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## PAANOPTO SOFTWARE LICENSE AND SERVICES AGREEMENT

This **SOFTWARE LICENSE AND SERVICES AGREEMENT** is entered into on the date specified on the Order Form (the "Effective Date") between Panopto EMEA Limited, a United Kingdom corporation ("**Panopto**") and the "**Licensee**" (as identified on the Order Form delivered in connection herewith), and includes all Appendices and Exhibits attached hereto and including the Order Form (collectively, the "**Agreement**"). Capitalized terms shall have the meanings set forth in [Appendix A](#). Panopto is the owner of certain proprietary software defined in [Appendix A](#) as the "**Licensed Products**". Licensee is desirous of licensing the Licensed Products and services described in the Order Form and quote and hereby incorporated by reference. By the signatures of their duly authorized representatives set forth on the Order Form, Panopto and Licensee, intending to be legally bound, agree as follows:

### 1. License and Support

1.1 [Grant of License](#). Pursuant to the terms and conditions of this Agreement and the Order Form, during the Term, for Authorized Users, Panopto grants a nonexclusive, nontransferable, non-sublicenseable license to access, use, install, and execute the Licensed Products.

1.2 [Restrictions on Use](#). Licensee will use the Licensed Products only for Licensee's own data processing and computing needs in accordance with the intended use of the Licensed Products. Licensee shall not permit any parent, affiliated entities who are not included on the Order Form, or third parties to use the Licensed Products or operate any time sharing arrangement with respect to the Licensed Products. Licensee agrees to take all reasonable steps to protect the Licensed Products from unauthorized copying or use. Licensee shall implement and use, and shall not in any way disable, any license key or the encryption provided with the Licensed Products. If Licensee's license is restricted to a number of Authorized Users, the rights granted to those Authorized Users are personal to the Authorized User, and Licensee will not allow the Authorized Users to share their passwords with any other party.

1.3 [Modifications, Reverse Engineering](#). Licensee shall not and will not permit any Authorized Users to (i) disassemble, decompile or reverse engineer the Licensed Products or otherwise attempt to discover the source code for the Licensed Products or (ii) prepare any derivative works based on the Licensed Products; (iii) sublicense, lease, rent assign, distribute, repackage, rebrand, or otherwise transfer or disclose the Licensed Products or any portion thereof; (iv) use the Licensed Products in a manner or for any purpose that violates any law or regulation, or any right of any person; or (v) cause, assist, or permit any third party to do any of the foregoing. Notwithstanding the foregoing, Licensee may in accordance with the terms and conditions hereof, develop plug-ins and other custom enhancements using API with the prior written consent of Panopto.

1.4 [Designation of Authorized Support Contacts](#). Licensee shall provide to Panopto, in writing, the names and contact information for the person or persons to be designated as "Authorized Support Contacts." The maximum number of persons who may be so designated is set forth in the Order Form. Only persons so identified in writing shall be authorized and permitted to request and receive Support Services pursuant to this Agreement. The Authorized

Support Contact may be changed from time to time upon written notice to Panopto.

1.5 [Material Terms and Conditions](#). Licensee specifically agrees that each of the terms and conditions of this Section 1 are material and that failure of Licensee to comply with these terms and conditions shall constitute sufficient cause for Panopto to terminate this Agreement.

1.6 [Documentation](#). Panopto may make Documentation available at Panopto's designated internet website for access by Licensee during the Term.

1.7 [Support Services](#). Support for the Licensed Products will be provided to Licensee only as specified in the applicable Order Form or quote and in accordance with the descriptions of Support Services set forth on [Appendix B](#) to this Agreement. During the Term, Licensee will be entitled to updates and upgrades made generally available to Panopto's customers without additional fees, as and when released by Panopto. Panopto reserves the right to discontinue the licensing, maintenance and support of any Licensed Products or any version thereof, for any reason and at any time, upon twelve (12) months' prior written notice to Licensee or at any time with respect to all versions of the Panopto software which are older than the immediately preceding version of the then current version. Such discontinuance will not be deemed a termination or breach of the Agreement by Panopto.

1.8 [Third Party Services](#). Panopto may offer to Licensee certain Third Party Services in connection with the Licensed Products. The terms and conditions applicable to the Third Party Products are specified on [Appendix D](#).

### 2. Ownership

2.1 [Ownership of Licensed Products](#). Licensee agrees that Panopto owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Licensed Products and any bug fixes, enhancements, error corrections, updates, upgrades or other modifications, including custom modifications, to the Licensed Products whether made by Panopto or any third party. Under no circumstances shall Licensee sell, lease, license, publish, display, distribute, or otherwise transfer to a third party, including without limitation, individuals affiliated with the Licensee, the Licensed Products or any copy thereof, in whole or in part, without Panopto's prior written consent.

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## 2.2 Ownership of Licensee Content and Data Protection.

(a) Licensee Content. As between Panopto and Licensee, Licensee shall own all right, title and interest in and to the Licensee Content. Panopto and its affiliates may access the Licensee Content solely as necessary to (i) perform Support Services, at the request of Licensee, or to otherwise perform its obligations under this Agreement and (ii) to perform analysis and otherwise improve the Licensed Products. Licensee represents and warrants that Licensee shall not provide Licensee Content that is Sensitive Personal Data. Licensee is solely responsible for obtaining necessary permissions and consents relating to its provision of the Licensee Content. Licensee shall indemnify, defend, and hold Panopto and its affiliates harmless from any allegation, claim, liability damage, and expense (including reasonable attorney's fees) incurred or suffered arising of Licensee or Authorized User's misappropriation or infringement of any intellectual property right of the Licensed Products, or any breach of this Section 2.2 by Licensee or Authorized User.

(b) Data Protection. In the event Panopto is deemed to process Personal Data, Licensee and Panopto agree that for the purposes of the Data Protection Act of 1998 or, as of May 25, 2018, GDPR, the Licensee is the Controller and Panopto is the Processor in respect of any Personal Data. Panopto shall process the Personal Data only in accordance with the terms set forth on the Data Processing Addendum attached hereto as Appendix E. Licensee acknowledges that Panopto is reliant on the Licensee for direction as to the extent to which Panopto is entitled to use and process the Personal Data and Licensee shall be responsible for Personal Data in the Licensee Content. Consequently, Panopto will not be liable for any claim brought by a Data Subject arising from any action or omission by Panopto, to the extent that such action or omission resulted from the Licensee's instructions and shall only be liable to the extent set forth in the Data Processing Addendum and as limited by the terms herein. Notwithstanding the foregoing and anything stated herein to the contrary, Panopto may authorize a third party (sub-processor) to process the Personal Data provided that the sub-processor's contract is on terms which are substantially the same as those set out in this Agreement.

