



SAFARI Montage® Software

License Agreement

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1. DEFINITIONS.

“**Access Credentials**” means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual’s identity and authorization to access and use the Software.

“**Administrator**” means the Person responsible for managing, coordinating, and reporting on the functions of the Software.

“**Anonymized Data**” means data and information related to your use of the Software that contains no Personally Identifiable Information and is used by us in an anonymized or aggregated manner, such as statistical, performance, and usage information related to the operation of the Software.

“**Customer Data**” means information and content in any form provided directly or indirectly to us by you or your Users or generated through the use of the Software to facilitate the use, support, and maintenance of the Solution. Customer Data includes Personally Identifiable Information. Customer Data does not include Anonymized Data or general business information.

“**Customer Systems**” means your information technology infrastructure, including computers, software, hardware, databases, database management systems, mobile devices, and networks, whether operated directly by you or through the use of third-party services.

“**Digital Content**” means content licensed to you under the [SAFARI MONTAGE® Digital Content License Agreement](#).

“**Documentation**” means any instructions or other documents or materials that we provide or make available to you and which describe the functionality, components, or features of the Software, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“**Hardware**” means servers, hard drives, encoders, decoders, source controllers, endpoints, broadcast carts, keypads, and other hardware products purchased from SAFARI Montage or our resellers on which Software may be loaded.

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network, or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent you or any User from accessing or using the Software or SAFARI Montage Solution as intended by this License.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, data, database protection, derivative works, adaptations, modifications, additions, translations, and changes thereto, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**New Version**” means any subsequent version of the Software (as may be indicated by our designation of a new version number) that we may introduce and market from time to time.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Personally Identifiable Information**” means information in any form that you or an individual User provides directly or indirectly to us, including the information of students. Personally Identifiable Information may be provided by you or your Users to facilitate use, support, and maintenance of the SAFARI Montage Solution, or generated as a result of such use. Information relevant to and collected by the Software is described in the [SAFARI Montage® Products and Services Privacy Policy](#).

“**Process**” means to take any action or perform any operation or set of operations that the Software are capable of taking or performing on any data, information, or other content. “**Processing**” and “**Processed**” have related meanings.

“**SAFARI Montage Materials**” means the Specifications, Documentation, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, and software provided or used by us in connection with the Software. SAFARI Montage Materials include Anonymized Data and any information, data, or other content derived from monitoring of your or your Users’ access to or use of the Software. SAFARI Montage Materials do not include Customer Data or Digital Content.

“**SAFARI Montage Solution**” means the information technology infrastructure used by or on behalf of SAFARI Montage in performing the Software, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by us or through the use of third-party services.

“**Software**” means the executable, object code version of the operating system, the application software, Software Updates, open source software, and other components licensed or otherwise provided to you in connection with the operation and use of any on-prem or downloadable commercially marketed SAFARI Montage software products.

“**Software Update**” means any update, upgrade, release, New Version, or other adaptation or modification of the Software, including any updated Documentation, that we may choose to provide from time to time, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.

“**Software Upgrade Plan**” or “**SUP**” means the Support Services purchased by you after expiration of the applicable Software Warranty Period (as defined in the [SAFARI Montage® Hardware and Software Limited Product Warranty and Support Terms](#)), except that for cloud-hosted services, SUP may be included during any Access Period as described in the Quote.

“**Specifications**” means the Documentation, system requirements, technical overview requirements, and any select integration requirements for the Software.

“Support Services” means the technical support and maintenance services we provide for the Software, either remotely or on-site, including the release of Software Updates. Interoperability Support Services may be subject to additional terms and conditions.

“Term” has the meaning set forth in Section 10.

“Third-Party Software” means software not branded as SAFARI Montage or included in a SAFARI Montage product.

“Third-Party Materials” means materials and information, in any form or medium, including Third-Party Software, documents, data, content, specifications, hardware, accessories, components, parts, features, and other products not branded as SAFARI Montage. Third-Party Materials does not include Digital Content.

“Training Services” means curriculum administrator instruction, professional development, and other training services we provide remotely or on-site.

“Users” means your end users, such as district and school administrators, teachers, students, parents, employees, consultants, and contractors, including Administrators, who are authorized by you to access and use the Software.

