



# 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" OR "YOU") ACCEPTS AND IS BOUND BY THESE CLOUD TERMS. THESE CLOUD TERMS APPLY IN ADDITION TO THE TERMS, CONDITIONS, AND DEFINITIONS IN THE SAFARI MONTAGE® 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 to us 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.

"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 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 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 Cloud-Hosted Services is described in the SAFARI Montage® 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, 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.

"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.

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

"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 proprietary to SAFARI Montage. Third-Party Materials does not include Digital Content.

"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.

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, or interest in or to (including any license under) any Intellectual Property Rights in or relating to the SAFARI Montage Materials or Third-Party Materials. All right, title, and interest in and to the SAFARI Montage Materials and the Third-Party Materials are and will remain with us and the respective rights holders in the Third-Party Materials.

2.5 **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.

2.6 **Changes.** We reserve the right, in our sole discretion, to make any changes to the SAFARI Montage Materials that we deem necessary or useful to maintain or enhance the quality or delivery of the Cloud-Hosted Services, comply with applicable law, or in response to a lawful claim by a third party.

2.7 **Solution Vendors.** We may from time to time, in our sole discretion, engage third parties to perform services in connection with the delivery of the Cloud-Hosted Services to Customer. Our use of Microsoft Azure for data storage is subject to additional terms and conditions available at <https://www.microsoft.com/en-us/licenses/termsofservice>.

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; SERVICE USAGE AND DATA STORAGE.

- 3.1 **Use Restrictions.** You shall not, and shall not 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.
4. **CUSTOMER OBLIGATIONS.**
  - 4.1. **Customer Systems and Cooperation.** At all times during the term of these Cloud Terms, 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; (ii) provide us personnel with such access to your premises and Customer Systems as is necessary for us to perform the Cloud-Hosted Services and Support Services; and (iii) provide all cooperation and assistance in a timely manner and as we may reasonably request to enable us to exercise its rights and perform our obligations under and 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: (a) 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, (b) permanently erase from your systems and destroy any content to which any of them have gained unauthorized access; (c) remove any improper content from the SAFARI Montage Solution; and (d) 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.
  - 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 shall apply unless SAFARI Montage and Customer have entered into a written data protection agreement, in which case the executed written data protection agreement shall 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 to be bound by confidentiality agreements and undergo training to protect Personally Identifiable Information.
  - 6.2. **Background Checks.** We, at our own cost, screen all of our employees who will provide 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 you or your Users' Personally Identifiable Information. We will notify you of a confirmed data breach 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, the parties will coordinate with each other 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, and 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, 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 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. **AUDITS.** You acknowledge and agree: (i) within 20 days of our request, to fully document and certify that your use of the Cloud-Hosted Services conforms to these Cloud Terms, and (ii) permit us to audit the use of the Cloud-Hosted Services in such manner as we may consider appropriate. In the event any such documentation or audit demonstrates that you are in breach of any provision of these Cloud Terms, and you fail to remedy the breach to our satisfaction within five business days of notice thereof, we will determine, in our sole discretion, all appropriate remedial action, which may include termination, payment of additional fees, and your modification of its software usage to correct the deficiency and resolve the breach.
8. **INTELLECTUAL PROPERTY RIGHTS.**
  - 8.1. **SAFARI Montage Materials.** All right, title, and interest in and to the SAFARI Montage Materials, including all Intellectual Property Rights therein, are and will remain with us and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials, except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the SAFARI Montage Materials are expressly reserved. You unconditionally and irrevocably grants us an assignment of all right, title, and interest in and to Anonymized Data and all related Intellectual Property Rights.
  - 8.2. **Customer Data.** As between Customer and SAFARI Montage, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all related Intellectual Property Rights, subject to the rights and permissions granted in Section 8.3.
  - 8.3. **Consent to Use Customer Data.** You irrevocably grant all such rights and permissions in or relating to Customer Data as are necessary or useful to deliver the Cloud-Hosted Services hereunder.
9. **REPRESENTATIONS AND WARRANTIES.**
  - 9.1. **Customer Representations and Warranties.** You represent and warrant that you own or otherwise have and 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.
  - 9.2. **Additional SAFARI Montage Representations and Warranties.** We represent and warrant that the Cloud-Hosted Services will operate according to the Specifications.
  - 9.3. **Disclaimer.** EXCEPT AS PROVIDED IN THE TERMS AND IN APPLICABLE SAFARI MONTAGE AGREEMENTS, THE WARRANTIES SET FORTH HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SAFARI MONTAGE'S 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 CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR. SAFARI MONTAGE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, TRADE USAGE, OR OTHERWISE. CUSTOMER IS SOLELY RESPONSIBLE, AND BEARS THE ENTIRE RISK, FOR THE SELECTION OF THE PRODUCTS, THIRD-PARTY PRODUCTS, AND SERVICES TO ACHIEVE INTENDED RESULTS AND FOR THE USE AND RESULTS OBTAINED. SAFARI MONTAGE MAKES 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 CUSTOMER'S 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.
10. **INDEMNIFICATION.**

- 10.1. **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.
11. **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 (a) our knowingly selling, licensing, or renting Personally Identifiable Information and (b) 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 (i) Third-Party Materials or Customer Data, (ii) 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, (iii) unauthorized modification of the SAFARI Montage Materials, (iv) failure to timely implement any modifications, upgrades, replacements, or enhancements we make available to you, or (v) any act, omission, or other matter described in Section 10.1, whether or not resulting in any action, claim, or Losses.
12. **ACCESS PERIOD AND TERMINATION.**
  - 12.1. **Access Period.** The Access Period for the Cloud Terms commences as of the Effective Date and, unless terminated earlier pursuant 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.
  - 12.2. **Termination.** In addition to any other express termination right set forth elsewhere in these Cloud Terms:
    - 12.2.1. 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) breaches any of your obligations under Section 3.1, 4, 6.4, or 6.5; and
    - 12.2.2. 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.
  - 12.3. **Effect of Termination or Expiration.** Upon any expiration or termination of the Access Period, except as expressly otherwise provided in these Cloud Terms:
    - 12.3.1. all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;
    - 12.3.2. we will cease all use of any Customer Data and (i) upon your written request, return or destroy all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data; and (ii) after 60 days, permanently erase all Customer Data from all systems we directly control; and
    - 12.3.3. we may disable all Customer and User access to the SAFARI Montage Solution and SAFARI Montage Materials.
  - 12.4. **Surviving Terms.** Sections 9, 10, and 11 will survive any expiration or termination of these Cloud Terms along with any other right or obligation of the parties that, by its nature, should survive.

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