## 2.3 **Hosted Solution. If Licensee purchased the Hosted Solution, the following additional terms and conditions shall apply:**

(a) Upon the prior written request of Licensee, Panopto shall grant the Licensee access to the Licensed Products, for a period of thirty (30) days after termination of this Agreement, solely to allow Licensee to download all Licensee Content from the Licensed Products. Other than the foregoing, Panopto shall have no obligation to make the Licensee Content

available to Licensee at any time following the Term of this Agreement, or to make the Licensee Content available, or for use with or in, in any third party service provider or in any format other than as it is maintained in the Licensed Products. Licensee acknowledges and agrees that following the Term of this Agreement, all Licensee Content will be removed from Panopto's servers and will no longer be available for Licensee's or Panopto's use or access. Panopto shall be permitted to use Licensee Content provided or made available from Licensee as necessary to maintain and support the Hosted Solution provided to Licensee hereunder. Licensee shall be solely responsible for maintaining copies of the Licensee Content to the extent that Licensee deems necessary.

(b) Panopto will provide the Licensed Products in accordance with the standards attached hereto as Appendix C (which may be updated from time to time, upon prior notice to Licensee, and provided further, that such updates shall not materially affect the existing service levels).

**3. Fees and Payment Terms.** The License Fees shall be due and payable thirty (30) days from the Effective Date Licensee may be subject to Overage Charges in accordance with the definition set forth in Appendix A. Overage Charges shall be paid within thirty (30) days after receipt of an invoice for such Overage Charges.

## **4. Term and Termination**

4.1 Term. The initial term of this Agreement will begin on the Effective Date and shall continue thereafter until the Expiration Date specified on the Order Form, unless earlier terminated as provided in Section 4.2 (the "**Initial Term**"). Upon Licensee's request, Panopto may, prior to the Expiration Date, agree in writing to extend the term for an additional period of time (the "**Renewal Term**" and together with the Initial Term, the "**Term**") upon the payment of additional License Fees as specified in a written renewal Order Form provided to Licensee or purchase order executed by Licensee (the "**Renewal Agreement**"). If no Renewal Agreement is reached prior to the then current Expiration Date, this Agreement will terminate as of such Expiration Date.

### 4.2 Termination.

(a) Termination Upon an Event of Default. Either party may terminate this Agreement upon written notice to the other party upon the occurrence of any of the following events (each an "**Event of Default**"): (i) a material breach of this Agreement that is not cured within thirty (30) days of receipt of notice from the non-breaching party specifying the breach (including, without limitation, a failure to pay any amount due as and when required); or (ii) the other party (A) terminates or suspends its business, (B) becomes subject to any bankruptcy or insolvency proceeding under Federal or state

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statute, (C) becomes subject to direct control by a trustee, receiver or similar authority, or (D) has wound up or liquidated, voluntarily or otherwise.

(b) Effect of Termination. Upon the expiration or termination of this Agreement: (i) the license rights granted under this Agreement with respect to all Licensed Products will immediately terminate; (ii) other than as specified in Section 2.3, Licensee and its Authorized Users will immediately cease all use of all Licensed Products; (iii) Panopto may deactivate all access codes and license keys for the Licensed Products if any were provided to Licensee prior to termination or expiration; (iv) any outstanding amounts due under the Order Form and this Agreement shall be immediately due and payable; and (v) each of Panopto and Licensee will return to the other or destroy all Confidential Information in its respective possession or control and certify the destruction of the same. Termination of this Agreement shall not affect any obligation owed by one party to the other party that have accrued prior to such termination.

4.3 Suspension of Access. Upon Panopto's reasonable belief that tortious or criminal or otherwise illegal or unauthorized activity may be associated with Licensee or Authorized User's utilization of the Licensed Product, Panopto may, without incurring any liability, temporarily suspend or discontinue providing access to the Licensed Products, or a specific Authorized User's account within the Licensed Products, pending investigation and resolution of the issue or issues involved and solely as is reasonably necessary to resolve such issue. If access to the Licensed Products is suspended or discontinued pursuant to this Section, Panopto shall provide Licensee with prompt written notice. Licensee shall not be permitted to load or vulnerability test against Panopto's production cloud environments. Panopto shall share its quarterly vulnerability test results with Licensee upon request.

## 5. Licensee Obligations

5.1 Product Feedback. Any product feedback provided by Licensee to Panopto relating to the Licensed Products shall be solely owned by Panopto, and Licensee shall have a royalty-free, non-transferable, non-sub-licensable, license to use any feedback which is incorporated into the Licensed Products during the Term.

5.2 Use of Logo. Licensee may not remove or interfere with the display of logos, including any links to Panopto web sites, which are embedded in the Licensed Products, unless such removal is authorized by Panopto in writing.

5.3 Access to Systems for the Panopto Deployed Solution. Licensee shall permit access to its systems to allow the Licensed Products to reach a Panopto-maintained URL. The sole purpose of this connection shall be to (i) transmit health information about the server to Panopto in order for Panopto to contact the Licensee if there are operational

problems, and (ii) aggregate usage data to improve the Licensed Products.

6. **Confidentiality**. Each party agrees that in the performance of this Agreement, each party may disclose (the "Disclosing Party") to the other party (the "Recipient"), or the Recipient may have access to the confidential or proprietary information owned or provided by the other party. "Confidential Information" shall include, but not be limited to, software computer programs, object code, source code, marketing plans, educational instruction, business plans, customer lists, financial information, product specifications, business practices and other data. For the avoidance of doubt, the Licensed Products and Documentation shall be Panopto's Confidential Information, and the Licensee Content shall be the Licensee's Confidential Information. During the Term and at all times after its termination (for whatever reason), the Recipient and its employees shall maintain the confidentiality of and not disclose to any third parties, all Confidential Information and not sell, license, publish, display, distribute, disclose or otherwise make available any Confidential Information to any third party nor use such information except as expressly authorized by this Agreement. The Recipient shall not have any obligations with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a Recipient; (ii) was previously known to the Recipient or rightly received by the Recipient from a third party; or (iii) is independently developed by the Recipient; or (iv) is required to be disclosed by law provided the Recipient has promptly notified the Disclosing Party of such requirement, if such disclosure is legally permissible, and is allowed the Disclosing Party a reasonable time to oppose such requirement. Notwithstanding the foregoing, in no event shall Panopto have any obligation or liability for the use or disclosure of Licensee's Confidential Information made available by Licensee to Viewers through the Licensed Products or web-access.

