



TERMS AND CONDITIONS

By using the service(s) of F1 Solutions “F1”, you agree to the terms and conditions set forth herein (the “Terms and Conditions”). The terms “**Customer**”, “**you**”, or “**your**” refers to you, your employees, and those you have authorized to use the service(s) provided by F1, and you may be referred to herein each as a “**Party**” and collectively as the “Parties”.

1. Certain Definitions.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means these Terms and Conditions, together with: (i) any other schedule or an exhibit attached hereto; (ii) any Sales Order (as hereinafter defined within these Certain Definitions) issued under this Agreement; and (iii) any other document incorporated herein by reference; and (iv) any amendments to (i)-(iii).

“**Customer Equipment**” means any equipment, systems, cabling, or facilities provided by Customer and used directly or indirectly in the provision of the Services.

“**Customer Materials**” any documents, data, know-how, methodologies, software, and other materials provided to F1 by Customer, including computer programs, reports, and specifications.

“**Deliverables**” means all documents, work product and other materials that are delivered to Customer hereunder or prepared by or on behalf of F1 in the course of performing the Services, including any items identified as such in a Sales Order.

“**F1 Equipment**” means any equipment, systems, cabling, or facilities provided by or on behalf of F1 and used directly or indirectly in the provision of the Services.

“**F1 Materials**” means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by F1 in connection with performing the Services, in each case developed or acquired by the F1 prior to the commencement or independently of this Agreement.

“**Intellectual Property Rights**” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Sales Order**” means a document issued under and pursuant to these Terms and Conditions setting forth the Services to be purchased, a detailed description of the Services, terms of the Sales Order(s), pricing and payment terms, escalation and change management procedures, and any other relevant matter, which is necessary for the individual transaction to be adequately described.



"Service Period" means term of service for which F1 will provide ongoing services pursuant to a Sales Order.

"Services" mean any professional or other services to be provided by F1 under this agreement, as described in more detail in a Sales Order, and F1's obligations under this Agreement.

"Statement of Work" means a document that includes a proposed scope, implementation plan, training plan, general assumptions, project management methodology, and responsibilities for the respective Sales Order.

"Third-Party Services" means any specified product, equipment, hardware, software, or service that is provided by F1 but is not manufactured, developed, and/or owned by F1.

2. **Scope.**

2.1 F1 will provide the Services as mutually agreed upon in writing between the Parties pursuant to mutually executed Sales Orders.

2.2 These terms and conditions of this Agreement shall apply to all Customer purchases of Services from F1 under a Sales Order.

2.3 **Non-Exclusive.** This Agreement is not an exclusive dealing agreement or a requirements contract.

3. **Services.**

3.1 **Services.** Subject to payment by Customer of the Fees as set forth in the associated Sales Order, F1 will provide those services as described in more detail in said Sales Order in accordance with the terms and conditions of this Agreement. F1 will only provide said services for and during the term stated in the Sales Order. F1 will only provide those support services stated in the Sales Order as they apply to designated tasks or equipment defined in the Sales Order. Each Sales Order shall include the following:

- (a) A detailed description of the Services to be performed pursuant to the Sales Order including, but not limited to, any selected specific support packages as better detailed in Section 3.3 of this Agreement;
- (b) The date upon which the Services will commence and the term of any Service Periods;
- (c) The Fees to be paid to F1 under the Sales Order;
- (d) Any criteria for completion of the Services pursuant to such Sales Order; and
- (e) Any other terms and conditions agreed upon by the Parties in connection with the Services to be performed pursuant to such Sales Order

3.2 **Nature of Services.** All services will be defined under the Sales Order documents. The services of F1 under this Agreement are furnished on a "reasonable efforts, opinion only" basis. While it is F1's intention to provide the services hereunder in a competent and professional manner, Customer understands and agrees that F1 cannot and does not warrant or guarantee the suitability or completeness of its services for the needs of the Customer nor that any particular result(s) will issue from or be obtainable by the Customer from the use of the services provided by F1 hereunder. F1 is not responsible for any downtime due to a vendor or software support failure.

