



Pink Elephant Data Management

Leveringsvoorwaarden





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1. Leveringscondities Pink Elephant Data Management

Genoemde bedragen in deze offerte zijn in Euro's, exclusief btw en 14 dagen geldig na opmaak. Onze betalingstermijn van facturen bedraagt 30 dagen na ondertekening van deze offerte. Bij betalingen later dan 30 dagen na factuurdatum is tevens de wettelijke handelsrente verschuldigd en zal van toepassing zijn op de dagen na overschrijding van de betalingstermijn. Zowel buitenrechtelijke als gerechtelijke incassokosten, gemaakt in verband met te late betalingen, zijn voor rekening van de afnemer.

Met uitzondering van de leveringscondities zoals in deze aanbieding overeengekomen, zijn op al onze aanbiedingen en overeenkomsten de NLDigital Voorwaarden 2020 van toepassing. Deze voorwaarden zijn gedeponereerd bij de Rechtbank Midden-Nederland, locatie Utrecht. Een inblikexemplaar is beschikbaar op: <https://www.pinkelephant.nl/algemenevoorwaarden/>. Door ondertekening van deze offerte, verklaart u de kopie te hebben ontvangen en in te stemmen met de inhoud van deze voorwaarden en leveringscondities. Pink Elephant Data Management is de handelsnaam van Data Management Professionals B.V. geregistreerd bij de kamer van koophandel onder registratienummer 11068227.

Art.1) Offertes: Offertes zijn confidentieel tussen beide partijen. Offertes zijn vrijblijvend, met een geldigheid van een maand. Kosten van projectvoorstellen kunnen in overleg in rekening gebracht worden. Daarin vervatte voorstellen mogen in dat geval gebruikt worden door de opdrachtgever, ook als hij deze door een ander laat uitvoeren. In alle andere gevallen blijven de geleverde voorstellen, eigendom van Pink Elephant Data Management.

Art.2) Planning: Tussen opdrachtverstrekking door de opdrachtgever en daadwerkelijke aanvang van het project bevindt zich altijd tenminste een periode van twee weken, tenzij schriftelijk anders is afgesproken.

Art.3) Opdracht: Wanneer een opdrachtgever een opdracht na opdrachtbevestiging wijzigt, dan is er sprake van een aanvullende opdracht. Aanvullende opdrachten worden apart geoffreerd en vallen onder "variatie order".

Art.4) Uitloop: Uitloop van projecten door derden en kosten die voortvloeien uit het niet aaneensluiten van de verschillende projectfasen, zijn voor rekening van de opdrachtgever. Extra tijd in uren dan wel dagen, worden doorbelast op basis van nacalculatie.

Art.5) Annulering project: Indien ten gevolge van overmacht een van beide partijen onmogelijk haar verplichtingen na kan komen, dient dit schriftelijk kenbaar gemaakt te worden. In geval van overmacht, zijn beide partijen verplicht tot het geheel of gedeeltelijk uitstellen van de uitvoering van de opdracht of, indien niet anders mogelijk, delen te annuleren. Dit ontslaat geen der partijen van de plicht om alles in het werk te stellen dat redelijkerwijs van haar mag worden verwacht voor het nakomen van haar verplichtingen.

Art.6) Intrekking: Indien als gevolg van gewijzigde omstandigheden bij de opdrachtgever, de opdracht wordt ingetrokken, dan is Pink Elephant Data Management niet verplicht haar werkzaamheden, die nog niet gereed zijn, op te leveren. Pink Elephant Data Management heeft echter wel recht op betaling van de verrichte werkzaamheden en redelijkerwijs een schadevergoeding voor het deel dat niet uitgevoerd is op basis van de getekende opdracht.

Art.7) Geheimhouding: U wordt geacht alle verstrekte informatie van Pink Elephant Data Management, zorgvuldig te behandelen en geheimhouding te betrachten. Dit betekent dat opgemaakte voorstellen en aansluitende informatie niet aan derden ter beschikking mogen worden gesteld, dan wel schriftelijk dan wel mondeling.

Art.8) Extra kosten door overmacht: Overeengekomen prijzen en condities zijn samen gesteld met als uitgangspunt dat Pink Elephant Data Management de te verrichten diensten volgens de door Pink Elephant Data



Management opgestelde projectplanning kan uitvoeren. Indien zich omstandigheden voordoen, welke buiten de invloed van Pink Elephant Data Management een direct aanwijsbaar gevolg hebben voor de tijdsperiode welke benodigd is voor de daadwerkelijke uitvoering van de diensten, waardoor de diensten niet volgens projectplanning kunnen worden uitgevoerd, behoudt Pink Elephant Data Management zich het recht voor de daarmee gepaard gaande meerkosten door te berekenen.

