

## F5 UNITY+ PARTNER AGREEMENT

Last updated: 9 September 2022

BY ACCEPTING THIS F5 UNITY+ PARTNER AGREEMENT (THE “**AGREEMENT**”) IN CONNECTION WITH SUBMITTING A PARTNER APPLICATION FOR THE F5 UNITY+ PARTNER PROGRAM – VALUE ADDED RESELLER (“**PARTNER APPLICATION**”), OR PARTICIPATING IN THE F5 UNITY+ PARTNER PROGRAM, AND/OR BY ACCESSING F5 PARTNER CENTRAL, YOU (1) AGREE TO THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF YOURSELF AND THE COMPANY OR ORGANIZATION IDENTIFIED AS THE COMPANY IN THE PARTNER APPLICATION (THE “**PARTNER**”), (2) REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON BEHALF OF THE PARTNER, AND (3) AGREE THAT SUCH PARTNER WILL BE RESPONSIBLE FOR THE ACTS AND OMISSIONS OF ANY INDIVIDUAL USERS WHO SUBMIT THE PARTNER APPLICATION, ACCESS OR USE F5 PARTNER CENTRAL, SUBMIT A DEAL REGISTRATION, AND/OR PERFORM PARTNER’S OBLIGATIONS UNDER THIS AGREEMENT. IF YOU AND/OR PARTNER DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT ACCEPT THIS AGREEMENT, DO NOT SUBMIT A PARTNER APPLICATION, DO NOT SUBMIT A DEAL REGISTRATION AND DO NOT ACCESS F5 PARTNER CENTRAL.

YOU UNDERSTAND AND AGREE THAT SUBMISSION OF THE PARTNER APPLICATION AND YOUR ACCEPTANCE OF THIS AGREEMENT DOES NOT GUARANTEE YOUR PARTNER APPLICATION WILL BE APPROVED BY F5. YOUR PARTNER APPLICATION IS NOT APPROVED UNTIL YOU RECEIVE NOTIFICATION FROM F5 THAT YOUR PARTNER APPLICATION HAS BEEN APPROVED, WHICH APPROVAL IS PROVIDED IN F5’S SOLE DISCRETION.

You will provide accurate, current and complete information (including about Partner) in the Partner Application, in the submission of any Deal Registration, or in other account-related forms in connection with the F5 Unity+ Partner Program, as applicable (“**Partner Information**”) and agree to maintain the security of your username(s) and password(s). You will maintain and promptly update the Partner Information to keep it accurate, current and complete.

The Agreement is entered into by and between Partner and F5. F5, Inc., F5 Networks Ltd. and F5 Networks Singapore Pte Ltd have agreed to their respective rights and obligations regarding the distribution of its products and services. All references to “**F5**” in this Agreement will be deemed to be a reference to the applicable F5 entity as follows: (i) F5 Networks Ltd. if Partner’s Authorized Territory (as defined below) is in Europe, the Middle East or Africa (“**EMEA**”); (ii) F5 Networks Singapore Pte Ltd if Partner’s Authorized Territory is in the Asia-Pacific region (“**APAC**”); and (iii) F5, Inc. if Partner’s Authorized Territory is in a region outside of EMEA or APAC. F5 and Partner are each a “**Party**,” and collectively, the “**Parties**.”

### TERMS AND CONDITIONS

#### 1. DEFINITIONS.

“**Agreement**” consists of this F5 Unity+ Partner Agreement and all Exhibits hereto and additional terms and conditions referenced herein.

“**Affiliate(s)**” means, with respect to either Party, any company, corporation, partnership or other entity, directly or indirectly, controlling, controlled by, or under common control with, such Party where “**control**” is defined as having rights to more than 50% of the equity, ownership or voting rights for such entity.

“**Authorized Distributor**” means a distributor F5 has authorized to sell Products to Partner within the Authorized Territory.

“**Authorized Territory**” means the geographical area(s) or country(ies) selected by Partner during the Partner Application and approved by F5, within which Partner is authorized to market and distribute Products to End Users in compliance with F5 Channel Partner Policies and Procedures.

**“Collateral”** means marketing and sales materials for the Products that are provided by F5 to Partner for distribution to potential customers.

**“Confidential Information”** means any means any (i) non-public information of a Party, whether in written, oral, graphic, electronic or any other form, made available by or on behalf of one Party (the **“Discloser”**) to the other Party (the **“Recipient”**) under or in connection with this Agreement, including, without limitation, any information relating to a Party’s current and planned products and services (including the Software, Documentation SaaS Offerings, and any proprietary information embodied in the Hardware), technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans (including details of the F5 Partner Program), (ii) the terms of this Agreement (including pricing and discounts), (iii) other information that is marked as **“Confidential”** or some other label indicating its confidential nature or, if disclosed orally, is identified as confidential at the time of such disclosure, or (iv) information that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

**“Demonstration Products”** means Products Partner can use solely for marketing and demonstration purposes.

**“Documentation”** means F5’s standard published Product documentation normally supplied with or made available to its End Users and Partners to aid in the use, support and/or operation of the Products and any Updates thereto, in any form, media or language provided.

**“Due Diligence Screening”** means the process by which F5 screens prospective and current partners, as further described in the F5 Channel Partner Policies and Procedures.

**“Effective Date”** means the later of the dates this Agreement is executed by the Parties.

**“End User”** means an end user customer of the Products in the Territory who purchases such Products and/or Services for its personal or internal business use and not for transfer or resale.

**“End User License Agreement”** or **“EULA”** means either (i) the then-current license agreement shipped with, incorporated in, or made available by download with the Product or accessed when the Product is run or ordered, which sets forth the terms and conditions pursuant to which an End User may use the Products (including any Subscription Services Agreements, Terms of Use or other similar agreement) or (ii) the end user license agreement executed by F5 and an End User setting forth the terms and conditions of End User’s use of the Products other than the SaaS Offerings.

**“End User Services Agreement”** or **“EUSA”** means either (i) the then-current services agreement accepted by End User in order to access the SaaS Offerings which sets forth the terms and conditions of End User’s use of the SaaS Offerings or (ii) the agreement executed by F5 and End User which sets forth the terms and conditions of End User’s use of the SaaS Offerings.

**“Evaluation Products”** means those Products which are provided by F5 for evaluation use only as described in Section 3.10.

**“F5 Channel Partner Policies and Procedures”** means the documents, policies and procedures posted to F5 Partner Central (as defined below) as may be updated from time to time by F5.

**“F5 Partner Program”** means the qualification criteria and benefits to Partner as set forth in F5 Partner Central.

**“F5 Partner Central (“PC”)** means partnercentral.f5.com or any other successor site as designated by F5. Partner shall review PC regularly for any updates or changes to the F5 Channel Partner Policies and Procedures and F5 Partner Program.

**“F5 Price List”** means F5’s then-current price list for Products in the Authorized Territory, which F5 may modify from time to time in its sole discretion.

