



# Terms of Services

Latest update:

These Terms of Services (the “**Terms**”) constitute a legal agreement between the organization identified on an Order Form or through Proof-of-Concept Services, and agreeing to these Terms (the “**Customer**”, “**you**”) and Flare Systems Inc., with a registered address at 1751 Rue Richardson, Montréal (Quebec) H3K 1G6, Canada (“**Flare**”, “**we**”, “**us**”, “**our**”).

These Terms are effective upon Customer’s acceptance of such Terms through the Order Form and remain in full force until the Subscription Term is terminated or expired in accordance with this Agreement. If you have any questions on the Agreement, you can reach out to us by e-mail at [legal@flare.systems](mailto:legal@flare.systems).

## 1. DEFINITIONS

The terms which are not defined elsewhere in this Agreement are defined below.

- “**Agreement**” means these Terms of Services, the Order Form, any Change Orders, amendments, addenda, appendices or exhibits.
- “**Admin**” means the personnel designated by you to administer the Services on your behalf.
- “**Affiliate**” means any entity which, directly or indirectly, controls, is controlled by, or is under common control with a party to these Terms of Services. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- “**Aggregated Data**” means any dataset or data which no longer allows Flare to identify an individual or Customer (including its activities), whether directly or indirectly. Aggregated Data is no longer considered Confidential Information of Customer, and does not include any Personal Data.
- “**Anonymized Data**” means Customer Data which have been processed through an industry-standard de-identification technology or method and which, therefore, no longer allows for the identification of individuals and does not contain any Personal Data. For the avoidance of doubt, Anonymized Data does not include Personal Data.
- “**Applicable Law**” means any law, regulation, mandatory guidelines, regulations and binding corporate rules which are applicable to the Agreement, including the performance of the Services.
- “**Change Order**” means an amendment to the Order Form which is approved, executed, signed or accepted by Customer, including through the issuance of a purchase order corresponding to an Order Form issued by Flare, and which is deemed attached and part of the Agreement.
- “**Confidential Information**” means any and all information of a party (the “**Disclosing Party**”) which has or will come into the possession of the other party (the “**Receiving Party**”) concerning the business, properties, affairs or finances of the Disclosing Party, including proprietary information and trade secrets. Confidential Information must be indicated as confidential information, or it must be clear at the time of the disclosure that the information ought to be handled as Confidential Information. Without limiting the

generality of the foregoing, Flare's Confidential Information shall include the Flare Platform and Flare API, along with any underlying technologies, and Customer's Confidential Information includes Customer Data.

- **"Customer Data"** means the Personal Data, Anonymized Data and Customer's Confidential Information which are processed through the Services by Flare on behalf of Customer. Customer Data does not include Service Data, Risk Data and Aggregated Data.
- **"Documentation"** means the documentation and other materials made available to Customer (and End Users) in connection with our provision of the Services, including service specifications and descriptions that are publicly available on our website.
- **"End User"** means a user who is authorized by you to use and access the Services, including any Admin(s).
- **"Flare API"** means application programming interface used to search Risk Data or for other purposes related to the Services, as further described in the Documentation, and an Order Form, where applicable.
- **"Flare Platform"** means the web application which is made available to Customer and its Authorized Users in accordance with an Order Form.
- **"Service Data"** means information which Customer and its End Users obtain through the Services from queries, API calls, monitoring and the use of functionalities to find information.
- **"Intellectual Property"** means any and all intellectual property, including, without limitation, works, inventions (whether patentable or not), discoveries, improvements, trade secrets, know-how, scientific formulae, data, information, images, reports, results, analysis, software, models, research and development information, technical information, prototypes, specifications, patterns, drawings, algorithms, products, compositions, processes and protocols, methods, tests, devices, computer programs, trade-marks and any and all proprietary rights provided under patent law, copyright law, trade-mark law, design patent or industrial design law, semiconductor chip or mask work law, or any other statutory provision or civil or common law principle applicable to the protection of intangible proprietary information or rights, including trade secret law, which may provide a right in any of the foregoing as well as any and all applications, registrations or other evidence of a right in any of the foregoing. For the avoidance of doubt, as between the parties, Flare's Intellectual Property includes the Flare Platform, Flare APIs and other the underlying technologies to the Services.
- **"Intended Purposes"** means to conduct monitoring for information security and cybersecurity purposes, to prevent and manage fraud, to manage information security and other systems' risks, including risks associated with external attack vectors, to enrich threat intelligence or other threat data, to conduct threat modelling and for preparing and participating in security activities, as well as any reasonably related purposes which are not in breach of this Agreement.
- **"Order Form"** means a quotation, an order form, an estimate or a procurement document which is approved, executed, signed or accepted by Customer, including through the issuance of a purchase order corresponding to an Order Form issued by Flare, and which is deemed attached and part of the Agreement.
- **"Personal Data"** means any data which are collected by Flare about End Users to provide the Services to Customer, but excluding any Service Data, which are provided by Flare to Customer.

