

**Appendix B, Final Master Contract**

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RFQQ 04913

**On-Line File Storage Services**

**Master Contract Number 04913**

for

**On-Line File Storage Services (OLFS) between  
Washington State Department of Enterprise Services**

and

**Box, Inc.**

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**Exhibit A: RFQQ 04913**

**Exhibit B: CONTRACTOR'S RESPONSE**

**Exhibit C: CONTRACTOR'S PRICE PAGE**

**Exhibit D: SUB CONTRACTOR'S VAR AGREEMENT**

## **PARTIES**

This Master Contract ("Master Contract" or "Contract") is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES) an agency of Washington state government located at 1500 Jefferson Street SE Olympia WA, 98504-2445, and Box Inc. (Contractor), a Delaware corporation with an office located at 4440 El Camino Real, Los Altos, CA 94022 licensed to conduct business in the state of Washington, for the purpose of providing On-Line File Storage services as described and identified herein.

## **RECITALS**

The state of Washington, acting by and through DES issued Request for Qualifications (RFQQ) number 04013 dated August, 2013, (Exhibit A) for the purpose of purchasing On-Line File Storage services in accordance with its authority under [Chapter 39.26 RCW](#).

Contractor submitted a timely Solicitation Response ([Exhibit B](#)).

DES evaluated all properly submitted Responses to the above-referenced RFQQ and has identified Contractor as an Apparent Successful Bidder.

DES has determined that entering into this Contract with Contractor will meet Purchasers needs and will be in Purchasers best interest.

NOW THEREFORE, DES awards to Contractor this Master Contract, the terms and conditions of which shall govern Contractor's provisioning of IT professional services as described herein, on a convenience or as-needed basis. This Master Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

## **1 OVERVIEW**

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### **1.1 Term**

#### **A Master Contract Term**

The initial term of this Contract shall be from date of last signature, through May 15, 2015.

The total term, including the initial term and all subsequent extensions, shall not go beyond May 15, 2019 unless an emergency exists and/or special circumstances require a partial term extension. DES reserves the right to extend with all or some of the Contractors, solely determined by DES.

#### **B. Master Contract Extensions**

Extensions for additional terms shall be offered at the sole discretion of DES and will be completed through documentation which confirms that a Contractor continues to meet original RFQQ requirements.

Contractors that do not respond to extension offers from DES by the Contract expiration date may be suspended for up to one year and then terminated until such time that Contractor is deemed to be responsive by DES. During this period, any additional Contract activity will be suspended until extension offers are completed, returned and approved by DES.

**C. Extension of Contract Terms during Purchaser Subscription Period**

Notwithstanding anything in the foregoing, DES and Contractor agree that the terms and conditions of this Contract will survive the Initial Term and the expiration of any subsequent renewals of the Contract to the extent any Purchasers hereunder have an ongoing subscription period for services. For the avoidance of doubt, the terms and conditions of this Agreement shall govern any outstanding Subscription Periods of Services purchased hereunder until the expiration of each of the applicable Subscription Periods.

**D. Program Management**

Except as prohibited by law, DES reserves the right to review the program's prequalified pools/usage rate and use its sole discretion in determining which Contractors receive extension offers.

**1.2 Purchasers**

With respect to use of this Contract, Washington state agencies, including but not limited to DES, institutions of higher education, boards, commissions and political subdivisions (e.g., counties, cities, school districts, or public utility districts) as set forth in the Interlocal Cooperation Act, chapter 39.34 RCW, and public-benefit nonprofit corporations that are eligible to receive services from DES under chapter 39.26 RCW.

Effective January 1, 2013 and unless otherwise exempted by law, Washington state agencies are delegated authority for the procurement of goods and services set forth in [Policy # DES-090-00](#). This delegation is independent of the funding source for the procurement. When projecting contract values, agencies should do so in a manner that is true to the intent of these thresholds. Washington state agencies' delegation of authority for second tier competitions as applicable to this Contract is limited to the delegation set forth in Policy # DES-090-00.

**2 CONTRACT ADMINISTRATION**

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**2.1 Contract Administrator**

DES shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract.

**2.2 Administration of Contract**

DES will maintain Contract information and pricing, and reserves the right to make it available at [des.wa.gov](http://des.wa.gov).

**2.3 Contractor Supervision and Coordination**

Contractor shall:

- A. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
- B. Identify in Section 2.4.C, below, the Contractor's account manager, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract for the duration of this Contract and will provide oversight of Contractor

activities conducted hereunder. Contractor account manager will serve as the focal point for business matters, performance matters, and administrative activities under this Contract;

- C Identify the Report Manager, who will collect data, prepare and file quarterly reports as established in Section 2.7
- C As soon as commercially practicable notify the Contract Administrator in writing of any change of the designated Contractor's account manager assigned to this Contract; and
- D. Be bound by all written communications given to or received from the Contractor's Representative.

Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

## **2.4 Contract Management**

Upon award of this Contract, the Contractor shall:

- A. Review the impact of the Award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
- B Use commercially reasonable efforts to ensure that those who endeavor to utilize this Contract are authorized Purchasers under this Contract.
- C Designate a Purchaser's service representative who will act as account manager and be responsible for addressing Purchaser issues including, but not limited to:
  - i Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
  - ii Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.

## **2.5 Changes**

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually-agreed Contract Amendment. However, changes to point of contact information made in writing may be updated without the issuance of a mutually-agreed Contract Amendment.

DES reserves the right to add services as market conditions and Purchasers' needs change. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator, which amendment will be mutually agreed upon by the parties in writing.

## **2.6 Statewide Payee Desk**

In order to receive payment, Contractor and Subcontractors are required to be registered with the Statewide Payee Desk maintained by DES for processing Contractor payments. Purchasers who are Washington state agencies cannot make payments until Contractors are registered. Registration materials are available on the DES website under the radio button "for Business", find: [Receiving Payment from the State](#).

## 2.7 Fees and Reporting

- A. This Contract is subject to a management fee. Collection and remittance of this fee shall be conducted in accordance with the provisions set forth herein.

The management fee is 0.74 percent of the purchase price for Work Orders ("Management Fee"). The purchase price is defined as total invoice price less sales tax.

The Management Fee is to be included in all amounts charged by Contractor to any Purchaser under this Contract and not as a separate line item to Purchasers. Contractor will collect and distribute the fee to DES.

The Management Fee will be reviewed to ensure that this program is self-supporting. DES may, at its sole discretion, increase, decrease, or eliminate the Management Fee upon thirty (30) days written notice to Contractor. Any decrease to, or elimination of, the Management Fee, shall be reflected in contract pricing commensurate with the adjustment. DES and Contractor reserve the right to negotiate contract pricing in the case of an upward adjustment of the Management Fee.

DES will send an invoice within 30 days after the receipt of the sales report described below based on the sales reported. Payment of the Management Fee is due within thirty (30) days of the receipt of the DES invoice.

- B. Contractor shall provide a sales report to DES on a quarterly basis in the electronic format as provided here: [Contract Usage Reporting System Login](#).

Contractor must agree to submit to DES a quarterly report of all purchases made from any resulting Contract. The report must identify: (1) the Contract number; (2) each Purchaser making purchases during the reporting quarter; (3) the total purchases by each Purchaser; (4) the total invoice price, excluding sales tax and excluding the DES Management Fee, for each Purchaser; (5) the sum of all invoice prices, excluding sales tax and excluding the DES management fees, for all Purchasers; and (6) the amount of the DES management fees. Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

Should the Contractor have no activity in a quarter, a quarterly report will not be required and accordingly, no management fee will be required.

A letter of instruction will be sent to the party identified by the Contractor as the Report Monitor, along with links and password information after finalization of award.