2. LICENSE.

- 2.1. **Software.** So long as you pay the required fees and comply with all other terms, conditions, and restrictions of this License, SAFARI Montage grants you a non-exclusive, non-sublicensable, non-transferable license to: (i) use, run, and access the Software solely for your and your Users’ internal, educational purposes during the Term; (ii) provide access to the Software to Administrators and Users; (iii) provide control of Software functions to Administrators to use expressly as set forth in the Documentation; and (iv) until end of June 2022, in connection with Software utilizing SAFARI Montage® Media Player, distribute, download, use, run, access, and store the Software on a local device for the limited purpose of playing back media within the SAFARI Montage Solution.
- 2.2. **Documentation.** SAFARI Montage grants you a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for your internal, educational purposes in connection with your use of the Software.
- 2.3. **Third-Party Software.** For Third-Party Software we distribute, you agree that: (i) the terms and conditions of such separate license agreement (including warranties, use restrictions, and remedies, if any) shall apply.
- 2.4. **Open Source Software.** Nothing in this License shall be read to add additional terms, conditions, or restrictions or otherwise affect any rights or obligations under any open-source license. Any use of open source software is subject to the applicable open source license.
- 2.5. **Reservation of Rights.** Nothing in this License grants any right, title, interest, or Intellectual Property Rights in or to the SAFARI Montage Materials or Third-Party Materials, as all such rights, title, interest, and Intellectual Property Rights will remain with us or the respective rights holders. We retain the right to modify or remove any feature or functionality of the Software in any future version and make any changes to the Software or SAFARI Montage Materials that we deem necessary or useful or as required by law.
- 2.6. **Customer Data.** As between you and us, you are the sole and exclusive owner of all right, title, interest, and Intellectual Property Rights in and to all Customer Data, except that you irrevocably grant to us a license to use Customer Data as we deem necessary or useful to deliver maintenance and support for the Software. You unconditionally and irrevocably grant us an assignment of all right, title, interest, and Intellectual Property Rights in and to Anonymized Data.

3. LICENSE RESTRICTIONS.

You shall not and shall not permit any User or any other Person to access or use the Software, Documentation, or other SAFARI Montage Materials except as expressly permitted by this License. Without limiting the foregoing, except as License expressly permits, you shall not:

- 3.1. copy, modify, or create derivative works or improvements of the Software or SAFARI Montage Materials;
- 3.2. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Software or SAFARI Montage Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- 3.3. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software or SAFARI Montage Materials, in whole or in part;
- 3.4. bypass or breach any security device or protection used by the Software or SAFARI Montage Materials or access or use the Software or SAFARI Montage Materials other than by a User through the use of his or her own then-valid Access Credentials;
- 3.5. input, upload, transmit, or otherwise provide to or through the Software or SAFARI Montage Solution, any information or materials that are unlawful, injurious, or obscene, or that contain, transmit, or activate any Harmful Code;
- 3.6. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Software, SAFARI Montage Solution, or SAFARI Montage’s provision of services to any third party, in whole or in part;
- 3.7. remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Software or SAFARI Montage Materials, including any copy;
- 3.8. use the Software or SAFARI Montage Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party or that violates any applicable law;
- 3.9. access or use the Software or SAFARI Montage Materials for purposes of competitive analysis of the Software or SAFARI Montage Materials, the development, provision, or use of a competing software service or product, or any other purpose that is to our detriment or commercial disadvantage.

4. DELIVERY.

SAFARI Montage will deliver the Software electronically via download to servers or Customer client devices meeting the minimum operating requirements as described in the Documentation at <http://safarimontage.com/support/supportdocumentation.aspx>; pre-installed on the related Hardware specified in the Quote; or by other means that we choose. Hardware will be shipped to you consistent with Section 1.3 of the **SAFARI Montage® Products and Services General Terms and Conditions of Sale**.

5. SOFTWARE SUPPORT.

We will provide you with Support Services consistent with Section 7.2 below as we determine in our discretion for the first year you license any Software. To receive Support Services after the first year, you must purchase an annual SUP, which will also be provided consistent with Section 7.2. You must cooperate with us and promptly follow instructions for all Support Services. We will provide Support Services the same way we provide “Warranty Service” for Software, subject to and as described in the **SAFARI Montage® Hardware and Software Limited Product Warranty and Support Terms**.

