



## Element Software and Services License Agreement

# Element Software and Services License Agreement

## DEFINITIONS

**Agreement:** this Element Software and Services License Agreement and either: (a) where the parties agree and execute Order Forms, any Order Form; or (b) where the Customer places its order online, any Subscription. This Element Software and Services License Agreement shall comprise the entire Agreement between Element and the Customer where either: (i) the Customer downloads Element Starter directly from the relevant code repository; or (ii) the Customer is purchasing the Service from a third-party.

**Customer:** means the business or individual detailed in the Order Form or Subscription, as applicable. Where the Customer downloads Element Starter directly from the relevant code repository, the Customer shall be the individual, organisation or other entity on whose behalf Element Starter is downloaded. Where the Customer is purchasing the Service from a third party, the Customer shall be the individual, organisation or other entity on whose behalf this Element Software and Services License Agreement is accepted.

**Customer's IT Environment:** The Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Service.

**Data:** the data inputted by the Customer, or by Element on the Customer's behalf or otherwise generated in respect to the Customer's use of the Service.

**Documentation:** any documentation in relation to the Service made available to the Customer by Element from time to time.

**Element:** New Vector Limited (a company incorporated and registered in England and Wales with company number 10873661, and whose registered office is at 10 Queen Street Place, London, United Kingdom, EC4R 1AG).

**Element Applications:** the mobile, desktop, web application, or other software components owned and made available by Element as described and made available here: <https://element.io>, as amended from time to time.

**Element Clients:** a subset of the Element Applications used primarily by the Users.

**Element Policies:** any policies or procedures of Element or in respect to the use of the Service as made available to the Customer from time to time.

**Element Products and Services:** the software, products, and services to be provided by Element including the ESS and (if applicable) the Element Clients, together with accompanying professional and support services, as are included in the Customer's Plan or otherwise provided by Element under this Agreement, and detailed in the Order Form or Subscription (only in respect of a Purchased Service) and applicable Documentation.

**Element Extensions:** additional services or functionality such as bridges (functionality allowing connectivity with third party services), integrations, additional server modules, or gateways, and any other extensions provided by Element under this Agreement, including in respect of a Purchased Service as detailed in an Order Form or Subscription, as applicable.

**Element Server Suite (ESS):** the Element product stack which may include (but is not limited to) a homeserver, an admin console and Element Extensions.

**Element Starter:** the software made available for free by Element as "Element Starter".

**Element Software and Services License Agreement:** Element's standard end user license agreement or similar terms of service,

to be accepted by the End Customer before using Element Products and Services, as amended from time to time.

**Fees:** the fees payable by the Customer to Element for a Purchased Service as detailed in the Order Form or Subscription (as applicable).

**Initial Term:** the initial term of this Agreement as detailed in the Order Form or Subscription (as applicable), which shall commence on the Start Date (or, if a Trial Period is provided, the day following the last day of the Trial Period).

**Intellectual Property Rights:** all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case throughout the world and together with all renewals and extensions.

**MAU Limit:** the maximum number of MAUs permitted to use the Service in a rolling thirty (30) day period, as purchased by the Customer and set out in the Order Form or Subscription (if applicable).

**Minimum Specification:** means the specification which the Customer IT Environment is required to meet in order to use the Service, as revised from time to time.

**Monthly Active User (MAU):** any User who has been active in the last thirty (30) days, regardless of whether that User has subsequently been deactivated.

**Non-Purchased Service:** any Element Product and Service provided by Element to the Customer where the Customer is not paying any Fees to Element, either because the Customer is using Element Starter or has purchased the Element Products and Services through a third-party.

**Open-Source Software:** open-source software as defined by the Open Source Initiative ("OSI") (<https://opensource.org/osd/>) and/or that is licensed under a license on the OSI Approved Licenses List at <https://opensource.org/licenses/>

**Order Form:** if applicable, any order form agreed by Element with the Customer detailing the Service, the Plan purchased by the Customer (if applicable), the Initial Term, the number of Users, and the Fees (if applicable), as amended on agreement between the parties in writing.

**Plan:** the subscription plan purchased by the Customer in order to receive and use Element Products and Services, as listed in the Order Form or Subscription, the details of which are either described at the following page: <https://element.io/pricing> or otherwise detailed in the relevant Order Form or Subscription. Where the Customer is using Non-Purchased Services via a third party, its Plan will be the authorised plan as notified to Element by that third party.

**Professional Services Schedule:** the schedule containing the terms and conditions applicable to the performance of professional services by Element which, if applicable, will be attached to the relevant Order Form and/or statement of work.

**Purchased Service:** the Element Products and Services being purchased by the Customer from Element, as detailed in the Order Form or Subscription (as applicable).

**Renewal Term:** any subsequent terms after the Initial Term as described in clause 17.1.

**Self-Hosted:** to be installed and run on computer facilities provided, procured or controlled by the Customer.

**Service:** either the Purchased Service or the Non-Purchased Service, as applicable.

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**Start Date:** the date Element first makes the Service available to the Customer.

**Subscription:** if applicable, the Customer's online order detailing the Service, the Plan the Customer has purchased (if applicable), the Initial Term, the number of Users, and the Fees (if applicable).

**Term:** the Trial Period (if applicable), the Initial Term and any Renewal Term, or where the Customer has purchased a Non-Purchased Service from a third-party, as defined in clause 17.2.

**Users:** any individuals accessing and using the Service.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account any amendment, extension, or re-enactment and includes any subordinate, interim or provisional legislation for the time being in force made under it. Any words following the terms including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms. References to clauses and schedules are to the clauses and schedules of this Agreement. The details of the Order Form or Subscription, as applicable, form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

## 1. SERVICES

- 1.1 **This Agreement** will operate as a framework agreement which defines the contractual terms and conditions under which Element will supply the Service to the Customer. Whilst this Agreement remains in force, the parties shall agree to the provision of the Service, including where applicable under the Plan purchased by the Customer, as set out in any Order Form or Subscription (as applicable) entered into under this Agreement, which shall be governed by and be subject to, the terms and conditions of this Agreement.
- 1.2 **Term of this Agreement.** This Agreement shall commence on the Start Date when the Service is made available to the Customer and, except where the Customer has purchased a Non-Purchased Service from a third-party (in which case clause 17.2 shall apply), shall continue throughout the Initial Term and any Renewal Term unless earlier terminated in accordance with the terms of this Agreement.
- 1.3 **Open-Source.** Element is a software company that supports and incorporates Open-Source Software components into its software. Some components of Element's software that comprise the Services are also made available separately by Element as Open-Source Software (the "Open-Source Components"). The Open-Source Components are made available by Element under a multi-license model. Element makes the Open-Source Components available under the terms of the relevant open-source license, unless you procure a right to use the Service under the terms of this Agreement. Further, the Services offered by Element incorporate Open-Source Software in accordance with the terms of the open-source licences applicable to that Open-Source Software.
- 1.4 **Provision of the Purchased Service. (Not applicable to Self-Hosted deployment)** Element shall, during the Term, use commercially reasonable endeavours to make the Purchased Service available twenty four (24) hours a day, seven (7) days a week, except for periods of planned or emergency (unscheduled) maintenance. Element will give

at least five (5) business days' notice of planned maintenance.

