

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

23-1022

SAP Number

Board Governed County Service Areas

Department Contract Representative	Richard Cho
Telephone Number	(909) 387-8099
Contractor	Barracuda Networks, Inc.
Contractor Representative	Sean Yost
Telephone Number	(858) 571-3100 x 1200
Contract Term	10/13/23 – 10/12/24
Original Contract Amount	\$27,000.00
Amendment Amount	
Total Contract Amount	\$27,000.00
Cost Center	1051001378 and 1052001378

Briefly describe the general nature of the contract:

Barracuda Networks, Inc.'s Legal Terms and Conditions for All Barracuda Products to acquire a new term of licenses and services, through an authorized reseller, for software and hardware support for data backup appliances and allow for continued operation of the Department of Public Works – Special District, Water and Sanitation Division, control system, providing data protection, and a disaster recovery plan.

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Aaron Gest*

Aaron Gest, Deputy County Counsel

Date Sep 15, 2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *David R. Doublet*

David Doublet, Assistant Director

Date Sep 18, 2023

LEGAL TERMS AND CONDITIONS FOR ALL BARRACUDA PRODUCTS

General Terms Applicable to all Products

SCHEDULES:

[Schedule 1: Software Use and Restrictions](#)

[Schedule 2: Limited Warranty](#)

[Schedule 3: Hosted Services](#)

[Schedule 4: Additional Terms for SAT](#)

[Schedule 5: Support Services Terms](#)

[Schedule 6: Professional Services Terms](#)

[Schedule 7: Data Privacy](#)

[Schedule 8: Migration and Upgrade Credit Program Terms](#)

The General Terms and Conditions ("**General Terms**"), together with all applicable Schedules (collectively, the "**Agreement**") are a legal agreement between you, a legal entity ("**Customer**"), and Barracuda Networks, Inc. ("**Barracuda**"). If you are not legally able to be bound by the Agreement or do not want to consent to the terms of the Agreement, your use of the Products is strictly prohibited. Your use of the Products is subject at all times to this Agreement, as amended from time to time. If you do not unconditionally agree to the foregoing, discontinue the installation or use of the Products. If you proceed with use, you are (i) representing and warranting that you are authorized to bind the Customer; and (ii) agreeing to the Terms.

Order of Precedence . The General Terms are applicable to all Barracuda Products and set forth the terms under which the Customer may use Barracuda Products. Certain Products are subject to additional terms and conditions, which are set forth in the applicable "Schedule." In the event of a conflict or inconsistency between any of the General Terms and a Schedule, the Schedule will govern.

GENERAL TERMS AND CONDITIONS

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING A BARRACUDA PRODUCT. BY USING A BARRACUDA PRODUCT, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IF CUSTOMER LIVES IN THE UNITED STATES, THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IT AFFECTS CUSTOMER'S RIGHTS REGARDING HOW TO RESOLVE ANY DISPUTE WITH BARRACUDA. PLEASE READ IT CAREFULLY.

1. Definitions.

1.1. "**Barracuda Materials**" means all Barracuda proprietary materials, including, but not limited to, Deliverables, Products and intellectual property related to Products and Documentation.

1.2. "**Deliverables**" means any written reports and materials that are created specifically for Customer as a result of Professional Services provided hereunder, as set forth in [Schedule 6](#) ("Professional Services Terms").

1.3. "**Delivery**" with respect to Hardware means the date of shipment, and with respect to Software and Hosted Services means when the Software or Hosted Service is made available by Barracuda.

1.4. "**Documentation**" means manuals or other materials provided by Barracuda related to the Products in electronic or other form, as amended from time to time by Barracuda.

1.5. "**Effective Date**" shall mean the date of Delivery of the Products.

1.6. "**Hardware**" means a physical appliance provided by Barracuda.

1.7. "**Hosted Service**" means the right to use a cloud system or platform hosted by Barracuda, which provides the services and functionality set forth in the applicable Specification.

1.8. "**Hosted Service Term**" means the length of time for which a Hosted Service is purchased.

1.9. "**Intellectual Property Rights**" means copyrights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation, trade names, trademarks, service marks and trade dress), patent rights (including, without limitation, the exclusive right to make, use and sell), trade secrets, moral rights, right of publicity, authors' rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the law of the United States or any other state, country or jurisdiction.

1.10. "**Product**" means, collectively, any Hardware, Software, Subscriptions, Hosted Service, Services and any combination thereof.

1.11. "**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.

1.12. "**Professional Services**" means consulting services provided by Barracuda under a Statement of Work and/or set forth on an Order.

1.13. **“Software”** means software embedded in Hardware, used to provide a Hosted Service or any software licensed to Customer as a Subscription, including any Updates thereto.

1.14. **“Service”** or **“Services”** means Professional Services and Support Services.

1.15. **“Specification”** means the functionality for the Product as documented in the Product data sheet.

1.16. **“Statement of Work”** or **“SOW”** means a document between Barracuda and Customer, describing Professional Services, rates and timelines for those Professional Services.

1.17. **“Subscription”** means a license provided by Barracuda for a Subscription Term under which Barracuda provides access to certain features and functionality, as described in the Specification, which is provided subject to the applicable Schedule, if any, and these General Terms.

1.18. **“Subscription Term”** means the length of time for which a Subscription is purchased.

1.19. **“Support Term”** means the length of time for which the Support Service is purchased.

1.20. **“Support Services”** means the maintenance and technical support services provided by Barracuda with respect to each Product, as described in [Schedule 5](#) (“Support Services Terms”).

1.21. **“Update”** means minor enhancements, error corrections and bug fixes to the Software.

2. Modification. Barracuda reserves the right to modify the Agreement at any time, in its sole discretion, without liability to Customer. The Agreement, as amended, will be effective upon use of the Products for all existing users immediately after any amended terms are posted online. If Customer has signed up for email updates, Barracuda will provide email notice to Customer of the update. Customer's continued use of the Products shall be deemed acceptance of the modified terms.

3. Orders and Statements of Work.

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 in writing by Barracuda. All Orders will be governed by this Agreement and are noncancelable and nonrefundable after Delivery, except as set forth in Section 5.2 (“Returns”).

3.2. Statements of Work. Each Statement of Work is governed by this Agreement. Barracuda will not be obligated to perform any Professional Services until a Statement of Work describing those Professional Services has been agreed upon by both parties or an Order listing those Professional Services has been accepted by Barracuda in writing.

4. Payment Terms.

4.1. Fees and Expenses. If Customer purchases directly from Barracuda, Customer will pay Barracuda the fees specified on the invoice associated with each Order or Statement of Work ("**Fees**"). If Customer purchases through a Barracuda authorized reseller, all fees and other procurement and delivery terms shall be agreed upon between Customer and the applicable reseller. Fees for usage in excess of 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 herein.

