

SAFARI Montage® Cloud-Hosted Solutions

Terms of Service

THESE TERMS OF SERVICE (THE “**CLOUD TERMS**”) APPLY TO THE PURCHASE OF CLOUD-HOSTED SOFTWARE SERVICES SOLD BY LIBRARY VIDEO COMPANY D/B/A SAFARI MONTAGE (“**SAFARI MONTAGE**,” “**WE**,” “**US**,” OR “**OUR**”) IN THE UNITED STATES. BY SUBMITTING A PURCHASE ORDER OR USING SAFARI MONTAGE CLOUD-HOSTED SOFTWARE SERVICES, CUSTOMER (“**CUSTOMER**,” “**YOU**,” OR “**YOUR**”) ACCEPTS AND IS BOUND BY THESE CLOUD TERMS. THESE CLOUD TERMS APPLY IN ADDITION TO THE TERMS, CONDITIONS, AND DEFINITIONS IN THE **SAFARI MONTAGE® Products and Services General Terms and Conditions of Sale** AND OTHER APPLICABLE SAFARI MONTAGE AGREEMENTS.

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 Cloud-Hosted Services.

“**Access Period**” means the period of time during which we grant you access to the Cloud-Hosted Services as set forth in the Quote.

“**Administrator**” means the Person responsible for managing, coordinating, and reporting on the functions of the Cloud-Hosted Services.

“**Anonymized Data**” means data and information related to your use of the Cloud-Hosted Services 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 Cloud-Hosted Services.

“**Cloud-Hosted Services**” means the particular SAFARI Montage cloud-hosted software service set forth in the Quote, which service may provide access to Digital Content.

“**Customer Data**” means information and content in any form provided directly or indirectly by you or your Users or generated through the use of the Cloud-Hosted Services and Support Services 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 provided to you or otherwise licensed to you in accordance with 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 Cloud-Hosted Services, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“**Effective Date**” means the date that you first receive Administrator credentials.

“**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 Cloud-Hosted Services or SAFARI Montage Solution as intended by these Cloud Terms.

“**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, 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.

“**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 that can identify or reasonably be linked to an individual User, 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 Cloud-Hosted Services 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 Cloud-Hosted Services are capable of taking or performing on any data, information, or other content. “**Processing**” and “**Processed**” have correlative 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 in connection with the Cloud-Hosted Services. 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 Cloud-Hosted Services. 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 Cloud-Hosted Services, 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.

“**Specifications**” means the Documentation, system requirements, technical overview requirements, and any select integration requirements for the Cloud-Hosted Services.

“**Support Services**” means the technical and administrative support and maintenance services we provide, either remotely or on-site. Interoperability Support Services may be subject to additional terms and conditions.

“**Third-Party Materials**” means materials and information, in any form or medium, including any software, documents, data, content, specifications, and products of or relating to the Cloud-Hosted Services that are not included in the Cloud-Hosted Services. Third-Party Materials does not include Digital Content.

“**Training Services**” means curriculum administrator instructional technical training, product training, and professional development services we provide, either remotely or on-site.



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

2. CLOUD-HOSTED SERVICES.

- 2.1 **Access and Use.** SAFARI Montage grants you a non-exclusive, non-transferable right to access and use the Cloud-Hosted Services during the Access Period, solely for your internal use and in accordance with these Cloud Terms. We will provide you the Access Credentials on or around the Effective Date. The Effective Date may be delayed up to 60 days upon your request.
- 2.2 **Documentation License.** SAFARI Montage grants you a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the term of these Cloud Terms solely for your internal educational purposes in connection with your use of the Cloud-Hosted Services.
- 2.3 **Service and System Control.** Except as otherwise expressly provided in these Cloud Terms:
 - 2.3.1. We have and will retain sole control over the operation, provision, maintenance, and management of the SAFARI Montage Materials. We retain the right to modify or remove any feature or functionality of the Cloud-Hosted Services and make any changes to the Cloud-Hosted Services or SAFARI Montage Materials that we deem necessary or useful or as required by law or in response to a lawful claim by a third party.
 - 2.3.2. You have and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the SAFARI Montage Materials by you, any User, or any other Person by or through the Customer Systems or any other means controlled by you or any User.
 - 2.3.3. All Cloud-Hosted Services will be hosted solely from within the United States.
- 2.4 **Reservation of Rights.** Nothing in these Cloud Terms grants any right, title, interest, or Intellectual Property Rights in or relating 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. All other rights in and to the SAFARI Montage Materials are expressly reserved.
- 2.5 **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 the Cloud-Hosted Services to you and to provide maintenance and support for the Cloud-Hosted Services. You unconditionally and irrevocably grant us an assignment of all right, title, interest, and Intellectual Property Rights in and to Anonymized Data.
- 2.6 **Service Management.** 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 Cloud-Hosted Services.
- 2.7 **Solution Vendors.** We may from time to time in our discretion engage third parties to perform services in connection with the delivery of the Cloud-Hosted Services. Our use of Microsoft Azure for data storage is subject to additional terms and conditions at <https://www.microsoft.com/licensing/docs>.
- 2.8 **Suspension; Termination.** We may, directly or indirectly, suspend, terminate, or otherwise deny you, any User’s, or any other Person’s access to or use of all or any part of the Cloud-Hosted Services, without incurring any resulting obligation or liability, if: (a) we receive a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires us to do so; or (b) we believe, in our sole discretion, that: (i) you or any User has failed to comply with any material term of these Cloud Terms, or accessed or used the Cloud-Hosted Services beyond the scope of the rights granted or for a purpose not authorized under these Cloud Terms or in any manner that does not comply with any material instruction or requirement of the Specifications; (ii) you or any User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Cloud-Hosted Services; or (iii) these Cloud Terms expire or are terminated. This Section 2.8 does not limit any of our other rights or remedies, whether at law, in equity, or under these Cloud Terms.

3. USE RESTRICTIONS, DATA STORAGE, SERVICE USAGE.

- 3.1 **Use Restrictions.** You shall not, nor shall you permit any User or any other Person to, access or use the Cloud-Hosted Services or SAFARI Montage Materials except as expressly permitted by these Cloud Terms. Without limiting the foregoing, except as these Cloud Terms expressly permit, you shall not:
 - 3.1.1. copy, modify, or create derivative works or improvements of the Cloud-Hosted Services or SAFARI Montage Materials;
 - 3.1.2. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Cloud-Hosted Services 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;
 - 3.1.3. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Cloud-Hosted Services or SAFARI Montage Materials, in whole or in part;
 - 3.1.4. bypass or breach any security device or protection used by the Cloud-Hosted Services or SAFARI Montage Materials or access or use the Cloud-Hosted Services or SAFARI Montage Materials other than by a User through the use of his or her own then-valid Access Credentials;
 - 3.1.5. input, upload, transmit, or otherwise provide to or through the Cloud-Hosted Services or SAFARI Montage Solution, any information or materials that are unlawful, injurious, or obscene, or that contain, transmit, or activate any Harmful Code;
 - 3.1.6. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Cloud-Hosted Services, SAFARI Montage Solution, or SAFARI Montage’s provision of services to any third party, in whole or in part;
 - 3.1.7. 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 Cloud-Hosted Services or SAFARI Montage Materials, including any copy thereof;
 - 3.1.8. access or use the Cloud-Hosted Services 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; or
 - 3.1.9. access or use the Cloud-Hosted Services or SAFARI Montage Materials for purposes of competitive analysis of the Cloud-Hosted Services 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.
- 3.2 **Data Storage, Service Usage.** For certain Cloud-Hosted Services, we may enforce limitations to your data storage or service usage as set forth in the Quote, Documentation, or other agreement.

4. CUSTOMER OBLIGATIONS.

- 4.1 **Customer Systems and Cooperation.** During the Access Period, you will: (i) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Cloud-Hosted Services are accessed or used (e.g., a supported, properly configured LDAP server); (ii) provide our personnel with access to your premises and Customer Systems as necessary for us to perform the Cloud-Hosted Services and Support Services;

(iii) regularly back up Customer Systems and Customer Data; and (iv) provide all cooperation and assistance in a timely manner and as we may reasonably request to enable us to exercise our rights and perform our obligations in connection with these Cloud Terms.

- 4.2. **Effect of Customer Failure or Delay.** We are not responsible or liable for any delay or failure of performance caused in whole or in part by your delay in performing, or failure to perform, any of your obligations under these Cloud Terms.
- 4.3. **Corrective Action and Notice.** If you become aware of any actual or threatened activity prohibited by Section 3.1, you shall, and shall cause your Users to, immediately: (i) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Cloud-Hosted Services and SAFARI Montage Materials, (ii) permanently erase from your systems and destroy any content to which any of them have gained unauthorized access; (iii) remove any improper content from the SAFARI Montage Solution; and (iv) notify us of any such actual or threatened activity.

5. SAFARI MONTAGE OBLIGATIONS.

- 5.1. **Support.** We will provide commercially reasonable Support Services from time to time in our discretion to enable the Cloud-Hosted Services to perform according to the Specifications. To receive Support Services, contact our Technical Support Team between the hours of 8:00 a.m. and 6:00 p.m. Eastern Time by calling (800) 782-7230 or submitting a service case online at <http://www.safarimontage.com/support/OpenSupportCase/OpenCase.aspx>.
- 5.2. **Scheduled Downtime.** We will use commercially reasonable efforts to schedule daily downtime for routine maintenance of the Cloud-Hosted Services as needed Monday through Sunday between the hours of 8:00 p.m. and 6:00 a.m. Eastern Time, and weekly downtime as needed on Saturdays between the hours of 10:00 a.m. and 6:00 p.m. Eastern Time.
- 5.3. **Redundancy.** The SAFARI Montage Solution will be sufficiently redundant to ensure continuous operation of the Cloud-Hosted Services. SAFARI MONTAGE HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DAMAGE, DESTRUCTION, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.
- 5.4. **Training.** We may provide Training Services as identified in the Quote.