- 1.5 **Support Services.** Element will, as part of the Service, provide the Customer with the support service included in the Customer's Plan (or otherwise detailed in the Order Form or Subscription, as applicable). Element may amend its support services at its discretion from time to time.
- 1.6 **Professional Services.** Element will, where detailed in an Order Form, provide professional services in accordance with the Order Form and the Professional Services Schedule (or such other agreed form of documentation as may be provided by Element in writing to the Customer).
- 1.7 **Updating Service.** As part of its updating service Element shall provide error correction, patches, fixes and updates to the Service as generally made available to its customers. Where requested, the Customer may be required to update the Customer's IT Environment in order to continue to comply with any required Minimum Specification for the Service. For the avoidance of doubt the cost of the updating service described in this clause is included in the Fees (if applicable), but excludes any sum payable by the Customer to ensure compatibility with the Service. Element shall have no liability whatsoever for any failure of Customer hardware or software to comply with the Minimum Specification.
- 1.8 **Service Improvements.** The Customer acknowledges that Element may change or modify the Service from time to time. Element shall only be required to provide the Customer with reasonable notice of a change or modification to the Service in advance if the change or modification is material (and does not extend or enhance the functionality or architecture of the Service) or may substantially adversely affect the Customer's use of the Service.
- 1.9 Any dates quoted for delivery of the Service are approximate only. Any services which are not detailed as being included in the Plan, or otherwise in the Order Form or Subscription (as applicable), are out of scope and subject to additional charges.
- 1.10 **Variation to this Agreement.** Element may make changes to this Agreement from time to time on reasonable advance notice to the Customer of no less than fourteen (14) days, except where such changes are insignificant or do not have a material adverse effect on the Customer's use of the Service in which case Element shall be entitled to make such changes without giving notice to, or obtaining the consent of, the Customer. In the event that the Customer objects to such changes on the grounds that such change has a material adverse effect on the Customer's use of the Service, the Customer's sole remedy shall be the termination of this Agreement. In the event of the Customer's termination of this Agreement in accordance with this clause, Element shall promptly refund to the Customer any Fees already paid for the Purchased Service that relate to the period after the date of termination, on a pro-rata basis (and for the avoidance of doubt excluding any one-off set-up fees already incurred, if applicable). In all cases any revised version of this Agreement shall automatically apply from the end of the notice period provided by Element (and for the avoidance of doubt such revisions shall apply to any Renewal Term or any Element Extensions when purchased).

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- 1.11 Unless otherwise agreed in writing, the Customer acknowledges that the Service has not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Service as described as being included in its Plan, or otherwise in the Order Form or Subscription (as applicable), and/or Documentation, meet the Customer's requirements.
- 1.12 **Trial Period.** Element may choose to make the Element Products and Services available to the Customer for free, on the basis of the Customer's chosen Plan, for a thirty (30) day trial period (the "**Trial Period**"), subject to the terms and conditions of this Agreement. By default, the Customer's access to the Element Products and Services during the Trial Period will be subject to a MAU Limit of fifty (50). Element shall be entitled to extend the Trial Period at any time in its sole and absolute discretion. At the end of the Trial Period, the Customer will have the option of subscribing to a paid Plan for the Element Products and Services for which Fees shall be payable, in accordance with the terms and conditions of this Agreement. If the Customer does not subscribe to a paid Plan at the end of the Trial Period, the Customer's right to access and use the Element Products and Services shall cease immediately upon the expiry of the Trial Period. Where the Element Products and Services are being provided on a Self-Hosted basis, the Customer must cease using and delete the Element Products and Services immediately and confirm to Element in writing that it has done so. Where the Element Products and Services are not provided on a Self-Hosted basis, Element shall be entitled to terminate the Customer's access to the Element Products and Services. Access to the Element Products and Services during the Trial Period may be terminated by Element at any time without notice and without liability, and is provided "as is", without warranty or indemnity of any kind.
- 1.13 Where the Customer has purchased a Non-Purchased Service from a third-party, Element shall in no circumstances be responsible, or accept any liability, to the Customer for: (a) any act or omission of that third party; (b) any goods, services or software provided to the Customer by that third party in addition to the Non-Purchased Service; (c) any modifications made or configurations carried out by that third party to the Non-Purchased Service; or (d) any provisions (including any warranty, condition, representation or service level commitment) included in the Customer's contract with that third party for the Non-Purchased Service. The obligations imposed on Element (including where applicable any warranties provided by Element) in clauses 1.4, 1.5, 1.6, 1.7, 4, 5.1, 5.2, 7.3, 10.2, and 15.2 of this Agreement shall not apply to any Non-Purchased Service purchased by the Customer from a third party. The Customer acknowledges and agrees that Element shall be entitled to suspend and/or terminate the Customer's access to the Non-Purchased Service purchased from a third party if Element's agreement with that third party expires or terminates, or otherwise if the third party is in breach of Element's agreement with it.
- 2. SUPPORT IN ACCESSING AND USING THE SERVICE**
- 2.1 The Customer should refer to the Documentation for information and assistance around using and accessing the Service. The support services provided will depend on the Plan purchased by the Customer (or will be detailed in the Order Form or Subscription, as applicable). Any support request or other assistance requested which is outside the scope of the Plan (or is not detailed in the Order Form or Subscription, as applicable) the Customer has purchased, or deemed by Element to be out of scope will be chargeable as additional services. Element shall have no obligation to provide any out of scope services.
- 2.2 **The Customer's responsibility to understand the Service.** The Customer acknowledges and agrees that whilst the Service is designed for ease of use, it is the Customer's responsibility to ensure that any individuals involved in accessing and using the Service are appropriately trained in the use of any applicable technology and understand and are familiar with the Service and any training materials or Documentation made available to the Customer relating to it. In the event that Element identifies that any repeated requests for assistance are as a result of inadequate training either in respect to the Customer's own systems or the Service, this assistance will be provided as additional services, at Element's discretion. The Customer is solely responsible for ensuring that all Users of the Service are appropriately trained in its use. Element shall have no responsibility to provide support if support issues are deemed by Element to be the result of misuse or lack of appropriate training by the Customer in the use of the Service.
- 2.3 The Customer acknowledges that the provision of the Service to the Customer is based on the Customer meeting applicable service requirements ("**Set Up Requirements**") as detailed in the Documentation provided to the Customer.
- 2.4 In the event that the Customer does not provide Element with the information Element requires from the Customer (and in the event that information is not accurate and complete in all respects) at each stage of the onboarding and set up process or otherwise comply with the Set Up Requirements, Element will not be liable for the Customer's inability to make use of the Service in whole or part, and any additional work required by Element to support the Customer's onboarding, access to the Service or to otherwise assist in Set Up shall be chargeable (and provided at Element's discretion) as additional services at Element's standard rates then in force. Element is not liable for any delay or inability to use or access the Service in whole or part directly or indirectly caused by a delay by the Customer or any third party or any failure to comply with the Customer's obligations under this Agreement.
- 2.5 Element shall have no obligation to provide, and the Customer shall have no right to receive, any support services in respect of the Service where the Customer has modified, amended, varied, or changed the Service in any way (including where the Customer has modified the source code of any of the Services). The Customer's right to receive support services under its Plan shall cease upon the Customer carrying out any such modification.