**“Hardware”** means a device that may be purchased by Partner onto which the Software is pre-installed as specified in the F5 Price List and any Updates thereto.

**“Intellectual Property Rights”** means any and all intellectual property rights worldwide arising under statutory law, common law or by contract and whether or not perfected, including without limitation: (i) trade dress, trademark and service mark rights; (ii) patents, patent applications, patent rights, design rights and utility models; (iii) rights associated with works or authorship including but not limited to copyrights, copyright applications, copyright registrations, mask works rights, mask work applications, mask work registrations and database rights; (iv) rights relating to trade secrets, know-how and Confidential Information; (v) any rights analogous to those set forth in this section and any other proprietary rights relating to intellectual property; and (vi) divisionals, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, as hereafter created, filed, used or acquired, and whether registered or unregistered. Intellectual Property Rights shall also include any moral rights including rights of paternity or integrity, any right to claim authorship, to object to any distortion, mutilation or other modification of, or other derogatory action in relation to the subject work whether or not such would be prejudicial to an author’s honor or reputation, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral" right.

**“Managed Services”** means the information technology service offering marketed and provided by Partner resulting from the inclusion of services utilizing the Products with other products and services of Partner and/or its suppliers.

**“Marks”** means those F5 logos, trademarks, trade names, slogans, designs and other identifying symbols as specified in F5’s then-current trademark and usage guidelines.

**“Minimum Purchase Requirement”** means the minimum purchase requirements for Partner’s applicable partner tier level (**“Partner Level”**) as set forth in the F5 Partner Program.

**“Non-Production Products”** means Products that are purchased for test and evaluation only of Partner’s solutions to its End Users, but not for managing internet traffic or other commercial purpose (**“Non-Production Use”**).

**“Open Source Software” or “OSS”** means software components that are licensed under a license approved by the Open Source Initiative (“OSI”) or similar open source or freeware license and are embedded in or provided with the Products.

**“Product(s)”** means the Software, Hardware, Documentation and Services.

**“Services”** means consulting, training, installation and other professional services, as well as any Software-as-a-Service offerings, which Partner is authorized to market and resell in accordance with the terms of this Agreement and those set forth at <http://www.f5.com/pdf/customer-support/consulting-services-agreement.pdf> (or a successor site) (**“Professional Services”**), <http://www.f5.com/about/guidelines-policies/#supportPolicies> (or a successor site) (**“Support”**), and <https://www.f5.com/pdf/customer-support/eusa.pdf> (or a successor site) (**“SaaS Offerings”**).

**“Software”** means F5’s proprietary software programs described in the F5 Price List, in binary or executable code form and any Updates thereto. Software may be provided via download, on physical media, embedded in Hardware or made available as part of a cloud-based services offering.

**“Term”** means the term of this Agreement as set forth in Section 6.1.

**“Terms”** means these Terms and Conditions and all Exhibits hereto and documents referenced herein.

**“Updates”** means fixes, maintenance releases and error corrections to the Products which are generally provided at no additional charge by F5 to customers who have purchased Support. Updates do not include releases, improvements or enhancements for which F5 charges separately or extra as determined by F5 in its sole discretion.

All references to “sale” or “purchase” with respect to Software, SaaS Offerings, and Documentation shall refer to the purchase of licenses to use the Software, SaaS Offerings, and Documentation as specified herein.

## **2. PARTNER OBLIGATIONS.**

**2.1 Promotion.** Partner will vigorously promote and advertise the Products in accordance with the F5 Channel Partner Policies and Procedures and all applicable laws and regulations. Partner may modify the Collateral to insert its identifying information such as name, logo, address, contact persons, telephone numbers, fax numbers, e-mail addresses and web sites. Partner will obtain F5’s prior written approval of any promotional or advertising materials relating to the Products or Services before publishing or distributing such materials (excluding Collateral) and shall be responsible for ensuring their accuracy.

**2.2 Partner Personnel.** Partner will maintain sufficient technical and sales personnel having the knowledge and skills necessary to: (i) inform End Users about the features and capabilities of the Products and, to the extent necessary, competitive products; (ii) provide installation, service and support for the Products in accordance with Partner’s obligations under this Agreement and consistent with Partner’s Partner Level; and (iii) otherwise perform its obligations under this Agreement. During the Term, Partner will at its expense, comply with F5’s training requirements for Partners of the Products and those specified for Partner’s Partner Level within ninety (90) days from the Effective Date. F5 will notify Partner from time to time of the training courses offered for the Territory and the rates applicable thereto. New Products added to the F5 Price List may require Partner to receive additional training or certification before being available for resale by Partner.

**2.3 Support.** Partner will provide prompt and comprehensive pre-sales support services to End Users consistent with its Partner Level and Partner’s failure to provide such support shall be deemed a material breach of this Agreement. Partner may sell Support to End Users and/or purchase back-end Support from F5 in order to assist Partner in performing its support obligations to End Users.

**2.4 Business Conduct.** Partner will at all times during the Term: (i) conduct business in a manner that favorably reflects on the Products, and the good name, goodwill and reputation of F5; (ii) make no false or misleading representations or advertisements with regard to F5 or the Products; and (iii) make no representations, warranties or guarantees to End Users or to the trade with respect to the specifications, features or capabilities of the Products or Services that are inconsistent with the Documentation and Collateral.

**2.5 Publicity.** Partner agrees and acknowledges that F5 may identify Partner as a member of the F5 Partner Program in all marketing materials and on F5’s website. Partner may not issue any press release or any other public announcement regarding this Agreement or any aspect of its relationship with F5 without the prior written consent of F5, which F5 may withhold in its sole discretion.

**2.6 Approvals.** Partner shall obtain and maintain at its own expense all approvals, consents, permissions, licenses, and other governmental or other third-party approvals necessary for Partner to market, distribute, and, if applicable, support the Products. Partner will comply with all applicable laws, statutes, ordinances, directives, and regulations that apply to the activities of Partner in connection with this Agreement including, but not limited to, relevant privacy and piracy laws.

**2.7 F5 Channel Partner Policies and Procedures.** Partner will comply with all F5 Channel Partner Policies and Procedures, including, but not limited to, all terms and conditions set forth in the F5 Partner Program. Failure to comply with any of these policies and procedures shall be considered a material breach of this Agreement. F5 reserves the right to modify the F5 Channel Partner Policies and Procedures at any time upon thirty (30) days' notice to Partner (including notice within PC). Partner agrees that information may be communicated via PC and Partner will ensure that it has sufficient personnel available to monitor PC and administer the F5 Partner Program.

**2.8 Records and Reports.** Partner will maintain accurate records of all sales of Products, including the names and addresses of the End Users, the sale date and any purchase orders or agreements evidencing such sales. Partner will maintain such records for at least three (3) years from the date of termination or expiration of this Agreement. In addition, Partner shall comply with all administrative requirements of the F5 Partner Program.

