



# Element One Terms & Conditions.

## 1. Who are we?

We are 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, trading as “**Element**”) (“**Element**”, “**us**”, “**we**”). We have developed the communications and collaboration software application known as “**Element**” (the “**App**”).

## 2. Element’s open source commitment

Certain parts of the App are made available as open-source software (as defined by the Open Source Initiative (<https://opensource.org/osd/>) (“**Open-Source Software**”)) in accordance with the applicable open-source license terms as referenced in the source code repository accessible via the Element website (“**Open-Source Components**”).

## 3. Our Services

Whilst the Open-Source Components are made available to anyone to use for free as Open-Source Software, you can take the benefit of our services whereby we make the App available to you, and manage the running, hosting and maintenance and support of the App for you (together, the “**Services**”). This ensures you experience a certain level of performance and stability when using the App.

## 4. Our Proprietary Software

As part of the Services, we may also make available to you additional software that is owned by us, and that is not made available as Open-Source Software (we call this our “**Proprietary Software**”). Nothing in these terms is intended to conflict with the applicable open-source license in respect to any Open-Source Component, and in the event of any conflict the applicable open-source license shall prevail.

## 5. Your right to use the Services

We grant to you a personal, non-exclusive, non-transferable, non-sublicenseable right to use the Services for the purposes of communication and collaboration using the App. This right will last until this contract (and where applicable, your Subscription) is ended by you or us.

Where your Subscription includes the use of any of our Proprietary Software, your right to use the Services will include a personal, non-exclusive, non-transferable, non-sublicenseable right to use the Proprietary Software.

Otherwise, no right, title or interest in the Services or Proprietary Software shall be transferred to you.



## 6. Compliance with the user terms

By agreeing to these terms, you also accept Element's acceptable use policy found here: <https://element.io/acceptable-use-policy>, and agree to comply with all guidance provided by us with regards to the security of your login credentials and keep this information confidential.

## 7. Your account

As part of the sign-up process you shall be required to provide your name and email address and create a display name and password for your account ("**Login Details**"). You are responsible for the security of your Login Details and we are not liable for any unauthorised access to your account arising from your failure to keep your Login Details secure. We may, in the event of a security risk being detected, reject or change your Login Details at any time and shall notify you in the event that such changes are applied.

## 8. Authorised use

You shall not allow use of your Subscription by any other person. If you suspect that your Subscription has been used by another person, you must notify us immediately via email to [ems-support@element.io](mailto:ems-support@element.io).

## 9. Account activity

The individual who purchases the Subscription is responsible for any activity that occurs through their Element account. We can terminate your Subscription or suspend your account in order to protect you, Element or our partners from identity theft or other fraudulent activity.

## 10. Your order will be deemed accepted at the point you accept these terms and your first payment is made

Our contract with you starts once you have accepted these terms and made your first payment to us.

## 11. Your Subscription

You may purchase a Subscription which will give you access to an account within a shared homeserver together with some additional features (as set out on the payment page) in return for paying fees to us (the "**Fees**"). The Fees and additional features will be communicated to you prior to your acceptance of these terms.

## 12. When you purchase a Subscription, you must provide us with details of a Payment Method

When you sign up to a Subscription you must provide us with a Payment Method. "**Payment Method**" means a current, valid, credit or debit card. You must keep your Payment Method up to

date and ensure the details are correct. We may also update your Payment Method using information provided to us by the payment service providers. Following any such change, you authorise us to continue charging the applicable Payment Method.

### **13. When you purchase a Subscription, we charge you when you place your order and on a monthly or annual basis after that**

You will be required to pay the Fees at the time you sign up to your Subscription. After that, we will charge you the Fees on a monthly or annual basis in accordance with your billing cycle (see below), except that if you purchase any additional or new features part-way through a billing cycle, we will charge you further Fees at the time of purchase.

### **14. You will be charged in accordance with your billing cycle**

We operate a monthly or annual billing cycle. The Fees for your Subscription will be charged to your Payment Method in advance of each billing cycle on the specified billing date indicated on the subscription sign up page and in your account profile in the billing section. Your billing date will normally correspond to the date during the month in which you sign up to your Subscription (e.g., if you sign up on 15<sup>th</sup> January, your billing date will always be on the 15<sup>th</sup> day of each month (if your Subscription is monthly), or 15<sup>th</sup> January of each subsequent year (if your Subscription is annual).

There may be occasions where your billing date changes, such as if we try to charge your Payment Method but are unable to take the payment (in which case you authorise us to continue attempting to charge your Payment Method until the payment has successfully been made), or if your Subscription began on a day not contained in a given month.

### **15. You authorise us to charge you monthly or annually**

By agreeing to these terms, you authorise us to charge:

- the monthly or annual Fees for each billing cycle;
- any further Fees that are payable in respect of additional features that you have purchased,

in both cases to your Payment Method.

If you cancel your Subscription before your next billing date (see "**You can end an on-going contract**" below), we will stop charging you for the Fees and no further payments will be taken from your Payment Method.

