



## Proof of Value - Terms of Use

These terms and conditions (“**Terms of Use**”) govern the use of the Tessian POV Services (as defined below) for proof of value purposes, unless a separate written agreement has been agreed to with Tessian for the purposes of the POV Services, in which case such agreement will prevail.

BY CLICKING ‘I ACCEPT’ YOU (i) AGREE TO THESE TERMS OF USE WHICH WILL FORM A BINDING CONTRACT BETWEEN TESSIAN AND THE ENTITY YOU REPRESENT (“**CUSTOMER**”); AND (ii) YOU REPRESENT AND WARRANT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS OF USE. IF YOU DO NOT AGREE TO THESE TERMS OF USE, OR YOU DO NOT HAVE THE POWER AND AUTHORITY TO ACT ON BEHALF OF AND BIND THE CUSTOMER, DO NOT PROCEED TO ACCEPT THESE TERMS OF USE OR CONTINUE WITH THE POV.

Tessian means Tessian Inc., where Customer is located in the United States or Tessian Limited, where Customer is located outside of the United States. Customer and Tessian are individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

### It is agreed:

#### 1. Definitions.

- 1.1 “**Agreement**” means these Terms of Use, the Specifications and the Data Protection Exhibit.
- 1.2 “**API**” means the connection created between Tessian and Customer’s primary email server for the purpose of Customer providing Customer Data to Tessian for Tessian to create a Historical Report.
- 1.3 “**Authorised Mailbox(es)**” means email accounts of Customer that are authorised by Customer to use the Services.
- 1.4 “**Customer Data**” means the data provided by or collected from or through Customer, Authorised Mailboxes or on Customer’s behalf for the purpose of using the POV Services or facilitating Customer’s use of the POV Services, including, for the avoidance of doubt, all Customer emails (including all their content and attachments) scanned by the POV Services, but excluding any Aggregated Data and de-identified Threat Data, as defined in Section 11.2.
- 1.5 “**Data Protection Exhibit**” means the [Data Protection Exhibit](#).
- 1.6 “**Device**” means any desktop, laptop computer, or mobile device used by an Authorised Mailbox for the internal business purposes of Customer.
- 1.7 “**Gateway**” means the email gateway which emails will be routed through and which will be configured by setting up a connector or routing agent on Customer’s primary email server.
- 1.8 “**Historical Report**” means a report of spear phishing attempts (for Tessian Defender), data exfiltration attempts (for Tessian Enforcer) and misaddressed emails (for Tessian Guardian) that Customer has experienced in the past based on an analysis of Customer’s historical email data (please note that we are unable to analyse email attachments in a Historical Report).
- 1.9 “**Intellectual Property Rights**” means all rights in any patent (including, patent applications and disclosures), copyrights, trade secrets, know-how and any other valid intellectual property rights.
- 1.10 “**POV Period**” means 14 days from the date of acceptance of these Terms of Use.
- 1.11 “**Reports**” means reports and documentation generated by Customer via the API or the Tessian portal.
- 1.12 “**POV Services**” means Tessian Defender, Tessian Enforcer, Tessian Guardian, Tessian Human Layer Risk Hub, Tessian HLS Intelligence and/or any other services that may be generally offered by Tessian from time to time.
- 1.13 “**Specifications**” means the [Tessian Products Specification](#).

#### 2. Grant of Right of Use.

- 2.1 Subject to Customer’s compliance with these Terms of Use, Tessian will provide, for the POV Period, POV Services to Customer and/or a Historical Report at no charge. The POV Services and/or a Historical Report will be provided in accordance with the Specifications. Tessian grants Customer a limited, non-exclusive, non-sublicensable, non-transferable right to use the POV Services for the POV Period and to use the POV Services, the Reports and the Historical Report for Customer’s internal business purposes only. No other license is granted by Tessian.
- 2.2 The POV Period may be extended by Tessian in writing (including email). Tessian reserves the right to modify the POV Services and terminate Customer’s use of the POV Services at any time and without notice.

### **3. Customer Obligations.**

- 3.1 In relation to the POV Services and/or the generation of the Historical Report, Customer will comply with these Terms of Use and any other instructions provided by Tessian from time to time. Customer will only use the POV Services as reasonably directed by Tessian and install the POV Services only on the agreed number of Authorised Mailboxes. Customer will install one copy of the Add-In (in object code format) in accordance with the Specifications on each Device used by each Authorised Mailbox or otherwise into Customer's remote environment, subject to any directions provided by Tessian. If it is agreed with Tessian that the POV Services will be delivered using the Gateway, Customer shall use/install the Gateway service, which Customer may configure by setting up a connector or routing agent on Customer's primary mail server, in accordance with Tessian's instructions. Customer will ensure the POV Services meet Customer's regulatory requirements and obligations, including those with regards to data privacy and employment laws.
- 3.2 In order for Tessian to produce the Historical Report, Customer permits Tessian access to Customer's relevant Office 365 or G Suite admin consoles for Tessian to view the Authorised Mailboxes identified by the Customer and to view the directory of the Customer's users.
- 3.3 Customer will not and will not allow any third party to: (i) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the POV Services; (ii) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the POV Services (as applicable) in any form or media or by any means except to the extent expressly permitted by these Terms of Use; (iii) access all or any part of the POV Services in order to build a product or service which competes with the POV Services; (iv) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the POV Services available to any third party; (v) use the POV Services in a manner that introduces any viruses, malicious code, or any other items of a harmful nature; or (vi) use the POV Services in any way that violates any applicable law or regulation.
- 3.4 Customer is solely responsible for the acts or omissions of any user of the POV Services through Customer or Customer's systems. Customer will notify Tessian promptly if it becomes aware of any unauthorized access or use.

