

LEGAL TERMS AND CONDITIONS

These Legal Terms and Conditions (“**Agreement**”) are a legal agreement between you on behalf of a legal entity (“**Customer**”), and Barracuda Networks, Inc. (“**Barracuda**”), and apply to your purchase and use of Barracuda Products, regardless of source. If you do not agree to the foregoing, you must discontinue the installation or use of the Products. Otherwise, upon acceptance of a Quote to purchase Products, or upon use of Free Products (“**Effective Date**”), you: (a) represent and warrant that you are authorized to bind the Customer; and (b) agree to be bound by this Agreement. If Customer has a separate, signed agreement with Barracuda that governs the acquisition and use of Products, then that document will apply instead of this Agreement.

1. Definitions.

- 1.1. “**Customer Data**” means all data, including text, sound, video, or image files, and software, that Customer provides to Barracuda, or that is provided on Customer’s behalf so that Barracuda can provide the Products in accordance with this Agreement. Customer Data may include Customer Personal Data but does not include Systems Data.
- 1.2. “**Customer Personal Data**” has the meaning stated in the Data Processing Addendum.
- 1.3. “**Delivery**” with respect to Software and Hosted Services means when the Software or Hosted Service is made available by Barracuda. Barracuda may provide Software to Customer via electronic download or other method. With respect to Hardware, Delivery means date of shipment from Barracuda’s designated shipping location.
- 1.4. “**Feedback**” refers to any suggestion or idea for products or for modifying any existing Products, including, without limitation, all Intellectual Property Rights in and to any such suggestion or idea.
- 1.5. “**Hardware**” means a physical appliance provided by Barracuda.
- 1.6. “**Hosted Service**” means a software-as-a-service (SaaS) service provided by Barracuda and hosted on a third-party hosting platform.
- 1.7. “**Intellectual Property**” means rights under copyright, trademark, patent, trade secrets, moral rights, right of publicity, authors’ rights, and all other intellectual property rights that may exist now and come into existence during the term of this Agreement and all renewals and extensions thereof, regardless of whether such rights arise under United States laws or any other jurisdiction.
- 1.8. “**Order**” means a written purchase order or similar ordering document, signed or submitted to Barracuda under which the Products are provided for Customer’s use.
- 1.9. “**Personal Data**” has the meaning stated in the Barracuda Privacy Notice.
- 1.10. “**Product**” means, collectively, Hardware, Software, Hosted Services and any combination thereof.
- 1.11. “**Product Guide**” means the website at <https://trust.barracuda.com/legal/product-guide> or any successor website at which Barracuda publishes product descriptions and service descriptions.
- 1.12. “**Quote**” means a written quotation document provided by Barracuda or an authorized reseller to Customer to acquire Products.
- 1.13. “**Services**” means, collectively, Professional Services and Technical Support.
- 1.14. “**Software**” is as defined in the Software Use and Restrictions Agreement located at https://assets.barracuda.com/assets/docs/dms/Barracuda_Networks_Software_Use_and_Restrictions_Agreement.pdf.
- 1.15. “**Systems Data**” means data generated or collected in connection with Customer’s use of the Products, such as logs, session data, telemetry data, support data, usage data, threat intelligence or actor data, statistics, netflow data, potentially malicious files detected by the Product, and derivatives thereof.

- 1.16. **“User”** means an individual who is authorized by Customer to use a Hosted Service, for whom Customer has purchased a subscription and to whom Customer (or, when applicable, Barracuda, at Customer’s request) has supplied a user identification and password. Users may include employees, consultants, contractors, and agents of Customer, and third parties with which Customer transacts business.

