

These terms and conditions govern the corresponding order form (the "Sales Order") entered into by and among Periscope, Inc., a C Corporation incorporated in Delaware with an office at 1125 Mission Street, San Francisco, California 94103 ("Provider") and the legal entity executing the Sales Order ("Customer") as of the date set forth in the Sales Order (the "Effective Date"). In consideration of the mutual promises contained herein, the parties agree as follows:

**1. DEFINITIONS:**

- a. **"Additional Services"** means services additional to the Services such as integration services or consulting services as such services and the fees therefor are agreed by the parties from time to time pursuant to a Sales Order or other agreement.
- b. **"Authorized User"** means individual users granted access to use the Software. Each Authorized User shall receive a personal login and password which shall be maintained securely by Customer from unauthorized use. The number of Authorized Users licensed hereunder is specified and referenced as "User Seats" on the Sales Order.
- c. **"Available"** means that the key components of the Services are accessible and operable over the internet.
- d. **"Documentation"** means the standard documentation and user manuals available at: <https://dtdocs.sisense.com/>.
- e. **"Emergency Maintenance"** means any maintenance reasonably necessary to fix critical functionality, security or other vulnerabilities or material defects that may substantially impair the usability or performance of the Services which cannot reasonably be performed during the Scheduled Maintenance window. Provider will use commercially reasonable efforts to notify Customer (by email, or by posting to Provider's website) of Emergency Maintenance as soon as reasonably practicable.
- f. **"Monthly Uptime Percentage"** means the percentage of time that the Services are Available, calculated in accordance with the following formula:  
  

$$\text{Monthly Uptime Percentage} = (\text{minutes Available} / \text{Scheduled Availability Time (minutes)}) \times 100.$$
- g. **"Primary Contact"** means a contact designated by the Customer who is an employee responsible for all matters relating to this Agreement.
- h. **"Scheduled Availability Time"** means 24 hours a day, 7 days a week, excluding (i) Scheduled Maintenance; (ii) Emergency Maintenance ; (iii) downtime due to acts of Customer, its vendor(s), or any Third Party Services (as defined below), third party connections, utilities or equipment or (iv) downtime related to any other forces beyond the reasonable control of Provider (such as internet outages, malicious attacks or outages with respect to Customer's network or internet access). General outages of which Provider is aware will be posted on: <https://status.periscopedata.com>.
- i. **"Scheduled Maintenance"** means maintenance conducted between the hours of 4:00 pm PT and 7:00 pm PT on the second Saturday of each month, provided that Provider, in its sole discretion, may conduct such Scheduled Maintenance at a different time, and if so, such change to the Scheduled Maintenance will be communicated to Customer (by email or by posting to Provider's website) at least 24 hours in advance.
- j. **"Services"** mean the specific Provider internet-accessible service(s) identified in a Sales Order that provides use of the Software that is hosted by Provider or its service provider and made available to

Customer over a network on a term-use basis for the scope of use specified in the Sales Order.

- k. **"Service Availability"** means 99.9% of all Scheduled Availability Time, calculated on a monthly basis.
- 1. **"Software"** means Provider's proprietary software products listed in the applicable Sales Order and made available to Customer as part of the Services and shall include the Documentation.

**2. SERVICES AND SUPPORT**

- a. Subject to the terms and conditions of this Agreement, Provider will provide Customer and its Authorized Users with access and the right to use the Services in accordance with the scope of use specified on the Sales Order. The Services and this Agreement are subject to modification from time to time at Provider's sole discretion, for any purpose deemed appropriate by Provider, so long as such modification does not materially decrease functionality or otherwise violate this Agreement. Provider will use commercially reasonable efforts to give Customer prior written notice of any such modification.
- b. Provider will use commercially reasonable efforts to provide Customer with the Services meeting or exceeding the Service Availability. If Provider fails to meet the Service Availability in any month during the current term and Customer is in compliance with all of its obligations hereunder, Provider will provide Customer with a service credit representing the percentage stated below of the pro rata fee for the Services for the month in which the failure occurred, such credit to be applied to the next billing cycle that is at least sixty (60) days after the month in which the failure occurred:

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	5%
Less than 99.0%	10%

- c. In order to receive the service credit, Customer must notify Provider in writing and request the applicable service credit within ten (10) business days following the end of the calendar month in which the failure occurred. Failure to provide such notice will forfeit the right to receive the service credit. The service credit will be Provider's sole obligation and Customer's exclusive remedy with respect to any failure by Provider to meet the Service Availability.
- d. Subject to the terms hereof, Provider will provide reasonable support to Customer for the Services from Monday through Friday during the hours of 7am to 5pm Pacific Time.

