

iRules On-Demand

IMPORTANT – READ BEFORE COMPLETING YOUR REQUEST FOR SERVICES

YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY SUBMITTING A REQUEST FOR SERVICES TO F5.

You are engaging F5 Networks, Inc. a Washington corporation with a place of business at 401 Elliott Avenue West, Seattle, WA 98119 ("F5" or "F5 Consulting") to perform professional services on your behalf. This Consulting Services Agreement (the "Agreement") will govern the delivery of those services to you (hereinafter referred to as "Customer").

1. Professional Services.

1.1 F5 will provide Customer with programming services (the "Services") to deliver the i-Rule scripts requested by Customer in accordance with the terms and conditions of this Agreement (the "Deliverables"). F5 will use its commercially reasonable efforts to provide such Deliverables but will not be obligated to provide Services beyond four (4) hours of effort. The Deliverables will generally be made available within one (1) business day of the date of the request, provided that this delivery time is not guaranteed and certain factors may delay the timing of Deliverables.

1.2 F5 will provide such resources and utilize such employees and/or consultants as it deems necessary to perform the Services. Customer agrees to provide F5 with such technical assistance, network access, information, materials, and technology owned or controlled by Customer (the "Licensed Technology") as F5 reasonably requires in order to perform the Services.

2. Products and Deliverables.

2.1 F5 will use its commercially reasonable efforts in providing the services and/or design or development of the Deliverables.

2.2 Under this Agreement, F5 is not providing or licensing to Customer any existing or future F5 software programs or products, other than the license to use the Deliverables as set forth in Section 57. Customer may acquire licenses to such F5 products only under the

terms of a separate agreement.

2.3 Custom scripts written by F5, including but not limited to EAVs, iRules and iControl scripts, fall outside the scope of F5 Technical Support and F5 will not guarantee support for such scripts. Once the script is installed and verified, F5 Consulting may or may not provide additional support or modifications as a follow-on engagement with a new Statement of Work. To provide this support, F5 Consulting may need to install and use additional software.

3. Services Fees and Expenses.

3.1 For the Services provided by F5, Customer agrees to pay F5 \$350.00 per hour for the Services. The minimum charge is for two (2) hours work. After two (2) hours, F5 will charge in fifteen (15) minute increments. Customer shall reimburse F5 for actual, reasonable out-of-pocket expenses incurred, if any.

3.2 The amounts payable to F5 are exclusive of any sales or use or other taxes or governmental charges. Customer shall be responsible for payment of all such taxes or charges except for any taxes based solely on F5's net income. If Customer is required to pay any taxes based on this Section 3.2, Customer shall pay such taxes with no reduction or offset in the amounts payable to F5 hereunder.

4. Invoicing and Payment.

All fees for the Services are due in advance. In the event that Customer has an account with F5 and F5 allows Customer to submit an order against such account, F5 will invoice Customer for the Services and all invoices shall be due and payable within thirty (30) days of the date of the invoice. If amounts owing from Customer are not paid within thirty (30) days, the unpaid amount shall accrue interest at the rate of 1.0% per month, or at the highest legal interest rate, if less. Customer is

not entitled to a refund for any Services that it cancels.

5. Intellectual Property Rights and Limited License.

5.1 As used herein, the term "IP Rights" shall mean recognized protectable intellectual property such as: patents and applications, copyrights, trademarks, trade secrets, mask works, industrial design rights, rights of priority, know how, design flows, methodologies and any and all other legal rights protecting intangible proprietary information. Examples of inventions, innovations, and/or developments that may contain protectable IP Rights include, without limitation: formulas, algorithms, methods, methodologies, design flows, processes, databases, mechanical and electronic hardware, electronic components, computers and their parts, computer languages, computer programs and their documentation, encoding techniques, articles, writings, compositions, works of authorship, and improvements.

5.2 Any IP Rights which may be developed by F5 under this Agreement or in the delivery of any Services hereunder, including any enhancements or modifications made to F5's product(s) (collectively, "Developments"), shall be the property of F5. Customer will have a non-exclusive license to the Developments to the extent necessary to enable Customer to use any F5 Deliverable(s). F5 may in its sole discretion develop, use, market, and license the Developments and any software or data processing material that is similar or related to that which was developed by F5 for Customer. F5 shall not be required to disclose information concerning any Developments which F5 deems to be proprietary or confidential. Customer acknowledges that F5 has extensive expertise, experience, and proprietary products and tools in the lines of business in which it operates, and that F5 intends to utilize such expertise, experience, products and tools in providing professional services to other clients. Nothing in this Agreement shall restrict or limit F5 from performing such development, consulting or other services to any other entity in any industry. Customer agrees that F5 and its employees may provide professional services similar in nature to the services provided hereunder for any third parties both during and after the term of this Agreement.

