

F5 PLATFORM TERMS OF USE
DOC-0355-20 CT

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These F5 Platform Terms of Use (these "Terms") govern the use of F5 Products and are a legally binding contract between F5, Inc. and its Affiliates, as further defined below ("F5," "we," "us," or "our"), and you, or, if you are accepting these Terms on behalf of a company or other legal entity, that company or entity ("you" or "Customer"). BY ACCEPTING THESE TERMS, OR BY REGISTERING FOR, ACCESSING, OR USING THE F5 PRODUCTS, YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND HAVE THE AUTHORITY TO BIND THE LEGAL ENTITY FOR WHICH YOU ARE ACTING, AND YOU AGREE TO BE BOUND BY THEM. IF YOU DO NOT AGREE, DO NOT ACCEPT THESE TERMS OR ACCESS OR USE THE F5 PRODUCTS. THESE TERMS ARE EFFECTIVE ON THE DATE YOU ACCEPT THEM OR, IF EARLIER, WHEN YOU REGISTER FOR OR USE AN ACCOUNT (THE "EFFECTIVE DATE"). IF YOU AND F5 HAVE EXECUTED A WRITTEN AGREEMENT FOR THE F5 PRODUCTS ("SIGNED AGREEMENT"), THE SIGNED AGREEMENT GOVERNS AND THESE TERMS HAVE NO EFFECT. F5 and Customer are each a "Party" and, together, the "Parties." Unless otherwise defined here, capitalized terms have the meanings given in Section 1. These Terms, together with all Service Policies and applicable Orders, apply to the F5 Products and Support Services that you order from us or from an Authorized Distribution Partner.

1. Definitions. The following definitions apply to these Terms:

- 1.1. "Account"** means your online account used to access the F5 Products.
- 1.2. "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 greater than fifty percent (50%) of the equity or beneficial interests of the entity.
- 1.3. "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.
- 1.4. "AI Addendum"** means the AI addendum located [here](#) (as may be updated by us from time to time).
- 1.5. "Authorized Distribution Partner"** means an entity who is authorized by us to resell F5 Products.
- 1.6. "Covered Applications"** means any applications or components thereof, such as websites, mobile applications, or artificial intelligence or machine learning models, that have been enabled to make use of the F5 Products by collecting or generating Threat Data.
- 1.7. "Customer Application"** means any application that is owned or operated by you and configured to interact with any of the F5 Products pursuant to these Terms.
- 1.8. "Customer Data"** means software, data, text or image files, or information (including data that identifies a natural person) provided or uploaded or input by you, your Users, or your End Users into the F5 Products or otherwise made available by you or your End Users to the applicable F5 Products.
- 1.9. "Customer Dashboard"** means the online dashboard application that we make available to you under these Terms, that enables you to configure and/or monitor the performance of the F5 Products.
- 1.10. "Derived Data"** means any learnings, algorithms, know-how or other data or information derived from or any improvements to the Threat Data and any Intellectual Property Rights therein, in each case, developed or created by or for you.
- 1.11. "Documentation"** means user manuals, help files, technical information, license files, sales documents, materials, or other documentation, in whatever form, provided by us and made available to you for use of F5 Products, and that describe, restrict, or enable the operation, use, or technical specifications of the F5 Products, as updated by us from time to time.
- 1.12. "DPA"** means the data protection addendum located [here](#) (as may be updated by us from time to time).
- 1.13. "End Users"** means your end user clients or customers who visit a website or mobile application owned or operated by you.
- 1.14. "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, or if you purchase F5 Products via a public cloud marketplace private offer, regardless of your primary place of business.
- 1.15. "F5 Products"** means, collectively, the SaaS Offerings, any Hardware, any Software, and SDKs, provided by us to you, as set forth in your Order and as further described in the Service Policies.
- 1.16. "Feedback"** means any ideas for suggested improvements, modifications, or other feedback about the F5 Products.
- 1.17. "Flex Consumption Program"** means a multi-year consumption subscription for F5 product offerings as governed by the corresponding program terms located [here](#) ("Program Terms"), or such other agreement between you and us. Flex Consumption Program subscriptions are not available for all F5 Products.
- 1.18. "Free Services"** means F5 Products that we make available to you free of charge. Free Services exclude Evaluations as well as F5 Products that are available for purchase under an Order.
- 1.19. "Hardware"** means any hardware device purchased from F5 or an Authorized Distribution Partner or otherwise provided as part of an F5 Product.
- 1.20. "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.
- 1.21. "Licensed Threat Data"** means any subset of the Threat Data that Customer is authorized to receive from F5 or use in connection with Customer's subscription to one or more F5 Products, as permitted by the applicable Order.
- 1.22. "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.
- 1.23. "Open Source Software"** means any software that is distributed as "free software" or "open source software" or is otherwise distributed under distribution models that (a) require the licensing or distribution of Source Code to licensees; (b) prohibit or limit the receipt of consideration in

connection with sublicensing or distributing any software; (c) except as specifically permitted by applicable law, allow any licensee to decompile, disassemble or otherwise reverse-engineer any software; or (d) 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).

- 1.24. **“Order”** means any ordering document or online order that identifies the F5 Products and/or services licensed or sold to you and any applicable subscription or licensing parameters and is subject to these Terms.
- 1.25. **“Portal”** means the applicable F5 portal site through which you can access and update your Account.
- 1.26. **“SaaS Offerings”** means the cloud service offerings provided to you by us under these Terms, as set forth in each Order and as further described in the Service Policies. SaaS Offerings includes the applicable Customer Dashboard.
- 1.27. **“Security Addendum”** means the security addendum located [here](#) (as may be updated by us from time to time).
- 1.28. **“Service Level Agreement”** means, for all SaaS Offerings, the service level agreement available [here](#) (or any successor or related locations designated by us), as it may be updated by us from time to time.
- 1.29. **“Service Policies”** means the DPA, Service Level Agreement, Security Addendum, Documentation and any other policy or terms referenced in or incorporated into these Terms.
- 1.30. **“Software”** means the object code version of F5’s proprietary computer programs made available by F5 for use by you (including for use in connection with any SaaS Offerings), including any Updates.
- 1.31. **“Source Code”** means software in a human-readable format.
- 1.32. **“Support Services”** means the support services provided by us in accordance with our then-current support policy for the applicable F5 Product, as may be identified.
- 1.33. **“Third-Party Applications”** means certain third-party products, services or software that are not owned or operated by F5.
- 1.34. **“Threat Data”** means (i) data and information collected or generated by the F5 Products and related services, systems, and technologies, including indications of compromise, behavioral information, device information, network information, data relating to attacks, attack tools, and attack credentials, information relating to the status of a mobile application, the device the mobile application is executed on, and the state or activities occurring on such mobile application or device; (ii) data that F5 creates through proprietary analysis and modeling of any of the foregoing and/or Customer Data alone or in combination with other data (such as a risk score, intelligence about a threat from some source other than Customer Data, or substantiation of any of the foregoing); and (iii) contextual information associated with any foregoing data and information (e.g., any description or the meaning of any such data and information). Threat Data does not include Customer Data.
- 1.35. **“Updates”** means any correction, update, upgrade, patch, or other modification or addition made by us to specific Software.
- 1.36. **“Usage Data”** means information about your access and use of the F5 Products, including but not limited to usage and performance information.
- 1.37. **“Usage Metrics”** means any user, account, device, instance, or other product-specific licensed capacity or usage metrics for the applicable F5 Product.
- 1.38. **“Users”** means individuals authorized by you to access the F5 Products 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. F5 Product License and Use.