## 7. Warranty

7.1 Scope of Warranty. Panopto warrants to Licensee that the Licensed Products will perform in all material respects, in accordance with the Documentation, provided that Licensee properly uses the Licensed Products on hardware and with an operating system for which the Licensed Products are designed. Panopto also warrants that Support Services will be provided in a workmanlike manner.

7.2 Remedies. Panopto's entire liability, and Licensee's exclusive remedy in the event of a breach by Panopto of the foregoing warranties shall be the performance by Panopto of the Support Services as specified in Appendix B and Appendix C. The foregoing limited warranty is void if failure of the Licensed Products has resulted from (i) accident, abuse or misapplication attributable to Licensee's actions or inactions, (ii) use of the Licensed Products in violation of this Agreement, or (iii) use of the Licensed Products in combination with any other product or software not

specified in the Documentation. Licensee shall promptly provide written notice to Panopto that describes the problem with the Licensed Products (including, as applicable, the Service Ticket notifying Panopto of the problem).

7.3 Exclusivity. PANOPTO DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE LICENSED PRODUCTS WILL BE SECURE, ERROR FREE, VIRUS FREE, OR FREE FROM INTERRUPTIONS, DEFECTS, OR OTHER FAILURES OR HARMFUL COMPONENTS OR THAT THE LICENSED PRODUCTS, ANY AFFILIATED SITE AND/OR THEIR CONTENT WILL SATISFY YOUR SPECIFIC REQUIREMENTS OR BE COMPATIBLE WITH YOUR EQUIPMENT (MOBILE OR OTHERWISE) OR OTHER HARDWARE, SOFTWARE, OR BROWSER CONFIGURATION OR THAT INACCURACIES OR ERRORS WILL BE CORRECTED. THE LICENSED PRODUCTS, ITS CONTENT, AND ANY INFORMATION INCLUDED ON OR PROVIDED THROUGH THE PLATFORM ARE PRESENTED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. Disclaimer and Indemnification

8.1 Disclaimer of Damages; No Consequential Damages and Limitation of Liabilities. IN NO EVENT WILL PANOPTO BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, RELATED, IN ANY WAY, TO THIS AGREEMENT, THE LICENSED PRODUCTS, OR SUPPORT SERVICES PROVIDED HEREUNDER, OR RESULTING FROM LICENSEE'S (OR LICENSEE'S AUTHORIZED USERS OR VIEWER'S) USE OF, OR INABILITY TO USE, THE LICENSED PRODUCTS, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE, EVEN IF PANOPTO HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. PANOPTO'S MAXIMUM LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TWELVE (12) MONTH FEE ACTUALLY PAID TO PANOPTO FOR THE ORDER THAT IS THE SUBJECT OF THE CLAIM. PANOPTO SHALL HAVE NO LIABILITY FOR, AND DOES NOT REPRESENT OR ENDORSE THE ACCURACY OR RELIABILITY OF ANY OF THE LICENSEE CONTENT CONTAINED ON, DISTRIBUTED THROUGH, OR LINKED, DOWNLOADED OR ACCESSED FROM ANY OF THE LICENSED PRODUCTS, NOR THE QUALITY OF ANY LICENSEE CONTENT. FURTHER, PANOPTO SHALL HAVE NO OBLIGATION TO MONITOR LICENSEE CONTENT OR COMPLY WITH ANY PRIVACY POLICY WITH RESPECT TO LICENSEE'S (OR LICENSEE'S AUTHORIZED USERS OR VIEWER'S) USE OR DISTRIBUTION OF LICENSEE CONTENT. LICENSEE SHALL BE SOLELY RESPONSIBLE FOR THE LICENSEE CONTENT, AND LICENSEE SHALL INDEMNIFY AND HOLD PANOPTO HARMLESS FROM ANY LIABILITY WHATSOEVER CAUSED BY THE LICENSEE CONTENT. PANOPTO SHALL

HAVE NO LIABILITY WHATSOEVER FOR THIRD PARTY PRODUCTS.

8.2 Indemnification. Panopto shall defend any suit or proceeding brought against Licensee and its members, trustees, officers, directors, faculty, and employees arising out of a claim that the Licensed Products infringe any existing United States or United Kingdom copyright or patent provided (1) Licensee promptly notifies Panopto in writing of any such claim, suit or proceeding, (2) at Panopto's expense, Licensee gives Panopto the sole right to defend, settle and control the defense of the suit or proceeding, (3) Licensee provides all necessary information and reasonable assistance for such defense or settlement, and (4) Licensee takes no adverse position to Panopto in connection with such claim. In the event Panopto is obligated to defend such suit or proceeding, Panopto will pay all costs and damages finally awarded or agreed in settlement by Panopto that are directly related thereto. Upon notice of a claim of infringement, Panopto may, at its discretion: (i) replace, in whole or in part, the Licensed Products with a substantially compatible and functionally equivalent computer program; (ii) modify the Licensed Products to avoid the infringement; and / or (iii) if (i)-(ii) are not commercially practicable, terminate this Agreement, require Licensee and any Viewers to immediately cease the use of the Licensed Products, in whole or in part, and refund Licensee a pro-rata portion of the License fee paid. Notwithstanding the foregoing, Panopto shall have no liability for any claim of infringement, and Panopto's indemnification obligations shall not apply, to any claim based upon (i) modification of the Licensed Products by anyone other than Panopto, (ii) use of other than the then-current release of the Licensed Products if use of the then-current version or release would not result in the claim, (iii) use of the Licensed Products that is not in accordance with its Documentation or this Agreement, or (iv) use of the Licensed Products in combination with another product, hardware or software that has not been provided by Panopto. The remedies set forth in this Section shall be Panopto's sole obligation, and Licensee's sole remedy with respect to an infringement allegation.

9. Assignment Licensee shall not assign or otherwise transfer the Licensed Products or this Agreement to anyone, including any affiliated entities or third parties, without Panopto's prior written consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

10. Force Majeure Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of any governmental entity or any entity acting under color of law, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or

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communications; provided, however, that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes that in their judgment may or could be the cause of a delay in the performance of this Agreement.

