

APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3378



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, Suite 1100, Austin, Texas 78701-2437 ("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 of DIR Contract No. DIR-TSO-3378 and 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 DIR Contract No. DIR-TSO-3378, this Agreement and a Statement of Work, the terms of the DIR Contract No. DIR-TSO-3378 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. Any changes to the terms and conditions shall not weaken any terms of DIR Contract No. DIR-TSO-3378.

- 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 in accordance with Appendix C of DIR Contract No. DIR-TSO-3378 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 and in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3378.
- 4.3 Except as the parties provide otherwise in the applicable Statement of Work, each invoice shall be payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3378. In the event of any dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein. 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 and in accordance with Appendix C DIR Contract No. DIR-TSO-3378, 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 pre-approved expenses incurred by Periscope in the performance of the Services, including, but not necessarily limited to, travel and lodging expenses, communications charges and computer time and supplies. Periscope shall promptly furnish receipts and other evidence of such reimbursable expenses as Customer may reasonably request. All reimbursements for travel shall be in accordance with the Texas Travel Management Guide issued by the Comptroller of Public Accounts.

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.
- 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.

To the extent allowable under the Texas Public Information Act, 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:

- 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 Subject to record retention laws and policies, all Confidential Information made available hereunder, including copies thereof, shall be returned or 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;
- 7.4 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, or (iv) which is or becomes publicly available through no breach of this Agreement; and
- 7.5 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 re-perform 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 Either party may request in writing replacement of an employee of the other party 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. The employing party shall have an opportunity to correct such deficiencies. If the employing party cannot correct such deficiencies within a reasonable period of time, the employing party 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. This provision does not apply to publicly advertised solicitations.

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 Limitation of Liability shall be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-3378.
- 11.3 No proceeding, regardless of form, arising out of this Agreement may be brought by either party more than four (4) years 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 four (4) years from the date the last payment was due.

12. Termination.

- 12.1 Terminations shall be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3378.

12.2 A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent default. Failure of either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

12.3 Terms of this Agreement that by their nature are intended to survive shall survive termination of this Agreement.

13. Taxes.

13.1 Taxes shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3378.

14. Assignment.

14.1 Assignments shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-3378.

15. Severability.

15.1 If any term or provision of DIR Contract No. DIR-TSO-3378 or 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 handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3378.

17. Force Majeure.

17.1 Force Majeure shall be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3378.

18. Complete Agreement.

18.1 DIR Contract No. DIR-TSO-3378, this Agreement, including any exhibits attached hereto, and any Statement of Work set forth the entire understanding between the parties hereto and supersedes 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.

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 in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

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

Periscope Holdings, Inc.

By _____

Title _____

Date _____

By _____

Title _____

Date _____