

# Terms of Service ("Terms") for Elements.cloud App

Dated: June 16, 2020

Please read these Terms of Service ("Terms", "Terms of Service") carefully before using the Elements.cloud application accessed through <https://app.q9elements.com> (the "Service") operated by Q9 Elements Ltd., a UK Limited company ("Q9 Elements", "us", "we", or "our").

"You" or "your" means you as an individual and for and on behalf of the entity with which you are engaged or employed. By using the Service, you represent and warrant that you have the authority and capacity to agree on behalf of such entity to be bound by these Terms.

Your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who access or use the Service.

By accessing or using the Service you agree to be bound by these Terms unless you have executed a specific Master Services Agreement (the "MSA") with Q9 Elements in which case the MSA shall prevail and control over any inconsistent term or provision in these Terms. If you disagree with any part of the terms then you may not access or use the Service.

## **Subscriptions**

Billing is by invoice against a Purchase Order or similar instruction to purchase.

Payment terms are 30 days from date of invoice.

The service will commence from the date of the initial invoice and is for a period of one year (annual renewal date). The licenses specified on the initial invoice will be provisioned to the service.

Additional licenses can be added to the service during the subscription period. The licenses will be added to the service from the date of invoice and will run to the service annual renewal date. The licenses specified in the invoice will be added to the number provisioned to the service.

You may cancel your annual Subscription by notifying [success@elements.cloud](mailto:success@elements.cloud). Unless previously cancelled, thirty (30) days prior to the annual renewal date Elements.cloud will send an invoice for the following year's fees. If the fees have not been paid by the renewal date for any reason, your access to the Service may be suspended or terminated.

## **Fee Changes**

Q9 Elements, in its sole discretion and at any time, may modify the Subscription fees for the Subscriptions. Any Subscription fee change will become effective at the annual renewal date.

Q9 Elements will provide you with a reasonable prior notice of any change in Subscription fees to give you an opportunity to terminate your Subscription before such change becomes effective.

Your continued use of the Service after the Subscription fee change comes into effect constitutes your agreement to pay the modified Subscription fee amount.

## **Refunds**

Except when required by law, paid Subscription fees are non-refundable.

## **Content**

Our Service allows you to post, link, store, share and otherwise make available certain information, text, graphics or other material ("Content"). You are responsible for the Content that you post to the Service, including its legality, reliability, and appropriateness.

You retain any and all of your rights to any Content you submit, post or display on or through the Service and you are responsible for protecting those rights.

You represent and warrant that: (i) the Content is yours (you own it) or you have the right to use it and grant us the rights and license as provided in these Terms, and (ii) the posting of your Content on or through the Service does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person.

Q9 Elements will use your Content solely to provide you with the Services. Q9 Elements will hold your Content in strict confidence with the same degree of care it uses for its own confidential or proprietary information (but no less than reasonable care) and will prevent disclosure of all or any part of such Content to any third party. Q9 Elements will return or delete any Content upon your request.

## **Accounts**

When you create an account with us, you must provide us information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of the Terms, which may result in immediate termination of your account on our Service.

You are responsible for safeguarding the password that you use to access the Service and for any activities or actions under your password, whether your password is with our Service or a third-party service.

You agree not to disclose your password to any third party. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account.

You may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than you without appropriate authorization, or a name that is otherwise offensive, vulgar or obscene. You expressly agree that we cannot be held liable for any loss or damage arising out of any misrepresentations you make in this regard.

## **Intellectual Property**

The Service and its original content (excluding Content provided by users), features and functionality are and will remain the exclusive property of Q9 Elements and its licensors. The Service is protected by copyright, trademark, and other laws of both the United States and foreign countries. Our trademarks may not be used in connection with any product or service without the prior written consent of Q9 Elements. Q9 Elements warrants that the Services do not infringe or misappropriate any third-party intellectual property rights, including patents, copyrights, trademarks, trade secrets, or any other proprietary right. For any actual, alleged, or suspected claim of such infringement or misappropriation, in addition to all other obligations herein, Q9 Elements will, at no cost to you: (i) procure for you the right to continue to use the infringing Services; or (ii) replace the infringing Services with non-infringing services with equivalent functionality. If Q9 Elements fails to do so, Q9 Elements will refund all fees previously paid for such infringing Services.

