



Contract Number

22-216

SAP Number

Innovation and Technology Department

Department Contract Representative

Jennifer Mancebo

Telephone Number

909-388-5579

Contractor

F5, Inc.

Contractor Representative

Rob Nuno

Telephone Number

909-263-0594

Contract Term

Indefinite, until terminated

Original Contract Amount

Non-financial

Amendment Amount

N/A

Total Contract Amount

Non-financial

Cost Center

1200604048

Briefly describe the general nature of the contract: *F5 Maintenance Terms and Conditions with F5, Inc., for direct support services that enable the Innovation and Technology Department to provide an uninterrupted, redundant and secure method of accessing County resources such as websites and computer applications, effective as of March 29, 2022 and continuing until terminated by either party provided that the Agreement remain in full force and effect with respect to maintenance and support services until the County gives notice of non-renewal of maintenance and support services, and the County ceases all use of the support services.*

FOR COUNTY USE ONLY

Approved as to Legal Form



Bonnie Uphold, Deputy County Counsel

Date

3-17-2022

Reviewed for Contract Compliance



Date

Reviewed/Approved by Department



Date

F5 Maintenance Terms and Conditions

These F5 Maintenance Terms and Conditions ("Agreement") is effective on the date of the last signature below (the "Effective Date"), and is between F5, Inc. ("F5"), and San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California with its principal offices at 385 North Arrowhead Avenue, San Bernardino, California 91245 ("Customer") and governs any F5 maintenance and support services purchased by Customer during the Term (as defined below).

1. **Agreement.** Subject to Customer's payment of applicable maintenance and support fees, F5 agrees to support, maintain, repair or replace the F5 products ("Product(s)") properly registered and entitled subject to this Agreement). **By accessing F5 support services in any way, Customer agrees to be bound by the terms and conditions below.**

2. **Term.** This Agreement shall commence on the Effective Date and shall continue until terminated by either party by giving thirty (30) days prior written notice to the other party (the "Term"); provided, that the terms of this Agreement will continue in full force and effect with respect to any F5 maintenance and support services purchased by Customer prior to such termination. Coverage under this Agreement will commence on the earlier of (i) (90) days after the date the Product is shipped from the manufacturing facilities of F5, or (ii) the date the covered Product is activated with F5, or (iii) if F5 has no record of license activation, service will begin on the ship date and no service extensions will apply. Customer support agreements will automatically renew for additional one year terms upon submission of a purchase order for renewal, unless either Customer or F5 provides written notice of termination at least 30 days prior to the end of any such term. In the event that Customer accesses F5 support services in any way after this Agreement has expired or been terminated, Customer will continue to be bound by this Agreement, including without limitation Sections 4, 10, and 11, which will continue to apply to the services after such expiration or termination. Each renewal will be at F5's then-current rate. Services pricing will be charged for all F5 Product platform and add-on software purchases. The total service price will be calculated as a percentage of total list prices, appropriate to the level of service purchased. Either party may terminate Customer's F5 support services under this Agreement upon 30 days' notice in the event of a material breach by the other party of this Agreement, provided such breach is not cured by the end of such 30 day period.

3. **F5's Obligations.**
 - (a) F5 will provide telephone support for any Product covered by this Agreement. Such support will consist of responding to trouble calls as reasonably required to make the Product perform as described in the current Product specifications. Customer will receive Standard or Premium service as indicated in its order for the F5 support services. Customer support will be provided in accordance with F5's support policies which are available at www.f5.com/about/guidelines-policies.

 - (b) Customer is entitled, at no charge, to updated versions of covered Products, such as bug fixes and new releases that are generally made available at no additional cost to F5's customers that have ordered maintenance services for the relevant time period. The foregoing right shall not include any options, upgrades or future products which F5 or third party vendors charge for as a separate product or where Customer's installed hardware platform has no further upgrades available according to either (i) the applicable F5 software release notes provided with each release and also available for review via the Ask F5 service or (ii) a written end-of-life announcement communicated to Customer by F5. F5 is not obligated to provide hardware upgrades to ensure compatibility with new software versions of its products or to ensure that new software versions of its products are compatible with outdated hardware platforms.

