2.5. Usage Metrics. Certain F5 Services may be subject to Usage Metrics, as specified in an Order, the Documentation, or the Service-Specific Terms. Upon written request from us, you will: (a) certify in writing compliance with the applicable Usage Metrics (for example, by providing written evidence of the number of user accounts being monitored by the F5 Services); and/or (b) provide us reasonable access to your usage records and/or other internal logs, solely for the purpose of validating your compliance with the applicable Usage Metrics. If your use of the F5 Services exceeds the applicable Usage Metrics ("**Excess Usage**"), the Parties may work together to reduce such usage so that it conforms to applicable limits. If you are unable or unwilling to abide by any Usage Metrics, you will execute an Order for additional quantities of the applicable F5 Services promptly upon our request in order to become compliant with such Usage Metrics. You will be liable for fees associated with any Excess Usage determined in accordance with this Section.

4.2.6. Payment Terms. All Fees will be invoiced as set forth on your Order, and (i) payment terms are net 30 from the date of invoice; (ii) all fees are non-refundable; and (iii) suspension or termination of the F5 Services shall not relieve you of any payment obligations. The Parties acknowledge that the Customer currently purchases F5 Services through an Authorized Distribution Partner. In the event the Customer is authorized by F5 to purchase F5 Services directly through F5, the Parties will negotiate new applicable Payment Terms at that time.

4.2.7. Credit Terms. We reserve the right to set your credit terms in our sole discretion. If you are not extended credit by us, you must pay us all fees in advance of commencement of the F5 Services. If we grant you credit terms, then all invoices are due and payable within thirty (30) days following receipt of our invoice. We may change your credit terms on written notice to you.

4.2.8. Billing Disputes. In the event that you, in good faith, dispute any amount charged or invoiced hereunder, you will provide written notice of such dispute, which must be reported to us within thirty (30) days following receipt of invoice or the applicable statement, provided that in no event shall you withhold any fees not subject to a good faith dispute. Billing disputes do not constitute a material breach.

4.2.9. Late Payments. Payment of fees not received when due, or that are refused by your credit card or bank, shall be subject to a late charge at a rate equal to the lesser of 1.5% per month (18% per annum) or the highest rate permitted by law, plus all bank charges and costs of collection (including, attorneys' fees). In the event that late payments are not paid in full within thirty (30) days following notice of delinquency, we may terminate or suspend your access to the F5 Services pursuant to Section 3.3 of this Agreement. The Parties acknowledge that the Customer currently purchases F5 Services through an Authorized Distribution Partner. In the event the Customer is authorized by F5 to purchase F5 Services directly through F5, the Parties will negotiate new Late Payment terms at that time.

4.2.10. Resellers. If you purchase an F5 Service through an Authorized Distribution Partner, the terms of this Agreement will apply except for any terms related to pricing, payment, Service Term, or Taxes. Such terms will be negotiated solely by and between you and such Authorized Distribution Partner.

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5. Term and Termination.

5.1. Term.

5.1.1. Agreement Term. The term of this Agreement will commence on the Effective Date and will continue until terminated in accordance with the terms herein (the "**Term**").

5.1.2. Service Term. The term for any F5 Services provided hereunder shall either be (i) for pre-paid F5 Services, the term as applicable for the F5 Services ordered and paid for by you pursuant to an Order; (ii) for consumption-based F5 Services, the period of time in which you use such SaaS Offering; or (iii) for MY Subscriptions, the term as indicated in your F5 issued quote or other agreement with us ((i), (ii) or (iii), as applicable, the "**Service Term**"), unless earlier terminated pursuant to the terms of this Agreement.

