

## SAFARI MONTAGE SOFTWARE UPGRADE PLAN

This document contains the terms and conditions of the SAFARI Montage® Software Upgrade Plan ("SUP") between Library Video Company d/b/a SAFARI Montage ("SAFARI Montage") and the school and/or district that purchased, utilizes or otherwise has access to use the SAFARI Montage software, whether from a server on site in the school or district, or located remotely (collectively and individually the "Customer"). SAFARI Montage shall provide the services described in this SUP to the Customer for the period set forth below.

### 1. SCOPE OF COVERAGE

- 1.1. **Covered Software:** Except for the Excluded Software, this SUP applies to all SAFARI Montage software that Customer has purchased prior to the commencement of the Term or during the Term following the expiration of the applicable warranty period ("Software") on the systems and in the environment in which they were originally installed.
- 1.2. **SUP Commencement:** The SUP shall commence on the day immediately following the conclusion of the original warranty period for the First Installed Software; provided, however, if the Software is covered by an existing SUP or Extended Service Agreement, the SUP shall commence on the day immediately following the conclusion of the prior SUP or Extended Service Agreement. The term First Installed Software means and refers to: (a) in the case of a Local Area Network, the date on which the SAFARI Montage server was shipped to Customer; or (b) in the case of a Wide Area Network, the date on which the SAFARI Montage WAN Manager was installed at the Customer's site. The warranty period associated with the Software is described in the SAFARI Montage® Hardware and Software Limited Warranty. Purchase of additional SAFARI Montage products does not extend the original warranty period or the Term. Similarly, the distribution of updates or upgrades hereunder does not create a new warranty period or extend the Term.
- 1.3. **Term:** SAFARI Montage will provide services for the Term, which is the number of year(s) identified on the Customer's Extended Services Form.
- 1.4. **SUP Continuation:** At the conclusion of the Term, SAFARI Montage may send an invoice to the Customer to continue to offer the SUP services at a price to be determined at that time. In the event the Customer remits payment under this invoice, the SUP services will continue on the same terms and conditions as this SUP.

### 2. SERVICE

- 2.1. **Scope of SUP Services:** During the Term, SAFARI Montage will provide:
  - (i) technical and procedural support as SAFARI Montage deems reasonably necessary for the Software to perform substantially in accordance with the User Guide, as may be updated from time to time;
  - (ii) Software updates that SAFARI Montage makes generally commercially available, which updates may fix known issues or bugs with the Software or improve functionality;
  - (iii) Software upgrades that SAFARI Montage makes generally commercially available, which upgrades may include new features or functions; and
  - (iv) certain content for free. (SAFARI Montage will determine, in its sole discretion, when and whether to provide content for free; provided, however, if SAFARI Montage supplies content for free to first-time purchasers of the SAFARI Montage system, SAFARI Montage will supply the same content to Customer for free during the Term.)
- 2.2. **Providing Services:** SAFARI Montage will determine, in its sole discretion, whether to provide SUP service:
  - (i) through communication with the Customer by phone or email;
  - (ii) through a remote, automated, electronic connection or similar means;
  - (iii) through shipment of the Software (or the hardware on which the Software is installed) to SAFARI Montage facilities or through shipment of Software (or hardware) to the Customer; and/or
  - (iv) on site (by a certified technician).
- 2.3. **Distributing Software Updates or Upgrades:** SAFARI Montage will distribute Software updates and/or upgrades through one of the following methods:
  - (i) sending DVDs, CD-ROMs or other similar media containing the Software update or upgrade;
  - (ii) providing an IP address for the Customer to download the Software update or upgrade from an FTP server;
  - (iii) sending a hard-drive containing the Software update or upgrade (which may be subject to additional hardware fees); or
  - (iv) through a remote, automated, electronic connection or similar means.
- 2.4. **Obtaining Service:** To obtain technical support under this SUP, Customer must contact the SAFARI Montage technical support team by either calling (800) 782-7230 or submitting a "service ticket" online at <http://www.safarimontage.com/support>. The SAFARI Montage technical support team will determine, in its sole discretion, whether a valid SUP claim exists and, if so, how to provide the SUP service.
- 2.5. **Service Availability:** Technical support is available toll-free phone Monday through Friday from 8:00 a.m. to 6:00 p.m. Eastern Standard Time or at another time as indicated by SAFARI Montage.
- 2.6. **Current Software, Current Hardware:** SAFARI Montage will provide SUP services described herein only for the current and preceding version of the Software (unless SAFARI Montage otherwise agrees in writing). Accordingly, if SAFARI Montage ships a Software upgrade or update to Customer, but Customer fails to install the Software upgrade or update, SUP services may be terminated or withheld until the upgrade or update is installed. SAFARI Montage will provide upgrades, updates and free content for the type and configuration of SAFARI Montage hardware that the Customer purchased, utilizes or otherwise uses to obtain access to the Software. Accordingly, Customer may be required to purchase additional hardware, such as a hard drive, to support a Software upgrade, update or free content, and SUP services may be withheld or terminated if the Customer fails to purchase such additional hardware.
- 2.7. **Removal of Software From Customer's Site:** SAFARI Montage may determine, in its sole discretion, that the Customer must ship the Software (or the hardware on which the Software is installed) to SAFARI Montage facilities to obtain SUP service or that SAFARI Montage must remove the Software (or the hardware on which the Software is installed) from Customer's site and send it to SAFARI Montage's facilities for repairs. If SAFARI Montage directs the Customer to return the Software (or the hardware), SAFARI Montage will provide the Customer with an Equipment Service Request (ESR) number and shipping instructions. Customer must follow all such instructions, including the time frame required to return the Software (or hardware). When shipping the Software (or the hardware) to SAFARI Montage, the Customer must supply the address, phone number, ESR number, a description of the problem and complete identification of the product being returned (including serial number, service number and/or other service tag). The Customer must ship the product in the original packing material. If the original packaging is not available, the Customer must contact the SAFARI Montage technical support team for additional shipping instructions. SAFARI Montage will not be responsible for any loss or damages resulting from shipping a product for SUP service; therefore, the Customer should insure each shipment at Customer's expense. SAFARI Montage will pay freight charges to and from SAFARI Montage facilities for the Software returned for SUP service from a U.S. address, shipping standard ground carrier or another method determined by SAFARI Montage. In the event repairs are found not to be covered by the SUP, the Customer will be responsible for paying all return freight charges.

