



TECHNOLOGY SERVICES AGREEMENT

This Technology Services Agreement is entered into by and between the Panopto entity(ies) specified in Section 1(n) below and further identified in the Order Form ("Panopto") and the customer identified in the Order Form ("Customer") in which this Agreement is referenced and into which this Agreement is incorporated, is effective on the latest date such Order Form is executed ("Effective Date"), and incorporates all addenda, amendments, exhibits, schedules, order forms, quotes, and any other documents entered into by the parties that make reference to this Technology Services Agreement (collectively, "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, and its Affiliates to the extent any of them have been added to the Agreement as provided in Section 2(d), who are authorized 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, its Affiliates (if any), and their respective 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 information made available at <https://support.panopto.com> (in the case of Panopto Services) and at <https://elai.freshdesk.com/support/home> (in the case of Elai Services) that describe the functionality, components, features, or requirements of the Technology Services, including future updates and versions.
- (j) "Elai Services" means the software-as-a-service that generally includes an AI-powered text-to-video platform with interactive playback, creator tools, avatar-based learning, and other related services provided by Elai, Inc.
- (k) "Fees" means the fees for the Services as specified in one or more applicable Order Forms.
- (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) "Order Form" means a written document signed by Customer and Panopto (or one of its authorized billing agents), including any and all quotes, schedules, addenda, appendices, and exhibits attached thereto, that details the Services purchased by Customer (and any approved Affiliate) and references this Agreement.

- (n) "Panopto" means, if Customer purchases Panopto Services, the Panopto entity identified as follows based on Customer's account region: (i) if Customer is located in the Americas, Panopto, Inc., 600 River Avenue, Suite 100, Pittsburgh, Pennsylvania, USA; (ii) if Customer is located in Europe, the 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 2000, Australia; (iv) if Customer is located in Hong Kong, Panopto Asia Pacific Limited, 9/F, 3806 Central Plaza, 18 Harbour Road, 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. "Panopto" means, if Customer purchases Elai Services, and regardless of Customer's location, Elai Inc., 600 River Avenue, Suite 100, Pittsburgh, Pennsylvania, USA.
- (o) "Panopto Services" means the software-as-a-service that generally includes recording, screen-casting, video streaming, video content management and other related services provided by the applicable regional Panopto entity described in Section 1(n).
- (p) "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.
- (q) "Service Data" means query logs and other information about Customer's use of the Services. Service Data does not include Customer Content.
- (r) "Services" means the Support Services and Technology Services.
- (s) "Support Services" means the support services to be provided to Customer as listed in the applicable Order Form and described in the Support & Service Level Agreement found at <https://www.panopto.com/service-level-agreement/>, which is incorporated herein by reference.
- (t) "Technology Services" means the Elai Services and/or Panopto Services, as applicable. Technology Services does not include any third party products or services.

2. Technology Services

- (a) Order Forms. Panopto will provide the Services as described in the applicable Order Form(s). This Agreement applies to each Order Form. If a conflict exists between this Agreement and an Order Form, this Agreement will govern unless the Order Form expressly states that a specific provision in the Order Form takes precedence over a specific provision in this Agreement.
- (b) Add-On Services. If included in an Order Form 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) speech-to-text services pursuant to the Speech-to-Text Services Addendum ("STTS Addendum"); (iii) content conversion services pursuant to the Content Conversion Services Addendum ("Conversion Addendum"); (iv) content migration services pursuant to the Content Migration Addendum ("Migration Addendum"); and/or (v) generative artificial intelligence services pursuant to the Generative Artificial Intelligence Addendum ("Generative AI Addendum"). The On-Premises Addendum, STTS Addendum, Conversion Addendum, Migration Addendum, and Generative AI 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 Order Form, Panopto will provide Technology Services consistent with the Documentation, this Agreement, and that Order Form. 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) Customer Affiliates. Subject to Panopto's approval (to be provided or not provided in its sole discretion), Customer may request to add one or more of its Affiliates to this Agreement. If Panopto provides its approval, the addition of any such Affiliate to this Agreement will be evidenced by an Order Form describing the Services to be provided to such Affiliate and incorporating this Agreement by reference. Upon the execution of any such Order Form by both parties, such Affiliate will be deemed to be a "Customer" for purposes of this Agreement.
- (e) Access. Subject to and conditioned on Customer's payment of Fees and 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 Order Form.