4.2. Payment. If Customer purchases directly from Barracuda, payment is due within thirty (30) days of the date of each invoice. Payment will be made by credit card, wire transfer or another prearranged payment method unless Barracuda has extended credit terms to Customer. All Fees described in an Order or Statement of Work will be fully invoiced in advance, unless otherwise agreed to in writing by Barracuda. 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 lesser of one and one half percent (1.5%) per month or the maximum rate permitted by applicable law.

4.3. Increases. Barracuda reserves the right to increase prices for Products at any time, provided however that any price increase for Subscriptions, Hosted Services and Support Services will not go into effect until the end of the then-current term, as applicable.

4.4. 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 shall 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 Order or Statement of Work, as applicable, 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.

4.5. Payment Disputes. Customer must notify Barracuda of any billing problems or discrepancies within sixty (60) days of the applicable Barracuda invoice date. Customer must send such notification to Barracuda as indicated in Section 21 ("Notices"). If Customer does not bring such problems or discrepancies to Barracuda's attention within such sixty (60) day period, Customer agrees that it waives the right to dispute such problems or discrepancies.

4.6. Offsets. Customer shall pay all amounts due and 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 and in compliance with Section 4.4 ("Taxes")).

4.7. Import/Export Fees. Customer is responsible for any import or export fees or duties associated with its purchase or use of the Products.

5. Title and Returns.

5.1. Title; Ownership.

5.1.1. Hardware. All Hardware is shipped from Barracuda's designated manufacturing facility or point of origin (Exworks origin) (Incoterms 2010). Title to such Hardware and the risk of loss of or damage to Hardware shall 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 otherwise specified in writing by Customer. Customer must provide written notice to Barracuda within ten (10) days of Delivery of the Products of any non-conformity with the Order (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.

5.1.2. Software. Barracuda retains right, title and ownership to all Software, and Customer's license and usage rights to Software as set forth in [Schedule 1](#) ("Software Use and Restrictions").

5.1.3. Customer Data. "**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. Customer retains ownership of Customer Data at all times. Barracuda will use Customer Data only in accordance with the Barracuda Privacy Policy.

5.2. Returns. Customer may cancel all Orders for new Products (excluding renewals, upgrades and migrations) within thirty (30) days of the Effective Date of any Term ("Cancellation Period"). After the Cancellation Period, all Orders are non-cancellable

and the Fees paid to Barracuda are nonrefundable. Fees for installation or training provided by Barracuda are non-cancellable and nonrefundable once performance commences.

6. Third Party Products and Services. Third party products or services may contain features designed to interoperate with the Products. To use such features, Customer must obtain access to such third-party apps from their respective providers. If Customer chooses to utilize such third-party apps, the following terms shall apply:

(i) All governing terms and conditions, including data processing terms, shall be entered into between Customer and the applicable third-party app provider;

(ii) Customer may be required to grant Barracuda access to Customer's account on such third-party apps;

(iii) Customer instructs Barracuda to allow the third-party app provider to access Customer Data as required for interoperation with the Products; and

(iv) In the event the operation of a third party app requires the processing of personal data to which the General Data Protection Regulation ("GDPR") applies in a country that does not provide adequate data protection safeguards, then Customer and the third party app provider must put in place an adequate data transfer mechanism as set forth in Arts. 46 or 47 of the GDPR, including executing appropriate Standard Contractual Clauses, as needed. Barracuda shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from access by such third-party app providers. Third party app providers do not operate as subprocessors to Barracuda. Barracuda is not liable for, and does not warrant or support, any such third-party apps. Barracuda cannot guarantee the continued availability of such third party apps, and may cease providing them without entitling Customer to any refund, credit or other compensation, if, for example, the provider of the third-party app ceases to make its product or service available in a manner acceptable to Barracuda.

7. Professional Services. If applicable, Professional Services will be provided in accordance with these General Terms and [Schedule 6](#) ("Professional Services Terms").

8. Support Services and Product Upgrades.

8.1. Support Services.

8.1.1. Support Services Purchase. Support Services may be purchased separately, or for Hosted Services, may be bundled into the price. Customer is not entitled to Support Services until Barracuda receives payment in full for such Support Services.

8.1.2. Support Services Entitlement. For Customers with active Support Services, the following shall apply:

8.1.2.1. Support Services will only be available for the specific Product for which the Support Services is purchased. Applying Updates or receiving Support Services on systems where no valid entitlement has been purchased is strictly forbidden and in violation of this Agreement.

8.1.2.2. For Hardware, Customer is entitled to receive replacement of defective hardware as set forth in [Schedule 5](#) ("Support Services Terms").

8.1.2.3. For Software, Customer is entitled to Updates to Software. Barracuda shall provide Customer with all Updates, without additional charge, in accordance with [Schedule 5](#) ("Support Services Terms"). Upon Delivery to Customer, each Update will constitute Software and will thereafter be subject to and governed by this Agreement, including without limitation the license and warranty terms.

8.1.2.4. Support Services for Software are required at all times for continued access to the full functionality and proper operation of the Product. Customer acknowledges that failure to pay for ongoing Support Services will limit or degrade the functionality of the Products.

8.2. Upgrades. Upgrades are not included in Support Services, and may be purchased separately from Barracuda.

9. Intellectual Property.

9.1. Ownership of Barracuda Materials; Restrictions. All Intellectual Property Rights in Barracuda Materials belong exclusively to Barracuda and its licensors. Customer will not (and will not allow any third party to): (i) disassemble, decompile, reverse compile, reverse engineer or attempt to discover any source code or underlying ideas or algorithms in any Barracuda Materials (except to the limited extent that applicable law prohibits reverse engineering restrictions); (ii) sell, resell, distribute, sublicense or otherwise transfer the Barracuda Materials, or make the functionality of the Barracuda Materials available to any other party through any means (unless Barracuda has provided prior written consent); (iii) without the express prior written consent of Barracuda, conduct any benchmarking or comparative study or analysis involving the Barracuda Materials ("**Benchmarking**") for any reason or purpose except, to the limited extent absolutely necessary, to determine the suitability of Products to interoperate with Customer's internal computer systems; (iv) disclose or publish to any third party any Benchmarking or any other information related thereto; (v) use the Barracuda Materials or any Benchmarking in connection with the development of products, services or subscriptions that compete with the Barracuda Materials; (vi) use any Barracuda trademarks for any purpose not expressly granted by Barracuda in advance and in writing; or (vii) reproduce, alter, modify or create derivatives of the Barracuda Materials.