### **16. Our rights if your payment is declined**

We will notify you by email if your primary Payment Method is declined or no longer available for us to take payment of the Fees.



You authorise us to charge any Payment Method attached to your Subscription in case your primary Payment Method is declined or no longer available for us to take payment of the Fees, and to continually charge any Payment Method available to us until such payment is made. We will notify you by email each time we re-attempt to charge your Payment Method.

You remain responsible for any unpaid amounts until they have been successfully paid. If a payment of Fees is not successfully made following our third attempt to take payment, for any reason, and you have not or do not cancel your Subscription, we shall be entitled to suspend your access to the Platform until we have successfully charged a valid Payment Method. If a payment of Fees is not successfully made following our fifth attempt to take payment, for any reason, and you have not or do not cancel your Subscription, we shall be entitled to deactivate your account with the Platform permanently.

You may be charged certain fees by the issuer of certain Payment Methods (e.g., foreign transaction fees or other fees relating to the processing of your Payment Method). Local tax charges may vary depending on the Payment Method used. You should check with your Payment Method service provider for details of such charges.

## **17. We pass on increases in VAT**

If the rate of VAT changes between billing cycles, we will adjust the rate of VAT that you pay on any future payments.

## **18. Restrictions on your use of the Services**

Except as otherwise permitted by law or expressly within these terms, you agree:

- not to rent, lease, sub-license, loan, provide, or otherwise make available, the Services or Proprietary Software in any form, in whole or in part, to any person without prior written consent from us;
- not to copy the Services or Proprietary Software, except as part of the normal use of the them;
- not to translate, merge, adapt, vary, alter, make derivative works of, or modify, the whole or any part of the Services or Proprietary Software nor permit the Services or Proprietary Software or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the Services or Proprietary Software on devices as permitted in these terms;
- not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Proprietary Software nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to decompile the Proprietary Software to obtain the information necessary to create an independent program that can be operated with



the Proprietary Software or with another program (a “Permitted Objective”), and provided that the information obtained by you during such activities:

- is not disclosed or communicated without our prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective; and
- is not used to create any software that is substantially similar in its expression to the Proprietary Software;
- is kept secure; and
- is used only for the Permitted Objective;
- to comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the Services;
- not to circumvent, remove, alter, deactivate, degrade or thwart any of the content protections used by the Services or Proprietary Software; and
- not to insert any code or product or manipulate the Proprietary Software in any way.

In addition, you agree not to upload or otherwise send or transmit any material designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with the Services, including any viruses or any other malicious computer code, files or programs. We may terminate your Subscription or restrict your use of the Services if you violate this section headed “**Restrictions on use of the Services**” or are engaged in any illegal or fraudulent use of the Services.

## 19. We’re not responsible for delays outside our control

If our provision of the Services is prevented, impaired, delayed by an event outside our control, we will contact you as soon as possible to let you know and do what we can to mitigate the delay or impairment. If the effect on your use of the Services is likely to be substantial you can contact our Customer Service Team: [ems-support@element.io](mailto:ems-support@element.io) to end the contract with immediate effect.

## 20. Third party software

The App is based upon other upstream third-party software (which may be Open-Source Software), and Element may bundle its software with adjacent third-party software (which may be Open-Source Software). Element does not have control over either that upstream third-party software on which it is dependent, or that third-party software with which it has bundled its own software (in particular, Element does not have control over the performance, continued availability, or ongoing development of such third-party software, and is not able to guarantee that it will be able to fix, maintain or improve such third-party software).



Any third-party software incorporated into the Services will be provided to the Customer under the standard license terms provided by the relevant third party or any applicable open-source license.

## 21. Minimum technical requirements

In order to operate, the browser-based version of the Services simply requires a web browser and internet connection that meet the requirements set out here: <https://web-docs.element.dev/#supported-environments>. The Android mobile-app version of the Services requires a device meeting the requirements set out here: <https://github.com/vector-im/element-android/#element-android>. The iOS mobile-app version of the Services requires a device meeting the requirements set out here: <https://apps.apple.com/us/app/element-messenger/id1083446067>. Element does not accept liability for any failure of the Services if you do not use them in accordance with these minimum technical requirements.

## 22. You forego your legal right to change your mind

**Your legal right to change your mind.** Consumer laws in the United Kingdom ordinarily provide consumers with the opportunity to change their mind about a purchase for 14 days. However, by accepting these terms you agree to us providing the Services to you immediately and agree that you will lose your right to cancel the contract once the Services have started to be provided to you.

## 23. You can end an on-going contact

Your contract will renew automatically at the end of each billing cycle for a further month or year.

You can cancel your Subscription at any time for any reason through your account page, by following the instructions on-screen. If you cancel your Subscription, you will continue to have access to the Services until the end of the active billing period at the time of your cancellation, at which time your access to the Services shall cease and no further payment shall be charged to your Payment Method.

