

## End User License Agreement

### 1. PARTIES

This Agreement is by and between Digital Samba S.L. doing business as Digital Samba S.L. of C/ Roger de Lluria 93, 08009 Barcelona, Spain ("Digital Samba", "We" or "Us") and the individual or entity who purchased and is using the Products ("Customer" or "You") and the individuals accessing the Products ("End Users").

### 2. CONSTRUCTION

This Agreement describes Customer's right to access and use of Digital Samba products, third-party software, plug-ins and extensions ("Products") and related services (the "Service"). The Products and Services are provided to Customer under the terms and conditions of this Agreement, and any rules or policies that may be published on our Web site or in separate agreements with Customer.

### 3. LICENSE GRANT

Subject to the terms and conditions of this Agreement, Digital Samba grants to Customer a limited, non-exclusive, non-transferable license to use the Products (as well as any related documentation, instructions, evaluations, or other written materials). Customer will provide access to the Products only to its End Users and any other persons who are authorized by Customer to access the Products during the term of this Agreement. Customer may not sell access to the Products, unless expressly agreed with Digital Samba.

### 4. CUSTOMER CONTENT

If, in the process of using the Products or Service, Customer or an End User uploads, records or otherwise transmits any content to the Web server, (including PowerPoint™ presentations, photographs, illustrations, icons, articles, text, audio clips, or video clips (the "Content") through the Service, then Customer represents and warrants to us that Customer is either the owner or licensee of the Content; is solely responsible for the Content; and acknowledges and agrees that we neither control nor monitor the Content, nor guarantee the accuracy, integrity, security or quality of such Content. Customer will not use the Products or Service or upload, record or otherwise transmit any Content that: infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; violates any law, statute, ordinance or regulation; is defamatory, trade libelous, threatening, harassing, obscene, harmful, or pornographic; or contains any viruses or other Products that is intended to damage or interfere with (or surreptitiously intercept or capture) any system, data or personal information. Because Customer and its End Users will be in control of the content displayed online as a part of use of the Products, Customer understands that by using the Services or Products that End Users may be exposed to Content that is offensive or a violation of this Agreement, and that under no circumstances will we be liable to any person or entity for any alleged damages sustained by any End User. As part of the Service, you may submit questions or comments to Digital Samba. Digital Samba reserves the right to edit and post the questions or comments that you submit to us, along with their answers, without revealing your personally identifiable information as a part of the customer support Web site. Customer agrees that all communications, comments, feedback, suggestions, ideas, problem resolutions and other submissions related to the Services or Products submitted to us by Customer or its End Users shall be and remain our property with all non-exclusive worldwide rights, titles and interests in any resulting intellectual property. Upon termination of this Agreement or use of the Service, Customer agrees that any Content posted to its servers shall not be returned to Customer and shall be removed from the servers, except for those retained in accordance with customer's archive policies and procedures. Customer shall be entitled to retain all or any application(s) that have been developed by the customer without the use of the services and products provided under this agreement.

### 5. CUSTOMER AND TECHNICAL SUPPORT

Digital Samba will provide Customer and technical support for the Products to End Users in accordance with our Agreement with Customer. Please refer to that Agreement for details.

### 6. OWNERSHIP

Customer acknowledges and agrees that the Products and all related items provided to it and its End Users hereunder, as well as any and all copies thereof, contain valuable copyrighted material, trademarks, trade dress, service marks, trade secrets and proprietary and confidential information, and that Digital Samba and/or its

INITIAL:

licensors shall own and retain all applicable copyrights, trademarks, service marks, trade dress, trade secrets and other intellectual and property rights in the Products and all related items provided hereunder, including any enhancements thereto or derivative works thereof, whether or not authorized. It is expressly understood and agreed that no title to, or ownership of, any part of the Products or any related items provided hereunder, including any enhancements thereto or derivative works thereof, is hereby transferred to Customer. All graphics, logos, service marks, and trade names, including third-party names, product names, and brand names (collectively, the "Marks") relating to the Products and Services are the trademarks of Digital Samba or its affiliated entities. You are prohibited from using any Marks without the prior written permission of Digital Samba or the respective owners of such Marks. We reserve all rights related to the Marks not expressly granted in this Agreement.