- (f) Sandbox Account. At Customer's request, and only in the case of Panopto Services, 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.
- (g) 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 Order Form. In such case, the APIs shall be considered part of the Technology Services, subject to all of the terms and conditions of this Agreement.
- (h) 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 without limitation any (i) information, instructions, or materials provided by Customer or any Authorized User (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.
- (i) 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.
- (j) Authorized Support Contacts. 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.
- (k) Authorized Users. Customer's license is restricted to the number of Authorized Users specified on the applicable Order Form(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.
- (l) Privacy and Security. Panopto and Customer will comply with the Data Processing Agreement found at <https://www.panopto.com/data-processing-agreement/>, which is incorporated herein by 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 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 (i) infringes, misappropriates, or otherwise violates any Intellectual Property Rights, privacy rights, or any other right of any person, (ii) violates any Applicable Law, or (iii) violates, in the case of Panopto Services, the Acceptable Use Policy found at <https://www.panopto.com/acceptable-use-policy/>, or in the case of Elai Services, the Acceptable Use Policy found at <https://elai.io/acceptable-use-policy/>, both of which are 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, and any derivative works, modifications, or improvements based on the foregoing, along with any related Intellectual Property Rights, 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. Fees and Payment Terms

- (a) Fees. All Fees will be specified in the applicable Order Form and will be paid by Customer, without offset or deduction, at the time of purchase or on or before any different due date set forth in the Order Form. Customer is not entitled to any refund of any Fees paid or relief from Fees due if the volume of Services Customer actually uses is less than the volume Customer ordered, and Customer may not carry over any of the unused volume to Customer's next Order Form term.
- (b) Taxes. Fees and other charges payable under an Order Form do not include taxes, levies, duties, or similar governmental assessments of any nature, such as sales, use, value-added, withholding, or similar taxes. Customer is responsible for all such taxes, other than those based on Panopto's income, property, or employees ("Taxes"). If Panopto has the legal obligation to pay or collect Taxes for which Customer is responsible, Panopto will invoice Customer and Customer will pay that amount unless Customer provides Panopto with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer will indemnify Panopto for Taxes, and any related costs paid or payable by Panopto attributable to Taxes, that would have been Customer's responsibility under this Section 5(b).
- (c) Withholding. If Customer is required to withhold Taxes imposed upon Panopto for any payment under this Agreement by virtue of any Applicable Laws of a country in which the Services are delivered or obtained, then such payments will be made by Customer on behalf of Panopto by deducting them from the payment then due Panopto and remitting such Taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted upwards appropriately so that Panopto actually receives the full amount of the Fees set forth in the applicable Order Form. Customer will provide Panopto with official documentation or tax receipts on such withholdings supporting such Taxes and such payments as may be required by Panopto for

its tax records as soon as reasonably possible following payment to the applicable tax authority, and in any event no later than when required by Applicable Laws.

