

# Terms and Conditions

Atvik Security, LLC (as applicable, “Atvik Security”) is willing to provide certain services to you as the individual, the company, or the legal entity (referenced below as “You” or “Your” or “Customer”) that enters into a written quotation, work order, statement of work or similar document with Atvik Security that references these terms and conditions (hereinafter, this “Agreement”) only on the condition that you accept all of the terms of this Agreement. Read the terms and conditions of this Agreement carefully before purchasing any services from Atvik Security. This is a legal and enforceable contract between You and Atvik Security. By entering into a written quotation, statement of work or similar document with Atvik Security that references the agreement below, you agree to the terms and conditions of this Agreement. If you enter into a separate written agreement with Atvik Security for the services, then the terms of that separate written agreement, including attached Schedules, shall apply and this Agreement shall have no effect.

## GENERAL TERMS

### 1. DEFINITIONS

1.1. *Content* means any of Customer’s data gathered through the provision of the Offering or made available by Customer to Atvik Security for use in connection with the Offering. Depending on the Offering, this data may be stored within the Customer’s environment, within the Atvik Security environment, or a combination of both.

1.2 *Offering* means the Software, Cloud-Hosted Software, Managed Services, Professional Services and any other products and/or services indicated on the applicable Ordering Document.

1.3 *Ordering Document* means Atvik Security’s order form or other ordering document signed or referenced by Customer and Atvik Security or its authorized partner which identifies, as applicable, the specific Offering ordered, the Volume Limitations, the billable cloud resources, overage options, the Term, tiers and the price agreed upon by the parties.

1.4 *Schedule* means the specific terms and conditions related to the Offering that supplement this Agreement.

1.5 *Service(s)* means the consulting, testing, managed, or other services described in an SOW or other Ordering Document that Atvik Security provides.

1.6 *Term* means the period of time set forth in the applicable Ordering Document during which Services may be performed.

1.7 *Volume Limitations* means the capacity indicated on the Ordering Document, including unique assets, applications, number of scans, number of billable cloud resources, gigabytes, or workflows, as applicable.

## **2. USE OF OFFERING**

2.1. *Atvik Security Offering.* Atvik Security retains ownership of all right, title, and interest in and to all intellectual property in and about the Offering including the Documentation, modifications and derivative works thereto including all rights to patent, copyright, trade secret, trademark, and other proprietary or intellectual property rights.

2.2. *Customer Systems.* Customer represents and warrants that (a) it has the appropriate authorizations from the owner of the networks, systems, IP addresses, assets, and/or hardware on which it deploys the Offering(s), or which it targets, scans, monitors, or tests with the Offering(s), and (b) Customer has obtained all necessary rights to permit Atvik Security to collect and process Content from Customer, including, without limitation, data from endpoints, servers, cloud applications, and logs.

2.3. *Use by Affiliates.* Customer may make the Offering(s) available to its Affiliates under these terms, provided that Customer is liable for any breach of this Agreement by any of its Affiliates. "Affiliate(s)" means any entity now existing that is directly or indirectly controlled by Customer. For purposes of this definition, "control" means the direct possession of a majority of the outstanding voting securities of an entity.

## **3. FEES; PAYMENT TERMS**

3.1 If Customer purchases the Offering through a Atvik Security authorized partner, then terms regarding invoicing, fees, and taxes shall be as set forth between Customer and partner and the applicable fees shall be paid directly to such partner and section 3.2 shall not apply.

3.2 Customer agrees to pay the fees, charges and other amounts in accordance with the applicable Ordering Document. Atvik Security will invoice Customer upon execution of an Ordering Document or the reference to an Ordering Document in a Customer's purchase order, unless otherwise agreed by the parties. Customer shall be responsible for remitting all taxes levied on any transaction under this Agreement, including, without limitation, all federal, state, and local sales taxes, levies and assessments, and local withholding taxes in Customer's jurisdiction, if any, excluding, however, any taxes based on Atvik Security's income. In the event Customer is required to withhold taxes from its payment or withholding taxes are subsequently required to be paid to a local taxing jurisdiction, Customer is obligated to pay such tax, and Atvik Security, as applicable, will receive the Ordering Document payment amount as agreed to net of any such taxes. Customer shall provide to Atvik Security written evidence that such withholding tax payment was made.