2.1. Rights and Licenses Granted to Customer.

- 2.1.1 SaaS Offerings, Documentation, Software. Subject to these Terms, applicable Orders, and the Service Policies, during the applicable Subscription Term) and solely in connection with your internal business purposes, 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 Software in Object Code form. Software is licensed to you on either a subscription or perpetual basis as set forth in the applicable Orders and Documentation. You may permit your Affiliates to use F5 Products provided that (w) you warrant that you have the ability to bind such Affiliates to these Terms; (x) you are fully liable and responsible for all acts and omissions of such Affiliates under these Terms; (y) you will, upon our written request, provide a list of Affiliates using the F5 Products; and (z) if an Affiliate that is permitted to use the F5 Products ceases to be your Affiliate, you will promptly provide written notice to us and we may terminate the Software licenses or SaaS Offerings with respect to such Affiliate. The usage rights granted to your Affiliates in these Terms does not constitute a right to sublicense the Software. You may not copy or translate the Documentation without our prior written consent. You and F5 agree to work together in good faith to promptly resolve any unauthorized access or use of the F5 Products.
- 2.1.2 Hardware. If the F5 Products include Hardware, we will provide you the right to use such Hardware in accordance with these Terms. Fees for Hardware are in addition to any applicable license or subscription fees.
- 2.1.3 Data License. Certain F5 Products generate outputs valuable for our customers’ security operations. If you have subscribed to such F5 Products, then subject to these Terms, applicable Orders, and the Service Policies, we grant you a limited, non-exclusive, non-transferable, non-sublicensable license during the Subscription Term to internally use the Licensed Threat Data and any Derived Data based on such Licensed Threat Data solely for your lawful cybersecurity analysis or audit purposes in connection with Covered Applications and solely for your internal business purposes.

2.1.3.1 Ownership of and Restrictions on Use of Data. As between you and us, we own and retain all rights, title and interest in and to the Threat Data and Derived Data, and you hereby assign to us any right, title and interest you may have or acquire in any Threat Data and Derived Data. Threat Data and Derived Data are F5’s Confidential Information. Unless prohibited by law, you will promptly inform us of any request from a third party to exercise purported rights with respect to the Threat Data or Derived Data.

2.1.3.2 Obligations on Termination. Upon termination or expiration of the Subscription Term, you will immediately (i) discontinue use of the Licensed Threat Data and Derived Data and any Documentation pertaining thereto; (ii) return to F5, or at F5’s written request destroy, all tangible materials containing, reflecting, or incorporating the Licensed Threat Data or Derived Data or any Documentation pertaining thereto; (iii) permanently erase all electronic versions of the foregoing materials

from all systems you directly or indirectly control; and (iv) execute and deliver to F5, upon request, written certification of your compliance with the foregoing.

2.1.3.3 Restrictions. You will not (and will not authorize or permit any third party to) (a) attempt to reverse engineer the Threat Data or any portion thereof, or otherwise attempt to derive any processes, techniques, methods, specifications, protocols, algorithms, interfaces, data structures, or other information used to collect or generate any Threat Data; (b) copy, modify or otherwise prepare derivative works of any Documentation pertaining to any of the Threat Data; (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Threat Data, or Derived Data, or Documentation pertaining thereto, or any portion thereof, to any third party, including on or in connection with the Internet or any time-sharing, service bureau, software as a service, cloud or other technology or service or otherwise use any Threat Data, or Derived Data, or Documentation pertaining thereto other than as expressly allowed under these Terms; (d) use the Threat Data, or Derived Data, or any Documentation pertaining thereto (or any information obtained or derived from any of the foregoing) for the development, provision or use of a competing service or product; (e) externally disclose benchmarking or competitive analysis of any of the Threat Data, or Derived Data, or Documentation pertaining thereto; or (f) use the Threat Data or Derived Data in violation of any applicable law or regulation.

2.2. Reservation of Rights. We and our suppliers and licensors retain all right, title, and interest in and to the F5 Products and any software or other technology used by us in the provision of the F5 Products and all modifications, improvements, enhancements, and derivative works thereof; all trademarks, names, logos; and all Documentation for the F5 Products, 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 to F5 Products, 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 Products, including Aggregated Data, Usage Data, and product enhancements embodied in iRules and/or using the iControl open API. Subject to the foregoing, you retain all rights to Customer Data.

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

2.4. Support Services. During the applicable Subscription Term, we will provide Support Services to you. If the level of support is not identified in the Order, we will provide the basic level of support that is available for the applicable F5 Product. Unless otherwise provided as part of the Documentation, maintenance and support for Software must be purchased separately. If you purchase maintenance and support for an F5 Product, "Software" includes all Updates we make publicly available at no additional cost and all other Updates to which you are entitled by your purchase of maintenance and support. You may use Updates only on F5 Products for the term that the applicable F5 Product is licensed to you, and only on F5 Products for which you have purchased maintenance and support. We may modify our support policies at any time, but any modifications to Support Services will not materially diminish our responsibilities under the applicable support policies during a Subscription Term.

2.5. Software Development Kit License. If we provide access to our proprietary software development kits ("SDK"), the following terms apply.

2.5.1 Object Code License. Subject to these Terms, we grant to you a limited, non-exclusive, royalty-free, non-sublicensable, non-transferable, license to reproduce the Object Code for the SDK solely for your internal use and distribution to third parties in accordance with these Terms.

2.5.2 Distribution License. Subject to these Terms, we grant to you a limited, non-exclusive, royalty-free, non-sublicensable, non-transferable, license to reproduce and distribute the SDK in Object Code form solely as part of, and solely as integrated into, a mobile application and solely for your internal business purposes.

2.5.3 Distribution Agreements. Your distribution of Object Code hereunder must be subject to an agreement with each recipient and/or end user that prohibits (a) title to the distributed Object Code from passing to the end user or any third party; (b) transfer or duplication (except for back-up and archival copies) of the distributed Object Code; and (c) 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 not less than reasonable effort. You will not (and will not authorize or knowingly permit any third party to) identify us as the source of software contained in your applications.

