

## END USER LICENSE AGREEMENT

**THIS END USER LICENSE AGREEMENT** (this “Agreement”) is a legal agreement between EJ2 Communications, Inc. d/b/a Flashpoint (“Flashpoint”) and you (“You,” “your” or “Subscriber”). Subscriber has previously licensed the Flashpoint Services pursuant to an agreement with an authorized Flashpoint Reseller; this Agreement governs your use of the Flashpoint Services and Data. By [signing where indicated below and/or accessing the Services and/or Data, you agree to be bound by the terms and conditions of this Agreement.

**1. DEFINITIONS.** Capitalized terms used but not defined in the main body of the Agreement will be as defined in Exhibit 1.

**2. SUBSCRIPTION; RESTRICTIONS ON USE.**

**2.1 Subscription to Services, Documentation, and Data.** Subject to the terms and conditions of this Agreement, Flashpoint grants Subscriber access to the Services through the Website and the Flashpoint APIs to authorize Authorized Users to: (a) access and use the Services and the Data contained therein solely for the purpose of (i) creating Subscriber reports the Data generated by search queries (collectively, the “Subscriber Reports”), and (b) use the Documentation (all of the foregoing rights, collectively, the “Subscription”). Subscriber shall insure that all Authorized Users comply with the applicable provisions of this Agreement, including but not limited to, the license scope set forth in this Section 2.1, and the Restrictions on Use set forth below in Section 2.2. Subscriber will be primarily liable to Flashpoint for any and all violations thereof by such Authorized Users.

**2.2 Restrictions on Use.** Except as expressly provided in this Agreement, Subscriber will not make any use or disclosure of the Services, the Website, the Flashpoint APIs, the Data, the Updates, or the Documentation that is not expressly permitted under this Agreement. Without limiting the foregoing, Subscriber will not: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the Services, the Website, or the Flashpoint APIs; (ii) modify or adapt the Services, the Website, the Flashpoint APIs, the Data or the Documentation; (iii) make any copies of the Services, the Website, the Flashpoint APIs, the Data, the Updates, or the Documentation; (iv) resell, distribute, or sublicense the Services, the Website, the Flashpoint APIs, the Data, the Updates, or the Documentation; making the Services, the Website, the Flashpoint APIs, the Data, or the Updates available on a “service bureau” basis; or otherwise allow any third party to use or access the Services, the Website, the Flashpoint APIs, the Data, the Updates, or the Documentation; (v) remove or modify any proprietary markings or restrictive legends placed on the Services, the Website, the Flashpoint APIs, the Data, the Updates, or the Documentation; (vi) use the Services, the Website, the Flashpoint APIs, the Data, the Updates, or the Documentation in violation of any applicable law, rule, or regulation or for any purpose not specifically permitted in this Agreement; or (vii) introduce into the Services, the Website, the Flashpoint APIs, the Data, or the Updates any Services, virus, worm, “back door,” Trojan Horse, or similar harmful code.

**3. SUPPORT SERVICES.** Flashpoint will be reasonably available to provide Subscriber problem resolution and technical support in connection with the Services, the Website, the Flashpoint APIs, the Data, and the Updates during the Term (the “Support Services”). Subscriber may request Support Services from Flashpoint via email at a dedicated email address, which will be provided to Subscriber by Flashpoint upon completion of the onboarding process.

**4. TERM AND TERMINATION.**

**4.1 Term.** Unless earlier terminated as set forth herein, the initial term of this Agreement is set forth on the Order.

**4.2 Termination.** In the event of a material breach of this Agreement by a party, the other party may terminate this Agreement by giving thirty (30) days prior, written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach before the expiration of such thirty (30) day period.

