

SAFARI MONTAGE® MEDIA PLAYER DISTRIBUTION AND LICENSE AGREEMENT

THIS IS A LICENSE, NOT A SALE. THE SAFARI MONTAGE MEDIA PLAYER SOFTWARE IS LICENSED ON THE TERMS AND CONDITIONS SET FORTH IN THIS SAFARI MONTAGE MEDIA PLAYER DISTRIBUTION AND LICENSE AGREEMENT THAT, AMONG OTHER THINGS, DEFINE WHAT THE LICENSEE MAY AND MAY NOT DO WITH THE SAFARI MONTAGE SOFTWARE, AND CONTAIN LIMITATIONS ON DAMAGES, WARRANTIES AND REMEDIES. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THE SOFTWARE.

1. Definitions.

- 1.1. "SAFARI Montage" means Library Video Company and its trade names, divisions, successors, subsidiaries, assigns and affiliates, if any.
- 1.2. "Software" means the SAFARI Montage® Media Player.
- 1.3. "Customer" means the purchaser of a SAFARI Montage system software license, which may include, without limitation, schools, school districts, regional media centers or like institutions.
- 1.4. "End Users" means individual persons who use the Software and are authorized to use and/or access the Customer's SAFARI Montage system, which may include, without limitation, students, teachers, tutors, instructors, consumers, home school parents and other educators.

2. **Customer Responsibility.** Customer is responsible for the supervision, management and control of the use of the Software. In addition, the Customer is responsible and liable for compliance with the terms and conditions of this Agreement and any breach hereof.

3. **Software Licensing; Distribution.** SAFARI Montage either licenses software directly or distributes software that is licensed by a third party. In either case, Licensee does not obtain ownership of the Software. If any portion of the Software is governed by a separate license agreement between Licensee and a third party, Customer agrees that for any such third party software (a) the terms of such separate license agreement (including its warranties, restrictions and remedies, if any) shall apply to that software and are hereby incorporated by reference into this Software License Agreement, and (b) in the case of software licensed under an open source license agreement, nothing in this Agreement shall be read to add additional conditions or restrictions, or affect any rights and/or obligations Licensee may have, pursuant to any such open source license. With respect to the Software (or portions thereof) directly licensed by SAFARI Montage to Licensee, SAFARI Montage hereby grants Customer a limited, royalty-free, non-exclusive, non-transferable license to: (A) install the Software on compatible personal computers and/or (B) distribute the Software to End Users for installation on compatible personal computers. By way of illustration and not limitation, Customer may distribute the Software to End Users by: (a) attaching the installation package to an email to End Users; (b) imaging the hard drive on which the Software resides and distributing the hard drive to End Users or administrators; or (c) deploying the installation package over a network to computer systems connected to the Customer's private local area network or private wide area network.

4. **Use of Software.** Use of the Software by End Users shall be governed by the terms of the SAFARI Montage Media Player Software License Agreement, a copy of which is included within the Software installation package, as well as viewable on the SAFARI Montage website at www.safarimontage.com/support/smmpdownload.aspx. Where Customer distributes the Software pursuant to Section 3 in a form other than the installation package, Customer shall, incidental to such distribution, provide each End User with a copy of the SAFARI Montage Media Player Software License Agreement, along with written notice that such agreement governs the End User's use of the Software. Customer further agrees not to: (a) rent, lease, sell, sublicense, assign or otherwise transfer (except as provided in Section 3) the Software to anyone else; (b) modify, adapt, translate or create a derivative work based upon the Software; (c) reverse engineer, decompile, disassemble, make any disk sets of or otherwise copy the Software; (d) ship, transport or export the Software, or use the Software in any manner that is prohibited by the United States Export Administration Act or by any other export laws, restrictions or regulations of the United States, Canada or any other jurisdiction; (e) use the Software in the development of any product that is competitive with the Software or to infringe the rights of third parties; or (f) encumber or suffer to exist any lien or security interest in the Software. Any breach of this section 4 shall result in an immediate termination of this Agreement.

5. **Compliance With License/Audit.** Customer acknowledges and agrees to: (a) fully document and certify that use of the Software conforms to the license within twenty (20) days of SAFARI Montage's request for such documentation and certification; and/or (b) permit SAFARI Montage to audit the use of the Software in such reasonable manner as SAFARI Montage may consider appropriate. In the event any such documentation or audit demonstrates that Customer is in breach of any provision of this Agreement, SAFARI Montage shall determine, in its sole discretion, the appropriate remedial action, which may include any or all of the following: (a) termination of the Agreement; (b) Customer's payment of license fees; and/or (c) Customer's modification or change to software usage to correct the deficiency and resolve the breach.

6. **Ownership.** SAFARI Montage is the owner, or licensee, of all intellectual property rights in and to the Software, including, without limitation, all copyrights, trademarks, trade secrets, patents and all derivative works, adaptations, modifications, additions, translations and changes thereto. Customer shall have no right, title or interest in or to the Software, except in accordance with the license grant. SAFARI Montage and its licensors reserve all rights in the Software not expressly granted herein. SAFARI Montage has and retains the right to modify or remove any feature or functionality of the Software at any time.

7. **Software Installation and Maintenance.** Customer shall take reasonable efforts to properly maintain the Software from the time of delivery until the end of the term of this Agreement. The parties recognize and agree that Customer shall bear the sole responsibility for installing and deploying the Software.