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

2.6. Evaluations. We may provide certain F5 Products at no charge for evaluation (an "Evaluation"). These Terms apply to Evaluations, except for the following different or additional terms: (a) unless otherwise agreed in writing by the Parties, the term for an Evaluation is thirty (30) days, which may be automatically limited and extended upon our written consent; (b) EVALUATIONS ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND WE DISCLAIM ALL WARRANTIES, INDEMNITIES, AND ALL OTHER LIABILITIES FOR EVALUATIONS; (c) the term for an Evaluation commences on the date that we enable you to access or use the F5 Products that are the subject of the Evaluation; (d) you are not entitled to service level commitments, support and maintenance services, or Updates for an Evaluation; (e) F5 (or its Authorized Distribution Partner) may terminate the Evaluation upon at least five (5) days prior written notice to you, and in the event of termination you will promptly return any evaluation equipment and evaluation copies of the Software (as applicable) and remove all copies of such Software (as applicable) from your systems, servers and devices unless you have purchased a license or subscription to the F5 Products prior to such termination; and (f) within ten (10) days following F5's written request, your authorized representative will certify that you have returned and removed all such Software (as applicable). In the event of a conflict between this section and any other portion of these Terms, this section prevails.

2.7. Non-Production Use Software. Software designated as "non-production," "non-commercial," "lab" or "development" in the applicable Documentation ("Non-Production Software") may be used to conduct testing and development in your non-production environment and may not manage or protect data traffic or applications in the ordinary course of your business. WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, FOR ANY NON-PRODUCTION SOFTWARE, WHICH IS PROVIDED STRICTLY ON AN "AS IS" BASIS.

2.8. Software Hosted in a Public Cloud. If you use Software in a public cloud environment, you may only use the Software in object code form in an F5 authorized cloud provider's ("Cloud Provider") environment. You may not copy any portion of the Software out of the Cloud Provider environment. Each instance of the Software running in the Cloud Provider's environment requires its own license key when you are using a bring-your-own-license offering from the Cloud Provider. If you are using a utility offering (e.g., hourly) from the Cloud Provider, you will purchase licenses or subscriptions from the Cloud Provider's marketplace. IN ADDITION TO THE DISCLAIMERS IN THESE TERMS, AND NOTWITHSTANDING ANY TERMS TO THE CONTRARY HEREIN OR ANY REPRESENTATIONS OR WARRANTIES OF A CLOUD PROVIDER, SOFTWARE PROVIDED BY A CLOUD PROVIDER AND NOT OBTAINED FROM F5 IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTIES.

2.9. Free Services. We may make Free Services available to you. Use of Free Services is subject to these Terms. In the event of a conflict between this section and any other portion of these Terms, this section prevails. 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 HAVE NO INDEMNIFICATION OBLIGATIONS OR 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 IS LIMITED TO \$100.00. The foregoing provisions of this subsection also apply to F5 Products that are designated by us as "Preview", "Beta", "Early Access", "Early Release", "Limited Availability" or "Limited Access" ("Preview Services"). Unless otherwise specified in such Service Policies applicable to such Preview Services, you will use such Preview Services only for your internal demonstration, test, or evaluation purposes and not in a production environment.

2.10. Terms Applicable to Data.

2.10.1 Customer Data. You hereby grant us a non-exclusive right and license to use the Customer Data in connection with any F5 Product to which you subscribe, to which you are licensed, and that you purchase, to provide the F5 Products purchased by you, and to demonstrate to you features and functionality of additional products and services offered by us. 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 Products, and that no Customer Data will violate or infringe upon the rights of any third party.

2.10.2 You acknowledge and agree that certain F5 Products may rely on timely submission of complete and accurate Customer Data and you will submit all required Customer Data as specified in an Order or Documentation.

2.10.3 Usage Data. We may collect Usage Data in connection with the F5 Products. We may use Usage Data to operate our business, including to support your Account and support, improve, and enhance the F5 Products.

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

3. Third-Party Materials.

3.1. Open Source Components. Portions of the F5 Products contain open source software ("Open Source Components") licensed under the terms of the applicable open source licenses ("Open Source Licenses"). You are bound by and will comply with the Open Source Licenses. A listing of the Open Source Components and links to the Open Source Licenses is included in the Documentation. You may reference the applicable F5 Product's Open Source Notices and Software Acknowledgments at <http://my.f5.com>. To the extent the terms of the Open Source Licenses require us to make available the corresponding source code and/or modifications (the "Open Source Code"), you may obtain the Open Source Code at <https://my.f5.com> (or any successor website designated by us) or by sending a written request to the notice address specified in these Terms. All requests should identify the requested Open Source Code, the applicable F5 Product (and any available version information) licensed from us in connection with the requested Open Source Code, your name, and email address, and the postal address for delivery of the requested Open Source Code. You must request a copy of the Open Source Code within three (3) years of the date you accepted this License.

3.2. Third-Party Software. We may in our sole discretion embed or provide third-party software ("Third-Party Software") in or with F5 Products and may include geographical or other data ("Geographic Data"). Third-Party Software is expressly excluded from the defined term "F5 Products" as used in these Terms. You will not (a) copy the Third-Party Software or Geographic Data onto any public or distributed network; (b) use Third-Party Software or Geographic Data separately to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment; (c) use Third-Party Software or Geographic Data as a general server, as a standalone application, or with applications other than the Software in accordance with these Terms; (d) change proprietary rights notices in Third-Party Software or Geographic Data; or (e) modify Third-Party Software or Geographic Data. Your use of 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 these Terms. If you do not agree to abide by the applicable license terms for Third-Party Software, then you may not access or use the F5 Products or Third-Party Software. Additionally, the F5 Products may allow you to connect to and/or integrate certain Third-Party Applications. Your access to and use of such Third-Party Applications in connection with the F5 Products is governed solely by the license agreement between you and the applicable third party, and F5 does not endorse, is not responsible for, and makes no representations as to such Third-Party Applications. We are not liable for damage or loss caused or allegedly caused by or arising from your access or use of Third-Party Applications.

4. Your Obligations.

4.1. Use Restrictions. You are responsible for all activities conducted by you and your Users with respect to the F5 Products, including violations of these Terms and Service Policies by your Users. You will use the F5 Products strictly in compliance with these Terms, the applicable Orders, Service Policies, and all applicable laws and will not directly or indirectly (a) copy (except to make one archival copy of Software for backup and disaster recovery purposes), modify, or create derivative works of the F5 Products, any software component of the F5 Products, or Documentation; (b)

rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, provide as a service bureau, use or permit access to or operate in an application service provider or managed service provider environment, grant usage rights, or transfer F5 Products, any data incorporated into F5 Products, or otherwise make available F5 Products or Documentation except as expressly permitted under these Terms; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any source code of any Software or software component of the F5 Products except as required by law for interoperability purposes, and then only after you have given us an opportunity to resolve such interoperability issue; (d) remove any proprietary or confidentiality notices or legends from F5 Products or Documentation; (e) disassemble any Hardware; (f) use F5 Products 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 F5 Products or Documentation for purposes of competitive analysis thereof or the development, provision or use of any competing software, service or product; (h) hack, manipulate, interfere with, disrupt, disable or circumvent F5 Products, including, but not limited to, the security, integrity or performance of F5 Products, reporting, copy protection or other mechanism in F5 Products used to limit license duration or access to non-licensed functionality or capacity, or otherwise attempt to gain unauthorized access to F5 Products; (i) attempt to penetrate or manipulate, or encourage, aid or facilitate the penetration or manipulation of, the security features of the F5 Products or any other system (including but not limited to unauthorized access to or use of data, systems or networks, probing, scanning or testing the vulnerability of a system or network, breaching security authentication measures, unauthorized monitoring of data or traffic, interfering with the service of any user, host or network by any means; forging any TCP/IP packet header or any part of a message header); or (j) take any action that imposes an unreasonably large load or excessive traffic demands on any SaaS Offerings. You agree that any breach of these use restrictions is an impermissible use of the F5 Products and constitute a material breach of these Terms by you. You will use reasonable efforts to cooperate with us to resolve any such breach.