**2.9 Minimum Purchase Requirements.** Partner shall satisfy all Minimum Purchase Requirements in order to maintain Partner's Partner Level. If Partner fails to meet the Minimum Purchase Requirements or any other requirements of the F5 Partner Program (including the F5 Channel Partner Policies and Procedures), F5 may modify Partner's Partner Level and/or those F5 Partner Programs which Partner may participate in, in its sole discretion.

**2.10 Audit.** F5, in its sole and absolute discretion, may conduct, or have a third party conduct on its behalf, an audit of the records of Partner for the purpose of validating Partner's compliance with the terms of this Agreement. F5 will bear the cost of such audit, unless the audit determines that Partner has underpaid or underreported by more than five percent (5%) for any F5 fiscal quarter OR unless such audit reveals Partner is not in compliance with this Agreement or any Exhibit hereunder. In the event of an underpayment by Partner, Partner will pay to F5 or its Authorized Distributor (as specified by F5), the full amount of any underpayment disclosed by such audit, plus interest at the rate of one and one-half percent (1.5%) per month or the highest rate allowed by law, whichever is lower, within five (5) days of F5's notification of such underpayment. In the event of underpayment by Partner in excess of five percent (5%) or a material breach of this Agreement is discovered, Partner will bear the reasonable costs of the audit in addition to all other remedies F5 has under this Agreement, at law or in equity.

**2.11 Pricing Letters.** From time-to-time, at F5's sole discretion, F5 may issue a special pricing letter ("Pricing Letter") in order to meet pricing from competitive products on particular bids or for other competitive reasons. Pricing Letters cannot be used in conjunction with any other promotional pricing or rebates. Partner agrees that the End User named in the specific Pricing Letter is the only one to whom Partner shall sell the Products. F5 requires certain supporting documentation to substantiate and verify the granting of such Pricing Letter. Partner undertakes to use such Pricing Letter solely for the specific project/deal referred to in the Pricing Letter. If Partner fails to do so, then Partner shall be liable to reimburse F5 or its Authorized Distributor for the sum equal to the difference between the price set forth in the F5 Price List and the price granted in the Pricing Letter for all Products purchased with the benefit of such Pricing Letter. This sum shall be paid within seven (7) days from receipt of written notification from F5. Partner understands that it will be deemed a material breach of this Agreement if any of the supporting documents are inaccurate, not genuine or otherwise not submitted in good faith.

### **3. RIGHTS AND RESTRICTIONS**

**3.1 Distribution Rights.** F5 hereby grants to Partner during the Term, a non-exclusive, non-transferable license within the Authorized Territory to: (i) order and purchase Products from Authorized Distributors; (ii) market and distribute Products for delivery to or use by End Users; (iii) use Demonstration Products to demonstrate and market Products to End Users; and (iv) use and reproduce any Collateral and distribute Collateral in connection with the marketing, sale and or support of the Products. Prices for Products are negotiated between Partner and its Authorized Distributor, and the F5 Partner Program discounts are recommended discounts and are not intended to set a fixed or minimum price. Terms and conditions specific to Partner's appointment and distribution

rights as a value-added reseller and/or managed service provider are set forth in the applicable Exhibits attached to this Agreement.

**3.2 End User Terms.** All Products will be delivered or made available to End Users solely in accordance with the applicable EULA. All SaaS Offerings will be delivered or made available to End Users solely in accordance with the applicable EUSA. Partner shall promptly notify F5 of any violations of the EULA or EUSA, as applicable, of which it is or becomes aware.

**3.3 Modification of Price List.** F5 may add or remove any Product from the F5 Price List upon thirty (30) days prior written notice to Partner.

**3.4 License to Use Marks.** Subject to Partner's compliance with the terms and conditions of this Agreement, F5 hereby grants to Partner during the Term, a non-exclusive, non-transferable license to use the Marks within the Authorized Territory solely in connection with Partner's marketing and distribution of the Products. Partner shall use the Marks in accordance with applicable law as well as F5's policies or guidelines regarding advertising and trademark usage as established from time to time. When using the Marks, Partner must indicate that F5 is the owner of such Marks and that Partner is using the Marks with permission from and on behalf of F5. Partner acquires no right in the Marks by its use. In addition, Partner is required to submit to F5 for approval, first article units of materials on which any Mark will be used (other than Collateral) prior to any sale, distribution or other release of such materials to third parties. If Partner acquires any goodwill in any of the Marks, all such goodwill will automatically vest in F5 and Partner shall take all such actions or execute any documents necessary to affect such vesting. Partner shall not contest the validity of any of the Marks or F5's exclusive ownership of the Marks. Partner shall not adopt, use or register, whether as a corporate name, trademark, service mark, domain name or other indication of origin, any of the Marks, or any word or mark confusingly similar to the Marks in any jurisdiction. Partner shall provide all reasonable assistance, including execution of documents as requested by F5, to protect its trademark rights in the Authorized Territory. F5 shall have the sole and exclusive right to bring legal action in the Authorized Territory for infringement with respect to the Marks. Partner shall assist F5 in such legal proceedings. Partner shall notify F5 promptly of any known infringements of the Marks. Any violation of this Section 3.4 shall be deemed a material breach of this Agreement.

**3.5 Restrictions and OSS.** Except as expressly permitted herein, Partner shall not and shall not assist or permit others to: (i) copy, modify, translate or create derivative works of any part of the Products or, (ii) disassemble, decompile or in any other way reverse engineer any portion of Products (other than OSS) or attempt to disable any security devices or codes incorporated into or distributed with the Products or attempt to circumvent or exceed account limitations, (iii) sell, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the Products to a third party, (iv) unbundle any components of the Software; (v) obtain unauthorized access to the SaaS Offerings (including without limitation permitting access to or use of the SaaS Offerings via another system or tool, the primary effect of which is to enable input of requests or transactions by other than authorized users); (vi) use the SaaS Offerings in a manner that is in violation of any third party rights of privacy or intellectual property rights; (vii) publish, post, upload or otherwise transmit data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (viii) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the SaaS Offerings; or (ix) cause or permit any third party to do any of the foregoing. Certain portions of the Products may contain OSS. Information identifying OSS, and the licenses that apply to them, is available in the applicable Documentation and at <http://askf5.com>. Partner's and End User's use of OSS is subject to the terms of each applicable license. Where Software is pre-loaded onto Hardware, the Software may not be used other than in conjunction with such Hardware.

**3.6 Proprietary Marks.** Partner shall not alter, remove or obscure any copyright notices, trademark notices, or other proprietary rights or confidentiality notices that are: (i) placed or embedded by F5 or its suppliers or licensors in or on the Products or Collateral; (ii) displayed when the Products are run; or (iii) applied to the Products, their packaging, labels, Collateral or any other materials provided under this Agreement.