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## 3. LICENSE

3.1 Subject to the Customer paying the Fees detailed in any Order Form or Subscription (where applicable), or such Fees as are otherwise payable in accordance with this Agreement, clause 1.3 (Open-Source), the restrictions set out in this clause 3 and to which the Customer's Plan is subject (if applicable), and the other terms and conditions of this Agreement, Element hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable (unless agreed in advance by Element and documented in an Order Form), revocable right: **(a)** to permit Users to use the Service and the Documentation during the Term; and, **(b)** to access and use the Service and the Documentation within the limits of the Plan, Order Form or Subscription (as applicable).

3.2 **Limitations on Use.** The rights provided under this Agreement are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company unless otherwise agreed by Element and documented in an Order Form.

### 3.3 User limits and account security

(a) In relation to Users, the Customer undertakes that: **(a)** the maximum number of Users shall not exceed the MAU Limit it has purchased from time to time; **(b)** each User shall accept and comply with Element's Terms of Use found here: <https://static.element.io/legal/terms-of-use.pdf> ("**Terms of Use**"), and comply with all guidance provided by Element with regards to the security of their login credentials and keep this information confidential. Whilst Element does not actively monitor for breaches of the Terms of Use or the uploading of illegal content, if Element is providing hosting services to the Customer and is notified of any such breaches or illegal content it reserves its right (without liability to Customer) to take action against the offending User, including to investigate the breach, remove the offending content, and suspend the User that committed the breach.

(b) By default, MAU limits are imposed. Once the MAU Limits are reached, Users already using the Service will be able to continue doing so, but new Users or Users without active sessions when the limit was reached will not be able to use the Service, unless additional Users are purchased. Where MAU limits are not imposed, usage of the relevant server shall be monitored, with the Customer undertaking to pay for MAU usage as applicable.

(c) Certain Plans offered by Element include a maximum MAU Limit. If the Customer wishes to increase its MAU Limit above the maximum MAU Limit permitted for its Plan, the Customer will have to upgrade to a different Plan. The Customer shall be entitled to increase its MAU Limit or other limits detailed in its Order Form or Subscription (as applicable) by agreement in writing with Element.

3.4 **FAIR USE of resources - MAU:** If the Customer's use of the Purchased Service exceeds any limits imposed in accordance with the Customer's Plan, or otherwise described in an Order Form or Subscription (as applicable), Element shall be entitled to increase its Fees to account for such additional use of the Purchased Service and automatically apply those increased Fees. Overage fees can be avoided by contacting Element in advance and purchasing additional Users or increased limits, or upgrading to a different Plan. If at any time it becomes apparent to Element that the Customer has underpaid

Fees, all Fees applicable to the Customer's actual historical use will be immediately payable to account for any shortfall and the terms of clause 12.5 shall apply. Element may audit the Customer's use of the Service at any time to ensure compliance with this Agreement.

3.5 Where the Customer amends or upgrades its Plan part way through any Term including by the addition of services, Users or licenses, such additional Fees as may be payable shall be prorated from the date of activation by Element for the remainder of the then current Term.

3.6 **FAIR USE of resources - Data Storage:** If Customer's use of the Services exceeds our fair usage limits, then Element shall be entitled to charge the Customer to account for additional costs incurred such as for excessive data storage or data transit. The server data storage limit for events shall be 1GB per User and 9GB per User for media storage, unless otherwise agreed between the parties.

3.7 In the event that Element is entitled to charge additional Fees under this clause 3 (whether such Fees are due to an increase in Fees, or to pay for additional Services or to rectify an underpayment), Element shall be entitled to automatically debit such additional Fees from the payment method(s) for which the Customer has provided details to Element (or Element's Payment Provider, as applicable). If Element is unable to debit such additional Fees automatically from the Customer, Element shall be entitled to issue an invoice reflecting the additional Fees and the Customer shall pay such invoice within thirty (30) days of the date of such invoice.

## 4. ELEMENT'S OBLIGATIONS

4.1 **Warranty.** Element warrants that it will provide the Purchased Service substantially in accordance with the material terms of the Documentation and with reasonable skill and care.

4.2 The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Purchased Service contrary to Element's instructions, or modification or alteration of the Purchased Service by any party other than Element.

4.3 Subject to clause 4.2, if the Purchased Service does not conform with the warranty under clause 4.1, Element will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or if reasonably practicable, provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in this clause. Notwithstanding the foregoing, Element: **(a)** does not warrant that the Customer's use of the Service will be uninterrupted or error-free; nor that the Service, Documentation and/or the information obtained by the Customer through the Service will meet the Customer's requirements; and **(b)** is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.



