

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
YOSEMITE TECHNOLOGIES, INC.	11/26/2008
RECEIVING PARTY DATA	
Name:	BARRACUDA NETWORKS, INC.
Street Address:	3175 S. WINCHESTER BLVD.
City:	CAMPBELL
State/Country:	CALIFORNIA
Postal Code:	95008
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	11847380
CORRESPONDENCE DATA	
Fax Number:	(415)446-0192
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	650 759-1207
Email:	PETER_GH_HWANG@PATENTRY.COM
Correspondent Name:	PATENTRY
Address Line 1:	P O BOX 151616
Address Line 4:	SAN RAFAEL, CALIFORNIA 94915
ATTORNEY DOCKET NUMBER:	YOSEMITE 11847380
NAME OF SUBMITTER:	PETER G.H. HWANG
Total Attachments: 8 source=yosemitelPRPurchase11262008#page1.tif source=yosemitelPRPurchase11262008#page2.tif source=yosemitelPRPurchase11262008#page3.tif source=yosemitelPRPurchase11262008#page4.tif source=yosemitelPRPurchase11262008#page5.tif	

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ASSET PURCHASE AGREEMENT

by and between

Barracuda Networks, Inc.

and

Yosemite Technologies, Inc.

dated November 26, 2008

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of November 26, 2008 (the "Effective Date") by and between Barracuda Networks, Inc., a Delaware corporation having its principal place of business at 3175 S. Winchester Blvd. Campbell, California 95008 ("Barracuda") and Yosemite Technologies, Inc., a Delaware corporation having its principal place of business at 111 W. Evelyn Avenue, Suite 202, Sunnyvale, California 94086 ("Yosemite"). Each of Barracuda, and Yosemite is a "Party" and together, the "Parties."

RECITALS

A. Yosemite is engaged in a business (the "Business," as defined below).

B. Yosemite desires to sell, and Barracuda desires to purchase selected assets, and assume selected liabilities of Yosemite associated with the Business on the terms and conditions set forth in this Agreement (the "Asset Acquisition").

C. Concurrent with the execution and delivery of this Agreement, and as a material inducement to Barracuda to enter into this Agreement Yosemite is entering into a Stock Restriction Agreement (the "Stock Restriction Agreement") substantially in the form attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

1. CONSTRUCTION AND DEFINITIONS

1.1 Definitions. The following capitalized terms have the meanings set forth below:

(a) "Affiliate" means any entity that controls, is controlled by or is under common control with a Party. An entity shall be regarded as in "control" of another entity, if it owns or possesses, directly or indirectly: (i) voting shares or other securities, representing more than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of the board of directors or similar managing authority of such controlled entity; or (ii) if such controlling entity does not have voting shares or other securities, more than fifty percent (50%) of the ownership interest that represents the right to make decisions, including the election of directors, for such controlled entity.

(b) "Inventory" means all inventory, merchandise, goods, works in progress and raw materials related to the Business, maintained, held or stored by or for Yosemite and any prepaid deposits for any of the same.

(c) "Business" means all operations and activities of Yosemite as currently conducted, including without limitation (i) the design, manufacture, marketing, and

sale of the Yosemite Products, (ii) technical support and maintenance of the Yosemite Products, and (iii) any other operations and activities of Yosemite related to the Transferred Assets.

(d) **"Closing Date"** has the meaning set forth in Section 3.1.

(e) **"Designated Employees"** means the individuals listed on Schedule

1.1(e).

(f) **"Yosemite Accounts Receivable"** means all indebtedness owing to Yosemite before the Closing Date a list of which is set forth in Schedule 1.1(f) hereto as of November __, 2008, and all documentary evidence of the same, including accounts and notes receivable checks, negotiable instruments, acceptances and chattel paper.

(g) **"Yosemite Books and Records"** means the books and records of Yosemite related to or used in the Business or necessary for the conduct of the Business by Barracuda from and after the Closing, including the sales records, customer lists and information, supplier lists and information, Yosemite Product records, distributor and other sales information, financial or personnel records, copies of Transferred Agreements, copies of policies and procedures regarding marketing and customer support.