5.2. Termination. This Agreement or any applicable Service Term may be terminated by either party (a) upon thirty (30) days prior written notice in the event of a material breach of this Agreement or the applicable Service Policies by the other party which is not cured within such thirty (30) day period; (b) immediately upon written notice if either party materially breaches a provision of this Agreement that cannot be cured; (c) immediately upon written notice if the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable insolvency proceeding, or if any such insolvency proceeding is instituted against the other (and not dismissed within 120 days); or (d) if there are no Orders then in effect and effective 10 days' after receipt of written notice by the non-terminating Party. The foregoing termination rights are in addition to your termination rights set forth in Section 8.2.2. This Agreement may be terminated by Customer upon thirty (30) days' prior written notice if Customer is not approved for or otherwise receives funds sufficient to continue payments set forth in this Agreement; provided, however, that prior to termination, the Parties will, in good faith, discuss modification to the applicable scope of purchase being terminated. In the event of termination due to a lack of appropriations, Customer will pay F5 for all undisputed fees and expenses related to the F5 Services received prior to the effective date of termination.

5.3. Effect of Termination.

5.3.1. Termination of the Agreement. Upon termination of this Agreement, (a) all Service Terms then in effect and the rights granted to you under the Agreement will immediately terminate, (b) all fees owed by you to us are immediately due upon receipt of a final invoice, and (c) and you will immediately cease use of all F5 Services.

5.3.2. Termination of Service Terms. Upon termination of any Service Term, your access to the applicable F5 Services shall immediately cease and the license granted to you to use such F5 Services shall immediately terminate.

5.3.3. Survival. Upon termination of this Agreement, the Parties' obligations under Sections 2.2 (Reservation of Rights); 2.3 (Feedback); 3.1 (Use Restrictions); 4.2 (Fees and Payment Terms); 5.3.1 (Termination of the Agreement); 5.3.3 (Survival); 6 (Confidentiality); 8 (Warranties and Disclaimers); 9 (Limitation of Liability); 10 (Indemnification); and 11 (Miscellaneous) will survive.

6. Confidentiality.

6.1. Definition. Each Party agrees that the business, technical, financial and other information, including without limitation, all software, Source Code, inventions, algorithms, techniques, methodologies, schematics, know-how, analyses, trade secrets, technical data, strategic planning, marketing data, databases, drawings, models, performance information and ideas and the terms and conditions of this Agreement, that is either designated in writing as confidential, or by the nature of the circumstances a reasonable person would treat as confidential, shall be the confidential property of the disclosing party and its licensors ("**Confidential Information**"). Confidential Information does not include information that (a) is previously rightfully known to the receiving party without restriction on disclosure, (b) is or becomes known to the general public, through no act or omission on the part of the receiving party, (c) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (d) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party.

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6.2. **Confidentiality Obligations**. Each Party agrees to protect the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event using less than a reasonable standard of care. A party shall not: (a) disclose or use any Confidential Information of the other Party for any purpose outside the scope of this Agreement, except with the disclosing party's prior written permission, or (b) disclose or make the other party's Confidential Information available to any party, except those of its Affiliates, employees, contractors, and agents that have signed or accepted an agreement containing disclosure and use provisions substantially similar to those set forth herein and have a "need to know" in order to carry out the purpose of this Agreement. If a party is compelled by law to disclose Confidential Information of the other party, it shall provide prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure. Due to the unique nature of the parties' Confidential Information disclosed hereunder, there can be no adequate remedy at law for a party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching party. Therefore, upon any such breach or threat thereof, the party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it.

7. Security and Privacy.

7.1. **Security**. We will maintain a security program materially in accordance with industry standards that is designed to (i) ensure the security and integrity of Customer Data and personal data uploaded by you or on your behalf to the F5 Services; (ii) protect against threats or hazards to the security or integrity of Customer Data and personal data; and (iii) prevent unauthorized access to Customer Data and personal data. In furtherance of the foregoing, we will maintain the administrative, physical, and technical safeguards to protect the security of Customer Data that are described in the applicable Documentation. Our security safeguards include measures for preventing access, use, modification or disclosure of Customer Data and personal data by our personnel except (a) to provide the F5 Services and prevent or address service or technical problems, (b) as required by applicable law, or (c) as you expressly permit in writing or under this Agreement.