3.3 **Specific Services.** F1 offers its customers various and specific services including, but not limited to, IP Intranet, Internet access, colocation services, cloud computing services, network and data management services, MPLS data connectivity, Voice Over Internet Protocol ("VoIP") services and products, MSP services, MSSP services, professional services, and such other services and related products as the Parties may agree upon, all as more specifically defined in a Sales Order issued under this Agreement.

3.4 **Additional Services.** Customer may, from time to time, request that F1 provide services and support not otherwise described in herein to Customer (the "Additional Services"). The scope of Additional Services may be changed from time to time upon the mutual agreement of the parties in writing. In the event such request from Customer for Additional Services is accepted by F1 in writing, F1 agrees that it will use commercially reasonable efforts to provide the Additional Services. The provision of Additional Services shall be subject to the terms and conditions of



this Agreement and Customer agrees to pay all fees and expenses associated with provision of such Additional Services in accordance with Section 7.2 of this Agreement.

4. **Customer's Responsibilities.**

4.1 **Customer Contacts.** The Customer shall identify at least two (2) contacts per location as its designated "**Customer Contacts**" who will serve as the primary contact with respect to this Agreement and who will have authority to act on behalf of Customer with respect to matters pertaining to this Agreement. The Customer Contacts shall be full-time employees of the Customer who are knowledgeable and have sufficient training with respect to the Services to communicate with F1 and coordinate and facilitate the Services. The customer must make available their IT team to answer any questions F1 may have. Any fees levied by the IT team will be outside of this agreement and be the sole responsibility of the IT team and their managed client.

4.2 **Changes.** The Customer shall notify F1 of any new Customer Equipment or other changes that may affect the Services Listed in a Sales Order (collectively "**Changes**") prior to or within a reasonable time after making such change. F1 shall not be responsible for any adverse effects caused by changes that are made either by the Customer or by a third party.

4.3 **Access to Premises.** The Customer shall provide such access to Customer's premises and such office accommodation and other facilities as may reasonably be requested by F1 for the purposes of performing the Services.

4.4 **Additional Information.** The Customer shall provide such information as F1 may reasonably request in order to carry out the Services in a timely manner and ensure that it is complete and accurate in all material respects. Any requests that are denied will be written out of the scope of this engagement.

4.5 **Compliance.** The Customer shall perform and comply with any other requirements that may be listed in an applicable Sales Order.

4.6 **Prevention or Delay.** If F1's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or its agents, subcontractors, consultants, or employees, F1 shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any Losses sustained or incurred by the Customer, in each case, to the extent arising directly or indirectly or such prevention or delay.

5. **Change Orders.**

5.1 **Change in Scope or Performance.** If either Party wishes to change the scope or performance of the Services under a Sales Order, it shall submit details of the requested change to the other in writing. F1 shall, within a reasonable time after such request, provide a written estimate to the Customer of:

- (a) The likely time required to implement the change;
- (b) Any necessary variations to the fees and other charges for the Services arising from the change;
- (c) The likely effect of the change on the Services; and
- (d) Any other impact the change might have on the performance of this Agreement.

5.2 **Change Orders.** Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing by both Parties.

6. **Term; Termination.**

6.1 **Term.** This Agreement shall be in effect during the term of any Sales Order. This Agreement shall automatically renew at the expiration of the Initial Term of a Sales Order for the Renewal Term stated on the Sales Order unless Customer provides a written notice of cancellation of the Sales Order to F1 as detailed in Section 6.2 of this Agreement. This Agreement will automatically terminate ninety (90) days after the completion or termination of all



Sales Orders between the Parties. This Agreement may not be terminated by either Party so long as an executory Sales Order remains outstanding.