## 7. LIMITATIONS OF USE

Users may not use the Products except as expressly permitted under this License Agreement or the terms of the Order Form, including the requirements provided by applicable U.S. intellectual property laws, and U.S. copyright laws. Any routine and/or systematic redistribution of any portion of the Products is expressly prohibited unless otherwise agreed to by Digital Samba and Customer. Furthermore, Customer and End-Users shall not, nor shall they permit others to do any of the following: (a) sell, distribute, transmit, or otherwise provide access or use to any person not authorized by this License; (b) store any Products in any information storage and retrieval system which provides access to persons not authorized by this License or provides concurrent usage by more End-Users than those authorized by this License; (c) rent, sublicense, lease, or assign any License to the Products to any person other than Customer; (d) copy, reproduce, create derivative works from, de-compile, disassemble, or otherwise reverse-engineer the Products, or in any other way alter, translate, modify, or adapt the Products (unless in accordance with rights under legislation implementing the EC Council Directive on the Legal Protection of Computer Programs); or (e) make use of the Internet or an Intranet to provide access to the Products through any local or wide area networks, timesharing services, multiple site arrangements or other forums which permit multiple simultaneous access or distribution other than provided by this Agreement. Any access to or use of the Products (or any part thereof) by persons or other users who are not authorized by Customer and this Agreement is specifically prohibited. If the Product is an upgrade, you are authorized to use the Product only if you are an authorized user of the qualifying product, as determined by Digital Samba. When you install the upgrade you must delete the copy of the qualifying product.

## 8. TERM AND TERMINATION

The term ("Term") means the duration of this Agreement commencing with the earliest of: (i) the date that we accept your order for use of the Products or Services, or (ii) that you first pay for Services, or (iii) that you install the Products, and continuing until the end of the applicable period as designated by us, subject to earlier termination in accordance with this Agreement. Upon expiration of the initial Term, this Agreement shall automatically renew for like terms until otherwise terminated as provided herein. Either party may terminate this Agreement at the end of any Term (initial or renewal) by providing the other party written notice of termination at least 30 days prior to the end of such Term. The following provisions will survive the expiration or termination of this Agreement: Sections 7, 8, 9, and 11. Customer may terminate this Agreement if Digital Samba fails to provide the Products and Service to Customer and such breach is not cured within fifteen (15) days after receipt of written notice of the breach. We may terminate this Agreement if Customer breaches any term or condition of this Agreement, including the failure to make timely payment of any fees due to us if such breach is not cured within five (5) days after receipt of written notice of Customer's breach. Upon termination, all payment obligations of Customer due through the date of termination shall be then due and payable, we may revoke the License granted to Customer and Digital Samba may immediately prohibit Customer's use and access to the Products. Customer agrees that cancellation of this Agreement or a Service Order for any other reason will result in a cancellation fee chargeable to Customer as the sum of the monthly service charges remaining in the Term of the service agreement, or 3% of the purchase price for server-licensed products, whichever is applicable, and that a 30-day cancellation notice is required.

## 9. LIMITED WARRANTY AND DISCLAIMER; LIMIT OF LIABILITY; INDEMNITY

Digital Samba warrants to Customer that the Products will operate substantially in accordance with the documentation provided to Customer online (the "Documentation"). This limited warranty shall apply only during the first thirty (30) days from the first day that the Products is available to Customer (the "Warranty Period"). Should the Products not function in accordance with the Documentation, (a "Warranty Claim") then Customer shall upon written notice to us be entitled to a refund of the fees collected during the Warranty Period. The foregoing refund shall be Customer's exclusive remedy for a breach of the foregoing limited warranty. All Warranty Claims not made in writing or not received by us within the Warranty Period shall be deemed to have been waived by Customer. Other than the foregoing limited warranty, Digital Samba makes no representations about the Products or services

INITIAL:

