

TERMS OF USE: AGREEMENT FOR HOSTED ASP SERVICES

PREAMBLE

Any reference to ORDER FORM shall mean (1) the “Order Form – Hosted ASP Services” submitted on paper or electronically, or (2) the electronic submission and signup forms found on digitalsamba.com or partner websites, whichever is applicable.

1. PARTIES

1.1 This Agreement (“AGREEMENT”) shall begin on the Contract Start Date defined on the ORDER FORM (“CONTRACT START DATE”), or in the case of electronic form submission the moment the form is submitted, 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”) and Client, which shall be the customer entity defined in the ORDER FORM (“CLIENT”).

1.2 In this AGREEMENT, the party who is contracting to receive services will be referred to as CLIENT, and the party who will be providing the services will be referred to as DIGITAL SAMBA.

2. PAYMENT FOR SERVICES

2.1 CLIENT will pay compensation to DIGITAL SAMBA for services provided on a recurring basis as specified and selected by CLIENT in the ORDER FORM. No compensation is due for free trial services.

2.2 If CLIENT opened an FLAT RATE ACCOUNT, DIGITAL SAMBA will invoice CLIENT for a flat-rate fee. FLAT RATE ACCOUNT customers are invoiced in advance of the invoicing period chosen in the ORDER FORM.

2.3 If CLIENT opened an EVENT ACCOUNT, DIGITAL SAMBA will invoice CLIENT for total user hours contracted and additional services selected in the ORDER FORM. EVENT ACCOUNT customers are invoiced for services prior to consumption of the service. If user hours and services exceed the user hours and services contracted, additional charges will apply.

2.4 If CLIENT opened a PAY-PER-USE ACCOUNT, DIGITAL SAMBA will invoice CLIENT for total minutes consumed in the previous invoicing period. PAY-PER-USE ACCOUNT customers are invoiced for services consumed at the end of each calendar month.

2.5 If CLIENT opened a FREE TRIAL ACCOUNT, no compensation is due.

3. RESOURCES PROVIDED

3.1 DIGITAL SAMBA will provide the hardware, software and system administration necessary to provide the communication application hosting and/or media stream access to CLIENT and CLIENT’s user base.

4. SERVICE LEVEL AGREEMENT

4.1 DIGITAL SAMBA will provide CLIENT with the Services specified in the ORDER FORM with strict regard to any application specifications such as for example simultaneous users, connection limits, bandwidth limitations, bandwidth use, peak bandwidth throughput, simultaneous streams and simultaneous seats.

4.2 DIGITAL SAMBA retains ownership of all software applications, media properties, server hardware, operating system, management, maintenance plus rack space and bandwidth from DIGITAL SAMBA’s network.

4.3 Except for FREE TRIAL ACCOUNT customers, DIGITAL SAMBA agrees that the provided communication applications’ uptime will meet or exceed 99.6%. If in any calendar month the client’s communication application is down for more than 0.4%, DIGITAL SAMBA will credit to CLIENT’s account twenty-five percent (25%) of such month’s fee, as set forth in the ORDER FORM.

4.4 The following scenarios are excluded from the provisions of clause 4.3 for the purpose of calculating downtime: (i) scheduled maintenance windows, (ii) client enabled faults, (iii) accounting shutdowns for non-payment, (iv) downtime due to the failure of power, facilities, systems, connections or other equipment not provided by DIGITAL SAMBA and (v) Force Majeure.

4.5 In no case will CLIENT receive account credit in more than two consecutive months or more than four times in any calendar year. To be eligible for credit, CLIENT must inform DIGITAL SAMBA in writing within 10 days of the downtime incident.

5. SPACE

5.1 For purposes of this AGREEMENT, SPACE means the facilities where CLIENT’s hardware and software are stored and operated, whether owned or rented by DIGITAL SAMBA.