4.2. Suspension; Discontinuation. We reserve the right to suspend or limit your access to SaaS Offerings if (a) we reasonably believe you have violated or are about to violate the use restrictions set forth herein; (b) you have not paid the applicable fees for the SaaS Offerings; (c) you are in material breach of these Terms or the Service Policies; (d) we reasonably believe your use of the SaaS Offerings poses a risk to us, the SaaS Offerings, our other customers, or third parties; or (e) you are using the SaaS Offerings 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 SaaS Offerings 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. We reserve the right to discontinue any or all SaaS Offerings or change or remove functionality of any or all SaaS Offerings. We will notify you of any discontinuation of the SaaS Offerings to which you are subscribed.

4.3. Compliance with Documentation. Your use of F5 Products must comply with these Terms and the applicable Documentation including, but not limited to, any restrictions on the number of protected applications, number or type of licensed devices, number of authorized copies or instances, number of users, bandwidth, non-production use, database, or location restrictions. We, or an authorized third party on our behalf, may review and/or require you to use license management or reporting tools or Software components to provide us with true, accurate, and timely reports regarding your use of the Software. In addition to other available rights and remedies, we may disable your use of Software that does not comply with the Documentation.

4.4. Versions. Your use of the Software may be limited to certain versions, as set forth in the applicable Documentation (for example, a "version plus" license may be limited to a certain number of major updates). If the Documentation contains such limitations, your use of versions or releases of Software not permitted in the Documentation is prohibited.

4.5. Security Updates. We may make Updates available for Software to address security vulnerabilities or risks ("**Security Updates**") and will notify you when a Security Update is available. You must install and deploy a Security Update without undue delay upon availability and notice. You acknowledge that, until you install such a Security Update, the affected Software may remain subject to the vulnerability or risk that the Security Update addresses.

4.6. Non-Transferability. Unless otherwise set forth in the Documentation or in a separate agreement between you and us, you may not transfer or attempt to transfer Software licensed for use on Hardware to any other hardware (including third-party hardware) or to any virtualized computing environment.

4.7. Licensed Features. Software provided in stand-alone form (for example, a virtual machine image) requires a valid license key or other identifying token ("**Token**") issued to you by F5 or an Authorized Distribution Partner, and you may use the Software only for the duration permitted by the license key or Token. F5 may employ mechanisms in the Software designed to ensure that you are only able to access licensed Software and features. Except for Non-Production Software and Evaluations, if your license key or Token allows you to deploy or use Software or features prior to executing an order for such Software or features, you agree to pay for the use of such Software or features in accordance with your payment terms with F5 or your Authorized Distribution Partner.

4.8. Collection and Use of Information. You consent to the collection and use of certain information about your F5 Products, including, but not limited to, Hardware serial number, appliance part number, disk configuration, memory amount, as well as periodic updates for software, databases, etc. You further consent that the F5 Products may collect, use, transmit to us, process, and maintain information related to the F5 Products for purposes of providing the Software and any features therein, determining fees in accordance with the Documentation and Program Terms, and verifying or enforcing compliance with the Documentation. Information collected by the F5 Products and transmitted to us may also include technical or diagnostic information related to your use that may be used by us to support, improve, and enhance our products and services. Depending on the specific F5 Product and/or licensed pricing tier for such F5 Product, you may be permitted to opt out of the collection and use of such information by configuring the Product to disable these features.

5. Ordering; Fees and Payment.

5.1. Ordering. You may order F5 Products directly from us or through an Authorized Distribution Partner. If you purchase a Flex Consumption Program subscription, you may be subject to specific ordering, reporting, and payment terms in the Program Terms.

5.2. Fees and Payment Terms.

- 5.2.1 **Taxes.** You are responsible for any fees, taxes, duties, withholdings, and other assessments based on your purchase of the F5 Products (not including those taxes based on our net income or those taxes for which you have provided a valid certificate confirming you are exempt). If F5 is obligated by applicable law or regulation to collect and remit any taxes relating to the F5 Products, then F5 will add the appropriate amount to your invoice as a separate line item.
- 5.2.2 **Fees.** Where applicable, fees are based on your specific usage of the F5 Products (e.g., for our cloud services SaaS Offerings). Notwithstanding the foregoing, the amount of fees for F5 Products will be set forth in each Order or the Documentation for the applicable F5 Product. Unless specified in an Order, all fees will be billed in United States dollars. 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 Products fees will not be effective until at least thirty (30) days after we provide notice to you.
- 5.2.3 **Payment via Cloud Provider.** If you order an F5 Product through a 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 F5 Product subscriptions, you will pay such taxes with no reduction or offset in the amounts payable to the Cloud Provider.
- 5.2.4 **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 pre-authorization 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.
- 5.2.5 **Usage Metrics.** Certain F5 Products may be subject to Usage Metrics, as specified in an Order, the Documentation, or the Subscription Program Terms available at <https://www.f5.com/company/policies/subscription-program-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 Products or number of software instances deployed by you); 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 Products 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 Products promptly upon our request in order to become compliant with such Usage Metrics. You are liable for fees associated with any Excess Usage determined in accordance with this section.
- 5.2.6 **Payment Terms.** All Fees will be invoiced as set forth on your Order, and (a) payment terms are net 30 from the date of invoice; (b) all fees are non-refundable; and (c) suspension or termination of the F5 Products does not relieve you of any payment obligations.
- 5.2.7 **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 use of the F5 Products. 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.
- 5.2.8 **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, and you will not withhold fees not subject to a good faith dispute. Billing disputes do not constitute a material breach.
- 5.2.9 **Late Payments.** Payment of fees not received when due, or that are refused by your credit card or bank, are 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). If 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 Products pursuant to Section 4.2 of these Terms.
- 5.2.10 **Sales Through Authorized Distribution Partners.** If you purchase an F5 Product through an Authorized Distribution Partner, these Terms will apply except for any terms related to pricing, payment, Subscription Term, or Taxes. Such terms will be negotiated solely by and between you and such Authorized Distribution Partner.

