



## Digital Samba Reseller Agreement

Last modified: 18 August, 2022 - The modified Agreement will be effective upon next renewal of your Licence Term, Support and Maintenance Term, or Subscription Term, as applicable. Until then, consult an [archived version](#) to see which version applies to you. If you place your initial Order after this date, then the Agreement will be effective on the date that you placed the Order.

Changes: Changed styles. Updated links. Changed definition from “Software” to “On-premise Software”. Added a value to Liability Cap. Changed place of arbitration and governing law (simplified to New York for US-based resellers and Barcelona for all others).

This Digital Samba Reseller Agreement (the "**Reseller Agreement**") is between the applicable reseller ("**you**" or "**Reseller**"), and Digital Samba SL. If you are agreeing to this Reseller Agreement not as an individual but on behalf of your company, then "Reseller" or "you" means your company, and you are binding your company to this Reseller Agreement.

This Reseller Agreement is a separate agreement from [the agreement that Digital Samba has with its end users](#) (as may be modified by Digital Samba from time to time, "**Digital Samba Customer Agreement**"). For convenience and consistency, however, the definitions of certain terms related to our products and services (namely Order, Scope of Use, On-premise Software, Hosted Services, Products, Cloud Server, Named User Cloud Account, Additional Services and others) will be the same as those in the Digital Samba Customer Agreement.

***This Reseller Agreement does not have to be signed in order to be binding. You indicate your assent to the terms in the Order Form.***

## 1. Order Requirements

To the extent that we make Products available for resale, you may order such Products for resale by placing an Order (as defined in the Digital Samba Customer Agreement). In addition you must provide all of the requested information including, without limitation, the identity of the end user as requested on the Order Form, and the specific On-premise Software licences, Hosted Services subscriptions, or other Products to be resold in your order ("**Reseller Order**"). All such information must be accurate and complete and must reflect bona fide orders you have received from end users.

## 2. Limited Right to Resell

Subject to this Reseller Agreement, we grant you a one-time, non-exclusive, non-transferable right to resell the Products specified in your Reseller Order to the end user specified in the Reseller Order, solely for use by such end user in accordance with the Digital Samba Customer Agreement. This right to resell does not apply to any other end user or Products (including without limitation any sale to any related party, organisation or affiliate, or to any subsequent, additional or renewal sale to the same party).

## 3 Enforcement of Digital Samba Customer Agreement.

**3.1. End User Terms.** All use of the Products by end users is subject to the Digital Samba Customer Agreement, and you may not purport to impose any other terms pertaining to their use of the Products. You are responsible for ensuring that each end user enters into the Digital Samba Customer Agreement (which includes all limitations on Scope of Use and other licence restrictions applicable to the end user's order) in a manner that is legally binding upon the end user. This may require you to (a) notify each end user that Digital Samba products are subject to the Digital Samba Customer Agreement and that by placing an order with Reseller the end user agrees to the Digital Samba Customer Agreement, (b) include either a copy of or link to the Digital Samba Customer Agreement in each quotation and order form you issue to the end user, and (c) obtain from each end user written confirmation of acceptance of the Digital Samba Customer Agreement prior to the earlier to occur of acceptance of the order by Reseller or delivery of the Product. You must provide evidence of such acceptance by the end user to Digital Samba upon request.

**3.2. Enforcement Cooperation.** You agree to immediately notify us of any known or suspected breach of the Digital Samba Customer Agreement or other unauthorised use of the Products and to assist us in the enforcement of the terms of the Digital Samba Customer Agreement.

## 4. Identification as Reseller

Subject to this Reseller Agreement, you are permitted to identify yourself as a Digital Samba "Reseller" solely in connection with your resale of Products. You may not use any Digital Samba trademark, logo or service mark ("**Digital Samba Marks**") except where we have granted written

permission. All goodwill arising from your use of Digital Samba Marks inures to the benefit of Digital Samba.

## 5. Payment and Delivery

**5.1. Fees.** Your non-refundable, non-cancelable payment to Digital Samba is due as specified on the Order Form, specifically, on the Contract Start Date (as defined on the Order Form) for the initial payment and on subsequent days for follow-up payments as defined by the Billing Cycle (also defined on the Order Form).

**5.2. Delivery.** Upon receipt of payment, we will initiate setup and configuration of the applicable On-premise Software or Hosted Services and upon setup completion provide the login information necessary for end users to use or access the applicable Products directly to the delivery contact specified in the Reseller Order in accordance with our standard delivery procedures. If we deliver the logins to you, you agree that you will, in turn, deliver them directly to the end user specified in the Reseller Order, and not to use or access the On-premise Software, Hosted Services, or other Products in any way, other than to provide support to the end user.