(h) **"Yosemite BU-Products"** means Backup Products, the Software for which consists in significant part of proprietary Product Software code delivered by Yosemite to Barracuda under this Agreement.

(i) **"Yosemite Intellectual Property Rights"** all Intellectual Property Rights owned or transferable by Yosemite as of the Closing Date.

(j) **"Yosemite Products"** means all of Yosemite's products, including all versions of such products and all products under development. Without limiting the foregoing, Yosemite Products includes the products listed on Schedule 1.1(j) hereto.

(k) **"Yosemite Tangible Assets"** means all tangible assets, including Technology, fixed assets and other capital assets, owned or transferable by Yosemite as of the Closing Date, the material items of which are described on Schedule 1.1(k). "Yosemite Tangible Assets" specifically include all copies and versions of the Product Software in both source code and object code form, the Yosemite Products, and any inventory of the foregoing. Further, the Technology included within the Yosemite Tangible Assets specifically includes (i) all Technology that is used in, related to or necessary for the operation of the Business, except as set forth in Section 6.5(b) of the Disclosure Schedule, and (ii) all know how and other Technology known by any Designated Employees, whether or not such Technology was reduced to any tangible media on or prior to the Closing Date.

(l) **"Exploit"** or **"Exploitation"** means with respect to any Technology, process or product, to make, have made, use, sell offer for sale, import, make derivative works from, perform, copy, disclose, distribute or otherwise exploit in any manner such product or Technology (or derivative thereof) or practice such process (or derivative thereof), as the case may be.

- (m) "**Excluded Assets**" means the assets listed on **Schedule 1.1(m)**.
- (n) "**Excluded Liabilities**" has the meaning set forth in **Section 2.3(b)**.
- (o) "**Governmental Entity**" means any court, administrative agency or commission or other federal, state, county, local or foreign governmental authority, instrumentality, agency or commission.
- (p) "**Intellectual Property Rights**" means the rights associated with the following: (i) all United States and foreign patents and applications therefor ("**Patents**"); (ii) all trade-secret rights and all other rights in or to confidential business or technical information; (iii) all copyrights, copyright registrations and applications therefor and all other rights corresponding thereto throughout the world ("**Copyrights**"); (iv) trademarks, service marks, trade dress rights and similar designation of origin and rights therein ("**Marks**"); (v) all proprietary rights in industrial designs and all registrations and applications therefor; (vi) all rights in databases and data collections (including knowledge databases, customer lists and customer databases); (vii) all proprietary rights in Software; (viii) all rights to uniform resource locators, web site addresses and domain names; and (ix) any similar, corresponding or equivalent rights to any of the foregoing.
- (q) "**BU-Products**" means complete, operational software products that are specifically adapted, marketed and sold for purposes of data backup and recovery.
- (r) "**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind whatsoever in respect of such asset.
- (s) "**Loss**" has the meaning set forth in **Section 9.2**.
- (t) "**Person**" means an individual, partnership, corporation, limited liability company, association, joint venture, trust, unincorporated organization or Governmental Entity.
- (u) "**Product Software**" means all Software, in both object and source code form, that is included in or part of any version of the Yosemite Products, including the Software listed on **Schedule 1.1(i)** and all versions thereof, and including any Software derived from such Software or from which such Software is derived.
- (v) "**Purchase Consideration**" has the meaning set forth in **Section 3.3**.
- (w) "**Registered IPR**" means Intellectual Property Rights that are the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any private, state, government or other public or quasi-public legal authority at any time.
- (x) "**Securities Act**" means the Securities Act of 1933, as amended.

(ii) "**Key Employees**" means the individuals listed on **Schedule 1.1(e)** under the heading "Key Employees".

1.2 **Construction.**

(a) For purposes of this Agreement, whenever the context requires: the singular number will include the plural, and vice versa; the masculine gender will include the feminine and neuter genders; the feminine gender will include the masculine and neuter genders; and the neuter gender will include the masculine and feminine genders.

(b) The Parties hereto agree that they have had the opportunity to discuss this Agreement with and obtain advice from their legal counsel, have had sufficient time to, and have carefully read and fully understand all the provisions of this Agreement, and are knowingly and voluntarily entering into this Agreement. Therefore, the Parties waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."