8. **Technical Support.** SAFARI Montage is not offering, providing or supplying any technical support in connection with deploying, using or installing the Software.

9. **Term and Termination.** The term of this Agreement shall commence upon the installation of the Software in accordance with Section 3 and will terminate concurrently with: (a) the termination of the SAFARI Montage Software License Agreement for the SAFARI Montage system with which the Software was being used; and/or (b) the Customer's termination of its use of the SAFARI Montage system. Notwithstanding the foregoing sentence, the Agreement will automatically terminate in the event Customer has breached this Agreement. Customer's rights to use the Software will immediately terminate upon termination or expiration of this Agreement. Within fifteen (15) days of termination or expiration of this Agreement, Customer shall return to SAFARI Montage the Software and any materials provided to Customer in connection with this Agreement, or destroy the Software and provide notice to SAFARI Montage certifying such destruction. Sections 1, 5, 6 and 9 through 12 shall survive any termination or expiration of this Agreement.

10. **LIMITED WARRANTY; DISCLAIMER OF WARRANTY.** SAFARI MONTAGE ONLY WARRANTS THAT THE SOFTWARE IS CAPABLE OF BEING DOWNLOADED, DEPLOYED AND INSTALLED ON A PERSONAL COMPUTER MEETING THE MINIMUM OPERATING REQUIREMENTS DESCRIBED IN THE SOFTWARE DOCUMENTATION. SAFARI MONTAGE DOES NOT OFFER OR SUPPLY ANY OTHER WARRANTIES, AND HEREBY DISCLAIMS ALL REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THE SOFTWARE. SAFARI MONTAGE DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, DURABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SAFARI MONTAGE ALSO DISCLAIMS ANY AND ALL WARRANTIES FOR NON-INFRINGEMENT, AND HAS NO LIABILITY FOR ANY THIRD PARTY CLAIMS THAT THE PRODUCT INFRINGES ON AN THIRD PARTY'S INTELLECTUAL PROPERTY. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING PERFORMANCE OF THE PRODUCT, SHALL BE DEEMED TO BE A WARRANTY, CONDITION OR REPRESENTATION BY SAFARI MONTAGE.

11. **LIMITED LIABILITY.** IN NO EVENT WILL SAFARI MONTAGE OR ITS LICENSORS OR DEALERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFIT, LOST OR DAMAGED DATA OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE, THE RESULTS OF USE OR THE INABILITY TO USE THE SOFTWARE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE.

SAFARI MONTAGE'S ENTIRE AGGREGATE LIABILITY AND THE LIABILITY OF ITS LICENSORS AND DEALERS UNDER, OR CONNECTION WITH, THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY. THE LIMITED WARRANTY, EXCLUSIVE REMEDIES AND LIMITED LIABILITIES SET OUT HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN CUSTOMER AND SAFARI MONTAGE. CUSTOMER ACKNOWLEDGES AND AGREES THAT SAFARI MONTAGE WOULD NOT BE ABLE TO PROVIDE THE PRODUCT TO CUSTOMER WITHOUT SUCH LIMITATIONS.

12. Miscellaneous Provisions.

12.1. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between Customer and SAFARI Montage pertaining to Customer's right to use the Software. This Agreement supersedes all prior or collateral oral or written representations discussions, communications, advertising or agreements related thereto, and SAFARI Montage is not bound by any representation or inducement not specifically set forth herein.

12.2. **Modification.** This Agreement may not be modified or amended, except in writing signed by an authorized representative of SAFARI Montage. No other SAFARI Montage employee is authorized to modify this Agreement or to make any representations or agreements, written or oral, concerning this subject matter herein, and no such modification, representation or agreement shall be binding upon SAFARI Montage. However, SAFARI Montage may license updates, upgrades or other media players to the Customer with the same or different terms.

12.3. **Severability.** Each and every provision of this Agreement is severable. If a court of competent jurisdiction declares any provision hereof to be void or unenforceable, then the same shall be struck from this Agreement without in any way affecting the validity of any other provision of this Agreement. This Agreement will be deemed amended to the extent necessary to make it enforceable and valid, and the remaining terms and provisions will remain in full force and effect.

12.4. **Non-Transferable, Waiver and Notice.** This Agreement is non-transferable and may not be assigned without the prior written approval of SAFARI Montage, and any attempt to assign this Agreement without authorization shall be deemed null and void. SAFARI Montage's failure to exercise any rights herein shall not constitute or be deemed a waiver or forfeiture of such rights. Any notices required to be given hereunder shall be given in writing and addressed as follows: if to Customer, to the address and individual of the Customer on file; and if to SAFARI Montage, to the chief legal officer at the corporate headquarters.

12.5. **Governing Law.** This Agreement shall be enforced and interpreted subject to the laws of the Commonwealth of Pennsylvania, without regard to any conflict of law principles.

12.6. **Force Majeure.** SAFARI Montage shall not be liable for any failure in service as a result of SAFARI Montage's being delayed, prevented or hindered in the performance of its obligations under this Agreement (or its agents, employees or contractors) by reason of any circumstances beyond its reasonable control, including, without limitation, fire, flood, power surges, civil disorder, government actions, war, terrorism, import or export regulations or embargoes, labor disputes, strikes, supply disruptions and/or acts of God, including, without limitation, lightning and earthquakes.

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