and is providing the Products and services to Customer and its end user “as is” and without warranty of any kind. Digital Samba expressly disclaims all warranties, express or implied, including all warranties of merchantability or fitness for a particular purpose, as well as any warranties alleged to have arisen from custom, usage, or a course of dealings between the parties. To the maximum extent permitted by law, and notwithstanding anything to the contrary contained herein, Digital Samba shall not be liable to Customer or any end user for any consequential, incidental, indirect or special damages, including (without limitation) damages arising out of or in connection with any loss of profit, interruption of service, or loss of business or anticipatory profits, even if Digital Samba has been apprised of the likelihood of such damages. In no event will Digital Samba’s aggregate liability under this agreement ever exceed the total amount of any fees paid by Customer during the term hereof. Digital Samba agrees to defend Customer and to pay any judgments, costs and expenses (but no more than the total amount of fees paid by Customer during the term of this agreement), or amounts paid in settlement to which Digital Samba agrees, which Customer may sustain as the result of any claim by a third party that the Products by itself and in unmodified form infringes or misappropriates such third party’s United Kingdom copyright, trade secrets, or patent; provided that Customer provides Digital Samba with prompt written notice of such claims or threat of such claims and that Digital Samba is given full control and authority to investigate, defend and/or settle such claim. In the event of any claim that Digital Samba Service infringes a third party’s intellectual property rights, Digital Samba may use all reasonable effort to procure the rights to allow Customer to continue to use the Service and Products, modify the Products or Service so it is not infringing in which case Customer shall immediately cease using the infringing Products or Service, or at its option, terminate this Agreement and refund pro-rata portion of any unused Customer fees actually paid. Customer agrees to defend, indemnify and hold harmless Digital Samba, (and its subsidiaries, affiliates, officers, employees, and directors) from any and all third party claims, liabilities, damages and/or costs (including attorney fees) due to or arising directly out of Customer’s (or any End User’s): use of the Products or Service in violation of this Agreement; unauthorized use or known breach of security; or infringement or violation, of any intellectual property or other right of any person or entity related to the Customer’s Content.

#### 10. MISCELLANEOUS PROVISIONS

**(a) Governing Law.** This Agreement is made under and will be governed by and construed in accordance with the laws of England, United Kingdom and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. The prevailing party in any litigation between the parties shall recover its reasonable attorneys’ fees and costs from the non-prevailing party.

**(b) Survivability.** The terms of the following Sections of this Agreement shall survive any cancellation, termination, or rescission: Ownership, Limitation of Use, Warranty, Indemnity and Limitation of Liability.

**(c) Severability and Waiver.** In the event any provision of this Agreement is held to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect, and the unenforceable provisions will be construed in accordance with applicable law as nearly as possible to reflect the original intention of the parties. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. Customer may not assign or delegate its obligations under this Agreement either in whole or in part without the prior written consent of Digital Samba, and such consent may not be unreasonably withheld.

**(d) Privacy Policy.** The Digital Samba Privacy Policy can be accessed at [digitalsamba.com](https://digitalsamba.com). The Privacy Policy explains how certain information about you may be processed and used, among many other details.

**(e) Disputes.** In lieu of court action, all claims, disputes, and controversies arising out of or relating to the sale of products or performance of services provided by Digital Samba, shall be submitted to arbitration in accordance with the Alternative Dispute Resolution Code and Arbitration Rules of the Arbitration Act, United Kingdom as well as the European Convention providing a Uniform Law on Arbitration, and any judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The site of the arbitration shall be London, UK. The parties agree that any party to the arbitration shall be entitled to discovery of the other party as provided by the Civil Litigation Rules of England; provided, however, that any such discovery shall be completed within four (4) months from the date the notice for Demand for Arbitration has been received by the other party. In any such proceedings, the prevailing party shall be entitled to recover all its reasonable costs and expenses (including attorney’s fees).

**(f) Entire Agreement and Amendments.** The Agreement (including the Privacy Policy and any related consents provided by or disclosures provided to you in connection with the Products or Services) constitutes the entire agreement between Digital Samba and you with respect to the Products and Services and supersedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic, between Digital Samba and you regarding them, unless you signed a separate “Agreement for Enterprise Server License” which shall extend the terms of this agreement, and, in the event of conflicting terms, the terms of the “Agreement for Enterprise Server License” shall prevail. The application of the United Nations Convention on the International Sale

INITIAL:

of Goods is hereby expressly excluded. Digital Samba's performance of this Agreement (including the Privacy Policy) is subject to existing laws and legal process, and you agree that Digital Samba may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term of this Agreement or that policy. A printed version of this Agreement and of any notice given to you in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The parties may, at any time, mutually agree to amend the provisions of this Agreement and/or the Privacy Policy, and the parties may at their discretion accept the amended provisions in the manner indicated in the amendment notice as communicated by the other party proposing such an amendment. Any amendment proposed by you may only be accepted by Digital Samba in a non-electronic writing manually signed by authorized representatives of the parties. Notwithstanding anything to the contrary herein, if Digital Samba posts amended terms on Digital Samba Web site, such terms will automatically become effective ten (10) days after they are posted on the web site with prior intimation to the customer. By using the Products or the Services after such revised terms are posted, you agree to be bound by any such amended provisions. Therefore, you agree to periodically visit the Digital Samba Web site to examine the then-current Agreement (including the Privacy Policy).

INITIAL: