



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 “**Add-in**” means the .MSI file for the Microsoft Outlook email client used by Customer, to be installed either locally onto each Device or into Customer’s remote environment in accordance with the Agreement.
- 1.2 “**Agreement**” means these Terms of Use, the Specifications and the Data Protection Exhibit.
- 1.3 “**API**” means the application programming interface provided to Customer for the purposes of using the POV Services which will include in the case of O365, Microsoft’s enterprise applications and in the case of Google Workspaces, the Google Workspaces API.
- 1.4 “**Authorized Mailbox(es)**” means email accounts of Customer that are authorized by Customer to use the Services.
- 1.5 “**Customer Data**” means the email data provided by or collected from or through Customer, Authorized Mailboxes or on Customer’s behalf for the purpose of using the POV Services or facilitating Customer’s use of the POV Services, including all Customer emails (including all their content and attachments) sent or received by an Authorized Mailbox for a period of up to 12 months prior to the POV to the end of the POV Period, but excluding any Threat Intelligence and Usage Data.
- 1.6 “**Data Protection Exhibit**” means the [Data Protection Exhibit](#).
- 1.7 “**Data Security Exhibit**” means the [Data Security Exhibit](#).
- 1.8 “**Device**” means any desktop, laptop computer, or mobile device used by an Authorized Mailbox for the internal business purposes of Customer.
- 1.9 “**Gateway**” means the email gateway through which emails will be routed.
- 1.10 “**Intellectual Property Rights**” means all intellectual property rights of any nature including: (i) copyright, patents, trademarks, database rights, designs, format rights, inventions, know-how, trade secrets, techniques and confidential information, customer and supplier lists and other proprietary knowledge and information (whether registered or unregistered); (ii) applications and all rights to apply for registration for any of the foregoing; and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world in each case for their full term and together with any revivals, renewals or extensions..
- 1.11 “**Local Software**” means the Add-in, together with any other software provided or made available from time to time by Tessian to Customer for local installation by Customer in accordance with the Agreement within its own local or remote environments.
- 1.12 “**POV Period**” means 14 days from the date of acceptance of these Terms of Use or as otherwise agreed in writing.
- 1.13 “**POV Services**” means Tessian Defender, Tessian Enforcer, Tessian Guardian, Tessian Human Layer Risk Hub, Tessian HLS Intelligence, the provision of Reports to Customer, and/or any other services that may be generally offered by Tessian from time to time.
- 1.14 “**Reports**” means reports and documentation generated by Customer via the API or the Tessian portal, and includes 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 historical Customer Data.
- 1.15 “**Specifications**” means the [Tessian Products Specification](#).

- 1.16 **“Threat Intelligence”** means data derived from Customer’s use of the Services including data identified as malicious, disclosed inadvertently, or flagged by an Authorized Mailbox user as being in breach of Customer’s security policies, and includes, without limitation, any data that may perpetuate data breaches, malware infections, cyberattacks or other threat activity. Threat Intelligence may include actions or inactions taken by Customer in relation to Threat Intelligence received by Customer through the Services. Threat Intelligence does not contain any data that could be used to identify Customer, its officers, employees, or its clients.
- 1.17 **“Usage Data”** means anonymized and aggregated data and other information that is collected, derived, extracted, or created from the Customer Data and/or data generated by Customer’s use of the Services.

## 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 at no charge. The POV Services 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, including any Reports, 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, 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 Authorized Mailboxes. 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 To the extent applicable to the POV Services received by the Customer, the Parties agree that:
  - 3.2.1 Customer may install one copy of the Local Software (in object code format) in accordance with the Specifications on each Device used by each Authorized Mailbox or otherwise into Customer’s remote environment, subject to any directions provided by Tessian; and/or
  - 3.2.2 Customer may use the Gateway, which Customer may configure by setting up a connector or routing agent on Customer’s primary mail server in accordance with Tessian’s instructions; and/or
  - 3.2.3 Customer permits Tessian access via the API to Customer’s relevant Office 365 or G Suite environment in order for Tessian to provide the POV Services.
- 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. Data and Security.

- 4.1 Customer grants Tessian and its affiliates a worldwide, non-exclusive, sublicensable, non-transferable license to receive, store and process Customer Data to: (i) provide to Customer the POV Services (including threat insights and other reports); (ii) identify and analyze global threat trends, and (iii) enhance, improve and develop the POV Services; and (iv) generate Threat Intelligence and Usage Data.
- 4.2 Customer, (i) reserves the right to remove Tessian’s access to Customer Data at any time during the POV Period; and (ii) acknowledges that if such permissions are removed in accordance with (i) above, either prior to the delivery of a Report and/or prior to the end of the POV Period, Customer agrees and understands that Tessian will not be able to, respectively, produce Reports and/or effectively provide POV Services.
- 4.3 All data shall be processed in accordance with Tessian’s [Privacy Policy](#) and, where applicable, the [Data Protection Exhibit](#). Tessian will delete its copies of Customer Data if the Customer decides not to proceed with a Tessian product within 30 days of such decision.
- 4.4 Tessian will comply with the security standards set out in the [Data Security Exhibit](#).

## 5. Support.

Tessian will provide support to Customer for installation and use of 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 Notwithstanding the above, Customer will continue to own all rights in the emails and the Customer Data.

## 7. Disclaimer of Warranties.

THE POV SERVICES 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. A 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. IF TO BE PROVIDED AS PART OF THE POV SERVICES, TESSIAN WILL USE REASONABLE ENDEAVOURS TO PRODUCE A 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 A REPORT. AS THE POV SERVICES 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 UNDER THE AGREEMENT SHALL BE LIMITED TO £10,000 (OR \$10,000 FOR CUSTOMERS BASED IN THE USA).

NOTWITHSTANDING THE TERMS 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. Termination.**

These Terms of Use shall apply for the duration of the POV Services. Sections 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.

#### **12. Miscellaneous**

- 13.1 The Agreement constitutes the whole agreement between the Parties and supersedes any previous agreement, whether written or oral, 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. 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 Unless otherwise provided in the Agreement, any changes to these Terms will only be effective if agreed by the Parties in writing.
- 13.6 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.
- 13.7 Neither a failure nor delay in exercising any right or remedy herein shall operate as a waiver of such right or remedy and a partial exercise of any right or remedy shall not prejudice any further exercise of such right or remedy.
- 13.8 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.