Art.9) Updates hard/software releases: Op basis van een afgesloten Support en Maintenance contract, geeft dit u recht op updates voor de desbetreffende Hardware en Software, voor zover de leverancier deze beschikbaar stelt. Uitvoering of installatie van een release update valt niet onder het Support en Maintenance contract. Deze aanvullende diensten kunnen echter wel additioneel geoffreerd en aangeboden worden door Pink Elephant Data Management.

Art.10) Looptijd: het afgesloten contract wordt na afloop van de looptijd (minimaal 1 jaar), automatisch verlengd. Opzegging van het contract dient schriftelijk te worden ingediend, 3 maanden voor de vervaldatum van het contract.

Art.11) Diensten: De aangeboden diensten en/of consultancy worden op basis van nacalculatie aangeboden, tenzij uitdrukkelijk is overeengekomen dat het een fixed-price project betreft en vermeld is in deze offerte.

Art.12) Facturatie en indexatie diensten: De aangeboden diensten en/of consultancy worden bij opdracht gefactureerd op basis van de in de offerte vermelde prijs, tenzij uitdrukkelijk anders overgekomen en vermeld in deze offerte. Het tarief van de afgenomen diensten wordt jaarlijks geïndexeerd uitgaande van de Jaarmutatie consumentenprijsindex (CPI); zoals vanaf 1963 door het Centraal Bureau voor de Statistiek gepubliceerd. De aanpassing zal jaarlijks per 1 januari worden doorgevoerd voor contracten, waarvan de looptijd meer dan 6 maanden is verstreken.

Art.13) Wijzigingen: Wijzigingen in de planning van een project zijn tot 2 weken voor de geplande uitvoering kosteloos. Daarna kan facturering plaatsvinden volgens onderstaande staffel: tot 1 week voor de geplande dag van uitvoering 25% van de geplande werkzaamheden; tot 1 werkdag voor de geplande dag van uitvoering 50% van de geplande werkzaamheden; binnen 1 werkdag voor de geplande uitvoering 75% van de geplande werkzaamheden.



2. Delivery terms Pink Elephant Data Management

All amounts mentioned in this quotation are in Euros excluding VAT and valid for 14 days after makeup. Our payment term is 30 days after receiving and accepting the invoice within the contract term. Payments received 30 days after the commencing date are subject to statutory interest. Interest will be charged starting 30 days after the commencing date. Extrajudicial and judicial collection costs incurred in connection with late payments are charged to the customer.

With the exception of the terms of delivery as agreed in this offer, to all our offers and agreements the NLdigital Terms 2020 are applicable. These conditions are filed at the District Court Midden-Nederland, location Utrecht. A display copy is available on: <https://www.pinkelephant.nl/algemenevoorwaarden/> By signing this offer you declare to have received a copy and agree with the contents of the terms and conditions. Pink Elephant Data Management is the tradename of Data Management Professionals B.V. registered at Dutch chamber of commerce under registration number 11068227.

Art.1) Offers/quotations/proposals are confidential, without obligation and valid for one month. Consultation Costs for project proposals can be charged. Project proposals covered under the consultation costs may be used by the customer, even if he allows someone else to do the implementation. In all other cases the proposals are the property of Pink Elephant Data Management.

Art.2) There will be at least a period of two weeks between the actual start of the project and the delivery of the project proposal, unless otherwise agreed.

Art.3) Modifications to the assignment after order confirmation will be seen as an extra assignment. Extra assignments are quoted separately and are subject to a Change Request purchase order.

Art.4) Extension of project caused by third parties and costs resulting from failure to unite the various project phases, will be charged to the customer. Extra time in hours or days will be charged on the basis of subsequent calculation.

Art.5) Cancellation of a project due to force majeure from any of the parties involved in such way that they cannot perform its obligations must be made clear in writing. In case of force majeure, both parties are obligated to defer all or part of the execution of the contract, or if not otherwise possible, cancel parts of the contract. It does not relieve any of the parties of their obligation to make every effort, within what can be reasonably expected, to meet its obligations.

Art.6) Pink Elephant Data Management is not obliged to deliver any outstanding services, which have not been delivered, if the order is revoked due to changed circumstances at the customer. Pink Elephant Data Management however is entitled to payment for the work performed and a reasonable compensation for the part that has been cancelled of the signed contract.

Art.7) All information provided to you by Pink Elephant Data Management is considered confidential, and you are to handle them with due care and uphold confidentiality. This means that subsequent proposals and formatted information are not to be made available to third parties, either in writing or orally.

Art.8) Prices and conditions are agreed to with the assumption that Pink Elephant Data Management is able to execute the services according to the project planning drawn up by Pink Elephant Data Management. Additional costs due to force majeure which are beyond the control of Pink Elephant Data Management and have an identifiable effect on the time period needed for the project, causing the inability to perform the services according to the project planning, Pink Elephant Data Management reserves the right to reimburse any associated costs.



Art.9) The offered support entitles you to Hardware/Software updates, only if you are in possession of a maintenance contract for the corresponding hardware and software. Software or release upgrades are not covered under a standard support contract, prepared by Pink Elephant Data Management. These additional services can be offered in a separate proposal supplied to you by Pink Elephant Data Management.

Art.10) Term: The contract will be automatically renewed after the Term (minimum one year) for one year. Termination of the contract must be in writing no later than 3 months before the end of the Term.

Art.11) Services: The services including consultancy are offered based on time & material, not as fixed-price, unless otherwise specified in this quote.

Art.12) Invoicing and indexation of services: The services and/or consultancy offered are invoiced upon assignment based on the price stated in the quotation, unless expressly agreed otherwise and stated in this quotation. The rate of the services purchased is indexed annually based on the annual consumer price index (CPI) as published by (the Dutch) Centraal Bureau voor Statistiek from 1963 onwards. The adjustment will be implemented annually on the 1st of January for contracts whose term has expired by more than 6 months.

Art.13) Changes: Changes in the planning or cancellation of resources is free of charge up till two weeks before start of the planned work. Any changes/cancellations within two weeks of the start of the planned work can be charged as follows: until 1 weeks before the start of the planned work, 25% of the planned work will be invoiced; until 1 workday before the start of the planned work, 50% of the planned work will be invoiced; within 1 workday of the start of the planned work, 75% of the planned work will be invoiced.



3. Lieferbedingungen Data Management Professionals

Alle in diesem Angebot genannten Beträge sind in Euro ohne Mehrwertsteuer angegeben und sind 30 Tage gültig.

Unsere Zahlungsfrist beträgt 14 Tage nach Erhalt und Annahme der Rechnung, innerhalb der Vertragslaufzeit. Es gelten unsere Allgemeinen Geschäftsbedingungen (<https://www.dm-p.com/de/agb>).

Zahlungen, die wir 2 Monate nach dem Anfangsdatum erhalten, unterliegen dem gesetzlichen Zinssatz. Zinsen werden 2 Monate nach dem Anfangsdatum berechnet. Gesetzliche Verzugszinsen, die im Zusammenhang mit verspäteter Zahlung entstehen, werden dem Kunden in Rechnung gestellt. Mit Unterzeichnung dieses Angebots bestätigen Sie, eine Kopie der Allgemeinen Geschäftsbedingungen erhalten zu haben und erklären sich mit deren Inhalt einverstanden.

Art.1) Angebote sind optional und gültig für einen Monat. Beratungskosten für Projektvorschläge können in Rechnung gestellt werden. Projektvorschläge, die unter den Beratungskosten abgedeckt werden, können vom Kunden genutzt werden, sogar wenn er jemandem erlaubt, die Implementierung durchzuführen. In allen anderen Fällen sind die Vorschläge Eigentum von Data Management Professionals.

Art..2) Falls nicht anders vereinbart, ist ein Zeitraum von mindestens zwei Wochen zwischen dem eigentlichen Start des Projekts und der Lieferung des Projektangebots vorgesehen.

Art.3) Nachträgliche Anpassungen der Beauftragung nach der Auftragsbestätigung werden als gesonderte Beauftragung betrachtet. Zusätzliche Beauftragungen werden separat angeboten und unterliegen einer Änderungsanfrage des Kaufvertrags.

Art.4) Ausweitung des Projekts, die durch Drittparteien verursacht werden und Kosten, die entstehen, wenn verschiedene Projektphasen nicht zusammengefasst werden, werden dem Kunden in Rechnung gestellt. Zusätzliche Zeit in Stunden oder Tagen werden auf Basis von vorherigen Berechnungen in Rechnung gestellt.

Art.5) Aufhebung des Projekts aufgrund von höherer Gewalt, egal auf welcher Seite, und welche dazu führen, dass Pflichten nicht eingehalten werden können, bedürfen der Schriftform. Im Falle von höherer Gewalt, sind beide Parteien verpflichtet, die gesamte oder einen Teil der Vertragserfüllung zurückzustellen, oder falls nicht anders möglich, Teile des Vertrags aufzuheben. Es entbindet keine der Parteien von ihrer Pflicht, mit größtmöglicher Bemühung und soweit angemessen, ihre Verpflichtungen einzuhalten.

Art.6) Data Management Professionals sind nicht verpflichtet, im Rahmen eines Dienstleistungsprojektes noch ausstehende Leistungen zu erbringen, sofern die Beauftragung des Dienstleistungsprojektes aufgrund veränderter Umstände widerrufen wird. Jedoch sind die Data Management Professionals berechtigt, eine Bezahlung für bereits erbrachte Leistungen und eine angemessene Kompensation für den entfallenden Teil des Dienstleistungsprojektes einzufordern, der aus dem unterzeichneten Vertrag widerrufen wurde.

Art.7) Die gesamte Information, die Ihnen von Data Management Professionals zur Verfügung gestellt wird, ist vertraulich und muss von Ihnen weiterhin vertraulich und mit angemessener Sorgfalt gehandhabt werden. Das bedeutet, dass nachfolgende Angebote und Informationen keinen Dritten zugänglich gemacht werden dürfen, weder schriftlich noch mündlich.

Art.8) Preise und Bedingungen werden unter der Annahme vereinbart, dass Data Management Professionals in der Lage sind, ein Dienstleistungsprojekt, sofern beauftragt, gemäß des von DMP aufgestellten Projektplans auszuführen. Für zusätzliche Kosten, die aufgrund höherer Gewalt und jenseits der Kontrolle von Data Management Professionals entstehen, und somit eine identifizierbare Auswirkung auf den für das Projekt festgelegten Zeitraum haben, behalten sich Data Management Professionals das Recht vor, die damit



verbundenen Kosten zurückzuerstatten, sofern die Erbringung und die daraus resultierend Einhaltung von Projektdienstleistungen gemäß einem festgelegtem Projektplan unmöglich wurden.

Art.9) Die angebotene Unterstützung berechtigt Sie nur dann zu Hardware/Software Updates, wenn Sie im Besitz des Wartungsvertrags für die dazugehörige Commvault Software sind. Software- oder Freigabe-Upgrades werden nicht von dem Standard-Support-Vertrag abgedeckt, der von Data Management Professionals vorbereitet wurde. Diese zusätzlichen Dienstleistungen können in einem separaten Angebot vereinbart werden, welches Ihnen von Data Management Professionals zur Verfügung gestellt wird.



4. Condiciones de entrega Data Management Professionals

Todas las cantidades mencionadas en esta oferta están expresadas en Euros (excluyendo IVA) y son válidas durante 1 mes. Nuestras condiciones de pago estándar son 30 días fecha factura después de aceptar la propuesta. Los pagos recibidos después de dichos 30 días estarán sujetos al cobro de intereses adicionales. Este interés será calculado desde el comienzo de la prestación. Los gastos judiciales y extrajudiciales que se deriven de dichos retrasos serán cargados al cliente.

Art.1) Las Ofertas son válidas por un mes. Los costes de consultoría para proyectos adicionales no incluidos en la presente oferta pueden acarrear cargos extras. Las propuestas de proyectos incluidos en la oferta pueden ser usados por el cliente, incluso si alguna compañía externa realiza la implementación. En todos los demás casos, las propuestas son propiedad de Data Management Professionals.

Art.2) Habrá al menos un periodo de dos semanas entre el inicio real del proyecto y la entrega, a menos que se acuerde algo distinto entre las partes.

Art.3) Las modificaciones al proyecto después de la recepción del pedido serán tratadas como proyecto adicional. Dichos proyectos adicionales se cotizarán por separado y estarán sujetos a pedido de compra adicional.

Art.4) Ampliaciones del proyecto causadas por terceras partes y costes derivados de la falta de cohesión entre las distintas fases del proyecto, serán susceptibles de ser facturadas al cliente. Dichos cálculos en tiempo extra en horas o días, serán calculados y cargados posteriormente.

Art.5) La cancelación de un proyecto debido a fuerza mayor de cualquiera de las partes involucradas, en tal forma que no puedan cumplir con sus obligaciones, deberá ponerse de manifiesto por escrito. En caso de fuerza mayor, ambas partes estarán obligadas a aplazar toda o parte de la ejecución del contrato, o en todo caso, cancelar partes del contrato. Lo anterior no eximirá a ninguna de las partes de su obligación de hacer todo lo posible, dentro de lo que pueda esperarse razonablemente, para cumplir con sus obligaciones.

Art.6) Data Management Professionals no estará obligado a proporcionar ningún servicio que no haya sido entregado si se revoca la orden debido a cualquier cambio de circunstancias por parte del cliente. Data Management Professionals sin embargo, tendrá derecho al pago por el trabajo realizado y a una compensación razonable por la parte que haya sido anulada del contrato firmado.

Art.7) Toda la información proporcionada al cliente por Data Management Professionals será considerada confidencial, y deberá ser manejada con cuidado y manteniendo confidencialidad. Esto también significa que propuestas posteriores no deberán ser puestas a disposición de terceros, ya sea por escrito o por vía oral.

Art.8) Los precios y condiciones se acuerdan bajo la premisa de que Data Management Professionals es capaz de ejecutar los servicios de acuerdo con la planificación del proyecto elaborado por Data Management Professionals. Gastos adicionales debido a fuerza mayor que escapen al control de Data Management Professionals y que tengan un efecto que pueda ser identificado como demora y provoque retrasos en la consecución del proyecto, Data Management Professionals se reserva el derecho de reembolsar dichos costes.

Art.9) El soporte ofrecido da derecho a actualizaciones de hardware / software, sólo si se está en posesión de un contrato de mantenimiento en vigor para el software CommVault correspondiente. Actualizaciones de versión no están cubiertas por el contrato de soporte estándar. Estos servicios de actualización se ofrecerán adicionalmente.



Art.10) Plazo: El contrato se renovará automáticamente después de la finalización (mínimo un año) de éste. La resolución del contrato deberá ser notificada por escrito en un plazo mínimo de tres meses antes de la finalización.

Art.11) Servicios: Los servicios que incluyen consultoría se ofrecen basados en tiempo y material, no como precio fijo, a menos que se especifique lo contrario en esta propuesta.

Art.12) Facturación: Los servicios, incluyendo consultoría, se facturarán en su totalidad inmediatamente después de la compra de los mismos, a menos que se especifique lo contrario en esta oferta.

Art.13) Cambios: Los cambios en la planificación de los recursos o la cancelación será sin coste hasta hasta dos semanas antes del inicio de los trabajos previstos. Cualquier cambio / cancelación dentro de las dos semanas del inicio de los trabajos previstos podrán ser facturados de acuerdo a lo siguiente: hasta 1 semana antes del inicio del proyecto, se facturará el 25% de los trabajos previstos; hasta 1 día antes del inicio de los trabajos previstos, se facturará el 50%; dentro del mismo día, se facturará el 75% de los trabajos previstos..



5. DMaaS delivery terms Pink Elephant Data Management

In addition to the general delivery terms and conditions as defined in the chapter Leveringscondities Pink Elephant Data Management (A display copy is available on: <https://www.pinkelephant.nl/algemenevoorwaarden/>), there are for the Pink Elephant DataManagement-as-a-Service ("DMaaS") service some additional terms and conditions. In this chapter these conditions for DMaaS will be described and will be part of the proposed solution and will be applicable when the DMaaS service is being used. Please read the terms and conditions of this agreement (the "Agreement") carefully, before using the DMaaS software, hardware and services (collectively, the "Service").

For DMaaS, Pink Elephant Data Management ("Pink Elephant") makes use of third party software and hardware, for which you, as the individual or legal entity that will be utilizing the software (referenced below as "You" or "Your"), can use the license, only on the condition that you accept all of the terms of this Agreement. The terms of this Agreement also apply to any updates, and support services for the software or services provided by Pink Elephant. This is a legal and enforceable contract between You and Pink Elephant. By signing this quote or this Agreement, You agree to the terms of this Agreement.

1. Service Description.

The Service provides the capability to store and retrieve Your files and other data ("Data") on Pink Elephant's system via the Internet during the Service Period (defined below), subject to the amount of online backup space or the amount of production data on which the Service in the quote is based and/or which You additionally use or purchase. The Service also gives You the ability to access and manage Your Data from any computer via a supported Internet browser. Pink Elephant will provide to You the amount of back-up space that is mutually agreed upon at the time You order the Service. It is Your responsibility to routinely back-up Your Data. If You choose to use the Service, You must complete the activation process within the Service. The Service is an Internet control product that consists of third party client software ("Software") installed on Your personal computer or servers that interacts with Pink Elephant servers. The client software on Your personal computer or servers connects to a server network infrastructure that is deployed on the internet and operated as a managed service by Pink Elephant and other service providers.

All or portions of the Service provided hereunder may be provided by a third party provider, including but not limited to, the storage of Data backed up via the Service.

2. Service Period. You will have certain rights to use the Software and access the Service during the Service Period. The "Service Period" shall begin on either: (i) the date of purchase, or (ii) the date You received the Hardware and Software, and shall continue for the period of time set forth in the contract term as defined in the quote.

3. Your Responsibilities.

(a) Pink Elephant Account. A current Pink Elephant Account ("Account") is required to access and use the Service. If You do not have a Account, You must complete the applicable registration process to create a Account in order to use the Service. You are entirely responsible for maintaining the confidentiality of Your Account password.

(b) Communication Connections; Service Availability. You are solely responsible for acquiring and maintaining the Internet or telecommunications services and devices required to access and/or use the Service. The Service is provided "as is" and "as available" and Pink Elephant shall not be liable for any downtime of the Service due to reasonable scheduled maintenance, maintenance for critical issues or forces beyond the reasonable control of Pink Elephant.

(c) User Conduct and Responsibility; Compliance with Applicable Laws. Use of the Service (including the transmission of any Data You choose to store through the Service) is subject to all applicable local, state, national and international laws and regulations, including but not limited to the United States export laws. You agree to comply with such applicable laws and regulations and with the specifications described in the Service



documentation or the applicable transaction documentation from the authorized distributor or reseller from which You obtained the Software or Service, and not to (i) use the Service for illegal purposes, (ii) transmit or store material that may infringe the intellectual property rights or other rights of third parties or that is illegal, tortious, defamatory, libelous, or invasive of another's privacy; (iii) transmit or store Data belonging to another party without first obtaining all consents required by law from the Data owner for transmission of the Data to Pink Elephant for storage within the Netherlands; (iv) transmit any material that contains software viruses or other harmful computer code, files or programs such as trojan horses, worms or time bombs; (v) interfere with or disrupt servers or networks connected to the Service; or (vi) attempt to gain unauthorized access to the Service, the accounts of other Service users, or computer systems or networks connected to the Service.

(d) No Resale or Commercial Use of the Service. Your right to use the Service is personal to You. You agree not to resell or make any commercial use of the Service.

(e) Storage and Other Limitations. Pink Elephant assumes no responsibility for the deletion or failure to store Data. Pink Elephant retains the right, at Pink Elephant's sole discretion, to determine whether or not Your conduct is consistent with the terms of this Agreement and may terminate Your access to the Service if Your conduct is found to be in violation of the terms of this Agreement.

The foregoing obligations regarding use of the Service apply to all use of the Service. You are solely responsible for the use of the Service, and the Data transmitted or stored through the Service, in connection with Your Account.

4. Service Fees and Payment. All fees for the Service are charged automatically per month in arrears using the payment method You provide when You activate the Service. If You provide Your credit card information, You authorize Pink Elephant to automatically charge Your credit card for charges that apply to Your account. Fees are billed monthly in arrears or annually in advance and are subject to change. You will provide all information necessary for Pink Elephant to bill for the Service. You affirm that the information You supply is correct and complete and will promptly notify Pink Elephant whenever Your personal or billing information changes. Specifically, if You elect to pay by credit card, You are responsible for directly updating, or notifying Pink Elephant of any changes to Your credit card (including, but not limited to card number, expiration date, billing address or card status).

If You upgrade Your Service during an existing subscription term, You will be billed in full, in advance for the new Service. Any remainder of the prior pre-paid subscription may not be refunded.

If, at any time, the Service fee is declined or otherwise rejected by Your bank or credit card company or You otherwise fail to pay for the Service, Pink Elephant may immediately suspend Your account until You provide a valid payment method and pay any past due amounts. You will have thirty (30) days to contact Pink Elephant and update Your payment method and have Your account reactivated. If no action is taken, Pink Elephant may terminate Your account and Your Data may be purged. In order to reactivate Your account, You will be charged any past due amounts and any fees incurred by Pink Elephant for rejected payments. You may also be billed in advance for ongoing Service as described above.

5. Software, Installation, and Use. The Service includes the following personal computer desktop and server software and access to related Internet services, including but not limited to data storage, backup and restore.

(a) Pink Elephant hereby grants You a nonexclusive, nontransferable license to use the Software and access the Service solely in accordance with the terms and conditions of this Agreement. You may install the Software on the number of computers that are specified within the documentation of the Service or the applicable quote. You may only use the Software in accordance with such specifications, each of which will be referred to as a licensed computer.

(b) You must agree to provide Pink Elephant with accurate and truthful registration information, including, but not limited to, Your name, address, telephone number, email address and the location of the Hardware provided by Pink Elephant, to keep Your registration information current during the Service Period as defined above.



(c) To the extent permissible under applicable law, Pink Elephant may at any time without notice or liability, limit availability to the Service in order to perform maintenance activities.

6. Scope of License.

(a) The client Software and access to the Service is licensed, not sold. Pink Elephant shall retain all right, title and interest in the Software and Service, including without limitation all intellectual property rights embodied therein. You do not acquire any rights, express or implied, in the Software and Service, other than those specified in this Agreement.

(b) To the extent permissible by applicable law, You may not, nor may You permit any other person to:

- sublicense, rent or lease any portion of the Service;
 - reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Software or create derivative works from the Software or Service;
 - use the Service as part of a facility management, timesharing, service provider or service bureau arrangement;
- or

(c) You may not use the Software or the Service to upload, transmit, or transfer any data, information, materials, or content to Pink Elephant or any third party other than transmissions or transfers of information necessary for the intended use of the Software and Service. You also agree not to use the Software or Service for any unlawful or improper purpose.

7. Hardware. When Pink Elephant as part of the delivery of the Service also provides hardware ("Hardware"), the following is applicable:

- Pink Elephant delivers the Hardware to You, however Pink Elephant is and remains the owner of the Hardware. The Hardware is therefore not part of any purchase agreement.
- You will bear the entire risk of loss, damage, destruction, theft or seizure of the Hardware, from the actual delivery of the Hardware until such time the Hardware is returned to Pink Elephant, i.e. end of the Service Period, except to the extent such loss or damage is caused by Pink Elephant's default under this Agreement.
- You can not derive any rights to the Hardware, including requirements with regards to performance or the capacity of the Hardware for use in your environment, unless explicitly defined in the quote.
- You will keep the Hardware in its possession and control at the location mentioned in this Agreement or the quote, and will not use the Hardware at any other location without obtaining Pink Elephant's prior written consent.
- You must not at any time:

(a) assign, transfer, mortgage, charge, sublease, part with the possession of or otherwise deal with the Hardware without obtaining Pink Elephant's prior written consent, or

(b) allow the Hardware to become a fixture or part of any other object or allow any person to obtain enforceable rights in respect of the Hardware.