**3. RESTRICTIONS AND RESPONSIBILITIES**

- a. Access to the Services requires the Customer to install an up-to-date internet browser.
- b. Neither Customer nor any Authorized User may use the Software or Services in a way that violates applicable law, regulation or mandate, or the terms of this Agreement.
- c. Customer will not, and will not permit any third party or any Authorized User to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or the Software (provided that such activities are prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services or Software; use the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including

but not limited to any European privacy laws, intellectual property, consumer and child protection, obscenity or defamation).

- d. Customer hereby agrees to indemnify and hold harmless Provider against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of Sections 3 (b), (c) or (f) or otherwise arising from Customer's use of Services. Although Provider has no obligation to monitor the content provided by Customer or its Authorized Users, or Customer's or its Authorized Users' use of the Services, Provider may do so and may remove any such content or prohibit any use of the Services it believes may be (or be alleged to be) in violation of the foregoing provisions.
- e. Customer will designate a Primary Contact. Customer may change the individual designated as Primary Contact at any time by providing written notice to Provider.
- f. Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer's account with or without Customer's knowledge or consent, including any use by Authorized Users). The license granted hereunder does not extend to employees and contractors of any of Customer's affiliates or any entity that controls or is controlled by Customer, unless such affiliate or entity is explicitly granted permission to use the Services in the Subscription Agreement. Customer shall ensure that its Authorized Users are familiar with and agree to all applicable obligations contained in this Agreement, and Customer shall be liable for any breach of this Agreement by any Authorized User. Provider's privacy policy governs Provider's use of information collected directly from Authorized Users.
- g. Customer acknowledges and agrees that the Services operate on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties ("Third Party Services") listed on <https://www.sisense.com/privacy-policy/service-providers/>. Provider is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such availability and operation is dependent upon Third Party Services. Provider does not make any representations or warranties with respect to Third Party Services.

#### 4. CONFIDENTIALITY

- a. Each party, including any Authorized User (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party).
- b. The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary information solely to those employees or contractors of Customer with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary information that the party takes with its own proprietary information, but in no event to employ less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was disclosed to it without restriction by a third party not known by the Receiving Party to be subject to a confidentiality obligation, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order to the extent permitted under applicable law. Notwithstanding anything to the contrary, Provider may collect and use data with respect to the aggregate response rate and other

aggregate measures of the Services' performance, and any other information received by Provider in connection with this Agreement provided such information has been anonymized such that it does not identify Customer or its personnel.

- c. Customer acknowledges that Provider does not wish to receive any Proprietary Information from Customer that is not necessary for Provider to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Provider may reasonably presume that any information unrelated to the Service received from Customer or any Authorized User is not confidential or Proprietary Information.
- d. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

#### 5. INTELLECTUAL PROPERTY RIGHTS

- a. Except as expressly set forth herein, Provider alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Services and the Software and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party or Authorized User relating to the Services and/or the Software, which are hereby assigned to Provider. Customer and its Authorized Users will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or Software, or any intellectual property rights.
- b. Provider will obtain and process content and data provided by or on behalf of Customer ("Content") only to perform its obligations under this Agreement. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all Content distributed through the Services and the intellectual property rights with respect to that Content. If Provider receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party (a "Claim"), Provider may (but is not required to) suspend activity hereunder with respect to that Content and Customer will indemnify Provider from all liability, damages, settlements, attorney fees and other costs and expenses in connection with any such Claim, as incurred.