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- 4.4 Element shall have no obligation to provide any services under this Agreement (and shall be entitled to charge the Customer additional charges at its then current rates) where faults or support requests arise from: **(a)** misuse, incorrect or unauthorised use of the Service; **(b)** failure of the Customer IT Environment; **(c)** use of the Service not in accordance with guidance provided by, or in combination with any hardware or software not approved by, Element; **(d)** any breach of the Customer obligations under this Agreement.
- 4.5 The warranties and representations set out in this clause are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement. Without limitation, Element specifically denies any implied or express representation that the Service will be fit for any purpose or use other than that specifically stated by Element in writing in the Documentation.
- 4.6 **Legal obligations.** Upon receipt of a valid legal order from a competent judicial or administrative authority regarding illegal content, Element shall promptly communicate receipt to the authority and undertake immediate actions to address the order and detail the execution and timing of the response to the authority with diligence, and notify affected Users where appropriate. This notification will include a clear explanation of the reasons behind the order, detailing the specific legal basis, and informing affected Users of their rights to seek redress.
- 4.7 To ensure effective communication and compliance with legal standards, Element has established a designated representative to facilitate interactions with European authorities and provide support for User inquiries and concerns. The representative will address legal inquiries from EU Member States' authorities, deal with User communications, and ensure Element's compliance with regulatory requirements. Contact details for this representative are maintained and made available to both authorities and Users in English, French, and German:
- Name:** Element Software GmbH  
**Address:** c/o Tradeo, Karl-Arnold-Platz 1, 40474 Düsseldorf  
**E-mail:** legal@element.io
5. **INTEGRATION WITH THIRD-PARTIES**
- 5.1 **Third Party Software.** Element shall provide any third-party software to the Customer under the standard license terms provided by the relevant third party or any applicable open-source license. Element is not responsible in any way for any third-party software's performance, features or failures and makes no warranty in respect to the software being fit for the Customer's purposes, or any guarantee in respect to such third-party software's operation or availability at any time.
- 5.2 **Third-Party Services / Integration.** Element offers services and functionality using third party developer tools such as Application Programming Interfaces ("APIs") and Software Development Kits ("SDKs") (the "**Integration Services**"). These third-party Integration Services' terms and conditions contain restrictions on access, storage and use of information. Element has no control over the content of third party sites or resources which Element links to through Element's use of APIs or the Customer's use of the Integration Services and accepts no liability or responsibility for them, the Customer's use or inability to use Integration Services, the web sites they link to or their content, their accuracy or reliability or for any loss or damage (direct, indirect, special, consequential or otherwise) whatsoever that may arise from the Customer's use of any of them or the results obtained. The Customer's use of Element Integration Services is on an "as is" basis and without any warranty of any kind (subject to any additional Element terms that may apply).
- 5.3 The Customer may integrate Element APIs and/or Element SDKs with its own systems subject to the applicable license terms made available to the Customer by Element from time to time.
- 5.4 It is the Customer's sole responsibility to ensure that the Element APIs and/or SDKs are properly integrated. Unless otherwise agreed in writing, beyond providing Documentation, Element does not commit to providing further support or assistance with the integration of the Service with the Customer's systems.
- 5.5 The Customer acknowledges and agrees that: **(i)** the use and availability of certain parts of the Service may be dependent on third-party product vendors and service providers, **(ii)** these third-party products and services may not operate in a reliable manner all of the time and they may impact on the way that the Service operates, and **(iii)** Element shall not be responsible for damages and losses due to the operation of these third-party products and services.
- 5.6 **Location Sharing.** To enable location sharing functionality, Element requires a MapTiler API key. If the Customer uses this functionality, it will be exposing its map key. The Customer is responsible for all use of its API keys and should take steps to protect its MapTiler API keys in its account. The Customer may not use any MapTiler API key with any forks of Element or any other products using or incorporating Element code.
- 5.7 The Customer should contact the third party with any questions about third-party products and services or any issues with them including integration with the Customer's own systems.
- 5.8 Element shall have no liability or obligation whatsoever in relation to the unavailability of, or use or misuse of, the Service by any third-party. The Customer accepts all responsibility for and agrees to release Element entirely from any claims, liabilities, disputes, actions or proceedings arising from or connected to the Customer's interaction with any third party through, or as a result of the provision of, the Service.
6. **RESTRICTIONS OF USE**
- 6.1 The Customer shall not, and shall take all reasonable steps to ensure that any User does not, upload, access, store, distribute or transmit any viruses, or any material during the course of its use of the Service that: **(a)** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; **(b)** facilitates illegal activity; **(c)** is in breach of applicable legislation in respect to obscenity or indecency; **(d)** promotes violence; **(e)** is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or **(f)** causes damage or injury to any person

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or property. Element reserves the right, without liability to the Customer, to disable the Customer's access to the Service as a result of a breach of the provisions of this clause, or where there has been unauthorised or suspected fraudulent or otherwise suspicious activity related to the Customer's use of the Service. In line with this, Element may, in good faith, conduct voluntary investigations into content and activities on our Service to ensure compliance with this clause 6.1.

- 6.2 Except to the extent expressly permitted under this Agreement and to the maximum extent permitted by law, the Customer shall not: **(a) (i)** attempt to copy, reproduce, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service in any form or media or by any means; or **(ii)** attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service; or **(b)** access all or any part of the Service in order to build a product or service which competes with the Service; or **(c)** use the Service to provide services to third parties or offer any part of the Service for sale or distribution over any other medium; or **(d)** license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Documentation available to anyone except the Users; or **(e)** attempt to obtain, or assist third parties in obtaining, access to the Service; or **(f)** permit any third party to benefit from the use or functionality of the Service.

## 7. SELF-HOSTED SERVICES

- 7.1 This clause shall apply in respect of Self-Hosted installations of the Service.
- 7.2 The Customer acknowledges and agrees that: **(a)** unless otherwise agreed between the parties, Element is only providing the Service through instruction and guidance provided to the Customer's personnel via the communication channels agreed between the parties, and Element is not being provided with remote access to the Customer's IT Environment or the Service as it is installed on the Customer's IT Environment ("**Supported Software**"), in order to provide the Service directly; **(b)** Element is not liable for any failure to diagnose or resolve any request for support caused by it not having remote access to the Customer's IT Environment or the Supported Software; **(c)** Element is not liable for any failure to provide the Service where the Customer has exceeded the MAU Limit without either Element being notified, or the Customer purchasing additional MAUs or upgrading its Plan (if necessary) to cover the additional Users; and **(d)** Element is not liable for any fault caused or failure to diagnose or resolve any request for support where the Customer has failed to install and implement any patches, fixes, updates or upgrades made available by Element in respect of the Supported Software.
- 7.3 Element shall make any patches, fixes, updates and upgrades to the Supported Software generally available to the End Customer ("**Updates**"), and the Customer will be responsible for installing and implementing such Updates utilising the appropriate update installer, instructions and documentation provided by Element. A failure to use the correct provided installer or to follow instructions and/or documentation provided by Element in respect to any

Updates shall render any warranties, obligations and support obligations in relation to this Agreement, null and void and any additional support or assistance required will be deemed out of scope and chargeable.