6. Term and Termination.

6.1. **Term.**

- 6.1.1 **Term.** These Terms will commence on the Effective Date and will continue until terminated in accordance with the terms herein (the "**Term**").
- 6.1.2 **Subscription Term.** Software is licensed to you on either a perpetual or subscription basis as set forth in the applicable Order. The term for any F5 Products provided hereunder is (a) for pre-paid F5 Products, the term applicable for the F5 Products ordered and paid for pursuant to an Order; (b) for consumption-based F5 Products, the period during which you use such F5 Product; or (c) for Flex Consumption Program subscriptions, the term indicated in your Order or other agreement with us ((a), (b), or (c), as applicable (the "**Subscription Term**")), unless earlier terminated pursuant to these Terms.

- 6.2. **Termination.** These Terms or any applicable Subscription Term may be terminated by either Party (a) upon thirty (30) days prior written notice in the event of a material breach of these Terms or the applicable Service Policies by the other Party which is not cured within such thirty (30) day period (it being agreed and understood that in the event of a breach by F5, the foregoing right of termination will apply solely to the impacted Subscription Term(s) and not any unaffected or otherwise unrelated Subscription Term(s)); (b) immediately upon written notice if either Party materially breaches a provision of these Terms 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 one hundred twenty (120) days; or (d) if there are no Orders then in effect, upon ten (10) days prior written notice to the non-terminating Party. The foregoing termination rights are in addition to your termination rights set forth in Section 9.2.1.

6.3. **Effect of Termination.**

- 6.3.1 Termination of these Terms.** Upon termination of these Terms, (a) all Subscription Terms then in effect and the rights granted to you under these Terms will immediately terminate; (b) all fees owed by you to us are immediately due upon receipt of a final invoice; and (c) you will immediately cease use of all F5 Products.
- 6.3.2 Termination or Expiration of Subscription Terms.** Upon termination or expiration of any Subscription Term, (a) your access to the applicable F5 Products will immediately cease and any license granted to you to use such F5 Products is immediately terminated; (b) you will stop all instances of any applicable Software running in your private network and destroy any copies of such Software and associated Documentation in such network (and all copies or portions thereof); and (c) you will stop all instances of any applicable Software running in a Cloud Provider environment.
- 6.3.3 Survival.** Upon termination of these Terms, the Parties' obligations under Sections 2.2 (Reservation of Rights); 2.3 (Feedback); 4.1 (Use Restrictions); 5.2 (Fees and Payment Terms); 6.3.1 (Termination of these Terms); 6.3.2 (Termination or Expiration of Subscription Terms); 6.3.3 (Survival); 7 (Confidentiality); 9 (Warranties and Disclaimers); 10 (Limitation of Liability); 11 (Indemnification); and 12 (Miscellaneous) will survive.

7. Confidentiality.

- 7.1. Definition.** Each Party agrees that the business, technical, financial and other information, including without limitation, all software, inventions, algorithms, techniques, methodologies, schematics, know-how, analyses, trade secrets, technical data, strategic planning, marketing data, databases, drawings, models, performance information, ideas, that is either designated in writing as confidential, or by the nature of the circumstances a reasonable person would treat as confidential, is the confidential property of the disclosing party or its licensors ("**Confidential Information**"). These Terms [are F5's 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 by 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.
- 7.2. 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 using not less than a reasonable standard of care. A Party will not (a) disclose or use any Confidential Information of the other Party for any purpose outside the scope of these Terms, 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 its and 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 these Terms. If a Party is compelled by law to disclose Confidential Information of the other Party, it will 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 Confidential Information disclosed hereunder, there can be no adequate remedy at law for a breach of the obligations of this section, 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 is entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it.

8. Security and Privacy.

- 8.1. Security.** We will maintain a security program as substantively outlined in the Security Addendum that is materially in accordance with industry standards and designed to (a) ensure the security and integrity of Customer Data and personal data uploaded by you or on your behalf to the SaaS Offerings; (b) protect against threats or hazards to the security or integrity of Customer Data and personal data; and (c) 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 (x) to provide the F5 Products and prevent or address service or technical problems; (y) as required by applicable law; or (z) as you expressly permit in writing or under these Terms. You remain responsible for the security of data analyzed by the F5 Products other than while such data is in F5's custody.
- 8.2. Personal Data and Protected Health Information.** You agree that you will (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 Products under these Terms; 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 Products.
- 8.3. 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 are solely responsible for all costs and expenses (including our costs and expenses) related to the exercise of your rights in this section.
- 8.4. Restrictions.** Notwithstanding any provision in these Terms, we are not 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 Products; (d) results of security vulnerability assessments; (e) information to the extent that (i) providing such information is a violation by us of applicable laws or regulations, confidentiality obligations to our customers, or security certifications; or (ii) if such disclosure would hinder law enforcement's investigation into a security event or put at risk any trade secret of F5.

9. Warranties and Disclaimers.

- 9.1. Your Representations and Warranties.** You hereby warrant, represent, and covenant that (a) in your performance under these Terms and use of the F5 Products, you will comply with all applicable laws and will not infringe the proprietary rights or privacy rights of any third parties; (b) you will provide 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 Products,

including any unauthorized use or disclosure of your Customer Data. You represent that the individuals and your Affiliates using the F5 Products under your Account act with full authority of the Account owner.

9.2. Our Warranties.

9.2.1 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 does 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 these Terms or not in accordance with the Documentation; (b) a Force Majeure Event; or (c) failures caused by your software or other software, hardware, services, or products not provided by us. Additionally, F5 will not be liable for any errors or failures to meet any service levels in these Terms, non-conformance with the performance warranty in this section, or negative business impact, to the extent caused by your use of self-service functionality to administer, direct, configure or control the SaaS Offerings other than as described in the applicable Documentation (such as failing to follow best practices or quality assurance guidelines therein). For any SaaS Offerings not in conformance with Section 9.2.1, your sole and exclusive remedy and our sole liability is that we will correct the non-conformity or, if we fail to correct the non-conformity within thirty (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 Subscription Term for the affected SaaS Offering, in which case we will promptly refund the pro-rata amount of any unused fees prepaid by you for such terminated SaaS Offering, calculated from the effective date of termination. Your access to and use of the SaaS Offerings 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.

9.2.2 Software. We warrant that for a period of ninety (90) days from the date of shipment (the "Warranty Period") (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The term "shipment" means, with regard to Software installed on Hardware, the date of shipment of the Hardware, and for stand-alone Software, the later of the date a license key or Token for the Software is made available or the date set forth in the applicable Documentation. For any Software not in conformance with this section, your sole and exclusive remedy and our sole liability is that, during the Warranty Period and at no cost to you, we will, at our option, either replace defective media or Documentation or undertake reasonable efforts to modify or replace the Software to correct any material non-conformance with the Documentation. The foregoing Software warranties extend only to the original licensee, and do not apply if the Software (a) has been altered, except by us or a representative designated by us or in accordance with our instructions; (b) has not been installed, operated, updated, or maintained in accordance with our instructions; (c) has been subjected to abnormal conditions, misuse, negligence, or accident; or (d) has been operated outside of the environmental specifications for the Software. Our Software warranty applies only to the initial sale of the F5 Product and is not applicable to corrections or upgrades issued thereafter. THE FOREGOING WARRANTIES DO NOT APPLY TO, AND WE DISCLAIM ALL WARRANTIES WITH RESPECT TO, OPEN SOURCE COMPONENTS.