## **Links To Other Websites**

Our Service may contain links to third-party websites or services that are not owned or controlled by Q9 Elements.

Q9 Elements has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites or services. You further acknowledge and agree that Q9 Elements shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection

with use of or reliance on any such content, goods or services available on or through any such web sites or services.

We strongly advise you to read the terms and conditions and privacy policies of any third-party websites or services that you visit.

## **Termination**

We may terminate or suspend your account on thirty (30) days' prior notice if you breach the Terms.

Upon termination, your right to use the Service will immediately cease. If you wish to terminate your account, you may simply discontinue using the Service.

All provisions of the Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## **Mutual Indemnification**

Each party hereto agrees to defend, indemnify and hold harmless the other party, and its affiliates, employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to reasonable attorney's fees), resulting from, in connection with, or arising out of a) use and access of the Service or Content posted on the Service, b) the infringement or misappropriation of a third party's intellectual property rights by the Service, including patents, copyrights, trademarks, trade secrets, and any other proprietary right, c) a breach of these Terms, or d) a party's gross negligence or intentional misconduct.

## **Limitation Of Liability**

In no event shall either party, or their respective directors, employees, partners, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential,

exemplary or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from or arising out of these Terms or the Services, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not such party has been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.

### **Disclaimer**

Your use of the Service is at your sole risk. The Service is provided on an "AS IS" and "AS AVAILABLE" basis. The Service is provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance.

Q9 Elements its subsidiaries, affiliates, and its licensors do not warrant that a) the Service will function uninterrupted, secure or available at any particular time or location; b) any errors or defects will be corrected; c) the Service is free of viruses or other harmful components; or d) the results of using the Service will meet your requirements.

### **Mutual Exclusions**

Without limiting the generality of the foregoing and notwithstanding any other provision of these Terms, under no circumstances will either party ever be liable to the other party for any loss or damage arising from, connected with, or relating to the use of the Service, these Terms, the subject matter of these Terms, the termination of these Terms or otherwise, including but not limited to personal injury, loss of data, business, markets, savings, income, profits, use, production, reputation or goodwill, anticipated or otherwise, or economic loss, under any theory of liability (whether in contract, tort, strict liability or any other theory or law or equity), unless due to an intentional act, gross negligence, violation of law or fraud.

### **Governing Law**

These Terms shall be governed and construed exclusively and irrevocably in accordance with the laws of the England and Wales, without regard to its conflict of law provisions.

A party's failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect. These Terms constitute the entire agreement between us regarding our Service, and supersede and replace any prior agreements we might have between us regarding the Service. Any provisions contained on Q9 Elements Services, websites, invoices, product schedules, acknowledgments, or any "shrink-wrap", "click-through", or "click-wrap" terms are and shall remain in full force and effect except to the extent such terms conflict directly with these Terms.

## **Privacy Policy**

Please refer to our Privacy Policy, attached hereto as Attachment 1. You agree that they constitute part of these terms. You must read and agree to our Privacy Policy before you use the Service.

Q9 Elements will not issue a press release, advertisements, or public statement concerning the existence of this agreement, its contents, or the transaction contemplated by it or use your name, logo, or trademarks without your express written consent.

## **Contact Us**

If you have any questions about these Terms, please contact us [success@elements.cloud](mailto:success@elements.cloud)

# Attachment 1 — Privacy Policy

*Dated: October 29, 2019*

Q9 Elements ("Q9 Elements", "us", "we", or "our") operates the Elements application <http://app.q9elements.com> (the "Service").

This page informs you of our policies regarding the collection, use and disclosure of Information when you use our Service.

We will not use or share your information with anyone except as described in this Privacy Policy.

We use your Personal Information for providing and improving the Service. By using the Service, you agree to the collection and use of information in accordance with this policy. Unless otherwise defined in this Privacy Policy, terms used in this Privacy Policy have the same meanings as in our Terms and Conditions, accessible at <http://app.q9elements.com>

## **Information Collection And Use**

While using our Service, we may ask you to provide us with certain categories of personally identifiable information that can be used to contact or identify you. Personally identifiable information may include information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, including your email address, name, phone number, postal address, IP address, browsing history, search history, geolocation data, information regarding your interaction with a website or online application or advertisement, or inferences which we may draw from any such information ("Personal Information"). We do not sell or have any plans to sell your Personal Information; however, at any time, you may opt out of the resale of Personal Information. You also have the right to obtain and delete your Personal Information, by a verifiable request,



subject to certain limitations required to complete a transaction or provide a good or service.