6.2 Termination (by Customer). In the event Customer wishes to terminate a Sales Order, they must do so in writing and deliver to F1 at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term of the Sales Order. In addition, Customer may terminate a Sales Order in the event:

(a) F1 materially breaches and such breach is incapable of cure or in the event that F1 is not able to cure such breach within thirty (30) days after receipt of written notice of such breach; provided, however, F1's failure to achieve the applicable service level agreement (SLA) for a particular service shall not be a material breach for purposes of this subsection 6.2(a); or

(b) F1 becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

6.3 Termination (by F1). F1 has the right to terminate this Agreement and/or any Sales Order with Customer as follows:

(a) For any reason by delivering a written notice of termination to Customer. Such termination by F1 shall be effective thirty (30) days from the delivery of written notice of termination;

(b) Immediately, when Customer materially breaches this Agreement and/or any Sales Order (excluding Customer's failure to pay fees, which is addressed below) and such breach is either incapable of cure or is not cured within thirty (30) days after Customer's receipt of written notice of such breach;

(c) Immediately, when Customer fails to pay any Fees (as hereinbelow defined) within the required time and such breach is either incapable of cure or is not cured within ten (10) days after Customer's receipt of written notice of such breach; or

(d) Immediately, when Customer (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

In addition to the rights afforded to F1 under Section 5.3(a) of this Agreement, should Customer fail to pay any Fees (as hereinbelow defined), F1 reserves the right to discontinue services that are supplied through this Agreement until such time that the Customer pays all delinquent invoices and brings their account current. In the event of a material breach by Customer and termination of this Agreement by F1, any further support requests made after the breach will be responded to at F1's sole and exclusive discretion and will be charged to the Customer at the then-current time and material rates of F1. Such payments shall be made in advance of F1 performing any work.

Customer acknowledges that all F1-provided services in an executory Sales Order shall be terminated as of the effective date of termination of this Agreement and/or the applicable Sales Order. It is Customer's responsibility and obligation to ensure that F1 has access to Customer or the Customer's premises, as the case may be, within 96 hours of written notice of termination to reclaim and pickup any F1 Equipment. Should the Customer fail to provide such access to its premises, Customer agrees to pay up to 100% of the MSRP of such F1 Equipment.

6.4 Termination Fees. Except where otherwise provided in this Agreement or a Sales Order, or due to Force Majeure (as defined in this Agreement at Section 17.11), if F1 terminates this Agreement and/or any Sales Order for material breach by Customer pursuant to Sections 6.3(b) or 6.3(c), or Customer terminates this Agreement or a particular Sales Order prior to the end of the term other than as provided for in Section 6.2 (such instances of early termination collectively referred to herein as "Wrongful Termination"), in addition to any actual out-of-pocket costs



incurred by F1 in disconnecting services and all monies due and unpaid for services rendered (excluding any prepayments for services not yet rendered), Customer shall be responsible for one hundred percent (100%) of the amounts that Customer was obligated to pay to F1 over the remainder of the applicable term of the terminated Statement(s) of Work (the "**Termination Fee**"). The Termination Fee shall be in lieu of all other damages or losses stemming from such Wrongful Termination. Customer agrees to pay such Termination Fee within thirty (30) days of receipt of an invoice from F1. The Parties each acknowledge that such Termination Fee is not a penalty but is liquidated damages, it being understood and agreed by the Parties that the actual damages to F1 arising from Customer's Wrongful Termination are incapable of precise determination, and it is agreed that this Termination Fee is a reasonable estimate of the losses F1 will suffer as a result of Customer's Wrongful Termination of this Agreement and/or any Sales Orders.

7. Fees and Expenses; Payment Terms.

7.1 Fees. In consideration of the provision of the Services by F1 and the rights granted to the Customer under this Agreement, the Customer shall pay all fees as required and as better set forth in the applicable Sales Order (the "**Fees**"). Billing under the Sales Order shall commence on the Effective Date of the Sales Order, unless otherwise agreed by the Parties in the Sales Order. All payments shall be made as required in the applicable Sales Order. Any amounts that are due but remain unpaid on the tenth (10th) day following the due date shall bear interest at the lower of (a) a rate of one point five percent (1.5%) per month or (b) the highest rate permitted by applicable law.

