

Reseller Customer Agreement

Last Updated: 15 December 2023

This Reseller Customer Agreement (“Agreement”) is entered into by and between the Panopto entity specified in Section 1(m) below and the customer (“Customer”) purchasing the Services through an authorized reseller of Panopto (“Reseller”), and is effective as of the date Customer enters into this Agreement or the date Customer first accesses the Services, whichever is earlier (“Effective Date”). Customer may enter into this Agreement in a variety of ways, including by executing this Agreement separately, executing an agreement with Reseller to purchase the Services (“Purchase Agreement”) that references this Agreement and indicates Customer’s acceptance of this Agreement, or clicking an “I accept” button, checkbox, or other recognized method of assent presented with a link or other means of accessing this Agreement. This Agreement governs Customer’s access to, and use of, the Services ordered by Reseller for Customer and contains terms that are additional to the terms of any agreement between Customer and Reseller, including a Purchase Agreement.

1. Definitions

- a. “Affiliate” means any legal entity that directly or indirectly is in control of, is controlled by, or is under common control with, a party. For purposes of this definition, “control” means the power to direct or cause the direction of the management and policies of the entity, whether through ownership, by contract, or otherwise.
- b. “Applicable Laws” means the laws, rules, statutes, decrees, decisions, orders, regulations, judgements, codes, and requirements of any governmental authority (international, federal, state, or local) applicable to Panopto or Customer, as the case may be.
- c. “Authorized Support Contacts” means individuals identified by Customer as authorized to seek Support Services.
- d. “Authorized Users” means the employees, agents, contractors, enrolled students, and other individuals affiliated with Customer who are authorized to by Customer to access and use the Technology Services under the rights granted to Customer pursuant to this Agreement and for whom access to the Technology Services has been purchased under this Agreement.
- e. “Claims” means any and all third-party claims, actions, demands, lawsuits, or proceedings and any and all damages, liabilities, fines, penalties, costs, and expenses (including without limitation reasonable fees of attorneys and other professionals) arising therefrom.
- f. “Confidential Information” means non-public information, know-how, and trade secrets, whether in disclosed in oral, written, electronic, or any other form or media, that is designated or identified as “confidential” or that a reasonable person should understand to be confidential based on the nature of the information disclosed or the circumstances of such disclosure. The terms and conditions of this Agreement are deemed Confidential Information of both parties.
- g. “Customer Content” means the content produced, imported, uploaded, or recorded by Customer and its Authorized Users into the Technology Services.
- h. “Customer Systems” means Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management

systems), and networks, whether operated directly by Customer or through the use of third-party services. Customer Systems do not include the Technology Services.

i. “Documentation” means specifications, manuals, instructions, and other documents made available at <https://support.panopto.com> that describe the functionality, components, features, or requirements of the Technology Services, including future updates and versions.

j. “Governing Laws” means, for each Panopto entity, the following laws: (i) for Panopto, Inc., the laws of the State of Washington, USA; (ii) for Panopto EMEA Limited, the laws of England; (iii) for Panopto ANZ Pty Ltd, the laws of Australia; (iv) for Panopto Asia Pacific Limited, the laws of Hong Kong; and (v) for Panopto Asia Pte Ltd, the laws of Singapore, provided however, that if Customer is located in Japan, then the Governing Laws will be the laws of Japan

k. “Governing Tribunal” means, for each Panopto entity, the following tribunal: (i) for Panopto, Inc., the federal or state courts located in King County, Washington, USA, where the parties hereby irrevocably waive any right to jury trial; (ii) for Panopto EMEA Limited, the courts located in London, England, where the parties hereby irrevocably waive any right to jury trial; (iii) for Panopto ANZ Pty Ltd, the courts located in the country where Customer is located, which shall be either Australia or New Zealand, where the parties hereby irrevocably waive any right to jury trial; (iv) for Panopto Asia Pacific Limited, the Hong Kong International Arbitration Centre, where the arbitration will occur in accordance with its Arbitration Rules, including the expedited procedure set out in Rule 5.2, the seat of arbitration will be Hong Kong, the number of arbitrators will be one, and the arbitration proceedings will be conducted in the English language; and (v) for Panopto Asia Pte Ltd, the Singapore International Arbitration Centre, where the arbitration will occur in accordance with its Short Form Arbitration Rules, the seat of arbitration will be Singapore, the number of arbitrators will be one, and the arbitration proceedings will be conducted in the English language, provided however, that if Customer is located in Japan then the tribunal will be the Japan Commercial Arbitration Association, where the arbitration will occur in accordance with its Commercial Arbitration Rules, including its expedited arbitration procedures, the seat of arbitration will be Tokyo, the number of arbitrators will be one, and the arbitration proceedings will be conducted in the English language.