7.2. **Personal Data and Protected Health Information**. You agree that you shall: (a) not disclose any personal data or other information to us, if such disclosure would violate any applicable law, rule or regulation; (b) not request us to use, disclose or otherwise process personal data or other information in any manner that would not be permissible under any applicable law, rule or regulation, if such use or disclosure or other processing were done by us; and (c) disclose to us only the minimum amount of personal data reasonably necessary for us to provide the F5 Services under the Agreement; and (d) not share any information that would fall within the definition of 'Protected health information' under the Health Insurance Portability and Accountability Act, 1996, unless an appropriate business associate agreement is executed. You will obtain any consents and provide any notices that are legally required for your use of the F5 Services.

7.3. **Security Assessment**. At your written request, but no more than once in any twelve (12) month period, we will (a) submit written responses to reasonable questions regarding our privacy and information security practices that apply to Customer Data; and (b) upon thirty (30) days advance written notice, permit you reasonable access to our security personnel to conduct interviews regarding a privacy and security assessment of our procedures as they relate to the integrity of your data and to the systems that support and transmit Customer Data. You will be solely responsible for all costs and expenses (including our costs and expenses) related to the exercise of your rights in this Section 7.3.

7.4. **Restrictions**. Notwithstanding any other provision in this Agreement, we shall not be required to provide (a) physical or network access to our security systems, (b) documentation to provide evidence of compliance other than applicable attestations of compliance, (c) our costs of providing the F5 Services, (d) any results of security vulnerability assessments; (e) any information to the extent that providing such information is a violation by us of applicable laws or regulations; confidentiality obligations to our customers; or security certifications; or if such disclosure would hinder law enforcement's investigation into a security event or any trade secret of F5.

7.5. **Additional Security and Privacy Terms**. The Service-Specific Terms may contain additional detail relevant to security and privacy.

8. Warranties and Disclaimers.

8.1. **Your Representations and Warranties**. You hereby warrant, represent and covenant that (a) in your performance under the Agreement and use of the F5 Services, you will comply with all applicable laws and will not infringe the proprietary rights or privacy rights of any third parties; (b) you will and have provided accurate, current and complete information in connection with your Account and you will maintain and promptly update your Account information to keep it accurate, current and complete; and (c) you will maintain the security of your username(s) and password(s). You will promptly notify us if you discover or otherwise suspect any unauthorized access to your Account or the F5 Services, including any unauthorized use or disclosure of your Customer Data. You represent that the individuals and your Affiliates using the F5 Services under your Account act with full authority of the Account owner.

8.2. **Our Warranties**.

8.2.1. **SaaS Offerings**. We hereby warrant that we will provide the SaaS Offerings in a manner that substantially conforms to the Documentation for the applicable SaaS Offerings. This warranty shall not extend to non-conformance that results from: (a) your breach of the Service Policies or other use of the SaaS Offerings in violation of the Agreement or not in accordance with the Documentation; (b) a Force Majeure Event (as defined below); or (c) failures caused by your software or other software, hardware, services, or products not provided by us.

8.2.2. **Remedy**. For any SaaS Offerings not in conformance with Section 8.2.1, your sole and exclusive remedy shall be that we will correct the non-conformity or, if we fail to correct the non-conformity within 30 days after receiving written notice from you, or such other time period as may be mutually agreed upon by the parties, you may terminate the Service Term for the affected SaaS Offering. In the event that you terminate the Service Term pursuant to this Section 8.2.2 we will promptly issue you a refund for the pro-rata amount of any unused fees prepaid by you for such terminated SaaS Offering, calculated from the effective date of termination. The foregoing states your exclusive remedy, and our sole liability arising in connection with the limited warranties herein. The access to and use of the SaaS Offerings granted hereunder do not replace the need for you to maintain regular data backups or redundant data archives. WE HAVE NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF YOUR DATA.

8.3. **Hardware Warranty**. If the F5 Services purchased by you under this Agreement include hardware, any warranties in connection with such hardware will be set forth in the applicable Service-Specific Terms.