**4.3 Effect of Termination or Expiration.** In the event of any termination or expiration of this Agreement: (a) all rights granted hereunder to Subscriber will immediately cease, and Subscriber will immediately cease all access of the Services, the Website, the Data, and the Documentation; provided, however, that Subscriber may retain any Subscriber Reports created by Subscriber prior to the effective date of expiration or termination; and (b) At Flashpoint’s sole option, Subscriber will either return to Flashpoint (or provide Flashpoint with written certification of the destruction of) all documents, computer files, and other materials containing any Confidential Information (as defined below) that are in Subscriber’s possession or control. The following provisions will survive any termination or expiration of this Agreement: Section 1 (“Definitions”), Section 4.3 (“Effect of Termination or Expiration”), Section 5 (“Intellectual Property”), Section 6 (“Confidentiality”), Section 7.3 (“Disclaimer”), Section 8 (“Limitation of Liability”), Section 9 (“Indemnification”), Section 11 (“Miscellaneous Provisions”).

**5. INTELLECTUAL PROPERTY.** Flashpoint owns all right, title, and interest in and to the Services, the Website, the Data, the Updates and the Documentation, including all source code, object code, operating instructions, and interfaces developed for or relating to the Services, the Website, the Data, the Updates and the Documentation, together with all modifications, enhancements, revisions, changes, copies, partial copies, translations, compilations, and derivative works thereto, including all copyrights, patents, trade secrets, trademarks, and other intellectual property and proprietary rights relating thereto (the “Flashpoint Intellectual Property”). Subscriber will have no rights with respect to the Flashpoint Intellectual Property other than those expressly granted under this Agreement. Subscriber shall have no right to develop (or to permit any third party to develop) any software tool or other application that interfaces with the Services. Subject to the foregoing, Subscriber shall own all right, title, and interest in and to the Subscriber Reports.

**6. CONFIDENTIALITY.**

**6.1 Nondisclosure.** Each party will keep the Confidential Information received from the other party in confidence, will use such Confidential Information only for the purposes contemplated by this Agreement, and will not disclose such Confidential Information to any person or entity except to those of its employees, agents or contractors who need to know such information in order to carry out the activities contemplated by this

Agreement, and who are bound to protect the Confidential Information under terms at least as protective of the Confidential Information as the provisions hereof. Each party agrees to take measures to protect the confidentiality of the other party's Confidential Information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own confidential or proprietary information of similar kind and import (and in any event, no less than commercially reasonable measures).

6.2 *Effect of Termination on Confidential Information.* Upon request or upon the discontinuance, termination or cancellation of this Agreement or of any license covering any Confidential Information, the affected Confidential Information and all copies in whatever medium or form will be returned to the disclosing party or destroyed (with the receiving party certifying such destruction in writing).

## **7. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

**7.1 Mutual Representations and Warranties.** Each party represents and warrants that it has the full right, power, and authority to enter into this Agreement, to discharge its obligations hereunder, and to grant the rights granted hereunder.

**7.2 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1, THE SERVICES, THE WEBSITE, THE DATA, ANY UPDATES, THE FLASHPOINT REPORTS, THE DOCUMENTATION, THE SUPPORT SERVICES, AND OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND FLASHPOINT MAKES NO WARRANTY WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT FLASHPOINT MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

## **8. LIMITATION OF LIABILITY.**

**8.1 Liability Exclusion.** FLASHPOINT WILL NOT BE LIABLE TO SUBSCRIBER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, OR LOSS OF GOODWILL OR REPUTATION) WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING OUT OF OR RELATING TO THE SERVICES, THE DATA, THE UPDATES, THE FLASHPOINT REPORTS, THE SUPPORT SERVICES, THE DOCUMENTATION, SUBSCRIBER SERVICES, SUBSCRIBER REPORTS, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

**8.2 Limitation of Damages.** FLASHPOINT'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THE SERVICES, THE WEBSITE, THE DATA, THE UPDATES, THE FLASHPOINT REPORTS, THE SUPPORT SERVICES, THE DOCUMENTATION, SUBSCRIBER SERVICES, SUBSCRIBER REPORTS, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, OR OTHERWISE), WILL NOT EXCEED THE LOWER OF: (A) THE AGGREGATE AMOUNT OF THE FEES PAID OR PAYABLE TO FLASHPOINT BY RESELLER WITH RESPECT TO THE SERVICES CONTEMPLATED BY THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES; OR (B) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00 USD).