l. “Intellectual Property Rights” means all intellectual property rights existing now or in the future in any jurisdiction in the world, including without limitation (i) copyrights, trade secrets, trademarks, service marks, patents, inventions, designs, logos, trade dress, moral rights, mask works, publicity rights, and database rights, (ii) registrations, applications for registration, the right to file applications and obtain registrations, renewals, extensions, and restorations for any of the foregoing, and (iii) all claims, causes of action, and rights to sue for past, present, and future infringement of any of the foregoing.

m. “Panopto” means the Panopto entity identified as follows based on Customer’s account region: (i) if Customer is located in the Americas, Panopto, Inc. 506 2nd Avenue, Suite 1600, Seattle, Washington 98104, USA; (ii) if Customer is located in Europe, Middle East, or Africa, Panopto EMEA Limited, White Collar Factory, 1 Old Street Yard, London EC1Y 8AF; (iii) if Customer is located in Australia or New Zealand, Panopto ANZ Pty Ltd: Level 14, 5 Martin Place, Sydney NSW 200, Australia; (iv) if Customer is located in Hong Kong, Panopto Asia Pacific Limited: 3806 Central Plaza, 18 Harbour Road, Wanchai, Hong Kong; and (v) if Customer is located in Asia-Pacific (excluding Australia, New Zealand, and Hong Kong) Panopto Asia Pte Ltd: 30 Raffles Place, #23-01 Oxley @ Raffles, Singapore 048622.

n. "Panopto Systems" means the information technology infrastructure used by or on behalf of Panopto in performing the Technology Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Panopto or through the use of third-party services.

o. "Service Data" means query logs and other information about Customer's use of the Services. Service Data does not include Customer Content.

p. "Services" means the Support Services and Technology Services.

q. "Support Services" means any support services to be provided to Customer by Panopto as listed in the Purchase Agreement, which will be governed by Panopto's Support & Service Level Agreement found at <https://www.panopto.com/service-level-agreement/>, which is incorporated herein by reference.

r. "Technology Services" means the software-as-a-service and other related services provided by Panopto as described in the Purchase Agreement. Technology Services does not include third party products and services.

2. Services

a. Purchase Agreement. Panopto will provide the Services as described in the applicable Purchase Agreement(s). This Agreement applies to each Purchase Agreement. If a conflict exists between the terms of this Agreement and the terms of a Purchase Agreement, the terms of this Agreement will prevail. Customer acknowledges and agrees that Reseller is not an agent of Panopto and has no authority to bind Panopto to terms that vary from those contained in this Agreement.

b. Add-On Services. If included in a Purchase Agreement or otherwise agreed to be purchased by Customer, Panopto will provide one or more of the following add-on Services to Customer: (i) deployment of an on-premises solution installed on Customer Systems pursuant to the On-Premises Deployment Addendum (the "On-Premises Addendum"); (ii) captioning services pursuant to the Caption Services Addendum ("Caption Addendum"); (iii) content conversion services pursuant to the Content Conversion Services Addendum ("Conversion Addendum"); and/or (iv) content migration services pursuant to the Content Migration Addendum ("Migration Addendum"). The On-Premises Addendum, Caption Addendum, Conversion Addendum, and Migration Addendum (collectively, the "Addenda") can all be found at <https://www.panopto.com/services-addenda/>, and are incorporated herein by reference as applicable. The versions of the Addenda in effect as of the date of Customer's purchase of the applicable add-on Services will apply.