2. Use of Hosted Services and Software.

- 2.1. **Subscriptions.** Unless otherwise provided in the applicable Quote or Product Guide: (a) Hosted Services are purchased as subscriptions for the Hosted Services term stated in the applicable Quote or in the applicable online purchasing portal; (b) subscriptions for Hosted Services may be added during a Hosted Services term at the same pricing as the underlying subscription pricing, prorated for the portion of that Hosted Services term remaining at the time the subscriptions are added; and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. The term of each Software and Hosted Services subscription will begin upon Delivery and will continue for the duration of the subscription term stated in the Quote. Unless the parties agree otherwise in writing, Software and Hosted Services subscriptions will automatically renew at the end of any subscription term, at the then-current Barracuda list price, for an additional period equal to the length of the prior subscription term. Any renewal in which subscription volume has decreased from the prior term may result in re-pricing at renewal without regard to the prior term’s per-unit pricing. Either party may provide notice of its intent not to renew at least 30 days prior to the expiration of the then-current subscription term. Customer may terminate a Software or Hosted Service subscription at any time for convenience on 30 days’ prior written notice to Barracuda; provided, however, that Barracuda will not refund any amounts Customer already paid for that subscription, and Customer must pay any remaining Fees owing for the remainder of the then-current subscription term within 30 days of the effective date of the termination.
- 2.2. **Usage Limits.** Hosted Services and Software: (a) are provided with the understanding that Customer will make reasonable use of same; and (b) may be subject to usage limits specified in the Product Guide or Quote from Barracuda (or a Barracuda authorized reseller). If Customer exceeds a usage limit, Barracuda may work with Customer to seek to reduce Customer’s usage so that it conforms to that limit. Notwithstanding Barracuda’s efforts, if Customer is unable or unwilling to abide by a usage limit or enact efforts to reduce such usage, Customer will execute an Order for additional quantities of the applicable Hosted Services or Software promptly upon Barracuda’s request and pay any invoice for excess usage in accordance with the payment terms of this Agreement.
- 2.3. **Customer Responsibilities.** Customer will: (a) be responsible for Users’ compliance with this Agreement, Product Guide and Quotes; (b) be responsible for the accuracy, quality, and legality of Customer Data, the means by which Customer acquired Customer Data, Customer’s use of Customer Data with the Hosted Services, and the interoperation of any non-Barracuda applications with which Customer uses Hosted Services; (c) use commercially reasonable efforts to prevent unauthorized access to or use of Hosted Services, and notify Barracuda promptly of any such unauthorized access or use; and (d) use Hosted Services only in accordance with this Agreement, Product Guide, Quotes, and applicable laws and government regulations. If Customer or any User uses the Hosted Services in breach of the foregoing that in Barracuda’s judgment threatens the security, integrity, or availability of Barracuda’s services, then Barracuda may immediately suspend access to the Hosted Services; however, Barracuda will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
- 2.4. **Usage Restrictions.** Customer will not: (a) make any Hosted Service available to anyone other than Customer or Users, or use any Hosted Service for the benefit of anyone other than Customer, unless expressly stated otherwise in a Quote or the Product Guide; (b) sell, resell,

license, sublicense, distribute, rent, or lease any Hosted Service, or include any Hosted Service in a service bureau or outsourcing offering; (c) use a Hosted Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use a Hosted Service to store or transmit malicious code (meaning code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses); (e) interfere with or disrupt the integrity or performance of any Hosted Service or third-party data contained therein; (f) attempt to gain unauthorized access to any Hosted Service or its related systems or networks; (g) permit direct or indirect access to or use of any Hosted Services in a way that circumvents a contractual usage limit, or use any Hosted Services to access, copy or use any of Barracuda Intellectual Property Rights except as permitted under this Agreement, a Quote, or the Product Guide; (h) modify, copy, or create derivative works of a Hosted Service or any part, feature, function, or user interface thereof; (i) frame or mirror any part of any Hosted Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Product Guide; (j) except to the extent permitted by applicable law, disassemble, reverse engineer, decompile, or access a Hosted Service to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions, or graphics of the Hosted Service, or (3) copy any ideas, features, functions, or graphics of the Hosted Service.

- 2.5. **License to Software.** Use of Software that Barracuda provides to Customer, either on-premises or in a Customer-owned cloud tenant, is subject to the aforementioned Software Use and Restrictions Agreement.

