**AGREEMENT COVER SHEET**

City Manager's Office  
701 Laurel Street, Menlo Park, CA 94025  
tel 650-330-6620

<table>
<thead>
<tr>
<th>Project Manager: Gene Garces</th>
<th>Department: Administrative Services</th>
<th>Date: 7/27/2017</th>
</tr>
</thead>
</table>

- [ ] Time Sensitive  
- [ ] New Agreement  
- [ ] Attest Only  
- [ ] Amendment  
  Choose an item.

**First Party:** Barracuda Networks, Inc.  
**Type of Agreement:** Maintenance

**Agreement or Project Title:** Annual Hardware/Software Maintenance Agreement  
**Purpose:** Annual hardware/software maintenance renewal for Barracuda email and web security devices.

<table>
<thead>
<tr>
<th>Agreement Amount: $ 5,971.58</th>
<th>Begin Date: 8/1/2017</th>
<th>End Date: 7/31/2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved Budget: $ 12,000.00</td>
<td>Budgeted YR: 2017 / 2018</td>
<td>Available Budget: $ 12,000.00</td>
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<tr>
<td>Account/Funding: 104-70601-5525</td>
<td></td>
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**Required Approval:**  
- [ ] Department  
- [ ] City Manager  
- [ ] City Council

- [ ] Language Modifications  
- [ ] Approved by City Attorney

**Summary of Modifications:**

**Attachments:**  
- [ ] Three (3) Copies of Agreement  
- [ ] Staff Report  
- [ ] Prior Agreement/Amendments(s) for reference  
- [ ] PO/Check Req

- [ ] Receive an electronic copy of the executed Agreement  
- [ ] Request to forward PO/Check Req to Finance  
- [ ] Other/Comment

**Approval:**

[Signature]

Supervisor

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**Department Head**  

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**City Attorney**

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**Budget/Finance**

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Routing: Department, City Clerk, City Attorney, Finance, (City Manager), City Clerk, Department

Revised 20160829
**ePlus Technology Quote**

**Quote:** 22054218  
**Terms:** Net 30

**Expiration:** 8/5/2017

**Prepared For:** City of Menlo Park

**Prepared By:**

**Sales Rep:** Brittany Neff  
**Office:** (916) 251-3953  
**Email:** BRneff@eplus.com  
**Inside Rep:** Sabrina S. Jordan  
**Office:** (949) 930-7366  
**Email:** Sabrina.Jordan@eplus.com

<table>
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<tr>
<th>Item</th>
<th>Qty</th>
<th>Part Number</th>
<th>Description</th>
<th>Unit Cost</th>
<th>Ext. Cost</th>
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<td>2</td>
<td>BSF300a-e1</td>
<td>Barracuda Email Security Gateway 300 1 Year EU</td>
<td>$723.80</td>
<td>$1,447.60</td>
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<td>2</td>
<td>BSF300a-h1</td>
<td>BSF300a-h1 Barracuda Email Security Gateway 300 1 Year IR</td>
<td>$452.04</td>
<td>$904.08</td>
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<td>BYF410a-e1 Barracuda Web Security Gateway 410 1 Year EU</td>
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**Total:** $5,971.58  
**Freight:** TBD  
**Tax:** 0.00%  
**Grand Total:** $5,971.58

By placing an order with ePlus for products or services you agree to comply with the Terms and Conditions for Purchasing Products and Services located at http://www.eplus.com/terms-and-conditions/Pages/Products-Services-Terms-and-Conditions.aspx (the "Order Terms"). Unless there is a separate written agreement signed on behalf of both you and ePlus by a duly authorized officer, the Order Terms shall be the only terms and conditions applicable to transactions between you and ePlus, and no additional or contrary terms referenced in a purchase order, document, or electronic communication shall apply. In no event shall ePlus performance under a purchase order be deemed to constitute acceptance of any terms and conditions set forth therein.

