



Effective 01 January 2020
SSH Standard Terms and Conditions for Tectia SSH Services

1. APPLICABILITY

SSH Communications Security, Inc. (below referred to as “Licensor”) agrees to provide certain consulting, training and customer specific development services (“Services”) as defined in the respective SOW documents executed between Licensor and Licensee under the following terms and conditions (“Standard Terms and Conditions for Services”).

2. DEFINITIONS

The following capitalized terms shall have the following meanings:

“Documentation” shall mean all written or electronic documentation provided by Licensor to Licensee related to the Services;

“Deliverable” shall mean delivery of software that is developed/customized specifically for the Licensee, as well as the delivery of other services and items relating thereto, described and agreed in the respective SOW;

“Effective Date” shall mean the date of the execution of the respective SOW;

“Licensee” shall mean a person or entity which has executed the SOW with Licensor;

“Milestone” shall mean milestones defined in the respective SOW and describing the scope of the Licensor’s contribution to the project, including resource and time estimates;

“Product(s)” shall mean the Tectia SSH software in machine-readable binary code.

“SOW” shall mean a Statement of Work document defining the related consulting, training and customer specific development services to be provided by Licensor to Licensee.

3. PRICES

Licensee shall pay to Licensor the prices for the Services as agreed in the respective SOW (“Service Fee(s)”).

Unless the Parties agree to a specific deduction in writing, the Licensee shall pay the Service Fee(s) for the Services to Licensor with no setoffs or deductions whatsoever.

4. TAXES AND MISCELLANEOUS CHARGES

Any taxes and duties (including but not limited to custom duties, import/export duties, stamp duties, value added tax, consumption tax, withholding tax and sales tax) imposed in the country in which the Services are delivered will be borne by Licensee (collectively “Taxes”).

Any miscellaneous costs including but not limited to banking charges, currency conversion charges and/or delivery costs (collectively “Miscellaneous Costs”) will be borne by Licensee.

If Licensor pays any Taxes and/or Miscellaneous Costs, then such amount shall be added to the price of the Services and Licensee shall reimburse Licensor for all such Taxes and/or Miscellaneous Costs within fifteen (15) business days following its receipt of documentation evidencing Licensor’s payment thereof.

5. TERMS OF PAYMENT

Service Fee(s) for the Services shall be paid according to the respective SOW.

Licensee shall pay the Service Fee(s) within thirty (30) days of receipt of an invoice from Licensor.

Unless otherwise defined in the respective SOW all payments to Licensor shall be payable in United States Dollars (USD, \$).

If the Licensee fails to pay the Service Fee(s) by the due date specified above, Licensor shall be entitled without prejudice to any other right or remedy to charge interest at the rate of ten (10) percent per annum, or the maximum amount allowed by law, whichever is less, on overdue payments, until the date such payments are credited to Licensor’s bank account.

6. TITLE AND INTELLECTUAL PROPERTY

Licensee acknowledges and agrees that title to and ownership of the Services and Documentation (including but not limited to all copies thereof) are and shall remain with Licensor or their licensors.

Licensee also acknowledges and agrees that Licensor shall own all right, title and interest relating to any and all inventions, derivative works, modifications, new versions, works of authorship, mask works, designations, designs, materials, know-how, ideas and information made or conceived or reduced to practice, in whole or in part, as a re-



sult of or in connection to the Services including, but not limited to the Deliverables (collectively “Inventions”).

Nothing contained in these Standard Terms and Conditions for Services shall be construed as transferring any ownership, right or interest in the Services, Documentation and/or Inventions to Licensee. Licensee shall not receive any express or implied license or right under any patent, copyright, trademark, trade secret or other proprietary rights, except as expressly set forth in the SOW and/or these Standard Terms and Conditions for Services.

7. CONFIDENTIALITY

For the purposes of this Section confidential information (below referred to as “Confidential Information”) is defined as any information received by a Party (“receiving Party”) from the other Party (“disclosing Party”), whether before or after the Effective Date, which is marked or described by the disclosing Party in writing as being “Confidential”, “Secret” or “Proprietary”. The Parties specifically acknowledge that the Product(s) and Documentation, the source code of the Product(s), the Deliverable and the terms and conditions of these Standard Terms and Conditions for Services are Confidential Information.