3. **Orders; Fees; Payment Terms.**

- 3.1. **Orders.** Products will only be provided to Customer after Barracuda has received and accepted an Order for such Product. Orders are not binding upon Barracuda until accepted. All Orders will be governed by this Agreement and are noncancelable and nonrefundable except as provided herein.
- 3.2. **Fees and Expenses.** If Customer purchases directly from Barracuda, Customer will pay Barracuda the fees specified on an invoice associated with each Quote ("**Fees**"). If Customer purchases through a Barracuda authorized reseller, all fees and other procurement and delivery terms will be between Customer and the reseller. Fees for usage more than amounts purchased will be billed by Barracuda in the next billing cycle and Customer acknowledges that such additional fees must be paid in accordance with the terms of this Agreement, even if purchased through resellers. Customer is responsible for any import or export fees or duties associated with its purchase or use of the Products.
- 3.3. **Payment.** Payment is due within 30 days of the date of each invoice, and must be made by credit card, wire transfer, or another prearranged payment method, unless Barracuda has extended credit terms to Customer. All Fees described in a Quote will be fully invoiced in advance, unless the Quote states otherwise. Customer agrees that purchases are not: (a) subject to offset, recoupment, counterclaim, deduction, debit or withholding for any reason; (b) contingent on the delivery of any future functionality or features; or (c) dependent on any oral or written comments made by Barracuda regarding same. If any payment is past due, Barracuda may, without limiting any remedies available to Barracuda, suspend performance until payment is made current. Customer will pay interest on all delinquent amounts at the rate of 1.5% per month or the maximum rate permitted by applicable law. Barracuda retains all security interests in Hardware shipped until fully paid. Customer must notify Barracuda, as indicated in Notices below, of any billing problems or discrepancies within 60 days of the applicable Barracuda invoice date, otherwise, Customer agrees the right to dispute those problems or discrepancies is waived. Customer will pay all amounts due and payable to Barracuda under this Agreement in full without any setoff, recoupment, counterclaim,

deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law and in compliance with the Taxes section below).

- 3.4. **Increases.** Barracuda reserves the right to increase prices for Products at any time, provided however that any price increase for subscriptions to Software or Hosted Services and Technical Support will not go into effect until the end of the then-current term, as applicable.
- 3.5. **Taxes.** All Fees are exclusive of all sales, use, excise, value added, goods and services, withholding and other taxes, and all customs, duties, and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale or use of the Products, which will be invoiced to and paid by the Customer. If Customer is required by law to make any deduction or withholding on any payments due to Barracuda, Customer will notify Barracuda and will pay Barracuda any additional amounts necessary to ensure that the net amount Barracuda receives, after any deduction or withholding, equals the amount Barracuda would have received if no deduction or withholding had been required. Additionally, Customer will provide Barracuda with evidence, to the reasonable satisfaction of Barracuda, showing that the withheld or deducted amounts have been paid to the relevant governmental authority. For purposes of calculating sales and similar taxes, Barracuda will use the address set forth on the Quote for the jurisdiction to which Products and shipments are delivered unless Customer has otherwise notified Barracuda. Customer will provide tax exemption certificates or direct-pay letters to Barracuda as applicable.
- 3.6. **Returns.** Customer may cancel all orders for new Products (excluding renewals, upgrades, and migrations) within 30 days of the effective date of any subscription term (“**Cancellation Period**”). After the Cancellation Period, all orders are non-cancellable, and the Fees paid to Barracuda are nonrefundable. Fees for Services provided by Barracuda are non-cancellable and nonrefundable once performance commences. For select offerings, Barracuda may require Customer to return certain Hardware accompanying Subscriptions upon termination or expiration.

