

Appendix F to DIR Contract No. DIR-SDD-2099

SERVICE AGREEMENT

THIS AGREEMENT is entered into as of _____ between Periscope Holdings, Inc., a corporation formed under the laws of the State of Delaware, with its principal offices at 211 East 7th Street Avenue, Suite 1100, Austin, Texas 78701 ("Periscope") and _____ ("Customer"), with its principal place of business at _____.

WHEREAS, Customer desires to procure certain services from Periscope from time to time; and

WHEREAS, Periscope desires to provide such services to Customer on the terms set forth below;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Periscope and Customer agree as follows:

1. Services.

1.1 Periscope shall perform for Customer the Services specified in one or more Appendices or Exhibits to this Agreement, each of which will be attached hereto and made a part hereof. Each engagement by Periscope to provide Services to the Customer will be described in a Statement of Work agreed upon by the Customer and Periscope and shall contain any assumptions related to the Services. In the event of a conflict between any term of this Agreement and a Statement of Work, the terms of the Statement of Work shall prevail.

2. Customer Responsibilities.

2.1 In connection with Periscope's provision of the Services, Customer shall perform those tasks and assume those responsibilities specified in the relevant Software Maintenance Agreement and Statement of Work ("Customer Responsibilities"). Customer understands that Periscope's performance is dependent on Customer's timely performance of Customer Responsibilities hereunder and timely decisions and approvals by Customer. If Periscope's performance is adversely affected or delayed by Customer's failure to timely perform Customer Responsibilities, Periscope will promptly notify Customer in writing thereof. Periscope shall be entitled to rely on all decisions and approvals of the Customer in connection with the Services which are made in a writing signed by Customer's designated representative; changes in decisions and approvals are subject to Section 3.

3. Changes in Scope.

3.1 A change to or within the scope of the Services as described herein or to a condition agreed to in this Agreement shall be considered a scope change ("Scope Change") for purposes of this Agreement. A Scope Change may occur as a result of, but not limited to, the following: (i) any Customer act or omission which causes a material delay; (ii) any material changes to the business plan or direction; (iii) during implementation, any material change to the company's stated direction; Scope Changes shall be made only in a writing executed by authorized representatives of both parties. Periscope shall have no obligation to commence work in connection with a Scope

Change until the parties mutually agree as to the change in Periscope's charges resulting from a particular Scope Change, a change in schedule and/or other terms and conditions of this Agreement; provided, however, that Periscope shall provide Customer with written notice prior to commencing work in connection with any Scope Change.

- 3.2 If a Scope Change will result in an increase in Periscope's charges, then Periscope shall provide Customer with a target estimate of the charges for performance of such additional work that is required by the Scope Change (the "Additional Services"). The estimate shall include charges for Periscope's fees at the rates set forth in the relevant Statement of Work and for the anticipated reimbursable expenses associated with such Additional Services. Customer shall accept or reject in writing Periscope's estimate for the Additional Services. If authorized by Customer, Periscope shall perform the Additional Services and invoice Customer for the actual fees and Reimbursable Expenses incurred in connection with the Additional Services. Periscope shall also advise Customer if a Scope Change will adversely affect quality and timeliness of the Services to be performed by Periscope and will estimate the extent of impact to the Services caused by the Scope Change together with the corresponding fee estimate.
- 3.3 Each party shall notify the other party in writing as soon as possible after determining that some act or omission by Customer may cause a delay in the project that could result in a charge for a Scope Change. If such notice is from Periscope, the notice shall describe the problem anticipated to cause a delay and propose how Customer may conform to the project schedule, if possible.
- 3.4 Periscope's ability to provide the Services in accordance with the requirements of this Agreement regarding quality, timeliness and cost, is conditioned upon: (i) no material Scope Changes to the Services from the relevant Statement of Work; (ii) the completeness, truth and accuracy of all information provided by Customer to Periscope in connection with the Services; (iii) Customer's satisfactory and timely performance of its obligations under this Agreement, including, without limitation, the performance by Customer team members of their assigned tasks in a professional and workmanlike manner; (iv) Customer's satisfaction of such other conditions to which Services agreed to be performed hereunder are subject; and (v) the validity of the assumptions upon which the scope of the Services agreed to be performed hereunder are based. Periscope will promptly notify Customer in writing if any of the conditions set forth above have occurred and estimate the extent to which the quality, timeliness and cost of the Services will be adversely impacted as a result thereof.