## **Log Data**

We may also collect information that your browser sends whenever you visit our Service ("Log Data"). This Log Data may include information such as your computer's Internet Protocol ("IP") address, browser type, browser version, the pages of our Service that you visit, the time and date of your visit, the time spent on those pages and other statistics.

In addition, we may use third-party services, that collect, monitor and analyze this type of information in order to increase our Service's functionality.

These third-parties may use cookies to help us analyze how our users are using the Service and they have their own Privacy Policies addressing how they use such information.

## **Cookies**

Cookies are files with small amount of data, which may include an anonymous unique identifier. Cookies are sent to your browser from a web site and stored on your computer's hard drive.

We use "cookies" to collect information. You can instruct your browser to refuse all cookies or to indicate when a cookie is being sent. However, if you do not accept cookies, you may not be able to use some portions of our Service.

## **Service Providers**

We may employ third-party companies and individuals to facilitate our Service, to provide the Service on our behalf, to perform Service-related services or to assist us in analyzing how our Service is used.

These third parties may have access to your Personal Information only to perform these tasks on our behalf and are obligated not to disclose or use it for any other purpose.

## **Communications**

We may use your Personal Information to contact you with notifications and information about the app. You may opt out of receiving any, or all, of these communications from us by following the unsubscribe link or instructions provided in any email we send or by contacting us.

## **Compliance With Laws**

We will disclose your Personal Information where required to do so by law or in accordance with an order of a court of competent jurisdiction, or if we believe that such action is necessary to comply with the law and the reasonable requests of law enforcement or to protect the security or integrity of our Service.

## **Sharing or Sale of Personal Information to Third Parties.**

We do not share or sell your Personal Information to third parties.

## **Business Transaction**

If Q9 Elements is involved in a merger, acquisition or asset sale, your Personal Information may be transferred. We will provide notice before your Personal Information is transferred and becomes subject to a different Privacy Policy. In the event of such a transfer of information, your rights under the Data Protection Act 1998 and the California Consumer Privacy Act of 2018 are not affected.

## **Security**

The security of your Personal Information is important to us, but remember that no method of transmission over the Internet, or method of electronic storage is 100% secure. While we strive to use commercially acceptable means to protect your Personal

Information, we cannot guarantee its absolute security. As such we make no warranties as to the level of security afforded to your data, except that we will always act in accordance with the relevant US and applicable State regulations and laws.

### **International Transfer**

Your information, including Personal Information, may be transferred to — and maintained on — computers located outside of your state, province, country or other governmental jurisdiction where the data protection laws may differ than those from your jurisdiction.

If you are located outside the EU and choose to provide information to us, please note that we may transfer the information, including Personal Information, to the EU and process it there.

Your consent to this Privacy Policy followed by your submission of such information represents your agreement to that transfer.

In the event that a dispute arises with regards to the international transfer of data, you agree that the courts of Delaware shall have exclusive and irrevocable jurisdiction over the matter.

### **Links To Other Sites**

Our Service may contain links to other sites that are not operated by us. If you click on a third-party link, you will be directed to that third-party's site. We strongly advise you to review the Privacy Policy of every site you visit.

We have no control over, and assume no responsibility for the content, privacy policies or practices of any third-party sites or services.

### **Children's Privacy**

Our Service does not address anyone under the age of 13 ("Children").

We do not collect personally identifiable information from children between 13 and 16, unless such child has affirmatively opted in to our collection of such information. We do not knowingly collect personally identifiable information from children under 13. If you are a parent or guardian and you are aware that your Children has provided us with Personal Information, please contact us. If we become aware that we have collected Personal Information from a children under age 13 without verification of parental consent, we take steps to remove that information from our servers.

### **Contact Us**

If you have any questions about this Privacy Policy, please contact us  
success@elements.cloud