- **“Representatives”** means a party’s Affiliates, subsidiaries, agents and subcontractors, as well as the respective employees, directors, officers and developers of each of these third parties, and those of the concerned party, as the case may be.
- **“Risk Data”** means risk data obtained from various public and dark web sources, using Flare’s data crawling capacities.
- **“Scheduled Downtime”** has the meaning ascribed thereto in Section 7.
- **“Security Breach”** means any unauthorized access, use or disclosure of Customer Data in breach of a security safeguard, or otherwise as defined in any applicable Data Protection Laws. (i) access, use and communication not authorized by law of any Personal Data and (ii) loss of Personal Data or any other breach of the protection of such information.
- **“Services”** means the Flare platform, the Flare API, the provision of the query functions to search the Risk Data, the technical support services, and any related services, as identified in an Order Form and further described in the Documentation.
- **“Subscription Term”** means the term during which the Services are provided to Customer (and its End Users) in accordance with an Order Form, which shall contain the duration of the Subscription Term and start date.
- **“Uptime”** means the percentage of total possible minutes the Services are available, operational and accessible to you during a month. The Uptime is calculated as follows:
  - $[(\text{Total minutes of Uptime in a month} - \text{Total minutes for Exempted Downtime and Scheduled Maintenance}) / (\text{total minutes in a month} - (\text{Total minutes} - (\text{Exempted Downtime and Scheduled Maintenance})))] \times 100.$
- **“Urgent Security Issue”** means any (i) use of the Services in contravention of these Terms by an End User, (ii) Security Breach, or (iii) situation reasonably requiring Flare to act immediately to prevent or mitigate security risks, including to install important security patches.

## 2. OUR SERVICES

### 2.1 Performance of the Services

Subject to and conditional to your payment of applicable Fees and compliance with this Agreement, we will provide the Services and make the Services available to you during the Subscription Term, as further described in an Order Form. Flare will perform the Services in a professional and workmanlike manner.

### 2.2 Order Forms; Change Orders

The Order Form shall contain a description of the Services to be delivered to Customer, the start date of the Subscription Term, any payment terms (including frequency, amounts and method(s) of payment) and any other terms and conditions may agree to from time to time. Order Forms may only be amended by Change Order. In case of a conflict between the terms of the Agreement, such conflicts will be resolved in the following order of precedence: 1) Change Order; 2) Order form and (3) the remaining parts of this Agreement.

### 2.3 Modifications to Services

We reserve our rights to make changes to the Services. In case of material changes, we will notify you through the contact information available on the Order Form, or through the Services. Modifications to the Services shall not materially and adversely affect the performance of the Services in accordance with this Agreement, including the security of such Services.

### 2.4 Modification to these Terms

We reserve our right to modify these Terms by providing you with a thirty (30) days prior notice during which you may raise with us any comments or objections. If you continue to use the Services after this period, the Terms, as modified, will apply. You understand that each Order Form is subject to the latest version of these Terms.

### 2.5 Account; Account Credentials

End Users must have an account to access and use the Services. End Users are responsible for maintaining their credentials confidential, and Flare shall not be responsible if an account is compromised. If credentials have been compromised, Admins are responsible for blocking and resetting the compromised accounts as soon as practicable for the concerned End User(s) and contact us to advise us that credentials have been compromised so that we can conduct reasonable inquiries and any actions we may believe necessary to protect the Services, at our sole discretion. You agree to collaborate with us for such inquiries.

### 2.6 Administration of Services

You are responsible for understanding the settings, privileges and controls for the Services and for controlling whom you permit to become an End User and what are the settings and privileges for such End User. Flare shall not be responsible for managing End Users, settings, and controls available as part of the Flare Platform, including for setting up any alerts and handling such alerts.

You agree to notify us without undue delay if your contact information change. If you fail to do so, we shall have no liability whatsoever for notices or communications that are not received by you.

Customer is solely responsible for determining the number of accesses to the Flare Platform and usage rights required for the performance of the Services, including any strategic location of any data input points or monitoring requirements within Customer's networks and information technology ("IT") systems. Customer may add additional accesses.

### 2.7 Proof-of-Concept Services

Flare may provide some Services as proof-of-concept, beta trial, early version for evaluation purposes, developer only version, free trial, temporary access, or preview version (the "**Proof-of-Concept Services**"). The Proof-of-Concept Services may be provided with or without Fees, pursuant to an Order Form, or directly through the Flare Platform, and may be subject to additional terms and conditions. Flare will identify Proof-of-Concept Services accordingly, and Customer shall not be required to use any Proof-of-Concept Services to use the Services, including the Flare Platform.

Notwithstanding anything to the contrary, the Proof-of-Concept Services are provided "as is", where is" and "as available". Proof-of-Concept Services may contain bugs, errors and may not perform as well as the Services usually do, including by providing limited functionalities

during a limited period, such as to allow Customer to assess the Services. Any interfaces, information, or content accessed as part of the Proof-of-Concept Services is Flare's Confidential Information, and subject to Customer's compliance with these Terms.

Flare may, at its sole discretion, provide Customer with a temporary access to the Services as described in an Order Form, with or without fees, and for trials, proofs of concepts or otherwise (a "**Temporary Access**"). Notwithstanding anything to the contrary, if a Temporary Access is provided to Customer, such access is provided "as is", "where is" and "as available". This means that the representations, warranties, service level agreement and support commitments set forth herein are not applicable for such Beta Services. Flare will have no liability whatsoever for your use of the Beta Services, and such use shall be at your own risks.

## 2.8 Upgrades; New Features

We may, from time to time, develop new modules, versions, functionalities or features to the Services (each an "**Upgrade**"). Upgrades are generally included with your subscription to the Services, except if we indicate otherwise (the "**Excluded Upgrade**"). For further clarity, and subject to Section 2.3, Excluded Upgrades may include new features, modules or offerings that are excluded from Upgrades at our discretion, but shall not include security patches and updates that are required for the Services to function substantially as described in the Documentation or this Agreement.

## 2.9 Integration Partners

The Services may be integrated with third-party services, applications, products or platforms through an API or via other methods (each an "**Integration Partners**"). Integration Partners are not suppliers of Flare. Customer is responsible for provisioning such third-party services directly with Integration Partners and for conducting due diligence on Integration Partners, including on their information security and privacy practices. Flare does not endorse any Integration Partners. Flare is not responsible for any damages resulting from the use of Integration Partners by Customer.

## 3. ACCEPTABLE USE

Customer agrees and understands that the use of the Services is subject to the restrictions set forth in this Section, and Customer will not authorize or allow the use of the Services in violation of the Agreement. Customer remains liable for the act and omissions of its End Users. In this Section, the term "**Customer**" is intended to include any End Users, and Customer acknowledges that End Users are required to accept our [Terms of Use](#) prior for accessing and using the Services.

The Services allow End Users to conduct queries through real-time monitoring of the dark net and other forums or networks known to be used for fraudulent or criminal purposes, such as for the reseller of stolen credentials (the "**Dark Web**"). The following restrictions are applicable to the use of these query functions, as well as for any monitoring capabilities made available as part of the Services:

- Customer may not use the Services for the purpose of monitoring and profiling individuals based on their personal characteristics, except for the Intended Purposes. For greater clarity, the Services may not be used to monitor or to obtain Service Data on third parties other than Affiliates, employees, directors, officers and individuals which Customer has a legitimate interest in monitoring, investigating, profiling and protecting (such as a consent for doing so). The Services may not be used for targeting individuals based on Service Data, including for discriminatory purposes or for abusing surveillance purposes in violation of their right to privacy.

- Customer is solely responsible for ensuring that it has a lawful basis for processing the Service Data for providing adequate transparency notices in complying with Applicable Law. Customer may not use or otherwise process any Service Data without ensuring that it complies with Applicable Law when doing so.
- Customer may not use the Services for monitoring individuals or assets which it is not authorized to monitor. Without limiting the generality of the foregoing, Customer may not monitor third party assets, including websites, without such third party's prior consents and authorizations. Customer hereby represents and warrants that it has all such consents and authorizations to allow Flare to provide the Services.

Data insights may be provided by combining different datasets and augmenting Customer Data with Risk Data to provide Outputs (as defined below). Customer agrees and understands that (a) these Outputs may not be used for discriminatory purposes, or in violation of Applicable Law and (b) Flare is not responsible for any actions or decisions taken based on any Output. Customer must ensure that it verifies assumptions and conducts independent reviews prior for making decisions or taking actions which can affect individuals, or the conduct of its affairs.

The Services may not be used in high-risk situations such as (a) to prevent death and bodily harm on individuals; (b) to conduct criminal inquiries for a forensic report; (c) in high-risk industries and settings such as nuclear power facilities; (d) to conduct criminal checks and (e) as part of automated decision-making, especially for making decisions affecting the rights and freedoms of individuals.

