



F5 NETWORKS CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (the "Agreement") is entered into by and between you/customer ("Customer" or "You") and F5. All references to "F5" in this Agreement will be deemed to be a reference to the applicable F5 entity as follows: (i) if the Customer's primary place of business is located in Europe, the Middle East or Africa ("EMEA"), the F5 entity is F5 Networks Ltd.; (ii) if the Customer's primary place of business is located in the Asia-Pacific region, excluding Japan, India and Taiwan ("APAC"), the F5 entity is F5 Networks Singapore Pte. Ltd.; and (iii) if the Customer's primary place of business is located in Japan, India, Taiwan or a region outside of EMEA or APAC, the F5 entity is F5 Networks, Inc.

F5 agrees to provide professional services to customer ("Customer") under the following terms and conditions (the "Agreement"). By agreeing to have F5 perform professional services for Customer, Customer agrees to be bound by this Agreement:

1. Professional Services.

1.1 F5 will provide Customer with a specified number of hours of professional services ("Services") as set forth in a statement of work signed by Customer and F5 ("Statement of Work") or as otherwise agreed to by F5 and Customer. The parties may choose to define a set of deliverables as described in a Statement of Work. If deliverables are defined by the parties, F5 will use its commercially reasonable efforts to provide such deliverables (the "Deliverables"), but will not be obligated to provide Services beyond the hours set forth in the Statement of Work. In the event that a Statement of Work is not specified, F5 will use commercially reasonable efforts to provide such Services as requested by Customer up to the number of hours agreed by the parties.

1.2 F5 will provide such resources and utilize such employees and/or consultants as it deems necessary to perform the Services. Customer agrees to furnish F5 with adequate technical assistance, network access, materials, and an environment suitable for F5 to be able to perform the Services. Customer further agrees to provide F5 with such technology owned or controlled by Customer (the "Licensed Technology") as F5 reasonably requires to perform the Services.

1.3 Customer and F5 agree to cooperate in good faith to achieve completion of the Services in a timely and professional manner. F5 shall bear no liability or otherwise be responsible for delays in the provision of Services or any portion thereof occasioned by Customer's failure timely to complete a Customer task or adhere to a Customer schedule.

1.4 Under this Agreement, F5 is not providing or licensing to Customer any existing or future F5 software programs or products. Customer may acquire licenses to such F5 products only under the terms of a separate software license agreement.

2. Term of Agreement.

This Agreement commences on the earlier of the date of the Statement of Work, Purchase Order, or date that F5 begins provided Services ("Effective Date") and, unless terminated earlier pursuant to the terms of the Agreement, shall continue in force until exhaustion of the number of consulting hours identified in the Statement of Work or as otherwise agreed to by F5 and Customer..

3. Right to Perform Consulting Services.

Customer acknowledges that F5 has extensive expertise, experience, and proprietary products and tools in the area of application traffic management and secure remote access, and that F5 intends to utilize such expertise, experience, products and tools in providing consulting services and other services in such field to other clients. Subject to F5's compliance with the confidentiality provisions stated herein, nothing in this Agreement shall restrict or limit F5 from performing such development, consulting or other services to any other entity in any industry.

4. Services Fees and Expenses for Purchases through Distribution.

If Customer purchases the Services from a value-added reseller or other reseller who is authorized by F5 to resell the Services (the "F5 Authorized Reseller"), then Customer agrees to pay the applicable fees for such Services to the F5 Authorized Reseller, plus any applicable sales or use or other taxes or governmental charges. Customer also shall reimburse the F5



Authorized Reseller for actual, reasonable travel and out-of-pocket expenses incurred in accordance with F5's business expense policy.

5. Services Fees, Expenses and Invoicing for Direct Purchases.

If Customer purchases the Services directly from F5, the following provisions shall apply:

5.1 For the Services provided by F5, Customer agrees to pay F5 the fees set forth in a quote issued by F5 to Customer or as otherwise agreed to by F5 and Customer (the "Payment Schedule") plus any applicable sales or use taxes or other charges as discussed in Section 4.2. Customer also shall reimburse F5 for actual, reasonable travel and out-of-pocket expenses incurred in accordance with F5's business expense policy.