3.3 All fees are non-refundable and non-cancellable unless otherwise stated herein or in the applicable Ordering Document. In the event an Ordering Document requires travel by Atvik Security to a Customer designated site, Customer shall also reimburse Atvik Security for all reasonable out-of-pocket expenses incurred by Atvik Security in connection with delivery of the Offering.

## **4. CONFIDENTIALITY, PRIVACY, AND SECURITY**

4.1 Confidential Information. “Confidential Information” means information provided by one party to the other party which is designated in writing as confidential or proprietary, as well as information which a reasonable person familiar with the disclosing party’s business and the industry in which it operates would know is of a confidential or proprietary nature. A party will not disclose the other party’s Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party’s Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party’s Confidential Information in the same manner as it protects its own Confidential Information, but in no event with less than reasonable care. The parties expressly agree that the terms and pricing of this Agreement are Confidential Information. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

4.2 Exclusions. Information will not be deemed Confidential Information if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party’s Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process, or government regulation, provided that, unless prohibited from doing so by law enforcement or court order, the receiving party gives the disclosing party reasonable prior written notice, and such disclosure is otherwise limited to the required disclosure.

4.3 Content. To the extent that Atvik Security processes personal data about any individual in the course of providing the Offering, Customer agrees to Atvik Security’s Data Processing Agreement, located at <https://www.atviksecurity.com/legal/dpa/>. Customer retains ownership of all rights, title, and interest in and to all Content, and Customer is solely responsible for all Content. Atvik Security does not guarantee the accuracy, integrity, or quality of such Content. Except as provided in this Agreement, Customer shall be solely responsible for providing, updating, uploading, and maintaining all Content, as applicable. Atvik Security may use Content solely as necessary to: (i) provide the Offering to Customer; (ii) generate statistics and produce reports in anonymized and aggregated form that does not or cannot be used to identify Customer or any Content; and (iii) collect data and analytics about use of the Offering in order to continue to improve the development and delivery of the Offering.

4.4 Data Security. Atvik Security shall implement appropriate technical and organizational measures to protect Content from accidental or unlawful destruction, loss, or alteration, unauthorized disclosure of, or access to Content. Such measures may include, as appropriate (a) the encryption of Content; (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems and services; (c) a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of Content.

## 5. WARRANTIES

EXCEPT FOR THE WARRANTIES IN THIS AGREEMENT OR AS SET FORTH IN THE SCHEDULE(S), ATVIK SECURITY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ATVIK SECURITY MAKES NO WARRANTY THAT ALL SECURITY RISKS, INCIDENTS, OR THREATS WILL BE DETECTED OR REMEDIATED BY USE OF THE OFFERINGS OR THAT THERE WILL NOT BE FALSE POSITIVES.

## 6. INDEMNIFICATION

6.1 *By Atvik Security.* Atvik Security will indemnify Customer from and against all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") arising out of a third party claim alleging that the Offering infringes or misappropriates any intellectual property rights of such third party. Notwithstanding the foregoing, in no event shall Atvik Security have any obligations or liability under this Section arising from: (i) use of any Offering in combination with materials not furnished by Atvik Security, and (ii) any content, information, or data provided by Customer or other third parties. If the Offering is or is likely to become subject to a claim of infringement or misappropriation, then Atvik Security will, at its sole option and expense, either: (i) obtain for the Customer the right to continue using the Offering; (ii) replace or modify the Offering to be non-infringing and substantially equivalent to the infringing Offering; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Atvik Security, then Atvik Security may terminate Customer's rights to use the infringing Offering and will refund pro-rata any prepaid fees for the infringing portion of the Offering. THE RIGHTS GRANTED TO CUSTOMER UNDER THIS SECTION SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE OFFERING OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.