8.4. **Disclaimer of Additional Warranties**. EXCEPT AS OTHERWISE STATED HEREIN, THE F5 SERVICES AND ANY DATA PROVIDED AS A RESULT OF THE F5 SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND NEITHER WE, OUR LICENSORS, NOR OUR SUPPLIERS MAKE ANY OTHER WARRANTIES, AND HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CORRECTNESS OR RELIABILITY, REGARDING THE USE AND RESULTS OF THE F5 SERVICES OR ANY DATA PROVIDED AS A RESULT OF THE F5 SERVICES, OR THAT USE OF THE F5 SERVICES WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE OR FREE OF HARMFUL COMPONENTS, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE. IN ADDITION, WE DO NOT WARRANT OR GUARANTEE THE F5 SERVICES WILL DETECT ALL POSSIBLE ATTACKS AND/OR THREATS. WE RECOMMEND ALL CUSTOMERS MAINTAIN APPROPRIATE SECURITY CONTROLS ON THEIR ORIGIN SERVER(S). YOU ASSUME ALL RISK OF USE WITH SECURITY POLICES, INCLUDING APPLICATION UNAVAILABILITY FOR END USERS DUE TO ADVANCED BLOCKING POLICIES.

8.5. **Limitations**. YOU RECOGNIZE THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND THEREFORE ARE NOT SUBJECT TO OUR CONTROL (SUCH NETWORKS, "**NON-CONTROLLED NETWORKS**"). MALFUNCTION OR CESSATION OF INTERNET SAAS OFFERINGS BY INTERNET SERVICE PROVIDERS OR OF ANY NON-CONTROLLED NETWORKS THAT FORM THE INTERNET MAY MAKE THE F5 SERVICES TEMPORARILY OR PERMANENTLY UNAVAILABLE. YOU AGREE THAT WE SHALL NOT HAVE ANY LIABILITY WHATSOEVER WHEN THE F5 SERVICES ARE TEMPORARILY OR PERMANENTLY UNAVAILABLE DUE TO NON-AVAILABILITY OF NON-CONTROLLED NETWORKS INCLUDING DUE TO THE MALFUNCTION OR CESSATION OF INTERNET SERVICES BY NON-CONTROLLED NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO OUR CONTROL, OR DUE TO ANY ACCIDENT OR BY YOU. WE SHALL NOT BE LIABLE TO YOU FOR ANY BREACH OF SECURITY ON YOUR NETWORK, SYSTEM OR EQUIPMENT, OR FOR ANY LOSS OR THEFT OF INFORMATION TRANSMITTED OVER

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THE INTERNET OR STORED ON COMPUTERS DIRECTLY CONNECTED TO THE INTERNET EXCEPT WHERE SUCH BREACH, LOSS OR THEFT IS CAUSED BY OUR WILLFUL MISCONDUCT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. Limitation of Liability.

9.1. **Liability**. NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS (I) WILL HAVE ANY LIABILITY OR OBLIGATION, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY), OR OTHERWISE FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF USE, DAMAGE TO, LOSS, OR CORRUPTION OF DATA (WHETHER DIRECT OR INDIRECT, AND WHETHER OR NOT CONSTITUTING TANGIBLE PROPERTY DAMAGE), LOSS OF REPUTATION, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF BUSINESS, LOST PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, ANTICIPATED SAVINGS, OR OTHER FINANCIAL LOSS ARISING IN CONNECTION WITH THE F5 SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE F5 SERVICES; OR (B) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY CUSTOMER DATA OR OTHER DATA. EXCEPT FOR CLAIMS ARISING FROM OUR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATION OF LAW, SUBJECT TO THE FOREGOING, LIABILITY OF US AND OUR LICENSORS UNDER THIS AGREEMENT (INCLUDING ALL ORDERS) WILL NOT EXCEED (1) THE AMOUNT PAID OR PAYABLE FOR THE F5 SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE THE INCIDENT GIVING RISE TO THE LIABILITY, OR (2) ONE HUNDRED DOLLARS ($100.00) IF YOU HAVE PAID NO FEES TO US FOR THE F5 SERVICES THAT GIVE RISE TO THE CLAIM HEREUNDER . THE LIMITATIONS CONTAINED IN THIS SECTION WILL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER ANY TERM OF THE AGREEMENT, AND ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NOTWITHSTANDING THE FOREGOING, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY IN THE EVENT OF INFRINGEMENT OF A THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, FOR WHICH F5'S AGGREGATE, CUMULATIVE LIABILITY (INCLUDING WITHOUT LIMITATION ANY COSTS IT IS OBLIGATED TO INCUR IN MEETING ITS CONTRACTUAL OBLIGATIONS HEREUNDER) WILL NOT EXCEED THREE TIMES (3X) THE AMOUNT PAID OR PAYABLE FOR THE F5 SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE THE INCIDENT GIVING RISE TO THE LIABILITY.

