

## ANNUAL SUPPORT AND MAINTENANCE AGREEMENT

Digital Samba offers annual support and maintenance services to its customers, under Digital Samba's Annual Support and Maintenance Agreement. The services provided and the policies under which the services are rendered are described in this document.

### 1. MAINTENANCE SERVICES

Digital Samba provides maintenance services to Licensees of its Software ("Customer"), which is licensed under the Digital Samba authorized Software License Agreement. This may be an Enterprise Server License Agreement or an Agreement for Hosted Services, as applicable.

### 2. FEES

Customers may subscribe to the support and maintenance agreement by paying the annual maintenance fee. The maintenance fee for each successive one-year term shall be due and payable no later than the last day of the then current term. Customer may be required to pay an additional fee if maintenance services lapse and are subsequently resumed. Customers purchasing additional software or modules during the current term of their maintenance agreement may be required to pay additional maintenance fees for the additional software or modules.

### 3. TERM

Maintenance agreements for new software typically have a one year term (however multi-year agreements are available on most products), beginning on the date the software is shipped. The term of a maintenance renewal will be included on the renewal notice. Digital Samba or your local reseller will endeavour to send a renewal notice prior to expiration of your current maintenance agreement. Maintenance agreements will automatically terminate: (i) upon termination of the Software License Agreement; and (ii) in the event that Customer fails to pay the then current Maintenance Fee when due. The Current and last version are the supported versions of a Product.

### 4. SUPPORT AND MAINTENANCE SERVICES

The Support and Maintenance Services shall include the following support:

1. Telephone and Email Support. Digital Samba will provide telephone and email support during Digital Samba's normal business hours, from 8:30 a.m. through 5:30 p.m., Monday through Friday, Central European Time, excluding Digital Samba holidays. Such support will include the opportunity to consult with a member of the Digital Samba technical support staff who will assist the Customer with the Software capabilities, functionality and characteristics and provide basic problem resolution assistance as required. This assistance does not cover training or consulting services. Contact information can be found on our website at [www.digitalsamba.com](http://www.digitalsamba.com).

2. Software Releases. Digital Samba will make available to Customer and install such point releases, updates, upgrades, Service Packs (minor patch releases resolving critical bugs) and/or enhancements to the Software which Digital Samba makes generally available to its Maintenance Customers at no additional charge when available, provided that Customer has made available to Digital Samba all access details required to carry out such installations. In the event that Digital Samba Professional Services are required, the Customer will be billed for such Services at Digital Samba's standard rates then in effect. As Digital Samba makes available software releases, Digital Samba reserves the right, at its sole discretion, to discontinue or modify the terms and conditions of support for non-current releases and versions.

3. Excluded Services. Excluded from the coverage of this Agreement are services resulting from misuse or modification of the Software by Customer, failure or interruption of any electrical power, or any accident or other cause external to the Software, including, but not limited to problems or malfunctions related to Customer's network, database, third party software products, and/or computer configurations or Customer's hardware. Such excluded services, and additional consulting services such as training, setup and technical integration may be contracted separately at Digital Samba's then current labour rates, subject to Digital Samba's agreement.

4. Customer's Responsibilities. Customer is responsible for (i) notifying Digital Samba of all problems for which Customer requires assistance, and (ii) allowing, if necessary, access to the Software, and (iii) the assistance of a qualified Customer representative, so that Digital Samba can perform Maintenance Services hereunder.
5. Support Knowledgebase. Customer will have 24/7 access to the Digital Samba Support Knowledgebase.

#### **5. LIMITED WARRANTY**

DIGITAL SAMBA WARRANTS THAT THE MAINTENANCE SERVICES WILL BE PERFORMED IN A WORKMANLIKE MANNER IN ACCORDANCE WITH INDUSTRY STANDARDS. DIGITAL SAMBA MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS SUPPORT AND MAINTENANCE CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OF ANY KIND RESPECTING ANY MAINTENANCE SERVICES PERFORMED HEREUNDER OR ANY MATERIALS FURNISHED HEREUNDER.

#### **6. LIMITATION OF LIABILITY**

THE CUMULATIVE LIABILITY OF DIGITAL SAMBA TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS SUPPORT AND MAINTENANCE CONTRACT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE MAINTENANCE FEES PAID TO DIGITAL SAMBA WITHIN THE PRIOR YEAR. IN NO EVENT WILL DIGITAL SAMBA BE LIABLE TO CUSTOMER FOR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF DIGITAL SAMBA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.