Customer represents and warrants that it will not use the Services, nor authorize the use of the Services, in a manner:

- that is prohibited by Applicable Law or otherwise by this Agreement.
- that constitutes the selling, reselling or commercialization of the Outputs, Risk Data or any other proprietary information of Flare.
- that will disrupt third parties' use or enjoyment of the Services, including if this use results in automated, constant and repeated requests for data other than as permitted under this Agreement and has a negative effect on our systems or network, including abnormal usage that overloads servers or cause portions of our network to be blocked (e.g. denial-of-services and distributed-denial-of-service attacks).
- that uses the Services to create, transmit, distribute or store material that violates Intellectual Property, privacy, publicity or other personal rights of individuals, export control or that can otherwise be threatening, abusive, hateful or constitutes or encourages conduct that would be considered a fraud, a criminal offence or likely to give rise to civil liability.
- that results in (a) the sharing of credentials, identifiers and passwords among End Users or among End Users and third parties, and (b) the distribution, disclosure or use of any of the Services in any format to or by unauthorized third parties (i.e. other than End Users), including through any time-sharing service, service bureau, network or by any other means;
- that involves using any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, programs, algorithms, or methodology to access, acquire, copy or monitor the Services, or any portion of the Services, including the Flare Platform. The foregoing shall include any data scraping or screen or web scraping, even with the consent of the End Users.

- that involves modifying, decompiling, disassembling, deciphering, decrypting, seeking or otherwise reverse engineering or attempting to reconstruct or discover any source code or ideas or algorithms of any of the Services and their underlying technology by any means whatsoever.
- that involves scanning, probing, or performing discovery on computer devices, networks, applications and/or other related digital assets for which it does not own or is not fully authorized to perform such actions.
- that involves penetrating our security, including, without limitation, by posting or transmitting files which can contain viruses, worms, Trojan horses or contaminating or destructive features, by circumventing security measures, by attempting to access any part of the Services which is not otherwise authorized for Customer's access and by manipulating identifiers to disguise the origin of content shared through the Services.

If you breach this Section 3, or if we reasonably believe that a breach is imminent, we may suspend part or all of the Services to the minimum extent necessary to ensure that the breach is resolved or contained, and Flare will reactive access to the Services as soon as reasonably practicable, except that Flare reserves the right to ban access or suspend permanently access to End Users who have breached this Section 3.

#### **4. LICENSES**

##### **4.1 Licences to Customer Data**

You hereby grant us, for the Subscription Term non-exclusive, royalty-free, revocable (but only pursuant to this Agreement), non-transferable (except as set forth herein) and non-sublicensable (except as set forth herein) limited and worldwide licence to aggregate, reproduce, distribute, and otherwise use and display Customer Data as may be necessary for us in order to provide the Services to you, or to exercise our rights and obligations under this Agreement.

You hereby grant us, during the Term, a non-exclusive, royalty-free, revocable (but only pursuant to this Agreement), non-transferable (except as set forth herein) and non-sublicensable (except as set forth herein), limited and worldwide licence to use, modify, reproduce and display the Anonymized Data (a) to provide the Services; (b) to conduct research and development, (c) to improve the Services and (d) to create and generate Aggregated Data. Flare owns all rights, title and interest in the Aggregated Data.

##### **4.2 Licenses to the Services**

Subject to this Agreement, during the Subscription Term, we hereby grant you, non-exclusive, non-sublicensable (except to End Users), non-transferable (except as set forth herein), revocable (but only pursuant to this Agreement) rights and license to access and use (and allow your End Users to access and use) the Services for the Intended Purposes. When required in accordance with an Order Form or a Change Order, this licence shall also include, for the duration of the Agreement, the right to install, download and integrate the Flare API, and any other API or software which is required for Customer to access and use the Services in accordance with an Order Form.

##### **4.3 Licences to Outputs**

The Services may include the provision of reports or similar outputs, including any data analytic services' outputs, prioritization and classification of insights for monitoring (each an

“**Output**”). Flare hereby grants to Customer a perpetual, non-revocable, non-exclusive, non-sublicensable, non-transferable (except as set forth herein) and limited license to reproduce, print, download and use all such Outputs for Customer’s internal purposes. For the avoidance of doubt, Outputs may not be sold or commercialized. Customer agrees and acknowledges that Outputs may contain third party Intellectual Property and data from open-source vulnerability databases may be licensed subject to additional licensing terms, such as if Customer redistributes or publishes the Outputs. Notwithstanding anything to the contrary, Customer represents and warrants that it will comply with such additional licensing terms, as indicated in the Outputs. Customer shall not be authorized to remove any attribution notices integrated in the Outputs, or otherwise in the Services.

