



## 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 licence. *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 grants to the customer the right to download the latest version of *SAMBA+* 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. If SerNet decides to offer any support or additional service the terms and conditions will be published by SerNet on the website <http://samba.plus>

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 Licence

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

### § 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 licence or other rights to use the trademarks are granted to the customer under this agreement.

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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. The customer agrees to buy a *SAMBA+* subscription for every **five** server systems. Sale and rent of *SAMBA+* 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 the end user. Discounts apply upon request. The customer shares subscription keys with respective end users only. Sale and rent of *SAMBA+* as separate software products are not permitted.

##### 5.1.3 Reseller

Customers that resell *SAMBA+* and do not use or integrate *SAMBA+* in their own systems: The customer agrees to register as a reseller at SerNet and to inform SerNet about end users (name and address) for every procurement. The customer shares subscription keys with respective end users only.

#### 5.2 Term and Termination

The service duration starts after the activation of the customer's account and the subscription, which occurs after billing and payment.

The service can be cancelled after the first period of subscription at the earliest. The service ends automatically after the period of subscription.

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 licence
- 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. In this case SerNet will refund the portion of the subscription fee corresponding to the remaining period of the selected subscription term. Any further claims are excluded.

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 contract itself. According to GPL the user keeps all rights regarding the downloaded software after termination of the subscription contract.

### § 6 Limitation of Liability, Warranties

#### 6.1 Limitation of Liability

SERNET SHALL ONLY BE LIABLE FOR DAMAGES ON WHATEVER LEGAL GROUNDS IN THE EVENT OF GROSS NEGLIGENCE. THIS DOES NOT APPLY IN CASE OF PHYSICAL INJURY AND IN CASE OF THE GERMAN PRODUCT LIABILITY LAW (PRODUKTHAFTUNGSGESETZ). SER NET ASSUMES LIABILITY WITH LIMITATION TO THE CONTRACTUAL ANTICIPATED TYPICAL TYPES OF DAMAGES IN CASES FOR EACH SLIGHTLY NEGLIGENT BREACH OF ESSENTIAL CONTRACTUAL OBLIGATIONS. LIABILITY FOR LOSS OF PROFIT, FAIL OF MATERIALIZED SAVINGS OR OTHER INDIRECT CONSEQUENTIAL DAMAGES AS WELL AS DAMAGES AT RECORDED DATA ARE EXCLUDED. NO-FAULT LIABILITY AS DEFINED IN 536 A BGB IS EXCLUDED. THE LIMITATION OF LIABILITY SHALL ALSO APPLY ON THE LIABILITY OF REPRESENTATIVES AND ORGANS OF SERNET.

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### 6.2 Warranties

The customer acknowledges that *SAMBA+* is an open source software. SerNet does not make any warranties that the *SAMBA+* software is a fit for any specific purpose of the customer except as otherwise agreed upon in writing. All claims based on the supply of *SAMBA+* shall be barred after 12 months from the first download of the respective *SAMBA+* version by the statute of limitations.

## § 7. General

### 7.1 Governing Law

This agreement shall be governed by and construed in accordance with the laws of Germany, without giving effect to its principles of conflict of laws. Application of the CISG is hereby explicitly excluded. Any dispute that may arise between the parties shall be subject to the jurisdiction of the Landgericht Göttingen, Germany, except that SerNet may also select the customer's principal place of business.

### 7.2 Force Majeure

SerNet shall not be liable in damages and the customer shall not have the right to terminate this agreement for any delay or default in performing hereunder if such delay or default is caused by conditions 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 licence), wars, insurrections and/or any other cause beyond the reasonable control of SerNet.

### 7.3 Transfer of Rights Waiver of Contractual Right

This agreement may not be transferred, assigned, or distributed by the customer without the prior written consent of SerNet. SerNet has the right to assign its rights and obligations or to transfer its obligations to a subcontractor.

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, 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 Complete Agreement

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

### 7.5 Notices, Confidentiality

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

### 7.6 Export

*SAMBA+* may be subject to export or import control regulations. The customer is solely responsible for compliance with any such import, use, or export restrictions. In case the customer uses *SAMBA+* in breach of applicable export or import control regulations, SerNet is entitled to stop or terminate the access to *SAMBA+*.

### 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.

Göttingen, December 30th 2019 – SerNet GmbH