**5.3. Taxes.** Payments made by you under this Reseller Agreement exclude any taxes or duties payable in respect of the Products in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Digital Samba, you must pay to Digital Samba the amount of such taxes or duties in addition to any fees owed under this Reseller Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to Digital Samba any such exemption information, and Digital Samba will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

**5.4 End User Pricing and Payment; Refunds.** You will independently set your own pricing to each end user, subject to the provisions of Schedule A attached to this agreement. You bear all risk of non-payment by end users, and you are solely responsible for all of your costs and expenses. You may not terminate a Reseller Order or receive any refunds due to non-payment by an end user. If Digital Samba provides any refund to an end user under our standard return policy, Digital Samba, at its option, will refund the applicable amounts either directly to the end user or to you for distribution to the end user. You agree to cooperate with Digital Samba in connection with any such refund.

## 6. Feedback

If you provide any feedback, comments, suggestions, ideas, description of processes, or other information to us about or in connection with the Products or our Reseller program, including without limitation any ideas, concepts, know-how or techniques contained therein ("**Feedback**"), then you grant us a worldwide, royalty-free, non-exclusive, perpetual and irrevocable licence to use, copy, modify and otherwise exploit the Feedback for any purpose, without any compensation to you or any restriction or obligation on account of intellectual property rights or otherwise. For

clarity, no Feedback will be deemed your Confidential Information, and nothing in this Reseller Agreement (including without limitation Section 12 (Confidentiality)) limits Digital Samba's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

## 7. [redacted]

## 8. No Use Rights; Digital Samba Reserved Rights.

Only the end user customer of the Products may use the Products. You are not permitted to use any Products resold under this Reseller Agreement for your own benefit. To the extent that you nevertheless gain any access to the Products, all licence restrictions in the Digital Samba Customer Agreement apply to you. Notwithstanding anything to the contrary contained in this Reseller Agreement, except for the limited resale right in Section 2 above, Digital Samba and its suppliers have and will retain all rights, title and interest (including without limitation all patent, copyright, trademark, trade secret and other intellectual property rights) in and to all Products, service descriptions, documentation, and underlying technology ("**Digital Samba Technology**"), and all copies, modifications and derivative works thereof, including without limitation as may incorporate Feedback. You acknowledge that you are obtaining only a limited right to resell the Products and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Reseller Agreement or otherwise.

## 9. Reseller Obligations and Liability.

**9.1. End User Relationships; Business Practices.** You agree not to represent yourself as an agent or employee of Digital Samba. You will not make any representations regarding Digital Samba, on Digital Samba's behalf, or about any Products. You agree not to engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to Digital Samba or its products and agree to comply with all applicable federal, state and local laws and regulations while operating under this Reseller Agreement, including without limitation the U.S. Foreign Corrupt Practices Act and any similar laws or regulations in any applicable jurisdiction. You further agree to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

**9.2. Indemnity.** You are fully responsible for all liabilities and expenses of any type whatsoever that may arise on account of your resale of Products. You will indemnify, hold harmless and (at Digital Samba's option) defend Digital Samba from and against any claim, loss, cost, liability or damage, including attorneys' fees, for which Digital Samba becomes liable arising from or relating to: (a) any breach or alleged by you of any term of this Reseller Agreement, (b) the issuance by you of any warranty or representation regarding Digital Samba or its products or services not specified in the Digital Samba Customer Agreement, or (c) any of your other acts or omissions in connection with the marketing or resale of the Products under this Reseller Agreement.

## 10. Termination

**10.1. Termination.** We may terminate this Reseller Agreement if you materially breach any provision in this Reseller Agreement and fail to cure such breach within five (5) days of written notice of such breach. In addition, either party may terminate this Reseller Agreement for any reason or no reason upon thirty (30) days' written notice to the other party. Digital Samba may also terminate this Reseller Agreement immediately upon notice to you if (a) it ceases to offer the current Reseller program or (b) it reasonably believes that continuing hereunder could result in business or legal liability for Digital Samba or otherwise harm Digital Samba or its end users.

**10.2. Effect of Termination.** You expressly agree that Digital Samba will have no obligation or liability to you resulting from termination or expiration of this Reseller Agreement in accordance with its terms. Upon termination or expiration of this Reseller Agreement: (a) you must immediately cease identifying yourself as a Digital Samba Reseller and using Digital Samba Marks in connection with your resale activities hereunder, (b) you must destroy all Confidential Information in your possession and certify destruction (unless we request that you return such materials to us) and (c) Sections 5 (Payment and Delivery) (but only with respect to Reseller Orders completed during the Term), 6 (Feedback) and 8 (No Use Rights; Digital Samba Reserved Rights) through 15 (General) will survive.

## 11. Changes to Agreement

From time to time, we may modify this Reseller Agreement. The version of this Reseller Agreement in place at the time you submit each Reseller Order is the version that will govern such order. We will use reasonable efforts to notify you of these changes through communications through our website or other forms of communication, but we also suggest that you bookmark this Reseller Agreement and read it periodically.

## 12. Confidentiality

Except as otherwise set forth in this Reseller Agreement, each party agrees that all code, inventions, know-how, business, technical and financial information it obtains (as "**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Digital Samba Technology and any performance information relating to the Products shall be deemed Confidential Information of Digital Samba without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is

independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

## **13. Digital Samba Commitments; DISCLAIMER OF WARRANTIES**

For the avoidance of doubt, any and all commitments, indemnities and other terms and conditions offered by Digital Samba with respect to use of the Products are made directly by Digital Samba to the end user in accordance with the Digital Samba Customer Agreement and do not extend to you as a Reseller. We make NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, TO YOU AS A RESELLER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE AND NON-INFRINGEMENT.