 - (c) F5 will, at its option, repair or replace any Product or component that fails during the term of Customer's support agreement at no cost to Customer, provided that Customer contacts the F5 technical support center to report the failure and complies with F5's return policies. Products returned to F5 must be preauthorized by F5 with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by F5's receiving department. All other packages will be rejected. A replacement Product or component will be shipped from F5's USA operations to the Customer on the next business day following F5's confirmation of the failure of the original Product or component via remote troubleshooting and receipt from the Customer of the RMA Template containing Customer provided delivery and system configuration information (Note: there are international exceptions). Customer will return the failed Product or component to F5 under the RMA number issued by F5 upon receipt of the replacement. F5 may invoice the Customer for any failed Products or components (a) with respect to which the damage to such Products or components is attributable to actions taken by Customer or any of its agents (including but not limited to the categories set forth in Section 4 below); or (b) not returned within ten (10) business days of shipment of the replacement unit(s) (c) Product not returned in the original packaging box or the replacement unit packaging that causes undue damage to the unit. Title to any returned Products or components will transfer to F5 upon receipt. F5 will be responsible for all freight charges for returned Products or components provided Customer uses F5 designated carrier. F5 will replace defective media or documentation or, at its option, undertake reasonable efforts to modify the software to correct any substantial non-conformance with the specifications.

 - (d) ASK F5 is a 24-hour, 7-day-a-week online service that allows Customers to receive rapid answers to F5 Product and service-related questions. Customers simply type a question into their Web browser; ASK F5 responds to the query. ASK F5 is also fully integrated with F5's technical support center, allowing Customers to quickly communicate on-line with support staff who are experts in F5 Products. F5 provides ASK F5 online support services at no charge during the term of this Agreement, provided that Customer must register to obtain a user name and password in order to access the Ask F5 services.

(e) F5 can use remote access tools to view a specific troubleshooting instance. When accessing Customer systems:

- F5 will access Customer's system only upon Customer request. F5 will not take control of the remote access session, but instead will guide the Customer through executing commands, gathering data, making configuration changes or other actions as may be necessary.
- F5 recommends that the Customer create backup copies of configuration files before any work is performed.
- Any recommended changes must be validated by the Customer and, where possible, will first be made on a stand-by unit.
- F5 will make use of security shred bins for all sensitive Customer information that may be written on paper.
- F5 does not send out Customer information.

If remote access is not an available option, it will take significantly longer to identify and resolve the outstanding incident.

(f) F5 specifically disclaims any and all support or repair obligation with respect to any application that has not undergone feature-set approval and F5's QA process for feature integration (a "Non-Supported Application"). Customer acknowledges that if a new support case is created in accordance with F5's support process where the issue is suspected to be, or is found to be, attributable to a Non-Supported Application, F5 may elect one of the following options, at its sole discretion:

- Remove the Non-Supported Application, following consultation with Customer, in order to continue to resolve the issue; or
- Cease work on the case and recommend that Customer remove the Non-Supported Application from the F5 Product in order to continue toward resolution.
- If the F5 Product continues to function improperly or if the issue persists due to the NonSupported Application, F5 will cease all support efforts on the case. The parties will then cooperate to develop a mutually satisfactory "for-fee" arrangement for continuing work on the issue.

4. **Restrictions.** Services provided by F5 under this Agreement are limited to the covered Product and are contingent upon the Customer's proper use of the Product in the application for which it was designed. F5 will not be obligated to provide any service or to correct any malfunction, damage or other problem if the Product: (a) has been altered, except by F5 or an F5-designated representative or in accordance with F5 instructions, (b) has not been installed, operated, repaired, or maintained in accordance with F5 instructions, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, (d) has been operated outside of the environmental specifications for the Product or (e) is related to configuration of Customer's network beyond that necessary to the use or installation of F5 Products. F5 reserves the right to limit or terminate development support (including error correction services) of any Product version one (1) year after the date of release of a subsequent Product version in accordance with its end of life policies (available through AskF5). The foregoing restriction shall apply even if Customer elects to install a Product version other than the then-currently shipping version of the Product.

5. **Recertification.** Requests for maintenance on Products purchased from sources other than an F5 VAR or directly from F5 (i.e. used or purchased from an online auction), or where maintenance has lapsed on the Product for more than 180 days, will first be subject to an inspection by a representative of F5 at the rate of \$10,000 USD per unit (\$20,000 USD for redundant systems) payable to F5 Networks. The inspection will determine if the unit is at a maintainable state and eligible for coverage.