5.2 DIGITAL SAMBA grants to CLIENT a non-exclusive license to occupy the SPACE. Such CLIENT acknowledges that it has been granted only a license to occupy the SPACE and that it has not been granted any real property interests in the SPACE.

5.3 For FREE TRIAL ACCOUNT customers, DIGITAL SAMBA is entitled to remove all data occupying SPACE without notice. DIGITAL SAMBA will attempt to notify all such customers beforehand, but is not required to do so.

6. SERVICES

6.1 DIGITAL SAMBA will provide CLIENT with the Services as specified in the ORDER FORM. Services shall not include support for problems arising out of (i) modification, alteration or addition or attempted modification, alteration or addition of hardware undertaken by persons other than DIGITAL SAMBA or DIGITAL SAMBA's authorised representatives, or (ii) hardware supplied by CLIENT, although such support may be available at an additional cost, or (iii) installation of third-party software (excluding operating systems supported by DIGITAL SAMBA as part of a managed server).

6.2 As a service enhancement, DIGITAL SAMBA may delegate invoicing, first-line customer support or application providing to one of its partners while continuing to provide the actual Services itself.

6.3 In relation to services provided to FREE TRIAL ACCOUNT customers, DIGITAL SAMBA may without notice and at its sole discretion (1) modify the type and level of service provided (2) integrate advertising, (3) set limits to allowed usage per day, week, month or other, (3) choose to modify or discontinue the service at any time and any way it chooses.

7. REPORTING

7.1 DIGITAL SAMBA will make efforts to monitor different web traffic reports based on the selected application hosting service selected by CLIENT. These reports can be made available on request at a fee.

8. TECHNICAL SUPPORT

8.1 DIGITAL SAMBA technical support team will assist CLIENT in using their application, and will be responsible for the operation and uptime performance of CLIENT application hosting accounts. FREE TRIAL ACCOUNT customers are not entitled to technical support, and whilst there is no obligation to do so, DIGITAL SAMBA will attempt to provide such customers with equal levels of support.

8.2 When DIGITAL SAMBA's support team will provide additional technical support not related to the basic operation of CLIENT application additional hourly surcharges will apply.

8.3 Such support may include but not be limited to modifying CLIENT custom applications, additional design work, programming, and or Service related to CLIENT site.

9. RESTRICTIONS ON USE

9.1 CLIENT may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on DIGITAL SAMBA's, or other third party's software provider's software products.

9.2 CLIENT may not reverse engineer, decompile, or disassemble such software products, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

9.3 CLIENT's possession, access, or use of the software products does not transfer any ownership of the software products or any intellectual property rights to CLIENT.

10. ASSUMPTION OF RISK

10.1 CLIENT hereby assumes any and all risks associated with CLIENT's, its agents' (including contractors and sub-contractors) or employees' use of the SPACE and shall indemnify, defend and hold harmless DIGITAL SAMBA and its successors and assigns from any and all claims, liabilities, judgements, causes of action, damages, costs, and expenses (including reasonable attorneys' and experts' fees), caused by or arising in connection with such use.

11. THIRD-PARTY SERVICE PROVIDERS

11.1 From time to time, for the convenience of CLIENT, DIGITAL SAMBA may refer CLIENT to certain third party services, such as payment processors, hosts or domain name registrars or completely outsource the rendered service to such a third party provider.

11.2 DIGITAL SAMBA's referral to any such third party service does not constitute an endorsement by DIGITAL SAMBA of such third party service; consequently, DIGITAL SAMBA does not assume and liability associated with CLIENT's use of such third party service.

12. LIMITATION OF LIABILITY

12.1 DIGITAL SAMBA provides services to CLIENT on an “as is” basis. DIGITAL SAMBA and its third-party software providers expressly disclaim any and all warranties, including warranties of merchantability, non-infringement and fitness for a particular purpose.

12.2 Neither DIGITAL SAMBA nor its third-party software providers shall be liable for any loss of business, lost profits, lost data, lost savings, failure of security or any or all indirect, incidental or consequential damages, however characterised, whether or not such damages are foreseeable.