9.2. Feedback. Customer hereby grants Barracuda a perpetual, irrevocable, worldwide license to use any Feedback (as defined below) 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 and every way, as well as the right to grant sublicenses. Notwithstanding the provisions of Section 12 ("Confidential Information"), Feedback will not be considered Customer's Confidential Information. "**Feedback**" refers to any suggestion or idea for modifying any Products, including, without limitation, all Intellectual Property Rights in and to any such suggestion or idea.

10. Waiver of Consequential Damages and Limitation of Liability.

10.1. 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 PRODUCTS, 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).

10.2. LIMITATION OF LIABILITY. THE TOTAL AGGREGATE LIABILITY OF BARRACUDA AND ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES ARISING FROM OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNTS OWED OR PAID BY CUSTOMER FOR THE RELEVANT PRODUCTS DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST OCCURRENCE OF THE EVENTS GIVING RISE TO SUCH LIABILITY.

10.3. APPLICABILITY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY OR OTHERWISE; (C) EVEN IF A PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; (D) WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE PRODUCTS, FROM INABILITY TO USE THE PRODUCTS OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE PRODUCTS (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.

THE LIMITATIONS AND EXCLUSIONS CONTAINED HEREIN WILL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AND NOTHING HEREIN PURPORTS TO LIMIT EITHER PARTY'S LIABILITY IN A MANNER THAT WOULD BE UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY IN THE APPLICABLE JURISDICTION.

11. Export and Compliance with Laws.

11.1. Export.

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

11.1.2. Customer shall not: (a) permit any third party to access or use the Products in violation of any U.S. law or regulation; (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 shall not permit any third party to access or use the Products in, or export it to, a country subject to a United States embargo (currently, Cuba, Iran, North Korea, Sudan, the Crimea Region in the Ukraine and Syria); or (c) 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.

11.2. 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.

11.2.1 If Customer is a United States Government agency, the Products and Documentation 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 Documentation with only those rights set forth in this Agreement. Use of either the Products or Documentation or both constitutes an agreement by the Government that the Products and Documentation are “commercial computer software” and “commercial computer software documentation”, and constitutes acceptance of the rights and restrictions herein.

11.2.2. 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 or instrumentalities, is subject to restrictions set forth, as applicable: (i) in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19; or (ii) in similar clauses in other federal regulations, including the NASA FAR supplement. The contractor or manufacturer is Barracuda. Customer

shall 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.

12. Confidential Information.

12.1. Definition. “**Confidential Information**” refers to the following information disclosed by one party (“**Discloser**”) to the other (“**Recipient**”): (a) any document Discloser marks as “Confidential” or “Proprietary”; (b) any information Discloser orally designates as being “Confidential” at the time of disclosure, or which given the circumstances of the disclosure and the nature of the information would reasonably be considered confidential; (c) the non-public features and functions of the Products, Barracuda’s price lists, technology, trade secrets, marketing strategies, customer lists, mail lists and information concerning the design or methods of manufacture of the Products, for which Barracuda is Discloser; (d) this Agreement; and (e) any other nonpublic, sensitive information disclosed by Discloser. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient’s possession at the time of disclosure and not in violation of any confidentiality obligations; (ii) becomes known publicly, before or after disclosure, other than as a result of Recipient’s improper action or inaction; or (iii) is approved for release in writing by Discloser.

12.2. Maintenance of Confidentiality. Each party agrees that it shall: (i) take reasonable measures to protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential information of a similar nature; (ii) limit disclosure to those persons within Recipient’s organization who have a clear and well-defined “need to know” and who have previously agreed in writing to obligations at least as stringent as the provisions hereof, either prior to receipt of Confidential Information as a condition of their employment or in order to obtain the Confidential Information; (iii) not copy, reverse engineer, disassemble, create any works from, or decompile any prototypes, Products or other tangible objects which embody the other party’s Confidential Information and/or which are provided to the party hereunder; and (iv) comply with, and obtain all required authorizations arising from, all U.S. and other applicable export control laws or regulations. Confidential Information shall not be used or reproduced in any form except as required to accomplish the purposes and intent of an Order or Statement of Work. Any reproduction of Confidential Information shall be the property of Discloser and shall contain all notices of confidentiality contained on the original Confidential Information.

12.3. Exceptions. The parties agree that the foregoing shall not apply to any information that Recipient can prove, through written evidence: (i) is or becomes publicly known and made generally available through no improper action or inaction of Recipient; (ii) was already in its possession or known by it prior to disclosure by Discloser to Recipient; (iii) is independently developed by Recipient without use of, or reference to, any of Discloser’s Confidential Information; or (iv) was rightfully disclosed to it by, or obtained from, a third party without an obligation of confidentiality. Recipient may make disclosures required by law or court order provided that Recipient: (a) uses diligent

efforts to limit disclosure and to obtain, if possible, confidential treatment or a protective order; (b) has, to the extent legally permissible, given prompt advance notice to Discloser of such required disclosure.

12.4. Injunction. Recipient agrees that breach of this Section 12 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.

12.5. Return of Confidential Information. With respect to each item of Confidential Information, the obligations of Section 12.2 ("Maintenance of Confidentiality") will terminate five (5) years after the date of disclosure. Upon termination of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof. Where permissible by law, Recipient may retain one copy of all written materials returned to provide an archive record of the disclosure, which remains subject to the confidentiality terms of this Section 12.

12.6. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser will retain all right, title and interest in and to all of its Confidential Information.

12.7. Collection of Customer Data. Customer agrees to allow Barracuda to collect Customer Data from its Products in order to enhance its security products and to optimize and monitor the performance of the Product. Customer Data will be collected electronically and automatically. Customer Data will be kept private and will only be reported by Barracuda in the aggregate.

13. Term, Termination, and Survival.

13.1. Term. This Agreement will become effective on the Effective Date and will continue in effect for such time as Customer maintains use or possession of Products.

13.2. Termination for Cause. Either party may terminate this Agreement upon written notice of a material breach by the other party subject to a thirty (30) day cure period ("**Cure Period**"). If the breaching party has failed to cure the breach within the Cure Period after receipt by the breaching party of written notice of such breach, the non-breaching party may terminate this Agreement. This Agreement may be automatically terminated by Barracuda in the event Customer has breached any license restriction and, in Barracuda's determination, that breach cannot be adequately cured within the Cure Period.

13.3. Support Services. Support Services will begin on the date of Delivery of the Products, and will continue in effect for the duration of the Support Term. Support Services will automatically renew at the end of any Support Term, at the then-current price, for an additional period equal to the length of the prior Support Term. Either party

may provide notification of its intention to not renew at least sixty (60) days prior to the expiration of the then-current Support Term. Customer may terminate Support at any time, for its convenience, on thirty (30) days' prior written notice to Barracuda; provided, however, that no refund shall be owed and Customer is obligated to pay any remaining Fees owing for the remainder of the then-current Support Term within thirty (30) days of the effective date of the termination.