10. Indemnification and Insurance.

10.1. **Our Indemnification**. Subject to Section 10.1.1 below, we will defend you against any claim, demand, suit, or proceeding ("**Claim**") made or brought against you by an unaffiliated third party arising from or alleging that the use of the F5 Services as permitted hereunder infringes or misappropriates a valid U.S or European Union patent, copyright or trade secret and will indemnify you for any damages finally awarded against you (or any settlement approved by us) in connection with any such Claim. The terms "misappropriate" and "trade secret" are used as defined in the Uniform Trade Secrets Act, except in case of claims arising under any claim governed by the laws of any jurisdiction outside the United States, in which case "misappropriation" will mean intentionally unlawful use and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement.

10.1.1. Limitations. We will have no liability for any claim of infringement under Section 10.1 based on (a) use of the F5 Services in combination with equipment, services or software (including Open Source Software) not supplied by us where the F5 Services would not itself be infringing; (b) F5 Services that have been altered or modified in any way by anyone other than us or our authorized agents; (c) use of the F5 Services in an application or environment not described in the Documentation; (d) services, software or technology not developed by us; (e) supply or use of the F5 Services in any country into which the U.S. has embargoed or restricted the export of goods or services; (f) supply or use of the F5 Services to or by any person or entity who you know or have reason to know will utilize the F5 Services or portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (g) supply of the F5 Services to or use of the F5 Services by any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government including but not limited to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders.

10.1.2. Infringement Remedies. If, in our reasonable opinion, the F5 Services infringe or are likely to infringe, we will have the right, at our sole option and expense, to (a) obtain for you rights to use the F5 Services, (b) modify the F5 Services such that they become non-infringing or (c) if the options in clauses (a) or (b) are not commercially practicable, terminate the applicable Order and provide a credit not to exceed the pro-rata pre-paid fees paid by you for such F5 Services not delivered. The foregoing, subject to the restrictions set forth in Section 10.1.1 above, states your exclusive remedy and our exclusive liability concerning infringement.

10.2. **Your Indemnification**. You will defend us against any Claim made or brought against us or our Affiliates by an unaffiliated third party arising from or relating to (a) a breach by you or any of your employees, personnel, subcontractors, or agents of this Agreement, any license applicable to Third Party Software or Third-Party Applications, or the Service Policies; (b) your use, disclosure or other handling of New Data (as that term is defined in the Service-Specific Terms) in violation of the Agreement; (c) your breach or violation of any applicable law, rule or regulation; (d) an allegation of infringement or misappropriation of any third party's rights, in connection with our use of the Customer Data under this Agreement; (e) your deployment and/or configuration of any Customer Application; or (f) your gross negligence, fraudulent misrepresentation or willful misconduct.

10.3. **Indemnification Process**. The indemnifying party will pay costs and damages finally awarded against the indemnified party, or agreed in settlement by the indemnifying party directly attributable to any such Claim, and will bear all reasonable costs of the investigation and defense of the claim, but only on condition that (a) the indemnified party notifies the indemnifying party in writing of such claim promptly following receipt of notice; provided that any delay in providing such notice shall not impact the indemnifying party's obligations hereunder except to the extent that the indemnifying party is materially prejudiced by such delay, (b) the indemnifying party has sole control of the defense and settlement negotiations provided that the settlement includes a release of all claims against the indemnified party and contains no admission of liability by the indemnified party, (c) the indemnified party provides indemnifying party all non-privileged information and communications received by the indemnified party concerning such claim and (d) the indemnified party provides reasonable assistance to the indemnifying party when requested. The indemnified party will have the right to participate in the defense with counsel of its own choosing at its expense; provided that such representation does not interfere with indemnifying party's right to control the defense.