**3.7 Intellectual Property.** The Products and Collateral and all Intellectual Property Rights therein are and shall remain the exclusive property of F5 and its suppliers. All rights not expressly granted by F5 are reserved. Partner hereby acknowledges that the Products and Collateral are protected by copyright laws and other laws pertaining to Intellectual Property Rights in the United States and other countries and that the Products embody valuable Confidential Information of F5 and its suppliers, the development of which required the expenditure of considerable time and money.

**3.8 Sales to United States Government Agencies.** The Products are “Commercial Items(s)” as defined in 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. §227.7202, as applicable. The SaaS Offerings are “Commercial Cloud Services”. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227-7202-1 through 227.7202-4 and DFAR Subpart 239.76, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227-7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users: (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Therefore, if Partner is purchasing the Products for acquisition by the U.S. Government or any contractor therefore, Partner will license consistent with the policies set forth in 48 C.F.R. §12.212 (for civilian agencies) and 48 C.F.R. §227-7202-1 and 227.7202-4 (for the Department of Defense), and their successors.

**3.9 Evaluation Products.** Partner may request to receive Evaluation Products for non-commercial use and evaluation by Partner or its’ End User for the period set forth in the applicable evaluation form (provided by F5 or its Authorized Distributor). Ownership of and title to the Evaluation Product will remain with F5 or its Authorized Distributor at all times. Partner will keep the Evaluation Product free of liens, attachments, and other encumbrances. Partner agrees that Partner will not remove any ownership label on the Evaluation Product at any time during the evaluation period. Partner will not remove, move, or relocate the Evaluation Product from its Ship To Location identified in the evaluation form without prior written approval from F5. Evaluation Products must be returned to F5 or its Authorized Distributor DDP (Incoterms 2010), location specified on evaluation form not later than the date set forth in the evaluation form at Partner’s expense, and Partner must securely destroy any Confidential Information Partner received in connection with such Evaluation Product. Partner will be charged the purchase price for any Evaluation Product that is not returned as specified in the evaluation form.

Notwithstanding anything to the contrary contained in this Agreement, all Evaluation Products are provided “AS IS” without warranties or guarantees of any kind, INCLUDING BUT NOT LIMITED TO WARRANTIES, TERMS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. PARTNER WILL USE THE EVALUATION PRODUCT AT ITS OWN RISK. F5 AND ITS AUTHORIZED DISTRIBUTORS WILL NOT BE LIABLE TO PARTNER FOR ANY DIRECT OR INDIRECT DAMAGES INCURRED IN USING EVALUATION PRODUCTS. IN NO EVENT WILL F5 OR ITS AUTHORIZED DISTRIBUTOR BE LIABLE FOR LOSS OF PROFITS, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, NOR FOR PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF THE USE OF EVALUATION PRODUCTS.

**3.10 Non-Production Products.** Non-Production Products purchased by Partner may only be used for Non-Production Use and otherwise in accordance with the terms of the applicable EULA. Partner may not make the

Non-Production Products available to any third party or move the Non-Production Products to a different location (unless approved by F5 in writing). If Partner fails to comply with its obligations regarding Non-Production Products, Partner will be liable for a conversion fee equal to the difference between the price paid or the Non-Production Product and the then-current list price of such Product and associated Support. All such fees shall be payable immediately by Partner. Partner may also request to convert a Non-Production Product to a Product by paying the Authorized Distributor who provided the Non-Production Product (or F5 if purchased directly by Partner from F5) the difference between the price paid for the Non-Production Product (and associated Support) and the then-current list price (less applicable discounts).

#### **4. Compliance**

**4.1 Anti-Bribery and Anti-Corruption Compliance.** Reseller will comply with the F5 Partner Code of Conduct and the requirements of the U.S. Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act (UKBA), as may be amended from time to time, as well as all other applicable local laws and regulations prohibiting bribery or regulating payments to government officials and private persons in the Authorized Territory, and will not offer or accept money or anything else of value to or from any private person, agent, or representative of any government or government agency in order to obtain or retain business. Reseller will provide true, accurate, and complete information in all product orders, reimbursement requests, and other communications relating to F5 and its Products.

**4.2 Export Compliance.** Partner agrees to comply with the Export Controls Reform Act of 2018 and all regulations promulgated under such Acts, all economic sanctions issued or administered by the Office of Foreign Asset Control of the U.S. Department of Treasury, and all other U.S. government regulations relating to the export of equipment, products and technical data produced therefrom, as well as any related local regulations regarding importing, exporting or using cryptographic software (the “**Regulations**”), and will not import, export or re-export the F5 Products in violation of the Regulations. Specifically, Partner agrees not to export or re-export the Products: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, or to any national of any such country, wherever located, who intends to transmit or transport the Products back to such country; (ii) to any person or entity who Partner knows or has reason to know will utilize the Products or a portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (iii) to 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. Partner hereby represents and warrants that it is not located in, under control of, or a national or resident of any such country or on any such list.

**4.3 The Waste Electrical and Electronic Equipment Directive.** With respect to sales in European Union member states, Partner will be responsible for reporting electrical and electronic equipment (“**EEE**”) placed on the market, the costs of financing the collection, treatment, recovery, and environmentally sound disposal of the Products at the end of life of such Product supplied by F5 pursuant to this Agreement, to the extent required by the WEEE Directive (as defined below) as implemented by European Union member states. Partner further agrees that with respect to the sale of Products in European Union member states, it will undertake any and all additional responsibilities allocated to a “**Producer**” (as such term is defined in Directive 2012/19/EU, as amended, “**the WEEE Directive**”) in the WEEE Directive as implemented by European Union member states, including, but not limited to, any related obligations of registrations and reporting.

**4.4 Opt-Out Requirement.** To the extent, if any, Partner uses customer records for the promotion or sale of Products or Services, Partner will provide: (i) an “unsubscribe” or “opt-out” option on every marketing piece sent to a customer regardless of form, and (ii) any other appropriate disclosures regarding the nature of the solicitation, opt-out procedures and other notices as required by law. Additionally, Partner will comply with all applicable directives, laws, statutes, ordinances, and regulations that are related to privacy, use and protection of customer data and related rights. If and as required by mandatory provisions of applicable national law, Partner shall obtain



and document a customers' specific consent for use of their data in accordance with and for the purposes contemplated by this Agreement.