The confidentiality obligation under this Section shall not cover knowledge which

- (i) was at the time of receipt published or otherwise generally available to the public;
- (ii) has after receipt by a Party been published or become generally available to the public otherwise than through any act or omission on part of the receiving Party;
- (iii) was lawfully in the possession of the receiving Party at the time of receipt without any restrictions on disclosure;
- (iv) was rightfully acquired from third parties without any undertaking of confidentiality imposed by such third parties;
- (v) was developed independently by the receiving Party without reference to the Confidential Information;
- (vi) is required by applicable law or regulation or by legal process to be disclosed, so long as the receiving Party provides the disclosing Party with prompt written notice of such requirement to enable the disclosing Party to seek an appropriate protective order. If no such order is obtained within a reasonable time, the receiving Party may, without liability hereunder, disclose such portion of the Confidential Information that on the advice of the receiving Party’s legal counsel is legally required to be disclosed.

Both Parties agree to maintain Confidential Information in confidence and shall use the same degree of care, but in no event less than reasonable care, to avoid disclosure of Con-

fidential Information as it uses with its own confidential and proprietary information of similar type and importance. Both Parties agree to disclose Confidential Information only to those of its employees and subcontractors who have a bona fide need to know solely for the purpose (and to the extent) of exercising its rights contemplated under these Standard Terms and Conditions for Services.

Any Confidential Information supplied by Licensor shall: (a) be used for the sole purpose of installing, using, evaluating and maintaining the Product(s); (b) not be used by the Licensee (or any other party) in a manner detrimental to Licensor’s interest; and (c) not be reproduced, used or disclosed to other parties by the Licensee without Licensor’s prior written consent. All Confidential Information supplied by Licensor is, and shall remain, Licensor’s property.

The obligations set forth in this Section shall remain in force for a period of five (5) years as of the date of disclosure of the Confidential Information in question, regardless of an earlier termination of these Standard Service Terms and Conditions for Services. Notwithstanding the foregoing, source code of the Product(s) shall be kept confidential indefinitely.

8. AMENDMENT

No changes or amendments to these Standard Terms and Conditions for Services shall be effective unless reduced to writing and signed by Licensor.

9. ASSIGNMENT

These Standard Terms and Conditions for Services will bind and inure to the benefit of each Party’s permitted successors and assigns. Licensee shall not, without the prior written consent of Licensor, assign or otherwise transfer its rights and obligations under these Standard Terms and Conditions for Services in whole or in part. Any attempt to assign these Standard Terms and Conditions for Services in derogation of this Section will be null and void.

Licensor may assign these Standard Terms and Conditions for Services to any of its Affiliates, and in connection with a sale of business to which these Standard Terms and Conditions for Services relates.

10. INDEPENDENT CONTRACTOR

Licensor and the Licensee are each engaged in an independent business. Each Party shall, at all times, perform its obligations as an independent contractor and not as the agent, franchisee, partner, employee or servant of the other Party. Each Party shall, at all times, be solely responsible for: (a) the employment, direction, supervision, compensa-



tion and discharge of its own employees, agents and subcontractors, including compliance with social security, withholding and all other regulations governing such matters; and (b) its own acts and those acts of its employees, agents and subcontractors.

11. CONTROLLING LAW

These Standard Terms and Conditions for Services shall be interpreted and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles. Further, the application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded and disclaimed.

12. SETTLEMENT OF DISPUTES

Any dispute, controversy or claim arising out of, relating to or in connection with these Standard Terms and Conditions for Services or the SOW, or the breach, termination or validity hereof or thereof, shall be determined by the American Arbitration Association ("AAA") arbitration in accordance with the AAA's Commercial Arbitration Rules ("the AAA Rules"). The number of arbitrators shall be three, unless otherwise agreed by the Parties. The place of arbitration shall be New York, State of New York. The language of the arbitration shall be English. In accordance with the AAA Rules, the arbitrators shall be entitled to award interim measures of relief, including but not limited to injunctive relief and measures for the protection or conservation of property. The arbitrators shall have the power to order an award of damages and to award injunctive relief. The prevailing party in the arbitration shall recover its costs of arbitration, including but not limited to its reasonable attorneys' fees. Either party shall have the right to file an action in the applicable Court of the State of New York for the sole purpose of enforcing the arbitration award.