6. SECURITY.

- 6.1. **Information Security.** This Section 6 applies unless we have signed a separate written data protection agreement with you, in which case the fully executed written data protection agreement will be substituted. Otherwise, we will employ industry standard security measures to safeguard sensitive data in our care, including Personally Identifiable Information. We require all employees with access to Personally Identifiable Information to be bound by confidentiality agreements and undergo training to protect it.

- 6.2. **Background Checks.** At our own cost, we will screen all of our employees who provide installation, Support Services, or Training Services on-site at your premises.
- 6.3. **Data Breach Procedures.** We maintain a cybersecurity incident response plan in accordance with accepted industry standards and will implement the procedures required under such plan in the event of a data breach involving your or your Users' unencrypted Personally Identifiable Information. We will notify you of a confirmed breach of such data as soon as reasonably practical after we become aware of it or as required by applicable law or law enforcement. Immediately following notification to you, you will cooperate with us and we will coordinate with you as necessary to investigate the data breach in accordance with our incident response plan.
- 6.4. **Customer Control and Responsibility.** You have and will retain sole responsibility for: (i) all Customer Data, including its content and use; (ii) all information, instructions, technology, and other materials provided by or on behalf of you or any User in connection with the Software; (iii) Customer Systems; (iv) the security and use of Users' Access Credentials; and (v) all access to and use of the Software and SAFARI Montage Materials, directly or indirectly, by or through the Customer Systems or your Users' Access Credentials, whether with or without your knowledge or consent, including all results obtained from and all conclusions, decisions, and actions based on such access or use.
- 6.5. **Access and Security.** You will employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (i) securely administer the distribution and use of all Access Credentials and otherwise protect against any unauthorized access to or use of the Software, and (ii) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Software.
7. **REPRESENTATIONS, WARRANTIES, PROMISES.**
 - 7.1. **Customer.**
 - 7.1.1. You will designate and maintain an Administrator to serve as the primary point of contact for day-to-day communications and technical issues relating to the Software and provide such other personnel and access to your premises and Customer Systems as necessary for us to provide any installation, Support Services, or Training Services on site.
 - 7.1.2. If you, your Administrator, or your representative configure or direct us to configure an integration with an Interoperability Partner (as defined in the [SAFARI Montage® Products and Services Privacy Policy](#)) in connection with the Software, such configuration or direction is authorized and approved by you. SAFARI Montage bears no responsibility or liability for the selection of or the data security, collection, or use practices of any Interoperability Partner.
 - 7.1.3. You will install or permit us to install all Software Updates within a reasonable period of time after release, unless otherwise agreed to by us in advance.
 - 7.1.4. You will maintain and upgrade your server hardware environment as required for installation of Software Updates.
 - 7.1.5. You will cause Administrators and Users to comply with the terms of this License by implementing and distributing all necessary policies and notices and requiring Users to abide by the terms of this License. You are responsible and liable for compliance with the terms and conditions of this License.
 - 7.1.6. You represent, warrant, and agree that you or your Users own or otherwise have the necessary rights and consents in and relating to Customer Data so that, as received by us and Processed in accordance with this License, such data do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or any privacy or other rights of any student, teacher, or third party, or violate any applicable law. You are solely responsible for all information or materials in any form that you or your Users upload, post, distribute, transmit, or otherwise disseminate through or in connection with the Software.
 - 7.2. **SAFARI Montage.** SAFARI Montage's limited warranty and liability for the Software and the process for obtaining "Warranty Service" (including Support Services) are set forth in the [SAFARI Montage® Hardware and Software Limited Warranty and Support Terms](#).
 - 7.3. **Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7.2 AND AS PROVIDED IN THE [SAFARI Montage® Hardware and Software Limited Warranty and Support Terms](#) AND OTHER APPLICABLE SAFARI MONTAGE AGREEMENTS, THE WARRANTIES SET FORTH IN THIS LICENSE ARE YOUR SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR THE SOFTWARE. EXCEPT AS PROVIDED IN THIS LICENSE, THE LICENSED SOFTWARE AND ALL SAFARI MONTAGE MATERIALS ARE PROVIDED "AS IS." UNLESS OTHERWISE PROVIDED IN APPLICABLE SAFARI MONTAGE AGREEMENTS, THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR. WE SPECIFICALLY DISCLAIM ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR FREEDOM FROM ERROR OR INTERRUPTION, WHETHER EXPRESS OR IMPLIED OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, TRADE USAGE, TRADE PRACTICE, OR OTHERWISE. WE MAKE NO WARRANTY OF ANY KIND THAT THE SOFTWARE OR SAFARI MONTAGE MATERIALS OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.
8. **AUDITS.** If we ask you to, within 20 days you must permit us to audit your use of the Software and Documentation and document and certify that your use conforms to this License. If we determine that you are in breach of any provision of this License, and you do not remedy the breach to our satisfaction within seven days of notice from us, we will determine the appropriate remedial action, which may include: (i) requiring you to modify your usage to resolve the breach, (ii) payment of additional fees, and (iii) termination of the License.
9. **INDEMNIFICATION.** The following indemnification obligations apply in addition to those set forth in the [SAFARI Montage® Products and Services General Terms and Conditions of Sale](#) and other applicable SAFARI Montage Agreements.
 - 9.1. **By Customer.** Unless prohibited by applicable law, Customer shall indemnify, defend, and hold harmless the SAFARI Montage Indemnified Parties from and against any and all Losses we incur in connection with an action, claim, or other demand by a third party arising or resulting from: (i) Customer Data, including any Processing of Customer Data by us; (ii) any infringement, misappropriation, or other violation any Intellectual Property Rights or other rights of any third party by any use of (a) the Software by you, your Users, or any authorized third party and information, materials, including Customer Data, or (b) the technology, software, or other materials directly or indirectly provided or directed by you, your Users, or a third party to be installed, combined, integrated, or used with, as part of or in connection with, the Software or Documentation; (iii) any abuse, misapplication, use, misuse, or more culpable act or omission by you, your Users, or an authorized third party with respect to the Software or Documentation or otherwise in connection with this License that is beyond the scope of or otherwise fails to conform to the express requirements or restrictions of this License.
 - 9.2. **By SAFARI Montage.** SAFARI Montage shall indemnify, defend, and hold harmless the Customer Indemnified Parties from and against any and all Losses incurred by the Customer Indemnified Parties resulting from (i) our knowingly selling, licensing, or renting Personally Identifiable Information, and (ii) any action or claim by a third party that the SAFARI Montage Materials, or any use of the SAFARI Montage Materials in accordance with this License, infringes or misappropriates such third party's Intellectual Property Rights, unless such infringement arises from: (a) Third-Party Materials or Customer Data, (b) access to