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## 3 PRICING

### 3.1 Price Protection

For the initial term of the Contract, Contractor must guarantee to provide services at no higher than the rates set forth in the pricing document attached as Exhibit C hereto. Such prices shall not be increased during the initial term of this Contract.

### 3.2 Additional Charges

In the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrator's sole discretion, additional charges may be allowed.

### **3.3 Price Adjustments**

Contractor requests for adjustments in pricing will be considered up to 60 days before the expiration of the then current term at the sole discretion of DES only after expiration of the initial term of the Contract.

Price increases will not be considered without supporting documentation sufficient to justify the requested increase. The grant of any price adjustment will be at the sole discretion of DES. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted and such price adjustment shall be set forth in a written amendment to the Contract. Price adjustments granted by DES shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

## **4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS**

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### **4.1 RFQQ Requirements**

The RFQQ requirements are essential substantive terms of this Master Contract. Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFQQ, as detailed in RFQQ Appendix E, Mandatory Requirements, items 1- 6 and MS1- MS19.

### **4.2 Provision of Services**

Services may be accessed and used by Purchaser across the entire spectrum of business and operational activities involving Purchaser, now and in the future, directly or indirectly. Except as expressly set forth in any work event, there are no use, user, user type, geographic, facility, site or other similar restrictions on the access or use of the Services by Purchaser.

Purchasers must have documented permission from their agency CIO or designee, and must coordinate their activities as established by their agency with respect to the OCIO On-Line File Storage Guidance.

Support and maintenance services for all software required to deliver Services and the support and maintenance services are included within the Services price and at no additional cost to Purchaser. Notwithstanding the foregoing, Contractor may provide additional support services to the Box Service for purchase at additional costs, providing such additional support services have been approved by DES and are included in the pricing attachment at Exhibit C.

Purchaser shall have a present license right in and to the Software that is used to provide the SaaS Services. The rights to the service provided by Contractor in any work event constitutes "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code, as amended, and any SOW shall be governed by Section 365(n) of the Bankruptcy Code, as applicable, in the event Contractor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Contractor or the trustee in bankruptcy rejects such SOW.

In the event Contractor voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Contractor or the trustee in bankruptcy rejects the SOW under Section 365 of the Bankruptcy Code, Purchaser shall have the right to: (a) treat the SOW as terminated; or (b) retain Purchaser's rights under the SOW, specifically including the right to exercise its rights granted herein to the Software (and to all work-in-progress relating thereto). Failure by Purchaser to assert its right to retain its benefits to the intellectual property embodied in the software pursuant to Section 365(n)(1)(B) of the Bankruptcy Code with respect to an executory contract rejected by

Contractor or the trustee in bankruptcy shall not be construed by the courts as a termination of such SOW by Purchaser under Section 365(n)(1)(A) of the Bankruptcy Code.

Any attempted assignment of any work event or element by Contractor or the trustee in bankruptcy to a third party shall be subject to such third party providing "adequate assurance of future performance" (as referenced in Section 365(f) of the Bankruptcy Code) to Purchaser. Among other requirements as may be reasonably imposed, "adequate assurance" shall include a third party's express written agreement to assume all of Contractor's obligations under such SOW.

#### **4.3 Contractor Certifications**

Contractor shall maintain any required certification status for the initial term and any renewals of this Contract. If status is discontinued, this Contract and/or a Purchaser's Order may be terminated as set forth elsewhere herein.

#### **4.4 Use of Subcontractors**

In accordance with RFQQ requirements, Contractor agrees to take complete responsibility for all actions of Subcontractors.

Prior to performance, Contractor shall identify all Subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), and anticipated dollar value of each subcontract:

DES reserves the right to approve or reject any and all Subcontractors that are identified by Contractor, which approval shall not be unreasonably withheld.

The Contractor shall be responsible to ensure that all requirements of the Contract be appropriately communicated to any and all Subcontractors.

In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Subcontractor's duties.

Specific restrictions apply to contracting with current or former state employees pursuant to [Chapter 42.52 RCW](#).

#### **4.5 Assignments**

Contractor shall not assign, or otherwise transfer its obligations under this Contract without the prior written consent of DES. Contractor shall provide a minimum of 30 calendar days advance notification of intent to assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. Notwithstanding anything in the foregoing, Contractor may assign this Contract without the consent of DES: (i) to an affiliate of Contractor; or (ii) in connection with a successor in interest in a merger, reorganization or a sale of all or substantially all of the assets of Contractor providing, however, that any such assignment is subject to the then-current State of Washington contract novation process as applicable to DES.

#### **4.6 Contractor Authority and Infringement**

Contractor is authorized to sell under this Contract, only those Services as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that

they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established state Contracts.

## **5 SITE SECURITY AND SAFETY**

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### **5.1 Site Security**

While on DES or any Purchaser's premises, Contractor, its agents, employees, and Subcontractors shall conform in all respects with any applicable Purchaser's physical, fire, safety, and other security regulations.

### **5.2 Remote Access to Network**

Contractor understands that in order to obtain remote access to Purchaser's Local Area Network (LAN), email, or supported computing environments through a remote access connection ("Remote Access"), Contractor must comply with Purchaser's Remote Access policy and any other applicable policies or procedures. Contractor shall, prior to access, complete and sign any applicable agreements or forms. Remote Access is conditioned upon final approval by Purchaser.

### **5.3 System Security**

Contractor acknowledges and understands that it may be required to access Purchaser's computer networks in performing work under this Contract and that in providing such access to Contractor, Purchaser places special confidence and trust in Contractor.

- Contractor acknowledges and understands that any access granted by Purchaser to its computer networks shall be limited, restricted and conditioned upon Contractor's compliance with certain applicable policies and practices. Contractor warrants that, to the extent applicable to Contractors, it will perform all work for or on behalf of Purchasers in full compliance with the Office of the Chief Information Officer's Guidance document which is found here: *Online File Storage Guidelines for Agencies* on the website of the state OCIO, and as agreed in RFQQ Appendix E, Mandatory Requirements, items 1- 6 and MS1- MS19.

Contractor agrees that the Guidance document shall serve as the standard for network security and warrants that it shall exercise its commercially reasonable efforts to comply with the Guidance document with respect to 1) any electronic transfer of code or data; 2) prevention of unauthorized access; and 3) prevention of any and all undisclosed programs, extraneous code, Self Help code, unauthorized code, or other data that may be reasonably expected to damage data, code, software, systems or operations of DES's network, system or data. Vendor staff may be required by Purchaser to complete a certain minimum level of security awareness training coursework depending on the skill and experience levels required by Purchaser.

### **5.4 Contractor Security Requirements**

- A. For the provision of Services during the term of the Contract, Contractor shall be ISO 27001/27002 compliant, certified and audited no less than annually by a qualified third party, with storage capacity capable of storing and otherwise supporting the data needs as described in the RFQQ.
- B. The proposed solution must be compatible with applicable federally regulated accessibility standards (Section 508, <http://www.section508.gov/>).

- C. All data transfers must be encrypted using 128bit (or higher) SSL for HTTP traffic and SSH version 2 for any batch or real-time non-http transfers. Furthermore, SSL certificates must be signed by a trusted third party. No self-signed certificates will be considered.
- D. Definitions of Category 1- 4 data is found at [OCIO IT Security Standards 141.10, Section 4.1, Data Classification](#)

## **6 PAYMENT**

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### **6.1 Payment, Invoicing and Discounts**

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address (including email address) indicated in the purchase order.

Each invoice shall be identified by the associated Contract number; the Contractor's Statewide Payee Desk registration number assigned by DES, the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all volume discount(s).

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment until receipt of a properly completed invoice denominated in U.S. dollars.

Under [Chapter 39.76 RCW](#), if Purchaser fails to make timely payment(s), Contractor may invoice for 1 percent per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. Payment terms shall be net 30 days will automatically apply, unless otherwise agreed to in writing as between Purchaser and Contractor.

Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature relating to the payment of undisputed fees and acceptance of payment shall constitute a waiver of all claims relating to the undisputed fees submitted by Contractor.

Payment for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

### **6.2 Taxes**

- A. Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance, including any taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Unless otherwise indicated, the Purchaser agrees to pay state of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.
- B. In general, Contractors engaged in retail sales activities within the state of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity

carried on by the seller in the state of Washington is significantly associated with Contractor's ability to establish or maintain a market for its products in Washington state.

### **6.3 Department of Revenue Registration for Out-of-State Contractors**

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to [WAC 458-20-193](#), and contact the Department of Revenue for additional information (see [WA State Dept. of Revenue Registration Requirements](#)). When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the state of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

### **6.4 Fees/Licenses**

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

### **6.5 Taxes on Invoice**

Contractor shall calculate and enter the appropriate Washington state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with [WAC 458-20-247](#).

### **6.6 Minority and Women's Business Enterprise (MWBE) Participation**

If applicable to Contractor and required by Purchaser, with each invoice for payment and within 30 days of Purchaser's request, Contractor shall provide Purchaser an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's [Retention of Records](#) section.

### **6.7 Overpayments to Contractor**

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within 30 days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent per month on the amount due, until paid in full.

### **6.8 Contractor Expenses**

Purchaser shall reimburse Contractor for travel and other expenses only as approved in advance as identified in a Purchase Order, or as authorized in writing, in advance by Purchaser in accordance with the then-current rules and regulations set forth in the [Washington State Administrative and Accounting Manual](#). Contractor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of \$50 or more when requesting reimbursement. The amount reimbursed to Contractor is included in calculating the total amount spent under this Contract.

## 6.9 Audits

- A. DES reserves the right to audit, or have a designated independent third party audit, applicable financial records of Contractor to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination. An audit in accordance with this provision is limited as follows: (i) requires thirty (30) days prior written notice by DES; (ii) no more than once per year; and (iii) last no more than three (3) business days.

The cost of any such audit shall be borne by DES. Notwithstanding the foregoing, in the event the audit results substantiate errors in invoicing in excess of ten (10%) percent in favor of DES or Purchaser, then Contractor shall pay the amounts owing and the reasonable costs of the audit within thirty days of the date of such audit.

In any such audit, DES, or designated third party auditor, shall execute a non-disclosure agreement and be bound by the obligations of confidentiality contained therein.

- B. Contractor will annually audit the security of the computers and computing environment of the data center used in providing Services according to ISO 27001/27002 standards. Such audit will be performed by independent third party security professionals at Contractor's expense. Contractor will provide the security audit report resulting from such annual audit to DES upon written request from DES.

At its sole cost and expense, DES will have the right, through its internal staff, another agency of the State, or a third party auditor, to audit Contractor's security standards related to the services provided under this Master Contract.

Any such audit will occur on Contractor's premises, during normal working hours, subject to Contractor's reasonable policies and regulations, and no more than once annually. Contractor will be responsible for correcting any deficiencies identified in either the Security Audit Report or any DES security audit.

- C. Except where indicated, this Section shall apply to Contractor and to each Subcontractor providing any component of the Services.
- D. In connection with providing the SaaS Services, Contractor shall ensure its data center shall comply with SOC 1 financial and operational control objectives.
- E. In accordance with the requirements set forth in this Section 6.7.3, Contractor shall ensure its data center is audited as part of its annual SOC 1 Type 2 audit. The audit shall include an evaluation of Contractor's Data Center Provider's a) physical security measures, b) fire detection and protection systems, c) redundant electrical systems, and d) environmental controls. Contractor shall provide its SOC 1 Type 2 report detailing the results of the annual audit of Data Center Provider controls upon request. Within forty-five (45) days following DES' written request for a letter updating the most recently issued SOC 1 Type 2 Report or SOC 2 Type 2 Report, Contractor shall deliver to DES a letter from an authorized senior executive officer of Data Center Provider that contains a written description of any material changes to the control environment that would adversely affect the prior delivered SOC 1 Type 2 Report or SOC 2 Type 2 Report to cover the time period not covered under the scope of such most recently issued audit report from the date of such report until the date requested in DES' written request, or if there have not been any such changes, a letter stating that there have not been any changes since the date of the most recently issued report.

- F. At DES' sole cost and expense, DES shall have the right (either through its own audit staff, an independent third party auditor or an Agency of the State) to conduct reviews and audits of the type covered by SOC 1 Type 2 Reports and SOC 2 Type 2 Reports or other reviews and audits to ensure compliance with the Control Objectives and Contractor's other obligations. Such reviews or audits will be conducted during regular business hours, will be subject to Contractor's reasonable security policies (which will not apply to the extent they prevent or interfere with DES' right to conduct a review or audit as described in this Section 36.3) and will not unreasonably interfere with Contractor's business activities. Further, within the scope of each such review or audit, such reviewers and/or auditors shall have the right to examine and audit the Records (defined below) and question and interview any personnel with knowledge about the Control Objectives and other financial, operational, security, physical or other aspects of the SaaS Services. If the report identifies Deficiencies (defined below) requiring remediation, DES shall deliver to Contractor a full and complete copy of the report.
- G. As of the Effective Date, the data center will use an independent auditor recognized by the AICPA to conduct audits resulting in SOC 1 Type 2 Reports and said independent auditor to conduct audits resulting in SOC 2 Type 2 Reports. In order to assure auditor independence, Contractor shall provide DES at least ninety (90) days prior written notice if Data Center Provider intends to use an auditing firm other than an independent auditor recognized by the AICPA to conduct such audits, and shall discuss with DES, and address any concerns that DES may have regarding such change of auditors.
- H. If any SOC 1 Type 2 Report, SOC 2 Type 2 Report or other audit report reveals any deficiencies and/or exceptions with respect to the Control Objectives or otherwise (the "Deficiencies"), Contractor shall ensure that Data Center Provider prepares and delivers to DES a detailed plan for remedying all such Deficiencies (each such plan, a "Remedial Plan"). Contractor shall deliver such Remedial Plan to DES within a reasonable period of time following identification of any Deficiencies based on the nature and complexity of the Deficiencies to be remedied, not to exceed thirty (30) days following DES' written request for same. As between DES and Contractor, Contractor shall bear all costs and expenses associated with correcting all Deficiencies.

## **7 QUALITY ASSURANCE**

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### **7.1 Contractor Commitments, Warranties and Representations**

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and may render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response.

### **7.2 Warranties**

Contractor warrants that all services provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications of the Appendix E, Mandatory Requirements, this document and those in the RFQQ. Acceptance of any service and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

## **8 INFORMATION AND COMMUNICATIONS**

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### **8.1 Data Breach Notification**

If Contractor becomes aware of any breach, including but not limited to unlawful access to any Purchaser data stored on or at Contractor's or Subcontractor's equipment or facilities, or unauthorized access to such equipment or facilities, which may result in loss, disclosure, or alteration of Purchaser data (each a "Security Incident"), Contractor will take the following actions:

- A Notify Purchaser of the Security Incident in timely fashion following discovery;
- B Investigate the Security Incident and provide Purchaser with detailed information about the Security Incident;
- C Take steps to mitigate the effects and to minimize any damage or loss resulting from the Security Incident; and
- D Provide cooperation and assistance to Purchaser in fulfilling its mitigation, investigation, and notification obligations under applicable law or regulation, including assisting third parties retained by Purchaser for such purposes.
- E All data breach communications with the public will be coordinated with the state.
- F Permit Purchaser to conduct, with reasonable prior written notice, under reasonable time, place and manner conditions, pursuant to appropriate confidentiality and technical restrictions, and at its own expense, an audit of Solution Provider's systems, policies and procedures relevant to the security and integrity of Purchaser data.