Thank you for your inquiry. Please note the following about this quotation: It will expire on the date stated above. Unless freight amount is indicated, or is zero, freight will be added to the invoice. Unless Bill-To company is exempt from Sales Tax, it will be added to the invoice. Extended Warranties and Professional Services are available.

**Authorization Acceptance and Date**

**Print Name**  
**Title**

This quotation is confidential for your internal use only.
This is a solicitation for an offer and is subject to credit approval. No contract is formed unless a purchase order or other offer is received and accepted by our office. If you accept this quotation with the intent to have your chosen leasing company to pay the costs directly, please note that if the Lessor does not pay ePlus for any reason, you will be responsible for payment to ePlus.

Page 1 of 1
Support
A global support network of experts.
At your service.


Energize Updates

Barracuda Energize Updates provide your Barracuda Networks product with protection from the latest Internet threats. The team at Barracuda Central continuously monitors the Internet for new trends in network security threats and develops strategies to mitigate those threats.

Benefits of Energize Updates

Basic Support, which includes email support 24x7 and phone support between the hours of 9 a.m. and 5 p.m. Monday through Friday in the US (Pacific Time), Japan, China, Austria and the United Kingdom time zones.

Firmware Maintenance which includes new firmware updates with feature enhancements and bug fixes.

https://www.barracuda.com/support/updates#q2
Energize Updates deliver the latest definitions most appropriate to your product -- spam, virus, content categories, spyware filter, intrusion prevention, IM protocols, policies, security updates, attacks and document formats.

These updates are sent out hourly or more frequently if needed, to ensure that you always have the latest and most comprehensive protection.

Barracuda Energize Updates subscriptions must be purchased with any Barracuda Networks appliance to provide complete protection from the latest internet threats. Subscriptions can be purchased for 1, 3 or 5 year terms.

Energize Update subscriptions will be provided for up to 5 years for a particular hardware platform. Hardware can be easily refreshed at any time through the "Barracuda Hardware Refresh Program". Any unused portion of Energize Updates subscription will automatically be transferred to the new hardware platform.
Support
A global support network of experts.
At your service.

Instant Replacement

Overview

"We know how important it is to have 100% uptime in corporate environments. We work hard to build reliable equipment that gives our systems a 99.99% uptime."

We also understand that sometimes equipment can fail. We therefore offer the Barracuda Instant Replacement Service. With the Instant Replacement Service, we provide next business day shipping of replacement hardware.

Benefits of Instant Replacement

Enhanced Support which provides phone and email support 24x7.

Data migration service for Barracuda Email Security Gateways. Barracuda Networks will assist customers with moving the product configuration from the old product to the new product if the old configuration data is accessible.

Hard Disk replacement on Barracuda Networks models that have swappable raid drives. Barracuda Networks will ship via
If your Barracuda Networks product fails, we will ship you a replacement unit within 1 business day so you can get back up and running soon. Replacement requests received outside normal business hours will be considered received the next business day for purposes of shipping date. Actual delivery time will vary based on transit time.

Hardware Refresh

Along with providing priority replacements in case of equipment failure, the Instant Replacement subscription also provides ongoing migration to the latest hardware platforms through the Barracuda Hardware Refresh Program (refresh).

Normally, refresh units are purchased for a fee that represents a discount over the list price over a new hardware unit. However, Barracuda Networks will waive this fee if your old hardware unit is more than 4 years old and covered under an Instant Replacement subscription. This means that by maintaining an Instant Replacement subscription with your Barracuda appliance, you can continue receiving a new hardware unit every 4 years at absolutely no additional cost.

With this, the Instant Replacement program provides a single, convenient subscription that covers you in case of hardware failure and provides an affordable way to migrate to the most current hardware platform on an ongoing basis.
Barracuda Policies

IF YOU LIVE IN THE UNITED STATES, THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IT AFFECTS YOUR RIGHTS ABOUT HOW TO RESOLVE ANY DISPUTE WITH BARRACUDA. PLEASE READ IT CAREFULLY.