c. Provision of Technology Services. For the term of each applicable Purchase Agreement, Panopto will provide Technology Services consistent with the Documentation and this Agreement. Panopto reserves the right, in its sole discretion, to make any changes to the Technology Services, Documentation, and Panopto Systems that it deems necessary or useful, including to (i) maintain or enhance the quality or delivery of the Technology Services, the competitive strength of or market for the Technology Services, or the Technology Services' cost efficiency or performance, or (ii) comply with Applicable Law; provided, however, that no such change will materially diminish the functionality of the Technology Services. Customer may access updates and upgrades to the Technology Services that Panopto makes generally available to its existing customers without additional cost when publicly released by Panopto.

d. Access. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Panopto hereby grants Customer a non-exclusive, non-transferable,

non-sublicensable, revocable right to access and use the Technology Services and Documentation solely for Customer's internal business purposes during the term of an applicable Purchase Agreement.

e. Sandbox Account. At Customer's request, Panopto may, in its sole discretion, provide Customer with an account, separate from its primary account, to be used by Customer for the sole purpose of performing internal testing of the Technology Services (the "Sandbox Account"). The Sandbox Account may be permissioned for up to 25 Authorized Users. Panopto reserves the right, in its sole discretion, to terminate the Sandbox Account at any time, with or without notice, and with or without reason.

f. APIs. Panopto makes certain application program interfaces ("APIs") available to its customers for use with the Technology Services. Should Customer decide to make use of some or all of these APIs, Panopto hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, revocable right to access and use such APIs solely for Customer's internal business purposes during the term of an applicable Purchase Agreement. In such case, the APIs shall be considered part of the Technology Services, subject to all of the terms and conditions of this Agreement.

g. Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

- i. Panopto has and will retain sole control over the operation, provision, maintenance, and management of the Technology Services, Documentation, and Panopto Systems; and
- ii. Customer has 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 and liability for all access to and use of the Technology Services, Documentation, and Panopto Systems by any person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any (i) information, instructions, or materials provided by any of them (including Customer Content) to the Technology Services or Panopto, (ii) results obtained from any use of the Technology Services, Documentation, or Panopto Systems, and (iii) conclusions, decisions, or actions based on such use.

h. Restrictions. Customer will not, directly or indirectly, and will not permit any Authorized User or other person to:

- i. Access or use the Technology Services, Documentation, or Panopto Systems except as expressly permitted by this Agreement;
- ii. Sell, rent, license, distribute, provide access to, sublicense or otherwise make available any of the Technology Services to a third party (except to Authorized Users);
- iii. Copy, modify, decompile, disassemble, reverse engineer, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Technology Services or the Panopto Systems;
- iv. Remove proprietary or confidentiality marks or notices from the Technology Services or Documentation;
- v. Permit unauthorized parties from using or copying the Technology Services, or operate time-sharing arrangements;
- vi. Disable any access keys or encryptions included in the Technology Services; or

- vii. Perform load, vulnerability, or penetration testing against the Technology Services or the Panopto Systems without prior written approval from Panopto in each instance, and then only subject to such conditions at Panopto reasonably requires. Panopto may terminate any testing of the Technology Services at any time as Panopto deems necessary or advisable to protect the operation or integrity of the Technology Services.

1.

i. Authorized Support Contacts. If Panopto is providing Customer with Support Services under a Purchase Agreement, Customer will identify Authorized Support Contacts before commencement of the Services. Only Authorized Support Contacts may request Support Services. Customer may change Authorized Support Contacts by submitting a support case to Panopto.

j. Authorized Users. Customer's license is restricted to the number of Authorized Users specified on the applicable Purchase Agreement(s). The rights and permissions granted are specific to each Authorized User. Customer is responsible for provisioning Authorized User accounts and role permissions within the Technology Services. Customer will ensure that Authorized Users do not share accounts or credentials with any other individual. Panopto will not have any liability under this Agreement for actions taken using Authorized Users' accounts, including without limitation any unauthorized use or access caused by misuse or misappropriation of such accounts. Customer is responsible for promptly restricting access by any Authorized User once they are no longer authorized to access the Technology Services. If Customer becomes aware of any unauthorized use of, or access to, the Technology Services, or any other security incident relating to the Technology Services or Panopto Systems, it will promptly notify Panopto thereof.

k. Privacy and Security. Panopto and Customer will comply with Panopto's Data Processing Agreement found at <https://www.panopto.com/data-processing-agreement/>, which is incorporated hereby in reference.