### 3. CUSTOMER RESPONSIBILITIES

- 3.1. **Care of Software.** The Customer shall be responsible for the use, care and general maintenance of the Software, and the hardware on which the Software is installed, in accordance with normal business practices and SAFARI Montage's instructions. This includes, but is not limited to, supplying and meeting the minimum system requirements, and providing and maintaining a stable installation environment with proper electrical power, grounding, air conditioning and humidity control.
- 3.2. **Access to Software.** In the event SAFARI Montage requires remote, on-site or other direct access to the Software, the Customer shall provide technicians access on the scheduled dates, at the scheduled times and in the requested manner.
- 3.3. **Software Assistance.** The Customer is required to: (a) support and assist SAFARI Montage in identifying and clarifying the problems, including, without limitation, supplying source documents or data files as may be necessary to isolate or replicate a problem or condition; and (b) provide and maintain, at its own expense, an adequate communication infrastructure to allow SAFARI Montage to support the Software on a remote basis, including granting remote access to the Customer's computer system through SAFARI Montage's networking equipment.
- 3.4. **Additional Devices.** The Customer agrees not to employ or install additional attachments, features or devices to the Software, make alterations to the Software or permit personnel other than SAFARI Montage personnel (or SAFARI Montage authorized dealers or contractors) to repair or service the Software, without the written consent of SAFARI Montage.

### 4. EXCLUSIONS FROM SERVICE

- 4.1. The SUP does not apply to and does not cover any loss, problem or damage to the Software due to, or repairs required by:
  - (i) Customer neglect, negligence, misuse, abuse, misapplication or any external fire, theft, vandalism, terrorism, flood, exposure to weather conditions, power surges, accidental damage, Acts of God, including, without limitation, lightning and earthquakes;
  - (ii) viruses, worms, Trojans, spyware, malware and any other external tampering with the Software caused by, or occurring at, the client computer or client software;
  - (iii) Customer's failure to perform preventative maintenance or provide and maintain a stable operating environment with all facilities prescribed by SAFARI Montage (including but not limited to proper electrical power, grounding, air conditioning and/or humidity control), or Customer's failure to use reasonable means to protect the Software from further damage after a failure occurs;
  - (iv) any third party hardware or software parts, components or accessories used in connection with Software, including, without limitation, any application programs, network programs, databases, files, drivers, source code, object code or proprietary data, keyboards, mouse, speakers, modems, wiring or any unauthorized attachments, features or devices;
  - (v) use of supplies or materials not meeting SAFARI Montage's specifications or use of Software not in accordance with Software instructions or for purposes other than those for which they were designed, or any relocation, reconfiguration or unauthorized additions or other transportation damage;
  - (vi) a change required by the laws or regulations of any governmental body or agency;
  - (vii) any and all pre-existing conditions that occur prior to the effective date of this SUP (unless otherwise agreed in writing); and
  - (viii) any non-authorized service, which includes any instance in which a person, other than authorized SAFARI Montage technicians, performs maintenance or repairs to the Software, or makes any alterations or modifications to the Software, or uses supplies other than those recommended by SAFARI Montage, or supplies any parts, components or accessories.