## 5. INTELLECTUAL PROPERTY

We shall remain the sole and exclusive owner of all rights, titles and interests, including all Intellectual Property, in and to the Services (including the Flare API, the Flare Platform, and the Risk Data), the Documentation, the Aggregated Data, and in and to our Confidential Information. The Services are licensed, not sold, to Customer. All rights not granted herein are reserved.

Notwithstanding anything to the contrary, Flare shall also be the sole owner of any suggestions, enhancement requests, recommendations or other feedback provided by Customer (or its End Users) to Flare, as long as they relate to the Services, and Customer hereby assigns to Flare, without limitation of any kind, all of its rights, titles and interests therein, and waives any non-assignable moral right therein, Flare accepting such assignment and waiver. Customer shall remain the sole and exclusive owner of all rights, titles, and interests into its Intellectual Property, including, without limitation, Anonymized Data and Customer Data.

Your use of the Services is subject to your compliance with the applicable Open-Source Software License Terms contained in the Services. You agree that you may not remove any attribution notices or proprietary notices set forth in the Services, or their underlying technologies.

## 6. SERVICE LEVEL AGREEMENT

The Services are available on a twenty-four (24) hours a day basis, from Monday to Sunday. Subject to this Agreement, Flare shall deploy commercially reasonable efforts to ensure an Uptime of 98.5% (the “**Service Level**”).

The Service Level excludes downtime that is caused by: (i) Customer’s fault, acts or omissions, or a breach of this Agreement , (ii) events that are not within the reasonable control of Flare, such as a case of Force Majeure, (iii) Customer’s third-party service providers (including Internet service providers’ downtime), (iv) Customer’s IT infrastructure and internal configurations, (v) suspension of the Services in accordance with this Agreement or (vi) a Urgent Security Issue (in which case, Flare may not be able to provide advance notice of such downtime).

The Service Level also excludes downtime that is caused by maintenance (“**Scheduled Downtime**”). We reserve up to eight (8) hours per month for Scheduled Downtime. Flare will provide a written notice to Customer prior to proceeding with a Scheduled Downtime either by e-mail or through the Flare Platform.

We may suspend the Services at our sole discretion in case of an Urgent Security Issue or as otherwise required to comply with Applicable Law, and such suspension shall be considered excluded from the Service Level calculation.

## **7. TECHNICAL SUPPORT**

We provide technical support as set forth in the Documentation. Support requests are handled based on their criticality, as determined by the impacts on the Services. We do not provide technical support for previous versions of the Services. We deploy commercially reasonable efforts to respond to technical support requests within twenty-four (24) hours, from Monday through Friday, excluding on statutory holidays applicable to the activities of Flare.

## **8. FEES, TAXES**

You agree to pay the fees set forth in the Order Form, including any costs and expenses which are set forth in such Order Form (the “**Fees**”). The Fees are subject to the payment terms set forth in the Order Form. If no payment terms are indicated, the Fees are payable within thirty (30) days of the invoice date, in Canadian dollars. After this delay, any unpaid portion of the Fees is subject to a monthly interest of 1%, for a total of 12% annually. If the payment is not received within sixty (60) days, Flare may suspend the Services for late payment at its sole discretion, and until any undisputed unpaid portion of the Fees are paid, and shall have no obligations to provide the Services until it receives full payment. Once the payment is received, Flare will reactivate the Services within twenty-four (24) hours. You will be liable for all costs incurred to recover the unpaid portion of the Fees, including attorney’s fees, if payment is not received within ninety (90) days of the invoice date and Flare may terminate this Agreement with cause pursuant to 17.

If a payment is processed through direct debit in your bank account or through a credit card, you hereby authorize us to debit the Fees from the bank account or the credit card. You also represent and warrant that you provide us with accurate and truthful banking and financial information as required for us to process the payments. It is your responsibility to inform us without undue delay of any changes to your banking and financial information. Notwithstanding the foregoing, we have no obligation to make such payment methods available to you. We may change our billing options at any time by advising you at least thirty (30) days in advance.

Subject to Applicable Law, and except if the Services are terminated by you for our breach of this Agreement, or otherwise by Flare for convenience, pursuant to Section 17, the Fees are non-reimbursable and non-cancellable, and we have no obligation to refund any Fees already paid by you to us for any reason whatsoever.

If we are required by Applicable Law, or by the administration thereof, to collect any applicable taxes from Customer, Customer shall pay such taxes to Flare concurrently with and in addition to the payment of the Fees.

## **9. CONFIDENTIAL INFORMATION**

Confidential Information shall not include information which the Receiving Party can demonstrate: (i) is readily available to the public in the same form through no fault of the Receiving Party, (ii) did not originate from the Disclosing Party and was lawfully obtained by the Receiving Party in the same form from an independent third party without any restrictions on disclosure, or (iii) did not originate from the Disclosing Party and was in the possession of the Receiving Party in the same form prior to disclosure to the Receiving Party by the Disclosing Party. The foregoing shall not apply to Personal Data and Service Data.