6. Term and Termination

- (a) Term. The term of this Agreement begins on the Effective Date and continues so long as there is an open Order Form in effect or until termination as provided in Section 6(b). The term of each Order Form will be the period described in such Order Form unless earlier terminated as provided in Section 6(b). Unless otherwise provided in the Order Form, the term of each Order Form shall automatically renew for additional 1-year periods unless either party provides the other party with written notice of non-renewal at least 30 days prior to the end of the then-current term. Panopto reserves the right to increase the applicable fees for any renewal term by providing Customer written notice of such increase at least 60 days prior to the end of the then-current term.
- (b) Termination. The parties have the following termination rights:
- (i) Either party may terminate this Agreement or an Order Form, effective upon written notice to the other party, if the other party materially breaches this Agreement (other than the Customer breaches described in Sections 6(b)(ii) and (iii)) 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 or an Order Form if Customer fails to pay any amount when due and such failure continues more than 10 days after Panopto's delivery of written notice thereof;
 - (iii) Panopto may terminate this Agreement or an Order Form, effective immediately upon written notice, if Customer breaches the terms in Section 2(i); or
 - (iv) Either party may terminate this Agreement or an Order Form, 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; (4) outstanding Fees or other amounts due from Customer will be immediately due and payable; and (5) each party will cease use of, and destroy or return to the other party (at the other party's option), 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) if Customer fails to pay any Fees when due; (ii) during any cure period relating to Customer's breach under Section 6(b)(1); or (iii) 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 and any Order Form that are likely to require performance, or have application to events that may occur, after termination or expiration of this Agreement or any Order Form, will survive termination or expiration, including without limitation Sections 4(c), 4(d), 5, 6(c), 6(e), 7, 8, 9, 10, and 11 of this Agreement.

7. 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 the breach of this Section 7 by such person or entity.
- (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, (iii) is independently developed by a party without reference to the Confidential Information; or (iv) is disclosed with the other party's prior written consent.
- (c) Disclosure Required by Law. Each party may disclose the other party's Confidential Information without consent to the extent such disclosure is required by law, court order, or governmental or regulatory authority, provided that it provides the other party written notice prior to such disclosure (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 of such Confidential Information.
- (d) Remedies. If a party breaches this Section 7, 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 the necessity of proving actual damages and without any requirement to file a bond. The ability to seek injunctive relief shall not prohibit the non-breaching party from seeking a remedy for actual monetary damages.

8. 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, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, QUALITY, TITLE, NON-INFRINGEMENT, COURSE OF DEALING, OR COURSE OF PERFORMANCE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, PANOPTO DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL MEET CUSTOMER'S NEEDS OR BE UNINTERRUPTED, TIMELY, SECURE, OR FREE FROM ERROR OR DEFECT, AND PANOPTO WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE OF ITS CONTROL, INCLUDING WITHOUT LIMITATION ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

9. 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 to Customer any prepaid Fees covering the remainder of the term of the affected Order Form(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 9(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.

10. Limitation on Liability

NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST CONTENT OR DATA, LOSS OF REVENUE OR PROFITS, BUSINESS INTERRUPTION, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, 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 PAID BY CUSTOMER TO PANOPTO UNDER THE APPLICABLE ORDER FORM IN THE 12-MONTH PERIOD PRECEDING THE EVENT THAT RESULTED IN THE DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS WILL NOT APPLY TO LIABILITY ARISING FROM CUSTOMER'S BREACH OF SECTIONS 2(i) OR 5, EITHER PARTY'S BREACH OF SECTION 7, OR EITHER PARTY'S OBLIGATIONS UNDER SECTION 9.

11. Miscellaneous

- (a) Relationship. The parties are independent contractors, and nothing in this Agreement will be construed to create a partnership, joint venture, employment, franchise, fiduciary, or agency relationship 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; 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 a breach of this Agreement or otherwise as a result of any delay or failure to perform any obligation under this Agreement (except for Customer's obligation to pay Fees) 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 party at the address set forth on the Order Form or such other address as may be given in writing by a party in accordance with this Section 11(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 Applicable Laws relating to export and import. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any government list of prohibited or restricted parties or located in (or a national of) a country that is subject to any government embargo issued under any Applicable Laws in the jurisdiction(s) where Panopto and Customer operate, and (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.
- (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. All Claims will be governed by the laws, and subject to the jurisdiction, indicated in the Order Form.
- (l) Counterparts. The parties may execute this Agreement in any number of counterparts. Each counterpart is an original and all counterparts constitute one agreement binding both parties. Electronic signatures will be considered binding for all purposes.
- (m) Entire Agreement and Amendment. The parties agree that this Agreement (including any and all applicable Order Forms and Addenda) 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 the Support & Service Level Agreement, Acceptable Use Policies, and Data Processing Agreement may be updated from time to time upon notice to Customer (which may be provided through the Technology Services).