13.4. Subscriptions. The term of each Subscription will begin on the date of Delivery of the Products, and will continue in effect for the duration of the Subscription Term. Subscriptions will automatically renew at the end of any Subscription Term, at the then-current price, for an additional period equal to the length of the prior Subscription Term. Either party may provide notification of its intention to not renew at least sixty (60) days prior to the expiration of the then-current Subscription Term. Customer may terminate a Subscription at any time, for its convenience, on thirty (30) days' prior written notice to Barracuda; provided, however, that no refund shall be owed and Customer is obligated to pay any remaining Fees owing for the remainder of the then-current Subscription Term within thirty (30) days of the effective date of the termination.

13.5. Hosted Services. The term of each Hosted Service will begin on the date of Delivery, and will continue in effect for the duration of the Hosted Service Term. Hosted Services will automatically renew at the end of any Hosted Service Term, at the then-current price, for an additional period equal to the length of the prior Hosted Service Term. Either party may provide notification of its intention to not renew at least sixty (60) days prior to the expiration of the then-current Hosted Service Term. Customer may terminate a Hosted Service at any time, for its convenience, on thirty (30) days' prior written notice to Barracuda; provided, however, that no refund shall be owed and Customer is obligated to pay any remaining Fees owing for the remainder of the then-current Hosted Service Term within thirty (30) days of the effective date of the termination.

13.6. Professional Services; Statements of Work. The term of each SOW will be as set forth in the applicable SOW. If no term is expressed in a SOW, then the term of that SOW will begin upon commencement of the Professional Services and will continue until the Professional Services described in that SOW are complete or the SOW is earlier terminated as set forth herein. Unless otherwise stated in a SOW, Customer may terminate a SOW at any time for its convenience by providing at least thirty (30) days' prior written notice to Barracuda; provided, however, that no refund will be owed and Customer is obligated to pay any amounts owing for Professional Services and Deliverables provided or performed under that SOW up to and including the date of termination.

13.7. Effect of Termination. Except for termination of this Agreement by Barracuda for Customer's breach, no termination of this Agreement shall impact any active Subscription, Hosted Service, Support Services or SOW that extends beyond such termination, and this Agreement shall continue to govern and be effective until expiration or termination of such Subscription, Hosted Service, Support Services or

SOW. The provisions of Section 4 ("Payment Terms"), Section 10 ("Waiver of Consequential Damages and Limitation of Liability"), Section 11 ("Export and Compliance with Laws"), Section 12 ("Confidential Information"), Section 14 ("Governing Law, Venue and Dispute Resolution"), and [Schedule 2](#) ("Limited Warranty") and any other terms which by their nature should survive termination shall survive termination of this Agreement.

14. Governing Law, Venue and Dispute Resolution.

14.1. GOVERNING LAW AND VENUE. THESE TERMS AND THE USE AND PROVISION OF PRODUCTS WILL BE GOVERNED SOLELY BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO: (A) ANY CONFLICTS OF LAW PRINCIPLES THAT WOULD APPLY THE SUBSTANTIVE LAWS OF ANOTHER JURISDICTION TO THE PARTIES' RIGHTS OR OBLIGATIONS; (B) THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS; OR (C) OTHER INTERNATIONAL LAWS. THE PARTIES CONSENT TO THE PERSONAL AND EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

14.2. DISPUTE RESOLUTION . IF CUSTOMER LIVES IN THE UNITED STATES, THIS SECTION CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IT AFFECTS CUSTOMER'S RIGHTS REGARDING HOW TO RESOLVE ANY DISPUTE CUSTOMER MAY HAVE WITH BARRACUDA. PLEASE READ IT CAREFULLY.

The parties will attempt to resolve any claim, 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 Barracuda Materials, 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, content and 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.

15. Permission to Use Logo. 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.

16. Changes to Products. Barracuda reserves the right at any time to modify, suspend or discontinue providing the Products or any part thereof and to alter prices, features, Specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases in its sole discretion, without prior notice.

17. 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.

18. Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and this Agreement will not be construed in favor of or against either party by reason of authorship. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

19. Force Majeure. Except with respect to payment of Fees, neither party 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. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

21. Notices. Barracuda 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 Barracuda at 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, Waiver and Assignment.

22.1. 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. If any term or condition in this Agreement conflicts with any term or condition in any Order, invoice or similar supplementary document submitted by Customer, the term or condition set out in this Agreement shall prevail. Unless otherwise expressly and mutually agreed in writing by the parties, under no circumstances shall any Order, invoice or similar supplementary document issued by Customer in connection with the Products supersede the terms of this Agreement. Any such documentation shall be solely for Customer's internal business purposes, and in no event shall any terms and conditions, or other charges of any such document modify or become a part of this Agreement or become binding on Barracuda, even if signed by Barracuda.

22.2. Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

22.3. 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.

Schedule 1: Software Use and Restrictions

In addition to the General Terms, the following terms govern Customer's use of the Software.

- 1. License Grant.** Subject to the terms of the Agreement and payment of all Fees, Barracuda grants Customer, for the duration of the applicable term, a

nonexclusive and revocable license to use the Software solely for Customer's internal business purposes. Barracuda reserves all rights not expressly granted to Customer. The rights granted are limited to the Software and do not include any other patent or Intellectual Property Rights. Barracuda retains ownership of the Software and all Intellectual Property Rights contained therein. If the Software has been licensed for evaluation use only, Customer may not use the Software in a production environment, or beyond the term of the evaluation license.

2. **Permitted Uses.** This Agreement allows Customer to use the Software only on the single Hardware device on which the Software was Delivered or on other hardware that meets the requirements set forth in the Software Specification. In addition, use of the Software shall be limited, as applicable and as set forth in Barracuda's price list, quote, user Documentation and website, to a maximum number of: (a) seats (i.e., users with access to use the Software); (b) concurrent users, sessions, ports and/or issued and outstanding IP addresses; (c) usage volume; or (iv) central processing unit cycles or instructions per second.
3. **Restrictions on Software Rights.** Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform or sublicense the Software; (b) use the Software for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Software; (c) reverse engineer, decompile, disassemble or otherwise attempt to derive any of the Software's source code; (d) make copies of the Software, other than one backup copy solely as necessary to use the Software in accordance with the Agreement; (e) transfer, rent, lease, lend or sublicense the Software or allow a third party to do so or otherwise transfer the Software or any of its rights and obligations under this Agreement; (f) utilize or run the Software on more computers than the number of licenses that were purchased; (g) operate the Software in a fashion that exceeds the capacity or capabilities that were purchased; (h) develop, disclose, publish or otherwise make publicly available any benchmarks, measurements, performance or comparison tests or other reports on the Software; (i) interfere with, disrupt the integrity or performance of, or attempt to gain unauthorized access to the Software, their related systems or networks or any third party data contained therein; (j) use the Software in any manner not authorized by the published Specifications for the applicable Software; (k) duplicate the Software, except for making a reasonable number of archival or backup copies, provided that Customer reproduces in its copy the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to Customer; or (l) sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Software.
4. **Automatic Installation of Updates.** Barracuda regularly makes Software and firmware Updates available to Customers with an active Support Service entitlement in order to correct errors, update configuration or prevent issues. To

the extent possible within the specific Product, these are automatically installed unless Customer opts out in the system configuration.