### **8.2 Advertising**

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from DES.

### **8.3 Retention of Records**

Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

### **8.4 Proprietary or Confidential Information**

Contractor acknowledges that DES and Purchaser are subject to chapter 42.56 RCW and that this Contract and any work shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor.

To the extent consistent with [Chapter 42.56 RCW](#), the Public Disclosure Act, DES or Purchaser shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, DES or Purchaser will promptly notify

Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DES or Purchaser will release the requested information on the date specified.

DES or Purchaser's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as DES or Purchaser retains Contractor's information in DES or Purchaser records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

#### **8.5 Non-Endorsement and Publicity**

Neither DES nor the Purchasers are endorsing the Contractor's products or services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to DES, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the DES.

#### **8.6 Ownership/Rights in Work Product and Data**

Parties agree that all data placed in Contractor's environment remains wholly and completely the property of the Purchaser.

#### **8.7 Protection of Data and Confidential Information**

Contractor will comply with all data protection and privacy laws applicable to the Services offered under this Contract. Contractor will process Purchaser data in accordance with the provisions of this Contract and, except as otherwise stated in this Contract or a Statement of Work, Contractor (a) will acquire no rights in Purchaser data; and (b) will not use, process or disclose DES or Purchaser Data for any purpose other than providing the services required under this Contract or any applicable Statement of Work.

Contractor, DES and Purchasers acknowledge that some of the material and information that may come into its possession or knowledge in connection with or in performance of this Contract or work may consist of Confidential Information. "Confidential Information" means all information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") which is in tangible form and labeled "confidential" or the like, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. Contractor and DES or Purchaser agrees to hold the Disclosing Party's Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract or any work, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract or any work, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without the Disclosing Party's express written consent or as provided by law. Contractor and DES or Purchaser agree to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement or are under obligations of confidentiality substantially similar as set forth herein. Contractor and DES or Purchaser agree to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. Contractors that may come into contact with medical data or Protected Health Information may be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work.

Confidential Information other than Content, will not include information that as shown by the Receiving Party's records was: (i) already known to Receiving Party at the time of disclosure by the Disclosing Party; (ii) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of the Receiving Party has become, generally available to the public; or (iv) was independently developed by Receiving Party without use of the Disclosing Party's Confidential Information.

Immediately upon expiration or termination of this Contract or any work, the Receiving party shall, at the Disclosing party's option: (i) certify to Disclosing party that all Confidential Information has been destroyed; or (ii) return all Confidential Information to Disclosing party; or (iii) take whatever other reasonable steps Disclosing party requires to protect the Confidential Information.

Violation of this section may result in termination of this Contract and any work and demand for return of all Confidential Information, and/or payment of monetary damages.

## **9 GENERAL PROVISIONS**

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### **9.1 Governing Law / Venue**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

### **9.2 Severability**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

### **9.3 Survivorship**

All transactions executed for products and services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Contractor Commitments, Warranties and Representations; Protection of Confidential Information; Order of Precedence, Incorporated Documents, Conflict and Conformity; Non-Endorsement and Publicity; Retention of Records; Patent and Copyright Indemnification; Proprietary or Confidential Information; Problem Resolution and Disputes; and Limitation of Liability shall survive the termination of this Contract.

### **9.4 Independent Status of Contractor**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any

claim of right, privilege or benefit which would accrue to an employee under [Chapter 41.06 RCW](#), or [Title 51 RCW](#).

### **9.5 Gifts and Gratuities**

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: [RCW 39.26.020](#), [RCW 42.52.150](#), [RCW 42.52.160](#), and [RCW 42.52.170](#) under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under [RCW 39.26.020](#) and the Ethics in Public Service Law, [Chapter 42.52 RCW](#) state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by [RCW 42.52.150](#)) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

### **9.6 Immunity and Hold Harmless**

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all third party claims for injuries, death or damage to tangible property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any Subcontractor or its employees.

Contractor shall be required to indemnify, defend, and hold harmless the state under this Section 9.6 only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless state and its agencies, officials, agents or employees.

### **9.7 Personal Liability**

Unless prohibited by applicable law, it is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the state of Washington or the Contractor, when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement. Notwithstanding the foregoing, the State of Washington and Contractor are liable for the negligent acts or omissions of its officials, officers, employees and agents.

### **9.8 Insurance**

The following are general insurance provisions for the State of Washington.

#### **General requirements**

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract. Upon request, contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in contract cancellation.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit contractor's liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

**Specific requirements**

**Employers Liability (Stop Gap):** The contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the contractor or their employees for services performed under the terms of this contract.

**Commercial General Liability Insurance:** The contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the contractor's premises/operations, independent contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) conditions.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$50,000
Medical Expense Limit (any one person)	\$5,000

**Additional insurance provisions**

All above insurance policies shall include, but not be limited to, the following provisions:

**Additional insured:**

The State of Washington shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

**Identification:**

Policy(ies) and certificates of insurance shall include the affected contract reference number.

**Insurance carrier rating**

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A-Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with [Chapter 48.15 RCW](#) and [Chapter 284-15 WAC](#).

**Excess coverage**

The limits of all insurance required to be provided by the contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the contractor from liability in excess of such limits.

**Limit adjustments**

The state reserves the right to increase or decrease limits as appropriate, upon written notice to Contractor.

**9.9 Nondiscrimination**

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, [Chapter 49.60 RCW](#), Discrimination – Human Rights Commission.

**9.10 Waiver**

Failure or delay of either party to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law, or DES' or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of that party to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract, no provision of this Contract shall be construed, expressly or by implication, as a waiver by a party of any existing or future right and/or remedy available by law.

### 9.11 Treatment of Assets

Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract or any work.

Contractor shall be responsible for any loss of or damage to property of Purchaser which results from Contractor's negligence or which results from Contractor's failure to maintain and administer that property in accordance with sound management practices.

Upon loss or destruction of, or damage to any Purchaser property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.

Contractor shall surrender to Purchaser all Purchaser property upon completion, termination, or cancellation of any work.

All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

### 9.12 Patent and Copyright Indemnification

- A Indemnification by Contractor.** Contractor, at its expense, shall defend, indemnify, and save DES and any Purchaser harmless from and against any third party claims against DES or Purchaser that any software or materials provided hereunder, infringes any patent, copyright, utility model, industrial design, mask work, trade secret (to the extent that such misappropriation is not the result of DES or Purchaser's actions), trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court of competent jurisdiction.
- B Indemnification by DES or Purchaser** DES or Purchaser will defend Contractor against any third party claim: (i) that any Content, or DES or Purchaser's use of the Box Service in breach of this Contract, infringes a registered patent, registered trademark, or copyright, or misappropriates a trade secret (to the extent that such infringement or misappropriation is not the result of Contractor's actions); or (ii) relating to any Content or DES or Purchaser's use of the Box Service in violation of this Contract. DES or Purchaser will, with respect to any claim against Contractor, indemnify Contractor for the resulting costs and damages finally awarded against Contractor to such third party by a court of competent jurisdiction or agreed to in settlement.
- C Indemnification Process** As a condition of receiving an indemnification under this Contract, the party seeking indemnification (the "Indemnified Party") will provide the other party (the "Indemnifying Party") with: (i) prompt notice in writing of the claim, but Indemnified Party's failure to provide timely notice shall only relieve Indemnifying Party from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Indemnifying Party; (ii) cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations; and (iii) provides such assistance in connection with the defense and settlement of the claim, at the Indemnifying Party's expense, as the Indemnifying Party may reasonably request

If a claim has occurred, or in Contractor's opinion is likely to occur, Purchaser agrees to permit Contractor, at its option and expense, either to procure for Purchaser the right to continue using the Box Service or to replace or modify the same so that they become non-infringing and functionally

equivalent. If use of the Box Service is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Box Service and provide Purchaser a refund equal to the prorated portion of any prepaid Fees Purchaser paid to Contractor for Contractor's provision of the Box Service.