12.3 Under no circumstances, including negligence, will (A) DIGITAL SAMBA, or (B) with regard to third-party software, the applicable licensor, be liable for any indirect, incidental, special or consequential damages that result from the use of or inability to use the services, or, if applicable, the third-party software, including but not limited to loss of revenue or lost profit, damages that result from mistakes, omissions, interruptions, deletion of files or email, errors, defects, viruses, delays in operation or transmission, failure of performance, theft, destruction or unauthorised access to DIGITAL SAMBA’s records, programs, or services, even if such party has been advised of the possibility of such damages.

12.4 In the event of any breach by DIGITAL SAMBA of this agreement, DIGITAL SAMBA’s liability to CLIENT will not exceed the amount paid to DIGITAL SAMBA by CLIENT during the previous twelve months.

12.5 In the event of any breach by the third-party licensor of this agreement, such licensor’s liability to CLIENT will not exceed the amount paid for such third-party software.

13. CLIENT’S REPRESENTATION

13.1 CLIENT hereby represents and warrants that it holds the requisite copyright and trademark and/or intellectual property rights to post CLIENT’S media properties and other content to DIGITAL SAMBA’s network and SPACE.

13.2 Further, CLIENT represents and warrants that the rights delegated to DIGITAL SAMBA under this agreement, including the public display, public performance, distribution, and reproduction of CLIENT’S media properties and other content on the DIGITAL SAMBA network will not violate or infringe upon the copyright, literary, privacy, publicity, trademark, service mark or any other personal or property right on any person or entity and that CLIENT’S media properties and other content will not constitute a libel or defamation of any third party.

13.3 CLIENT represents and warrants that it has met any and all obligations to artists, guilds, authors, composers, and/or any other participants in the production of the media properties.

13.4 CLIENT indemnifies and holds DIGITAL SAMBA and its successors and assigns harmless from any breach of these representations and warranties by CLIENT.

13.5 CLIENT assumes full responsibility for all intellectual properties and content posted to DIGITAL SAMBA’S servers on CLIENT’S behalf, including any trademark, copyright, patent or other intellectual property submitted to DIGITAL SAMBA for either encoding services and/or straight posting to our servers.

13.6 DIGITAL SAMBA reserves the right to remove without notice any material which, in its sole opinion, may result in a violation of intellectual property rights of others or any other applicable federal, state, common, or international laws or regulations.

13.7 Notwithstanding any other provision of this agreement to the contrary, the indemnity set forth in this section shall survive termination of this agreement.

14. LICENSE GRANT

14.1 By using DIGITAL SAMBA’s services, CLIENT grants DIGITAL SAMBA a worldwide, non-exclusive right and license to promote, perform and display CLIENT’S media properties as necessary (and only as necessary) for DIGITAL SAMBA to provide the underlying Services.

15. JOINT MARKETING

15.1 The parties may agree to cooperate in joint marketing activities and a joint press release regarding this AGREEMENT and Services rendered. Such marketing activities may include streaming CLIENT content on DIGITAL SAMBA web site, joint tradeshow and conference presence and inclusion in any case studies or tutorials.

15.2 The form, content and design of any and all materials or marketing activities that include the other party shall be subject to such party’s final approval which may not be unreasonably withheld or delayed.

16. MAINTENANCE, SECURITY, BACKUPS

16.1 Subject to the terms and conditions of this AGREEMENT, CLIENT understands and agrees that DIGITAL SAMBA will attempt to keep its network of servers running continuously. DIGITAL SAMBA will, from time-to-time, be disconnected, due to routine maintenance windows, upgrades and other required events.

16.2 CLIENT understands and agrees that DIGITAL SAMBA’s servers may be unavailable for a variety of reasons, including, without limitation, (i) equipment malfunctions, (ii) periodic maintenance or repairs or (iii) other causes beyond the control of DIGITAL SAMBA.