4. Payment for Services and Expenses.

- 4.1 Customer shall pay Periscope for the Services as defined in the applicable Statement of Work.
- 4.2 Except as the parties provide otherwise in the applicable Statement of Work, Customer will compensate Periscope for its services under this Agreement in accordance with rates set forth in Appendix C of DIR Contract No. DIR-SDD-2099. Periscope will submit its invoices as outlined in the Statement of Work covering the time period specified, or upon completion of the project, whichever comes first.
- 4.3 Payments shall be in accordance with Section 6.C. of Appendix A of the DIR Contract No. DIR-SDD-2099. Invoices shall provide reasonable detail concerning the services performed, identify time spent by each assigned Periscope employee, and the percentage of project completion. Periscope shall provide Customer with a schedule identifying the hourly rates for Periscope personnel performing Services hereunder, updating such schedule on a regular basis.

4.4 Except as the parties provide otherwise in the applicable Statement of Work, Periscope shall be reimbursed by Customer for all reasonable expenses incurred by Periscope in the performance of the Services, including, travel and lodging expenses in accordance with the terms of DIR Contract No. DIR-SDD-2099. All travel expenses must be approved in writing by Customer prior to services being performed. Periscope shall promptly furnish receipts and other evidence of such reimbursable expenses.

5. Work Product.

5.1 Subject to Periscope's right to retain copies of its work papers as specified in Section 7, upon final payment for the Services performed pursuant to the applicable Statement of Work, all original written materials originated and prepared for Customer by Periscope pursuant to this Agreement ("Owned Materials") shall belong exclusively to Customer. The foregoing notwithstanding, except upon Customer termination of this Agreement for cause, Customer agrees that it will not transfer or allow access to or use of the Owned Materials by any other parties than by the Customer without consent of Periscope. Other Intellectual Property matters are governed by Section 8 of the DIR Contract No. DIR-SDD-2099.

5.2 Except as set forth in Sections 6 and 7, Periscope and Customer shall be free to use its general knowledge, skills and experience and any ideas, concepts, know-how, and techniques related to the scope of and used in the course of providing the Services.

6. Proprietary Materials.

6.1 In the course of performance hereunder, Periscope may use (and may authorize Customer personnel to use in the performance of Customer Responsibilities) proprietary materials, tools and methodologies known as "Solution Construction Aids" ("SCAs"), which will be identified by Periscope. SCAs are Periscope Confidential Information for purposes of Section 7. If Periscope authorizes the Customer to retain any SCA, Customer may use such SCAs only for internal business purposes and may not use them for the benefit of others.

7. Confidential Information.

During the course of the Services for Customer, each party may be given access to information that relates to the other's past, present, and future research, development, business activities, products, services, and technical knowledge ("Confidential Information"). In connection therewith, the following subsections shall apply, to the extent authorized by the Texas Public Information Act:

7.1 The Confidential Information of the other party may be used by the receiver only in connection with the Services or as may otherwise be provided herein;

7.2 Each party agrees to protect the confidentiality of the Confidential Information of the other. Access to the Confidential Information shall be restricted to those of Periscope's and Customer's personnel engaged in a use permitted hereby;

7.3 The Confidential Information may not be copied or reproduced without the discloser's prior written consent;

7.4 All Confidential Information made available hereunder, including copies thereof, shall be returned or, to the extent consistent with records retention laws and policies, destroyed upon the first to occur of (a) completion of the Services or (b) request by the discloser. Periscope may retain, however, subject to the terms of this Section, an archival copy of the Confidential Information required for compliance with its quality assurance requirements;

7.5 Nothing in this Agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it without obligation of confidence, (ii) independently developed by it, (iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, (iv) which is or becomes publicly available through no breach of this Agreement; and (v) which is required to be disclosed pursuant to the Texas Public Information Act; and

7.6 In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other party, it shall provide prompt notice to the other of such receipt. The party receiving the subpoena shall thereafter be entitled to comply with such subpoena or other process to that extent required by law.

8. Warranty.

8.1 Periscope warrants that its Services will be performed in a professional and workmanlike manner in accordance with applicable professional standards and shall reperform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 EXCEPT AS THE PARTIES MAY EXPRESSLY PROVIDE IN ANY STATEMENT OF WORK HERETO, THE PRECEDING IS PERISCOPE'S ONLY WARRANTY CONCERNING THE SERVICES AND ANY WORK PRODUCT, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.