5. **Documentation Usage.** Customer may reproduce the Documentation as reasonably necessary to support internal use of the Software.
6. **Method of Delivery.** Barracuda shall provide the Software to Customer, through a system of electronic download or via other media, in its discretion.
7. **Software Audit.** During the Term of this Agreement, and at any time during the two (2) years thereafter, Barracuda may audit Customer's use of Software on thirty (30) days' advance written notice. Customer shall cooperate with the audit, including by providing access to any books, computers, records or other information that relate to its use of the Software. Such audit shall not unreasonably interfere with Customer's business activities. If Barracuda discovers unauthorized use, reproduction, distribution or other exploitation of the restrictions for the Software, and such unauthorized use exceeds five percent (5%), then Customer shall reimburse Barracuda for the reasonable cost of the audit, or of the next audit in case of discovery without an audit, in addition to such other rights and remedies that Barracuda may have. Barracuda may not conduct an audit more than once per year unless it reasonably believes Customer, its affiliate or an authorized user has engaged in any unauthorized use, reproduction, distribution or other exploitation of the Software.
8. **Open Source Licensing.** Products may include programs that are covered by the GNU General Public License (GPL), The Lesser General Public License (LGPL) or other open source license agreements, in particular the Linux operating system. The Software does not constitute an edited version or further development of the operating system. These programs are copyrighted by their authors or other parties, and the authors and copyright holders disclaim any warranty for such programs. Barracuda owns the copyright in other programs.

Schedule 2: Limited Warranty

In addition to the General Terms, the following Warranty terms will apply.

Barracuda warrants the Products only to the original Customer as follows:

1. **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, the price paid by the Customer for the defective Hardware will be refunded by Barracuda upon return of the defective Hardware 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.

2. **Software Warranty.** For Software, Barracuda warrants to Customer that, for ninety (90) days from the Delivery of the Software, the Software will perform substantially in accordance with the applicable Specification. In addition, to Barracuda's knowledge, at the time of Delivery the Software is free from what are commonly defined as viruses, worms, spyware, malware and other malicious code that may potentially hamper performance of the Software. Barracuda's sole obligation shall be to correct the non-conforming Software. If Barracuda determines, in its reasonable discretion, that a material non-conformance is incapable of correction, Barracuda will provide the Customer with a pro-rata refund of the price paid for the non-conforming Software. The license granted with respect to any Software for which a refund has been given automatically terminates immediately upon refund.
3. **Services Warranty.** Barracuda warrants to Customer that Services will be performed in a professional manner in accordance with industry standards for like services. Customer shall notify Barracuda within thirty (30) days of any non-conformity and Customer's sole remedy for breach of this warranty is reperformance of the affected Services.
4. **Hosted Service Warranty.** Barracuda warrants to Customer that, during the Hosted Service Term, the Hosted Service will substantially conform in all material aspects to the then-current Specification. Customer shall notify Barracuda within thirty (30) days of any non-conformity, and Customer's sole remedy for breach of this warranty is that Barracuda will correct the non-conforming Hosted Service.
5. **Warranty Claims.** All warranty claims must be made to Barracuda within the applicable warranty period specified herein, if any. Replacement Hardware may consist of new or remanufactured parts that are equivalent to new. Customer will pay the shipping costs for return of Products to Barracuda. Barracuda will pay the shipping costs for repaired or replaced Products back to Customer.
6. **Exclusions.** The warranties stated in this Schedule shall not apply if a Product has: (i) been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Barracuda; (ii) been repaired or altered by persons other than Barracuda; (iii) not been installed, operated, repaired and maintained in accordance with the Documentation; (iv) been used with any third party software or hardware that has not been previously approved in writing by Barracuda; (v) been subjected to causes external to the Product such as, but not limited to, natural disasters, failure of electrical systems, fire or water damage; or (vi) has been relocated outside of the original ship-to country or transferred to a party other than the original Customer.

The Products are not intended for use with 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, and Barracuda makes no warranty and shall have no liability arising from any use of the Products in any high risk or strict liability activities.

7. **Remedies Exclusive.** The remedies stated in this Schedule are the Customer's sole and exclusive remedies, and Barracuda's sole obligations, with respect to Products that fail to comply with the foregoing warranties.
8. **Disclaimer of Warranties.** Barracuda provides no warranty regarding, and will have no responsibility for, any claim arising out of: (i) a modification of the Product made by anyone other than Barracuda, unless an authorized Barracuda representative approves of such modification in writing; or (ii) use of the Product in combination with any operating system not authorized in the Specifications or with hardware or software specifically forbidden by the Specifications. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ALL PRODUCTS, DOCUMENTATION AND DELIVERABLES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER. BARRACUDA AND ITS SUPPLIERS EXPRESSLY DISCLAIM, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. BARRACUDA ALSO MAKES NO WARRANTIES REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS, AND MAKES NO WARRANTY THAT PRODUCTS DOCUMENTATION OR DELIVERABLES WILL BE ERROR-FREE. IN NO EVENT SHALL BARRACUDA BE LIABLE FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST DATA), HOWEVER CAUSED WHETHER OR NOT BARRACUDA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE SOLE REMEDY FOR ANY BREACH OF ANY OR ALL OF THE FOREGOING WARRANTIES SHALL BE REPAIR, REPLACEMENT OR REFUND OF THE COST OF ANY NON-CONFORMING PRODUCT(S).

Schedule 3: Hosted Services

In addition to the General Terms, the following terms govern Customer's use of Barracuda Hosted Services.