16.3 In the event that DIGITAL SAMBA servers need to be disconnected due to routine maintenance windows, upgrades or required events, DIGITAL SAMBA will attempt to notify the CLIENT via electronic mail to the e-mail addresses which DIGITAL SAMBA has on file for the client.

16.4 CLIENT is responsible for notifying DIGITAL SAMBA of any changes in their primary email address.

16.5 For clients that subscribe to DIGITAL SAMBA's Data Protection Services, DIGITAL SAMBA will use commercially reasonable efforts to keep all information on DIGITAL SAMBA servers backed-up. However, CLIENT assumes responsibility for making a separate backup copy of any information posted to our servers. DIGITAL SAMBA is not responsible for lost materials or information.

16.6 Additionally, CLIENT is responsible for testing any changes that DIGITAL SAMBA makes to CLIENT's media properties at CLIENT's request, to make sure that such changes are in accordance with such CLIENT request.

16.7 DIGITAL SAMBA will use commercially reasonable efforts to maintain security on its network of servers. However, the nature of the World Wide Web and the Internet is not secure by default. CLIENT assumes responsibility for the appropriate use of security.

16.8 DIGITAL SAMBA makes access to its servers available only through any administration consoles that may be part of the application as specified in the ORDER FORM. Root-level access is not provided.

16.9 DIGITAL SAMBA reserves the right to charge CLIENT at its standard rates to repair errors, faults or other operational or security problems attributable to CLIENT manipulation and CLIENT acknowledges that any damages that may result there from are subject to the language of this agreement under the heading "LIMITATION OF LIABILITY".

17. END-USER LICENSE AGREEMENT AND ACCEPTABLE USE

17.1 CLIENT agrees to be bound by the DIGITAL SAMBA End-User License Agreement, a current copy of which may be found on the DIGITAL SAMBA website (<http://www.digitalsamba.com/legal/>).

17.2 CLIENT agrees to be bound by the DIGITAL SAMBA Acceptable Use Policy, a current copy of which may be found on the DIGITAL SAMBA website (<http://www.digitalsamba.com/legal/>).

18. CONFIDENTIALITY

18.1 CONFIDENTIAL INFORMATION shall mean any term of this AGREEMENT, and any proprietary information or data, either oral or written, received from and designated as confidential by the disclosing party.

18.2 This shall include pricing information for DIGITAL SAMBA services. It does not, however, include information that (i) is already known by the recipient, (ii) become publicly known through no wrongful act of the recipient, or (iii) is received by the recipient from a third party without similar restriction and without breach of this section.

18.3 In addition, under no circumstances shall CLIENT's CONFIDENTIAL INFORMATION include any CLIENT content or any other content, software, materials or other information delivered by the CLIENT to DIGITAL SAMBA to be posted on DIGITAL SAMBA's servers.

18.4 Each party agrees that it will use the same care to protect against the unauthorised duplication, use, publication, or disclosure of such CONFIDENTIAL INFORMATION of the other party as it uses to protect its own proprietary and CONFIDENTIAL INFORMATION, and will not use or disclose such CONFIDENTIAL INFORMATION except in connection with the purposes of this AGREEMENT, unless authorised in writing by the other party.

18.5 All other materials, including copies and summaries, containing the other party's CONFIDENTIAL INFORMATION shall be destroyed or returned to such party, as instructed by such party, by the recipient promptly upon request.

19. TERM AND CANCELLATION

19.1 The initial service term shall commence on the CONTRACT START DATE defined on the ORDER FORM, in accordance with delivery instructions provided on the ORDER FORM.

19.2 The initial term of this AGREEMENT shall be noted in the ORDER FORM, else it shall be 12 months.

19.3 The subsequent renewal terms of this AGREEMENT shall be noted in the ORDER FORM, else it shall be 12 months.

19.4 Prior to the expiration of the initial term or any renewal of this AGREEMENT, CLIENT may cancel this AGREEMENT effective at the end of the then-current term with written notice given at least 20 days prior to the end of such term.