### **4. Tessian Obligations.**

In providing the Historical Report, Tessian will upload copies of emails contained within Authorised Mailboxes from the previous 12 months and extract the relevant metadata required for analysis ("**Analysed Data**") to create the Historical Report from its analysis of the Analysed Data. Tessian does not store copies of original emails. Customer reserves the right to remove Tessian's access permissions at any time, although if such permissions are removed before the Historical Report is delivered, Customer agrees and understands that Tessian will not be able to produce the Historical Report.

### **5. Support.**

Tessian will provide support to Customer for installation and use for the POV Services. Tessian will use reasonable endeavours to respond to all Customer inquiries as soon as reasonably practicable.

### **6. Intellectual Property Rights.**

- 6.1 Tessian and its third party licensors own all right, title and interest in the POV Services and its underlying systems, and to the Intellectual Property Rights therein and nothing in these Terms of Use shall confer in Customer any right of ownership. Notwithstanding any provision to the contrary, nothing in these Terms of Use is intended to limit Customer's liability in the event of Customer's misappropriation or violation of Tessian's Intellectual Property Rights.
- 6.2 Tessian will own the Historical Report and grants Customer the right to use it in its assessment of whether to purchase any Tessian services.
- 6.3 Notwithstanding the above, Customer will continue to own all rights in the emails and the Analysed Data.

### **7. Disclaimer of Warranties.**

THE POV SERVICES AND HISTORICAL REPORT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TESSIAN DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE POV SERVICES. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW. THE HISTORICAL REPORT (I) IS FOR INFORMATION PURPOSES ONLY, (II) RELIES ON PREVIOUS TYPICAL PATTERNS AND BEHAVIOURS, (III) DOES NOT REFLECT ALL EMAIL DATA OR ALL RECENT OR EMERGING PATTERNS AND BEHAVIOURS, (IV) IS INTENDED FOR USE AS AN AID TO THE CUSTOMER IN MAKING AN INFORMED JUDGMENT.

### **8. Indemnification.**

Tessian agrees to (i) defend Customer and its respective officers, directors, employees, contractors, agents, and licensors from

and against any third-party claim that the Customer's use of the POV Services misappropriates or violates a third party's Intellectual Property Rights (an "IP Claim"); and (ii) subject to Section 9 below, indemnify the Customer for any amount (including reasonable legal fees and other reasonable costs of defense) finally awarded against Customer in judgment of any IP Claim.

#### 9. Limitation of Liability.

EXCEPT TO THE EXTENT THAT A DISCLAIMER OF LIABILITY IS PROHIBITED UNDER APPLICABLE LAW, IN NO EVENT WILL TESSIAN, ITS AFFILIATES AND ITS LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS BE LIABLE UNDER THE AGREEMENT FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF CUSTOMER'S USE, OR INABILITY TO USE, THE POV SERVICES, INCLUDING ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE. TESSIAN WILL USE REASONABLE ENDEAVOURS TO PRODUCE THE HISTORICAL REPORT, BUT SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS OR EXPENSES SUFFERED OR INCURRED BY THE CUSTOMER DUE TO ANY DELAY OR FAILURE TO PRODUCE THE HISTORICAL REPORT. AS THE POV SERVICES AND HISTORICAL REPORT ARE PROVIDED WITHOUT CHARGE, AS FAR AS PERMITTED BY APPLICABLE LAW, TESSIAN'S MAXIMUM AGGREGATE LIABILITY TO THE CUSTOMER ARISING OUT OF OR IN CONNECTION WITH THE PROVISION OF THE POV SERVICES AND/OR PRODUCTION OF THE HISTORICAL REPORT (WHETHER FINALISED OR NOT) UNDER THE AGREEMENT SHALL BE LIMITED TO £10,000 (OR \$10,000 FOR CUSTOMERS BASED IN THE USA).

NOTWITHSTANDING THE TERMS OF ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY'S LIABILITY IS EXCLUDED OR LIMITED BY THE AGREEMENT IN THE EVENT OF: (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (B) FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY WHICH MAY NOT LAWFULLY BE EXCLUDED OR LIMITED.