Terms and Conditions

These Terms and Conditions (the “Terms” or “Agreement”) for Barracuda products and services (“Product” or Products”) are a legal agreement between you, either as an individual or a legal entity (“Customer”), and Barracuda Networks, Inc. (“Barracuda”).

These Terms, along with any other policies or documents referenced herein, govern Customer’s purchase and use of the Products. Customer’s use of the Products constitutes its binding legal agreement to these Terms, which are subject to change at any time by Barracuda.

If Customer is not legally able to be bound by these Terms or does not want to consent to these Terms, Customer’s use of the Products is strictly prohibited.
Barracuda reserves the right at any time to modify these Terms in its sole discretion, without liability to Customer. This Agreement, as amended, will be effective upon use of the Products for all existing users immediately after any amended terms are posted online at https://www.barracuda.com. Customer agrees to be bound by this Agreement, as modified. If Customer does not agree to any changes to the Terms, it must stop using the Products and terminate its account immediately. It is incumbent upon Customer to check for any amendments to these Terms and review the most current version of this Agreement from time to time so that it will be apprised of any changes.

1. Relationship to Other Agreements.

   b. Software is provided in accordance with the then-current terms of the applicable Barracuda Software License Agreement, located at https://www.barracuda.com/legal/software-license-agreement (https://www.barracuda.com/legal/software-license-agreement). The terms for the applicable Software License ("License") will be those designated for the Product set forth on the order. Customer agrees that it is bound by the terms of the applicable License.

2. Use of Barracuda Products. The Products are made available to Customer only for internal business use and not for resale, unless Customer is a legal and authorized reseller of Barracuda Products pursuant to a contract executed by both parties stating Customer is an authorized reseller. Customer agrees and understands that the License for the software included in the Products is non-transferable and may not be sold or transferred in any way except by an authorized reseller or distributor. Such use must also comply with all applicable Barracuda policies and all laws, rules and regulations, and must not infringe or violate third party rights. Customer may not sell, license, provide services, or distribute the Products or any part thereof to any third party.

3. Shipping, Title and Returns.
   a. Shipping. Separate charges for shipping and handling will be charged on Barracuda’s invoice.

   b. Title. Title to hardware passes from Barracuda to Customer on shipment from Barracuda’s facility (Exworks origin) (Incoterms 2010). Loss or damage that occurs during shipping by a carrier selected by Barracuda is Barracuda’s responsibility. Loss or damage that occurs during shipping by a carrier selected
by Customer is Customer’s responsibility. Partial shipment is acceptable.

c. Returns. Customer may cancel all purchase orders for Product and support services (excluding renewals) within thirty (30) days of shipment of hardware or delivery of software from Barracuda (“Cancellation Period”). After the Cancellation Period, all purchase orders are non-cancellable and the fees paid to Barracuda for Product or support services are nonrefundable. Fees for installation or training provided by Barracuda are non-cancellable and nonrefundable once performance commences.

4. Payment Obligations.

a. Customer shall pay the total purchase as specified in the invoice.

b. Customer acknowledges that the reoccurring amount billed each period may vary for reasons that include differing amounts due to promotional offers, differing amounts due to changes in Customer’s account, or changes in the amount of applicable sales tax. Customer authorizes Barracuda to bill for such varying amounts. All reoccurring fees and charges are non-cancelable and nonrefundable and no credits will be given for partially used periods.

5. Payment Terms, Disputes and Offsets.

a. Payment Terms.

i. Payment will be made by credit card, wire transfer, or another prearranged payment method unless Barracuda has agreed to credit terms.

ii. When credit is provided, payments are due net 30 days, measured from the date of the invoice. Orders are not binding upon Barracuda until accepted in writing by Barracuda.

iii. Any payment not received from Customer by the due date shall accrue (except with respect to charges then under a reasonable and good faith dispute) at the lower of one and a half percent (1.5%) of the outstanding balance per month (being 18% per annum) or the maximum allowed by law, from the date such payment is due until the date paid. Customer also agrees to pay all sums expended (including reasonable legal fees) in collecting overdue payments. If Customer continues to not make payment for thirty (30)
days following written notice thereof, Barracuda may: (i) disable Customer’s use of the Product; (ii) withhold, suspend or revoke its grant of any software license; and/or (iii) terminate this Agreement.