- You must insure the Hardware (with a reputable insurance company) against all:

(a) liability whatsoever to any third party arising directly or indirectly out of Your possession or use of the Hardware,

(b) loss or damage to the Hardware from all insurable risk for the full cost of replacing it, and

(c) other risk in respect of which a prudent owner or operator of equipment of the same nature as the Hardware would normally insure such equipment.

- Upon expiry or earlier termination of the Service Period, You will, at Your own expense, restore the Hardware to its original condition (fair wear and tear excepted), remove all markings, labels and identification tags attached to the Hardware by You (except where these have been attached at the request of Pink Elephant) and return the Hardware to Pink Elephant at the original location of the Hardware.

8. Termination; Suspension. Your right to use the Service shall terminate upon expiration of the Service Period. In addition, Pink Elephant may, at its sole discretion, immediately suspend or terminate use of the Service during the Service Period for your failure to or Pink Elephant's reasonable belief that you have failed, to comply with



these terms and conditions or any other misuse of the Service. Following the expiration or termination of the Service Period:

- Data stored to the online backup space provided with Your Service will be at risk of being purged;
- Pink Elephant shall not be obligated to maintain such Data, forward such Data to You or a third party, or migrate such Data to another backup service or account; and
- You will not be able to store Data to any additional backup space under the Service that You may have purchased separately unless and until Your current Service Period is renewed or Your new Service Period is activated.

9. Changes to the Service. You shall have the right to receive new features to the Software, Hardware and Service as Pink Elephant, in its sole discretion, makes such features available during Your Service Period. Pink Elephant continually strives to improve the usability and performance of its products and services. In order to optimize the Software, Hardware and Service Pink Elephant may, at its discretion and without notice, add, modify or remove features from the Software, Hardware or Service at any time. In such event, You may be required to upgrade to the latest version of the Software or Hardware in order for the Service to continue to function correctly.

You agree that Pink Elephant may, in its sole discretion and from time to time, establish or amend general operating practices to maximize the operation and availability of the Service and to prevent abuses.

10. Privacy; Data Protection. From time to time, depending on the settings for the Service, the Hardware, Software and Service will collect certain information from You and the end users who use the computer on which the Software is installed (collectively, the "End Users").

The collected information is necessary for the purpose of delivering the functionality of the Software, Hardware and Service and will be encrypted and transferred to Pink Elephant; however, Pink Elephant will not read such information or online communications.

From time to time, the Software, Hardware and Service may collect certain information from Your computer, which may include:

- Information regarding installation of the Software and Hardware. This information indicates to Pink Elephant whether installation of the Software and Hardware was successfully completed and is collected by Pink Elephant for the purpose of evaluating and improving Pink Elephant's product installation success rate. This information will not be correlated with any personally identifiable information.
- The name given, during initial setup, to the computer on which the Software is being installed. If collected, the name will be used by Pink Elephant as an account name for such computer under which You may elect to receive additional services and/or under which You may use certain features of the Software. You may change the account name at any time after installation of the Software (recommended).
- Other general, statistical information used for product administration and analysis, and for improving product functionality. This information will not be correlated with any personally identifiable information.

Pink Elephant reserves the right to cooperate with any legal process and any law enforcement or other government inquiry related to your use of this Software. This means that Pink Elephant may provide documents and information relevant to a court subpoena or to a law enforcement or other government investigation. Article 6 of the NLdigital Conditions 2020 are applicable to You, Pink Elephant and this Agreement. If You have any questions about how Your Data is being handled, please contact Pink Elephant Customer Service.

Pink Elephant has no obligation to monitor use of the Service and/or Data transmitted or stored through the Service. To the maximum extent permissible under applicable law and notwithstanding the provisions of article 10, Pink Elephant reserves the right at all times to monitor, review, retain and/or disclose any Data or other information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to investigate any suspected breach of these Terms and Conditions.

11. DISCLAIMER OF WARRANTY. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE SOFTWARE AND SERVICE AND ANY THIRD PARTY SOFTWARE OR SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. Pink Elephant AND ITS LICENSORS PROVIDE THE SERVICE



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12. LIMITATION OF LIABILITY.

SOME STATES AND JURISDICTIONS INCLUDING MEMBER COUNTRIES OF THE EUROPEAN ECONOMIC AREA, DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE BELOW LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

(a) TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, YOU ASSUME TOTAL RESPONSIBILITY FOR USE AND RESULTS OF USE OF THE SERVICE. Pink Elephant AND ITS LICENSORS EXERCISE NO CONTROL OVER AND DISCLAIM ANY RESPONSIBILITY FOR THE CONTENT OR DATA CREATED OR ACCESSIBLE USING THE SERVICE. YOU AGREE NOT TO USE THE SERVICE IN HIGH RISK ACTIVITIES WHERE AN ERROR COULD CAUSE DAMAGE OR INJURY.