5.2 The amounts payable to F5 set forth in the Payment Schedule are exclusive of any sales or use or other taxes or governmental charges. Customer shall be responsible for payment of all such taxes or charges except for any taxes based solely on F5's net income. If Customer is required to pay any taxes based on this Section 4.2, Customer shall pay such taxes with no reduction or offset in the amounts payable to F5 hereunder.

5.3 Unless otherwise set forth in a Statement of Work, F5 will invoice on a monthly basis for all Services fees and reimbursable expenses that have accrued. Each invoice shall be due and payable within thirty (30) days of date of a proper invoice, and shall be deemed overdue if they remain unpaid beyond that point. If past due amounts owing from Customer are not paid within thirty (30) days, the unpaid amount shall accrue interest at the rate of 1.0% per month, or at the highest legal interest rate, if less.

6. Intellectual Property Rights.

Except as described below, the Deliverables which are first produced or created for Customer by F5 under a Statement of Work incorporating this Agreement shall be the property of Customer and shall be considered works made for hire under this Agreement. Notwithstanding the foregoing, any developed technology, including patentable and unpatentable ideas, know-how, technical data, or techniques, and all intellectual property rights appurtenant thereto which may be developed by F5 under this Agreement or in the delivery of any services hereunder that derive from, improve, enhance or modify F5's product(s) or pre-existing intellectual property, including but not limited to product enhancements embodied in "iRules" and/or using the "iControl" open API, will be the property of F5 (collectively, "F5 Developments"). Customer will have a non-exclusive license to the F5 Developments to the extent necessary to enable Customer to use any F5 Deliverable(s). Subject to the limitations placed on F5 by the confidentiality provisions of this Agreement or by any existing non-disclosure agreement between F5 and Customer, F5 may in its sole discretion develop, use, market, license, or sell the F5 Developments and any software, application or product that is similar or related to that which was developed by F5 for Customer. F5 shall not be required to disclose information concerning any F5 Developments which F5 deems to be proprietary or confidential.

7. Limited Warranties and Exceptions.

7.1 F5 warrants that the Services provided hereunder will be performed in a professional manner consistent with the quality of F5's performance of services for similarly situated customers and in accordance with generally accepted industry standards. F5 makes no guarantees or assurances that the Services will achieve Customer's specific goals or provide additional functionality to Customer's F5 appliance.

7.2 TO THE FULLEST EXTENT PERMITTED BY LAW, F5 EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES. IN THOSE JURISDICTIONS, SUCH INAPPLICABILITY WILL NOT AFFECT THE REMAINDER OF THE PROVISIONS IN THIS AGREEMENT.

7.3 In order to receive warranty remedies, deficiencies in the Services must be reported to F5 in writing within ninety (90) days of completion of the Services. After such time, any corrective Services requested by Customer shall be billed to Customer at F5's standard consulting rates then in effect and subject to scheduling availability of F5 personnel. Customer's sole remedy for a breach of the warranty described in Section 7.1 shall be re-performance of the non-conforming Services or to receive a refund of the pro rata amount of the fees allocable to such non-conforming Services, at F5's option.



7.4 F5's maximum liability for any breach of warranty hereunder shall be a refund of the applicable Services fees paid under this Agreement. Customer shall, under no circumstances except as may be specifically set forth in a separate agreement, be entitled to a refund of any fees paid with respect to any F5 products.

8. Termination.

8.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice if the other party materially breaches or fails to perform any material term hereof and the breaching party fails to cure such breach within the 30-day period; provided, that the non-breaching party may immediately terminate this Agreement upon written notice for a breach of the provisions set forth in Section 11 (Confidentiality and Non-Use) or misappropriation by the other party of the non-breaching party's intellectual property rights.

8.2 Each party's obligations under Sections 3-14 of the Agreement shall survive termination or expiration of the Agreement. If F5 terminates the Agreement for failure of Customer to pay any amounts owing hereunder, the rights of Customer to use the Deliverables including any express or implied licenses which may have been granted herein shall immediately terminate.