6.2 *By Customer.* Customer will indemnify, defend, and hold harmless Atvik Security from and against all Losses arising out of a third party claim regarding: (i) Customer's violation of any representations and warranties made in Section 2.2 of this Agreement; or (ii) Customer's violation of applicable law.

## 7. LIMITATION OF LIABILITY

7.1 *Exclusion of Certain Damages.* **NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE.**

7.2 *Limitation on Amount of Liability.* **NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THE RELEVANT OFFERING DURING THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY, EXCEPT THAT THE LIMITATION IN THIS SECTION 7.2 SHALL NOT APPLY TO: (I) VIOLATIONS OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS BY THE OTHER PARTY; OR (II) A PARTY'S EXPRESS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT.**

## **8. TERM AND TERMINATION**

8.1 Term. The Term of each Offering will be as set forth on the Ordering Document. The Term will automatically renew for the same period of time as the initial Term at the rate listed on the applicable Ordering Document unless (i) otherwise indicated on the Ordering Document or (ii) either party provides the other with written notice of its election not to renew at least 30 days prior to the end of the applicable Term. Any renewal will be invoiced at the rate indicated on the applicable Ordering Document. In connection with any renewal term, Atvik Security reserves the right to change the rates, applicable charges and usage policies and to introduce new charges for any subsequent Term, upon providing Customer written notice thereof (which may be provided by e-mail) at least 60 days prior to the end of the applicable Term.

8.2 Termination. Either party may terminate this Agreement or any Ordering Document (i) in the event of a material breach of this Agreement or any such Ordering Document by the other party that is not cured within thirty days of written notice thereof from the other party, (ii) immediately in the event of an incurable, material breach, or (iii) immediately if the other party ceases doing business, or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding that is not dismissed within sixty days of filing. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive such termination.

8.3 Effect of Termination. Upon any termination or expiration of this Agreement or any applicable Ordering Document, Atvik Security shall no longer provide the applicable Offering to Customer and Customer must cease using the Offering and send no further Content to Atvik Security. Termination of this Agreement or an Ordering Document shall not relieve Customer of its obligation to pay all fees that have accrued or have become payable by Customer hereunder. Customer agrees that following termination of Customer's account and/or use of the Offering, Atvik Security may immediately deactivate Customer's account and that following a reasonable period not to exceed 90 days, shall be entitled to delete Customer's account and all Content.

## **9. GENERAL PROVISIONS**

9.1 Offering-Related Professional Services. To the extent Customer purchases Professional Services, or Professional Services are included in the Offering, Customer may reschedule the Professional Services up to ten business days prior to the start of the Professional Services at no cost. If Customer reschedules the Professional Services with less than ten business days' notice, Customer will forfeit the portion of the Professional Services equal to the number of days that were rescheduled without the required notice. If Customer reschedules the Professional Services after they have begun, Customer will forfeit five days of Professional Services, or the number of days remaining on the Professional Services, whichever is fewer. Customer will also be responsible for any out-of-pocket expenses incurred by Atvik Security due to such rescheduling. If performance of the Professional Services is delayed by Customer's acts or omissions, including Customer's failure to meet the requirements set forth in an SOW, Customer will forfeit the duration of such delay from its Professional Services time. Customer will have twelve months from the date of order to use or schedule any Professional Services, after which time any remaining, unscheduled Professional Services time will be forfeited.

9.2 Atvik Security Personnel. Atvik Security shall have sole discretion in staffing the Services and may assign the performance of any portion of the Services to any subcontractor, except that Customer may request the use of Atvik Security personnel in any Ordering Document or at the time Customer schedules the Services. In the event that Atvik Security subcontracts any portion of the Services, Atvik Security shall be fully responsible for the acts and omissions of any such subcontractor.