or use of the SAFARI Montage Materials in combination with any hardware, system, software, network, or other materials or service not provided by SAFARI Montage or specified for your use, (c) unauthorized modification of the Software or SAFARI Montage Materials, (d) your failure to timely implement any modifications, upgrades, replacements, or enhancements we make available to you, or (e) any act, omission, or other matter described in Section 9.1, whether or not resulting in any action, claim, or Losses.

- 9.3. **Indemnity Procedure.** We will promptly notify each other in writing of any action or claims for Losses for which we believe we are entitled to be indemnified under Section 9.1 or 9.2. The party seeking to be indemnified will cooperate with the indemnifying party, and the indemnifying party will assume control of the investigation and defense at its sole cost and expense. Neither party will materially prejudice the other through a settlement or other action without the other party's prior written consent.

10. TERM, TERMINATION.

- 10.1. **Term.** The Term for the Software is as stated in the Quote.
- 10.2. **Termination.** We may terminate the License, effective upon written notice to you, if you: (i) fail to pay any amount when due and such failure continues more than 10 days after delivery of written notice of the nonpayment; or (ii) breach any obligation under Sections 2, 3, 6.4, 7.1, or 9.1.
- 10.3. **Effect of Expiration or Termination.** Upon any expiration or earlier termination of the License, except as expressly otherwise provided in this License:
- 10.3.1. All rights, licenses, consents, and authorizations granted by either party to the other under this License will immediately terminate.
 - 10.3.2. You will (i) immediately cease all use of the Software and Documentation, and (ii) within 10 days, return to us or, upon our request, destroy all copies of the Software and Documentation, and (iii) certify in writing your compliance with these requirements;
 - 10.3.3. We will (i) cease all use of any Customer Data, (ii) upon your written request, return or destroy all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data, and (iii) after a period of time no longer than required to support the authorized educational or school purposes, take reasonable commercial efforts to erase Customer Data from systems we directly control.
- 10.4. **Surviving Terms.** In addition to any section or term that by its nature should survive, Sections 2.5, 2.6, 6, 7, 9, and 10 will survive any termination or expiration of this License.