1. Use of the Hosted Service. Neither Customer nor those that access a Hosted Service through Customer may use a Hosted Service:

- (i) To copy or upload files or information unless Customer has a legal right to the files or information;
- (ii) To probe, scan or test the vulnerability of any system, or attempt to circumvent any security or authentication measures;
- (iii) To access, tamper with or use non-public areas of the Barracuda cloud, or attempt to access or search the Barracuda cloud through nonpublic interfaces;
- (iv) To attempt to disrupt any user or network by sending a virus, malware, overloading, flooding, spamming, mail-bombing or otherwise interfering with the use of other users;
- (v) To send unsolicited communications, promotions or advertisements, or spam;
- (vi) To send bulk email, including unsolicited bulk e-mail or unsolicited commercial e-mail;
- (vii) To attempt to access another user's account;
- (viii) To send altered, deceptive or false source-identifying information, including "spoofing" or "phishing";
- (ix) To publish anything that is fraudulent, misleading or infringes a third party's rights;
- (x) To misrepresent itself or an affiliation with an entity;
- (xi) To publish or share materials that are offensive, defamatory or unlawful;
- (xii) In a way that is prohibited by law, regulation, governmental order or decree;
- (xiii) To violate the rights of others;
- (xiv) To try to gain unauthorized access to or disrupt any service, device, data, account or network;
- (xv) In a way that could harm the Hosted Service or impair anyone else's use of it; or
- (xvi) In any application or situation where failure of the Hosted Service could lead to death or serious bodily injury, or to severe physical or environmental damage.

Violation of the terms in this section may result in suspension or cancellation of the Hosted Service. Barracuda may provide reasonable notice before suspending a Hosted Service.

2. Technical Limitations. Customer must comply with, and shall not work around, any technical limitations in a Hosted Service that restrict a Customer's use of the Hosted Service. Customer may not download or otherwise remove copies of Software or source code from a Hosted Service.

3. Non-Barracuda Products. Barracuda may make non-Barracuda products available to Customer through Customer's use of the Hosted Services. If Customer installs or uses any non-Barracuda product with a Hosted Service, Customer's use of such non-Barracuda product is subject to third party license terms only and Customer may not use such non-Barracuda product in any way that would subject Barracuda's intellectual property or technology to additional obligations. For Customer's convenience, Barracuda may include charges for the non-Barracuda product as part of Customer's bill for Hosted Service. Barracuda, however, assumes no responsibility or liability whatsoever for non-Barracuda products. Customer is solely responsible for any non-Barracuda product that it installs or uses with a Hosted Service.

Schedule 4: Additional Terms for Security Awareness Training

In addition to the General Terms, the following terms govern Customer's use of the Security Awareness Training Service.

1. If Customer has purchased training, the following additional terms apply:

1.1. License Grants and Restrictions.

1.1.1. Use of Barracuda Materials. Subject to the restrictions and limitations contained in this Agreement, the Product license granted by Barracuda to Customer in the Agreement shall include a license to use the Barracuda Materials for Customer's own internal business training purposes during the Term, and any subsequent renewal terms, as defined in the Order.

1.1.2. Modifications and Derivative Works. Customer shall not have the right to utilize the Barracuda Materials to modify or create its own custom training materials including, but not limited to, combining Barracuda Materials with content developed by Customer or another third party.

1.2. Restrictions. Customer expressly acknowledges and agrees that its license for the use of the Barracuda Materials is intended for Customer's own internal training and business purposes. This use includes all Customer affiliated companies. Customer shall not use the Barracuda Materials to provide consulting services to any third party, operate as an independent contractor or service bureau to any third party, certify any third party, or otherwise sell, license, sublicense, disseminate, disclose or otherwise make public the Barracuda Materials to any third party.

1.3. No Circumvention. Customer acknowledges and agrees that the intent of the license granted in this Section 1 is to enable Customer to train its own employees and contract personnel. Accordingly, Customer agrees that it will not use, or knowingly allow others to use, the Barracuda Materials for the purpose of creating similar training materials or programs, and Customer shall not furnish any information, data or copies of Barracuda Materials to any third party to assist in the creation or design of training materials or programs.

1.4. Trademark and Copyright Notices and Disclaimers. In using the Barracuda Materials, Customer will ensure that it identifies Barracuda as the owner of the Barracuda Materials and Customer shall not remove, cover up or alter any trademark, trademark notice, copyright notice or other similar disclaimer. All rights not expressly granted herein are reserved by Barracuda.

2. If Customer has purchased the Security Awareness Training Outlook plugin, the following addition terms also apply:

2.1. License Grant. Barracuda grants to the Customer, during the Term, and any subsequent renewal terms, a non-exclusive, perpetual, limited license to Use the Security Awareness Training Plugin. “Use” means storing, copying, loading, installing, executing, modifying or displaying the Security Awareness Training Plugin on an unlimited number of computers solely for Customer’s own internal business purposes. Customer acknowledges and agrees that Barracuda shall not have any duty or obligation to provide Customer with any updates, modifications, bug fixes or support with respect to the Security Awareness Training Plugin.

2.2. Restrictions. Customer may not disable any licensing or control features of the Security Awareness Training Plugin. Customer shall only access the source code for the Security Awareness Training Plugin for the limited purpose of testing and inspecting the operation of the Plugin. Except for open source code used in connection with the installation kit for the Security Awareness Training Plugin, Customer acknowledges that the source code for the Security Awareness Training Plugin, and any modifications made to the Security Awareness Training Plugin source code by Customer, shall be and remain proprietary and confidential to Barracuda. Customer shall not transfer, disclose or otherwise provide any third party with copies of the Security Awareness Training Plugin or any modifications to the Security Awareness Training Plugin source code.

2.3. Ownership. Apart from open source code used in connection with the installation kit, the Security Awareness Training Plugin is owned and copyrighted by Barracuda. The license set forth in this Agreement does not grant Customer any rights, title or ownership in or to the Security Awareness Training Plugin. This Agreement shall not constitute a sale of any rights in the Security Awareness Training Plugin.

3. If Customer has purchased Simple Message Services (SMS), the following addition terms also apply:

If Customer contracts with Barracuda to provide Products that utilize SMS/texting, automated or manual telephone calls, or similar telecommunications technology, Customer shall be solely responsible for obtaining prior approval from the owner of any device that may receive such messages from Barracuda in strict compliance with the Telephone Consumer Protection Act of 1991 (TCPA) or any similar law or regulation in any country; and Customer shall be solely responsible for, and shall indemnify Barracuda from, any charges or fees charged by any carrier to Customer or the device owner.

Schedule 5: Support Services Terms

In addition to the General Terms, the following terms govern Customer's use of the Barracuda Support Services.

This Schedule sets forth the terms and conditions under which Barracuda will provide Customer with Support Services.