The Receiving Party shall take all reasonable steps necessary to ensure that the Confidential Information of the Disclosing Party is not made available or disclosed by it or by any of its

Representatives to any third person except (i) as required by Applicable Law including a valid court order, (ii) with the prior written consent of the Disclosing Party, (iii) as authorized or reasonable inferred from this Agreement, or (iv) if the disclosure is made to the Receiving Party's legal counsel, an auditor, or as reasonably required in the course of the administration of a legal entity. The Receiving Party will ensure that its Representatives are subject to an appropriate obligation of confidentiality.

The Receiving Party shall deploy commercially reasonable technical and organizational controls to protect the Disclosing Party's Confidential Information against a Security Breach, taking into consideration the risks to such Confidential Information. Without limiting the generality of the foregoing, Flare shall ensure that Customer Data is encrypted in-transit and at-rest and enter into commercially reasonable terms with suppliers and service provider which shall be substantially as set forth herein. In case of a Security Breach, Flare will notify Customer without undue delays by providing information on the cause of the Security Breach, the types of Customer Data affected by the Security Breach and the likely consequences. If such information is not available at the time of the initial notice, Flare will follow up with additional information as such information becomes available.

Upon the termination of this Agreement for any reason, the Receiving Party shall promptly, at the request of the Disclosing Party, either return all Confidential Information in its possession to the Disclosing Party or securely destroy such Confidential Information. Notwithstanding the foregoing, the Receiving Party is authorized to keep copies as required to comply with Applicable Law, for its corporate records or as part of business continuity; in such case, the Receiving Party shall ensure the confidentiality and integrity of such Confidential Information as long as it is under the Receiving Party custody, and shall securely delete such Confidential Information as soon as reasonably possible.

## **10. PERSONAL DATA**

Each party agrees to comply with Data Protection Laws in the use and provision of the Services.

Without limiting the generality of the foregoing, Customer is solely responsible for (a) determining if it has a lawful basis for processing the Service Data, including through queries, and monitoring functionalities made available through the Services; (b) providing appropriate transparency notices based on its processing of such Service Data; (c) for determining appropriate retention periods for Service Data which are acquired by Customer through the use of the Services, such as query results; (d) for ensuring that it implements adequate technical and organizational measures to protect Service Data acquired through the Services against Security Breaches, and for notifying concerned individuals in case of a Security Breach.

Flare will process Personal Data as required to provide the Services or otherwise as set forth in its Privacy Policy. Flare will not sell or otherwise commercialize the Personal Data.

Flare shall ensure that any third party or personnel who process Personal Data on its behalf is subject to an appropriate confidentiality obligation with respect to such Personal Data.

The parties agree to collaborate in good faith to respond to End Users' requests regarding their rights on their Personal Data. If Flare receives a request to this effect, Flare will inform Customer without undue delays and Customer will be responsible for responding to such requests. If a request is received by either party regarding Service Data, the parties will collaborate in good faith to respond to the requests, including by limiting further use of the Service Data thereafter if appropriate.

## **11. CUSTOMER INDEMNIFICATION**

You hereby agree to indemnify us, defend us and hold us harmless (including our Representatives) from and against any and all claims, penalties, fines, costs, expenses (including reasonable attorney's fees), actions, damages, losses or liabilities, directly or indirectly arising out of, related to, in connection with or resulting from: (i) a breach of Section 3 and (ii) your gross negligence, fraud and willful misconduct.

## **12. DISCLAIMER**

Except as provided in this Agreement, and to the maximum extent permitted under Applicable Law, (i) we do not warrant that the Services will be uninterrupted or error free, (ii) we do not make any warranty as to the results that may be obtained from the use of the Services, (iii) Flare is the sole authorized person to make any representations or warranties on its behalf, and (iv) the Services are provided on an "as is", "where is" and "as available" basis. Flare does not guarantee that the Risk Data is accurate or reliable.

To the maximum extent permitted by Applicable Law, and except as otherwise set forth herein, we make no other representations, conditions, warranties or guarantees, express or implied, regarding the accuracy, quality, reliability or completeness of any outputs or information (including Outputs) provided as a by or as a result of using the Services, and we expressly disclaim any and all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. Unless stated otherwise in this Agreement, you hereby waive your rights in any of the foregoing warranties, representations or conditions, whether express or implied.

Customer is solely responsible for the accuracy, truthfulness and quality of Customer Data and any content or information, directly or indirectly, delivered through or passed through the Services by Customer (or its End Users). We exercise no control over and accept no responsibility for the accuracy, truthfulness and quality of Customer Data, including, without limitation, violations of Intellectual Property, Applicable Law and privacy rights.