4. **Title and Ownership.**

- 4.1. **Hardware.** All purchased Hardware is shipped from Barracuda’s designated manufacturing facility or point of origin (Ex Works Origin) (Incoterms 2020). Title to such Hardware and the risk of loss of or damage to Hardware will pass to Customer at the time of shipment from Barracuda’s facility. Barracuda is authorized to designate a carrier pursuant to Barracuda’s standard shipping practices unless Customer states otherwise in writing. Customer must provide written notice to Barracuda within 10 days of Delivery of the Products of any non-conformity with the Quote (e.g., Delivery of the wrong Product or incorrect quantities). Partial shipment is expressly permitted hereunder, and separate charges for shipping and handling will be charged on Barracuda’s invoice.
- 4.2. **Software.** Barracuda retains ownership of all Software and Hosted Services. Neither party provides the other, by virtue of this Agreement, any ownership or licenses to Intellectual Property owned by the other.
- 4.3. **Customer Data and Systems Data.** Customer retains ownership of Customer Data. Barracuda owns Systems Data and may use Systems Data to provide Products and services to its customers, including Customer, to improve Products and services, to develop new Products and services, to manage our relationship under this Agreement, and for threat research purposes. Barracuda will not disclose to any unaffiliated third-party Systems Data that identifies Customer, Customer’s customers or end users, except to the extent required to comply with applicable law or valid order of a court or government agency of competent jurisdiction.
 - 4.3.1. **Privacy.** If applicable, Barracuda, as a data processor, will process Customer Personal Data in accordance with the Barracuda Data Processing Addendum located at <https://trust.barracuda.com/legal/global-dpa>, which is hereby incorporated by reference

into this Agreement. When Barracuda processes data as a controller or business, Barracuda processes Personal Data in accordance with the Barracuda Privacy Notice located at <https://trust.barracuda.com/privacy/documentation/privacy-notice> not the DPA.

- 4.4. **Feedback.** Customer hereby grants Barracuda a perpetual, irrevocable, worldwide license to use any Feedback that Customer communicates to Barracuda, without compensation, without any obligation to report on such use, and without any other restriction. Barracuda's rights granted in the previous sentence include, without limitation, the right to exploit Feedback in any way, and is not to be considered Customer's Confidential Information.
- 4.5. **Permission to Use Logo.** During the term of the Agreement, Customer grants Barracuda permission to use Customer's name and/or logo on the Barracuda website, or any other marketing material when referring to Customer. Customer will retain all title and rights in its name and logos.
5. **Third Party Products and Services.** Third party applications may contain features designed to interoperate with the Products. To use such features, Customer must obtain access to such third-party applications from their respective providers. If Customer chooses to utilize third-party applications, the following terms will apply: (a) all governing terms and conditions, including data processing terms, will be entered into between Customer and the applicable third-party application provider and Barracuda assumes no responsibility or liability for non-Barracuda products; (b) Customer may be required to grant Barracuda access to Customer's account on such third-party applications; and (c) Customer instructs Barracuda to allow the third-party application provider to access Customer Data as required for interoperation with the Products.
6. **Professional Services.** If Customer's order includes Professional Services, provision of those Professional Services will be provided pursuant to the Professional Services Terms at https://assets.barracuda.com/assets/docs/dms/Barracuda_Networks_Professional_Services_Terms_and_Conditions.pdf.
7. **Technical Support.** For Hardware and Software, Customer may purchase Technical Support separately. For Hosted Services, Technical Support will be bundled into the price of the subscription. Customer is not entitled to Technical Support until and unless Barracuda receives payment in full. The terms applicable to Barracuda's provision of Technical Support are stated at https://assets.barracuda.com/assets/docs/dms/Barracuda_Networks_Technical_Support_Policy.pdf.
8. **Product Warranties; Exclusions.**
 - 8.1. **Software Warranty.** For Software, Barracuda warrants to Customer that, for 90 days from Delivery, the Software will perform substantially in accordance with the applicable Product Guide. Customer's sole remedy and Barracuda's sole obligation under this warranty is for Barracuda to correct the non-conforming Software. If Barracuda determines, in its reasonable discretion, that a material non-conformance cannot be corrected, Barracuda will provide Customer, as its sole remedy, a refund of the unused fees for the non-conforming Software. The license granted with respect to any Software for which a refund has been given automatically terminates immediately when Barracuda provides the refund.
 - 8.2. **Hosted Services Warranty.** Barracuda warrants that during an applicable Hosted Services subscription term: (a) this Agreement and the Product Guide will accurately describe the applicable administrative, physical, and technical safeguards for security, confidentiality, and integrity of Customer Data; (b) Barracuda will not materially decrease the overall security of the Hosted Services; and (c) the Hosted Services will perform materially in accordance with the applicable Product Guide. For any breach of the above warranty, Customer's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.
 - 8.3. **Hardware Warranty.** For Hardware, Barracuda warrants to Customer that, for one (1) year from