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 for this Section 6. 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 on-site Support and Training Services 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 you 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 Cloud-Hosted Services; (iii) Customer Systems; (iv) the security and use of Users' Access Credentials; and (v) all access to and use of the Cloud-Hosted Services 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 Cloud-Hosted Services, and (ii) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Cloud-Hosted Services.

7. REPRESENTATIONS, WARRANTIES.

- 7.1. **Customer.** You represent and warrant that you or your Users own or otherwise have or will have the necessary rights and consents in and relating to Customer Data so that, as received by us and Processed in accordance with these Cloud Terms, 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. If your Administrator or representative configures or directs us to configure an integration with a third-party platform (also known as an Interoperability Partner, as defined in the **SAFARI Montage® Products and Services Privacy Policy**), such configuration or direction is authorized and approved by you, and SAFARI Montage bears no responsibility or liability for the selection of or the data security, collection, or use practices of any Interoperability Partner.
- 7.2. **SAFARI Montage.** We warrant that the Cloud-Hosted Services will operate according to the Specifications.
- 7.3. **Disclaimer.** EXCEPT AS PROVIDED IN SECTION 9.2 (INDEMNIFICATION) AND IN THE APPLICABLE SAFARI MONTAGE AGREEMENTS, THE WARRANTIES SET FORTH HEREIN ARE YOUR SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR THE CLOUD-HOSTED SERVICES. ALL CLOUD-HOSTED SERVICES AND SAFARI MONTAGE MATERIALS ARE PROVIDED "AS IS." 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, AND FREEDOM FROM ERROR OR INTERRUPTION, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, TRADE USAGE, TRADE PRACTICE, OR OTHERWISE. YOU ARE SOLELY RESPONSIBLE AND BEAR THE ENTIRE RISK FOR THE SELECTION OF THE CLOUD SERVICES, THIRD-PARTY PRODUCTS, AND RELATED PRODUCTS AND SERVICES TO ACHIEVE INTENDED RESULTS AND FOR THE USE AND RESULTS OBTAINED. WE MAKE NO WARRANTY OF ANY KIND THAT THE CLOUD-HOSTED SERVICES 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 Cloud-Hosted Services and Documentation and document and certify that your use conforms with these Cloud Terms. If we determine that you are in breach of any provision of these Cloud Terms, and you fail to remedy the breach to our satisfaction within seven days of notice from us, we will determine the appropriate remedial action, which may include: (i) modification of your usage to resolve the breach, (ii) payment of additional fees, or (iii) termination.

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. **Customer Indemnification.** 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, or alleged to arise out of or result from: (i) Customer Data, including any Processing of Customer Data by or on behalf of SAFARI Montage in accordance with these Cloud Terms; and (ii) Customer Data that is unlawful or actually does or threatens to infringe or misappropriate any United States Intellectual Property Rights or other rights of any third party; and (iii) any access to, use, or misuse of the Cloud-Hosted Services by Customer, its Users, or an authorized third party that is beyond the scope of or otherwise fails to conform to the express requirements or restrictions of these Cloud Terms.
- 9.2. **SAFARI Montage Indemnification.** 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 these Cloud Terms, 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, Third-Party Materials, or other materials or services not provided by SAFARI Montage or specified for your use, (c) unauthorized modification of the SAFARI Montage Materials, (d) 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.

10. ACCESS PERIOD AND TERMINATION.

- 10.1. **Access Period.** The Access Period for the Cloud Terms commences as of the Effective Date and, unless terminated earlier pursuant to any of the Cloud Term's express provisions, will continue in effect for one year from such date or for such other period of time set forth in the Quote.
- 10.2. **Termination.** In addition to any other express termination right set forth elsewhere in these Cloud Terms:
 - 10.2.1. We may terminate the Cloud Terms, effective upon written notice to you, if you: (i) fail to pay any amount when due hereunder, and such failure continues more than 10 days after delivery of written notice of the nonpayment; or (ii) breach any of your obligations under Section 3.1, 4, 6.4, or 6.5; and
 - 10.2.2. Either party may terminate the Cloud Terms, effective on written notice to the other party, if the other party materially breaches the Cloud Terms, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.
- 10.3. **Effect of Termination or Expiration.** Upon any expiration or termination of the Access Period, except as expressly otherwise provided in these Cloud Terms:
 - 10.3.1. All rights, licenses, consents, and authorizations granted by either party to the other under these Cloud Terms will immediately terminate;
 - 10.3.2. We will (i) cease all use of any Personally Identifiable Information, (ii) upon your written request, return or destroy all documents and tangible materials containing, reflecting, incorporating, or based on Personally Identifiable Information, 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 Personally Identifiable Information from systems we directly control; and
 - 10.3.3. We will disable all Customer and User access to the SAFARI Montage Solution and SAFARI Montage Materials.
- 10.4. **Surviving Terms.** In addition to any section or term that by its nature should survive, Sections 2.4, 2.5, 6, 7, 9, and 10 will survive any expiration or termination of these Cloud Terms.