

# Flashpoint

## Client Commercial Terms and Conditions

Commercial Terms and Conditions for all Offerings to be provided by Client.

### END USER LICENSE AGREEMENT

**THIS END USER LICENSE AGREEMENT** (this “Agreement”) is a legal agreement between the GSA Multiple Award Schedule Contractor acting on behalf of EJ2 Communications, Inc. d/b/a Flashpoint (“Flashpoint”) and the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“You,” “your” or “Subscriber” or “Ordering Activity”). 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 both parties executing this Agreement in writing, 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 Ordering Activity 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 Ordering Activity reports the Data generated by search queries (collectively, the “Ordering Activity Reports”), and (b) use the Documentation (all of the foregoing rights, collectively, the “Subscription”). Ordering Activity 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. Ordering Activity 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, Ordering Activity 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, Ordering Activity 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 Ordering Activity 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”). Ordering Activity may request Support Services from Flashpoint via email at a dedicated email address, which will be provided to Ordering Activity by Flashpoint upon completion of the onboarding process.

**4. RESERVED.**

**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.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Flashpoint shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer

**4.3 Effect of Termination or Expiration.** In the event of any termination or expiration of this Agreement: (a) all rights granted hereunder to Ordering Activity will immediately cease, and Ordering Activity will immediately cease all access of the Services, the Website, the Data, and the Documentation; provided, however, that Ordering Activity may retain any Ordering Activity Reports created by Ordering Activity prior to the effective date of expiration or termination; and (b) At Flashpoint’s sole option, Ordering Activity 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 Ordering Activity’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 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”). Ordering Activity will have no rights with respect to the Flashpoint Intellectual Property other than those expressly granted under this Agreement. Ordering Activity 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, Ordering Activity shall own all right, title, and interest in and to the Ordering Activity 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).

**6.3**

Flashpoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**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. FLASHPOINT WARRANTS THAT THE SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF RECEIPT, PERFORM IN ACCORDANCE WITH ANY WRITTEN SPECIFICATIONS ACCOMPANYING IT.

**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 ORDERING ACTIVITY 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 ARISING OUT OF OR RELATING TO THE SERVICES, THE DATA, THE UPDATES, THE FLASHPOINT REPORTS, THE SUPPORT SERVICES, THE DOCUMENTATION,

ORDERING ACTIVITY SERVICES, ORDERING ACTIVITY 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. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**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, ORDERING ACTIVITY SERVICES, ORDERING ACTIVITY 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 AGGREGATE AMOUNT OF THE PURCHASE ORDER PRICE, INCLUDING FEES PAID OR PAYABLE BY ORDERING ACTIVITY WITH RESPECT TO THE SERVICES CONTEMPLATED BY THIS AGREEMENT

**8.3** THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.

**9. Reserved.**

**9.1** **Indemnification by Flashpoint.** Flashpoint will indemnify, have the right to intervene to 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. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**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 an 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](#)"). Ordering Activity 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. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; such approval not to be unreasonably withheld or delayed. 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 Federal laws of the United States. Flashpoint reserves the right, at its sole discretion, to modify or replace the non-material terms of this Agreement at any time. Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms. 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

competent jurisdiction, the other provisions of this Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the Parties' intent. Neither Party will issue any press release or similar materials discussing the Parties' relationship before obtaining the other Party's prior written agreement to any such material. Each Party shall have the right to review and approve the use of their respective marks in any such materials created by or on behalf of the other party prior to the release thereof. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral or written understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The vendor shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.