9.2.3 Hardware Warranty. Hardware purchased pursuant to these Terms is subject to F5's Product Warranty [here](#).

9.3. Disclaimer of Additional Warranties. EXCEPT AS OTHERWISE STATED HEREIN, THE F5 PRODUCTS AND ANY DATA PROVIDED AS A RESULT OF THE F5 PRODUCTS 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 AND GUARANTEES, 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 PRODUCTS OR ANY DATA PROVIDED AS A RESULT OF THE F5 PRODUCTS, OR THAT USE OF THE F5 PRODUCTS WILL BE UNINTERRUPTED, SECURE, ERROR-FREE, OR FREE OF HARMFUL COMPONENTS, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE. WE DO NOT WARRANT OR GUARANTEE THE F5 PRODUCTS WILL DETECT ALL POSSIBLE ATTACKS AND/OR THREATS, WILL OPERATE WITH ANY SOFTWARE OR HARDWARE OTHER THAN THAT PROVIDED BY US OR SPECIFIED IN THE DOCUMENTATION, OR THAT THE F5 PRODUCTS WILL SATISFY YOUR SPECIFIC REQUIREMENTS. WE RECOMMEND ALL CUSTOMERS MAINTAIN APPROPRIATE SECURITY CONTROLS ON THEIR ORIGIN SERVER(S). YOU ASSUME ALL RISK OF USE WITH SECURITY POLICIES, INCLUDING APPLICATION UNAVAILABILITY FOR END USERS DUE TO ADVANCED BLOCKING POLICIES. SAAS OFFERINGS ARE NOT AVAILABLE FOR USE WITHIN THE PEOPLE'S REPUBLIC OF CHINA. WE MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE AVAILABILITY, FUNCTIONALITY, OR LEGALITY OF SAAS OFFERINGS IN THE PEOPLE'S REPUBLIC OF CHINA. ANY ATTEMPT TO ACCESS OR USE SAAS OFFERINGS WITHIN THE PEOPLE'S REPUBLIC OF CHINA IS STRICTLY PROHIBITED AND MAY RESULT IN THE TERMINATION OF YOUR ACCOUNT AND/OR SUSPENSION OR TERMINATION OF THE SAAS OFFERINGS.

9.4. Limitations. YOU RECOGNIZE THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND ARE NOT SUBJECT TO OUR CONTROL ("NON-CONTROLLED NETWORKS"). MALFUNCTION OR CESSATION OF SAAS OFFERINGS BY INTERNET SERVICE PROVIDERS OR NON-CONTROLLED NETWORKS MAY MAKE THE F5 PRODUCTS TEMPORARILY OR PERMANENTLY UNAVAILABLE. YOU AGREE THAT WE HAVE NO LIABILITY WHATSOEVER WHEN THE F5 PRODUCTS 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 NETWORKS OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO OUR CONTROL, OR DUE TO ANY ACCIDENT OR BY YOU, AND YOUR PAYMENT OBLIGATIONS WILL CONTINUE IN EFFECT. WE ARE NOT LIABLE FOR ANY BREACH OF SECURITY ON YOUR NETWORK, SYSTEM, OR EQUIPMENT, OR FOR ANY LOSS OR THEFT OF INFORMATION TRANSMITTED OVER THE INTERNET OR STORED ON COMPUTERS DIRECTLY CONNECTED TO THE INTERNET EXCEPT WHERE SUCH BREACH, LOSS, OR THEFT IS CAUSED BY OUR WILFUL MISCONDUCT. THESE LIMITATIONS APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. Limitation of Liability.

10.1. NEITHER PARTY (INCLUDING F5'S AFFILIATES AND LICENSORS) (1) WILL HAVE ANY LIABILITY WHETHER ARISING IN CONTRACT, TORT, 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 (WHETHER DIRECT OR INDIRECT), LOSS OF BUSINESS (WHETHER DIRECT OR INDIRECT), LOST PROFITS (WHETHER DIRECT OR INDIRECT), COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF ANTICIPATED SAVINGS, OR OTHER

FINANCIAL LOSS ARISING IN CONNECTION WITH THE F5 PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (2) WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH YOUR INABILITY TO USE THE F5 PRODUCTS NOT CAUSED BY F5 OR ANY DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE CUSTOMER DATA OR OTHER DATA. THE WAIVER OF DAMAGES IN SUBSECTION (1), OTHER THAN THE WAIVER OF PUNITIVE AND EXEMPLARY DAMAGES, WILL NOT APPLY TO (A) A BREACH OF SECTION 7.2 (CONFIDENTIALITY OBLIGATIONS); (B) A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT; (C) YOUR BREACH OF SECTION 4.1 (USE RESTRICTIONS) OR YOUR MISUSE OR MISAPPROPRIATION OF OUR INTELLECTUAL PROPERTY RIGHTS; OR (D) LIABILITY THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