1. Technical Support Options.

1.1. Support Service Benefits. Barracuda's Energize Update Support Service includes the following benefits based on the level of technical support purchased by Customer:

Features	Basic	Enhanced	Premium
Barracuda Energize Updates	Required	Required	Required
Barracuda Instant Replacement	Recommended	Required	Required
Term	1, 3, or 5 years	1, 3, or 5 years	1, 3, or 5 years
Barracuda Networks models supported	All models	All models	6xx and above
Support Operation Hours	M-F 9 am - 5 pm phone support 24/7 email support	24/7 phone and email support	Dedicated 24/7 phone and email support
Firmware maintenance	√	√	√
Access to beta programs	√	√	√
Data migration for replacement unit(s)		√	√
Hard disk (RAID) replacement		√	√
Hardware refresh 4yr program		√	√
Live Transfer to Dedicated Support Technician			√
Support Case Prioritization			√
Priority escalation to resolve critical issues			√
Priority Level Agreements (PLAs)			√
Dedicated Account Manager			√
Monthly Account Manager Calls			√

Monthly Support Case Report			√
Dedicated Technical Support Engineering Team			√
Proactive ticket evaluation			√
Dedicated Premium Email Alias			√
Root cause analysis upon customer request			√
Issues updated upon request			√
Configuration review upon request			√

Barracuda reserves the right to modify the Support Services offered at any time, but no such modification will go into effect until the end of the then-current Support Term. Support Service offerings may vary by Product and geography. Please refer to the [Support Plans and Packages Website](#) for the most current Support Services descriptions.

1.2. Phone Support. Barracuda will handle any problem involving Products over the telephone or email.

2. Hardware Support Options.

2.1. Instant Replacement Timeframes. For Customers residing in the United States, Barracuda will use commercially reasonable efforts to ship Customer a new Product within twenty-four (24) hours of Barracuda's confirmation that replacement Hardware is required. For Customers residing outside the United States, Barracuda will use commercially reasonable efforts to ship Customer a replacement Product via express mail within one (1) business day of Barracuda's confirmation that replacement Hardware is required. In some regions, Customer may be required to purchase Instant Replacement at the time of Product purchase.

2.2. Additional Instant Replacement Terms:

2.2.1. In some regions, after four (4) continuous years of Instant Replacement service, Customer will receive a replacement unit at no additional charge.

2.2.2. Instant Replacement must be purchased within sixty (60) days of initial order of the system to be covered.

2.2.3. For Hardware not under an active Instant Replacement entitlement, Customer may, with prior approval, return the defective Hardware and Barracuda will repair the Hardware at an additional cost.

3 Exclusions. The following are expressly excluded from the Support plans:

3.1. Repair or replacement of Products that is required as a result of causes other than normal use, including without limitation:

- (i) Repair, maintenance or modification of the Product by persons other than Barracuda's authorized personnel;
 - (ii) Accident or negligence by the Customer;
 - (iii) User error or misuse of the Product; or
 - (iv) Causes external to the Product including, but not limited to, failure of electrical systems, fire, water damage, hardware failure, operation system software failure or any other damage and failure not caused by Barracuda.
- 3.2. Maintenance or technical services for any third party software or hardware, where such third party software or hardware was not provided by Barracuda.

Schedule 6: Professional Services Terms

In addition to the General Terms, the following terms govern Customer's purchase and use of Professional Services.

1. **Rates and Payment.** Professional Services will be billed on a time and materials basis at the rate set forth in the applicable Statement of Work. If an hourly rate is specified, Customer will pay for each hour of Professional Services or portion thereof. If a flat rate is specified, Customer will pay at the rate specified in the applicable SOW. In addition to labor fees, Customer is responsible for all travel and out-of-pocket expenses related to the Professional Services. Travel expenses include lodging, train fare, airfare, parking, tolls and mileage. Shipping expenses, if any, are the sole responsibility of Customer. Shipping expenses include freight charges from Barracuda to the staging area, freight charges from the staging area to the Customer site, overnight courier charges for replacement components, cables, etc. Professional Services may be provided in a number of ways, including on-site, telephone, and/or remote support. The Professional Services may include work performed on Barracuda equipment or third-party equipment. Barracuda will submit invoices for Professional Services fees upon completion of the Professional Services. Payment on each invoice is due within thirty (30) days of the date of such invoice. Barracuda will have the right to use subcontractors to perform all or part of the Professional Services, as it deems appropriate.
2. **Change Orders.** In order to add or change any terms or conditions of these Professional Services Terms, a written change order signed by both parties ("**Change Order**") is required. Barracuda will prepare all Change Orders. The parties must mutually agree to all Change Orders. Pending such agreement, Barracuda will continue to perform and be paid as if such Change Order had not been requested or recommended.

3. **Deliverables and Acceptance.** Upon completion of the Professional Services, Customer shall have five (5) days to verify that the Professional Services and Deliverables provided substantially conform to the terms of the SOW. Customer must notify Barracuda of its non-acceptance within such five (5) day period. Any notification of non-acceptance will include a reasonably detailed description of the reasons for such non-acceptance. Barracuda shall have thirty (30) days from the date of such notification to rectify the problem, following which Customer shall have another five (5) day period to review the applicable Professional Services or Deliverables. In the event that Customer either (a) does not notify Barracuda of any non-acceptance during the relevant five (5) day period, or (b) confirms its acceptance of the applicable Professional Services or Deliverables, in writing within the relevant five (5) day period, the applicable Professional Services or Deliverables shall be deemed accepted. Notwithstanding the foregoing, the acceptance criteria or procedures for Deliverables set forth in any SOW will only apply to the Professional Services provided.
4. **License and Ownership.** Barracuda retains all right, title and interest in and to all Deliverables created hereunder. Upon Customer's acceptance of a Deliverable and receipt by Barracuda of payment in full, Barracuda grants Customer a non-exclusive, perpetual, non-transferable license to use such Deliverable solely for its internal purposes. Customer's license confers no title or ownership in the Deliverable and will not be construed as a sale of any rights in the Deliverable or the media on which it is recorded or printed. All copyrights and other Intellectual Property Rights existing prior to the date of performance of Professional Services shall belong to the party that owned such rights immediately prior to the date of performance of Professional Services. Neither party shall gain, by virtue of this Agreement, any rights of ownership, patents, trade secrets, trademarks or any other Intellectual Property Rights owned by the other. Barracuda shall own all copyright, patents, trade secrets, trademarks and other Intellectual Property Rights, title and interest in or pertaining to any techniques, know-how, software, inventions, processes, data, design, diagrams, documentation and all other information and materials created by Barracuda in performing the Professional Services hereunder.

Schedule 7: Data Privacy

In addition to the General Terms, the following data privacy terms apply.

Barracuda is committed to helping protect the security of Customer Data. Barracuda has implemented, and will maintain and follow, appropriate technical and organizational measures intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss or destruction.

At Barracuda, we understand the importance of our customers' personal and business data, and we take steps to secure and protect it whenever it is stored in our cloud or other infrastructure.