the Delivery of the Hardware, the Hardware will be free from defects in materials and workmanship (the “Hardware Warranty”). If Barracuda determines, in its reasonable discretion, that a material defect is incapable of correction or that it is not practical to repair or replace defective Hardware, Barracuda will provide Customer, as its sole remedy, a refund of the price paid (less applicable depreciation) for the non-conforming Hardware once returned to Barracuda. All Hardware (or any part thereof) that is replaced by Barracuda, or for which the purchase price is refunded, shall become the property of Barracuda upon replacement or refund.

- 8.4. **Exclusions.** The warranties stated in this Section do not apply if a Product has: (a) been subjected to abuse, misuse, neglect, negligence, accident, or use contrary to any instructions issued by Barracuda; (b) been repaired or altered by persons other than Barracuda or Barracuda’s subcontractor; (c) not been installed, operated, repaired, and maintained in accordance with the Product Guide; or (d) used in any high risk or strict liability activity, including, without limitation, air or space travel, nuclear facilities, technical building or structural design, power plant design or operation, life support or emergency medical operations or uses, or any other uses in which failure could lead to death, personal injury, or environmental damage (collectively, “**High-Risk Activities**”). Barracuda does not warrant the Products for use in connection with High-Risk Activities and will have no liability to anyone if they are so used.
- 8.5. **Disclaimer of Warranties.** Except as expressly provided herein, neither party makes any warranty of any kind, whether express, implied, statutory, or otherwise, and each party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement, to the maximum extent permitted by applicable law.
- 8.6. **Free Products.** Barracuda may make Products available to Customer free of charge. Free Products exclude Products offered as part of a private preview, alpha or beta trial, or other pre-GA access, all of which will be subject to an agreement for such purpose. Free Products may have certain limits on amount of use, as described in the documentation, a Barracuda online portal, or other written communications from Barracuda, with overages requiring Customer to purchase additional resources or services. Customer agrees that Barracuda, in its sole discretion and for any or no reason and/or without prior notice, may terminate Customer’s access to or use of the Free Products or any part thereof, without liability. Customer is solely responsible for exporting Customer Data, if any, from the Free Products prior to termination. **Free Products are provided as-is and without any warranty of any type. Unless otherwise required by law, Barracuda disclaims any liability of any type with respect to Free Products. Notwithstanding anything to the contrary in the Agreement, Customer is liable to Barracuda and its affiliates for any damages arising out of Customer’s use of Free Products, and any breach by Customer of the Agreement.**
- 8.7. **Changes to Products.** In its sole discretion, without prior notice, Barracuda reserves the right at any time to: (a) modify, suspend, or discontinue providing the Products or any part thereof, and (b) alter prices, features, documentation, the Product Guide, capabilities, functions, licensing terms, release dates, general availability, or other characteristics of any future releases.
9. **Waiver of Consequential Damages and Limitation of Liability.**
- 9.1. **Waiver of Consequential Damages.** Neither party nor its suppliers, resellers, partners, or their respective affiliates will be liable for: (a) any indirect, incidental, consequential, special, exemplary, or punitive damages; (b) lost profits, loss of revenue, loss or corruption of data, loss of use; or (c) procurement of substitute products, subscriptions or services in any manner arising from or related to the Products or Services, whether such claims are based on warranty, contract, tort (including negligence), or otherwise, even if a

party has been advised of the possibility of such damages.