**11. Notices** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed, where the party receiving the notice is the Licensee, to the Licensee's address or facsimile number as set forth in the Order Form or as subsequently modified by written notice, or if the party receiving the notice is Panopto, at the address or facsimile number set forth below or as subsequently modified by written notice.

## 12. General Provisions

- (a) Complete Agreement. The parties agree that this Agreement (including the Order Form and all Appendices thereto) 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, and any future terms and conditions exchanged by the parties, including those included on Licensee's purchase orders, relating to the subject matter of this Agreement.
- (b) Subcontractors. Panopto may use subcontractors to perform its obligations under this Agreement. Unless otherwise specified herein, Panopto shall be responsible for ensuring that its subcontractors comply with the terms of this Agreement.
- (c) Amendment. This Agreement may not be modified, altered or amended except by written instrument duly executed by both parties.
- (d) Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.
- (e) Severability. If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.
- (f) Identification of Licensee. Panopto shall be permitted to identify Licensee as a customer of the Licensed Products in promotional and marketing materials.
- (g) Survival. The provisions of Sections 2.1, 2.2, 3, 5, 6, 7, 8, 11 and 12 shall each survive any termination of this Agreement.
- (h) Third Parties Rights. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any

right or remedy of a third party which exists, or is available, apart from that Act.

- (i) No Partnership or Agency. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- (j) Export. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval. Each party undertakes: (i) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and (ii) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.
- (k) Choice of Law; Dispute Resolution; Waiver of Jury Trial. This Agreement is made under and shall be governed by and construed in accordance with the laws of England without reference to any provisions regarding conflicts of laws. Any legal action or proceeding arising out of or in connection with this Agreement shall be brought in the courts of London, England, and each of Panopto and Licensee hereby accepts the exclusive jurisdiction of such courts.

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## Appendix A to Panopto Software License and Services Agreement – Definitions

The following terms when used in the Order Form and the Panopto Software License and Services Agreement shall have the meanings set forth below:

1. “Authorized Support Contacts” means designated individuals affiliated with Licensee identified on the Order Form (as may be replaced from time to time as provided in the Agreement) that are authorized to seek support services from Panopto with respect to the Licensed Products.
2. “Authorized User” means an employee, agent, enrolled student, or affiliate of the Licensee for whom Licensee assumes liability for the use of the License Products.
3. “Controller” has the meaning set out in the GDPR and, for the purposes of Appendix E, means the Licensee.
4. “Data Subject” means a living individual to whom personal data relates.
5. “Documentation” means the specifications, manuals, documents, drawings, and other tangible items pertaining to the Licensed Product as from time to time made available to Licensee by Panopto through Panopto’s website.
6. “Error” means any failure of the Licensed Product to substantially conform in all material respects to its Documentation. However, any nonconformity resulting from Licensee’s misuse, improper use, alteration, or damage of the Licensed Product of Licensee’s combining or merging the Licensed Product with any hardware or software not supplied or identified as compatible by Panopto, shall not be considered an Error.
7. “GDPR” means all applicable present and future laws relating to individually identifiable personal information including, without limitation, the General Data Protection Regulation (Regulation (EU) 2016/679).
8. “Hosted Solution” means the hosted version of the Licensed Product.
9. “License Fee” means the amount identified as the Total Fee on the Order Form.
10. “Licensee Content” means the video, audio and presentation materials produced, imported or uploaded and recorded by use of the Panopto Licensed Products.
11. “Licensed Products” means the software provided by Panopto used to import, transcode, record, edit, store, transcribe, encode, index, search or view content, including the hosted version of the Panopto software and associated services described in the Order Form or quote and in the Agreement, but excluding any Third Party Products.
12. “Normal Working Hours” for customer located in Europe, Middle East, Africa and Russia means 8:00 A.M. to 8:00 P.M., Greenwich Mean Time or British Summer Time, on the days Monday through Friday, excluding regular and Panopto scheduled holidays and those days when the banking institutions in London, England are authorized to close for business.
13. “Overage Charges” means additional fees incurred by Licensee for use of the Licensed Products in excess of the amount of viewed, uploaded or recorded hours covered by previously purchased Usage Hours. Overage Charges will be billed quarterly at twice Panopto’s list price for such Usage Hours. For Licensees purchasing a plan with unlimited hosting usage, recordings that accrue more than 25,000 unauthenticated viewed hours will require the purchase of Usage Hours as defined below. Usage Hours are sold in bundles of 5,000 hours at Panopto’s list price.
14. “Panopto” means Panopto EMEA Limited, a U.K. corporation, including its successors and assigns.
15. “Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, or joint venture.
16. “Personal Data” has the same definition as the one set out in Appendix E.
17. “Privacy Laws” means all present and future laws and regulations relating to the privacy of individually identifiable medical, financial or other information including, without limitation, the Data Protection Act of 1998 or, as of May 25, 2018, GDPR.

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18. "Sensitive Personal Data" means special categories of Personal Data as set out in Article 9(1) of the GDPR consisting of racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation, personal financial data (e.g. financial account numbers), any other personal information that has unique obligations or handling requirements described in any applicable international, federal or local law.
  19. "Service Ticket" means a service call reference created by Panopto service management system.
  20. "Support Services" shall mean the services provided to Licensee as described in Appendix B to this Software License and Services Agreement".
  21. "Usage Hours" means a block of time for uploading, recording and viewing content through the Hosted Solution as specified on the Order Form or quote. If the ratio of uploaded or recorded hours to viewed hours over the course of one (1) year exceeds five to one (5:1), Panopto reserves the right to switch Licensee from a hosted to an on-premises deployment.
  22. "Viewer" means any member of the public, any affiliate or other end-user that views Licensee Content whether through a Licensed Product or via web-access.

**Appendix B to Software License and Services Agreement – Support Services**

**1. Support Services. Panopto, directly or through a third party, will provide the following Support Services to Licensee:**

- a. Online Documentation for Licensed Products, How-to and other training related videos, and access to Support discussion boards and standard online training sessions.
- b. Customized training depending on support package purchased.
- c. Corrections of Errors in the Licensed Products
- d. Periodic updates of the Licensed Product that may incorporate: (i) corrections of any Errors; (ii) fixes of any minor bugs, and; (iii) at the sole discretion of Panopto, enhancements to the Licensed Products.
- e. Telephone and email support to assist Authorized Support Contact(s) in using the Licensed Product during Normal Working Hours<sup>1</sup>. Telephone and help desk support services shall include access only for the Authorized Support Contacts designated by Licensee, who may contact Panopto personnel in connection with the use and administration of, and identification and resolution of problems related to the Licensed Products.