Contractor has no liability for any claim of infringement arising solely from:

- A Contractor compliance with any designs, specifications or instructions of Purchaser;
- B Modification of the Box Service by Purchaser or a third party without the prior knowledge and approval of Contractor; or
- C Use of the Box Service in a way not specified by Contractor, unless the claim arose against Contractor's Box Service independently of any of these specified actions.

**9.13 Exclusive Remedy.** This Section 9 states the Indemnified Party's sole and exclusive remedy against, and the Indemnifying Party's sole liability to, the other party for any type of claim under this Section.

## **10 DISPUTES AND REMEDIES**

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### **10.1 Problem Resolution and Disputes**

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between DES or the Purchaser and Contractor and it cannot be resolved between the parties through the normal problem escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three Business Days. The initiating party shall have three Business Days to review the Response. If after this review a resolution cannot be reached, both parties shall have three Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

DES, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for services being provided by Contractor, Contractor shall continue providing services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

## **10.2 Administrative Suspension**

When in the state's best interest, DES may at any time, suspend the Contract or any portion thereof for a period of not more than 30 calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume selling to new Purchasers on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. Notwithstanding anything in the foregoing, any such administrative suspension under this Section 10.2 shall not act to suspend any then-current Purchaser Subscription Period of the Box Service, which Box Service will continue to be provided through any such suspension.

## **10.3 Force Majeure**

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

**Exceptions:** Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

**Notification:** If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract Amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

**Rights Reserved:** DES reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the state.

## **10.4 Alternative Dispute Resolution Fees and Costs**

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

## **10.5 Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

#### **10.6 Limitation of Liability**

The parties agree that Contractor, DES and Purchaser shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages.

Parties agree that damages of Breach itself will be treated as a direct, not a consequential damage.

Contractor, DES and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the respective fault or negligence of Contractor, DES or Purchaser. Neither party will be liable to the other for damages caused by force majeure events as those events are described in this Contract.

Contractor, DES and Purchaser shall not be liable for personal injury to another party or damage to another party's tangible property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Notwithstanding anything in the foregoing, in no event will Contractor, DES or Purchaser's total and cumulative liability or that of Contractors' distributors and resellers, for all claims of any nature arising out of this Contract exceed the greater of: (i) total fees paid by DES or Purchaser to Contractor for the specific use of the Box Service giving rise to the claim in the twelve (12) months preceding the event first giving rise to the claim under this agreement; or (ii) \$500,000.00. The foregoing limitation does not limit or exclude any liability for death or personal injury caused by negligence.

#### **10.7 Federal Funding**

In the event that federally funded acquisitions result from this Contract, the Contractor may be required to provide additional information (free of charge) at the request of DES or Purchaser and additional restrictions may apply.

#### **10.8 Federal Restrictions on Lobbying**

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

#### **10.9 Debarment and Suspension**

Contractor certifies, that neither it nor its "principals" (as defined in RCW 39.26.010 (9) or other state statute, regulation or policy) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or state department or agency.

As new laws, rules, and policies are implemented, they may apply to this Contract.

## **11 CONTRACT TERMINATION**

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### **11.1 Material Breach**

Either party may terminate this Contract and any then-current Subscription Period for cause at the sole discretion of the Contract Administrator and/or Contractor, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that DES or the Contractor is in violation of applicable federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract;
7. A failure of DES the Contractor or Purchaser to pay any fees owing hereunder or to comply with restrictions on use of the Box Service or purchaser responsibilities for use of the Box Service as set out in this Contract.

### **11.2 Opportunity to Cure**

In the event that either party fails to perform a contractual requirement or materially breaches any term or condition, the other party may issue a thirty (30) day written cure notice.

If the breach remains after Contractor has been provided the opportunity to cure, DES may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and/or any related Subscription Periods or portions thereof; and
3. Suspend or bar Contractor from receiving future Solicitations or other opportunities.

### **11.3 Termination for Convenience**

When, at the sole discretion of DES, it is in the best interest of the state, DES may terminate this Contract, in whole or in part, by 30 calendar days written notice to Contractor. For the avoidance of doubt, any termination of this Contract by DES does not affect any Purchaser then-current Subscription Period and the terms and conditions of this Contract shall continue to govern those Subscription Periods until such Subscription Period expires or is terminated as provided for herein.

DES or Purchaser may terminate a Purchase Order upon 30 calendar days written notice to Contractor. If a Purchase Order is so terminated, (i) any prepaid fees under any then outstanding Purchase Order(s) hereunder will not be refunded, and (ii) to the extent fees under any such Purchase Order(s) have not been prepaid for the entire stated subscription term, DES or Purchaser shall, within 10 business days of such notice of termination, pay Contractor an amount equal to all remaining fees under all such Purchase Order(s) for the full stated subscription term of each such Purchase Order.

#### **11.4 Termination for Withdrawal of Authority**

In the event that DES's or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract or any Purchase Order and prior to normal completion, DES may terminate this Contract, or Purchaser may terminate its Purchase Order, by seven calendar days written notice to Contractor. No penalty shall accrue to DES or Purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this Contract, or Purchaser to terminate any Purchase Order, in order to acquire similar Services from a third party.

If a Purchase Order is so terminated under this Section 11.4, (i) any prepaid fees under any then outstanding Purchase Order(s) hereunder will not be refunded, and (ii) to the extent fees under any such Purchase Order(s) have not been prepaid for the entire stated subscription term, DES or Purchaser shall, within 10 business days of such notice of termination, pay Contractor an amount equal to all remaining fees under all such Purchase Order(s) for the full stated subscription term of each such Purchase Order.

#### **11.5 Termination for Non-Appropriation of Funds**

If funds are not appropriated to Purchaser to continue any Purchase Order, in any future period, and Purchaser provides formal written notice of same to Contractor, Purchaser may terminate any Purchase Order by 30 calendar days and provides formal written notice to Contractor or work with Contractor to arrive at a mutually-acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period(s). Purchaser agrees to notify Contractor in writing of such non-appropriation at the earliest possible time. No penalty shall accrue to Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchaser to terminate any Purchase Order, in order to acquire similar services from a third party.

#### **11.6 Termination by Mutual Agreement**

DES and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement. In such circumstances, the parties would have to agree on the status of continued use by paid subscribers.

#### **11.7 Termination Procedure**

Upon termination of this Master Contract or any Purchase Order, DES or Purchaser, in addition to any other rights provided in this Master Contract may require Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Purchase Order as has been terminated. The sections titled Section 8.6 Protection of Data and Confidential Information and Section 9.11 Treatment of Assets shall apply in such property transfer.

Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Master Contract or Purchase Order had not been terminated. Failure to agree on such determination shall be a dispute within the meaning of the section of this Master Contract entitled Disputes.

#### **11.8 Post-Termination Assistance**

The State of Washington shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established.

#### **11.9 Post-Termination Obligations**

Upon termination or expiration of this Contract for any reason, (a) DES or Purchaser will have no further rights to the Box Service hereunder; (b) DES or Purchaser will, within 5 days of such termination or expiration, destroy all copies of the API, the Box Software, the Support Guide and Confidential Information of Contractor, including any copies of the Support Guide in written or electronic form and any Box Software stored on DES or Purchaser's servers or other systems; and (c) if requested by Contractor, DES or Purchaser will promptly provide to Contractor a written certification signed by an authorized representative certifying that all copies of the API, the Box Software, the Support Guide and Confidential Information of Contractor have been destroyed. For 60 days following the expiration of the Termination of the Agreement and/or applicable Subscription Period, and subject to DES or Purchaser's prior written request, Contractor will grant DES or Purchaser, as the case may be, limited access to the Box Service solely for purposes of DES or Purchaser's retrieval of the Content. After such 60 day period, Contractor will have no obligation to maintain the Content and will delete the Content unless legally prohibited.