Once the unit has passed inspection, a F5 support services and additional services may be purchased at the current published rates.

6. **Prices and Payment.** Fees for the initial or any subsequent term of Customer's support agreement will be due and payable net 30 days from date of invoice. All payments to F5 Networks will be made in US dollars. F5 may accept payment in any amount without prejudice to its right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere will be construed as an accord or satisfaction.

7. **Lapsed Service Fee.** If Customer purchases an annual Maintenance Agreement for a Product where maintenance has lapsed on the Product by up to 180 days, Customer will be charged a "Lapsed Service" fee at the rate of \$2,000 USD in addition to the then-current standard maintenance fee pro-rated for the time period during which no maintenance was in effect.

8. **Expedited RMA Services (Limited Availability Area).** Where Customer has purchased an Expedited RMA service, the terms of this Section 8 will also apply. Products covered under any of these services must be covered under current F5 support services under this Agreement. Expedited RMA service purchased by Customer will be available fifteen business days after the receipt and acceptance of the purchase order for service and the Customer's completed Expedited RMA Service paperwork, providing full hardware configuration to be supported and accurate installation address of Product (template provided by F5 Sales). F5 will make a reasonable effort to match the current configuration of the supported hardware. However, it is the Customer's duty to notify F5 in writing of any hardware configuration changes or changes to the Product location covered by this agreement. F5 requires fifteen business days to implement necessary changes to support the new configuration and/or location, and will be subject to Availability Area. If change notification is not made, F5 will take responsibility for the configuration and location on file at F5 only. Notification regarding physical moves of appliances must be made via email to RMAchanges@F5.com.

4 Hour RMA Services: For Customers with Products deployed within the F5 Four Hour RMA Availability Area (the Availability Area) as posted at <http://www.f5.com/about/guidelines-policies/>, F5 will make a commercially reasonable effort to deliver a Replacement unit within 4 hours of an F5 determination that a Replacement unit is needed and receipt from the Customer of the completed RMA

Template containing Customer provided delivery and system configuration information. Customer acknowledges and agrees that the Replacement unit may be delivered with a different System Software version than the version installed on the failed unit. For Customers with units that are not within the Availability Area or who otherwise do not meet the criteria listed for F5 Four Hour RMA Availability, F5 will use commercially reasonable efforts to deliver a replacement unit as soon as practicable.

The four hour period will be defined by the business hours covered by Customer's current F5 support services under this Agreement. Accessories such as optical modules and cables and mechanical items such as rail kits, latches, and bezels are not covered by Expedited RMA Services. Limited parts, including ARX batteries, are not covered by Expedited RMA Services for safety and regulatory reasons and will be subject to F5's standard RMA processes. Please contact Customer's F5 representative for further details.

Provided the Customer technical contact completes the RMA Template, for Customers that purchase the Expedited 4 Hour RMA with Technician Service (Limited Availability Area), the technician, working under the direct supervision of a remote F5 Network Support Engineer, will: a) Remove and replace the failed unit;

- b) Load the F5 Manufacturing Released System Software version on the Replacement unit that most closely matches, without exceeding, the System Software version on the failed unit;
- c) Activate the License on the Replacement Appliance where applicable.

The Customer understands and agrees that execution of the three steps above requires the Customer to provide a site escort for the Technician as well as high speed internet access and telephone connectivity both in reasonable proximity to the work area.

The technician will not:

- a) Troubleshoot;
- b) Apply Hot Fixes or software patches;
- c) Upgrade software;
- d) Make changes to the environment;
- e) Restore the configuration, create a basic configuration, or perform any other configuration activity
- f) Fulfill requests made by the Customer's on-site representative.

9. **Taxes and Other Charges.** All charges are exclusive of all foreign, federal, state, municipal, or other government excise, duty, sales, use or occupational taxes or charges now in force or enacted in the future, and therefore are subject to an increase equal in amount to any taxes or charges F5 may be required to collect or pay upon the services performed or materials provided hereunder whether during the service coverage period or otherwise.

10. **Insurance.**

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.

Without in anyway affecting any indemnity obligations 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 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 Customer'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. Personal injury.
 - v. Contractual liability.
 - vi. \$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.