b. Payment Disputes. Customer must notify Barracuda of any billing problems or discrepancies within sixty (60) days after they first appear on Customer’s statement from its bank, credit card company or other billing company. Customer must send such notification to Barracuda at the Barracuda contact information indicated in Section 21 ("Notices"). If Customer does not bring such problems or discrepancies to Barracuda’s attention within the sixty (60) day period, Customer agrees that it waives the right to dispute such problems or discrepancies.

c. Offsets. Customer shall pay all amounts payable to Barracuda under this Agreement to Barracuda 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).

6. Taxes and Duties.

a. Customer shall be responsible for all sales, use, withholding, value added, and any other taxes imposed by any federal, state, provincial or local governmental entity or any other governmental entity on the purchase of Product, excluding taxes based on Barracuda’s net income.

b. Customer is responsible for any import or export fees or duties associated with its use of the Product.

7. Support Subscriptions, Renewals, and Upgrades.

a. Support Subscriptions.

i. Provided Customer has purchased and paid for support, Barracuda will provide support subscriptions to Customer in accordance with the then-current support policies and conditions in effect. Barracuda will attempt to handle any problem involving Products over the telephone or email. However, Barracuda’s support personnel/providers may not be able to understand or resolve any given problem.

ii. Support offerings may vary by Product and geography. Barracuda may, at its discretion, revise its support programs and the terms and conditions that govern them. The services and support programs and their terms and conditions in place at the time of purchase will
apply to Customer’s purchase.

iii. The support programs and their terms and conditions in place at the time of purchase will apply to Customer’s purchase through the end of the then-current term.

iv. Barracuda has no obligation to provide support until Barracuda has received full payment for the Products that Customer purchased.

v. The support period start date will be the earlier of (i) the date the Product is activated by Customer, or (ii) thirty (30) days after the Product has been shipped or made available to Customer for download. For new Product purchases, support subscriptions (including instant replacement and energize updates) will commence on the date of activation. Barracuda will automatically activate Products six (6) months after the date of sale, if not activated earlier by Customer.

vi. In some regions, Barracuda requires Customer to purchase an Instant Replacement subscription with the purchase of certain Products.

b. Renewals. Customer agrees that Barracuda shall have the right to, automatically and without notice, renew and invoice any subscription upon expiration of the subscription. The subscription start date will begin upon expiration of the prior subscription term, and Customer will be responsible for all renewal subscription fees from the previous subscription expiration date.

c. Upgrades. Customers may upgrade the Product model and associated support subscription service within sixty (60) days of purchase and receive a full credit for the original purchase, provided any hardware unit is returned to Barracuda in working order within thirty (30) days of the upgrade and the initial product is disabled.

8. Intellectual Property Ownership

a. Intellectual Property Ownership. Customer acknowledges that Barracuda or its licensors own all right, title and interest in and to the Product (including software) and content provided through or in conjunction with the Product, including, without limitation, all intellectual property rights. Except for the license granted in these Terms, all rights in and to the Products are reserved and Barracuda grants no implied licenses.
9. Warranty


b. THE WARRANTY WILL BE EFFECTIVE, AND BARRACUDA WILL BE OBLIGATED TO HONOR THE WARRANTY, ONLY UPON BARRACUDA’S RECEIPT OF PAYMENT IN FULL FOR THE ITEM TO BE WARRANTED.

c. EXCEPT AS PROVIDED IN THE WARRANTY FOR THE PRODUCT, THE PRODUCTS AND ANY THIRD PARTY SOFTWARE AND SERVICES ARE PROVIDED “AS IS”.

