



Terms and Conditions SAMBA+ Subscription

§ 1 Recitals

Samba is developed by the international Samba team, refer to <http://samba.org>. *Samba* is released and distributed as open source software for free download under the GPLv3 license. *SAMBA+* is a special version of *Samba* provided by SerNet and is released and distributed under GPLv3 as well. The applicable open source conditions for using each of the versions of *Samba* are specified in the applicable description of each product version. The GPL conditions may be downloaded from: <https://www.gnu.org/licenses/lgpl-3.0.html>

§ 2 Grant

2.1 Grant of Subscription

SerNet Inc. (“SerNet”) grants to the Customer the right to download the latest version of *SAMBA+* issued on the website <http://oposso.samba.plus> for the use for up to **five** server system for the agreed subscription period named in the confirmation of order or in the invoice under the terms and condition of this agreement.

The subscription service granted by SerNet does not include any support. The Customer has no right to get access to older versions of the software and/or versions that are no longer distributed by SerNet.

2.2 Grant of Support or Additional Services

The rights granted under section 2.1 of this agreement do not include any support or other service.

SERNET IS NOT OBLIGED TO PROVIDE ANY SPECIFIC VERSION OF *SAMBA+* OR EXTENSIONS OF THE SOFTWARE. THIS SPECIFICALLY ALSO INCLUDES NEW RELEASES, UPDATES, UPGRADES OR PREVIOUS VERSIONS, ADDITIONAL PRODUCT SERVICES OR SUPPORT.

§ 3 Open Source License

The Customer explicitly acknowledges that supply of *SAMBA+* is governed by the terms and conditions of the GPLv3 open source license.

§ 4 Trademarks *Samba* and SerNet

The Customer acknowledges that “*Samba*” and “SerNet” are trademarks of SerNet and the Samba team. The Customer is not entitled to use the trademarks without prior written consent of SerNet. No express or implied license or other rights to use the trademarks are granted to the Customer under this agreement or any related documents.

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§ 5 Access, Term, Payments, Payment Conditions

5.1 Access

Upon signature of this agreement the Customer will receive a subscription key for the update function of *SAMBA+*.

5.1.1 End User

Customers that use *SAMBA+* for their own purposes: The Customer will keep the key confidential and will use the key for its own internal uses and will not make it available to any third party. Each subscription entitles the Customer to use up to five server systems. Sale and lease of *SAMBA+* to any third party are not permitted.

5.1.2 Vendor

Customers that integrate *SAMBA+* in their own products: The Customer agrees to buy a *SAMBA+* subscription for every product containing *SAMBA+* that is made available to an end user. Discounts may apply upon request. The Customer may not share subscription keys with any person or entity other than the applicable end users to which the Customer made *SAMBA+* available. Sale and lease of *SAMBA+* to any third party are not permitted.

5.1.3 Reseller

Customers that resell *SAMBA+*: Prior to any resale, the Customer shall register as a reseller with SerNet and notify SerNet regarding certain requested information with respect to end users (which includes, among other things, name and address of such end users). The Customer may not share subscription keys with any person or entity other than the applicable end users to which the Customer resold *SAMBA+*.

5.2 Term and Termination

The service term commences after the activation of the Customer's account and the subscription, which occurs after billing and payment, and ends at the applicable end date specified, if any, in the Customer's subscription (the "**Service Term**").

The Customer is entitled to cancel any service after 12 months since the commencement of the Service Term. The service ends automatically at the end of the Service Term.

SerNet is entitled to stop or terminate the access to *SAMBA+* software downloads if one of the following conditions applies:

- the Customer is in default of due payment obligations under this agreement
- the Customer uses the *SAMBA+* software in breach of the terms of this agreement
- the Customer is in breach of the applicable terms of the open source license
- the Customer uses the trademarks *SAMBA+* or SerNet against the § 4 of this agreement

SerNet is further entitled to terminate the subscription with immediate effect if SerNet becomes aware that the provision or the use of the *SAMBA+* software infringes any intellectual property rights of a third party (the "**Infringement**"). In this case SerNet will refund the portion of the subscription fee corresponding to the remaining period of the selected subscription term (the "**Refund**"). THE REFUND IS THE EXCLUSIVE REMEDY OF THE CUSTOMER WITH RESPECT TO ANY INFRINGEMENT AND ANY OTHER CLAIM SHALL BE BARRED.