## **5. Confidential Information**

**5.1 Generally.** By virtue of this Agreement, either Party may have access to the other Party's Confidential Information. Recipient agrees to hold Discloser's Confidential Information (except for F5's Confidential Information that constitutes a trade secret) in confidence during the Term and for a period of three (3) years thereafter, and with respect to F5's Confidential Information that constitutes a trade secret, for so long as the Confidential Information remains a trade secret. Confidential Information may be disclosed only to employees or contractors of Recipient with a "need to know" and who are instructed and agree not to disclose the Confidential Information and not to use the Confidential Information for any purpose, except as set forth herein. Recipient shall have appropriate written agreements with any such employees or contractors sufficient to comply with the provisions of this Agreement. Recipient agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed in violation of the terms of this Agreement. Recipient may disclose the Discloser's Confidential Information: (i) to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, provided that the Recipient gives prompt written notice thereof to Discloser (to the extent legally permitted) and assistance to enable Discloser to seek a protective order or otherwise prevent or restrict such disclosure; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital and/or potential investors in or acquirers of such Party. Recipient shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of Confidential Information that is made (a) in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Recipient files a lawsuit for retaliation by Discloser for reporting a suspected violation of law, Recipient may disclose Confidential Information to its attorney and use the Confidential Information in the court proceeding, if Recipient files any document containing the Confidential Information under seal and does not disclose the Confidential Information except pursuant to court order.

**5.2 Exceptions.** Confidential Information does not include information that: (i) is or becomes publicly available through no act or omission of Recipient; (ii) Discloser discloses to third parties without restriction on disclosure; (iii) is disclosed to Recipient by a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iv) is independently developed by Recipient without use of or access to the Confidential Information of the Discloser; or (v) is previously known to Recipient without a nondisclosure obligation as evidenced by written records.

**5.3 Ownership.** All Confidential Information, including copies made by Recipient, will remain the property of Discloser. Nothing herein shall be construed as granting or conferring any rights by license or otherwise in the Confidential Information except as expressly provided herein.

**5.4 Destruction of Confidential Information.** Upon the written request of Discloser, or upon the expiration or termination of this Agreement, Recipient shall promptly destroy all copies of the Confidential Information, in whatever form or media, to the Discloser. Recipient shall certify such destruction to Discloser in writing within ten (10) days thereafter. Notwithstanding the foregoing, the Recipient may retain copies of Confidential Information if and to the extent required for legal or regulatory purposes and will not be required to delete electronic Confidential Information stored in any disaster recovery or back-up/archival storage in accordance with its policies, provided that any such retained Confidential Information will continue to be subject to the terms of this Section 5.

**5.5 Protection of Personal Data.** Other than at the specific request of F5, Partner will not disclose or allow access to any personal data (as defined in the applicable national, state, provincial, or local laws or regulations (collectively the "Privacy Acts") whether provided by F5 or acquired by the Partner during the course of tendering

for or executing this Agreement, other than to a person placed by Partner under a like obligation who is employed or engaged by Partner, any Affiliate, employee, agent or other person within the control of Partner concerned with the performance of this Agreement. Partner agrees that it and its Affiliates, agents or any other person(s) in the control of Partner, will process the personal data as referred to above in accordance with the data protection principles as set out in the Privacy Acts.

**5.6 Injunctive Relief.** It is understood and agreed that notwithstanding any other provision of this Agreement, a breach of this Section 5 may cause the Discloser irreparable harm for which recovery of money damages might be inadequate, and that Discloser shall therefore be entitled to seek timely injunctive relief, without posting bond, to protect its rights under this Agreement, in addition to any and all remedies available at law.

## **6. Term and Termination**

**6.1 Term.** This Agreement will become effective on the Effective Date and will remain in full force and effect for a period of one (1) year unless terminated earlier in accordance with this Agreement. This Agreement will automatically renew for additional one (1) year periods unless written notice of non-renewal is provided by either Party at least three (3) months prior to the expiration of the then current Term. This Agreement will be considered an agreement for a fixed term regardless of the number of renewals that may take place.

**6.2 Termination for Cause.** Either Party may terminate this Agreement at any time, if the other Party breaches any material term of this Agreement (which includes nonpayment or failure to comply with the F5 Channel Partner Policies and Procedures) and fails to cure that breach within thirty (30) days after notice thereof from the non-breaching Party. F5 may also terminate this Agreement at any time if Partner: (i) ceases to do business, or otherwise terminates its business operations; (ii) becomes insolvent, seeks protection under any receivership, deed of trust, assignment for the benefit of creditors, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against Partner (and not dismissed within sixty (60) days), or any other proceedings for the settlement of Partner's debts; (iii) initiates dissolution or winding up of its business; (iv) is merged or consolidated, sells all or substantially all of its assets, or is subject to any substantial change in management or control; or (v) refuses to cooperate in or fails any Due Diligence Screening.

**6.3 Termination for Convenience.** Either party may terminate this Agreement or any particular Authorized Territories upon thirty (30) days' advance written notice to the other party.

**6.4 Effect of Termination.** Upon the termination or expiration of this Agreement: (i) the due dates of all outstanding invoices will automatically be accelerated so they become due and payable on the date of termination or expiration, even if longer terms had been previously provided; (ii) Partner will cease using the Marks and promoting and advertising the Products; and (iii) all rights and licenses granted pursuant to this Agreement, except those expressly identified as surviving termination, shall automatically cease, provided, however, that EULAs or EUSAs in effect with End Users shall continue in full force and effect. Except where this Agreement is terminated by F5 pursuant to Section 6.2 or otherwise for cause, Partner shall have the right to continue distribution or provision of the Products where orders were placed by End Users prior to the date of expiration or termination and such Products and/or Services have not been delivered: (a) provided that delivery to End User occurs within two (2) months following the date of termination or expiration, or (b) when delivering Managed Services, Partner may continue to provide the Managed Services to those End Users with EULAs or EUSAs in effect as of the date of such termination or expiration through the earlier to occur of (y) the end of the subscription period for the Managed Services or (z) one (1) month from the date of termination or expiration ("**Sell-Out Period**"). All terms and conditions of this Agreement shall continue to apply during this Sell-Out Period. In addition, if Partner is at a Partner Level where it was providing support services to End Users, then within five (5) days following such expiration or termination, Partner shall provide all information necessary for F5 or its designee to take over support of the Products for End Users and will work with F5 to insure a seamless transition of support to F5 or another third party designated by F5, including notifying End Users of such transition of support.

**6.5 No Additional Liability.** Neither Party shall be liable to the other for any damages, expenditures, loss of profits or prospective profits or goodwill on account of the termination or expiration of this Agreement pursuant to its terms. Partner expressly waives any and all rights provided by law or statute for any indemnity or compensation from F5 by reason of termination or non-renewal of this Agreement. Partner acknowledges that it has no expectation and has received no assurances that any investment by Partner in the promotion of the Products will be recovered or recouped or that Partner will obtain any anticipated amount of profit by virtue of this Agreement.

**6.6 Survival of Terms.** All provisions of this Agreement (including all Exhibits) that by their nature should survive termination of this Agreement shall remain in effect after termination or expiration of this Agreement including but not limited to those specified in Sections 2.10, 3.5, 3.6, 3.7, 4, 5, 6, 7, 8, 9, and 10. The right of termination will not be the sole remedy under this Agreement. Unless specifically provided otherwise, all other remedies provided for under this Agreement or in law or equity will remain available to the Parties.