10. Term, Termination and Survival.

a. Term. This Agreement is effective upon purchase or use of the Product, and, unless earlier terminated, remains in effect until Customer no longer utilizes the Product.

b. Termination.

   i. Barracuda may terminate this Agreement for Customer’s breach, which Customer fails to cure within thirty (30) days of written notice by Barracuda.

   ii. Customer agrees that, upon termination, Customer will immediately discontinue all use of the Products and that it is not entitled to any refund of prepaid fees.

c. Survival. The terms of this Agreement that by their nature extend beyond termination, including Payment, Warranty, Limitation of Liability, Governing Law, Dispute Resolution, and Venue, shall survive termination of this Agreement.


a. Privacy Policy. Please refer to Barracuda’s Privacy Policy located online at https://www.barracuda.com/legal/privacy (https://www.barracuda.com/legal/privacy) for information about how Barracuda uses, transfers and shares information collected by or provided to it.
b. Collection of Customer Data. Customer agrees to allow Barracuda to collect information (“Statistics”) from their Products in order to fight spam, viruses, and other threats as well as to optimize and monitor the Product. Statistics will be collected electronically and automatically. Statistics include, but are not limited to, the number of messages processed, the number of messages that are categorized as spam, the number of virus and types, IP addresses of the largest spam senders, the number of emails classified for Bayesian analysis, the number and types of attacks seen and blocked, bandwidth used, CPU and RAM usage, network interface utilization, and IP addresses of attackers and other statistics. Statistics will be kept private and will only be reported by Barracuda in the aggregate.

12. Export and Compliance with Laws.

a. Export. The Products and software, including technical data, 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 comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Products or software. Barracuda provides multiple versions of Products targeted for specific geographic regions.

b. Compliance with Laws. Customer 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.

13. Confidential Information. Each party may, from time to time, divulge confidential information and proprietary trade and/or manufacturing secrets to the other party. The receiving party shall preserve in strict confidence any confidential or proprietary information obtained concerning the business or affairs of the disclosing party and its affiliated entities, including, but not limited to, this Agreement, trade secrets, technology, Barracuda’s price list(s), marketing strategies, customer lists, mail lists, and information concerning the design or methods of manufacture of the Products (“Confidential Information”), and shall refrain from disclosing, during the term of this Agreement or at any time thereafter, any such information to any person or persons, natural or corporate, except as expressly provided herein. The receiving party agrees, with respect to Confidential Information disclosed hereunder, to use the same degree of care that it uses to prevent the disclosure of its own similar information, but in no event less than reasonable care. The receiving party may only use Confidential Information for the purpose of fulfilling its obligations hereunder and shall disclose the Confidential Information only to its own employees and to its attorneys, accountants and other professional advisors, in each case who have a need to know and who have agreed in writing under terms at least as stringent as the confidentiality terms in this Agreement to maintain such Confidential Information in confidence. The receiving party shall be liable for a breach of this section by any of its representatives to whom it discloses Confidential Information. The receiving party shall not
have any obligation to protect Confidential Information which (a) was in the receiving party’s possession prior to receipt from the disclosing party; (b) is, or becomes, a matter of public knowledge through no act, omission or fault of the receiving party; or (c) is disclosed by the receiving party with the written permission of the disclosing party.


a. WAIVER OF CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY, OR ITS SUPPLIERS, RESELLERS, PARTNERS OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE PRODUCT, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

b. LIMITATION OF LIABILITY.

i. WITHOUT LIMITING THE FOREGOING, THE TOTAL AGGREGATE LIABILITY OF BARRACUDA, AND ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED (i) U.S. $25.00 IF NO AMOUNT HAS BEEN PAID BY CUSTOMER TO BARRACUDA; OR (ii) THE AMOUNT PAID BY CUSTOMER IN THE THREE MONTH PERIOD IMMEDIATELY PRIOR TO THE CLAIM.

ii. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE PRODUCT, FROM INABILITY TO USE THE PRODUCT, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE PRODUCT (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

iii. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR DEATH OR BODILY INJURY OR THE LIMITATIONS ABOVE AND IN THOSE JURISDICTIONS, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY.