9. Indemnification.

9.1 General. F5 and Customer each agrees to indemnify, defend and hold the other, its affiliates, and their respective officers, directors, employees, and agents ("Indemnitees") harmless from and against any and all liabilities, losses, damages, costs, and expenses ("Losses"), and any reasonable attorney's fees and expenses relating to its defense, resulting from any third party suit or action brought against the Indemnitees due to third party claims for death, bodily injury or the damage to or loss of any real or tangible personal property to the extent arising out of the indemnitor's negligence or willful misconduct in the performance of this Agreement.

9.2 Intellectual Property Infringement. F5 agrees to indemnify, defend and hold harmless Customer Indemnitees from and against any Losses, and any reasonable attorney's fees and costs relating to its defense, which Customer may incur for third party claims arising out of any suit brought against Customer based upon a claim that a Service or Deliverable includes any trade secret that F5 has unlawfully misappropriated or infringes: (a) a patent duly issued by the United States, Canada, Japan, or a country that is a member of the European Economic Area; (b) a registered trademark enforceable in any country that has ratified or acceded to either the Madrid Agreement Concerning the International Registration of Marks or the Protocol Relating to the Madrid Agreement; or (c) a copyright valid in any country that has ratified or acceded to The Berne Convention on Literary and Artistic Works. F5 will have the right, at its option and expense: (i) to obtain for Customer rights to use the Service or Deliverable, (ii) to replace or modify the Service or Deliverable so that they become non-infringing, or (iii) to accept return of the Deliverables for a refund not to exceed the purchase price paid by Customer for such Deliverables based upon a three year straight line depreciation. The foregoing, subject to the following restrictions, states the exclusive liability of F5 to Customer concerning infringement. F5 will have no liability for any claim of infringement based on: (i) use of a Service or Deliverable in combination with equipment or software not supplied by F5 where the Service or Deliverable would not itself be infringing, (ii) software or technology not developed by F5 or (iii) Services or Deliverables that have been altered or modified in any way by anyone other than F5 or according to F5's instructions.

9.3 Condition to Indemnification. If any claim or action is commenced against a party entitled to indemnification under this Section 9 for Losses resulting from such claim or action (a "Claim"), such party shall give written notice to the other party within ten (10) days of notice of such Claim. If such party receiving notice is obligated under this Section 9 to defend the party against such Claim, then the indemnifying party shall take control of the defense and investigation of the Claim, using such attorneys and other assistance as it selects in its discretion. The indemnified party shall cooperate in all reasonable respects in such investigation and defense, including trial and any appeals, provided that such party may also participate, at its own expense, in such defense. No settlement of a Claim that involves a remedy other than payment of money by indemnifying party shall be agreed to and entered without the consent of the indemnified party, which consent shall not be unreasonably withheld.

10. Limitations on Liability.

EXCEPT FOR DAMAGES OR LOSSES ARISING FROM INFRINGEMENT OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING



OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. F5'S TOTAL AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATIONS DO NOT APPLY TO ANY LIABILITY FOR DEATH OR PERSONAL INJURY OR TO ANY LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED BY THE GOVERNING LAW OF THIS AGREEMENT AS SET OUT IN SECTION 13.

11. Confidentiality and Non-Use.

11.1 By virtue of this Agreement, each party hereto may disclose to the other party information that is confidential and otherwise proprietary. Unless governed by the terms of an existing or contemporaneously executed non-disclosure agreement ("NDA"), the following Sections 11.2 and 11.3 apply.

11.2 Subject to the exceptions listed below, a party's "Confidential Information" shall be defined as information disclosed by the party to the other party under this Agreement and clearly marked or otherwise clearly designated as "confidential" or information disclosed by one party that is reasonably understood by the other party to be confidential. The Licensed Technology, F5's proprietary software applications and hardware and the terms and pricing of this Agreement shall automatically be considered Confidential Information under this Agreement. However, a party's Confidential Information shall not include any information that: (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party by employees or agents without access to the party's Confidential Information.