Barracuda's policies regarding data ownership and protection are focused on providing its customers with confidence that their data remains secure and under their control. Barracuda has established a number of measures to ensure that its customers and their data are treated in a manner consistent with privacy principles.

1. Data Privacy Practices.

1.1. Data Processing. Barracuda processes personal and business data in accordance with the GDPR and other applicable laws. To the extent Barracuda processes personal data on behalf of Customer as a Processor, as defined by the GDPR, it shall do so only in accordance with Customer's instruction and the Data Processing Addendum located online [here](#).

1.2. Privacy Policy. Please refer to Barracuda's Privacy Policy located online at <https://www.barracuda.com/legal/privacy> for information regarding how Barracuda uses, transfers and shares information collected by or provided to it.

1.3. Subprocessors. Barracuda may engage the [other entities](#) to carry out specific processing activities on behalf of its customers or for data center facility management activities.

1.4. Customer Access to and Deletion of Data. Barracuda will retain Customer Data and information for so long as there is an active relationship unless otherwise prohibited by law. After expiration or termination of a Hosted Service or Subscription, Barracuda will disable Customer's account and may delete Customer Data in its discretion or as required by law.

1.5. California Consumer Privacy Act (CCPA). Please refer to Barracuda's [CCPA Service Provider Attestation](#).

1.6. Barracuda Trust Center. For additional information on Data Privacy and Security Practices, please visit our Trust Center located online at <https://www.barracuda.com/company/legal/trust-center>.

2. Information Security Controls.

2.1. Information Security Management.

2.1.1 Barracuda shall have a security policy that explicitly addresses and provides guidance to employees and non-employee workers to ensure the security and confidentiality of Customer Data and systems maintained or processed by Barracuda.

The policies shall be endorsed and backed by senior management and provide for, and clearly state, the appropriate ramifications for noncompliance.

2.1.2 Barracuda shall have resources to foster and focus on information security and compliance efforts. Barracuda will provide Customer, upon request, with contact details for Barracuda's compliance representative.

2.1.3 Barracuda shall have information security policies ("ISP") in place that provides a framework for information security management within its organization. The ISP shall include, at a minimum, Barracuda's ISP, and Barracuda's incident escalation procedures.

2.2. Personnel Practices.

2.2.1 Signed Confidentiality Agreements. Barracuda shall ensure that non-disclosure and/or confidentiality agreements are signed by all of its employees, non-employee workers, consultants, temporary workers and other persons ("**Barracuda Resources**") who may have access to Customer Data.

2.2.2 Training in Security Practices. Barracuda shall cause Barracuda Resources to be made aware of, and be required to adhere to, its security policies.

2.3. Physical Security Controls. Barracuda shall have physical security controls in place to protect systems and facilities that contain any Customer Data including, at a minimum:

(i) Limiting access to premises and facilities (including, without limitation, the general working areas and computer installations) to authorized individuals;

(ii) Availability of adequate power;

(iii) Back up environmental controls such as heat ventilation and air conditioning systems; and

(iv) Adequate monitoring to protect computer installations.

2.4. Outsourcing. If Barracuda outsources activities or relies on third parties to fulfill IT or Security functions then the following shall be in place:

(i) Formal agreements that require security controls employed by the third party to be consistent with Barracuda's security practices and subject to non-disclosure agreements; and

(ii) That Barracuda conducts third party reviews to assess the third party's security.

2.5. Audit/Security Reviews.

2.5.1 Barracuda periodically conducts audits, assessments, testing of the system of controls and testing of information security procedures for all of Barracuda's systems that contain any Customer Data. These periodic audits will be conducted at least annually through either (a) an internal yet independent function of Barracuda employees; or (b) an external independent auditor that is engaged by Barracuda.

2.5.2 Barracuda ensures that its security controls align to the NIST framework and maintains externally validated SOC 2 Reports as listed online at <https://www.barracuda.com/company/legal/trust-center>. The SOC 2 Report on Barracuda's systems addresses security and more specifically that the system is protected against unauthorized access (both physical and logical).

3. Security Incident Notification(s). If Barracuda becomes aware of any unlawful access to any Customer Data stored on Barracuda's equipment or in Barracuda's facilities that results in the loss, disclosure or alteration of Customer Data (each a "**Security Incident**"), Barracuda will promptly: (a) notify Customer of the Security Incident; (b) investigate the Security Incident; and (c) take reasonable steps to mitigate the effects of, and minimize any damage resulting from, the Security Incident.

3.1. Security Incident notification(s) will be delivered to one or more Customer administrators by a means selected by Barracuda, including via email. It is Customer's sole responsibility to ensure that its administrators maintain accurate contact information on each applicable Hosted Services portal. Barracuda's obligation to report or respond to a Security Incident under this section is not an acknowledgement by Barracuda of any fault or liability with respect to a Security Incident.

3.2. Customer must notify Barracuda promptly of any possible misuse of its accounts or authentication credentials or any security incident related to a Hosted Service.

4. Barracuda Personnel. Barracuda personnel are granted access to Confidential Information and Customer Data only when necessary under management oversight. Barracuda personnel will use Confidential Information and Customer Data only for purposes compatible with providing Customer the Hosted Services, which can include customer support and troubleshooting the Hosted Service and are obligated to maintain the security and confidentiality of any Confidential Information and Customer Data. This obligation continues even after the end of a Customer's use of the Hosted Services.

5. Additional Information. Additional information about Barracuda's security and privacy practices is located at <https://www.barracuda.com/company/legal/trust-center>.

6. Reporting. If Customer has a concern related to the privacy or security of the information entrusted to Barracuda, please contact us. Customer may use Barracuda's privacy web form located online at: <https://www.barracuda.com/company/contact>, or send an email to legal@barracuda.com.

Schedule 8: Migration and Upgrade Credit Program Terms

The following terms and conditions apply to the Migration & Upgrade Credit Program ("Program"): Barracuda Networks provides a promotional discount for existing Customers when migrating or upgrading to a new Hardware, cloud, or virtual solution from an existing functionally similar Barracuda Product. The promotional discount is subject to the following terms.

1. The Product being replaced must be under a current, active Support Services subscription. A reinstatement fee for Support Services will be charged if the Support Term has lapsed on the Product being replaced.
2. Purchase of Support Services is required with a minimum Support Term of 12 months.
3. If Hardware is being replaced it must be returned to Barracuda within 60 days of the migration/replacement order date. Software that is being replaced can no longer be used following the migration. Failure to return Hardware or discontinue use of Software within this timeframe will result in additional charges to the Customer equal to the full amount of the migration promotion received.
4. Barracuda Networks reserves the right to reject any migration or upgrade request at its sole discretion.
5. Barracuda Networks reserves the right to terminate this Program at any time without notice.

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