



## ElephantDrive Software and Website Terms of Use & Notices

Updated February 2015

PLEASE READ THESE TERMS CAREFULLY BEFORE INTERACTING WITH THE ELEPHANTDRIVE WEB SITE OR SOFTWARE - BY USING THE SERVICES YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY IT.

### 1. This is an agreement between you and ElephantDrive, Inc

This is an agreement ("Agreement") between you and ElephantDrive, Inc. (or, if applicable based on where you live, one of its affiliates) ("the Company"). This Agreement governs your use of the Internet site located at <https://vault.elephantdrive.com>, <http://vault.elephantdrive.com>, and any sub-domains thereof (the "Site") and any software, service, web site, or web page operated by the Company (collectively with the Site, "the Services"). Use of the Services is available only to individuals or businesses that can form legally binding contracts under applicable law. You represent that you are at least 18 years of age and have attained the age of majority in the province, state or country in which you reside, and any information that you submit is correct. The Company offers use of the Services to you conditioned in your acceptance of the Agreement. Your use of the Services constitutes your acceptance of the Agreement. The Agreement contains disclaimers of warranties and liability and an exclusive remedy (see Section 6). These provisions form an essential basis of our bargain.

### 2. How the Company may modify the Agreement

The Company reserves the right to change the terms, conditions, and notices under which it offers the Services, including any charges associated with the use of the Services. You are responsible for regularly reviewing these terms, conditions and notices, and any additional terms posted on the Company's web site. Your continued use of the Services after the effective date of such changes constitutes your acceptance of and agreement to such changes.

### 3. Privacy policy

The Company respects your privacy and permits you to control the treatment of your personal information. A complete statement of the Company's current privacy policy can be found at: <https://www.elephantdrive.com/m/ct.aspx?ici=1704>. The Company's privacy policy is expressly incorporated into the Agreement by this reference.

### 4. Use of software

The Company may make certain software available to you via the Services. If you download software from the Services, the software, including all files and images contained in or generated by the software, and accompanying data (collectively, "Software") are licensed to you by Company, for your use in accordance with this Agreement only. Company does not transfer either the title or the intellectual property rights to the Software, and Company retains full and complete title to the Software as well as all intellectual property rights therein. You may not sell, redistribute, or reproduce the Software, nor may you decompile, reverse-engineer, disassemble, or otherwise convert the Software to a human-perceivable form. All trademarks and logos are owned by Company or its licensors and you may not copy or use them in any manner.

### 5. No commercialization, unlawful, or harmful use of the Services; System integrity

The Services are only for your personal or business use and You will not re-sell or attempt to re-sell the Services for commercial purposes, unless you are an Authorized Reseller. You will not use the Services in any way that is unlawful, or harms the Company, its affiliates, resellers, distributors, service providers and/or suppliers (each, an "ElephantDrive Party" and collectively, the "ElephantDrive Parties") or any customer of an ElephantDrive Party, as determined in the Company's sole discretion. The Company may tell you about certain specific harmful uses in a code of conduct or other notices available through its web site, but has no obligation to do so. Without limiting the generality of this section, you may not use the Services in any manner that could damage, disable, overburden, or impair any element of the Services (or the network(s) connected to the Services) or interfere with any other party's use and enjoyment of the Services. You may not use any device, software or routine to interfere or attempt to interfere with the proper working of the Services. You may not take any action that imposes an unreasonable or disproportionately large load on the Company's infrastructure. You may not disclose or share your password or account information with any third parties or use your password or account information for any unauthorized purpose.

### 6. Submissions

The materials, data, and other information used and displayed in the Services are the property of the Company or its licensors and are protected by copyright, trademark and other laws. In addition to the Company's and its licensors' and suppliers' rights in individual elements of the content within the Services, the Company owns a copyright in the selection, coordination, arrangement and enhancement of such content. Unless the Company has entered into a separate written agreement with you that explicitly states to the contrary, you agree that any information, feedback, questions, comments or the like that you provide to the Company in connection with the Services ("Submissions") will be deemed to be provided to the Company on a non-confidential and non-proprietary basis and will become and remain the property of the Company. The Company shall have no obligations of any kind with respect to any Submissions and shall be free to reproduce, use, disclose and/or distribute any Submissions for any purpose whatsoever, without limitation. You also agree that the Company shall be free to use any ideas, concepts or techniques embodied in the Submissions for any purpose whatsoever, including, but not limited to, developing, manufacturing, and marketing products or services incorporating such ideas, concepts, or techniques. For avoidance of doubt, data uploaded, backed up, or otherwise added into an end user account is considered End User Data as opposed to Submissions. End User Data remains the property of the end user and will be treated as confidential in accordance with our Privacy Policy.

#### **7. Compliance with intellectual property laws; Copyright infringement**

When using the Services, you agree to obey the law and to respect the intellectual property rights of others. Your use of the Services is at all times governed by and subject to laws regarding copyright ownership and use of intellectual property. You agree not to upload, download, display, perform, transmit, or otherwise distribute any information or content (collectively, "Content") in violation of any third party's copyrights, trademarks, or other intellectual property or proprietary rights. You agree to abide by laws regarding copyright ownership and use of intellectual property, and you shall be solely responsible for any violations of any relevant laws and for any infringements of third party rights caused by any Content you provide or transmit, or that is provided or transmitted using your User ID. The burden of proving that any Content does not violate any laws or third party rights rests solely with you. Company has in place certain legally mandated procedures regarding allegations of copyright infringement occurring via the Services. Company has adopted a policy that provides for the immediate suspension and/or termination of any user who is found to have infringed on the rights of Company or of a third party, or otherwise violated any intellectual property laws or regulations. Company's policy is to investigate any allegations of copyright infringement brought to its attention. If you have evidence, know, or have a good faith belief that your rights or

the rights of a third party have been violated and you want Company to delete, edit, or disable the material in question, you must provide Company with all of the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Company to locate the material; (d) information reasonably sufficient to permit Company to contact you, such as an address, telephone number, and if available, an electronic mail address at which you may be contacted; (e) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For this notification to be effective, you must provide it to Company by regular mail to ElephantDrive Inc., Copyright Infringement, 212 Marine Street, Suite 100, Santa Monica, CA 90405 or by electronic mail to [copyright@ElephantDrive.com](mailto:copyright@ElephantDrive.com)

#### **8. Inappropriate content**

You agree not to upload, download, display, perform, transmit, or otherwise distribute any Content that (a) is libelous, defamatory, obscene, pornographic, abusive, or threatening; (b) advocates or encourages conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or foreign law or regulation; or (c) advertises or otherwise solicits funds or is a solicitation for goods or services. Company reserves the right to terminate your receipt, transmission, or other distribution of any such material using the Services, and, if applicable, to delete any such material from its servers. Company intends to cooperate fully with any law enforcement officials or agencies in the investigation of any violation of these Terms of Use or of any applicable laws.

#### **9. No warranty**

THE COMPANY PROVIDES THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS OR IMPLIED. TO THE FULL EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE COMPANY SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON INFRINGEMENT. The Company does not guarantee continuous, uninterrupted or secure access to the Services, and operation of the Services may be

interfered with by numerous factors outside of its control, including but not limited to telecommunications network disruptions. Nor does the Company guarantee the accuracy, timeliness or completeness of any information in the Services or the results of your use of the Services.

#### **10. Limitation of Liability, Your Exclusive Remedy**

IN NO EVENT SHALL THE COMPANY OR ITS LICENSORS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS SHALL ONLY APPLY TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE COMPANY'S AGGREGATE LIABILITY, AND THE AGGREGATE LIABILITY OF ITS LICENSORS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO \$100 IF YOU ARE DISSATISFIED WITH THE SERVICES, YOU DO NOT AGREE WITH ANY PART OF THE AGREEMENT, OR YOU HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST ANY ElephantDrive PARTY WITH RESPECT TO THE AGREEMENT OR THE SERVICES, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES.

#### **11. Affiliate sites**

The Company has no control over, and no liability for any third party websites or materials. Company works with a number of partners and affiliates whose Internet sites may be linked with the Site. Because neither Company nor the Services has control over the content and performance of these partner and affiliate sites, Company makes no guarantees about the accuracy, currency, content, or quality of the information provided by such sites, and Company assumes no responsibility for unintended, objectionable, inaccurate, misleading, or unlawful content that may reside on those sites. Similarly, from time to time in connection with your use of the Services, you may have access to content items (including, but not limited to, websites) that are owned by third parties. You acknowledge and agree that Company makes no guarantees about, and assumes no responsibility for, the accuracy, currency, content, or quality of this third party content, and that, unless expressly provided otherwise, this Agreement shall govern your use of any and all third party content.