7.2 Additional Services. Should the Customer request Additional Services as hereinabove defined, such Additional Services will be priced at F1's standard rates at the time of request unless F1 and Customer mutually agree to another acceptable rate.

7.3 Fixed Price Services. Where the Services are provided for a fixed price, the applicable Sales Order shall set forth the amount of the Fees for the Services and the schedule on which such Fees will be paid by the Customer. The Sales Order attached represents the fees for this agreement.

7.4 Rate Changes. F1 may, from time to time, review the amount of time it spends on services provided under this Agreement and any applicable Sales Order. F1 may, at its reasonable discretion, raise or lower the rates after thirty (30) days' written notice to Customer.

7.5 Automatic Pricing Increase. All prices for recurring services in this Agreement or any applicable Sales Order shall automatically increase five (5%) percent annually to cover cost increases including but not limited to changes in vendor costs, licensing costs, and staffing costs. F1 may also charge a monthly administrative fee for various billing and related expenses incurred by F1.

7.6 Reimbursement. The Customer agrees to reimburse F1 for expenses incurred directly in the performance of Services for the Customer. F1 shall provide invoices to the Customer from time to time during the Term for any expenses incurred under this Agreement. F1 reserves the right to do progress billing for any Sales Order that stretches past sixty (60) days of initial start of work.

8. Intellectual Property.

8.1 F1 Materials. F1 and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to the F1 Materials and processes. This intellectual property may not be given out to other business entities unless it is in the course of complying with a contractual obligation under government regulations.

8.2 Customer Materials. Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title, and interest in and to the Customer Materials, including all Intellectual Property Rights therein. F1 shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer. All other rights in and to the Customer Materials are expressly reserved by Customer.

9. Confidentiality Obligations.

9.1 Scope of Confidential Information. From time to time during the Term, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") information about its business affairs, goods and services, confidential information and materials comprising or relating to intellectual



property, trade secrets, third-party confidential information and other sensitive or proprietary information. Such information, as well as the terms of this Agreement and any Sales Order, whether oral or in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as “confidential” constitutes “**Confidential Information**” hereunder. Confidential Information does not include information that, at the time of disclosure:

- (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 9 by the Receiving Party or any of its affiliates, employees, officers, directors, partners, shareholders, attorneys, third-party advisors, successors, and permitted assigns (collectively, the “**Representatives**”);
- (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;
- (c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party;
- (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party’s Confidential Information; or
- (e) is required to be disclosed pursuant to applicable Law.

9.2 Protection of Confidential Information. With respect to Confidential Information, the Receiving Party shall for three (3) years from the expiration or termination of this Agreement:

- (a) protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
- (b) not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and
- (c) not disclose any such Confidential Information to any Person, except to the Receiving Party’s Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

Both parties agree that whoever is responsible for the breach shall be held accountable for that action. The provisions of this Section 9 shall survive for 30 days past the expiration or termination of this Agreement.

9.3 Injunctive Relief. The Parties agree that any breach of the restrictions contained in this Section 9 will cause irreparable harm to the non-breaching Party, entitling such Party to seek injunctive relief in addition to all other legal remedies.

10. Representations and Warranties.

10.1 Legal Authority. Each Party represents and warrants that the execution and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all requisite corporate action of such Party and do not conflict with any other agreement or obligation to which such Party is a party or by which it is bound.

10.2 Authority to Grant Rights. Each Party represents and warrants that it has, and covenants and agrees that it will have, throughout the term of this Agreement, full authority to grant the rights such Party purports to grant under this Agreement.

10.3 F1 Representations. In addition to the representations and warranties contained herein, F1 makes the following additional representations:

- (a) In an effort to ensure that F1 meets certain flow down governmental export control requirements that our clients fall under, F1 must only hire United States citizens and all of its staff are based and located within the jurisdiction of the United States.



(b) F1 provides data security training to all its staff before gaining access to client data, which includes, but is not limited to, written policy review, periodic security reminders, phishing campaign training and other similar training courses. Ongoing data security training occurs on a regular basis that includes but is not limited to, phishing campaigns with staff, training videos and presentations, outside training resources involved with continuing education, and posting of latest security concerns to staff by the security team.

(c) F1 monitors and tracks all actions it takes on behalf of the Customer through a ticketing system. These records are kept and maintained by F1 for record keeping and documentation of change control.

10.4 Compliance with Laws. Except to the extent any violation will not have a material, adverse effect on the execution or performance of this Agreement:

(a) Each Party represents and warrants that such Party has not violated any applicable Laws in connection with its execution or performance of this Agreement.

(b) Each Party represents and warrants that such Party's execution, delivery, and performance of this Agreement shall not constitute a violation of any judgment, order, or decree applicable to it; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

(c) Each Party represents and warrants that such Party shall perform its obligations in a manner that complies with all applicable Laws (including identifying and procuring required permits, certificates, approvals, and inspections). If a charge of non-compliance by a Party with any such Laws occurs, the Party charged with such non-compliance shall promptly notify the other Party of such charges in writing.

(d) **No Other Warranties.** EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY. EACH PARTY HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES WITH RESPECT TO ANY OF ITS PRODUCTS OR SERVICES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, OR NON-INFRINGEMENT. NEITHER PARTY WARRANTS THAT ITS TECHNOLOGY, PRODUCTS OR SERVICES WILL FUNCTION WITHOUT INTERRUPTION, THAT THEY WILL BE ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED. TO THE EXTENT THAT EITHER PARTY MAY NOT, AS A MATTER OF APPLICABLE LAW, DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER SUCH APPLICABLE LAW.

(e) Without limiting the foregoing, F1 does not guarantee and shall not be responsible for ensuring the Customer's compliance with any government or civil data security Laws or other requirements (collectively, "**Security Requirements**"). F1 will use commercially reasonable efforts to make the Customer aware of any applicable Security Requirements and "best practices" in the industry related to the Services, but it is the Customer's sole responsibility to ensure compliance with all applicable Security Requirements. F1 does not automatically bring a client up to a government data security level as a condition of management. This would have to be requested and a Sales Order with fees associated provided by F1 and approved by client. The Customer shall notify F1 of all Security Requirements to which Customer is subject and shall promptly notify F1 of any changes necessitating compliance with additional or different Security Requirements. Any changes in the Security Requirements applicable to Customer or to which the Customer is subject may necessitate a Change Order or may result in increased Fees. F1 makes best efforts to interpret government data security controls, but as these can be subjective at times does not make any guarantees to the accuracy or definitive nature of these recommendations or interpretations.

11. LIMITATION OF LIABILITY.

11.1 IN NO EVENT SHALL EITHER PARTY OR THEIR REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2 IN NO EVENT SHALL F1'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY AND ALL STATEMENT(S) OF WORK, AND ANY AND ALL RELATED AGREEMENTS, INCLUDING ANY BUSINESS ASSOCIATE AGREEMENT,



WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNIFICATION OBLIGATIONS, OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO F1 BY THE CUSTOMER FOR RECURRING SERVICES DURING THE LAST TWELVE (12) MONTHS UNDER THE SALES ORDER AT ISSUE.