Payments are non-refundable. Subject to your legal rights as a consumer and except where otherwise set out in these terms, we do not provide refunds or credits for the remainder of any billing period after your cancellation. Where you have a right under law to terminate your Subscription with immediate effect because of something we have done wrong, then we will refund you for one month's worth of Fees.

## 24. You have rights if there is something wrong with the Services

If you think there is something wrong with the Services, you must contact our Customer Service Team: [ems-support@element.io](mailto:ems-support@element.io). Your legal rights are summarised below. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk).

**Summary of your key legal rights**

The Consumer Rights Act 2015 says digital content such as the App must be as described, fit for purpose and of satisfactory quality:

If your digital content is faulty, you're entitled to a repair or a replacement.

If the fault can't be fixed, or if it hasn't been fixed within a reasonable time and without significant inconvenience, you can get some or all of your money back.

If you can show the fault has damaged your device and we haven't used reasonable care and skill, you may be entitled to a repair or compensation

## 25. We can change the Services and these terms

**Changes we can always make.** We can always change the Services:

- to reflect changes in relevant laws and regulatory requirements;
- to make minor technical adjustments and improvements, for example to address a security threat. These are changes that don't affect your use of the Services; and
- to administer updates, provided that the Services always match the last description of them that we provided to you before your most recent payment of Fees. We might ask you to install these updates.

**Changes we can only make if we give you notice and an option to terminate.** We can also make other types of change to the Services or these terms, but if we do so we'll notify you and you can then contact our Customer Service Team: [ems-support@element.io](mailto:ems-support@element.io) to end the contract before the change takes effect and either receive a refund for any remaining portion of the then-current billing cycle following the date of termination, or if the contract will terminate after the start of the next billing cycle then the Fees for the next billing cycle will be reduced proportionately.

## 26. We can suspend the availability of the Services (and you have rights if we do)

**We can suspend the availability of the Services.** We might do this to:

- deal with technical problems or make minor technical changes;
- update the Services to reflect changes in relevant laws and regulatory requirements; or



- make changes to the Services (see the section above headed We can change the Services and these terms).

**We will let you know and may allow you to terminate.** We will contact you in advance to tell you we're suspending the availability of the Services, unless the problem is urgent or an emergency.

## 27. We can withdraw the Services

We can stop making the Services available. We will let you know at least fourteen (14) days in advance and we will refund any Fees you've paid in advance for the Services for any period after the Services cease to be available.

## 28. We can end our contract with you

We can end our contract with you for the Services and claim any compensation due to us if:

- you don't make any payment of the Fees to us when it's due and we are unable to take payment from your Payment Method within twenty-four (24) days of our first failed attempt; and/or
- you breach these terms.

## 29. We don't compensate you for all losses caused by us or the Services

We're responsible for losses you suffer caused by us breaking this contract unless the loss is:

- **Unexpected.** It was not obvious that it would happen and nothing you said to us before we accepted your order meant we should have expected it (so, in the law, the loss was unforeseeable).
- **Caused by a delaying event outside our control.** As long as we have taken the steps set out in the section above headed We're not responsible for delays outside our control.
- **Avoidable.** Something you could have avoided by taking reasonable action. For example, damage to your own digital content or device, which was caused by the Services and which you could have avoided by following our advice to apply a free update or by correctly following the installation instructions or having the minimum system requirements advised by us.
- **A business loss.** It relates to your use of the Services for the purposes of your trade, business, craft or profession.

## 30. We use personal data as set out in our Privacy Notice



How we use any personal data you give us is set out in our Privacy Notice: <https://element.io/privacy>.

### **31. You have options for resolving disputes with us**

**Complaints.** Our Customer Service Team: [ems-support@element.io](mailto:ems-support@element.io) will do their best to resolve any problems you have with us or our products.

**You can go to court.** These terms are governed by English law and wherever you live you can bring claims against us in the English courts. If you live in Wales, Scotland or Northern Ireland, you can also bring claims against us in the courts of the country you live in. We can claim against you in the courts of the country you live in.

### **32. Other important terms apply to our contract**

**We can transfer our contract with you, so that a different organisation is responsible for supplying the Services.** We'll tell you in writing if this happens and we'll ensure that the transfer won't affect your rights under the contract. If you're unhappy with the transfer you can contact our Customer Service Team: [ems-support@element.io](mailto:ems-support@element.io) to end the contract within fourteen (14) days of us telling you about it and we will refund you any payments you've made in advance that relate to the period after the date on which the contract ends.

**You can only transfer your contract with us to someone else if we agree to this.** If we do agree to allow you to transfer the contract, we can require the new owner to prove you transferred the contract to them.

**Nobody else has any rights under this contract.** This contract is between you and us. Nobody else can enforce it and neither of us will need to ask anybody else to sign-off on ending or changing it.

**If a court invalidates some of this contract, the rest of it will still apply.** If a court or other authority decides that some of these terms are unlawful, the rest will continue to apply.

**Even if we delay in enforcing this contract, we can still enforce it later.** We might not immediately chase you for not doing something (like paying) or for doing something you're not allowed to, but that doesn't mean we can't do it later.