You acknowledge and agree that any Outputs produced by or obtained from the Services (or the use thereof) are for informational purposes only. We do not have any liability whatsoever for business decisions resulting from such Outputs. You must ensure the Outputs are accurate and consistent. For the avoidance of doubt, this includes any advices on mitigation and detection of information security vulnerabilities.

We do not operate the networks of, or have any control over the operations of, the wireless or other communications service providers through which you may access the Services. Accordingly, (a) we disclaim all responsibility and liability for, or relating to, your use of any such providers to access the Services, and (b) we cannot guarantee the privacy or security of wireless data transmissions.

No other oral advices, written or electronically delivered information given by us or our Representatives shall create any warranty.

## **13. LIMITATION OF LIABILITY**

To the maximum extent permitted by Applicable Law, in no event will either party and its Representatives be liable for any consequential, indirect, punitive, special or incident damages, which shall include, without limitation, any loss of data, loss of opportunities, reputational damages or loss revenues resulting from a breach of this Agreement, or the provision of the Services, even if it has been made aware of such damages.

To the maximum extent permitted by Applicable Law, in no event will Flare's liability to Customer or its Representatives in relation to this Agreement or the provision of the Services will exceed the Fees paid by Customer in the twelve (12) months preceding the claim.

For the avoidance of doubt, the foregoing limitation of liability shall not apply to bodily damages, moral damages, willful misconduct, gross negligence and fraud.

#### 14. **FORCE MAJEURE**

Except as it relates to the payment of the Fees, neither party shall be liable for delays in or failure of performance hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God or public enemy, acts of government in either its sovereign or contractual capacity, flood, earthquake, epidemic, pandemic (including any similar phenomenon arising from the outbreak of coronavirus COVID-19) or other natural disaster, strike or other labor disputes, acts of war, acts of civil disobedience, denial-of-services and distributed-denial-of-services, ransomware and other cyber-attacks that are not caused or facilitated by negligence (a "**Force Majeure**"). Any delay resulting from a Force Majeure will result in an extension of the corresponding obligation for a period equal to the time lost by reason of such cause. For instance, if the Services are unavailable for a period of two (2) weeks as a result of a Force Majeure, then the Subscription Term shall automatically be extended by two (2) weeks. The parties shall advise each other as soon as possible in the event of a Force Majeure.

#### 15. **EXPORT CONTROL; ANTI-CORRUPTION**

Each party shall comply with all applicable anti-bribery and anti-corruption laws, including, without limitation, the *Canadian Corruption of Foreign Public Officials Act* and the *U.S. Foreign Corrupt Practices Act of 1977*, as amended ("**Anti-Corruption Laws**"). Neither party nor any of their Representatives is or has been the subject of any investigation or inquiry by any authorities with respect to potential or actual violations of Anti-Corruption Law. If a party has been subject to such investigation or inquiry, it represents and warrants that it has not been found in breach of Applicable Law and that no charge has been retained against this party. Notwithstanding anything to the contrary, if either party takes any action that could constitute a violation of Anti-Corruption Laws, the other party may immediately terminate these Terms of Services.

Customer acknowledges that the provision of the Services, including the Flare API and Flare Platform is subject to export control laws. Customer hereby represents and warrants that (i) neither it nor any of its Representatives will export, re-export, distribute or otherwise transfer the Services or Flare Platform, or any technical information related thereto, directly or indirectly, to any country for which the competent authorities (including the Canadian and United States government entities) require an export license, other governmental approval or letters of assurance without first obtaining such license, approval or letter, including, without limitation, any countries on Canada's Area Control List or subject to the Canadian Economic Sanctions, and (ii) neither it nor any of its Representatives will export, re-export, distribute or otherwise transfer the Services or any technical information related thereto for an end use that is directly or indirectly related to the research, development or production of chemical, biological or nuclear weapons or any missile programs for such weapons, or that otherwise disrupt international peace or is contrary to any restriction on end users set for in applicable Law.

#### 16. **DISPUTE RESOLUTION PROCEDURE**

In the event of a dispute between us in relation to this Agreement, such as a claim, a damage or allegations of claims and damages, the parties agree that they will deploy commercially reasonable efforts to resolve the conflict amicably. If the parties fail to resolve the dispute amicably, either party may send a notice of dispute to the other party, and the parties will

name a senior representative to solve the conflict for a period of at least thirty (30) days. Senior representatives must have decision-making authority. If the dispute has not been resolved through the honest efforts of both parties during this delay, either party may exercise its rights under this Agreement, or at law.