**2. Support Services in General. Panopto shall provide the Support Services according to the time frames established below:**

<b>PRIORITY CODE</b>	<b>PRIORITY DESCRIPTION</b>	<b>SERVICE TICKET GENERATION</b>	<b>RESPONSE TIMES</b>	<b>RESOLUTION TIMES</b>
P1 (High)	<b>Mission Critical.</b> Licensed Products, access to the Licensee Content is unavailable, causing critical impact to business operations; no workaround available. <sup>2</sup>	Within thirty (30) minutes of Error notification during Normal Working Hours.	Within four (4) hours of Service Ticket generation during Normal Working Hours.	Panopto shall use commercially reasonable efforts to resolve the Error within 24 hours of response time.
P2 (Medium)	<b>High:</b> The Licensed Product is available but aspects of access to the Licensee Content are unavailable and so impacting significant aspects of business operations and there is no reasonable workaround.	Within thirty (30) minutes of Error notification during Normal Working Hours.	Within eight (8) hours of Service Ticket generation during Normal Working Hours.	Panopto shall use commercially reasonable efforts to resolve the Error within 48 hours of response time.
P3 (Low)	<b>General Support:</b> Any Error that is not a P1 or P2.	Within thirty (30) minutes of Error notification during Normal Working Hours.	Within sixteen (16) hours of Service Ticket generation during Normal Working Hours.	Panopto shall use commercially reasonable efforts to resolve the Error upon the release of the next version of the Licensed Product, or the next regularly scheduled Licensed Product update.

<sup>1</sup> Normal Working Hours restrictions shall not apply to Licensees who have purchased 24x7 “On-Call-Support.” For all other Licensees, problems reported outside Normal Working Hours shall be queued for the next business day.

<sup>2</sup> Mission Critical shall mean any of the following: Licensee’s Panopto site is unavailable; multiple Authorized Users cannot log in on Licensee’s Panopto site; or Licensee’ Content is not streaming, processing or delivering (site wide).



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In the event that Licensee has purchased the 24x7 “On-Call Support” (Emerald Package) (as set forth in the Order Form or quote), Licensee agrees that such support services are provided as a pass-through pursuant to a contract between Panopto and a third party service provider. Panopto works with such service provider to ensure that support service is provided in a professional and workmanlike manner, but does not assume any liability to Licensee for such service. 24x7 support is available to all Authorized Users but will only be able to address questions typical of a user (not a system administrator, i.e. “P 1 and P2” level questions). In the event that the question or issue cannot be resolved with the on-call support staff, then such question or issue will be escalated to Panopto and Panopto shall resolve such issue in accordance with this Appendix. Panopto shall not be responsible for any Error in Licensed Products that have been modified or adapted by Licensee, or Errors that have arisen by reason of the Licensee’s errors or negligence.

**3. On-premise Deployments.** For on-premise deployments, please note that the Licensed Products are licensed to support a single production, development and test server environment.

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**Appendix C to Software License and Services Agreement – Hosted Solution: Hosting Services**

**3. Panopto Obligations for Purchasers of the Hosted Solution: Hosting Services.** For purchasers of the Hosted Solution, Panopto will, for the Term, offer hosting services to Licensee. Panopto will use reasonable efforts to make the Hosted Solution available 7 days a week, 24 hours a day. The Hosted Solution shall have an Availability Percentage of 99.9% of during any calendar month (the “**Uptime Commitment**”). “**Availability Percentage**” means the percentage of the total time during any given calendar month that the Hosted Solution is not Unavailable. “**Unavailable**” means that the Hosted Solution is not available to users via the Internet, as measured and reported by an independent third party retained by Panopto for such purpose, and are not otherwise subject to an Exclusion, as set forth below.

$$\text{Availability Percentage} = 100 \cdot \left(1 - \frac{(\text{DH} - \text{EX})}{\text{TH}}\right)$$

DH = Total of all Unavailability measured in hours.  
EX = Total of all downtime due to Exclusions measured in hours (as defined below).  
TH = Total hours in each calendar month.

Calculations of the Availability Percentage shall exclude unavailability of the Hosted Solution caused by any of the following (each, an “**Exclusion**”):

- (a) **Scheduled Downtime.** Scheduled Downtime” means a maintenance period outside of the daily maintenance window that is scheduled by Panopto with five (5) business days advance notice to Licensee for general maintenance operations, enhancements, upgrades or modifications to the Hosted Solution. Panopto shall ensure any Scheduled Downtime does not exceed three (3) hours in a given month. Panopto shall use reasonable efforts to notify Licensee 21 calendar days prior to any Scheduled Downtime and schedule maintenance between the hours of 12:00pm and 8:00pm Pacific Time on Saturdays;
- (b) Momentary interruptions or outages of less than 1 minute in duration;
- (c) Failures or interruptions in the Internet, utilities, communications, satellite or network services that are outside the control of Panopto or its service providers; or
- (d) Unplanned emergency maintenance downtime. Panopto reserves the right to perform emergency maintenance that may cause downtime at any time without notification.

**4. On-premise Deployments.** For on-premise deployments, please note that the Licensed Products are licensed to support a single production, development and test server environment.

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#### Appendix D to Software License and Services Agreement – Captioning Terms (If Applicable)

If Licensee is purchasing or licensing captioning services (the “Caption Services”) the following terms shall apply:

a. *Services.* The Caption Services shall be provided only in English, from recordings of English media. Licensee agrees that the Caption Services shall only be used by Licensee as permitted by the Agreement, and any law, regulation or guideline in any applicable jurisdiction.

b. *Purchasing of Minutes.* Licensee may purchase blocks of minutes to be used by Licensee’s Authorized Users for the Caption Services. In the event that the Licensee’s block of minutes is less than the price for the Caption Services that an Authorized User is ordering, then Licensee shall be notified that there are not sufficient minutes purchased, and the order will not be accepted by Panopto until such time as sufficient minutes are purchased by Licensee. Licensee agrees that blocks of minutes purchased by Licensee shall expire upon the earlier of (i) termination or expiration of the Agreement, or (ii) one (1) year after purchase by Licensee.