(d) Except as otherwise indicated, all references in this Agreement to "Sections" and "Schedules" are intended to refer to Sections of this Agreement and Schedules to this Agreement.

(e) The headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement.

2. **PURCHASE AND SALE**

2.1 **Transferred Assets.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Yosemite agrees to sell, convey, transfer, assign and deliver to Barracuda, and Barracuda agrees to purchase from Yosemite irrevocably and in perpetuity (except only as provided herein), all rights, title and interest in and to all tangible and intangible assets of Yosemite other than the Excluded Assets (collectively the "**Transferred Assets**"), free and clear of all Liens other than Assumed Liabilities, including the following:

(a) all Yosemite Tangible Assets;

(b) all Yosemite Intellectual Property Rights, including the right to pursue past damages based on third-party infringement of the Yosemite Intellectual Property Rights, and also including the goodwill of the Business appurtenant to the Marks included in the Yosemite Intellectual Property Rights;

(c) **Excluded Liabilities.** Barracuda shall not be liable to any Person for any of the Excluded Liabilities hereunder, including but not limited to any employment related liabilities other than those specifically identified on Schedule 2.3(a).

3. CLOSING

3.1 **Closing.** The closing of the transactions contemplated by this Agreement (the "**Closing**") shall be held as promptly as practicable, but no later than five (5) business days after the conditions to close identified in Section 3.2 have been met or waived. The closing will take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304, at 5:00 p.m. November 30, 2008, or at such other place and time as the Parties may mutually determine. The date on which the Closing actually occurs is referred to in this Agreement as the "**Closing Date**."

3.2 **Closing Responsibilities and Conditions to Close.**

(a) **Deliveries.** At or prior to the Closing:

(i) Yosemite shall make available to Barracuda all of the Transferred Assets at the facilities set forth on Schedule 3.2(a)(i) or at such other place(s) and times as the Parties may mutually agree in writing, and subject to the remaining provisions of this Section 3.2.

(ii) Yosemite shall to the extent practicable, deliver all Software within the Transferred Assets to Barracuda by electronic means in a manner that Barracuda reasonably specifies;

(iii) Yosemite shall deliver (A) fully executed documents in a form reasonably satisfactory to Barracuda to confirm the conveyance and assignment of the Yosemite Intellectual Property Rights to Barracuda, (B) one or more fully executed bills of sale in the form of Exhibit B hereto (the "**Bill of Sale**"), and (C) other transfer documents reasonably requested by, and in a form reasonably satisfactory to, Barracuda.

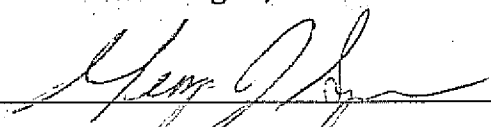
(iv) Each of Yosemite and Barracuda shall deliver a duly executed copy of the Stock Restriction Agreement.

(v) Barracuda shall deliver all other documents, agreements, certificates or writings required to be delivered by Barracuda on or prior to the Closing Date pursuant to this Agreement or as may be reasonably requested by Yosemite in order to consummate the transactions contemplated by this Agreement.

(b) **Product Software.** With respect to each item of Product Software for which a Copyright registration in the current version has not been obtained prior to Closing, Yosemite's delivery of the Product Software under Section 3.2(a) shall additionally include the source code for the Product Software in a form acceptable to Barracuda for filing by Barracuda with the United States Copyright Office.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

Yosemite Technologies, Inc.

By: 

Name: George J. Symons

Title: CEO

Barracuda Networks, Inc.

By: 

Name: Dean Drako

Title: CEO

Schedule 6.6(a)
Intellectual Property Registered IPR

Patent Application Number 11/599,746 (YOSM.P001) is currently in the patent office. As of May 2008 the status is that it has been docketed to an Examiner. We do not have a scheduled time for the first office action yet, but estimate that we should receive one in the next 6-8 months.

Patent Application Number 11/949,123 is currently in the patent office, filed 12/3/2007. We are awaiting first office action.

Patent Application Number 11/847,380 is currently in the patent office, filed 8/30/2007. We are awaiting first office action.

Trademarks are defined in the attached file Yosemite Global Trademarks.pdf