5.3 To perfect ownership of F5 IP Rights, Customer agrees to assign to F5 all rights Customer may have in the IP Rights, if any, to be owned by F5 as provided in Section 5.2 and to assist and cooperate with F5 in all reasonable respects, at F5 expense, and execute all documents reasonably necessary to acquire, transfer, maintain, and enforce such F5 IP Rights.

6. Limited Warranties and Exceptions.

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

6.2 F5 EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

6.3 In order to receive warranty remedies, deficiencies in the Services must be reported to F5 in writing within thirty (30) days of completion of the Services. After such time, any corrective Services requested by Customer shall be billed to Customer at F5's standard consulting rates then in effect and subject to scheduling availability of F5 personnel. If Customer modifies any of the Deliverables any applicable warranty as established above will be void. Customer's sole remedy for violation of the warranties in Section 6.1 shall be to have F5 re-perform the deficient Services.

6.4 F5's maximum liability for any breach of warranty hereunder shall be a refund of the applicable Services fees paid under this Agreement. Customer shall, under no circumstances be entitled to a refund of the any fees paid to F5 under a separate agreement.

7. Termination.

7.1 This Agreement may be

terminated by either party upon ten (10) days' prior written notice if the other party materially breaches or fails to perform any material term hereof and the breaching party fails to cure such breach within the 10-day period.

7.2 All provisions of this Agreement which are by their nature intended to survive the expiration or termination of this Agreement shall survive such expiration or termination. If F5 terminates the Agreement for Customer's material breach of this Agreement, the rights of Customer to use the Deliverables including any express or implied licenses which may have been granted herein shall immediately terminate.

8. Indemnification.

8.1 Compliance with Laws and Regulations. The parties will comply with all applicable laws and regulations in the performance of their obligations hereunder. Customer will defend, indemnify and hold F5 and its officers, directors, employees, shareholders, and agents (the "F5 Indemnitees") harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable attorneys fees and expenses incurred by the F5 Indemnitees, as a result of Customer's failure to comply with applicable laws. F5 will defend, indemnify and hold Customer and its officers, directors, employees, shareholders and agents (the "Customer Indemnitees") harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable attorneys fees and expenses, incurred by the Customer Indemnitees as a result of F5's failure to comply with applicable laws.

8.2 Condition to Indemnification. If any claim or action is commenced against a party entitled to indemnification under this Section for Losses resulting from such claim or action (a "Claim"), such party shall give written notice to the other party within ten (10) days of notice of such Claim. If such party receiving notice is obligated under this Section to defend the party against such Claim, then the indemnifying party shall take control of the defense and investigation of the Claim, using such attorneys and other assistance as it selects in its discretion. The indemnified party shall

cooperate in all reasonable respects in such investigation and defense, including trial and any appeals, provided that such party may also participate, at its own expense, in such defense. No settlement of a Claim that involves a remedy other than payment of money by indemnifying party shall be agreed to and entered without the consent of the indemnified party, which consent shall not be unreasonably withheld.

9. Limitations on Liability.

9.1 EXCEPT FOR CLAIMS FOR INDEMNITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. F5'S TOTAL LIABILITY TO CUSTOMER SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER HEREUNDER.

9.2 Other than claims for indemnification, no action, regardless of form, arising from this Agreement may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought within one (1) year after the later of the date of last payment or the date such unpaid amount should have been paid.

10. Independent Contractors.

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

11. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Washington excluding those laws that direct the application of the laws of another jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) in any form that it may be adopted are specifically excluded from and will not apply to this Agreement.

12. Miscellaneous.

12.1 Notices. Notices to be given or submitted by either party to other pursuant to this Agreement shall be in writing and directed in the case of the Customer to the address provided by Customer in its request for Services, and in the case of F5, to: 401 Elliott Avenue West, Seattle, WA 98119, Attn: Professional Services Administration with a copy to the attention of the Legal Department.

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

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

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

12.5 Export Administration. If any Deliverables are for use outside the U.S.A.,

Customer agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and with the U.S. Export Administration Act to assure that such are not exported in violation of United States Law and to comply fully with any other regulations or laws relating to such export or import into another country. Customer shall be responsible for any duties, customs charges or other taxes or fees relating to such export.

12.6 Complete Agreement. Customer acknowledges that it has read, understands and agrees to be bound by this Agreement and that the Agreement is the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, which supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter.

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.