c. *Pricing.* The turnaround times and price per minute are provided to the Licensee and the Authorized User through the Licensed Products, and pricing for the Caption Services shall be the then-current pricing as of the date that Licensee or its Authorized Users order the Caption Services. The turnaround times and associated pricing may be changed, from time to time, by Panopto with five (5) days prior written notice.

d. *Use of Licensee Content.* Licensee consents to allow Panopto or a third party subcontractor of Panopto, to process, access, view, or edit the Licensee Content in order to create text captions of the Licensee Content, and otherwise perform the Caption Services, when requested by Licensee. Any third party subcontractor of Panopto performing Caption Services hereunder shall maintain the confidentiality of the Licensee Content, and shall be bound by confidentiality obligations at least as strict as those set forth in the Agreement.

e. *Warranty Disclaimer.* PANOPTO DOES NOT WARRANT THAT ITS CAPTIONING AND/OR CAPTION SYNCHRONIZATION OF LICENSEE’S AUDIO AND VIDEO RECORDINGS WILL BE FREE FROM ERRORS OR COMPLETELY ACCURATE. Captioned materials may contain unavoidable inaccuracies due to poor audio quality or unusual slang, regional dialects, or obscure names contained within Licensee’s audio and video recordings. Captions may not be synchronized properly due to several reasons, including, but not limited to, background noise or music. PANOPTO’S ENTIRE LIABILITY, AND LICENSEE’S EXCLUSIVE REMEDY IN THE EVENT OF AN INACCURACY OR ERROR IN THE CAPTIONED RECORDINGS OR OTHERWISE UNDER THIS CAPTIONING AGREEMENT, SHALL BE, AT PANOPTO’S OPTION, EITHER: (I) RETURN OF THE PRICE PAID WITH RESPECT TO THE SPECIFIC RECORDING THAT IS INACCURATE OR CONTAINS AN ERROR, OR (II) RE-PERFORMANCE THE CAPTIONING CAPTION SERVICES.

f. *Licensee Representations and Warranties.* Licensee represents and warrants that it shall not and shall not allow any Authorized Users to use the Caption Services to: (a) submit material that is protected by copyright, patent or any other proprietary rights unless Licensee is the owner of such material or have a license or permission from the owner of any such proprietary rights to provide the materials; or (b) upload, post, email, transmit or otherwise make available any Licensee Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful or racially, ethnically or otherwise objectionable. Licensee agrees that it shall indemnify, defend and hold harmless Panopto, its Affiliates, officers, directors, employees and shareholders from and against any losses of any kind whatsoever that result from breach of this Section by Licensee or its Authorized Users.

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**Appendix E to Software License and Services Agreement – Data Processing Addendum**

DATA PROCESSING ADDENDUM

This DATA PROCESSING ADDENDUM (this “Addendum”) is made as of \_\_\_\_\_, 2018 (“Effective Date”) between [CUSTOMER NAME] (“Controller”) and **Panopto EMEA Limited** (“Processor”). Controller and Processor may each be referred to as a “Party” and collectively as the “Parties.”

WHEREAS, Controller and Processor have agreed to terms and conditions for Processor’s provision of software that provides recording, screencasting, video streaming, and video content management (the “Service Contract”).

WHEREAS, the Parties wish to enter into this Addendum to the Service Contract to include provisions specific to the General Data Protection Regulation (GDPR). The GDPR is a European Union Regulation that governs, in part, the collection and handling of the Personal Data that Processor may Process by virtue of its obligations and services provided set forth in the Service Contract.

NOW, THEREFORE, the Parties have created this Addendum, and in light of the foregoing premises, the Parties agree as follows:

1. Definitions. The following terms are defined by the GDPR.

Affiliate	Any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
General Data Protection Regulation (GDPR)	The EU General Data Protection Regulation (GDPR) replaces the Data Protection Directive 95/46/EC and was designed to harmonize data privacy laws across Europe, to protect and empower all EU citizens’ data privacy and to reshape the way organizations across the region approach data privacy. The GDPR become enforceable on May 25, 2018.
Personal Data:	Any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
Processing	Any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (and "Process", "Processed" and any such variations thereof shall have the same meaning).
Sensitive Personal Data	Any special categories of Personal Data as set out in Article 9(1) of the GDPR consisting of racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation, personal financial data (e.g. financial account numbers), any other personal information that has unique obligations or handling requirements described in any applicable international, federal or local.

2. Compliance with the GDPR. This Addendum demonstrates Processor’s provision of sufficient guarantees that it will implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of the GDPR and will ensure the protection of the rights of all applicable Data Subjects. Processor further

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represents that it will provide Controller with all information necessary to demonstrate compliance with the GDPR, and that it will not use Personal Data for any purpose not enumerated in this Addendum or in the underlying Service Contract or scope(s) of work.

3. **Subject and Term.** The purpose of this Addendum is to identify the GDPR obligations applicable to Processor, in the context of the scope of work detailed in the Service Contract. This Addendum shall be deemed to take effect from the Effective Date, shall continue in full force and effect until the termination of the Service Contract and amends the Service Contract as to relevant data protection laws and regulations including but not limited to the Data Protection Directive 95/46/EC and the GDPR to the extent the Services Contract referenced any such prior laws or regulations.
4. **Scope of the Work.** The Scope of Work is stated in the Service Contract and all operative amendments, order forms and other agreements there, and is incorporated by reference as though fully stated herein.
5. **Duration of the Processing.** The duration of the Processing will expire upon the termination of the Service Contract, or as soon thereafter as is reasonably possible. In no case shall Processor retain Personal Data any longer than is necessary to accomplish the purposes of its Processing.
6. **Nature and Purpose of Processing.** The purpose for the collection, Processing and use of the Personal Data by Processor is to provide the services as described in the Service Contract, which generally speaking is providing software that provides recording, screencasting, video streaming, and video content management.
7. **Types of Data Processed.** The Parties agree that the following data categories will be collected, processed and used by Processor under this Addendum and per the terms of the Service Contract:
  - **Name**
  - **Email address**
  - **Any Personal Data contained in files Controller uploads to Processor's cloud-based application as permitted by the Service Contract excluding any Sensitive Personal Data.**
8. **Categories of Data Subjects.** Controller has defined the following Data Subject categories from who the Personal Data as defined above will be collected, Processed and used by Processor:
  - **Controller users who access Processor's services.**
9. **Controller's Rights and Obligations.** Controller is entitled to appoint a qualified third party independent auditor to inspect Processor's compliance with this Addendum, the underlying Service Contract, and applicable data protection requirements. Controller's right to audit shall be subject to giving Processor at least (4) weeks prior written notice of any such audit. Processor shall deal promptly and properly with all inquiries from Controller relating to its Processing of the Personal Data subject to this Addendum and the underlying Service Contract.
10. **Confidentiality and Information Security.** Processor agrees and warrants that the security measures it implements ensure a level of security appropriate to the risks presented by the Processing and the nature of the Personal Data to be protected, having regard to the state of the art and the cost of their implementation. Processor ensures in particular that it has implemented appropriate measures to:
  - a. Prevent unauthorized persons from gaining access to data processing systems with which Personal Data are Processed or used;
  - b. Protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the Processing involves the transmission of data over a network;
  - c. Prevent data processing systems from being used without authorization;
  - d. Ensure that persons entitled to use a data processing system have access only to the Personal Data to which they have a right of access, and that Personal Data cannot be read, copied, modified or removed without authorization during Processing or use and after storage;
  - e. Ensure that Personal Data cannot be read, copied, modified or removed without authorization during electronic