## **9. INDEMNIFICATION.**

**9.1 Indemnification by Flashpoint.** Flashpoint will indemnify, defend, and hold harmless Subscriber and its officers, directors, employees, and agents (each, a "Subscriber Indemnitee") from and against any and all liabilities, settlement payments, awards, damages, losses, costs, and expense, including, but not limited to, reasonable attorneys' fees (collectively, "Losses") incurred by such Subscriber Indemnitees in connection with any valid third-party claim, action, or proceeding (each, a "Claim") to the extent arising from, relating to, or alleging that the Services, Documentation, Website, or the Data infringes or misappropriates any U.S. patent, copyright, trade secret, or other intellectual property right of any third party. Notwithstanding the foregoing, Flashpoint shall not be obligated to indemnify, defend, or hold harmless the Subscriber Indemnitees hereunder to the extent: (i) the Loss arises from or is based upon use by Subscriber, or any Authorized User of: (a) the Services, the Website, and/or the Data in a manner for which they were not authorized by this Agreement; or (b) any unauthorized enhancements, modifications, alterations, or implementations of the Services, the Website and/or the Data; (ii) the Claim arises from use of the Services in combination with unauthorized modules, apparatus, hardware, software, or other services; or (iii) the Claim arises from Subscriber's use of the Services and/or the Data that violates this Agreement or any applicable law, rule, or regulation.

**9.2 Infringement Claims.** In the event that Flashpoint reasonably determines that the Services, Website, or the Data is likely to be the subject of a claim of infringement or misappropriation of third-party rights, Flashpoint shall have the right (but not the obligation), at its option to: (i) procure for Subscriber the right to continue to use the Services, the Website and/or the Data for the remainder of the then-current Term, (ii) replace the infringing components of the Services, the Website and/or the Data with other components with the same or similar functionality that are reasonably acceptable to Subscriber, or (iii) suitably modify the Services, the Website and/or the Data so that it is non-infringing and reasonably acceptable to Subscriber. If none of the foregoing options are available to Flashpoint on commercially reasonable terms, Flashpoint may terminate this Agreement without further liability to Subscriber. This Section 9.2, together with the indemnity provided under Section 9.1, states Subscriber's sole and exclusive remedy, and Flashpoint's sole and exclusive liability, regarding infringement or misappropriation of any intellectual property rights of a third party.

**10. Usage of Analytics.** Flashpoint may use analytics to monitor, identify, and collect trend and usage statistics with respect to Authorized Users and organizations, including, without limitation, how often different features of the Services or the Website or the Flashpoint APIs are

used, how often different buttons and menu items are clicked, execution time for different operations, types of errors, error reports, download locations, versions, platform information, application and Services, Website or the Flashpoint APIs usage, features usage, exception tracking, and operating system information (collectively, "Analytical Information"). Subscriber hereby agrees that Flashpoint may collect such Analytical Information and use it in aggregated form to provide, operate, manage, maintain, and enhance the Services, the Website and the Flashpoint APIs and develop new functionality. Flashpoint shall own all right, title to and interest in such Analytical Information.

**11. Miscellaneous.** All notices, requests, demands and other communications hereunder must be sent in writing and will be deemed given on the next day (if delivered personally), on the date three (3) days after mailing (if mailed by registered or certified mail), or on the next day (if delivered by courier) to the respective addresses of the parties as the respective parties may designate by like notice from time to time. Subscriber may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of Flashpoint. Any assignment or other transfer in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns. This Agreement, and any disputes directly or indirectly arising from or relating to this Agreement, will be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. The Parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in New York, in New York County, in the Borough of Manhattan for all suits, actions, or proceedings directly or indirectly arising out of or relating to this Agreement, and waive any and all objections to such courts, including but not limited to objections based on improper venue or inconvenient forum, and each Party hereby irrevocably submits to the jurisdiction of such courts in any suits, actions or proceedings arising out of or relating to this Agreement. The Parties further agree that service of any process, summons, notice, or documents to a Party by registered or certified mail, or by nationally or internationally recognized private courier service shall be effective service of process for any action, suit, or proceeding brought against such Party in any such court. Flashpoint reserves the right, at its sole discretion, to modify or replace this Agreement at any time. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. If any provision of this Agreement is held invalid or unenforceable by any court of