Additional Insured. All policies, except for Worker's Compensation/Employer's Liability, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, 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 Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy.

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 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 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.

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 Customer.

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 Customer or between Customer and any other insured or additional insured under the policy.

Proof of Coverage. F5 shall furnish Certificates of Insurance to Customer 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.

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".

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, Customer has the right but not the obligation or duty to cancel the Agreement.

Insurance Review. Insurance requirements are subject to periodic review by 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 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 Customer, inflation, or any other item reasonably related to Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment, signed by both parties, to this Agreement. Any failure, actual or alleged, on the part of 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 Customer.

11. **Limitation of Liability and Disclaimer of Warranty.** F5 sole obligation and liability hereunder is for the service and repair of the Products covered under this Agreement. F5 will have no further obligation or liability beyond such service and repair. IN NO EVENT WILL F5 BE LIABLE FOR ANY DAMAGE RESULTING FROM LOSS OF USE, DATA, PROFIT, OR BUSINESS, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY. F5 LIABILITY FOR DAMAGES FOR ANY CAUSE, WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT) WILL BE LIMITED TO THREE HUNDRED THOUSAND DOLLARS (US\$300,000). F5 DISCLAIMS ALL WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE OR USE.
12. **General Provisions.**
 - (a) **Non-Assignment and Non-Transferability:** Customer may not transfer its F5 support services under this Agreement to a third party without F5 prior written consent. F5 support services entitlement under this Agreement is not transferable between Products or Customers. F5 support services under this Agreement cannot be transferred from one Product to provide coverage on another Product, unless this transfer is in connection with an RMA replacement. F5 support services under this Agreement do not transfer with Product title transfers between Customer and any third party without the prior written consent of F5 and payment of a re-certification fee. F5 may not assign this Agreement without Customer's prior written consent, except that F5 may assign this Agreement, without Customer's permission, in connection with any merger, consolidation, sale of all or substantially all of F5's assets, or any other similar transaction.
 - (b) **Force Majeure.** F5 will exercise reasonable efforts to meet its obligations hereunder, but will not be liable or in default under this Agreement due to the delays in delivering materials or furnishing services resulting from any cause beyond its reasonable control including, but not limited, to acts of God, weather, strikes, labor disputes, transportation difficulties, and/or any other cause whatsoever.

- (c) **Governing Law.** 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 the exclusive jurisdiction for any action relating to this Agreement shall be in the appropriate courts of the venue ("Venue") set forth opposite the applicable F5 entity:

F5 Entity:	Governing Law:	Venue:
F5 Networks Singapore Pte Ltd	The laws of Singapore	Singapore
F5 Networks Ltd.	The laws of England and Wales	London, England
F5, Inc.	New York	New York, NY

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

- (d) **Notice.** All notices and demands under this Agreement will be in writing in English and deemed given three (3) business days after it is sent by registered or certified mail, return receipt requested and postage prepaid, one (1) business day after it is sent via reputable nationwide overnight courier service, or upon personal delivery. All notices to Customer shall be sent to the address set forth at the beginning of this Agreement. All notices to F5 shall be sent to the address(es) of the undersigned F5 entity in the table below. Either party may change its address(es) by giving written notice to the other party in accordance with this Section 15.5. Notice may also be sent by fax, with confirmation of receipt, or electronic mail provided that it is also provided in accordance with one other method described above within three (3) business days.

F5 Entity:	Notice Address:
F5, Inc.	F5, Inc. Attn: Legal Department 801 Fifth Avenue Seattle, WA 98104 USA

- (f) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersede all proposals, understandings, or discussions, whether written or oral, relating to the subject matter of this Agreement and all past dealing or industry custom. No modification of this Agreement shall be effected by the Customer's use of any order form, purchase order, acknowledgement or other form containing additional or different terms. 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 email 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.


SAN BERNARDINO COUNTY

► 
Curt Hagman, Chairman, Board of Supervisors

MAR 29 2022

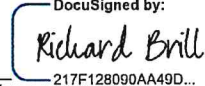
Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS

DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD


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

By _____ Deputy

F5, INC.

By ► 
(Authorized signature)

Name _____
(Print or type name of person signing contract)

SVP, Global Services - The Ame

Title _____
(Print or Type)

2/25/2022

Dated: _____

Address _____
See section 12(e) above.