#### 6. PAYMENT OF FEES

- a. Customer will pay Provider (i) the fees set forth in the applicable Sales Order for the Services and (ii) to the extent applicable, all fees for Additional Services (collectively, the "Fees"). All payments will be made in accordance with the payment method and payment schedule specified in the applicable Sales Order or other applicable agreement executed by the parties.
- b. Unless otherwise provided in the applicable Sales Order or other agreement between the parties, Provider will invoice Customer for the Fees upon execution of the Sales Order or applicable agreement, and payments will be due within thirty (30) days of the date of receipt of the invoice.
- c. Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. Failure of Customer to make any payment when due which is not remedied within fifteen (15) days after notice by Provider shall constitute sufficient cause for Provider to immediately suspend its performance under this Agreement.
- d. All amounts payable by Customer hereunder are exclusive of all duties and taxes, including but not limited to sales, use, excise or

value added taxes and withholding taxes (collectively, "Taxes"), where applicable. Customer shall pay and bear all Taxes associated with this Agreement, excluding taxes based solely on Provider's net income. Any withholding amount or deduction imposed on the payment to be made to Provider shall be the sole responsibility of Customer and any payments or fees due Provider shall not be decreased in any manner by such withholding amount. If Provider has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Provider with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 7. TERM AND TERMINATION

- a. Subject to earlier termination as provided below, this Agreement will remain in effect for the term specified on the Sales Order (the "Initial Service Term"). Following the Initial Service Term, this Agreement will automatically renew for successive renewal terms of equal length to the Initial Service Term, (each, a "Renewal Term", and together with the Initial Service Term, the "Service Term") unless either party gives the other party notice of non-renewal at least sixty (60) days prior to the end of the then-current term.
- b. Unless otherwise specified in the applicable Sales Order, the fees for the Services and any other recurring fees shall automatically be increased from the applicable fees for the last annual period of the expiring term, without giving effect to any discount provided for such expiring term, by 5% per annum for each Renewal Term for the same licenses on the same terms as were originally purchased.
- c. In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days' prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. This Agreement shall automatically terminate, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business without a successor.
- d. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.

## 8. SOFTWARE SECURITY

Provider represents and warrants that it will use commercially reasonable efforts, including the application of commercially available anti-virus software, to ensure that the Software shall not contain any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, backdoors, viruses, illicit code, and logic or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data.

## 9. WARRANTY

- a. Services will be performed in accordance with the functional specifications in the Documentation. If, at any time, Provider fails to comply with the warranty in this Section 9.a, Customer may promptly notify Provider in writing of any such noncompliance. Provider will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not

established during such period, Customer may terminate this Agreement as its sole and exclusive remedy for such noncompliance.

- b. EXCEPT AS PROVIDED IN PARAGRAPH 9.A, THE SERVICES AND PROVIDER PROPRIETARY INFORMATION AND ANYTHING ELSE PROVIDED BY PROVIDER IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. PROVIDER (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

## 10. LIMITATION OF LIABILITY

IN NO EVENT WILL PROVIDER (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROVISION OF, USE OF OR DELAY OR INABILITY TO USE THE SERVICES, THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF PROVIDER, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE LESSER OF (i) TEN THOUSAND DOLLARS, OR (ii) THE FEES PAID TO PROVIDER HEREUNDER IN THE THREE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 11. U.S. GOVERNMENT MATTERS

Notwithstanding anything to the contrary, Customer and its Authorized Users may not provide to any person or export or re-export or allow the export or re-export of the Services or any Software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer and its Authorized Users acknowledge and agree that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Services is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by Provider are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such

commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

## 12. MISCELLANEOUS

- a. This Agreement is not assignable, transferable or sub-licensable by Customer except with Provider's prior written consent. Provider may transfer and assign any of its rights and obligations under this Agreement with written notice to Customer.
- b. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- c. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Provider in any respect whatsoever.
- d. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid.
- e. Provider will not be liable for any loss resulting from a cause over which it does not have direct control.
- f. This Agreement and all matters arising out of or in connection with it shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of New York, United States of America, without regard to the conflict of laws principles thereof. The parties hereby expressly submit to the exclusive jurisdiction of the federal and state courts located in the City, County and State of New York for resolution of all disputes arising under the terms of or in connection with this Agreement (including non-contractual claims) and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Provider, in its sole discretion, shall have the right to seek a preliminary, interim or preventative injunction in respect of any breach of its Intellectual Property rights in any jurisdiction and court. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.
- g. Customer agrees to participate in press announcements, case studies, trade shows, or other forms reasonably requested by Provider. Provider is permitted to disclose that Customer is one of its customers to any third-party at its sole discretion. Additionally, the Customer allows Provider to reference Customer's name and use its logo in Provider's business development and marketing efforts and display them on Provider's website and other promotional materials.