9. Personnel.

9.1 Each party agrees to assign a project manager who shall be that party's representative and upon whose decisions and written orders each party may rely as binding.

9.2 Customer may request in writing replacement of an employee of Periscope's assigned to perform Services under this Agreement if the requesting party believes that such employee's performance has been deficient, stating in the notice the basis for such request. Periscope shall have an opportunity to correct such deficiencies. If Periscope cannot correct such deficiencies within a reasonable period of time, Periscope shall replace the identified individual.

9.3 To the extent permissible under applicable state law, neither party shall solicit or hire any of the other's employees who are assigned to the project during the term of this Agreement and for a period of six (6) months following expiration or termination of this Agreement without prior written notice to the other party.

10. Independent Contractor.

10.1 In the performance of Services, Periscope and its employees shall act solely as an independent contractor and nothing herein shall at any time be construed to create the relationship of employer and employee, as between Customer and Periscope or Customer and Periscope's employees. Periscope and its employees shall have no right or authority, and shall not attempt, to enter into any contract, commitment, or agreement, or incur any debt or liability, of any nature, in the name of or on behalf of Customer, its subsidiaries, or affiliates.

10.2 Periscope's employees shall not be entitled to any of the customary employee fringe benefits provided by Customer to its employees, including but not limited to employee pension and welfare benefit plans.

11. Limitation on Liability.

11.1 The limit of Periscope's liability (whether in contract, tort, negligence, strict liability in tort or by statute or otherwise) to Customer or to any third party concerning performance or non-performance by Periscope, or in any manner related to this Agreement, for any and all claims shall not in the aggregate exceed the fees and expenses paid by Customer to Periscope hereunder with respect to the Exhibits or Statement of Work involved. Customer's exclusive remedy for any claim arising out of these arrangements shall be for Periscope, upon receipt of written notice, to use its best efforts to cure the breach at its expense within a reasonable period of time, and failing that, payment in the amount of the lesser of the (i) fees paid to Periscope with respect to the Statement of Work involved, or (ii) actual damages caused by such uncured breach by Periscope.

11.2 In no event shall either party be liable for consequential, incidental or punitive loss, damage or expenses (including lost profits or savings) even if it has been advised of their possible existence. Any action by either party must be brought within two years after the cause of action arose.

11.3 No proceeding, regardless of form, arising out of this Agreement may be brought by either party more than four (4) year after the existence of the cause of action has become known to the party injured; except that (i) proceedings related to violation of any duty to protect Confidential Information may be brought at any time and (ii) proceedings for nonpayment must be brought within two (2) years from the date the last payment was due.

12. Termination.

12.1 Termination shall be in accordance with Section 9.B. of Appendix A of the DIR Contract No. DIR-SDD-2099.

13. Taxes.

13.1 As per Section 4.F. of the DIR Contract and as per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

14. Assignment.

14.1 Periscope shall not assign this contract voluntarily, involuntarily or by operation of law without the express written consent of Customer. In the event of assignment, Periscope will notify Customer in writing and Customer agrees not to withhold consent without reasonable cause.

15. Severability.

15.1 If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not effect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

16. Notice.

16.1 Notices shall be in accordance with Section 11.A. of Appendix A of the DIR Contract No. DIR-SDD-2099.

17. Force Majeure.

17.1 Force Majeure shall be in accordance with Section 10.A. of Appendix A of the DIR Contract No. DIR-SDD-2099.

18. Complete Agreement.

18.1 The DIR Contract No. DIR-SDD-2099, this Agreement, including any exhibits attached hereto, and any Statement of Work set forth the entire understanding between the parties hereto and supercedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. This Agreement and the Statement of Work attached hereto are not a part of, do not depend for their consideration or enforceability upon, and shall not be construed with or as a part of any other agreement, either past, present or future. All prior or contemporaneous promises, representations, agreements, or understandings are merged herein and superseded hereby. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Each party acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein, and for its own purposes and not for the benefit of any third party. This Agreement may not be modified or amended except by the mutual written agreement of the parties. In the event of a conflict between the DIR Contract No. DIR-SDD-2099 and this Agreement, the DIR Contract shall control.

19. Governing Law.

19.1 This contract shall be deemed to be made under, and shall be construed in accordance with, the laws of the State of Texas. All disputes that arise in connection with, or are related to this contract shall be resolved, if not sooner settled, by a state court of competent jurisdiction in Travis County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Periscope Holdings, Inc.

By _____

Title _____

Date _____

Customer:

By _____

Title _____

Date _____