- 9.2. **Limitation of Liability.** Except as stated regarding Free Products above and in case of bodily injury or death where, and then only to the extent, applicable law requires, the total aggregate liability of Barracuda and its suppliers, resellers, partners, and their respective affiliates arising from or related to this Agreement will be limited to the total amounts paid by Customer for the relevant Products or Services during the 12-month period immediately preceding the first occurrence of the events giving rise to the liability. This limitation will apply to all causes of action in the aggregate.
- 9.3. **Applicability.** The foregoing limitations of liability will apply whether from: (a) use or misuse of and reliance on the products; or (b) inability to use the products or from the interruption, suspension, or termination of the products (including such damages incurred by third parties). Such limitation will apply notwithstanding a failure of essential purpose of any limited remedy and to the fullest extent permitted by law.
- 9.4. **US Government Customers.** If Customer is a United States Government agency ("USG Customer"), to the extent that this Section conflicts with applicable law or Federal Acquisition Regulations (or Supplements thereto), said law or Federal Acquisition Regulations control.
- 10. Export and Compliance with Laws.**
- 10.1. **Compliance with Export Laws.** The Products, including technical data regarding the Products, are subject to U.S. export control laws, including, but not limited to, the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to strictly comply with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Products. Customer will not: (a) permit any third party to access or use the Products in violation of any U.S. law or regulation; or (b) export the Products or otherwise relocate them unless such export and/or relocation is in full compliance with all applicable local and U.S. laws and regulations. Without limiting the foregoing, Customer will not permit any third party to access or use the Products in, or export them to, a country subject to a United States embargo or comprehensive sanctions (currently, Russia, Belarus Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Luhansk People's Republic or the so-called Donetsk People's Republic) or authorize the relocation of the Products to a prohibited entity, territory or country, or take any action otherwise in violation of any applicable restrictions or regulations.
- 10.2. **General Compliance with Laws.** Each party agrees to comply with all applicable laws related to its performance of the obligations set forth in this Agreement, including, but not limited to, any applicable privacy laws.
- 10.3. **Commercial Computer Software.** If Customer is a USG Customer, the Products and Product Guide qualify as "commercial items", as that term is defined at Federal Acquisition Regulation ("FAR") 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, Government end user will acquire the Products and Product Guide with only those rights set forth in this Agreement. Use of the Products, Product Guide, or both constitutes an agreement by the Government that the Products and Product Guide are "commercial computer software" and "commercial computer software documentation," respectively, and constitutes acceptance of the rights and restrictions herein.
- 10.3.1. **Restricted Rights.** The Products are provided with Restricted Rights. Use, duplication or disclosure for or by the Government of the United States, including without limitation any of its agencies, instrumentalities, or contractors, is subject to restrictions set forth, as applicable: (i) in subparagraphs (a) through (c) of the Commercial Computer Software License clause at FAR 52.227-19; or (ii) in similar clauses in other federal regulations,

including without limitation the Defense FAR Supplement, the NASA FAR Supplement, and the Department of Energy Acquisition Regulations. The contractor or manufacturer is Barracuda. Customer will not remove or deface any restricted rights notice or other legal notice appearing on the Products or on any packaging or other media associated with the Products.

11. Confidential Information. Customer may be exposed to certain confidential information including, but not limited to, information concerning the business, technology, and customers of Barracuda, which Customer knows, or should reasonably know, is confidential and proprietary (herein “Confidential Information”). Customer agrees that while this Agreement is in effect and for a period of 3 years thereafter, Customer will not: (i) use the Confidential Information for any purpose other than to perform under this Agreement; or (ii) disclose to any third party any Confidential Information without the prior written consent. Customer may disclose Confidential Information only to its employees or contractors on a need to know basis and as is reasonably necessary to allow the party to perform under this Agreement; provided that each such employee or contractor is under a written obligation of nondisclosure which protects the Confidential Information under terms at least as stringent as these terms. This Section will not apply to Confidential Information after such information is made public by Barracuda. If any Confidential Information is required to be disclosed by Customer as a matter of law or by order of a court or other legal process, Customer will promptly notify Barracuda of such obligation to disclose and reasonably assist in limiting such disclosure. Customer acknowledges that disclosure will cause irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Barracuda may be entitled to seek injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