## **17. TERMINATION**

Each party may terminate this Agreement for cause upon written notice (a) if the other party commits a material breach of the Agreement and has not cured the breach within thirty (30) days of receiving a notice of such material breach; (b) immediately upon written notice, if Customer becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or assignment for the benefit of creditors, if such proceedings are not abandoned within sixty (60) days.

Each party may terminate this Agreement without cause subject to a ninety (90) days written notice to you.

### **17.1 Effects of Termination**

If this Agreement is terminated for any reason or expires, then: (i) such termination or expiry shall not operate to limit, reduce, cancel or otherwise modify any obligations then accrued or unpaid in accordance with the Agreement; (ii) except as otherwise set forth in this Agreement, the rights granted by one party to the other shall terminate immediately; (iii) you shall have a limited access to the Services for a limited period of thirty (30) days during which you may extract Customer Data available for extraction through the Services, if any; (iv) if the termination of the Agreement is for any other reason than as a result of Flare's material breach of this Agreement or as a result of Flare's termination for convenience, you agree that all Fees shall become due upon the termination of this Agreement, and such Fees shall constitute adequate compensation for the early termination of the Agreement under Section 2129 of the *Civil Code of Quebec* and (v) if the termination of the Agreement is due to Flare's material breach of this Agreement or as a result of Flare's termination for convenience, then Flare will reimburse to Customer any Fees paid in advance for Services which have not been rendered as of the termination date, and Customer shall not be obliged to pay for any such Fees.

All obligations of the parties, whether in this Agreement, which by their terms are intended or are otherwise appropriate, to survive the cancellation, termination or expiration, including Section 1 - Definitions, Section 3 - Acceptable Use, Section 5 - Intellectual Property, Section 9 - Confidential Information, Section 10 - Personal Data, Section 11 - Customer Indemnification, Section 12 - Disclaimer, Section 13 - Limitation of Liability, and Section 17 - Termination, shall survive the cancellation, termination or expiration of the Agreement.

## **18. GOVERNING LAW**

The laws of the Province of Québec and the applicable laws of Canada shall govern this Agreement. Venue for disputes arising under this Agreement shall lie exclusively in the courts located in the judicial district of Montreal, Quebec, and the parties attorn to the jurisdiction of such courts, without giving effect to any choice or conflict of law provision or rule (whether in Quebec or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the Province of Quebec, Canada. The *United Nations Convention on the International Sale of Goods* is specifically excluded from application to the Terms of Services.

## **19. GENERAL PROVISIONS**

### **19.1 Entire Agreement**

The Agreement constitutes the whole and entire agreement between you and Flare in connection with the subject matter hereof and, unless specified otherwise in an Order Form,

supersede any proposal and any prior agreements, letters, undertakings, declarations, commitments, representations, written or oral, in respect thereof, and there are no express or implied terms, conditions, agreements, undertakings, declarations, commitments, representations or warranties between the parties not expressly provided herein.

#### 19.2 No Waiver

No waiver or course of dealing between the parties shall extend to, or constitute a waiver of, any subsequent or other defaults or impair any right consequent thereon. No failure or delay on the part of any party in exercising any right, power or privilege hereunder and no course of dealing between the parties shall operate as a waiver of any default of any such right, power or privilege. No waiver to the Agreement shall be binding unless contained in writing and signed by the waiving party.

#### 19.3 Severability

Any provision of this Agreement found upon judicial interpretation or construction to be prohibited by Applicable Law shall be ineffective to the extent of such prohibition, without invalidating the remaining provisions hereof; so long as the economic and legal substance of the subject matter of these Terms of Services is not affected thereby in any manner materially adverse to any party.

#### 19.4 Independent Contractor

Flare agrees not to hold itself out as an agent of Customer, it being understood that Flare is an independent contractor only, providing the Services to Customer. Nothing contained in these Terms of Services shall be construed to establish a partnership or joint venture between parties. Neither party shall be deemed to be the partner, agent or legal representative of the other, nor to otherwise have the ability, right or authority to assume or create, in writing or otherwise, any obligation of any kind, express or implied, in the name of or on behalf of the other party.

#### 19.5 Assignment and Subcontracting

Except in the case of a merger and acquisition, *bona fide* corporate reorganization, or in case of a sale of all or parts of its assets, neither party may assign parts or all of this Agreement without the other party's prior written consent. Any attempt to assign this Agreement in violation of this Section will be null and void. This Agreement is binding upon and enure to the benefit of successors and permitted assigned.

#### 19.6 Language

The parties confirm that it is their wish that these Terms of Services, as well as any other documents relating to these Terms of Services, including Order Forms, Change Orders, notices, schedules and authorizations, have been and shall be drawn up in the English language only. *Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.*