## **7. Warranty, Disclaimers and Damage Limitations.**

**7.1 Limited Warranties for Software and Hardware.** F5 warrants that for a period of one (1) year following the date of delivery to Partner, the Hardware will be free from defects in material and workmanship under normal use and that for ninety (90) days following delivery to Partner, the Software (excluding any Updates) will perform substantially in accordance with its applicable Documentation. Partner's sole and exclusive remedy and F5's sole liability under this limited warranty is: (i) for F5 to repair or replace a defective Hardware within thirty (30) days following receipt by F5 in accordance with F5's RMA procedures; and (ii) for F5 to use its reasonable efforts to correct any reproducible error in the Software confirmed by F5. Partner shall be responsible for freight costs to F5 and F5 shall pay freight costs for the replacement to Partner or End User. If Partner has obtained Advance Exchange RMA approval (as detailed in the applicable Support contract), F5 will ship a replacement Product or component to Partner on the first business day following confirmation of the failure of the original Product or component. F5 may invoice Partner for any replacement Products or components: (a) not covered by the warranty as specified in Section 7.3; or (b) where the failed Product or component is not returned within ten (10) days of receipt of the replacement unit(s). Title to any returned Products or components will transfer to F5 upon receipt. All warranties to the End User shall be specified in the applicable EULA and F5 and Partner shall work together to facilitate the repair, replacement or return of the Products via Partner as specified in the EULA. Replacement Products are warranted only for the unexpired portion of the original warranty period.

**7.2 SaaS Offerings.** F5 represents and warrants that during the applicable subscription term as set forth in the ordering document, the SaaS Offerings will conform to the description set forth for such SaaS Offering in the applicable Documentation (including any applicable Service Level Objectives ("SLOs") for such SaaS Offering) in all material respects. Partner's and its End Users' sole and exclusive remedy for a breach of the foregoing warranty shall be the receipt of service level credits as specified in the applicable SLO. This warranty shall not apply, and F5 shall not be responsible for its inability to provide the SaaS Offering to the extent such failure is due to: (i) third party software, hardware or network infrastructure as specified in the SLO; and (ii) failure of the external internet beyond F5's network; (iii) electrical or internet access disruptions.

**7.3 Exclusions.** The foregoing limited warranties do not apply if the Product: (i) has been altered, except by F5 or an F5-designated representative or in accordance with F5 instructions; (ii) has not been installed, operated, repaired, or maintained in accordance with F5's instructions; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; (iv) has been operated outside of the environmental specifications for the Product or outside the scope of this Agreement or the applicable EULA; or (v) has been affected by computer viruses and other changes to the operating system or environment which adversely affect the Products. F5's provision of any software corrections or Updates does not extend the original warranty period.

**7.4 Services.** F5 warrants that it will perform Services in a professional manner in accordance with industry standards and using qualified personnel. Partner's sole and exclusive remedy and F5's sole liability under this limited warranty is for F5 to re-perform at no additional cost any non-compliant Services of which F5 is given written notice within ninety (90) days of the performance of such non-conforming Services.

**7.5 DISCLAIMER.** TO THE FULLEST EXTENT ALLOWED BY LAW, THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. F5'S WARRANTIES HEREIN RUN ONLY TO PARTNER AND ARE NOT EXTENDED TO ANY THIRD PARTIES. F5 NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, SUPPORT OR USE OF THE PRODUCTS. F5 ALSO SPECIFICALLY DISCLAIMS ANY WARRANTIES WITH RESPECT TO: (A) ANY WORK PRODUCT OF ANY THIRD PARTY WITH WHOM PARTNER CONTRACTS DIRECTLY FOR THE PROVISION OF CONSULTING/IMPLEMENTATION SERVICES IN CONNECTION WITH THE PRODUCTS; OR (B) ANY SOFTWARE OR TECHNOLOGY NOT DEVELOPED BY F5 OR ITS AGENTS.

## **8. INDEMNIFICATION**

**8.1 Indemnification by F5.** F5 shall defend or settle, at its option, any claims, suits, losses, expenses and liabilities (including reasonable attorney's fees) ("**Claims**") brought against Partner and its officers, directors and employees by a third party, to the extent it is based on a claim that the Products, as delivered to Partner, infringe any valid patent or registered trademark or copyright, or misappropriates a trade secret of a third party enforceable in the Authorized Territory. F5 will pay the resulting costs and damages (including reasonable legal fees) finally awarded against Partner attributable to such Claim. If the Products or any part of them are, or in the opinion of F5 may become, the subject of any Claim, or if it is judicially determined that the Products or any part of them infringes any such intellectual property or proprietary right, or if the distribution or use of the Products or any part of them is, as a result, enjoined or F5 wishes to minimize its liability hereunder, then F5 at its option, may: (i) procure for Partner and End Users the right to distribute or use, as appropriate, such Products as provided herein; or (ii) replace the Products with non-infringing, functionally equivalent products; or (iii) suitably modify the Products so they become non-infringing. In the event that F5 is unable to do (i), (ii) or (iii) above using its commercially reasonable efforts, then F5 may accept return of the Products and provide a credit equal to the fees paid by Partner for such Product amortized over a three (3) year period using the straight-line method for the benefit of the End User. In the event an End User is directly indemnified by F5 pursuant to the EULA, then F5's payment to End User of such amounts shall replace F5's refund obligation to Partner hereunder. F5 shall not be liable for any costs or expenses incurred without its prior written authorization. Notwithstanding the foregoing, F5 shall have no liability with respect to any Claims arising out of: (i) unauthorized modification of the Products; (ii) combination or use of the Products with any equipment, data, devices or software not provided by F5 where in the absence of such combination the applicable Product would not have been infringing; (iii) use of the Product in a manner other than for which it was intended or outside the scope of this Agreement or EULA or the operating environment described in the Documentation; (iv) use of other than the then-most current release of the Software if such Claim would have been prevented by the use of such current release, (v) sale or use of the Product outside of the Authorized Territory.

**8.2 Indemnity by Partner.** Partner shall indemnify, defend and hold harmless F5 and its Affiliates and their officers, directors and employees ("**F5 Parties**") against all Claims made against F5 Parties by a third party to the extent arising out of resulting from: (i) any acts or omissions of Partner relating to its activities in connection with this Agreement; (ii) Partner's failure to comply with applicable laws; or (iii) Partner's misrepresentations relating to F5, the Products, or this Agreement, regardless of the form of action. Partner shall be solely responsible for any claims, warranties or representations made by Partner or its employees or agents which differ from the warranty

provided by F5 in the limited warranty included in the packaging of each Product sold or licensed hereunder, or which differ from written documentation provided by F5.