### **12 ADDITIONAL TERMS**

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Exhibit 1 to this Agreement contains additional terms applicable to Contractor's provision of the Services contemplated hereunder purchased by DES and/or Purchasers.

### **13 CONTRACT EXECUTION**

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#### **13.1 Entire Agreement**

This Contract document and all citations and subsequently issued Amendments comprise the entire agreement between DES and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled [Contractor Commitments, Warranties and Representations](#), understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or specifications of this Contract will be effective without the written consent of both parties.

### 13.2 Order of Precedence, Incorporated Documents, Conflict and Conformity

The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

#### A *Incorporated Documents*

Each of the documents listed below is, by this reference, incorporated into this negotiated Contract as though fully set forth herein.

- i Appendix B, Final Master Contract
- ii The RFQQ with all attachments exhibits, and all amendments thereto;
- iii Contractor's Response to the RFQQ.

#### B *Order of Precedence*

In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- i Applicable federal and state statutes, laws, and regulations;
- ii Mutually agreed written Amendments to this Contract;
- iii This Contract and all Schedules thereto, including  
The RFQQ ([Exhibit A](#)); with all attachments exhibits and Amendments  
and Contractor's Response to the RFQQ ([Exhibit B](#));

#### C *Conflict*

To the extent possible, the terms of this Contract shall be read consistently.

#### D *Conformity*

If any provision of this Contract violates any Federal or state of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

### 13.3 Legal Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington state Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

**To Contractor at:**  
Box, Inc.  
**Attn: Robert Rush**  
4440 El Camino Real  
Los Alto, CA 94022

Phone 650.329.1210  
E-mail:

**To DES at:**  
Washington state Department of Enterprise Services  
**Attn: Marci Disken Contract Administrator**  
**If by US Postal Service**  
PO Box 41411  
Olympia, WA 98504-1411

Phone: 360.407.2210  
Email: [marci.disken@des.wa.gov](mailto:marci.disken@des.wa.gov)

Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

**13.4 Liens, Claims, and Encumbrances**

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if DES or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

**13.5 Authority to Bind**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

**13.6 Counterparts**

This Contract may be executed in counterparts, in a single original, or duplicate originals. As applicable, each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

<p><b>APPROVED (DES)</b>          WA state Department of Enterprise Services</p>	<p><b>APPROVED (CONTRACTOR)</b>          Box, Inc.</p>
<p>Signature: <i>[Handwritten Signature]</i></p>	<p>Signature: <i>[Handwritten Signature]</i></p>
<p>Print or Type Name: Dale Colben Date: 3-17-14</p>	<p>Print or Type Name: SCOTT HERBERT Date: 3/17/14</p>
<p>Title: Procurement Dir Mgr</p>	<p>Title: VP VERTICAL SALES</p>

DocuSigned by:  
*Box Legal Approved*  
 C2CF6532F08F48D...  
 March 16, 2014

## Exhibit 1 Additional Terms

**“Account(s)”** means all User content storage account(s) created by the User for itself or on behalf of Customer (including accounts created by or for its Administrators, Managed Users, or External Users) within the Box Service.

**“Administrator(s)”** means a person designated by Customer to have an Account with the authority to utilize the Administrative Console to create and manage Accounts associated with Customer.

**“API”** means the application programming interface used by Customer to access certain enterprise functionality provided by the Box Service.

**“Bandwidth Limit”** means 1 terabyte (1TB) per User per month unless otherwise set forth in the applicable Order.

**“Box Service”** means the hosted storage solution provided by Box that permits User access to online content storage, sharing and processing, including, individually and collectively, the API, the Box Software and any Support Guides.

**“Content”** means electronic files, materials, data, text, audio, video, images or other content transmitted, stored, retrieved or processed by Customer and Users using the Box Service.

**“Customer Domain”** means all email and/or web addresses registered, owned or controlled by Customer, its affiliates and/or agents and used by one or more Users to register an Account.

**“External User(s)”** means a person who is permitted to access, store, retrieve or manage Content with a Managed User of the Customer, and is not in a Customer Domain.

**“Managed User(s)”** means a person who is permitted to access, store, retrieve or manage Content, and is associated with a Customer Domain.

**“Order”** means a Box quote order or other ordering document agreed to in writing by the Parties under this Agreement or by Customer and a Box authorized reseller.

**“Privacy Policy”** means the then-current Box privacy policy found at <https://www.box.com/static/html/privacy.html> which identifies how Box collects, uses and discloses, on a limited basis, information of Users excluding Content.

**“Subscription Period”** means the time commencing on the Order Effective Date and continuing for the period specified in the applicable Order, or if no such period is specified, a 1 year period.

**“User(s)”** means, collectively, any person who is permitted to access, store, retrieve or manage Content in any Account, including any Administrator, Managed User or External User.

**“Support Guide”** means Box’s then current published written or electronic documentation specifying the functionality of the Box Service and made generally available by Box to its customers or its users.

### Section 1. Access and Use of the Contractor Service

**1.1 Access Grant.** Subject to DES or Purchaser’s continued compliance with the obligations of this Agreement, including the timely payment of all applicable Fees, Contractor hereby grants DES or Purchaser the non-exclusive right during the Term to: (a) allow Users designated as Administrators to access and use the Administrative Console to create and administer Accounts registered to DES or Purchaser; (b) allow Users to store, retrieve, and share Content through the Box Service in accordance with the Support Guide solely through any Account registered to DES or Purchaser; and (c) make a reasonable number of copies of the API, the Box Software and any Support Guide Contractor directly makes available to DES or Purchaser, if any, and distribute and use such copies solely for DES or Purchaser’s own internal business purposes to support the use of the Box Service by Users.

**1.2 Restrictions on Use of the Contractor Service.** The Box Service is subject to the Bandwidth Limit specified herein as well as storage capacity limits, if any, as may be additionally specified in an Order. Without limiting any other damages under this Agreement if DES or Purchaser exceeds the applicable Bandwidth Limit or storage capacity limit, reasonable restrictions will be placed on DES or Purchaser's Account(s) until any such excess usage is adequately mitigated or eliminated by DES or Purchaser. DES or Purchaser agrees that it is solely responsible for the nature and content of all materials, works, data, statements, and other visual, graphical, video, written or audible communications of any nature submitted by any User or otherwise used through its Account. DES or Purchaser agrees not to use or permit the use of the Box Service: (a) to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (b) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability; (c) in any manner that is likely to damage, disable, overburden, or impair the Box Service or interfere in any way with the use or enjoyment of the Contractor Service by others; (d) to introduce any malware or other malicious activity in DES or Purchaser's or an User's use of the Box Service; (e) in violation of any U.S. denied party-list, embargoed country restriction, export law or regulation; or (f) in any way that constitutes or encourages conduct that could constitute a criminal offense.

**1.3 Suspension of Service.** Contractor may at any time suspend any User's use of the Box Service and/or remove or disable any Content as to which Contractor reasonably and in good faith believes is in violation of this Agreement. Contractor agrees to provide DES or Purchaser with notice of any such suspension or disablement before its implementation unless such suspension or disablement is necessary to comply with legal process, regulation, order or prevent imminent harm to the Box Service or any third party, in which case Contractor will notify DES or Purchaser to the extent allowed by applicable law of such suspension or disablement as soon as reasonably practicable thereafter.

## **Section 2. Non-Contractor Applications and Services.**

Contractor makes third-party applications, which are separately licensed by their provider, available to DES or Purchaser for use in connection with the Contractor Service ("**Third-party Products**"). Contractor makes no warranties of any kind and assumes no liability whatsoever for DES or Purchaser's use of such Third-party Products.

