



Terms and Conditions

SAMBA+ SLA Support Budgets

§ 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 GmbH (“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>

Customer explicitly acknowledges that supply of SAMBA+ is governed by the terms and conditions of the GPLv3 open source licence. 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 Terms and Conditions.

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.

§ 2 Scope of the Service Level Agreement

This Agreement represents a Service Level Agreement (“SLA” or “Agreement”) between SerNet Inc. and the Customer for the provisioning of support services with guaranteed response and solution times to support and sustain SAMBA+.

This paragraph sets forth the key parameters covered:

Covered services include support for installation, configuration, maintenance, updates and upgrades for “SAMBA+” and “SAMBA+ AIX”. Services are provided remotely by email, phone, or video conferencing.

Not included are consulting services, software development and any other services not listed in this Agreement. SerNet may reject support requests for software products and services that are not provided by SerNet.

Response time is the maximum elapsed time from when a technical issue is reported to SerNet to the time a SerNet technician first responded. It is aimed to provide a qualified response to the request during the first contact. A request is made by calling the SerNet emergency hotline. If the request is not made via the emergency hotline but e.g., via email, no response time is guaranteed.

Solution time is the maximum elapsed time after a technical issue has been raised until a qualified response to the request is created. Typically, this response contains one or more solutions to the request, which are then tested in further iterations with the customer, if necessary. A response is not necessarily a complete solution but can also be a workaround or a qualified statement that the request cannot be resolved. The customer shall provide all necessary information and assistance related to service performance that allows SerNet to meet the performance standards set forth in this Agreement.

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§ 3 Payment Methods

Services are sold as fixed price “SAMBA+ SLA Support Budgets” to Customer online via SerNet’s SAMBA+ shop at <https://shop.samba.plus>. SAMBA+ SLA Support Budgets are paid in advance using the payment methods set forth available on the SAMBA+ shop site.

§ 4 Purchase

Purchase information and invoice will be sent to customer via email and can also be retrieved from the personal customer section inside the shop. All prices include the respective VAT.

§ 5 Term and Termination

Upon notice via email from SerNet to the Customer within one working day after purchase, the SAMBA+ SLA Support Budget can be used by the Customer. The notification email from SerNet contains the project number to be referenced in a support call by the Customer and information about email addresses and phone numbers where requests are to be referred to. The budget contract ends without notice 12 months after the day of purchase, regardless of whether the services have been used. This SLA may be terminated by either party by providing 3 months’ notice in writing to the other party.

§ 6 Limitation of Liability, No Warranties

NOTWITHSTANDING ANYTHING TO THE 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. 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 THE 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. 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.

§ 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.

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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; No Trademark License

Customer's rights arising out of the supply 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.

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.

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 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 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.

7.6 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.

7.7 Notices

Any notices or communications between the parties shall be sent to the addresses or email addresses provided in this Agreement or by email.

Göttingen, April 28th 2023 – SerNet GmbH