9.3 Miscellaneous. (a) This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of California (for customers located in North America), or England & Wales (for customers located outside of North America), each excluding its respective choice of law provisions and each party consents and submits to the jurisdiction and forum of the state and federal courts in the State of California (for customers located in North America) or London, England (for customers located outside of North America) all questions and controversies arising out of this Agreement and waives all objections to venue and personal jurisdiction in these forums for such disputes; (b) this Agreement, along with the accompanying Schedules, Addenda, and Ordering Document(s) constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral; (c) this Agreement and each Ordering Document may not be modified except by a writing signed by each of the parties; (d) in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement but rather this Agreement shall be construed as if such invalid, illegal, or other unenforceable provision had never been contained herein; (e) Customer shall not assign its rights or obligations hereunder without Atvik Security's advance written consent; (f) subject to the foregoing subsection (e), this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their successors and permitted assigns; (g) no waiver of any right or remedy hereunder with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion; (h) nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, including but not limited to any of Customer's own clients, customers, or employees; (i) the headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement; (j) terms in an Ordering Document have precedence over conflicting terms in this Agreement or Schedules, but have applicability only to that particular Ordering Document; (k) the terms in a Schedule have precedence over conflicting terms in this Agreement, but have applicability only to that particular Schedule; and (l) this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.4 Injunctive Relief. Notwithstanding any other provision of this Agreement, both parties acknowledge that any breach of this Agreement may cause the other party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, the parties agree that, in addition to any other remedy to which a party may be

entitled hereunder, at law or equity, each party shall be entitled to seek an injunction to restrain such use in addition to other appropriate remedies available under applicable law.

**9.5 Relationship of the Parties.** Atvik Security and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties, or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

**9.6 US Government Restricted Rights.** This Section applies to all acquisitions of the Offering by or for the U.S. Federal Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the Federal Government for the Government's end use. The Offerings are "commercial items" as that term is defined at FAR 2.101. If Customer is an Executive Agency (as defined in FAR 2.101) of the U.S. Federal Government ("Government"), Atvik Security provides the Offering, including any related technical data and/or professional services in accordance with the following: If a right to access the Offering is procured by or on behalf of any Executive Agency (other than an Executive Agency within the Department of Defense (DoD)), the Government is granted, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to Atvik Security's customers as such rights are described in this Agreement. If a right to access the Offering is procured by or on behalf of any Executive Agency within the DoD, the Government is granted, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software that are customarily provided to Atvik Security's customers as such rights are described in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data provided by Atvik Security to an Executive Agency within the DoD. Note, however, that Subpart 227.72 does not apply to computer software or computer Offering documentation acquired under GSA schedule contracts. Except as expressly permitted under this Agreement, no other rights or licenses are granted to the Government. Any rights requested by the Government and not granted under this Agreement must be separately agreed in writing with Atvik Security. This Section 9.6 of the Agreement is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in the Offering.

**9.7 Force Majeure.** Other than payment obligations hereunder, neither party will be liable for any inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (including, but not limited to, natural disaster, act of war or terrorism, riot, global health crisis, acts of God, or government intervention), except for mere economic hardship, so long as the party continues to use commercially reasonable efforts to resume performance.

**9.8 No Reliance.** Customer represents that it has not relied on the availability of any future feature or version of the Offering or any future product or service in executing this Agreement or purchasing any Offering hereunder.

9.9 Publicity. Customer acknowledges that Atvik Security may use Customer's name and logo for the purpose of identifying Customer as a customer of Atvik Security Offerings. Atvik Security will cease using Customer's name and logo upon written request.

9.10 Notices. Unless specified otherwise herein, (i) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (ii) notice will be deemed given: (a) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (b) when verified by automated receipt or electronic logs if sent by email. When sent by email, notices to Atvik Security must be sent to [contact@atviksecurity.com](mailto:contact@atviksecurity.com).

