

## MENLO SECURITY TERMS OF SERVICE

### **1. SERVICES AND SUPPORT**

1.1 Menlo Security, Inc. ("Menlo") provides its cyber security products and services, which may include software, hardware and/or hosted subscription services (collectively "Service(s)") to you ("Customer") pursuant to these Terms of Service (the "Agreement"). By entering into a Services order form (or other ordering document) or Services-related agreement with Menlo or one of its channel partners (each an "Order Form") or otherwise registering for, accessing or using the Services, Customer unconditionally accepts and agrees to all of the terms of this Agreement. By entering into this agreement on behalf of a company or other legal entity, Customer represents that it has the authority to bind such entity and its affiliates to the terms of this Agreement, and, accordingly, the terms "Customer" shall refer to such entity and its affiliates. If Customer does not have such authority, or Customer does not agree to all of the terms of this Agreement, Customer may not use the Services. Subject to the terms of this Agreement, Menlo will use commercially reasonable efforts to provide Customer (a) the Services solely for Customer's internal business operations in accordance with the terms and limitations of each Order Form, and (b) reasonable support services, through electronic mail, telephone, or another online mechanism, in accordance with Menlo's standard practice. Capitalized terms not defined herein shall be given the meaning set forth in the applicable Order Form.

1.2 Menlo reserves the right to change or modify portions of this Agreement at any time. If Menlo does so, it will post the changes on this page and will indicate at the top of this page the date this Agreement was last revised. Menlo will also notify Customer, either through the Services user interface, in an email notification or through other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after being posted, except that changes addressing new functions of the Services or changes made for legal reasons may become effective immediately. Customer's continued use of the Service after the date any such changes become effective constitutes acceptance of the new Agreement.

1.3 From time to time, Customer may be invited to try certain services at no charge for a free trial or evaluation period or if such services are not generally available to customers (collectively, "Evaluation Services"). Evaluation Services will be designated as beta, pilot, evaluation, trial, limited release or the like. Evaluation Services are for Customer's internal evaluation purposes only and not for production use, are not considered "Services" under this Agreement, are not supported, are provided "as is" without warranty of any kind, and may be subject to additional terms. Unless otherwise stated, any Evaluation Services trial period will expire 60 days from the trial start date. Menlo may discontinue Evaluation Services at any time in its sole discretion and may never make them generally available.

Menlo will have no liability for any harm or damage arising out of or in connection with any Evaluation Services.

### **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will only use the Services as expressly permitted herein and in the applicable Order Form and agrees that it will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Menlo or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; remove any proprietary notices or labels; or modify, adapt or hack the Services, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks. With respect to any Software (in any form) that is provided to Customer, Menlo hereby grants Customer a non-exclusive, non-transferable, non-sub-licensable license to use such Software solely internally in connection with the Services and for no other purpose. All Software is Confidential Information of Menlo and subject to the terms of Section 3.

2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Menlo's standard published policies and codes of conduct then in effect (the "Policy") and all applicable laws and regulations (including, without limitation, those relevant to privacy, spam, intellectual property and the like). Customer hereby agrees to indemnify and hold harmless Menlo against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of any of the foregoing or otherwise from Customer's use of Services. Although Menlo has no obligation to monitor Customer's use of the Services, Menlo may do so and may prohibit any use of the Services (or disable content or data) it believes may be (or alleged to be) in violation of the foregoing or any other term of this Agreement.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

### **3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Menlo includes all Software and other non-public information regarding features, functionality and performance of the Service. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by its prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Menlo shall own and retain all right, title and interest in and to (a) the Services and Software, and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Services or support, and (c) all intellectual property rights related to any of the foregoing. Notwithstanding anything to the contrary, Menlo shall have the right collect and analyze data and information relating to the use and performance of various aspects of the Services and related technologies (including, without limitation, IP addresses, URLs, network traffic information and the like), and Menlo will be free (during and after the term hereof) to (i) use such information and data to provide, improve and enhance the Services and other Menlo offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. Further, Menlo shall have the right to use Customer's name in a factual manner for marketing or promotional purposes on Menlo's website and in other communication with existing or potential Menlo customers. To decline Menlo this right, Customer must email Menlo (at the email address provided in the Service) stating that Customer does not wish to grant Menlo this right. No rights or licenses are granted except as expressly set forth herein.

### **4. PAYMENT OF FEES**

4.1 Customer will pay Menlo (or its channel partner, if applicable) the then applicable fees for the Services as described in the relevant Order Form (or in the Service itself, as applicable) in accordance with the terms therein (the "Fees"). All Fees are non-cancelable and non-refundable regardless of any early termination of this Agreement. If Customer's use of the Services exceeds any applicable limits set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner

provided herein. Menlo reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Menlo has billed Customer incorrectly, Customer must contact Menlo no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Menlo's customer support department

4.2 Menlo may also choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Menlo thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Menlo's net income.

### **5. TERMINATION**

5.1 Subject to earlier termination as provided below, this Agreement is for the Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Service Term (collectively, the "Term"), unless either party requests termination at least forty-five (45) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement and such breach is not cured during the notice period. Menlo may also reasonably suspend Customer's and/or any users' access to Services at any time in its reasonable discretion if it possesses a good faith belief that Customer's use of the Service may be in violation of this Agreement or otherwise place Menlo (or its customers or other interests) at risk of harm, damage, loss or liability. Upon termination, Customer's right to use the Services shall immediately terminate, all outstanding Fees due for the Services for the entire Services Term (regardless of any early termination) shall immediately become due and payable, Customer shall return (or at Menlo's option destroy) all Software and Services-related hardware in its possession, and each party shall return to the other all Proprietary Information. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, all rights to payment of Fees, confidentiality obligations, warranty disclaimers, and limitations of liability.

### **6. WARRANTY AND DISCLAIMERS**

Menlo shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either

by Menlo or by third-party providers, or because of other causes beyond Menlo's reasonable control, but Menlo shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, MENLO DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND MENLO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## **7. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, MENLO AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND MENLO'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES RECEIVED BY MENLO FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT MENLO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **8. GOVERNMENT MATTERS**

Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent

with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

## **9. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sub-licensable by Customer except with Menlo's prior written consent. Menlo may transfer and assign any of its rights and obligations under this Agreement without consent. Except to the extent the parties have mutually executed and delivered a separate written agreement covering the same Menlo Services (a "Separate Signed Agreement"), this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. In the event of a conflict between the terms of this Agreement and the terms of a Separate Signed Agreement, the terms of the Separate Signed Agreement shall supersede and control. However, any different or additional terms of any purchase order, confirmation, or similar pre-printed form will have no force or effect. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Menlo in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