- 10.2.** SUBJECT TO SECTION 10.3 AND EXCEPT AS SET FORTH IN THIS SECTION 10.2, THE TOTAL AGGREGATE LIABILITY OF EACH PARTY UNDER THESE TERMS (INCLUDING ALL ORDERS) WILL NOT EXCEED (1) FOR PERPETUALLY LICENSED SOFTWARE, THE AMOUNT PAID BY YOU FOR THE SOFTWARE; (2) FOR SUBSCRIPTION-BASED F5 PRODUCTS, THE AMOUNT PAID OR PAYABLE BY YOU FOR THE F5 PRODUCTS THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE THE INCIDENT GIVING RISE TO THE LIABILITY; OR (3) IF YOU PAID NO FEES FOR THE F5 PRODUCTS THAT GAVE RISE TO THE CLAIM HEREUNDER, ONE HUNDRED DOLLARS (\$100.00) (THE "GENERAL CAP"). THE GENERAL CAP WILL NOT APPLY TO THE FOLLOWING, EACH OF WHICH IS INSTEAD SUBJECT TO A SEPARATE, STANDALONE AGGREGATE CAP, AND IN NO EVENT WILL MORE THAN ONE SUCH CAP APPLY TO ANY SINGLE CLAIM OR SERIES OF RELATED CLAIMS: (A) OUR OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION), FOR WHICH OUR AGGREGATE LIABILITY WILL NOT EXCEED THE LESSER OF FIVE TIMES (5X) THE GENERAL CAP OR FIVE MILLION DOLLARS (\$5,000,000); (B) OUR BREACH OF SECTION 7.2 (CONFIDENTIALITY OBLIGATIONS), FOR WHICH OUR AGGREGATE LIABILITY WILL NOT EXCEED TWO TIMES (2X) THE GENERAL CAP; AND (C) A PERSONAL DATA BREACH (AS DEFINED IN THE DPA) RESULTING FROM A BREACH OF OUR OBLIGATIONS IN SECTION 8.1 (SECURITY), THE SECURITY ADDENDUM, OR THE DPA, FOR WHICH OUR AGGREGATE LIABILITY WILL NOT EXCEED THE LESSER OF TWO TIMES (2X) THE GENERAL CAP OR TWO MILLION FIVE-HUNDRED THOUSAND DOLLARS (\$2,500,000). NO LIMITATION IN THIS SECTION 10.2 WILL APPLY TO: (I) A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT; (II) YOUR PAYMENT OBLIGATIONS; (III) YOUR BREACH OF SECTION 4.1 (USE RESTRICTIONS) OR YOUR MISUSE OR MISAPPROPRIATION OF OUR INTELLECTUAL PROPERTY RIGHTS; (IV) YOUR BREACH OF YOUR CONFIDENTIALITY OBLIGATIONS; OR (V) LIABILITY THAT CANNOT BE LIMITED UNDER APPLICABLE LAW.
- 10.3.** THE LIMITATIONS IN THIS SECTION 10 WILL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER ANY OF THESE TERMS, AND ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. ANY LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER APPLICABLE LAW WILL NOT AFFECT THE REMAINDER OF THE PROVISIONS IN THIS SECTION. TO THE EXTENT PERMITTED BY LAW, OUR LICENSORS WILL NOT HAVE ANY LIABILITY OF ANY KIND UNDER THESE TERMS.
- 10.4.** EXCEPT FOR LIABILITIES THAT CANNOT BE LIMITED UNDER APPLICABLE LAW AND OUR OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION), AND EXCEPT TO THE EXTENT ARISING FROM OUR GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT, WE WILL HAVE NO LIABILITY FOR ANY LOSS, DAMAGE, OR NEGATIVE BUSINESS IMPACT TO THE EXTENT CAUSED BY YOUR FAILURE TO INSTALL A SECURITY UPDATE FOR SOFTWARE AFTER WE MAKE THE SECURITY UPDATE AVAILABLE AND NOTIFY YOU THAT IT IS AVAILABLE.

11. Indemnification.

- 11.1. Our Defense and Indemnification Obligations.** Subject to Sections 11.1.1 and 11.3, we will defend you against any third-party action, suit, or proceeding based upon an allegation that your use of the F5 Product in accordance with these Terms, infringes a valid patent, trademark or copyright or misappropriates a third party's trade secret ("Claim") and we will indemnify you for any damages finally awarded against you or any settlement approved by us in connection with such Claim. The terms "misappropriates" and "trade secret" as used here have the same meanings given to those terms in the Uniform Trade Secrets Act, unless the Claim is governed by a jurisdiction outside the laws of the United States, in which case "trade secret" means "undisclosed information" and "misappropriates" means "intentionally using such undisclosed information in a manner contrary to honest commercial practices", as specified in Articles 39.1 and 39.2 of the Trade-Related Aspects of Intellectual Property Rights agreement.

11.1.1 Limitations. We will have no liability for any Claim based on (a) use of the F5 Product in combination with equipment, services or software (including Open Source Software) not supplied by us, where the F5 Product would not itself be infringing; (b) F5 Products that have been altered or modified in any way by anyone other than us or our authorized agents; (c) F5 Products that have been altered or modified by us in accordance with your specifications or instructions; (d) use of the F5 Product in an application or environment not described in the Documentation; (e) use of a superseded release of the F5 Product where the subsequent release is available to you at no cost and is non-infringing; (f) your continued use of the F5 Product after we notify you to discontinue use due to such a Claim; (g) services, software or technology not developed by us; (h) supply or use of the F5 Products to or in any country into which the U.S. has embargoed or restricted the export of goods or services; (i) supply or use of the F5 Products to or by any person or entity who you know or have reason to know will utilize the F5 Products in the design, development or production of nuclear, chemical or biological weapons; (j) supply of the F5 Products to or use of the F5 Products 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; or (k) any other use of the F5 Products in violation of the terms of these Terms.

11.1.2 Remedies. We will have the right, at our sole option and cost, to remediate any Claim against you by taking one or more of the following actions: (a) obtain for you rights to use the F5 Product; (b) modify the F5 Product such that they become non-infringing; (c) replace the F5 Product with another F5 Product that does not infringe or is not subject to the Claim; or (d) terminate the applicable license or Order and accept confirmation of the F5 Product's destruction in exchange for a credit (i) for Hardware or perpetually licensed Software, not to exceed the purchase price paid by you for such Hardware or Software based upon a three (3) year straight line depreciation; and (ii) for subscription Software, for the pre-paid, unused portion of the fees paid for the subscription Software, calculated monthly. The remedies in this section, subject to all other restrictions, liability limitations, and exclusions in these Terms, are your sole and exclusive remedy and our sole and exclusive liability in relation to Claims against you.

- 11.2. Your Defense and Indemnification Obligations.** You will defend and indemnify 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 your employees, personnel, subcontractors, or agents of these Terms, any license applicable to Third Party Software or Third-Party Applications, or the Service Policies; (b) your use, disclosure, or other handling of Threat Data in violation of these Terms; (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 these Terms; (e) your deployment and/or configuration of any Customer Application; or (f) your gross negligence, fraudulent misrepresentation, or willful misconduct.

- 11.3. Indemnification Process.** The indemnifying party will pay costs and damages (including reasonable attorneys’ fees) finally awarded against the indemnified party, or agreed in settlement by the indemnifying party, directly attributable to any indemnified 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; (b) the indemnifying party has sole control of the defense and settlement negotiations; (c) the indemnified party provides to the indemnifying party all non-privileged information and communications concerning such claim; and (d) the indemnified party provides reasonable assistance to the indemnifying party when requested. The indemnified party may 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 and settlement of the claim.

12. Miscellaneous.

- 12.1. Relationship of Parties.** The Parties are independent contractors in the performance of their obligations under these Terms, and nothing herein establishes any other relationship between them, including a joint venture or partnership. Neither Party is deemed to be an agent or representative of the other for any purpose.
- 12.2. Notices.** Notices given in connection with these Terms will be in writing in English and delivered in accordance with this section. All notices to us will be delivered to the address(es) of the appropriate F5 entity in the table below by a major commercial rapid delivery service or mailed by certified or registered mail, return receipt requested or by email to F5LegalNotices@f5.com. All notices to you will 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. Any notice given by email as described in this section will request acknowledgement of receipt and will be effective upon the sender’s receipt of such acknowledgement (with automated replies or read receipt not constituting such acknowledgement). If the sender does not receive such acknowledgement then the email notice will nevertheless be deemed effective if, no more than seven (7) business days from the date of sending the original email notice, the sender sends a tangible copy of that notice to the recipient by such other means as provided in this section.