## **Section 3. DES or Purchaser Responsibilities**

**3.1 Establishment of Accounts.** DES or Purchaser will promptly appoint an Administrator for the Administrative Console. Contractor will initially provide the necessary passwords or other unique identifiers to the Administrator to access the Administrative Console. As between the Administrator and Contractor, the Administrator will be solely responsible for the assignment and management of Accounts.

**3.2 Managed Users.** DES or Purchaser will have the right to appoint a Managed User for each Account established through the Administrative Console. As between the Administrator and Contractor, the Administrator will be responsible for providing the necessary passwords to permit Managed Users to access and use the Contractor Service. DES or Purchaser will ensure that all Managed Users do not share any password with any other person or permit any other person to log on as such Managed User. In the event of termination or withdrawal of a Managed User, DES or Purchaser may reassign the Account to a new Managed User, at no additional cost, subject to the terms of this Agreement.

**3.3 Content.** DES or Purchaser will: (a) be solely responsible for the nature, quality and accuracy of the Content; (b) ensure that the Content (including the storage or transmission thereof) complies with the this Agreement and any and all applicable laws, and regulations; (c) promptly handle and resolve any notices and claims relating to the Content; (d) promptly handle and resolve any notices sent to DES or Purchaser by any person claiming that any Content violates any person's rights, including take-down notices pursuant to the Digital Millennium Copyright Act and any other notices; and (e) maintain appropriate security, and protection of the devices accessing the Box Service.

Contractor has no liability to DES or Purchaser or any third party for any reason as a result of (i) any unauthorized disclosure or access to DES or Purchaser's Account or Content as a result of DES or Purchaser's or a User's misuse of the Box Service or loss or theft of any User password or username; or (ii) any deletion, destruction, damage or loss of Content caused by or at the direction of DES or Purchaser or a User.

**3.4 Notification of Unauthorized Use.** DES or Purchaser will immediately notify Contractor in writing of any unauthorized use of any Account, Content or the Box Service that comes to DES or Purchaser's attention. In the event of any such unauthorized use by any third party that obtained access to the Box Service directly or indirectly through DES or Purchaser or through any User, DES or Purchaser will take all steps necessary to terminate such unauthorized use and will provide Contractor with such cooperation and assistance related to any such unauthorized use as Contractor may reasonably request.

#### **4. Warranty and Disclaimer**

**4.1 Contractor Service Warranty.** Contractor warrants that while the corresponding paid-for Subscription Period is in effect, that the Box Service will perform in accordance with the functions specified in the RFQQ and the applicable Support Guide under normal use and circumstances. Subject to the notice and cure provisions of the Termination provisions of this Agreement, DES or Purchaser's sole and exclusive remedy and Contractor's entire liability for a breach of this warranty shall be for Contractor to use commercially reasonable efforts to modify the Service to substantially achieve in all respects the functionality described in the RFQQ and the applicable Support Guide and if Contractor is unable to restore such functionality, DES or Purchaser shall be entitled to terminate the applicable Order and receive a pro-rated refund of the subscription fees paid to Contractor for the corresponding remaining portion of the Subscription Period. The warranties set forth herein are made to and for the benefit of DES or Purchaser only. For the avoidance of doubt, this section relates to the Box Service warranty and is in addition to other warranties provided for in this Agreement such as Section 7.1.

**4.2 Mutual Warranties.** Each party represents and warrants to the other that (a) this Agreement has been duly authorized, executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement; and (c) the execution, delivery and performance of this Agreement does not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**4.3 DES or Purchaser Warranties.** DES or Purchaser represents and warrants to Contractor that (a) DES or Purchaser or its licensors own all right, title and interest in and to the Content; (b) DES or Purchaser has all rights in the Content to grant the rights to Contractor contemplated by this Agreement; and (c) none of the Content will violate the terms of Section 1.2 of this Exhibit 1 (Restriction on the use of the Contractor Service).

**4.4 Disclaimer of Warranties.** Except as provided in this section 4, to the maximum extent permitted by applicable law, neither party makes any (and each party specifically disclaims all) representations or warranties contract of any kind not established in the contract, whether express, implied, statutory or otherwise, including, without limitation, any warranty that the box service will be uninterrupted, error-free or free of harmful components, that the content will not be lost or damaged, or any implied warranty of merchantability, satisfactory quality, fitness for a particular purpose, or non-infringement, and any warranty arising out of any course of performance, course of dealing or usage of trade. Some jurisdictions do not allow the exclusion of implied warranties. In such an event the above exclusion will not apply solely to the extent prohibited by law.

## Section 5. Proprietary Rights

**5.1 Content Ownership by DES or Purchaser.** As between DES or Purchaser and Contractor, DES or Purchaser or its licensors own all right, title and interest in and to the Content. DES or Purchaser hereby grants Contractor the right to transmit, use and disclose the Content solely to provide the Box Service to DES or Purchaser or any User or to comply with any request of a governmental or regulatory body (including subpoenas or court orders), as otherwise required by law, or to respond to an emergency which Contractor believes in the good faith requires Contractor to disclose information to assist in preventing the death or serious bodily injury of any person.

**5.2 Ownership of Box Service by Contractor.** As between Contractor and DES or Purchaser, Contractor or its licensors own and reserve all right, title and interest in and to the Contractor marks, the Box Service and all hardware, software and other items used to provide the Box Service, other than the access rights explicitly granted to DES or Purchaser herein. No title to or ownership of any proprietary rights related to the Box Service is transferred to DES or Purchaser or any End User pursuant to this Agreement or any transaction contemplated by this Agreement. All rights not explicitly granted to DES or Purchaser are reserved by Contractor. Contractor reserves the right, in its sole discretion, to change and/or require you to change DES or Purchaser's Box Service user ID and any custom or vanity URLs, custom links, or vanity domains DES or Purchaser may obtain through the Box Service. In the event that DES or Purchaser makes suggestions, improvements or modifications to Contractor regarding any features, functionality or performance that Contractor adopts for any of its products including the Box Service, such features, functionality or performance shall be deemed to be automatically assigned under this Agreement to, and shall become the sole and exclusive property of Contractor.

### 5.3 Service Level Commitments

All references to "Box" herein shall mean "Contractor"; all references to "Customer" shall mean "DES or Purchaser".

Commencing on the effective date of the applicable Subscription Period, Box will provide to Customer the Service Level Commitments and Support Services defined herein as specified in the applicable Order. In the event of a conflict between the terms of the order and the terms of the Contract, the terms of the Contract shall prevail.

### 5.4 Definitions

**"Customer Core Group"** means Customer's employees who have been trained on the Box Service and who are familiar with Customer's business practices.

**"Customer User Community"** means all Customer's Users.

**"Downtime"** means any period during which the Customer is unable to access or use the Box Service because of an Issue, excluding (i) Scheduled Downtime or (ii) document preview, search, email uploads, sync or FTP functions of the Box Service.

**"Issue"** means a single, reproducible issue or problem materially or significantly affecting the functionality of the Box Service.

**"Scheduled Downtime"** means a time period identified by Box not to exceed 1 hour per calendar quarter and subject to 24 hours' prior notice wherever practical as provided to Box's general customer base, in which Box intends to have any downtime of the Box Service or related systems.

**"Uptime Percentage"** means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in such calendar month, divided by the total number of minutes in such calendar month.

**"User Administration Support"** means issues that impact the usability of the Box Service and are addressable through the adjustment of User access privileges, processes or procedures.

**5.5. Scope of Service Level Commitments.**

Box's obligations do not extend to Issues or errors caused by:

- (a) Third party hardware or software;
- (b) Use of the Box Service in violation of the terms of the Agreement;
- (c) Use of the Box Service other than in accordance with any user Documentation or the
- (d) reasonable instructions of Box;
- (e) Ongoing test or training instances of the Box Service provided to Customer; or
- (f) Services, circumstances or events beyond the reasonable control of Box, including, without limitation, any Force Majeure events, the performance and/or availability of local ISPs employed by Customer, or any network beyond the demarcation or control of Box.