- 7.4 Except to the extent that Element is required to provide the Service under this Agreement, Element shall not at any time be responsible or liable to the Customer for: **(a)** the delivery to or access by the Customer of the Supported Software; **(b)** the installation of the Supported Software on the chosen servers of the Customer; or **(c)** the deployment, implementation, configuration, or hosting of the Supported Software as required by the Customer.
- 7.5 Element shall not be liable to the Customer for any error, interruption or unavailability of the Supported Software that is caused by the Customer's IT Environment.
- 7.6 The Customer shall notify Element in advance (or otherwise as soon as possible) of any anticipated usage of the Service by Users in excess of the MAU Limit (whether such Users are employed or contracted by the Customer or not, and in whatever manner and for any reason), and upon such notification the MAU Limit and the Fees shall immediately be increased accordingly, or if necessary the Customer will be required to upgrade its Plan. Where Element is notified of additional usage in excess of the MAU Limit in accordance with this clause, it shall be entitled to invoice for such additional/increased Fees as are applicable on or after the date of such notification and the Customer shall settle such invoices within thirty (30) days of their date.

## 8. ELEMENT STARTER

- 8.1 This clause 8 shall only apply to Element Starter, and shall prevail over any conflicting clauses in the rest of this Agreement in respect of Element Starter.
- 8.2 Element shall not be obliged to provide any support services to the Customer in respect of Element Starter.
- 8.3 Element Starter is a Non-Purchased Service with no Fees payable by the Customer to Element.
- 8.4 The Customer's access to Element Starter shall commence on the Start Date and shall continue until terminated by either party. The Customer shall be entitled to stop using Element Starter and/or terminate this Agreement at any time. Element shall be entitled to terminate the Customer's use of and access to Element Starter, and or terminate this Agreement at any time.
- 8.5 The Customer shall be entitled to upgrade from Element Starter to a paid-for Plan upon agreement in writing with Element.
- 8.6 Whilst there are no MAU Limits imposed on the Customer's use of Element Starter, the Customer acknowledges and agrees that Element Starter may be subject to technical limitations, and exceeding these technical limitations may lead to a deterioration in performance or non-performance of the Service.

## 9. THE CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall: **(a)** provide Element with all necessary and timely cooperation in relation to this Agreement; including all necessary access to such information as may be required by Element in order to provide the Service, including but not limited to, Data and documentation requested for the provision of the Service (and ensure that such information and data is accurate in all material respects). Element is not liable for any inability to use the

# Element Software and Services License Agreement

Service in whole or part directly or indirectly caused by the Customer or any third party; **(b)** appoint an individual who shall have the authority to contractually bind the Customer on matters relating to the Service; **(c)** be responsible (at the Customer's own cost) for ensuring that the Customer's IT Environment complies with the relevant specifications to use the Service provided by Element, including the Minimum Specification, as amended from time to time; **(d)** comply with all applicable laws and regulations with respect to the Customer activities under this Agreement (including but not limited to consumer and Data Protection Legislation as defined in the Data Processing Agreement linked to in clause 10.4) and in the Customer's use of the Service including ensuring that the Service complies with any legal or regulatory requirements relating to their content and carry all disclaimers, warnings and public information which a competent lawyer would advise in all countries and for all purposes for which use is intended, including in respect to applicable consumer or Data Protection Legislation.

9.2 The Customer is responsible for ensuring that each User's use of the Service and Documentation is in accordance with the terms and conditions of this Agreement and shall be responsible for any User's compliance, non-compliance and/or breach of the terms of this Agreement (including but not limited to clause 6 above) or the Terms of Use or other policies made available to the Customer in respect to the use of the Service from time to time in writing ("**Element Policies**"). Element reserves the right, without liability to the Customer or any User to disable access to the Service in the event of a breach of any Element Policies. To the extent permissible by law, Element will not be liable for any loss that the Customer, a User or any third party may incur as a result of any use or misuse of any part of the Service, whether with or without the Customer's knowledge. The Customer is responsible for safeguarding the individual Users who access the Service and is liable for any actions or inactions of those Users under this Agreement as if they were its own. It is the Customer's responsibility to ensure Users' compliance with this Element Software and Services License Agreement and any Element Policies in respect to the use of the Service and shall take all reasonable steps and be responsible for, limiting or prohibiting access to the Service by any User whom the Customer becomes aware of during the course of this Agreement is breaching this Agreement or any Element Policies.

9.3 The Customer shall be responsible for:

- (a) **Safeguarding and Security.** Procuring and maintaining the Customer's network connections and telecommunications links from its systems to the Service, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
- (b) **Operating best practice and ensuring appropriate security precautions are taken in connection with its use of the Service.** The Customer is responsible for taking all reasonable steps to mitigate the risks inherent in the use of the Service, including data loss, and taking all reasonable and usual precautions to safeguard the Customer's IT infrastructure, including taking backups, operating firewalls and virus checks and implementing

effective and appropriate data security in respect to the use of the Service.

- (c) **Compliance with legal requirements.** Ensuring that the Customer's use of the Service complies with any legal or regulatory requirements and is not fraudulent.
- (d) **Ensuring that the use of the Service complies with the content standards** set out in this Agreement (or as otherwise provided to the Customer). The Customer warrants that any content will be non-infringing and will not breach any third-party rights and the Customer will be liable to Element and indemnify Element for any breach of that warranty. Element has the right to remove any content hosted on the Service without liability if in Element's opinion, that content does not comply with the standards set by Element.
- (e) **Ensuring that the Customer's use of the Service meets any required standards.** The Customer must: **(i)** ensure that any content uploaded by the Customer and all activities the Customer carries out through the Service and any subsequent agreement with any Users of the Customer's services complies with all applicable local legislation; **(ii)** not use the Service or allow the Service to be used in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Element Software and Services License Agreement, or act fraudulently or maliciously; **(iii)** not infringe Element's Intellectual Property Rights or those of any third party; **(iv)** not use the Service in a way that could damage, disable, overburden, impair or compromise Element's systems or security or interfere with other Users.
- (f) **Users' enquiries.** The Customer is responsible for fielding enquiries directly from the Users and for any liability which results from the Customer's engagement with them through the Service. The Customer agrees to indemnify Element, in full in respect to any claim made against Element by any User. The Customer accepts all responsibility for and agrees to release Element entirely from any claims, liabilities, disputes, actions or proceedings arising from or connected to the Customer's interaction with any third party through Element, or as a result of Element's provision of the Service.
- (g) Element has the right to suspend services, without liability, if, in Element's opinion, the Customer's use of the Service does not comply with the standards set by Element (including but not limited to the Element Policies). Element may suspend or terminate this Agreement or the Customer's or any User's access to the Service, without liability, if in Element's opinion the Customer or any User is not complying with the spirit of this Agreement, the fair use requirements contained in it, or operates in a way which fails to uphold the highest standards of care or where Element believes that the presence of certain content on the Service exposes Element or any of its customers or other Users to any potential liability or risk.
- (h) Element is a service provider, and does not engage in any relationship or correspondence with Users or participate in any part of any contract made between the Customer and its Users. The Customer agrees to indemnify Element, in full in respect to any claim made against Element by any party in connection with such arrangement, access or contract.