11.3 Each party agrees, for the term of this Agreement and three (3) years after its expiration or termination, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the disclosing party to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by the receiving party as a matter of law or by order of a court, provided that the receiving party uses reasonable efforts to provide the disclosing party with prior notice of such obligation to disclose and reasonably assists in obtaining a protective order therefore.

12. Independent Contractors.

F5 shall perform the Services as an independent contractor, and nothing contained in this Agreement shall be construed to create or imply a joint venture, partnership, principal-agent or employment relationship between the parties. Neither party shall take any action or permit any action to be taken on its behalf which purports to be done in the name of or on behalf of the other party and shall have no power or authority to bind the other party to assume or create any obligation or responsibility express or implied on the other party's behalf or in its name, nor shall such party represent to any one that it has such power or authority.

13. 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 Networks, Inc.	The laws of the State of Washington	Seattle, Washington

The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) in any form that it may be adopted are specifically excluded from and will not apply to this Agreement.



14. Miscellaneous.

14.1 Notices. Any Notices required under this Agreement must be in writing in English and delivered by certified or registered mail, return receipt requested, postage prepaid and addressed, in the case of the Customer, to the address in the Statement of Work or otherwise provided to F5, and in the case of F5, to the addresses sets forth opposite the applicable F5 entity below:

<u>F5 entity:</u>	<u>Address for notices:</u>	<u>With a copy to:</u>
F5 Networks Singapore Pte. Ltd.	F5 Networks Singapore Pte. Ltd. Attn: Professional Services Administration 5 Temasek Boulevard #08-01/02/05 Suntec Tower 5 Singapore 038985 Singapore	F5 Networks, Inc. Attn: Legal Department 401 Elliott Avenue West Seattle, WA 98119 USA
F5 Networks Ltd.	F5 Networks, Ltd. Attn: Professional Services Administration Chertsey Gate West 43-47 London Street Chertsey Surrey KT16 8AP United Kingdom	F5 Networks, Inc. Attn: Legal Department 401 Elliott Avenue West Seattle, WA 98119 USA
F5 Networks, Inc.	F5 Networks, Inc. Attn: Professional Services Administration 401 Elliott Avenue West Seattle, WA 98119 USA	F5 Networks, Inc. Attn: Legal Department 401 Elliott Avenue West Seattle, WA 98119 USA

14.2 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties to extent possible. In any event, all other terms and provisions shall be deemed valid and enforceable to the maximum extent possible.

14.3 Force Majeure. Neither party shall be liable for any loss, damage, or penalty arising from delay due to causes beyond its reasonable control.

14.4 Assignment. Neither party shall assign, delegate or subcontract any portion of its rights, duties or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed; provided, however, that consent shall not be required in the case of an assignment by either party to the surviving entity in a merger or consolidation in which it participates or to a purchaser of all or substantially all of its assets. Notwithstanding the foregoing, F5 may subcontract any portion of its obligations under this Agreement to a third party so long as F5 remains responsible for the performance of such obligations.

14.5 Export Administration. Customer agrees to comply fully with all relevant export laws and regulations of the United States or other countries ("Export Laws") to ensure that any Deliverable is not (i) exported directly or indirectly, in violation of Export Laws; or (ii) intended to be used for any purposes prohibited by the Export Laws, including without limitation, nuclear, chemical, or biological weapons proliferation. If a Deliverable has been rightfully obtained by Customer outside of the United States, Customer agrees not to re-export such Deliverable or any related technical information except as permitted by the laws and regulations of the United States and those of the jurisdiction in which Customer obtained such Deliverable. Customer shall be responsible for any duties, customs charges or other taxes or fees relating to such export.

14.6 Complete Agreement. This Agreement, the Statement of Work, and the documents referenced herein are the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, which supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter. No modification of this Product Warranty shall be effected by the Customer's use of any order form, purchase order, acknowledgement or other form containing additional or different terms.



14.7 **Modification.** Each party agrees that any terms and conditions of any purchase order or other instrument issued by Customer in connection with the Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement shall be of no force or effect. This Agreement may be modified only by a written instrument duly executed by an authorized representative of F5 and Customer. 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.

14.8 **No Waiver.** The failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such provision or the right of such party to enforce such provision or any other provision.