## **14. LIMITATION OF LIABILITY**

**14.1. Waiver of Consequential Damages.** TO THE FULLEST EXTENT ALLOWED BY LAW, NEITHER DIGITAL SAMBA NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**14.2. Liability Cap.** DIGITAL SAMBA'S AGGREGATE LIABILITY TO RESELLER SHALL NOT EXCEED \$10,000 OR THE AMOUNT ACTUALLY PAID BY RESELLER IN RESPECT OF THE RESELLER ORDER THAT IS THE SUBJECT OF THIS RESELLER AGREEMENT TO DIGITAL SAMBA FOR PRODUCTS AND SUPPORT AND MAINTENANCE IN THE 6 MONTHS IMMEDIATELY PRECEDING THE CLAIM, WHICHEVER IS LOWER. RESELLER'S AGGREGATE LIABILITY TO DIGITAL SAMBA FOR CLAIMS OTHER THAN FOR PAYMENTS DUE HEREUNDER SHALL NOT EXCEED THE CHARGES RESELLER INCURRED FOR PRODUCTS AND SUPPORT AND MAINTENANCE IN THE 6 MONTHS IMMEDIATELY PRECEDING THE CLAIM.

## **15. Dispute Resolution; Governing Law**

**15.1. Dispute Resolution; Arbitration.** In the event of any controversy or claim arising out of or relating to this Reseller Agreement, the parties hereto shall consult and negotiate with each other

and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Reseller Agreement shall proceed to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each party, and a third selected by the first two. For Resellers residing in the USA (based on the Company Address provided during the Order, or, in the absence of that, the address provided for invoicing purposes) the arbitration will take place in New York, USA. For all other Resellers the arbitration will take place in Barcelona, Spain. All negotiations and arbitration proceedings pursuant to this Section will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.

**15.2. Governing Law; Jurisdiction.** For Resellers residing in the USA (based on the Company Address provided during the Order, or, in the absence of that, the address provided for invoicing purposes) the “**Applicable Region**” shall be New York, USA. For all other Resellers the Applicable Region shall be Barcelona, Spain. This Agreement will be governed by and construed in accordance with the applicable laws of the Applicable Region. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions of Section 15.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the courts of the Applicable Region, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts of the Applicable Region, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, Digital Samba may bring a claim for equitable relief in any court with proper jurisdiction.

**15.3. Injunctive Relief; Enforcement.** Notwithstanding the provisions of this Section 15 (Dispute Resolution; Arbitration), nothing in this Reseller Agreement shall prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

**15.4. Exclusion of the UN Convention and UCITA.** The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Reseller Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Reseller Agreement regardless of when or where adopted.

## 16. Government End Users

The Products are commercial computer software. If the user or licensee of the Products is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the On-premise Software, or any related documentation of any kind, including technical data and manuals, is restricted by a licence agreement or by the terms of this Reseller Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement



227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

## 17. General

This Reseller Agreement is the entire agreement between you and Digital Samba relating to the resale of Digital Samba products as described in this Reseller Agreement and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Products or any other subject matter covered by this Reseller Agreement. If any provision of this Reseller Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. This Reseller Agreement may not be modified or amended except as described in Section 11 (Changes to Agreement) or otherwise with the written agreement of Digital Samba (which may be withheld in its complete discretion without any requirement to provide reasons). As used herein, "including" (and its variants) means "including without limitation" (and its variants). If either party to this Reseller Agreement breaches any provision of this Reseller Agreement relating to Confidential Information or intellectual property rights, there may not be an adequate remedy available solely at law; therefore, an injunction, specific performance or other form of equitable relief or monetary damages or any combination thereof may be sought by the injured party to this Reseller Agreement. No failure or delay by the injured party to this Reseller Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. The parties are independent contractors. This Reseller Agreement shall not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give one party the express or implied right, power or authority to create any duty or obligation of the other party.

Should you have any questions concerning this Reseller Agreement, please contact us at [support.digitalsamba.com](mailto:support.digitalsamba.com).



## Schedule A: Pricing

As outlined in Section 5.4 (End User Pricing and Payment; Refunds) you will independently set your own pricing to each end user.

If your pricing to an end user exceeds a 50% markup from the fees due to us, we agree to split the excess in equal parts.

We require this since such premium end users usually demand higher levels of attention and generate more support overhead for us. It is in both our interest to treat these end users with grade A service.

Example #1:

- 1) You chose a 6000 USD per month cloud server configuration through our Order Form
- 2) You resell it for 8000 USD pm
- 3) You keep all of the 2000 USD pm markup (33% markup)

Example #2:

- 1) You chose a 6000 USD per month cloud server configuration through our Order Form
- 2) You resell it for 10000 USD pm
- 3) You keep 3000 USD pm (50% markup)
- 4) We split the remaining 1000 USD pm in equal parts
- 5) In total you keep 3500 USD pm