11.3 THE CUSTOMER UNDERSTANDS THAT F1 IS NOT THE DEVELOPER, MANUFACTURER, OR OWNER OF THIRD-PARTY SERVICES (AS DEFINED ABOVE) AND THAT THE ONLY WARRANTIES OFFERED ON THIRD-PARTY SERVICES ARE SOLELY THOSE OF THE THIRD-PARTY SERVICES PROVIDER, NOT F1 OR ITS REPRESENTATIVES. THE CUSTOMER IS BOUND BY THE TERMS AND CONDITIONS OF THE THIRD-PARTY SERVICES PURCHASED FROM THE APPLICABLE THIRD-PARTY SERVICES PROVIDERS, INCLUDING BUT NOT LIMITED TO ANY LIABILITY LIMITATIONS, WARRANTIES, AND REMEDIES. THE CUSTOMER AGREES TO LOOK SOLELY TO SUCH THIRD-PARTY SERVICES PROVIDER FOR ANY LOSS, CLAIMS, AND/OR DAMAGES ARISING FROM OR RELATED TO SUCH THIRD-PARTY SERVICES. THE CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS F1 AND ITS REPRESENTATIVES FROM ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THE PURCHASE AND PROVISION OF ANY THIRD-PARTY SERVICES.

12. Indemnification.

12.1 **Indemnification** Subject to the terms and conditions of this Agreement, both parties (as the "Indemnifying Party") shall indemnify, defend and hold harmless each other and their Representatives (collectively, the "Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right under this Agreement and the cost of pursuing any insurance providers, incurred by any Indemnified Party (collectively "Losses"), arising out of any third party claim alleging:

(a) A material breach or non-fulfillment of any of Indemnifying Party's representations, warranties, or covenants set forth in this Agreement;

(b) Any grossly negligent or more culpable act or omission of Indemnifying Party or any of its Representatives (including any recklessness, willful misconduct, or fraud) in connection with Indemnifying Party's performance under this Agreement;

(c) Any bodily injury or death of any person or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party or any of its Representatives;

(d) Any failure by Indemnifying Party or its Representatives to materially comply with any applicable laws; or

(e) Any infringement by F1 of an Intellectual Property Right of a third party, unless such infringement claim arises out of any Customer Materials, or any instruction, information, or other materials provided to F1 by the Customer.

12.2 **Exceptions and Limitation on Indemnification.** Notwithstanding anything to the contrary in this Agreement, Indemnifying Party is not obligated to defend any Indemnified Party against any Losses that result directly from, in whole or in part, Indemnified Party's or any of its Representative's:

(a) Gross negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) Bad faith failure to comply with any of its obligations set forth in this Agreement.

13. Non-Solicitation.

13.1 During the Term, and for a period of eighteen (18) months thereafter, the Customer shall not: (a) solicit for employment; (b) induce, influence or encourage to terminate employment with F1; (c) hire or otherwise employ; or (d) engage as an independent contractor, any current or former employee of F1 with whom the Customer had more than incidental contact or who became known to the Customer in connection with this Agreement (each, a "Covered Employee"), except (i) pursuant to a general solicitation through the media that is not directed to any employees of F1, unless such solicitation is undertaken as a means to circumvent the restrictions contained in or conceal a violation of this Section 13; or (ii) if the Covered Employee's employment with F1 was terminated over twelve



(12) months prior to the date on which the Customer contacted such Covered Employee or discussed the employment or engagement of such Covered Employee.

13.2 If the Customer Breaches Section 13.1, the Customer shall, on demand, pay to F1 an amount equal to the sum of: (a) 80 hours of time at F1's standard rates then in effect and (b) 50% of such Covered Employee's new fully loaded income including bonuses and benefit potential or the annual fee that will be payable to such Covered Employee by the Customer. The Parties intend that the amounts payable to F1 under this Section 13.2 constitute compensation, and not a penalty. The Parties acknowledge and agree that F1's harm caused by a breach of Section 13.1 would be impossible or very difficult to accurately estimate, and that the amounts provided for herein are a reasonable estimate of the anticipated or actual harm that might arise from a breach of Section 13.1.