**8.3 Procedure.** Such indemnification is conditioned upon the indemnified Party (“**Indemnified Party**”): (i) promptly notifying indemnifying Party (“**Indemnifying Party**”) of the Claim in writing; (ii) giving Indemnifying Party sole control of the defense and settlement of such Claim using counsel of its own choice; and (iii) giving Indemnifying Party reasonable assistance in such defense at F5’s expense. Indemnified Party will have the right to participate in the defense with counsel of its own choosing at its expense provided that such representation does not interfere with Indemnifying Party’s right to control the defense and settlement of the Claim.

**8.4 Entire Liability.** THE PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATION OF EACH PARTY AND THE EXCLUSIVE REMEDIES OF EACH PARTY WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS.

## **9. LIMITATION OF LIABILITY**

**9.1 INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL F5 OR ITS SUPPLIERS OR LICENSORS BE LIABLE TO PARTNER OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST BUSINESS, LOST PROFITS, LOSS OF USE, OR LOSS OF OR DAMAGE TO DATA, SYSTEMS OR PROGRAMS ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS CONTAINED IN THIS SECTION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER ANY TERM OF THIS AGREEMENT.

**9.2 GENERAL LIMITATION.** F5 AND ITS SUPPLIERS’ AND LICENSORS’ TOTAL AGGREGATE LIABILITY TO PARTNER AND ITS END USERS FOR ALL CLAIMS UNDER THIS AGREEMENT OR UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY WILL BE LIMITED TO THE TOTAL AMOUNTS PAID BY PARTNER FOR PRODUCTS IN THE PREVIOUS TWELVE (12) FULL CALENDAR MONTHS PRIOR TO SUCH CLAIM OR USD \$100,000.00, WHICHEVER IS LESS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE MAXIMUM EXTENT PERMITTED BY LAW. The Parties expressly acknowledge and agree that F5 has entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between F5 and Partner and form an essential basis of the bargain between the Parties.

**9.3 Exception to Limitations.** The limitations of liability set forth in Sections 9.1 and 9.2 above will not apply to damages arising from claims for bodily injury or tangible property damage resulting from F5’s gross negligence or willful misconduct, or for any liability which F5 is not, and to the extent that it is not, lawfully permitted to limit or exclude.

## **10. General**

**10.1 Notices.** Except for notices with respect to F5 Channel Partner Policies and Procedures which may be provided by F5 through Partner Central, any notice or demand under this Agreement must be in writing in English and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by express courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; (d) by certified or registered mail, return receipt requested, upon verification of receipt; and (e) by electronic mail (for general business correspondence only, not for notice of breach or in connection with indemnity obligations), upon written verification of receipt. All notices to Partner shall be sent to the address set forth above. All notices to F5 shall be sent to the address(es) of the undersigned F5 entity in the table below. Either Party may change its address by giving the other Party written notice in accordance with this Section 10.1.

<b>F5 Entity:</b>	<b>Notice Address:</b>	<b>With a Copy to:</b>
F5 Networks Singapore Pte Ltd	F5 Networks Singapore Pte Ltd Attn: Legal Department 5 Temasek Boulevard #08-01/02/05 Suntec Tower 5 Singapore 038985 Singapore	F5, Inc. Attention: Legal Department 801 Fifth Ave. Seattle, WA 98104 USA
F5 Networks Ltd.	F5 Networks Ltd. Attn: Legal Department Chertsey Gate West 43-47 London Street Chertsey Surrey KT16 8AP United Kingdom	F5, Inc. Attention: Legal Department 801 Fifth Avenue Seattle, WA 98104 USA
F5, Inc.	F5, Inc. Attn: Legal Department 801 Fifth Ave. Seattle, WA 98104 USA	

**10.2 Force Majeure.** Notwithstanding anything else in this Agreement, and except for the obligation to pay money, no default, delay or failure to perform on the part of either Party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be beyond the reasonable control of the Party charged with a default.

**10.3 Waiver and Severability.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the Party to be charged. No waiver of any breach of, or failure to exercise any right under, any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of or right under the same or any other provision of this Agreement. If any provision of this Agreement is held to be illegal, unenforceable or invalid in whole or in part for any reason, that provision will be eliminated, limited, or changed and interpreted to the extent necessary, so as to best accomplish the objections of such provisions within the limits of applicable law or court decisions.

**10.4 No Agency; Independent Contractors.** F5 and Partner are independent contractors, and neither will be considered the agent of the other for any purpose. Nothing contained in this Agreement will be construed to establish a relationship that would allow either Party to make representations or warranties on behalf of the other except as expressly set forth herein. Nothing contained herein will in any way constitute any association, partnership, or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither of the Parties will hold itself out in any manner that would be contrary to the provisions of this Section 10.4.

**10.5 Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, will be governed by and construed in accordance with the laws of the jurisdiction set forth in the governing law column opposite the applicable undersigned F5 entity in the table below, without regard to that jurisdiction's choice of law rules. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Uniform Computer Information Transactions Act does not apply to this Agreement. Further, for any action arising out of or related to this Agreement, Partner consents to the exclusive jurisdiction and venue of the courts located in the venue column opposite the applicable undersigned F5 entity in the table below.

<b>F5 Entity:</b>	<b>Governing Law:</b>	<b>Venue:</b>
F5 Networks Singapore Pte Ltd	The laws of Singapore	Singapore
F5 Networks Ltd.	The laws of the Republic of Ireland	Dublin, Ireland
F5, Inc.	The laws of the State of Washington	Seattle, Washington

**10.6 Dispute Resolution.** In the event of any dispute arising out of or relating to this Agreement, the Parties will seek to settle the dispute via direct discussions. A mediator will be selected by voluntary agreement of both Parties. The mediation shall be held in the applicable venue (“**Venue**”) identified in Section 10.5. Each Party shall bear its own costs and expenses and an equal share of the administrative and other fees associated with the mediation. Except for Excluded Claims (defined below), any dispute arising out of or in connection with this Agreement that remains unresolved following mediation shall be finally settled by under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The place of arbitration shall be the applicable Venue and arbitral proceedings shall be conducted in English. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In rendering the award, the arbitrator(s) shall determine the rights and obligations of the Parties according to the substantive and procedural laws of the applicable Governing Law determined in accordance with Section 10.5. The arbitrator(s) shall not award punitive damages. The expenses of the arbitration, including the arbitrator’s fees, expert witness fees, and attorney’s fees, may be apportioned between the Parties in any manner deemed appropriate by the arbitrator; however, in the absence of any formal ruling by the arbitrator, each Party shall share equally in the payment of the arbitrator’s fees and bear its own costs, expert witness fees and attorney’s fees. Except for Excluded Claims, the arbitration award shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented and may not be reviewed by or appealed to any court except for enforcement. The foregoing alternative dispute resolution provisions will not apply to claims or actions related to: (i) the infringement, misappropriation or violation of F5’s or its licensors’ Intellectual Property Rights or (ii) a Party seeking to prevent any unauthorized disclosure or use of its Confidential Information (“**Excluded Claims**”), all of which Excluded Claims may be brought in any court of competent jurisdiction.