## 10. DATA AND DATA PROTECTION



# Element Software and Services License Agreement

- 10.1 **Customer Data.** The Customer shall own all rights, title and interest in and to all of the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.
- 10.2 Element shall, in providing the Service, comply with its Privacy Policy relating to the privacy and security of the Data as amended from time to time by Element in its sole discretion.
- 10.3 The Customer grants to Element a non-exclusive, perpetual, irrevocable, royalty-free license to use the Data (provided that such data is anonymised) for the purposes of: **(a)** statistical analysis and monitoring, querying and analysing such data for the purpose of providing the Service, improving the quality of services Element provides to its customers and for marketing purposes; **(b)** complying with any applicable governmental or regulatory requirements (including reporting requirements); and **(c)** exercising its rights and fulfilling its other obligations under this Agreement.
- 10.4 The parties acknowledge that if Element processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and Element is the processor for the purposes of the **Data Protection Legislation**. The obligations of the parties in respect to the processing of personal data are set out in the following document: <https://element.io/data-processing-agreement> ("**DPA**"). Acceptance of this Agreement shall constitute acknowledgement of and agreement with the DPA.
- 11. SUSPENSION OF THE SERVICE**
- 11.1 Element may suspend the Service without liability if: **(a)** Element reasonably believes that the Service is being used in breach of the Agreement and the Customer does not remedy the failure within fourteen (14) days of Element's written notice to the Customer describing the breach; **(b)** the Customer does not cooperate with Element's reasonable investigation of any suspected violation of the Agreement; **(c)** there is an attack on the Service or the Service is accessed by or manipulated by a third party without Element's consent; **(d)** Element is required by law to suspend the Service or the Customer's access to the Service; **(e)** there has been unauthorised or suspected fraudulent or suspicious activity relating to the Customer's use of the Service; or **(f)** there is another event for which Element reasonably believes that suspension of the Service is necessary to protect its or any other party's network, system, the Service or other customers.
- 11.2 Element will use reasonable endeavours to give the Customer advance notice of a suspension under this clause 11, unless Element determines in its reasonable commercial judgement that an immediate suspension is necessary to protect Element or its customers from imminent and significant operational or security risk, or if to do so would be unlawful or Element has grounds to suspect fraudulent or any other form of criminal use of the Service.
- 11.3 Any suspension of the Service, unless caused directly by Element, shall not suspend the Customer's obligation to pay any Fees.
- 12. FEES AND PAYMENT FOR THE PURCHASED SERVICE**
- 12.1 The Customer shall pay the Fees to Element when purchasing the Purchased Services in accordance with the Plan, Order Form or Subscription (as applicable) and this clause 12, or as otherwise agreed between the parties.
- 12.2 Where the parties have agreed for the Fees to be payable by the Customer without granting Element the authority to charge the Customer's payment details, the provisions of this clause 12.2 shall apply instead of clauses 12.3 and 12.4. Element shall invoice the Customer on the Start Date (or, where a Trial Period is provided, the day after the last day of the Trial Period) for the Fees payable for the Plan as detailed in the Order Form or Subscription (as applicable) for the applicable Initial Term. Fees for any Renewal Terms shall be payable in advance. All invoices are payable within thirty (30) days of the date of such invoices, unless otherwise agreed in advance.
- 12.3 Where the parties agree that the Customer shall provide Element, or Element's authorised third-party payment facility provider ("**Payment Provider**"), with its payment details and the authority to charge the Customer for the Fees automatically using those payment details, the provisions of this clause 12.3 and clause 12.4 shall apply, instead of clause 12.2. The Customer shall provide to Element or the Payment Provider relevant valid, up-to-date and complete contact and billing details and payment method to process any payments (either credit card, direct debit or debit card) and Element or the Payment Provider (as applicable) shall charge the Customer's payment method on the Start Date (or, where a Trial Period is provided, the day after the last day of the Trial Period) for the Fees payable for the Plan and the applicable Initial Term. Fees for any Renewal Term shall be payable and charged in advance. By submitting such payment information, the Customer automatically authorises Element or the Payment Provider (without any further reference to the Customer) to charge to such payment instrument all Fees incurred through the Customer's use of the Purchased Service.
- 12.4 The Customer must have an open payment channel such as a Direct Debit or Automatic Card Payment set up with Element or the Payment Provider. If this is cancelled or payment fails through the agreed channel, the Customer undertakes to make payment for any outstanding balance of any Fees due or payable to Element under this Agreement, in full, within seven (7) days of the original due date.
- 12.5 If Element has not received payment within seven (7) days after the due date for any Fees, then without prejudice to any other rights and remedies of Element: **(a)** Element may, without liability to the Customer, on two (2) business days' advance notice, disable the Customer's account and suspend access to all or part of the Purchased Service, future version updates, licensed bug fixes etc. and Element shall be under no obligation to provide any or all of the Purchased Service while the invoice(s) concerned, any interest, administrative and legal costs of collecting payment and any further sums payable, remain unpaid; and **(b)** interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of Lloyds TSB at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgement.
- 12.6 All amounts and fees stated or referred to in this Agreement: **(a)** are non-cancellable and non-refundable; **(b)** are exclusive of applicable tax, which shall be added to Element's invoice(s) at the appropriate rate.

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12.7 Element shall be entitled to increase the Fees payable for the Purchased Service at the start of each Renewal Term, on thirty (30) days' prior written notice to the Customer. In the event that the Customer does not agree to such an increase, the Customer may terminate this Agreement at the end of the Initial or then-current Renewal Term. In the event that the Customer does not notify Element that the Customer objects to any increase, the Renewal Term shall be extended and include the increase in Fees accordingly.