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transmission or transport;

- f. Ensure that it is possible to check and establish whether and by whom Personal Data has been input into data processing systems, modified or removed;
- g. Ensure that the Personal Data is Processed strictly in accordance with the instructions of the Controller; and
- h. Ensure the availability of data processing services.

Significant changes of the above technical and organisational measures by the Processor shall be agreed by the Parties in writing prior to any Processing taking place.

Furthermore, any information of whatever kind (whether technical, commercial, financial, operational or otherwise) and in whatever form (whether oral, written, recorded or otherwise), including Personal Data, (collectively, Confidential Information) which may be disclosed in any form or matter by one Party to the other Party, with respect to, or as a result of this Addendum or underlying Service Contract, shall be deemed to be of a confidential nature. Data relating to Controller's customers database, procedures and knowledge shall be considered private and confidential information.

11. Processor's Obligations. Under this Addendum, Processor has the obligation to:

- a) Process the Personal Data only on behalf of Controller and in strict compliance with its instructions, including with regard to transfers of Personal Data to a third country or an international organization;
- b) Ensure that only appropriately trained personnel shall have access to the Personal Data;
- c) Ensure that persons authorized to Process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality
- d) Provide Controller with such cooperation (including access to its facilities) as Controller may reasonably request;
- e) Provide Controller with sufficient guarantees that it will implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of the GDPR;
- f) Ensure the protection of the rights of the Data Subject;
- g) Assist Controller in ensuring compliance with the obligations pursuant to GPDR Articles 32 to 36 taking into account the nature of Processing and the information available to Processor;
- h) Promptly notify Controller of any legally binding request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
- i) Promptly notify Controller of any accidental or unauthorized access, or other event that constitutes a Personal Data breach, as detailed below in section 12;
- j) Promptly notify Controller of any request received directly from the Data Subjects without responding to that request, unless it has been otherwise authorized to do so, and implement measures to assist the controller in complying with the rights of Data Subjects;
- k) Implement such reasonable technical and organizational measures to protect the Data Subject as required by the GDPR;
- l) Support Controller regarding Controller's obligations to provide information about the collection, Processing or usage of Personal Data to a Data Subject;
- m) Support Controller in obtaining approvals from Data Protection Authorities, where required and appropriate;
- n) Immediately inform Controller if it believes that Controller's instructions conflict with the requirements of the GDPR or any other applicable law; and
- o) Ensure that the Personal Data is not in any way used, manipulated, distributed, copied or Processed for any other purpose than for the fulfilment of the contractual obligations as explicitly agreed upon and arising from this Addendum and its underlying Service Contract.

12. Breach Management and Notification. Processor shall maintain breach management policies and procedures that apply to the data it Processes on behalf of Controller. Processor shall, notify Controller without undue delay after becoming

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aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise Processed by Processor or its Sub-processors of which Processor becomes aware. Processor shall make reasonable efforts to identify the cause of such customer data incident and will provide Controller with all breach-related information that Controller needs to demonstrate compliance with its GDPR requirements.

13. Sub-Processing. Processor shall not subcontract its obligations under this Addendum or under the Service Contract to a sub-processor without the prior written consent of Controller. Processor shall inform Controller of its intention to engage a sub-processor and Controller shall have the right to consent to the appointment of a new sub-processor, which consent shall not be unreasonably withheld, conditioned or delayed. If Controller agrees to the appointment of sub-processors, those sub-processors must be appointed on the substantially similar terms as are set out in this Addendum with respect to the protection of Customer Data to the extent applicable to the nature of the services provided by such sub-processor. Controller hereby approves the appointment of the following third-party sub-processors: Amazon Web Services (to the extent that the Controller has purchased a cloud hosted solution) as its web hosting provider (and All Lines Technology in the U.S. to the extent the Controller has purchased the Emerald support package) by Processor as a sub-processor. Controller acknowledges and agrees that Affiliates of Panopto EMEA Limited will be retained as sub-processors. Except as otherwise set forth in the Services Contract, Processor shall be liable for the act and omission of its sub-processors to the same extent Processor would be liable if performing the services of each sub-processor directly under this Addendum. Processor may, by giving no less than thirty (30) days' notice to Controller, as or make changes to the list of sub-processors. Controller may object to the appointment of an additional sub-processor within fourteen (14) days of such notice on reasonable grounds relating to the protection of Personal Data, in which case Processor shall have the right to cure the objection through one of the following options (to be selected at Processor's sole discretion): (a) Processor will cancel its plans to use such sub-processor with regard to Personal Data or will offer an alternative to provide its services without such sub-processor; (b) Processor will take the corrective steps requested by Controller in its objections (which remove Controller's objection) and proceed to use the sub-processor with regard to the Personal Data; or (c) Processor may cease to provide or Controller may agree not to use (temporarily or permanently) the particular aspect of the services that would involve the use of such sub-processor with regard to Personal Data, subject to a mutual agreement of the parties to adjust the remuneration for the services provided considering the reduced scope of the services to the extent possible. If note on the above options are reasonably available and the objection has not been resolved to the mutual satisfaction of the parties within 30 days after Processor's receipt of Controller's objection, either party may terminate the Agreement and Controller will be entitled to a pro-rata refund for the prepaid fees for the services not performed as of the date of termination. Notwithstanding the foregoing, Processor may replace a sub-processor if the need for the change is urgent and necessary to provide the Processor's services and the reason for the change is beyond the Processors control in which case Processor shall notify Controller of such replacement as soon as reasonably practicable and Controller shall retain the right to object to the replacement sub-processor as set forth above.
14. Cross-Border Data Transfers. As a general rule, any onward cross-border transfer of data by Processor is prohibited absent an applicable exception. One such exception is met through the use of Standard Contractual Clauses, which are attached hereto as Addendum 1. These Standard Contractual Clauses shall become effective upon the full execution by the Parties of this Addendum. Controller hereby acknowledges that Processor shares Personal Data with its Affiliates outside the European Economic Area and that such transfer of data may only be permitted subject to the terms of the Standard Contractual Clauses between such Affiliates.
15. Return of Personal Data. At Controller's choice, Processor shall delete or return all Personal Data to Controller within thirty (30) days after the expiration of the Service Contract, and will delete any and all existing copies of Personal Data it maintains (unless Member State law requires storage of the Personal Data) upon the direction of Controller; provided, however Controller shall be responsible for existing copies of Personal Data contained in files Controller and its users upload to Processor's cloud-based application as permitted by the Services Contract.
16. Suspension of Operations. If Processor cannot engage in Processing that complies with this Addendum, the underlying Service Contract, and/or applicable laws, or foresees that it cannot comply with its contractual and legal obligations, for whatever reasons, it agrees to promptly inform Controller of its inability to comply, in which case Controller is entitled to

