FLASHPOINT SUBSCRIPTION AGREEMENT

THIS FLASHPOINT SUBSCRIPTION AGREEMENT (this “Agreement”) is a legal agreement between EJ2 Communications, Inc. d/b/a Flashpoint (“Flashpoint”) and you (“You,” “your” or “Subscriber”) that governs the terms of your use of the Services and Data. Subscriber has either: (a) previously arranged to purchase a subscription to the Flashpoint Services pursuant to an agreement with an authorized Flashpoint Reseller; or (b) is hereby purchasing a subscription for use of the Flashpoint Services and Data directly from Flashpoint through the terms of this Agreement (and the accompanying Order, as applicable). By clicking to agree below and/or by accessing the Services and/or Data (i.e., in the case where Subscriber has already entered into an Order directly with Flashpoint), Subscriber agrees 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, attached hereto and made a part hereof.

2. SUBSCRIPTION: RESTRICTIONS ON USE; FEES.

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, where applicable, 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 assure 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, 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, or the Documentation; (iv) resell, distribute, or sublicense the Services, the Website, the Flashpoint APIs, the Data, or the Documentation; (v) modify any proprietary markings or restrictive legends placed on the Services, the Website, the Flashpoint APIs, the Data, or the Documentation; (vi) use the Services, the Website, the Flashpoint APIs, the Data, 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, or the Data, any services, virus, worm, “back door,” Trojan Horse, or similar harmful code. If Flashpoint determines that any improper use of the Services has taken place at any time during the Term, in addition to any other rights or remedies that Flashpoint may have under this Agreement or applicable law, Flashpoint reserves the right to terminate and/or suspend (in Flashpoint’s sole discretion) that Authorized User(s)’s access to the Services immediately.

2.3 Fees. Fees for use of the Flashpoint Services will be as specified in the Order, and will be paid either directly by Subscriber to Flashpoint or by the Reseller on Subscriber’s behalf, as applicable. The Order will contain the applicable payment terms as well. All Fees are due in full, upfront for the Flashpoint Services and are non-refundable.

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, and the Data, 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 in 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 2.2 (“Restrictions on Use”), Section 3.3 (“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 12 (“Miscellaneous Provisions”).

5. INTELLECTUAL PROPERTY. Flashpoint owns all right, title, and interest in and to the Services, the Website, the Data, and the Documentation, including all source code, object code, operating instructions, and interfaces developed for or relating to the Services, the Website, the Data and the Documentation, together with all modifications, enhancements, upgrades, 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.


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 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 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 OR SUBSCRIBER DIRECTLY, AS APPLICABLE, 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 Indemnities 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(es) 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 and/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 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, at its option, terminate this Agreement without further liability to Subscriber.

Highly Confidential
communications hereunder must be sent in writing and will be available at https://www.flashpoint-intel.com/wp-content/uploads/Agreement, the provisions of the Data Protection Addendum are hereby issued. The provisions of the Data Protection Addendum are hereby made a part hereof, and will apply.

11. **Data Processing: Data Privacy**

11.1 **Data Processing and Storage.** Please be advised that Flashpoint will not maintain any history nor logs of Subscriber’s searches, nor will it keep a database of what is being researched by Subscriber through our Services. Similarly, in the event that Subscriber supplies Flashpoint with keywords in connection with our keyword alerting services, Flashpoint will store the keywords internally in order to detect on them, but Flashpoint does not share these keywords with anyone else, outside of our Subscriber Success, Solutions Architects, and Alerting Service internal Teams. Flashpoint will, however, monitor the service for internal system purposes only. Similarly, when Flashpoint performs searches for alerting, the searches are stored in Flashpoint’s keyword database – i.e., the fact that certain organizations are looking for certain keywords is still recorded. The organization is not able to be correlated with just the logs, however. Flashpoint does redact the specific queries once it moves to running searches under the context of the specific organization; while the keywords themselves are still maintained as set forth immediately above in this Section 11.1. In addition, Flashpoint may use third party platforms and tools that meet our security and privacy policy requirements in order to assist with the collection of Analytical Information. In addition to the foregoing, all Data and any Subscriber-related data will be processed and stored in accordance with Flashpoint’s then-current data retention and data privacy policy.

11.2 **GDPR Compliance.** In the event that Flashpoint processes any personal data of EU residents under this Agreement, the provisions of the Data Protection Addendum available at https://www.flashpoint-intel.com/wp-content/uploads/2019/11/DATA-PROTECTION-ADDITIONUM.pdf are hereby made a part hereof, and will apply.

12. **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 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. 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 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.
Exhibit 1

Definitions

“Authorized User” means an employee of Subscriber or an individual consultant, vendor, or contractor engaged by and acting under the direction and control of Subscriber that Subscriber permits to access and use the Services. Flashpoint acknowledges that Subscriber will not need to disclose the specific identity of such Authorized Users to Flashpoint.

“Confidential Information” means non-public financial, technical or business information of the disclosing party that is marked as confidential at the time of disclosure or that the receiving party should, from the circumstances surrounding its disclosure, know to be confidential. Confidential Information includes, in the case of Flashpoint, the Services, any and all source code relating thereto, the Data, and the Documentation, all pricing and Fees relating to the Services and related services, and any other non-public information or material regarding Flashpoint’s legal or business affairs, products, services, financing, or customers. Confidential Information does not include information that is: (i) known to the receiving party prior to receipt from the other party, (ii) generally known or available in the industry or to the general public through no act or fault of the receiving party, (iii) acquired in good faith from a third party that has no obligation of confidentiality with respect to such information, (iv) required to be disclosed by applicable law, by order of court or by the rules, regulations, or order of any governmental agency (provided, that prior to making any such required disclosure, the receiving party first notifies the disclosing party and cooperates with the disclosing party in its efforts to seek confidential or protective treatment of such information or to minimize the scope of any such required disclosure), or (v) independently developed for one party by employees or agents of that party who do not have access to the Confidential Information of the other party.

“Data” means any data that is accessible to Subscriber via the Services, including all Updates thereto.

“Documentation” means any written specifications, user documentation, training materials, validation test plans, and other documents relating to the Services that Flashpoint provides to Subscriber.

“Flashpoint API(s)” means those application program interfaces, import tools, registration pages and documentation of Flashpoint through which Subscriber may access Data, as applicable.

“Maximum Number of Authorized Users” means the maximum number of Authorized Users specified on the Order, as applicable.

“Order” means the applicable order form document which details the specifics of Subscriber’s Subscription, which will include a description of the Services, as well as details such as the fees paid for the Subscription (such Fees will be paid to Flashpoint either directly by Subscriber or by the Reseller on Subscriber’s behalf, as applicable) (“Fees”), Subscription Term, Maximum Number of Authorized Users, and any additional terms pertaining to the Services. Each Order will be between Flashpoint and either: (a) the Reseller obtaining access to the Services on Subscriber’s behalf; or (b) Flashpoint and Subscriber directly, as the case may be. The Order may take the form of either: (i) an order form provided by Flashpoint and signed by Subscriber, or (ii) Subscriber’s purchase order provided to and accepted by Flashpoint in writing.

“Reseller” means an authorized Flashpoint reseller and/or distributor of the Services and/or Data.

“Flashpoint Services” or “Services” means the platforms and Flashpoint APIs as specified on the Order, including all Updates thereto.

“Updates” means updates to the Data and/or Services that are periodically made available to Subscriber during the Term through the Services.

“Website” means any website or other access point through which Flashpoint provides access to the Services.