12.8 **Fees, audit and Telemetry.** By default, Self-Hosted Element services are configured to automatically report usage telemetry over the Internet to Element. In environments where automated reporting over the internet is not possible, telemetry may be manually reported subject to agreement with Element, in writing, in advance. Whether the Purchased Service is Self-Hosted or otherwise, Element reserves the right to audit the Customer's usage of the Purchased Service in order: **(a)** to verify that the Customer is in compliance with the terms of this Agreement; and, **(b)** for billing purposes. Any telemetry data received by Element is solely related to the use of the Purchased Service (including, but not limited to, delivering, enhancing, improving customising and supporting the Customer's use of the Purchased Service), for audit and billing purposes and is processed in accordance with the Element Policies, as amended from time to time, and applicable Data Protection Legislation.

12.9 The Customer shall take all necessary steps to ensure that the process by which telemetry data is received by Element remains operational and shall not do anything which would interrupt, modify or suppress data collection, without prior written agreement. In the event that Element permits the Customer to disable the telemetry setting, or in the event that the telemetry setting is not functional, it is the Customer's responsibility to report monthly usage statistics to Element in accordance with the guidance provided by Element in the applicable Documentation or Element Policy. In the event that Element believes that the Purchased Service dependent on the collection of telemetry data is being misused, not used in the spirit of this Agreement or the Customer's reporting is deficient (whether deliberately or otherwise), Element may, depending on the severity of the breach, suspend access to the Purchased Service with or without notice, and without liability.

12.10 Where the Customer has purchased a Non-Purchased Service through a third-party, it acknowledges and agrees that: **(a)** Element shall have the right to charge additional fees to that third-party as a result of the Customer either purchasing additional Services or professional services or amending the Services it is using, increasing or exceeding any limits imposed on the Service it is using, or otherwise in line with any increase imposed by Element; **(b)** the fees the Customer pays to such third-party may increase from time-to-time as a result of Element charging and invoicing additional fees to that third-party; and **(c)** the Customer's access to the Services may be suspended or terminated by Element (without liability) in circumstances where the third-party has failed to pay Element.

## 13. PROPRIETARY RIGHTS

The Customer acknowledges and agrees that Element and/or its licensors are the sole and exclusive owners of all Intellectual Property Rights and other proprietary rights in the Service. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Service.

## 14. CONFIDENTIALITY

14.1 Each party may be given access to confidential information from the other party in order to perform its obligations under this Agreement. A party's confidential information shall not be deemed to include information that: **(a)** is or becomes publicly known other than through any act or omission of the receiving party; **(b)** was in the other party's lawful possession before the disclosure; **(c)** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; **(d)** is independently developed by the receiving party, which independent development can be shown by written evidence; or **(e)** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided that to the extent practicable and permitted by law, the receiving party shall promptly notify the disclosing party in advance of such requested disclosure and provide the disclosing party with an opportunity to object to such request.

14.2 Each party shall hold the other's confidential information in confidence and, unless required by law, not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than the implementation of this Agreement.

14.3 Each party shall take all reasonable steps to ensure that the other's confidential information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

14.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of confidential information caused by any third party, provided that such party has taken reasonable steps to protect and avoid the loss, destruction, alteration or disclosure of such confidential information.

14.5 The Customer acknowledges that (without limitation) details of the Service, any Intellectual Property Rights, any security information shared under embargo, any information concerning the business, assets, affairs, customers, clients or suppliers of Element and the results of any performance, security, penetration, vulnerability or other logical, analytical, data or information gathering tests carried out on the Service, constitute Element's confidential information.

14.6 Element acknowledges that the Data is the Customer's confidential information.

14.7 This clause 14 shall survive termination of this Agreement, however arising.

## 15. INDEMNITY

15.1 The Customer shall defend, indemnify and hold harmless Element against claims, actions, liabilities, proceedings, losses, damages, expenses and costs (including without

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limitation court costs and reasonable legal fees) arising out of or in connection with: **(i)** the Customer's or any User's use of the Service and/or Documentation; or **(ii)** the Customer's collection, use, processing and/or transfer of any Data or other personal data; or **(iii)** any claim of any kind including legal fees arising from any claim, demand or action alleging that any use the Customer makes of the Service is contrary to any law, code or regulation in any country.

**15.2 Element's indemnity if the Service infringes any third-party IP / Element breaches applicable Data Protection Legislation.** Element shall, subject to clause 16.4, defend the Customer against any claim that: **(a)** the Service infringes any patent effective as of the Start Date, copyright, trade mark, or right of confidentiality; and/or **(b)** Element has breached applicable Data Protection Legislation, and shall indemnify the Customer for any amounts awarded against the Customer in judgement or settlement of such claims, provided that: **(i)** Element is given prompt notice of any such claim; **(ii)** the Customer provides reasonable co-operation to Element in the defence and settlement of such claim, at Element's expense; and **(iii)** Element is given sole authority to defend or settle the claim. In the defence or settlement of any claim, Element may procure the right for the Customer to continue using the Service, replace or modify the Service so that it becomes non-infringing or, if such remedies are not reasonably available, and Element is unable - after best efforts - to procure for the Customer the right to continue using the Service or to provide functionally equivalent services, terminate this Agreement on fourteen (14) days' notice without further liability to the Customer.

**15.3 Exclusions to Element's IP and Data Protection Indemnity.** In no event shall Element, its employees, agents, and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: **(a)** a modification of the Service by anyone other than Element; or **(b)** the Customer's use of the Service in a manner contrary to the instructions given to the Customer by Element; or **(c)** the Customer's use of the Service after notice of the alleged or actual infringement from Element or any appropriate authority.

**15.4** The foregoing states each party's sole and exclusive rights and remedies, and each party's (including that party's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

## **16. LIMITATION OF LIABILITY**

**16.1** This clause 16 sets out the entire financial liability of Element (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: **(a)** any breach of this Agreement and any support services or negligence in providing the Service; **(b)** any use made by the Customer of the Service and Documentation or any part of them; and **(c)** any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

**16.2** Except as expressly and specifically provided in this Agreement: **(a)** Element shall have no liability for any damage caused by errors or omissions in any information,

instructions or scripts provided to Element by the Customer in connection with the Service, or any actions taken by Element at the Customer's direction; **(b)** all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, disclaimed and excluded from this Agreement including, without limitation, any warranties of title, merchantability, or fitness for a particular use or purpose; and **(c)** the Service and the Documentation are provided to the Customer on an "as is" basis.