9.11 Compliance with Law. Each party agrees to comply with all applicable federal, state, and local laws and regulations including but not limited to export law, and those governing the use of network scanners, vulnerability assessment software products, encryption devices, user monitoring, and related software in all jurisdictions in which systems are scanned, scanning is controlled, or users are monitored.

## **OFFERING-SPECIFIC TERMS**

### **SCHEDULE A: PROFESSIONAL AND MANAGED SERVICES**

This Professional and Managed Services Schedule (the "Services Schedule") governs the terms and conditions in connection with the subscription to and use of Atvik Security Professional and Managed Services as defined herein. In the event of a conflict between this Services Schedule and the Agreement, this Services Schedule will prevail with respect to the Professional and Managed Services only.

#### **1. SERVICES DEFINITIONS**

1.1 *Deliverables* means the draft or final reports that are created for Customer as a result of the Services provided hereunder, unless otherwise defined in the individual SOW.

1.2 *Managed Services* means Services where Atvik Security manages an aspect of Customer's business for the term and scope indicated in an SOW. Managed Services may include Atvik Security operating or subscribing to software on Customer's behalf.

1.3 *Professional Services* means Services where Customer engages Atvik Security to perform specific, identified tasks, either at specific dates and times, or retained for a period of time in order to perform them as needed.

1.4 *SOW* means: (i) mutually agreed upon statement of work, or scope of work, scope of service, or service brief that sets forth and describes the Services to be provided hereunder, the applicable fees to be paid, and as applicable, any delivery schedules, timelines, specifications, and any other terms agreed upon by the parties; or (ii) Atvik Security Ordering Document which identifies the Services ordered; in each case as signed or referenced by Customer or its authorized partner.

#### **2. SERVICES**



2.1 Services. Customer may order Services from Atvik Security through an SOW. Atvik Security shall provide Customer the Services as specified in such SOW. All changes to an SOW must be approved by both parties in writing. Atvik Security will not invoice Customer for any Services beyond those contained in the SOW without the prior written consent of Customer.

2.2 Deliverables. Customer retains all right, title, and interest in and to Content and Customer Confidential Information. In addition, Customer shall own all right, title and interest to the Results obtained by Customer through Customer's use of the Services. For purposes of this Services Schedule, "Results" shall mean the data based on Content resulting from Customer's use of the Service, but does not include any dashboards for displaying results, report templates or other components of the Service used by Atvik Security. Atvik Security owns all right, title, and interest in and to Atvik Security's trade secrets, its Confidential Information, or other proprietary rights in any material used by Atvik Security or presented to Customer, whether such was developed prior to the Services, independent of this Agreement, or in performance of the Services (each, "Atvik Security IP"), including but not limited to, documentation, software, designs, inventions, discoveries, specifications, improvements, tools, models, know-how, methodologies, analysis frameworks, and report formats. Customer will have a perpetual, royalty-free, worldwide, non-exclusive, non-transferable license to use any Atvik Security IP incorporated into any Deliverable, for Customer's internal business purposes only, upon Customer's payment in full of all undisputed amounts due hereunder. Atvik Security may incorporate the Atvik Security IP in future releases of any of its products or services, provided Content or Customer Confidential Information is not included in any Atvik Security IP.

2.3 Managed Services. To the extent Managed Services include any Atvik Security software, Customer is granted a license to such Software subject to the applicable license terms. Such license will be for the Term of the Managed Services only.

2.4 Services Warranty. Atvik Security warrants that the Services will be provided with reasonable skill and care conforming to generally accepted industry standards, and in conformance in all material respects with the requirements set forth in the SOW. Customer must report any deficiency in the Services to Atvik Security in writing within fifteen business days of delivery or performance of the portion of the Services containing the deficiency. For any breach of the above warranty, Atvik Security will, at its option and expense, either (a) use commercially reasonable efforts to provide remedial services necessary to enable the Services to conform to the warranty, or (b) refund pro-rata amounts paid for the non-conforming Services. Customer will provide reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty. Termination of an SOW will not terminate the Agreement.