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suspend data Processing operations governed by this Addendum and the underlying Service Contract and to withhold payment to Processor for the same.

17. Processor's Liability. Processor shall be liable for the damage caused by any of its processing activities that do not comply with its obligations under the GDPR, and for damages caused by harms resulting from Processor's failure to comply with the lawful instructions of Controller subject to the applicable limitations of liability clauses set forth in the Services Contract to the extent permitted by applicable law.
18. Indemnification. Processor shall indemnify Controller for claims of any third party that arises as a result of Processor's non-compliance with its obligations under this Addendum and the applicable local laws and legislation of the countries where the Personal Data is Processed and regulations regarding data protection and privacy except as otherwise agreed to by the Parties in the Services Contract to the extent permitted by applicable law.
19. Counterparts. This Addendum shall become binding when any one or more counterparts hereof, individually or taken together, bears the signatures of both Parties. This Addendum may be executed by facsimile or exchange of PDF copies, and in two or more counterparts, each of which will be deemed an original document, and all of which, together with this writing, will be deemed one instrument.



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**ADDENDUM 1: STANDARD CONTRACTUAL CLAUSES**

*[These Clauses are subject to amendment from time to time, to the extent that they relate to a Restricted Transfer which is subject to the Data Protection Laws of a given country or territory, to reflect (to the extent possible without material uncertainty as to the result) any change (including any replacement) made in accordance with those Data Protection Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR (in the case of the Data Protection Laws of the European Union or a Member State); or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by another competent authority under another Data Protection Law<sup>3</sup> (otherwise).]*

**Standard Contractual Clauses (Processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Name of the data exporting organisation:

\_\_\_\_\_ (Name of Controller)

Address:

Tel.: \_\_\_\_\_; fax: \_\_\_\_\_; e-mail: \_\_\_\_\_

Other information needed to identify the organisation

.....  
(the data exporter)

And

Name of the data importing organization:

Panopto, Inc.

Address: 1TL506 2nd Avenue, #1600, Seattle, WA, 98104 USA

Tel.: +1 (855) 72606786; fax: +1 (412) 208-0811; e-mail: support@panopto.com

Other information needed to identify the organisation: A corporation with its registered office in Wilmington, Delaware (File Number 4296017)

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.....  
(the data importer)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

### Background

The data exporter has entered into a data processing addendum (“DPA”) with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer’s execution of, and compliance with, the terms of these Clauses.

### *Clause 1*

#### ***Definitions***

For the purposes of the Clauses:

- (a) “personal data,” “special categories of data,” “process/processing,” “controller,” “processor,” “data subject,” and “supervisory authority” shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; [If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words “except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of “personal data” is expanded to include those data” are added.]
- (b) The “data exporter” means the controller who transfers the personal data;
- (c) The “data importer” means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC; [*If these Clauses are not governed by the law of a Member State, the words “and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC” are deleted.*]
- (d) The “subprocessor” means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

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- (e) The “applicable data protection law” means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
  - (f) “Technical and organisational security measures” means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### *Clause 2*

##### ***Details of the transfer***

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

#### *Clause 3*

##### ***Third-party beneficiary clause***

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### *Clause 4*

##### ***Obligations of the data exporter***

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

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- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
  - (c) that the data importer will provide sufficient guarantees in respect to technical and organisational security measures;
  - (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
  - (e) that it will ensure compliance with the security measures;
  - (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
  - (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
  - (h) to make available to the data subjects upon request a copy of the Clauses and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
  - (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
  - (j) that it will ensure compliance with Clause 4(a) to (i).

#### *Clause 5*

#### ***Obligations of the data importer***

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented appropriate technical and organisational security measures before processing the personal data transferred;

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- (d) that it will promptly notify the data exporter about:
    - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
    - (ii) any accidental or unauthorised access, and
    - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
  - (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
  - (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
  - (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information;
  - (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
  - (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
  - (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

#### *Clause 6*

#### ***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity

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has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

*Clause 7*

***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9*

***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

*Clause 10*

***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

*Clause 11*

***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where

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the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

#### *Clause 12*

##### ***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

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**On behalf of the data exporter:**

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

**On behalf of the data importer:**

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....



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## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

### **Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

Data Exporter is (i) the legal entity that has executed the Standard Contractual Clauses as a Data Exporter and (ii) all affiliates

### **Data importer**

The data importer is (please specify briefly your activities relevant to the transfer):

Panopto, Inc a video content management services provider

### **Data subjects**

The personal data transferred concern the following categories of data subjects:

Employees and other users of the controller

### **Categories of data**

The personal data transferred concern the following categories of data:

Name, email and video content

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data:

None.

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities:

1. Support Services
2. Data analysis
3. Customer Support
4. Remote software delivery
5. Customer data analysis
6. Business and R&D analytics

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DATA EXPORTER

Name:.....

Authorised Signature .....

DATA IMPORTER

Name: Panopto, Inc

Authorised Signature .....