19.5 All account cancellations and invoicing changes must be submitted by email or fax to customer support, the contact details of which may be found on www.digitalsamba.com; no verbal cancellation requests will be accepted.

19.6 For clients with term contracts, in the event of early cancellation, CLIENT will be required to pay seventy-five percent (75%) of the most recent agreed-upon monthly charge for the remaining portion of the term.

19.7 DIGITAL SAMBA can cancel this AGREEMENT at will at any time with written notice to CLIENT. In the event that DIGITAL SAMBA cancels this AGREEMENT, the CLIENT will have a pro-rated refund of any unused portion of the billing period. Set-up fees are non-refundable.

19.8 After cancellation of a collocation contract, if CLIENT has substantial or past due accounting balances outstanding, DIGITAL SAMBA may at its sole option hold CLIENT equipment as collateral to ensure payment.

20. ADOBE

20.1 This paragraph applies only to clients who rent Adobe software products as outlined in the ORDER FORM.

20.2 In addition to any liability CLIENT may have to DIGITAL SAMBA, CLIENT agrees to be legally responsible directly to Adobe for any breach of these terms and conditions and for such Adobe software product.

20.3 If CLIENT returns Adobe software under this AGREEMENT, without prejudice to any other right, DIGITAL SAMBA may terminate CLIENT's rights to use such Adobe software products if CLIENT fails to comply with the terms and conditions of this AGREEMENT.

20.4 In the event of termination or cancellation, CLIENT must stop using and/or accessing Adobe software products, and destroy all copies of the Adobe software products and all of its component parts.

21. FORCE MAJEURE

21.1 DIGITAL SAMBA shall not be liable to CLIENT under this AGREEMENT for any delay or failure to perform its obligations under this AGREEMENT if such delay or failures arise from any cause(s) beyond such party's reasonable control, including by way of example labour disputes, strikes, acts of nature, floods, fire, lightning, utility or communications failures, earthquakes, vandalism, war, acts of terrorism, riots, insurrections, embargos, or laws, regulations or orders of any governmental entity.

21.2 Notwithstanding the foregoing, DIGITAL SAMBA shall exercise due diligence to resume performance hereunder as soon as commercially possible.

22. GENERAL

22.1 Each party represents and warrants that it has the right and authority to enter into this AGREEMENT, and that by entering into this AGREEMENT, it will not violate, conflict with or cause a material default under any other contract, agreement, indenture, decree, judgement, undertaking, conveyance, lien or encumbrance to which it is a party or by which it or any of its property is or may become subject or bound.

22.2 Each party shall, at its own expense, make, obtain, and maintain in force at all times during the term of this AGREEMENT, all applicable filings, registrations, reports, licenses, permits and authorisations necessary to perform its obligation under this AGREEMENT.

22.3 This AGREEMENT shall be governed by the Laws of England.

22.4 Prevailing party in a dispute may enter judgment in any court of competent jurisdiction.

22.5 Should any provision of this AGREEMENT be judged invalid or unenforceable, the rest of the agreement shall remain in full force and effect.

22.6 This AGREEMENT shall constitute the entire agreement between the parties, in conjunction with documents referred to above regarding the Services rendered, and shall supersede any and all understandings, whether written or oral.

22.7 This AGREEMENT may not be assigned by CLIENT without DIGITAL SAMBA's written permission except by succession.

22.8 DIGITAL SAMBA may assign this AGREEMENT.

22.9 Any waiver of any provision of this AGREEMENT shall not constitute a modification to this AGREEMENT or a permanent waiver of such provision unless it is in writing and signed by an officer of DIGITAL SAMBA.

22.10 CLIENT acknowledges that these terms and conditions are subject to change without notice.

22.11 CLIENT's continued use of DIGITAL SAMBA's Services constitutes CLIENT's acceptance of these and any and all modified terms.

FISCAL ADDRESS

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