#### **12. Prohibited uses**

The Company places certain restrictions on your permissible use of the Services. You are prohibited from violating or attempting to violate any security features of the Services, including, without limitation, (a) accessing content or data not intended for you, or logging onto a server or account that you are not authorized to access; (b) attempting to probe, scan, or test the vulnerability of the Services or any associated system or network, or to breach security or authentication measures without proper authorization; (c) interfering or attempting to interfere with service to any user, host, or network, including, without limitation, by means of submitting a virus to the Services, overloading, "flooding," "spamming," "mail bombing," or "crashing;" (d) using the Services to send unsolicited e-mail, including, without limitation, promotions, or advertisements for products or services; (e) forging any TCP/IP packet header or any part of the header information in any e-mail or in any posting using the Services; or (f) attempting to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by the Company in providing the Services. Any violation of system or network security may subject you to civil and/or criminal liability.

### **13. Indemnity**

You agree to indemnify the Company for certain of your acts and omissions. You agree to indemnify, defend, and hold harmless the Company, its affiliates, officers, directors, employees, consultants, agents, and representatives from any and all third party claims, losses, liability, damages, and/or costs (including reasonable attorney fees and costs) arising from your access to or use of the Services, your violation of this Agreement, or your infringement, or infringement by any other user of your account, of any intellectual property or other right of any person or entity. The Company will notify you promptly of any such claim, loss, liability, or demand, and will provide you with reasonable assistance, at your expense, in defending any such claim, loss, liability, damage, or cost.

### **14. Governing law**

The Services are controlled by the Company from its offices within the State of California, USA. The laws applicable to the interpretation of the Agreement shall be the laws of the State of California, USA, and applicable federal law, without regard to any conflict of law provisions. The Company makes no representation that the services or the content available via the Services are appropriate for access outside of the United States. Those who choose to access the Services from outside the United States do so at their own initiative and are responsible for compliance with local laws. You agree to submission of

any dispute to the state and federal courts of the State of California, city of Los Angeles, USA.

#### **15. Termination; Access restriction**

The Company may terminate the Agreement, or terminate or suspend your access to the Services at any time, with or without cause, with or without notice. Upon such termination or suspension, your right to use the Services will immediately cease. UPON SUCH TERMINATION OR SUSPENSION, ANY INFORMATION YOU HAVE STORED ON THE COMPANY'S HARDWARE AND/OR USING THE SERVICES MAY NOT BE RETRIEVED LATER, AT THE COMPANY'S SOLE DISCRETION.

#### **16. Payment, Cancellations and Refunds**

By agreeing to this Agreement and purchasing a subscription to the paid version of the Services, you are agreeing to allow the Company to place your account on a recurring payment plan. The account will automatically be charged according to the terms of the account type you select on the same day each month or year, depending on the duration of the subscription. Further, you grant permission to the Company to charge your credit card or payment service for any and all services you request and any renewals thereof. If the Company is not able to process a payment for your account on the specified processing date, the Company may suspend your account pending a successful payment transaction. You may cancel your account at any time by using the web-based cancellation link and confirmation in the My Account section at the Site. If you are not able to access this page, you may also send an email to [billing@elephantdrive.com](mailto:billing@elephantdrive.com) from the email address associated with your account using the subject line: "Account Cancellation" for assistance. Because the Company charges its subscribers for each unpaid billing cycle in advance, in order to cancel your account and not be charged for an impending billing cycle, you must make your cancellation request at least two business days before the next automatic billing occurrence. If you cancel during a billing cycle, no refund will be issued for the unused portion of the billing cycle. For example, if you are billed on the 15th of every month and you cancel on September 17th, you have already pre-paid for the entire current billing cycle (September 15 – October 15 in this case). Upon cancellation of your account, all data within the account will be queued for permanent deletion. If you cancel your account while it is in good standing, you may request that the Company continue to make your data available to you until the end of the current billing cycle. Only in the event of your request and ElephantDrive's acknowledgement will ElephantDrive continue to maintain the account data after cancellation and until the end of the current billing cycle. Such a request must be made at least one business day prior to the cancellation of the account. If no request is received

to maintain the account data until the end of the current billing cycle, all account data will be queued for deletion immediately following the cancellation of the account. If an account is later reactivated, previous data may not be recovered.

#### **17. Severability; Assignment; Waiver**

If any part of the Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement will remain unaffected and in full force and effect. The Company may assign the Agreement, in whole or in part, at any time with or without notice to you. You may not assign the Agreement, or assign, transfer or sublicense your rights, if any, as related to the Software. No waiver of any breach of any provision of these Terms of Use shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

#### **18. Entire agreement**

Except as expressly stated herein, the Agreement constitutes the entire agreement between you and the Company with respect to the Services and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and the Company with respect to the Services.

#### **19. Section titles**

The section titles in the Agreement are solely used for the convenience of the parties and have no legal or contractual significance.

#### **20. Acknowledgement**

By using the Services you acknowledge that you have read this Agreement and agree to be bound by it.