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- 4.2. **Additional Service:** If Customer requests service outside the scope of the SUP, such repair will be furnished at SAFARI Montage's then-current rates for labor and materials.
- 4.3. **Excluded Software:** This SUP shall not apply to SAFARI Montage Selective Video Streaming, Managed Home Access or SAFARI Montage LIVE! (the "Excluded Software"). Additionally, since this SUP provides support and upgrades for Software, the SUP does not extend to or apply to hardware.
- 4.4. **Paid in Full:** This SUP only covers Software that has been paid for in full. Therefore, SAFARI Montage reserves the right to refuse to provide SUP services for any Software for which the Customer has not paid in full.

**5. LIMITATION OF LIABILITY**

- 5.1. SAFARI Montage, and its affiliates, subsidiaries, divisions, successors, assigns or any of its suppliers or manufacturers, SHALL NOT BE LIABLE, REGARDLESS OF CIRCUMSTANCES AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSSES OR DAMAGES OF ANY NATURE OR KIND WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF OR RESULTING FROM USE OR FAILURE OF THE SOFTWARE, FAILURE TO REALIZE SAVINGS, PROPERTY DAMAGE, INTERRUPTIONS IN CUSTOMER'S USE OF THE PRODUCT OR LOST OR CORRUPTED DATA, INFORMATION AND CONTENT, OR DEMAND AGAINST THE CUSTOMER BY ANY THIRD PARTY, whether or not SAFARI Montage has received notice of the possibility or certainty of such damages, directly or indirectly arising from this SUP, including, without limitation, Customer's inability to use the Software, either separately or in combination with any other hardware or software.
- 5.2. All implied warranties with respect to the Software, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, are hereby expressly excluded. Under this SUP, SAFARI Montage does not guarantee or warrant that: (a) the SAFARI-branded software or hardware will meet Customer's requirements or that the operation of the Software will be uninterrupted or error-free; (b) the SAFARI Montage-branded Software will be compatible with any other content, product or systems; or that (c) SAFARI Montage will distribute or make available any specific Software updates or upgrades. The Customer assumes responsibility for the selection of the Software to achieve the Customer's intended results, and for the use and results obtained from the Software. Should the Software prove to be defective in any respect other than as encompassed by the foregoing, the Customer assumes the entire cost of all necessary servicing, repair or correction.
- 5.3. Recovery and reinstallation of user data is not covered under this SUP; therefore, Customers are solely responsible for backing up data on the hard drive(s) and on any other storage device(s) in or associated with the Software before obtaining SUP service. Customers should remove or delete any information they deem personal, confidential or proprietary prior to obtaining SUP service.

**6. MISCELLANEOUS**

- 6.1. **Entire Agreement.** This SUP constitutes the entire agreement and understanding between Licensee and SAFARI Montage pertaining to Licensee's right to use the Software. This SUP 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.
- 6.2. **Modification:** This SUP 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 SUP 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.
- 6.3. **Severability:** Each and every provision of this SUP 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 SUP without in any way affecting the validity of any other provision of this SUP. This SUP 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.
- 6.4. **Non-Transferable, Waiver and Notice:** This SUP is non-transferable and may not be assigned without the prior written approval of SAFARI Montage and any attempt to assign this SUP 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 Licensee, to the address and individual of the customer on file; and if to SAFARI Montage, to the chief legal officer at the corporate headquarters.
- 6.5. **Governing Law:** This SUP shall be enforced and interpreted subject to the laws of the Commonwealth of Pennsylvania, without regard to any conflict of law principles.
- 6.6. **Subcontracting:** SAFARI Montage reserves the right to subcontract any service or product to be provided under this SUP.
- 6.7. **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 SUP (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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