3. Customer Content

a. Rights in Customer Content. Customer owns any and all Intellectual Property Rights in and to Customer Content. Panopto's access to Customer Content is strictly limited to perform Support Services at the request of Customer (if Panopto is providing Support Services to Customer) or to perform its other obligations under this Agreement, and Customer acknowledges that Panopto has no obligation to monitor Customer Content. Subject to the terms of this Agreement, Customer hereby grants to Panopto a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, and display the Customer Content solely to the extent necessary to provide the Services to Customer.

b. Uploads of Customer Content. For Customer Content to be successfully uploaded to the Technology Services, it must be in a format consistent with the requirements set forth in the Documentation. Errors in uploading Customer Content into the Technology Services due to defective media, erroneous content, or failure to meet the requirements set forth in the Documentation may cause Customer Content to be rejected by the Service, and Panopto will have no responsibility for any related impact on Customer's ability to access or use the Technology Services.

c. Customer Obligations. Customer will obtain any and all necessary permissions and consents relating to its creation, use, and dissemination of Customer Content. Customer is solely responsible for configuring, viewing, and sharing settings within the Technology Services appropriately for Customer Content and Authorized Users. Customer will not, and will not permit any Authorized User

or other person to, use the Technology Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights, publicity, privacy, or any other right of any person or that violates any Applicable Law or Panopto's Acceptable Use Policy found at <https://www.panopto.com/acceptable-use-policy/>, which is incorporated herein by reference. Customer is solely responsible for the accuracy, content, and legality of Customer Content.

4. Intellectual Property

- a. Panopto Technology. Panopto owns all Intellectual Property Rights in and to the Services, Documentation, Panopto Systems, and any enhancements, error corrections, updates, upgrades, or other modifications thereto.
- b. Reservations of Rights. Except as otherwise expressly provided in this Agreement, (i) nothing in this Agreement will have any effect on either party's ownership of its Intellectual Property Rights and (ii) this Agreement does not grant either party any right, title, interest, or license, in the other's Intellectual Property Rights.
- c. Feedback. Despite anything to the contrary herein, Panopto may freely use and incorporate into its products and services, including the Services, any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or any Authorized Users (the "Feedback"), and any derivative works, modifications, or improvements to the foregoing based on the Feedback will be solely owned by Panopto.
- d. Customer Name and Marks. Panopto may use Customer's name and logo to identify Customer as a customer on its website. Any additional use of Customer's name, logo, or other Intellectual Property Rights by Panopto in marketing materials, such as profiles, white papers, and references, requires Customer's prior written approval.

5. Term and Termination

- a. Term. The term of this Agreement begins on the Effective Date and continues thereafter until the expiration date set forth in the applicable Purchase Agreement (the "Expiration Date"), unless earlier terminated as provided in Section 5(b). Upon Customer's request through Reseller, Panopto may, prior to the Expiration Date, agree in writing to extend the term of this Agreement for an additional period of time. If no such renewal is agreed upon prior to the then-current Expiration Date, this Agreement will expire as of such Expiration Date.
- b. Termination. The parties have the following termination rights:
 - i. Either party may terminate this Agreement, effective upon written notice to the other party, if the other party materially breaches this Agreement (other than the Customer breaches described in Section 5(b)(ii)) and such breach is incapable of being cured or, being capable of being cured, remains uncured 30 days after the breaching party receives written notice of the breach from the non-breaching party;
 - ii. Panopto may terminate this Agreement, effective immediately upon written notice, if Customer breaches the terms in Section 2(h); or
 - iii. Either party may terminate this Agreement, effective immediately upon written notice, if the other party (1) terminates or suspends its business, (2) is subject to a bankruptcy or insolvency proceeding under federal or state statute, (3) is subject to direct control by a trustee, receiver, or similar authority, or (4) has wound up or liquidated, voluntarily or otherwise subject to applicable law, has ceased to continue its business in the ordinary

course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding.