10.4. Without in anyway affecting the indemnity herein provided and in addition thereto, F5 shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Attachment A, as attached hereto and incorporated herein.

11. Miscellaneous.

11.1. **Relationship of Parties**. The parties are independent contractors in the performance of their obligations under this Agreement, and nothing contained herein shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

11.2. **Notices**. Notices under this Agreement shall be sufficient only if in writing in English and delivered in accordance with this Section. All notices to us shall be sent to the address(es) of the appropriate F5 entity in the table below by a major commercial rapid delivery courier service or mailed by certified or registered mail, return receipt requested. All notices to you shall be sent to the electronic mail address provided to us in the Portal to the attention of your Legal Department. Notice may also be sent to you by first-class postal mail to the mailing address specified in your Portal. Either party may change its address by giving the other party written notice in accordance with this Section 11.2.

F5 entity	Address for Notices:	With a copy to:
F5, Inc.	F5, Inc. Attn: Legal Dept. 801 Fifth Avenue Seattle, WA 98104 USA	
F5 Networks, Ltd.	F5 Networks, Ltd.	F5, Inc.

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	Attn: Legal Dept. Chertsey Gate West 43-47 London Street Chertsey Surrey KT16 8AP United Kingdom	Attn: Legal Dept. 801 Fifth Avenue Seattle, WA 98104 USA
F5 Networks Singapore Pte Ltd	F5 Networks Singapore Pte Ltd Attn: Legal Dept. 5 Temasek Boulevard #08-01/02/05 Suntec Tower 5 Singapore 038985 Singapore	F5, Inc. Attn: Legal Dept. 801 Fifth Avenue Seattle, WA 98104 USA

11.3. **Force Majeure**. If either party is unable to perform any of its obligations under the Agreement or such performance is delayed, other than payment obligations, due to any cause or event beyond the reasonable control of such party (a "**Force Majeure Event**"), then such party shall be excused for such delay or nonperformance, as applicable, of those obligations for as long as such Force Majeure Event continues.

11.4. **Export Control**. F5 Services may be subject to export control legal requirements of various countries, including the laws of the United States. You shall comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions and regulations of the U.S. Department of Commerce, and any other applicable U.S. and foreign authority. Without limiting the foregoing, (a) you represents that your entity is not named on any U.S. government list of persons or entities prohibited from receiving exports, (b) you shall not permit access or use of the F5 Services in violation of any U.S. export embargo, prohibition or restriction, and (c) you shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which the F5 Service is located.

11.5. **Government Restricted Rights**. The SaaS Offerings and any other software licensed to you under this Agreement is "commercial computer software" as that term is described in DFAR 252.227- 7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("**FAR**") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("**DOD**"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

Assignment; Subcontractors. This Agreement and the rights and obligations herein may not be assigned or transferred, in whole or in part, by the Customer without the prior written consent of F5. To the extent an assignment is not to a current F5 Affiliate, then such assignment would require the Customer's prior written consent which shall not be unreasonably conditioned, withheld or delayed. For the avoidance of doubt, no such consent shall be required for an assignment by F5 to a party in connection with F5's reorganization, merger, consolidation, sale, acquisition, or other restructuring involving all or substantially all of the voting securities or assets of the applicable business line of F5 or to an Affiliate. Any attempted assignment or transfer in violation of this Section 11.6 will be void and without effect. Subject to the foregoing, the Agreement will be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns. We may subcontract to third parties (including but not limited to our Affiliates) parts of the F5 Services, including but not limited to services related to management and hosting of the F5 Services. We shall be responsible for breaches of the Agreement caused by any subcontractors used in pursuant to the foregoing sentence.