Any rights to use *SAMBA+* software that has been downloaded before termination of this subscription contract are NOT affected by the termination of the subscription agreement itself. According to the GPL the user keeps all rights regarding the downloaded software after termination of the subscription agreement.

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§ 6 Limitation of Liability, No Warranties

6.1 Limitation of Liability

NOTWITHSTANDING ANYTHING CONTRARY IN THIS AGREEMENT, ALL RELATED DOCUMENTS OR OTHERWISE, SERNET WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR ANY RELATED DOCUMENTS OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, ENHANCED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA WHATSOEVER OR (II) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES OR (III) LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF USE. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON. IN NO EVENT SHALL SERNET'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY RELATED DOCUMENTS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERNET PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

6.2 No Warranties

SAMBA+ IS AN OPEN SOURCE SOFTWARE AND SAME IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SERNET HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, CONCERNING SAMBA+ AND SERVICES TO BE PROVIDED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, FREEDOM FROM BUGS, AND WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. ALL CLAIMS BASED ON THE SUPPLY OF SAMBA+ SHALL BE BARRED AFTER 12 MONTHS FROM THE FIRST DOWNLOAD OF THE RESPECTIVE SAMBA+ VERSION.

§ 7. General

7.1 Governing Law

This agreement, and all disputes arising out of or relating to this agreement or all related documents, shall be governed by and construed and interpreted in accordance with the laws of the State of California without regard to conflicts of laws principles or the UN Convention on the International Sale of Goods. Any action, suit, or other proceeding arising out of or related to this agreement, or any related documents must be instituted exclusively in the federal courts of the United States or the courts of the State of California in each se located in the city of San Francisco and County of San Francisco, and each party hereto irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT AND THE SERVICES.

7.2 Force Majeure

SerNet shall not be liable and the Customer shall not have the right to terminate this agreement for any delay or failure in performing its obligations hereunder if such delay or failure is caused by circumstance or cause beyond SerNet's control including, but not limited to acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, natural disaster, epidemic, pandemic, fluctuations or non-availability of electrical power, insurrections and/or any other cause beyond the reasonable control of SerNet.

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7.3 Transfer of Rights Waiver of Contractual Right

Customer's rights arising out of this agreement, or any related documents may not be transferred, assigned, or distributed by the Customer without the prior written consent of SerNet. SerNet may assign any of its rights or delegate any of its obligations to any third-party or affiliate or to any person acquiring all or substantially all of SerNet's assets without Customer's consent.

Waiver of any provision hereof shall not be deemed a waiver of any other provision, nor shall waiver of any breach of this agreement be construed as a continuing waiver of other breaches of the same or other provisions of this agreement.

7.4 Entire Agreement

This agreement constitutes the entire agreement of the parties regarding its subject matter and supercedes all prior and contemporaneous communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

7.5 Notices

Any notices or communications between the parties shall be sent to the addresses or email addresses at the beginning of this agreement or by e-mail. Customer acknowledges to be listed on a list of customers by SerNet.

7.6 Export

The Customer will comply in all respects with applicable export control laws and regulations and will not directly or indirectly transfer, divert, export, re-export, or import information contained in *SAMBA+* to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining such license or approval to do so from the appropriate agency or other governmental entity. Customer warrants that it will take all actions which may be reasonably necessary to assure that no end-user or end use contravenes applicable United States or other countries' laws or regulations. Customer shall defend, indemnify, and hold harmless SerNet and its affiliates from any and all damages, losses, liabilities, costs, expenses and the like arising out of Customer's breach of applicable export control laws or regulations.

7.7 Severability

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

May 1st 2024 – SerNet Inc.