14. **Non-Exclusivity.** F1 may perform the same or similar type of services for third parties during the Term.

15. **Cyber-Insurance.** Customer acknowledges and agrees that they should have cyber insurance that is designed to insure against network security breaches, privacy breaches, network business interruption, media liability, and errors and omissions. Customer acknowledges and agrees that they are not covered by F1's insurance policies.

16. **Notices.** Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other Party at:

F1 Solutions, LLC
PO Box 1337
Madison, AL 35758
Attn: General Manager
notice@meriplex.com

With a copy to: Meriplex Solutions, LLC
10111 Richmond Avenue, Suite 500
Houston, TX 77042
Attn: General Counsel
notice@meriplex.com

Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

17. **General Terms.**

17.1 **Waiver.** No waiver, forbearance, or delay by either Party in enforcing any of the terms of this Agreement shall prejudice, affect or restrict that Party's right, nor shall waiver by either Party or any breach operate as a waiver of any subsequent or continuing breach thereof.

17.2 **Further Assurances.** Upon a Party's reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

17.3 **Relationship of the Parties.** The relationship between F1 and the Customer is that of independent contracting parties. Except as expressly stated herein, nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

17.4 **Severability.** In the event that any provision contained in this Agreement or any part of any such provision shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provisions of this Agreement or the remaining part thereof which shall then be construed as if such invalid or unenforceable provision or part thereof had never been contained herein.



17.5 **Headings.** Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

17.6 **Entire Agreement.** This Agreement terminates and supersedes all prior oral and written understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

17.7 **Applicable Law.** This Agreement shall be construed according to and governed by the internal and substantive laws of the State of Alabama, applied without respect to any conflicts-of-law principals.

17.8 **Venue.** The Parties mutually agree that any controversies arising out of this Agreement shall be determined by the federal or state courts servicing Huntsville, Alabama.

17.9 **Attorneys' Fees.** In the event either Party institutes any legal suit, action, or proceeding against the other Party to enforce this Agreement or obtain any other remedy regarding breach of this Agreement, the prevailing party in the suit, action, or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting or defending the suit, action, or other proceeding. This shall include reasonable attorneys' fees and court costs.

17.10 **No Interpretation Against Drafter.** Both Parties have participated substantially in the negotiation and drafting of this Agreement and each Party hereby disclaims any defense or assertion in any arbitration or litigation that any ambiguity herein should be construed against the draftsman.

17.11 **Force Majeure.** If any Party to this Agreement is delayed in the performance of any of its obligations under this Agreement or is prevented from performing any such obligations due to causes or events beyond its control (excluding Customer's obligations to pay Fees hereunder), including, without limitation, acts of God, fire, flood, pandemics, strikes or other labor problem, injunction or other legal restraint, present or future law, governmental order, rule or regulation, including lockdowns, then such delay or nonperformance shall be excused and the time for performance thereof shall be extended to include the period of such delay or non-performance; provided, however, the non-performing Party is without fault in causing such non-performance or delay, and such non-performance or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. In any such event, the non-performing Party shall be excused from any further performance or observance of the obligation so affected only for so long as such circumstances prevail, and such Party continues to use commercially reasonable efforts to recommence performance or observance as soon as reasonably practicable. Any Party so delayed in its performance shall immediately notify the other Party by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay and the Party's efforts to minimize such delay. Any Party delayed in its performance shall also promptly notify the other Parties when such *force majeure* event ends.

17.12 **Assignment.** The Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of F1, which such consent shall not be unreasonably withheld, and any such assignment or delegation without F1's consent will be void. F1 may assign or delegate its obligations under this Agreement to other parties as may be necessary or convenient to accomplish the objectives of this Agreement, in its sole discretion. Any purported assignment or delegation in violation of this Section is null and void.

17.13 **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

17.14 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement, by facsimile, electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

17.15 **Survival.** Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of this Agreement; and (b) Sections 6-13 and 15-177, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this Agreement.