11.6. **Governing Law; Dispute Resolution**. This Agreement will be governed and construed in accordance with the following governing law ("**Governing Law**") depending on the applicable F5 entity who is a party to this Agreement, without regard to its choice of law rules, and without regard to the Uniform Computer Information Transactions Act or the United Nations Convention on Contracts for the International Sale of Goods.

F5 entity	Governing Law	Seat of Arbitration/Venue
F5, Inc.	The laws of the State of California	California Superior Court of competent jurisdiction
F5 Networks, Ltd.	The laws of the Republic of Ireland	Dublin, Ireland

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F5 Networks Singapore Pte Ltd	The laws of Singapore	Singapore

11.6.1. **Jury Trial Waiver; Prevailing Party.** Both parties knowingly and unconditionally agree to waive any right to have a jury participate in the resolution of any dispute or claim between the parties or any of their respective Affiliates arising under this Agreement. The prevailing party in any arbitration, suit, or action brought by one party against the other party to enforce the terms of this Agreement or any rights or obligations hereunder, shall be entitled to receive, in addition to such other relief as the arbitrators or court may award, its reasonable costs and expenses, including without limitation all attorneys' fees, expert witness fees, litigation related expenses and arbitrator and court or other costs incurred in such proceeding or otherwise in connection with bringing such arbitration, suit or action.

11.7. **Severability**. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement otherwise remains in full force and effect and enforceable.

11.8. **Entire Agreement; Order of Precedence**. This Agreement together with all the Service Policies and applicable Orders hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all proposals, understandings, discussions, or prior agreements, whether written or oral, relating to the subject matter of this Agreement and all past dealing or industry custom. In the event of any conflict or inconsistency between or among this Agreement or any Orders, Service Policies, or other documents referenced herein, the order of precedence shall be: (i) this Agreement; (ii) the applicable Order; (iii) the Service-Specific Terms for the applicable F5 Service; and (iv) the Documentation. Nothing contained in any Order or other document submitted by you shall in any way add to or otherwise modify this Agreement or Service-Specific Terms. The Service Policies may be updated by us from time to time. If we make a material change to any Service Policy, we will inform you of such changes, either by posting an update to the Portal, updating the "Last Updated" date on the applicable page, or providing email notice to you, provided that you have subscribed with us to be notified of such changes.

11.9. **Waiver**. No provision of, right or privilege under this Agreement shall be deemed to have been waived by any act, delay, omission or acquiescence on the part of any party, its agents or employees, but only by an instrument in writing duly executed by both parties. No waiver by any party of any breach or default of any provision of this Agreement by the other party shall be effective as to any other breach or default, whether of the same or any other provision and whether occurring prior to, concurrent with, or subsequent to the date of such waiver.

11.10. **Modification**. No modification of this Agreement shall be affected by either party's use of any order form, purchase order, acknowledgement, shrinkwrap, boxtop, or clickwrap license, or other form containing additional or different terms. This Agreement may only be modified by an instrument in writing duly executed by authorized representatives of both Parties, making specific reference to this Agreement and the clause to be modified.

11.11. **No Third-Party Beneficiaries**. Nothing in this Agreement, expressed or implied, is intended to confer upon any third party, any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

11.12. **Interpretation**. This Agreement will not be construed in favor of or against any party by reason of the extent to which any party participated in the preparation of this Agreement.

11.13. **Campaign Contribution Disclosure (SB 1439)**. We have disclosed to You using Attachment B - Campaign Contribution Disclosure Senate Bill 1439, whether We have made any campaign contributions of more than $250 to any member of the County Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Our proposal to the County, or (2) 12 months before the date this Agreement was approved by the County Board of Supervisors. We acknowledge that under California Government Code section 84308, We are prohibited from making campaign contributions of more than $250 to any member of the County Board of Supervisors or other County elected officer for 12 months after the County's consideration of this Agreement.

11.14. **Electronic Signatures**. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement.