(b) TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, REGARDLESS OF THE LEGAL THEORY UNDER WHICH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER Pink Elephant HAS BEEN ADVISED OF THE POSSIBILITY OF LIABILITY, LOSS OR DAMAGE, Pink Elephant, ITS LICENSORS, AFFILIATES, AGENTS, AND CONTRACTORS WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOSS OF BUSINESS, LOST OR IMPUTED PROFITS OR REVENUES, LOSS OR DESTRUCTION OF CONTENT, INFORMATION OR DATA, COSTS OF COVER, INTERRUPTED SERVICE, OR RELIANCE UPON THE SOFTWARE AND/OR ASSOCIATED DOCUMENTATION) ARISING OUT OF OR RELATED TO THIS AGREEMENT, HARDWARE, SERVICE OR SOFTWARE.

(c) TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WITH REGARD TO ANY SERVICE RELATED CLAIM FOR DAMAGES THAT IS NOT LIMITED BY THIS SECTION, YOUR EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO THE TOTAL CHARGES PAID BY YOU TO Pink Elephant FOR THE AFFECTED SERVICE IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. Pink Elephant TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL CHARGES PAID BY YOU TO Pink Elephant UNDER THIS AGREEMENT IN THE ONE MONTH IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM ("DAMAGE CAP")

(d) Pink Elephant AND ITS LICENSORS DISCLAIM ALL LIABILITY OR RESPONSIBILITY IF SERVICE CHANGES REQUIRE CHANGES TO YOUR EQUIPMENT, DEGRADE YOUR EQUIPMENT PERFORMANCE OR SERVICE PERFORMANCE WITH THE EQUIPMENT, OR MAKE YOUR EQUIPMENT OBSOLETE.

13. INDEMNIFICATION. To the maximum amount permissible under applicable law, You shall indemnify and hold Pink Elephant, its parents, subsidiaries, affiliates, officers, directors, employees and agents harmless from and against any third party claims, demands, costs, damages, losses, liabilities and expenses, including reasonable



attorneys' fees, made by any third party arising out of or in connection with use of the Service through Your Account, including but not limited to liability arising out of or in connection with the Data transmitted or stored through the Service in connection with Your Account.

14. Export Regulation. You acknowledge that the Software and related technical data and services (collectively "Controlled Technology") is subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations (EAR), and the laws of any country where Controlled Technology is imported or re-exported. You agree to comply with all relevant laws and will not export any Controlled Technology in contravention to U.S. law nor to any prohibited country, entity, or person for which an export license or other governmental approval is required. All Pink Elephant or third party product is prohibited for export or re-export to Cuba, North Korea, Iran, Syria and Sudan and to any country subject to relevant trade sanctions. USE OR FACILITATION OF Pink Elephant OR THIRD PARTY PRODUCT IN CONNECTION WITH ANY ACTIVITY INCLUDING, BUT NOT LIMITED TO, THE DESIGN, DEVELOPMENT, FABRICATION, TRAINING, OR TESTING OF CHEMICAL, BIOLOGICAL, OR NUCLEAR MATERIALS, OR MISSILES, DRONES, OR SPACE LAUNCH VEHICLES CAPABLE OF DELIVERING WEAPONS OF MASS DESTRUCTION IS PROHIBITED, IN ACCORDANCE WITH U.S. LAW.

15. Entire Agreement. This Agreement and the terms for supplements, updates, Hardware, Software (including any agreement that may be included with the Software provided by Pink Elephant for use with the Service), Internet-based services and support services that You use, are the entire agreement for the Software and support services.

16. GENERAL TERMS. This Agreement will be governed by and construed under the laws of the Netherlands. Any legal action or proceeding related to this Agreement shall be instituted in the Netherlands and the court of Amsterdam. Pink Elephant and You agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding. If any provision of this Agreement is ruled invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement. No amendment to this Agreement will be binding unless evidenced by a writing signed by the party against whom it is sought to be enforced. No waiver by either Pink Elephant or You of any breach or default under this Agreement shall be deemed to be a waiver of any of any other breach or default under this Agreement. Should You have any questions concerning this Agreement, or if You desire to contact Pink Elephant Customer Service for any reason, please write: Pink Elephant Data Management , Gooimeer 18, 1411DE Naarden, The Netherlands.

17. Legal Effect. This Agreement describes certain legal rights. You may have other rights under the laws of Your state or country. You may also have rights with respect to the party from whom You acquired the Software. This Agreement does not change Your rights or obligations under the laws of Your state or country if the laws of Your state or country do not permit it to do so.