15. Governing Law, Venue and Dispute Resolution.
a. GOVERNING LAW AND VENUE. THESE TERMS AND THE USE OF THE PRODUCT AND SOFTWARE WILL BE GOVERNED BY CALIFORNIA LAW EXCEPT FOR ITS CONFLICTS OF LAWS PRINCIPLES.

b. DISPUTE RESOLUTION. IF YOU LIVE IN THE UNITED STATES, THIS SECTION CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IT AFFECTS YOUR RIGHTS ABOUT HOW TO RESOLVE ANY DISPUTE WITH BARRACUDA. PLEASE READ IT CAREFULLY.

The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against Barracuda, its agents, employees, successors, assigns or affiliates (collectively for purposes of this paragraph, “Barracuda”) arising out of or relating to this Agreement, the Product, Barracuda advertising, or any related purchase (a “Dispute”) through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute will be settled by binding arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration. The Arbitration will be conducted before one (1) independent and impartial arbitrator. The arbitration hearing shall take place in Cupertino, California and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. The arbitrator shall base his or her award on the terms of this Agreement, and will follow the law and judicial precedents that a United States District Court Judge sitting in the county of Santa Clara, California would apply to the Dispute. The arbitrator shall render his or her award in writing and will include the findings of fact and conclusion of law upon which his or her award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. The existence or results of any negotiation, mediation or arbitration will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.

THE PARTIES AGREE TO ARBITRATE SOLELY ON AN INDIVIDUAL BASIS, AND THAT THIS AGREEMENT DOES NOT PERMIT CLASS ARBITRATION OR ANY CLAIMS BROUGHT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ARBITRATION PROCEEDING. THE ARBITRAL TRIBUNAL MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.
16. Permission to Use Logo. Customer grants permission to Barracuda to use Customer’s logo on the Barracuda website, or any other marketing material when referring to Customer. Customer will retain all title and rights to such logos.

17. Changes to Products. Barracuda reserves the right at any time to modify, suspend, or discontinue providing the Product or any part thereof in its sole discretion, with prior notice. Any discontinuation of service will be coterminous with the end of any prepaid term.

18. Relationship of the Parties. The parties intend that the relationship created between them by virtue of this Agreement shall be that of an independent contractor, and nothing herein shall be construed to create an agency, joint venture, partnership or other form of business association between them. Barracuda and its agents, employees, and servants shall not be deemed to be an employee, agent, or servant of Customer or its affiliated entities, if any. Barracuda is not to be considered an agent or employee of Customer for any purpose, and none of the benefits provided by Customer or its employees are available to Barracuda or Barracuda’s employees, agents, or servants. Barracuda shall be solely and entirely responsible for Barracuda’s acts and for the acts of Barracuda’s agents, employees, servants and subcontractors during the performance of this Agreement.

19. Force Majeure. Neither party hereto shall be liable for any failure to timely perform any of its obligations under this Agreement if such failure is caused by the occurrence of any event beyond the reasonable control of such party, including, without limitation, fire, flood, strikes, hurricanes, and other industrial disputes, failure of raw material, failure of transport, accidents, wars, riots, insurrections, acts of God or orders of any government department or agency.

20. Severability. If any term or condition of this Agreement is held void or unenforceable, it shall be severed, and every other provision shall be enforced as if the void or unenforceable term or condition had never been a part hereof.

21. Notices. Vendor may send notices pursuant to this Agreement to Customer’s email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to 3175 South Winchester Blvd, Campbell, CA 95008, Attn: Legal Department, and such notices will be deemed received 72 hours after they are sent.

22. Entire Agreement and Assignment.

a. 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, regarding the Products. Barracuda’s failure to enforce a provision is not a waiver of its right to do so later. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Barracuda.
b. Assignment. Customer may not assign or transfer any of its rights or obligations under this Agreement. Barracuda may freely assign its rights and obligations under this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void.