**10.7 Entire Agreement; Amendment.** This Agreement together with its Exhibits and other documents specifically included by reference herein, constitutes the entire agreement between the Parties with regard to its subject matter. This Agreement supersedes all prior and contemporaneous communications, discussions, negotiations, whether written or oral. F5 has not made and Partner has not relied upon any representations not expressly set forth in this document in making this Agreement. With the exception of F5 Channel Partner Policies and Procedures and the F5 Partner Program, this Agreement may be amended or modified only by a writing signed both by authorized individuals for F5 and Partner. Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Partner in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the Parties under, or otherwise modify, this Agreement, regardless of any failure of F5 to object to such terms, provisions, or conditions.

**10.8 Construction.** This Agreement has been negotiated by the Parties and their respective counsel. This Agreement will be interpreted in accordance with its terms and without any strict construction against either Party. Ambiguity will not be interpreted against the drafting Party. In the event of a conflict between these Terms and those set forth in an Exhibit, the provisions of such Exhibit shall control with respect to such subject matter.

**10.9 English Language.** This Agreement was negotiated and executed in English, and if it is translated into other languages, the original English language version shall be controlling, notwithstanding either Party’s signature on or acknowledgement of such translations. Partner waives any right to have this Agreement written in any other language.

**10.10 Assignment and Binding Effect.** Partner shall not assign this Agreement or its rights or duties under this Agreement without the prior written consent of F5. Any attempt to assign the Agreement without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement, their successors and permitted assigns.

**10.11 Subcontracting.** Partner agrees that F5 may subcontract any of its obligations under this Agreement, provided that any such subcontracting arrangement will not relieve F5 of any of its obligations hereunder.

**10.12 Counterparts.** The Parties may execute this Agreement in any number of counterparts, each of which will constitute an original, and all of which will together constitute one Agreement.

**10.13 Copies and Facsimiles.** A copy (including an electronic copy) or facsimile of this Agreement will have the same force and effect as an original and electronic signatures, faxed counterpart signatures or signatures exchanged by the exchange of electronic documents (such as a PDF) will be sufficient to evidence its execution.

**10.14 No Third Party Beneficiaries.** Except where expressly provided to the contrary, this Agreement is not intended to be for the benefit of, and will not be enforceable by, any person who is not named at the date of this Agreement as a Party to it and neither Party can declare itself a trustee of the rights under it for the benefit of any third party.

**10.15 Cumulative Remedies.** The right of termination will not be the sole remedy under this Agreement. Unless specifically provided otherwise, all other remedies provided for under this Agreement or in law or equity will remain available to the Parties.



## Value Added Reseller Exhibit

The terms and conditions in this Value Added Reseller Exhibit (“**VAR Exhibit**”) apply only if Partner is authorized to resell F5 Products. Capitalized terms not otherwise defined in this VAR Exhibit shall have the meanings ascribed to them in the Agreement.

**1. Appointment of Partner as a Reseller.** Subject to the terms and conditions set forth in the Agreement, F5 hereby appoints Partner during the Term as a nonexclusive reseller of the Products to End Users in the Authorized Territory and Partner accepts this appointment. This appointment does not authorize any Affiliate of Partner to act as a reseller hereunder without F5’s prior written approval. Except as otherwise specifically authorized in this Agreement, Partner will remain a single-tier reseller selling directly to End Users and Partner is not authorized to act as an Authorized Distributor selling to other Partners without F5 prior written permission. Partner shall not market, advertise, sell or ship the Products or Services outside of the Authorized Territory and any such activities will be deemed a material breach of this Agreement. Partner will refer all orders or inquiries received from outside the Authorized Territory to F5, except that if Partner is located within the European Economic Area or Switzerland, Partner may fulfill orders it receives from End Users outside of the Authorized Territory to the extent that the order is from an End User located within the European Economic Area or Switzerland and the Products are to be shipped (or in the case of SaaS Offerings or Services, used) within the European Economic Area or Switzerland. Notwithstanding anything in this Agreement to the contrary, F5 reserves the right to distribute or otherwise make available, the Products in the Authorized Territory directly or through others who distribute the Products, alone or associated with, integrated with, and/or bundled together with F5’s or a third party’s hardware, software or services. Each Party will designate an official liaison to handle all discussions with the other relating to this Agreement. Partner will meet with F5 on request, to review and address business and technical issues.

### **2. Pricing and Payments.**

**2.1 Pricing and Discounts.** The price for all Products is set forth in the F5 Price List. Partner will receive a discount based on the specific F5 Partner Program that Partner participates in and Partner’s Minimum Purchase Requirement as further described in PC. Any changes to price or discounts shall apply to all purchase orders received after the effective date of such price change; provided, that F5 shall honor any fees quoted in valid, unexpired, formal written price quotations provided by F5 to Partner in connection with specific transactions between Partner and an End User, as long as such price quotations have an expiration date within thirty (30) days of the initial quotation date provided that Partner notifies F5 of such quotation (including providing a copy of such quotation) within ten (10) days following the notice of price change. Price decreases shall be applied immediately to pending orders accepted by F5 but not yet shipped. Partner’s failure to meet its Minimum Purchase Commitment will allow F5 to terminate the Agreement for cause pursuant to the provisions of Section 6.2 of the Agreement or adjust Partner’s Partner Level (including discounts and pricing) to reflect its actual purchase volume. Unless otherwise specified in the F5 Price List, all prices are in U.S. dollars and are exclusive of applicable taxes, levies, tariffs and duties. Partner shall set its own prices to be paid by End Users. Prices for different countries may differ, therefore, Partner is required to specify in its order the country of delivery within the Authorized Territory to ensure proper pricing. If Partner misclassifies an order, F5 shall be entitled to any additional fees that should have been paid in connection with such misclassified order. Recurrent misclassifications shall be deemed a material breach of the Agreement.

**2.2 Taxes.** F5’s prices are exclusive of all sales, use, value-added, withholding and other taxes or duties. Partner will pay all taxes and duties assessed in connection with this Agreement and its performance, except for taxes payable on F5’s net income. Partner will promptly reimburse F5 for any and all taxes or duties that F5 may be required to pay on Partner’s behalf in connection with this Agreement. Partner will provide F5 with appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authorities to

substantiate any claim of exemption from any taxes or duties. Partner is responsible for fulfilling quota terms, obtaining import licenses, paying import license or permit fees, duties and customs fees, (including without limitation government, import, excise, sales, use value-added and other taxes or fees) and preparing and submitting all required documentation in connection with importing the Products. If applicable law requires Partner to withhold any taxes levied by any country on payments to be made pursuant to this Agreement, Partner shall (i) effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish F5 with tax receipts evidencing the payments of such amounts, and (ii) ensure that the sum payable by Partner upon which the deduction or withholding is based is increased to the extent necessary to ensure that, after such deduction or withholding, F5 receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount F5 would have received and retained in the absence of such required deduction or withholding.