12. Term, Termination, and Survival.

- 12.1. **Term.** This Agreement will become effective on the Effective Date and will continue in effect as long as Customer maintains use or possession of Products.
- 12.2. **Termination for Breach.** A party may terminate this Agreement for cause upon 30 days’ prior written notice to the other party of a material breach if such breach remains uncured at the expiration of such period.
- 12.3. **Effect of Termination of Agreement.** Unless Barracuda terminates this Agreement for Customer’s breach, no termination of this Agreement will impact any active Software or Hosted Services subscription, Technical Support, or SOW that extends beyond such termination, and this Agreement will continue to govern and be effective until expiration or termination of the Software or Hosted Services subscription, Technical Support, or SOW. Barracuda will make Customer Data contained in a Hosted Service, if any, available to Customer for download in accordance with the applicable Service Description posted on the Product Guide.
- 12.4. **Refund or Payment upon Termination.** If Customer terminates this Agreement in accordance with the “Termination for Breach” section above, Barracuda will refund Customer a portion of prepaid fees covering the remainder of the subscription term from the effective date of termination. If Barracuda terminates this Agreement in accordance with the “Termination” section above, Barracuda will not refund any amounts to Customer, and Customer will pay any unpaid Fees covering the remainder of the term of all Quotes to the extent permitted by applicable law. Termination will not relieve Customer of its obligation to pay any Fees payable to Barracuda for the period prior to the effective date of termination.
- 12.5. **Survival.** The following Sections will survive termination: 1 (“Definitions”), 3 (“Orders, Fees and Payment Terms”) but only if Fees are due and owing at termination, 4 (“Title and Ownership”), Section 9 (“Waiver of Consequential Damages and Limitation of Liability”), 11 (“Confidential Information”) but only as stated in that section, 12 (Term, Termination and Survival), and 14 (“General”).

13. General.

- 13.1. **Governing Law and Venue.** This Agreement is governed by the laws of the State of California without reference to its conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Each party consents to the personal jurisdiction of the Federal and State courts in Santa Clara County, California. If and only if Customer is a USG Customer, to the extent that this Section conflicts with applicable law and Federal Acquisition Regulations or Supplements thereto, said law and Federal Acquisition Regulations control.
- 13.2. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 13.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 13.4. **Force Majeure.** Except with respect to payment of Fees, neither party will be liable for any failure to timely perform any of its obligations under this Agreement if such failure is caused by events beyond the reasonable control of such party, including, without limitation, natural disasters, pandemics, strikes and other industrial disputes, failure of transport, accidents, wars, riots, insurrections, acts of God, or orders of any government organization.
- 13.5. **Severability.** If a provision of this Agreement is held to be invalid or otherwise unenforceable, that provision will be deemed null and void, and the remaining provisions of this Agreement will continue in full force and effect.
- 13.6. **Notices.** Customer must maintain accurate contact information with Barracuda. Barracuda may send notices via email pursuant to this Agreement to the contact point(s) that Customer provides to Barracuda, and such notices will be deemed received 2 U.S. business days after they are sent. Customer may send notices pursuant to this Agreement to Barracuda at 3175 South Winchester Blvd., Campbell, CA 95008, Attn: Legal Department, and such notices will be deemed received 5 U.S. business days after they are sent by registered mail or 2 U.S. business days after sent to Legal@barracuda.com.
- 13.7. **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 13.8. **Assignment.** Customer may not assign or transfer any of its rights or obligations under this Agreement without Barracuda's prior written consent. Barracuda may freely assign its rights and obligations under this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void. Except to the extent forbidden in this section, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 13.9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral. The parties agree that any term or condition stated in Customer's purchase order or other order documentation (excluding Barracuda Quotes) is void. If there is any conflict or inconsistency among the following documents, the order of precedence will be: (1) the Product Guide, (2) Software Use and Restrictions Agreement, (3) this Agreement, (4) a SOW in the context of Professional Services, and (5) the applicable Quote. Titles and headings of sections of this Agreement are for convenience only and will not affect the construction of any provision of this Agreement.

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