c. Effect of Termination. On the expiration or termination of this Agreement: (1) the access and use rights granted under this Agreement will immediately terminate; (2) Customer and Authorized Users will immediately cease use of the Services; (3) Panopto may deactivate all access codes and keys for the Technology Services; and (4) each party will return or destroy all Confidential Information in its possession or control and, at the other party's written request, certify such return or destruction. Termination of this Agreement will not affect any obligations owed by one party to the other that have accrued prior to such termination. Except in the case of termination by Panopto for Customer's breach, on Customer's written request there will be a 30-day transition period after termination during which this Agreement will continue in full force and effect solely to the extent necessary to allow Customer to retrieve Customer Content from the Technology Services. Except to the extent expressly set forth immediately above, Panopto has no obligation to archive or make available Customer Content after expiration or termination of this Agreement.

d. Suspension. Despite anything to the contrary herein, and in addition to any of its other rights or remedies, Panopto reserves the right to suspend Customer's or any Authorized User's access to any portion or all of the Services: (i) during any cure period relating to Customer's breach under Section 6(b)(1); or (ii) if Panopto reasonably determines that (1) Customer's or any Authorized User's use of the Technology Services disrupts or poses a security risk to the Technology Services or Panopto Systems or to any other customer or vendor of Panopto, (2) Customer's or any Authorized User's use of the Technology Services is fraudulent, illegal or unlawful, or (3) Panopto's provision of the Services to Customer or any Authorized User is or becomes prohibited by Applicable Law. Panopto will use commercially reasonable efforts to provide Customer with written notice of any such suspension and to resume providing access to the Services as soon as reasonably possible after the event giving rise to the suspension is cured. Panopto will have no liability for any damages, liabilities, losses, or other consequences that Customer or any Authorized User may incur as a result of any such suspension.

e. Survival. The terms of this Agreement that are likely to require performance, or have application to events that may occur, after termination or expiration of this Agreement, will survive termination or expiration, including without limitation Sections 4(c), 4(d), 5(c), 5(e), 6, 7, 8, 9, and 10 of this Agreement.

6. Confidentiality

a. Obligations. Except as expressly authorized hereunder, during the term of this Agreement and for two (2) years thereafter, each party will:

- i. Not use the other party's Confidential Information for any purpose other than in the performance of its obligations or the exercise of its rights under this Agreement;
- ii. Exercise the same degree of care to protect the other party's Confidential Information that is used to protect its own Confidential Information of a like nature, but in no event less than a reasonable degree of care; and
- iii. Not disclose the other party's Confidential Information to any person or entity, except to its Affiliates, employees, contractors, advisors, and consultants who have a need to know such Confidential Information for the receiving party to perform its obligations or exercise its rights under this Agreement and who are legally required to protect such Confidential

Information on terms at least as protective as those contained herein, and the receiving party accepts responsibility for each such entity's use of Confidential Information.

b. Exclusions. The foregoing obligations will not apply to information that (i) is or becomes publicly available without a breach of this Agreement, (ii) was previously known to a party, or rightly received by a party from a third party, with no obligation of confidentiality, or (iii) is independently developed by a party without reference to the Confidential Information.

c. Disclosure Required by Law. Each party will be allowed to disclose the other party's Confidential Information if required by law, court order, or governmental or regulatory authority, provided that it provides the other party reasonable prior written notice (unless precluded from doing so by law) and reasonably cooperates with the other party to contest or limit such disclosure and/or obtain confidential treatment.

d. Remedies. If a party breaches this Section 6, the non-breaching party may suffer irreparable harm and monetary damages may be an inadequate remedy. Therefore, the non-breaching party will be entitled to seek temporary, preliminary, and permanent injunctive relief against the breaching party, in addition to other rights and remedies to which it may be entitled at law or in equity, without any requirement to file a bond.