#### 10. Confidentiality.

To the extent that confidential and proprietary information of a Party ("**Confidential Information**") is exchanged and received in connection with these Terms of Use, the receiving Party agrees to maintain the confidential nature of the Confidential Information of the disclosing Party in its possession, notwithstanding that they may disclose the Confidential Information to its or, its affiliates', employees or independent contractors on a need to know basis and provided terms are in place which are no less stringent than those contained in this Section. Receiving Party will take reasonable steps to protect such Confidential Information from unauthorized use, access and disclosure; such steps shall be at least equal to those taken by the receiving Party to protect its own Confidential Information. Confidential Information does not include: (i) information that was publicly available at the time of disclosure or that becomes publicly available other than by a breach of this provision by the receiving Party; (ii) information previously known by or developed by the receiving Party without use of or access to the Confidential Information of the disclosing Party; or (iii) information that the receiving Party rightfully obtains without restrictions on use and disclosure. The receiving Party may disclose Confidential Information of the disclosing Party in accordance with a judicial, government or agency order or law, provided that the receiving Party required to make such disclosure shall, to the extent permitted, provide the disclosing Party with reasonable prior notice of such disclosure and shall comply with any applicable protective order or equivalent that applies to such disclosure. The receiving Party shall be liable to the disclosing Party for any breach of the receiving Party's confidentiality obligations committed by any person or entity to whom the receiving Party is permitted to disclose the Confidential Information of the disclosing Party pursuant to this Section.

#### 11. Data Protection.

- 11.1 All personal data shall be processed in accordance with Tessian's [Privacy Policy](#) and the [Data Protection Exhibit](#). Tessian will delete its copies of Customer Data and the Analysed Data if the Customer decides not to proceed with a Tessian product.
- 11.2 Tessian may use Aggregated Data and Threat Data (defined below) derived from the Customer's use of the POV Services to: (i) provide insight into the performance of Tessian services, (ii) identify and analyze global threat trends and performance, and (iii) enhance, improve and develop Tessian services, including through global denylists and threat directories. Tessian may use such data for its legitimate business purposes and may, to the extent it is irreversible and de-identified (stripped of any information used to identify the Customer, including personal data), share threat insights from such data with third parties. For these purposes, "**Aggregated Data**" shall mean Metadata and aggregated usage data, including, without limitation, utilization statistics, reports, rules, logs and information regarding security threats prevented and processed by the POV Services. "**Metadata**" shall mean email and attachment metadata extracted and stored for the use of the POV Services. "**Threat Data**" shall mean all data identified through the POV Services as malicious, including without limitation, any data that may perpetuate data breaches, malware infections, cyberattacks or other threat activity.

## **12. Termination.**

These Terms of Use shall apply for the duration of the POV Services. Clauses 6, 7, 8, 9 and 10 shall survive the expiration or termination of the Terms of Use. Notwithstanding the above, these Terms of Use will continue to apply for the duration of time that Tessian stores or processes Customer Data provided in connection with the POV Services, unless and until a written agreement is entered into by the Parties for the provision of Tessian services under a paid services order.

## **13. Miscellaneous**

- 13.1 The Agreement constitutes the complete and exclusive understanding and agreement between the Parties regarding its subject matter.
- 13.2 Where Customer is located in North America, the Agreement and any dispute or claim arising out of it or in connection with it will be governed by and construed in accordance with the law of the state of California without regard to its conflicts of law principles. Where Customer is located outside of North America, the Agreement and any dispute or claim arising out of or in connection with it will be governed by and construed in accordance with the laws of England.
- 13.3 Notwithstanding any provision herein to the contrary, Customer Data may be retained and disclosed by Tessian as required to comply with applicable laws, regulations, subpoenas or court orders or to otherwise enforce its rights under the Agreement. Where allowed by law, Tessian will provide reasonable prior written notice to Customer to permit Customer to seek a protective order and will cooperate in Customer's activities under this Section, at Customer's expense. Tessian will disclose only that information that is reasonably necessary to meet the applicable legal order or requirement.
- 13.4 Any business communications in connection with the Agreement may be provided by email. Any legal notices relating to the Agreement must be provided in writing and sent to the receiving Party at the address provided by such Party. All notices will be sent by major commercial delivery courier service or mailed in a manner that requires signature by the recipient.
- 13.5 No purchase order or other communication will add to or vary the Agreement. Except as expressly provided herein, any modification to the Agreement must be made in writing and signed by an authorized representative of each Party. If any provision of the Agreement is held to be unenforceable, such provision will be reformed to the extent necessary to make it enforceable, and such holding will not impair the enforceability of the remaining provisions. Failure by a Party to exercise any right hereunder or to insist upon or enforce strict performance of any provision of the Agreement will not waive such Party's right to exercise that or any other right in the future.
- 13.6 The Agreement is entered into solely between, and may be enforced only by, Tessian and Customer. The Agreement does not create any third-party rights or obligations thereto. Each Party is acting as an independent contractor, and nothing herein will be construed to create a partnership, joint venture or any type of agency relationship between Tessian and Customer.