Revised: October 2016
Barracuda Policies

Barracuda Networks Limited Hardware Warranty

1. Barracuda Networks, Inc., or the Barracuda Networks, Inc. subsidiary or authorized Distributor selling the Barracuda Networks product, if sale is not directly by Barracuda Networks, Inc., ("Barracuda Networks" or "Barracuda") warrants that commencing from the date of delivery to Customer (but in case of resale by a Barracuda Networks reseller, commencing not more than sixty (60) days after original shipment by Barracuda Networks, Inc.), and continuing for a period of one (1) year: (a) its products (excluding any software) will be free from material defects in materials and workmanship under normal use; and (b) the software provided in connection with its products, including any software contained or embedded in such products will substantially conform to Barracuda Networks published specifications in effect as of the date of manufacture. Except for the foregoing, the software is provided as is. In no event does Barracuda Networks warrant that the software is error free or that Customer will be able to operate the software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Barracuda Networks does not warrant that the software or any equipment, system or network on which the software is used will be free of vulnerability to intrusion or attack. The limited warranty extends only to you the original buyer of the Barracuda Networks product and is non-transferable.
2. Exclusive Remedy. Your sole and exclusive remedy and the entire liability of Barracuda Networks under this limited warranty shall be, at Barracuda Networks or its service centers option and expense, the repair, replacement or refund of the purchase price of any products sold which do not comply with this warranty. Hardware replaced under the terms of this limited warranty may be refurbished or new equipment substituted at Barracuda Networks' option. Barracuda Networks obligations hereunder are conditioned upon the return of affected articles in accordance with Barracuda Networks then-current Return Material Authorization ('RMA') procedures. All parts will be new or refurbished, at Barracuda Networks' discretion, and shall be furnished on an exchange basis. All parts removed for replacement will become the property of Barracuda Networks. In connection with warranty services hereunder, Barracuda Networks may at its discretion modify the hardware of the product at no cost to you to improve its reliability or performance. The warranty period is not extended if Barracuda Networks repairs or replaces a warranted product or any parts. Barracuda Networks may change the availability of limited warranties, at its discretion, but any changes will not be retroactive. IN NO EVENT SHALL BARRACUDA NETWORKS LIABILITY EXCEED THE PRICE PAID FOR THE PRODUCT FROM DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THE PRODUCT, ITS ACCOMPANYING SOFTWARE, OR ITS DOCUMENTATION.

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6.3. Injunction. Recipient agrees that breach of this Article 6 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Discloser will be entitled to seek injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

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12.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

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12.9. Dispute Resolution. IF YOU LIVE IN THE UNITED STATES, THIS SECTION CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IT AFFECTS YOUR RIGHTS ABOUT HOW TO RESOLVE ANY DISPUTE WITH BARRACUDA. PLEASE READ IT.

The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against Barracuda, its agents, employees, successors, assigns or affiliates (collectively for purposes of this paragraph, "Barracuda") arising out of or relating to this Agreement, Barracuda advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute will be settled by binding arbitration in accordance with the then current AAA Rules and the parties agree to share the arbitration costs equally. The Arbitration will be conducted before three (3) independent and impartial arbitrators. Barracuda will appoint one (1) arbitrator and the other party or parties will appoint one (1) arbitrator. The two (2) appointed arbitrators will then select a third arbitrator, who shall be the presiding arbitrator. The arbitration hearing shall take place in Cupertino, California and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. The arbitrators shall base their award on the terms of this Agreement, and will follow the law and judicial precedents that a United States District Judge sitting in the county of Santa Clara would apply to the Dispute. The arbitrators shall render their award in writing and will include the findings of fact and conclusion of law upon which their award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. The existence or results of any negotiation, mediation or arbitration will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. THE PARTIES AGREE TO ARBITRATE SOLELY ON AN INDIVIDUAL BASIS, AND THAT THIS AGREEMENT DOES NOT PERMIT CLASS ARBITRATION OR ANY CLAIMS BROUGHT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ARBITRATION PROCEEDING. THE ARBITRAL TRIBUNAL MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

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October 2016