7. Representations and Warranties

a. Panopto Representations and Warranties. Panopto represents and warrants:

- i. It has full rights and authority to enter into, perform under, and grant the rights in this Agreement;
- ii. Its performance of its obligations under this Agreement will not violate any agreement or obligation between it and any third party;
- iii. It will comply with all Applicable Laws; and
- iv. The Technology Services will operate in substantial conformity with the applicable Documentation. Panopto's sole liability and Customer's sole and exclusive remedy for any breach of this warranty will be for Panopto, at no charge to Customer, to use commercially reasonable efforts to correct the reported non-conformity. This limited warranty will not apply (1) unless Customer makes a claim within 30 days of the date on which Customer first notices the non-conformity, or (2) if the non-conformity results from Customer's use of the Technology Services in violation of this Agreement or the Documentation, or the combination of the Technology Services with products not specified in the Documentation.

b. Customer Representations and Warranties. Customer represents and warrants that:

- i. It has full rights and authority to enter into, perform under, and grant the rights in this Agreement;
- ii. Its performance of its obligations under this Agreement will not violate any agreement or obligation between it and any third party; and
- iii. It will comply with all Applicable Laws.

c. Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED AS-IS, AND PANOPTO MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A

PARTICULAR PURPOSE, NON-INFRINGEMENT, COURSE OF DEALING, OR COURSE OF PERFORMANCE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. PANOPTO DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE OF THE CONTROL OF PANOPTO, INCLUDING ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

8. Indemnification

a. Indemnification by Panopto. Panopto will defend, indemnify, and hold harmless Customer, its Affiliates, and their respective successors, directors, officers, employees, and agents from and against all Claims to the extent such Claims arise out of or relate to any assertion by a third-party that the Technology Services infringe any Intellectual Property Rights. If Customer's use of the Technology Services is, or in Panopto's opinion is likely to be, enjoined, Panopto may, in its sole discretion and at its sole expense, modify the Technology Services so that they are no longer infringing, procure for Customer the right to continue using the Technology Services, or terminate this Agreement and refund any prepaid fees covering the remainder of the term of the affected Purchase Agreement(s). The foregoing indemnification obligations will not apply to the extent the Claim is attributable to (i) Panopto's compliance with Customer's instructions, (ii) modification of the Technology Services by anyone other than Panopto, (iii) Customer Content or any third-party components contained within the Technology Services, (iv) use of the Technology Services inconsistent with the Documentation or this Agreement, or (v) the combination of the Technology Services with products or processes not specified in the Documentation or provided by Panopto. This Section 8(a) sets forth Panopto's sole liability and Customer's sole and exclusive remedy with respect to any claim of Intellectual Property Rights infringement.

b. Indemnification by Customer. Customer will defend, indemnify, and hold harmless Panopto, its Affiliates, and their respective successors, directors, officers, employees, and agents from and against all Claims to the extent such Claims arise out of or relate to the Customer Content.

c. Indemnification Procedures. The indemnification obligations of each party (the "Indemnifying Party") set forth above are contingent on the other party (the "Indemnified Party") providing the Indemnifying Party with (i) reasonably prompt notice of the Claim (provided that any delay in the Indemnifying Party receiving such notice will not excuse it from its indemnification obligations except to the extent it suffered harm as a result of such delay), (ii) sole control of the defense and settlement of the Claim (provided that the Indemnifying Party may not enter into any settlement of the Claim that affects the Indemnified Party's rights, makes admissions on the part of the Indemnified Party, or obligates the Indemnified Party to take or not take any action, without the Indemnified party's express written consent, which will not be unreasonably withheld), and (iii) reasonable assistance to the Indemnifying Party in the defense of the Claim, at the Indemnifying Party's expense. An Indemnified Party may employ separate counsel and participate in the defense of the Claim at its sole expense.

9. Limitation on Liability

NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF DATA, REVENUE, PROFITS, OR BUSINESS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, AND EVEN IF THE PARTY HAS BEEN ADVISED OF

THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY WILL EXCEED THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER TO RESELLER UNDER THE APPLICABLE PURCHASE AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT THAT RESULTED IN THE DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY DO NOT APPLY TO LIABILITY ARISING FROM CUSTOMER'S BREACH OF SECTIONS 2(d) or 2(g), EITHER PARTY'S DUTY TO INDEMNIFY THE OTHER PARTY UNDER THIS AGREEMENT, OR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT.