The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the San Bernardino County and F5 have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated:

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

By

Deputy

F5 INC.

By ► DocuSigned by: Peter Kersten 91B83294E8D947C...

(Authorized signature - sign in blue ink)

Name Peter Kersten

(Print or type name of person signing contract)

Title Vice President, F5

(Print or Type)

Dated: 1/12/2024

Address

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► County Counsel	►	►
Date	Date	Date

ATTACHMENT A
INSURANCE REQUIREMENTS

F5 agrees to provide insurance set forth in accordance with the requirements herein. If F5 uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, F5 agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, F5 shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

    a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the applicable state statutes, including Employer's Liability with $250,000 limits covering all employees providing services on behalf of F5 and all risks to such persons under this Agreement due to accident or disease. If F5 has no employees, it may certify or warrant to the Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

    b. Commercial/General Liability Insurance – F5 shall carry General Liability Insurance covering all operations performed by or on behalf of F5 providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars ($1,000,000), per occurrence. The policy coverage shall include:
        i. Premises operations and mobile equipment.
        ii. Products and completed operations.
        iii. Broad form property damage (including completed operations).
        iv. Explosion, collapse and underground hazards.
        v. Personal injury.
        vi. Contractual liability.
        vii. $2,000,000 general aggregate limit.

    c. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy.

    d. Professional Liability –Professional Liability Insurance with limits of not less than one million ($1,000,000) per claim and two million ($2,000,000) aggregate limits

    or

    Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million ($1,000,000) and two million ($2,000,000) aggregate limits

    If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of three (3) years after Agreement completion.

    e. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than $1,000,000 for each occurrence or event with an annual aggregate of $2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities.

2. **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the Customer and its officers, employees, and agents as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Customer to vicarious liability but shall allow coverage for the Customer to the full extent provided by the policy.

3. **Waiver of Subrogation Rights**. F5 shall require the carriers of required coverages for Workers' Compensation and General Liability insurance to waive all rights of subrogation against the Customer, its officers, employees, and agents. All general liability insurance coverage provided shall not prohibit F5 and F5's employees or agents from waiving the right of subrogation prior to a loss or claim. F5 hereby waives all rights of subrogation against the Customer for loss or damage to F5's property, and for claims of injury to, or death of, employees of F5 resulting from the work performed or to be performed under this Agreement.

4. **Policies Primary and Non-Contributory**. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Customer.

5. **Severability of Interests**. F5 agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between F5 and the Customer or between the Customer and any other insured or additional insured under the policy.

6. **Proof of Coverage**. F5 shall furnish Certificates of Insurance to the Customer's Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, and F5 shall maintain such insurance from the time F5 commences performance of services hereunder until the completion of such services.

7. **Acceptability of Insurance Carrier**. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the state in which F5 is providing the applicable services and with a minimum "Best" Insurance Guide rating of "A- VII".

8. **Intentionally Omitted.**

9. **Failure to Procure Coverage**. In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the Customer has the right but not the obligation or duty to cancel the Agreement.

10. **Insurance Review.** Insurance requirements are subject to periodic review by the Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Customer. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Customer, inflation, or any other item reasonably related to the Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Any failure, actual or alleged, on the part of the Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Customer.

ATTACHMENT B
Campaign Contribution Disclosure
(SB 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidiary relationship but meets one of the following criteria:

(1) One business entity has a controlling ownership interest in the other business entity;
(2) there is shared management and control between the entities; or
(3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: F5 Government Solutions LLC

2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?

   Yes ☐ If yes, skip Question Nos. 3 - 4 and go to Question No. 5.

   No ☒

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: N/A

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s): N/A

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
F5, INC	Parent

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
N/A		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

Company Name	Subcontractor(s):	Principal and/or Agent(s):
N/A		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	

9. Was a campaign contribution, of more than $250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☒ If **no**, please skip Question No. 10. Yes ☐ If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: N/A

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing below, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than $250 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

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Signature

25 Jan 2024

Date

Kimberly Molnar

Print Name

F5 Government Solutions LLC

Print Entity Name, if applicable