**16.3** Nothing in this Agreement excludes the liability of either party: **(a)** for death or personal injury caused by Element's negligence; or, **(b)** for fraud or fraudulent misrepresentation.

**16.4** Subject to clause 16.1 and clause 16.3: **(a)** to the maximum extent permitted by law, Element shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect, punitive, exemplary or consequential loss, costs, damages, charges or expenses however arising under or relating to this Agreement, even if Element has been advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based; and **(b)** Element's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to: **(i)** for Purchased Services, the total amount of Fees paid by the Customer to Element during the twelve (12) months immediately preceding the date on which the claim arose; **(ii)** for a Non-Purchased Service where the service has been purchased through a third-party, the total amounts paid by that third-party to Element during the twelve (12) months immediately preceding the date on which the claim arose; and **(iii)** in respect of any other Non-Purchased Service, £1,000 (one thousand pounds sterling). As the Fees for the Service properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.

**16.5** Under no circumstances shall Element be responsible or liable for any harm caused by the transmission, through the Service, of a computer virus, or other computer code or programming device that might be used to access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of the Customer's software, hardware, data or property.

**16.6** Under no circumstances shall Element be responsible or liable for: **(a)** any inaccuracy, error or delay in, or omission of any data or information entered into the Service by the Customer or any third party; **(b)** any error or delay in the transmission of such data or information; **(c)** any interruption in any such data or information; **(d)** the content of information transmitted through the Service when acting merely as a conduit for such transmission or 'mere conduit', where Element does not **(i)** initiate the

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transmission (ii) select the receiver of the transmission, or (iii) select or modify the information contained in the transmission. This exemption shall apply to the automatic, intermediate, and transient storage of information for the sole purpose of carrying out the transmission through the Service, provided the information is not stored longer than reasonably necessary for the transmission; or (e) with reference to clause 6.1f, any investigations conducted in good faith into the content and activities on the Service to ensure compliance with legal obligations, where Element is acting as a mere conduit.

## 17. TERM AND TERMINATION

- 17.1 This Agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Start Date and shall (except in respect to a Non-Purchased Service purchased by the Customer from a third party, which shall continue in accordance with clause 17.2) continue through the Trial Period (if applicable), Initial Term and thereafter, this Agreement shall be automatically renewed for successive rolling periods of twelve (12) months (or such other term as agreed by the parties) (each a “**Renewal Term**”), unless: (a) either party notifies the other party of termination, in writing, at least sixty (60) days before the end of the Initial Term or sixty (60) days before the end of any Renewal Term (except where the Initial Term or Renewal Term (as applicable) is less than sixty (60) days in duration, in which case at least thirty (30) days’ notice before the end of the applicable Initial Term or Renewal Term will be required), in which case this Agreement shall terminate upon the expiry of the applicable Initial or Renewal Term; or (b) otherwise terminated in accordance with the provisions of this Agreement.
- 17.2 The Initial Term together with any subsequent Renewal Terms shall constitute “**the Term**”, except in respect to a Non-Purchased Service purchased by the Customer from a third party, whereby this Agreement shall continue (unless terminated earlier in accordance with its terms) for such term as is notified to Element by the relevant third party (and such period shall in such cases be “**the Term**”).
- 17.3 Without affecting any other rights that it may be entitled to, either party may terminate this Agreement without liability to the other if: (a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or (b) the other party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease or carry on business; or (c) there is a change in law or legislation in a territory the Customer operates in which affects the way in which the Service operates or any such territory introduces any law that could require Element to build a ‘back door’ to any data Element stores or processes; or (d) Element believes that the Customer’s continued use of the Service is causing harm to individuals, others or to Element’s reputation, business or goodwill.

- 17.4 Without affecting any other rights that it may be entitled to, Element may terminate the Agreement: (a) if payment of any invoiced amount (except to the extent such invoice is disputed in good faith) or Fee payable is overdue and following notification to the Customer, the Customer does not pay the overdue amount within seven (7) days of a written notice from Element; (b) if the Customer breaches clause 6; (c) at any time and for any reason, by giving at least ninety (90) days prior written notice to the Customer.
- 17.5 On termination of this Agreement for any reason: (a) all licenses and access to the Service granted under this Agreement shall immediately terminate and the method of access supplied to the Customer will automatically expire and the Service will cease to operate immediately unless otherwise stated in the Documentation for the Customer’s Order Form or Subscription (as applicable); and (b) Element may destroy or otherwise dispose of any of the Data in its possession unless Element receives, no later than seven (7) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Data. This will be delivered to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Element in returning or disposing of the Customer Data; and (c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 17.6 If this Agreement is terminated prior to the end of the Initial Term or any Renewal Term, other than by the Customer for Element’s material breach under clause 17.3, all Fees payable up to the end of the Initial Term or any Renewal Term and all other Fees due and payable to Element under this Agreement shall be immediately due and payable to Element.

## 18. FORCE MAJEURE

Element shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Element or any other party), pandemic, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Element’s sub-contractors for so long as said cause persists, provided that the Customer is notified of such an event and its expected duration.

## 19. GENERAL

- 19.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise



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of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 19.2 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.3 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 19.4 **Export Controls.** The Customer is and will remain in compliance with all export control and import laws and regulations for the duration of this Agreement. Element reserves the right to suspend the Service immediately and without notice if Element determines, in its sole judgement, that the Service is being used in violation of local regulations governing the use of cryptographic technologies (even though Element has no responsibility to make such determination).
- 19.5 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 19.6 The Customer shall not, without the prior written consent of Element, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Element may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 19.7 Nothing in this Agreement is intended to or shall operate to create a partnership, joint venture, agency, franchise or employment relationship between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19.8 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns).
- 19.9 Each of the provisions of clauses 10 through 22 shall survive any termination or expiration of this Agreement in accordance with their terms.

## 20. NOTICES

Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded

delivery post or e-mail to the other party at its office address set out in this Agreement or by e-mail to [legal@element.io](mailto:legal@element.io), or such other address as may have been notified by that party for such purposes as set out in this Agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am (London time) on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at 9 am (London time) on the first day following delivery. Where Element is required under this Agreement to give the Customer any notice in writing, Element may give this notice by letter or by email.

## 21. GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## 22. MARKETING

Element may use Customer's name to identify Customer as its customer on the Element website, unless the Customer objects in writing. Element shall not make any other use of Customer's trademarks without Customer's prior written approval in each instance. Element shall not publicise the Customer's relationship with Element nor the Customer's use of the Service without the Customer's prior written approval in each instance.