<u>F5 entity</u>	<u>Address for Notices:</u>	<u>With a copy to:</u>
F5, Inc.	F5, Inc. Attn: Office of General Counsel 801 Fifth Avenue Seattle, WA 98104 USA	
F5 Networks, Ltd.	F5 Networks, Ltd. Attn: Office of General Counsel Chertsey Gate West 43-47 London Street Chertsey Surrey KT16 8AP United Kingdom	F5, Inc. Attn: Office of General Counsel 801 Fifth Avenue Seattle, WA 98104 USA
F5 Networks Singapore Pte Ltd	F5 Networks Singapore Pte Ltd Attn: Office of General Counsel 5 Temasek Boulevard #08-01/02/05 Suntec Tower 5 Singapore 038985 Singapore	F5, Inc. Attn: Office of General Counsel 801 Fifth Avenue Seattle, WA 98104 USA

- 12.3. Force Majeure.** If either Party is unable to perform any of its obligations under these Terms 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, subject to Section 9.5, such Party will be excused for such delay or non-performance, as applicable, of those obligations for as long as such Force Majeure Event continues.
- 12.4. Export Control.** F5 Products may incorporate dual-use cryptography and may be subject to export control legal requirements of various countries, including the laws of the United States. You will 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 represent that your entity is not named on any U.S. government list of persons or entities prohibited from receiving exports; (b) you will not permit access or use of the F5 Products in violation of any U.S. export embargo, prohibition, or restriction; and (c) you will comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which the F5 Product is located.
- 12.5. Government Restricted Rights.** The Software, SaaS Offerings, Documentation, and any other software licensed to you under these Terms are “commercial products” as defined in Federal Acquisition Regulation (“**FAR**”) 48 C.F.R. 2.101 and consist of “commercial computer software” and “commercial computer software documentation” as such terms are described in DFAR 252.227- 7014(a)(1) and used in FAR 12.212. Consistent with FAR 12.212 and 12.11 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contrary provision in any agreement into which these Terms and any licenses granted herein may be incorporated, if acquired by or on behalf of a U.S. Government end user, you will acquire the Software, SaaS Offerings, Documentation and other software licensed to you under these Terms subject to the terms of and with only the rights set forth in these Terms. Use of the SaaS Offerings, Software, and/or Documentation constitutes an agreement by the U.S. Government that the SaaS Offerings, Software, and Documentation are “commercial products”, “commercial computer software”, and “commercial computer software documentation,” and constitutes your acceptance of the rights and restrictions herein.
- 12.6. Assignment; Subcontractors; Data Residency and Processing Locations.** Neither Party may assign or transfer these Terms, in whole or in part, without the other Party’s prior written consent; provided, however, that no such consent is required for an assignment by us to an Affiliate or in connection with our reorganization, merger, consolidation, sale, acquisition, or other restructuring involving all or substantially

all of the voting securities or assets of the applicable business line. Any attempted assignment or transfer in violation of this section is void. Subject to the foregoing, these Terms are binding upon and 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 Products, including but not limited to services related to management and hosting of the F5 Products. We are responsible for breaches of these Terms caused by our subcontractors. F5's data residency and processing locations, available at <https://docs.cloud.f5.com/docs/reference/data-residency-locations>, describes where Customer Data is persistently stored for each SaaS Offering, from where F5 may access Customer Data, and which Subprocessor(s) are used to support the SaaS Offering and the scope of the Subprocessor's performance.

- 12.7. Governing Law; Dispute Resolution.** These Terms will be governed and construed in accordance with the following governing law depending on the F5 entity that is a party to these Terms, 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.

<u>F5 entity</u>	<u>Governing Law</u>	<u>Seat of Arbitration</u>
F5, Inc.	The State of Washington	Seattle, Washington
F5 Networks, Ltd.	The Republic of Ireland	Dublin, Ireland
F5 Networks Singapore Pte Ltd	Singapore	Singapore

12.7.1 Arbitration. Except for Excluded Claims, all disputes arising out of or in connection with these Terms including any question regarding its formation, existence, validity, or termination, will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Any dispute concerning the scope or applicability of these Terms to arbitrate will be finally settled by the arbitrator(s). The seat, or legal place, of arbitration is as set forth in the table above corresponding to the applicable contracting F5 entity. The language of the arbitration is English. The arbitration award is final and binding on the parties, and the parties undertake to carry out any award without delay. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) will award to the prevailing party, if any, as determined by the arbitrator(s), all of its reasonable costs and fees.

12.7.2 Excluded Claims. "Excluded Claims" means any dispute, claim or action concerning the validity, enforceability, infringement, misappropriation or violation of our Intellectual Property Rights or those of our licensors and all such Excluded Claims will be brought in any court of competent jurisdiction. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY KNOWINGLY AND UNCONDITIONALLY AGREES TO WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN THE RESOLUTION OF ANY EXCLUDED CLAIM.**

- 12.8. Severability.** If any provision of these Terms is held to be invalid, illegal, or unenforceable in any respect, that provision will be limited or eliminated to the minimum extent necessary so that these Terms otherwise remain in effect and fully enforceable.

- 12.9. Non-Reliance, Entire Agreement; Order of Precedence.** Customer agrees that its purchase of any F5 Products is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by F5 with respect to any future functionality or features. These Terms, together with all the Service Policies and applicable Orders, constitute the entire agreement between the Parties relating to the subject matter hereof and supersede all proposals, understandings, discussions, and prior agreements, whether written or oral, relating to the subject matter of these Terms, and all past dealing or industry custom. In the event of any conflict or inconsistency between or among these Terms or Orders, Service Policies, or other documents referenced herein, the order of precedence is (a) the applicable Order; (b) these Terms; and (c) the Documentation. We may update the Service Policies from time to time. If we make a material change to the Service Policies, 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 to be notified of such changes. Your continued use of the F5 Products after an updated Service Policy takes effect constitutes your acceptance of the update; if you do not agree to it, you must stop using the affected F5 Products.

- 12.10. Waiver.** No provision, right, or privilege under these Terms is waived by any act, delay, omission, or acquiescence on the part of a Party or its agents or employees, and may be waived only by a written instrument executed by both Parties. No waiver by a Party of any breach or default of these Terms by the other Party is 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 such waiver.

- 12.11. Modification.** No modification of these Terms is effected by either Party's use of any order form, purchase order, acknowledgement, shrinkwrap, boxtop, clickwrap license, or other form containing additional or different terms. These Terms may be modified only by a written instrument executed by both Parties that refers expressly to these Terms and the clause to be modified. Notwithstanding the foregoing, we may modify these Terms from time to time by posting the updated Terms and revising the "Last Updated" date. If we make a material change, we will notify you by posting an update to the Portal or, if you have subscribed to be notified of such changes, by email. Your continued access to or use of the F5 Products after the effective date of an update constitutes your acceptance of the updated Terms; if you do not agree, you must stop accessing and using the F5 Products.

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

- 12.13. Interpretation.** These Terms 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 these Terms.