10. Miscellaneous

- a. Relationship. The parties are independent contractors, and nothing in this Agreement creates a relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's written consent. There are no third-party beneficiaries under this Agreement.
- b. Assignment. Neither party may assign this Agreement or any right or obligation under it without the other party's prior written consent, not to be unreasonably withheld; provided, however, that either party may assign all, but not some, of its rights and obligations under this Agreement to any of its Affiliates, or to any entity into or with which it is merged or that acquires all or substantially all of its assets or stock, without the other party's consent. Subject to the foregoing, this Agreement will inure to the benefit of and bind all permitted successors, assigns, receivers, and trustees of each party.
- c. Force Majeure. Neither party will be liable to the other party for any delay or failure to perform any obligation under this Agreement due to acts of God, natural disasters, pandemic, epidemic, labor dispute, electronic, telecommunications, or other utility failure, terrorism, war, civil disturbance, government action, or any other cause beyond such party's reasonable control. The party affected by a force majeure event will provide written notice to the other party within a commercially reasonable time and use commercially reasonable efforts to resume performance as soon as possible.
- d. Notices. Any notice required or permitted under this Agreement will be in writing, sent to the applicable Panopto entity at the address set forth in Section 1(m) or to Customer at the address provided in the Purchase Agreement, or sent to such other address as may be given in writing by a party in accordance with this Section 10(d), and will be deemed to have been received (i) if given by hand, immediately upon receipt, (ii) if given by overnight courier service, the first business day following dispatch, (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the third business day following dispatch, or (iv) if given by email, immediately upon receipt, except that notices relating to termination or any claims (including without limitation breach, warranty, or indemnity) may not be given via email.
- e. Service Data. Despite anything to the contrary herein, Customer agrees that Panopto may collect Service Data and may use Service Data to develop, improve, support, and operate the Services during and after the term of this Agreement. Panopto will not disclose any Service Data to any third party, except in the form of Aggregated Usage Data. "Aggregated Usage Data" means Service Data that does not contain any Personal Data of any Authorized User, does not identify Customer or any of its Authorized Users, and may not reasonably be associated with any other data of Customer or any of its Authorized Users so as to identify them. Notwithstanding the foregoing, Panopto may disclose

Service Data to its service providers as Panopto reasonably determines necessary to provide and improve the Services, subject to written confidentiality obligations.

f. Subcontractors. Panopto may use subcontractors to perform some or all of its obligations under this Agreement. Panopto will be responsible for ensuring that its subcontractors comply with this Agreement.

g. Export Control. Customer agrees to comply with all export and import laws and regulations of all applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (ii) Customer will not, and will not permit any third parties to, access or use any of the Technology Services in violation of any applicable export embargo, prohibition, or restriction, and (iii) Customer will not submit to any of the Technology Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

h. Anti-Corruption. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any Panopto employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Panopto at legal@panopto.com.

i. No Waiver. A party’s delay or failure to exercise any right or remedy is not a waiver of that or any other right or remedy, and no waiver will be effective unless in writing signed by a duly authorized representative of the party claimed to have waived.

j. Severability. If a court of competent jurisdiction determines that any Agreement provision is illegal, invalid, or unenforceable, that provision will be limited to the minimum extent necessary so that this Agreement will remain in full force and effect.

k. Governing Law and Jurisdiction. This Agreement will be governed by the applicable Governing Laws, without reference to their conflict of law principles. The parties agree that all Claims arising out of or related to this Agreement, including any question regarding its existence, validity, interpretation, performance, breach, or termination, will be brought exclusively in the applicable Governing Tribunal. In the event of any such legal action, the substantially prevailing party shall be entitled to an award for its reasonable attorneys’ fees and other costs and expenses relating thereto.

l. Entire Agreement and Amendment. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, and all other agreements, oral or written, between the parties. No purchase order or other business form issued by Customer at any time before or after the execution of this Agreement will supersede the terms and conditions of this Agreement. No supplement, modification, or amendment to this Agreement will be binding unless executed in writing by a duly authorized representative of each party. The terms in this Agreement, as well as the Support & Service Level Agreement (if applicable), the Acceptable Use Policy, and the Data Processing Agreement, may be updated from time to time, effective upon posting the applicable updated version on Panopto’s website and providing notice to Customer (which may be provided through the Technology Services and/or via email).