Notwithstanding the above provisions of this Section, Licensor shall have the right to collect amounts owed by Licensee in any court having jurisdiction over Licensee.

13. FORCE MAJEURE

Licensor shall not be deemed to have breached any obligation under these Standard Terms and Conditions for Services if such breach results from causes that are beyond Licensor's reasonable control, including but without limitation to war (whether declared or not), acts of government or the European Union, export or import prohibitions, breakdown or general unavailability of transport, general shortages of energy, fire, explosions, accidents, strikes or other concerted actions of workmen, lockouts, sabotage, civil commotion and riots ("Force Majeure").

The Licensee shall not claim any damage or any other compensation from Licensor for delays or non-performance caused by Force Majeure.

14. WARRANTIES

Licensor shall perform the Services, and deliver the Deliverables to the Licensee, in accordance with the SOW and all other terms and conditions contained in this Agreement. Licensor will use all its best efforts to meet each Milestone in the SOW for delivering the Product and the Deliverables.

The Licensor represents and warrants that all Services shall be performed in a diligent, professional and workmanlike manner consistent with industry standards and shall be of a high grade, nature and quality.

LICENSOR MAKES NO OTHER WARRANTIES HEREUNDER, EITHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. LIMITATION OF LIABILITY

EXCEPT IN CASE OF A VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THESE STANDARD TERMS AND CONDITIONS TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOSS OF GOODWILL, LOST SAVINGS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF THE LIABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT IN CASE OF A VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, IF EITHER PARTY SHOULD BECOME ENTITLED TO CLAIM DAMAGES FROM THE OTHER PARTY UNDER THESE STANDARD TERMS AND CONDITIONS, THE LIABLE PARTY WILL BE LIABLE ONLY FOR THE AMOUNT OF THE OTHER PARTY'S ACTUAL DIRECT DAMAGES, NOT IN ANY CASE TO EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY LICENSEE FOR THE SERVICES TO WHICH THE LIABILITY RELATES.

The Parties agree that the limitations of liability set out in this Section are to be enforced to the maximum extent permitted by law, but will not be deemed to limit any liability to an extent that is impermissible under applicable law.



No action, regardless of form, arising out of any claimed breach of these Standard Terms and Conditions for Services may be brought by the Licensee more than one (1) year after the cause of action has accrued and in no case later than three (3) years after the delivery of the respective Services.

16. TERM AND TERMINATION

These Standard Terms and Conditions for Services shall be deemed to have been entered into on the Effective Date and shall remain in force until terminated as set below.

These Standard Terms and Conditions for Services may be terminated without cause by either Party with three (3) months' written notice to the other Party.

These Standard Terms and Conditions for Services may be terminated by the non-defaulting Party with immediate effect by written notice to the other Party in any of the following events:

- If the other Party becomes insolvent, is adjudged bankrupt or becomes the subject of dissolution, liquidation or bankruptcy proceedings that are not dismissed within ninety (90) days after they are instituted whether voluntarily or involuntarily or if the other Party applies for judicial or extra-judicial settlement with its creditors, makes an assignment for the benefit of creditors, or otherwise discontinues business;
- If the other Party is in breach or default of the material terms or conditions of these Standard Terms and Conditions for Services and/or related SOW and shall fail to remedy such breach or default within sixty (30) days of receipt of a written notice from the other Party asserting the breach or default.

17. ENTIRE AGREEMENT

Unless otherwise agreed in writing, these Standard Terms and Conditions for Services set forth all of the promises, agreements and conditions regarding its subject matter and supersedes all prior understandings (whether written, oral or otherwise) pertaining thereto and constitute the entire agreement between Licensor and the Licensee.

All Purchase Orders shall be fulfilled strictly in accordance with these Standard Terms and Conditions for Services. No other terms and conditions including, but not limited to the Licensee's own standard terms and conditions, shall apply, even if they are not specifically rejected by Licensor. These Standard Terms and Conditions for Services shall be regarded as accepted at the latest upon date of acceptance of the Purchase Order by Licensor.