**5.6. Scheduled Downtime and Guaranteed Up Times**

Box will use commercially reasonable efforts to provide at least 24 hours' prior notice before implementing any Scheduled Downtime. Subject to Customer's purchase of Premier Support, Box will provide Customer with the SLC Credits identified below during the applicable Subscription Period upon Customer's written request. The SLC Credit will be equal to the credit percentage identified in the table SLC Credits table below multiplied by the Customer's fees paid to Box for the Box Service that are attributable to the corresponding month (calculated on a straight line pro-rated basis with respect to any fees paid in advance). Customer will submit a written SLC Credit request to Box within 15 days of such Downtime. The SLC Credit is Customer's sole and exclusive remedy for any failure by Box to meet any service obligations incurred as result of downtime.

**SLC Credits Table**

<b>Uptime Percentage</b>	<b>SLC Credit Percentage</b>
Less than 99.9% but more than 99.8%	10%
Less than 99.8% but more than 99.7%	20%
Less than 99.7% but more than 99.6%	30%
Less than 99.6% but more than 99.5%	40%
Less than 99.5% but more than 99.4%	50%
Less than 99.4% but more than 99.3%	60%
Less than 99.3% but more than 99.2%	70%
Less than 99.2% but more than 99.1%	80%
Less than 99.1% but more than 99.0%	90%
Less than 99.0%	100%

**5.7 Support Services**

Box will provide support services to assist Customer in resolving Issues ("Support Services"). Support Services do not include (a) physical installation or removal of the API, the Box Software and any Documentation; (b) visits to Customer's site; (c) any professional services ("Professional Services") associated with the Box Service, including, without limitation, any custom development, data modeling, training and knowledge transfer; or (d) the set-up, configuration and use of the Box Service. Box's performance of Professional Services if any, will be subject to the Parties' execution of a Professional Services addendum ("PSO Addendum") to this Agreement and payment of the applicable Fees.

The Customer will ensure that the Customer User Community addresses all Issues through the Customer Core Group. The Customer Core Group will:

- (a) Validate and recreate Issues;
- (b) Resolve procedural Issues;
- (c) Provide first-level User Administration Support;
- (d) Report all unresolved problems to Box Support; and,
- (e) Provide additional information for testing and analysis purposes to assist with Issue resolution.

### 5.8 Case Prioritization

Any issues reported by Customer to Box will be classified as an Issue or a Request and assigned a priority. The following priorities and their meanings are used herein:

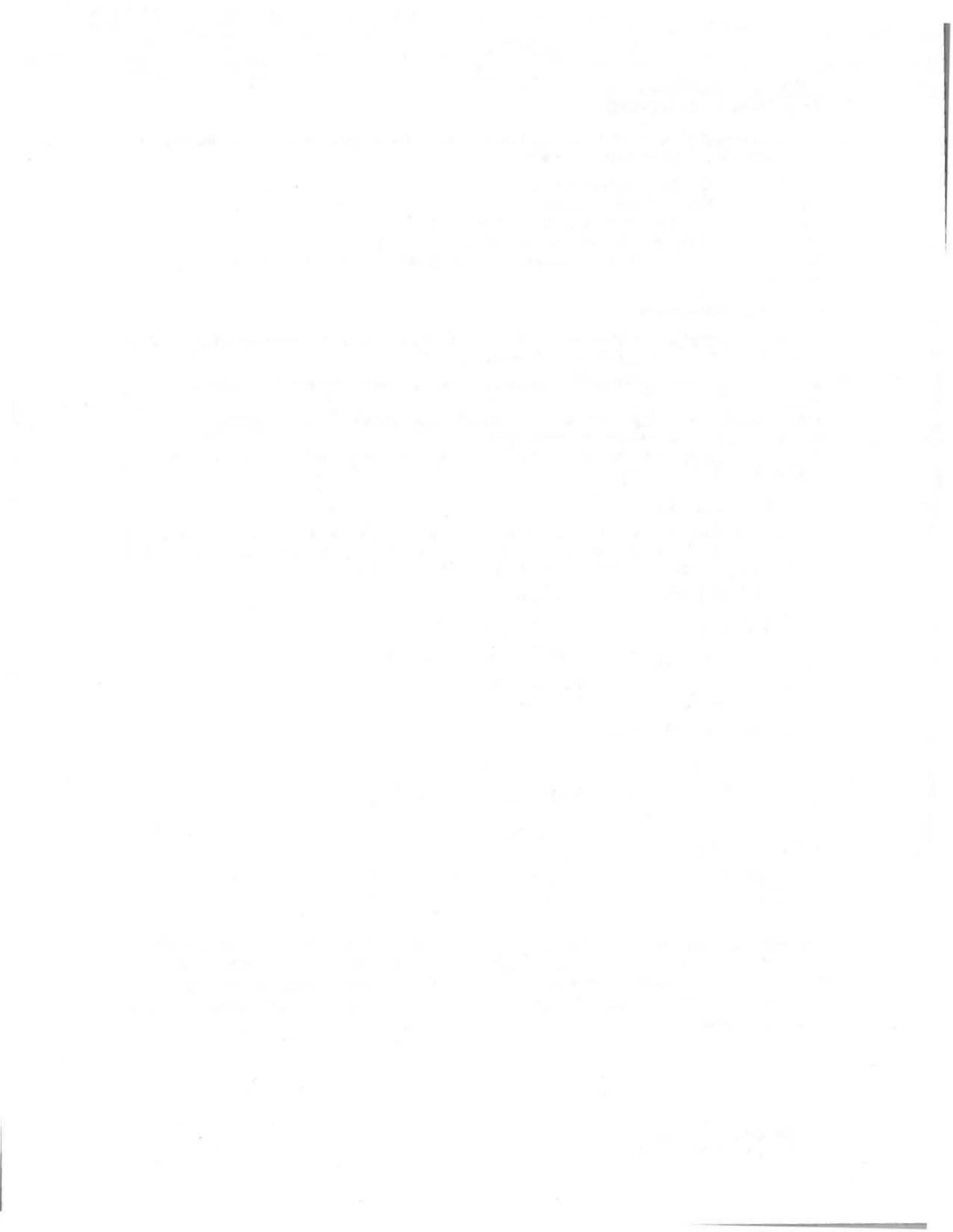
- (a) Level 1 – Urgent – An Issue that renders the Box Service completely inoperative for all Users.
- (b) Level 2 – High – An Issue that materially impairs substantial features of the Box Service for many Users; no reasonable workaround is available.
- (c) Level 3 – Normal – An Issue that impairs a feature of the Box Service for a few Users; a reasonable workaround is available.

### 6. Response Times

Box will provide an acknowledgement of a reported Issue to Customer and respond within the target time frames specified below ("Response"). The Response will include the priority assigned to the case, any actions taken, immediate resolution if available, and any escalation plans.

Hours of Operation and Response Time	Standard Support
Hours of Operation	5 AM – 6 PM PST Monday – Friday
Support Access Method	Web/Phone
Support Response Method	Email/Phone
Number of Support Requests	Unlimited
Priority Level/Target Response Time:	
Level 1 – Urgent	Within 1 business hour
Level 2 – High	Within 4 business hours
Level 3 – Normal	Within 8 business hours
Support Credits	N/A

Resolution to an Issue is subject to verification and reproduction of the Issue by Box, with Customer's reasonable assistance verifying and reproducing the Issue. Resolution(s) may include a temporary workaround, patch or bypass supplied by Box, or a computer or operating routine. Once Box has resolved an Issue, Customer will be required to test and accept the fix and/or work on data Issues if data has been impacted.





**04913 – On line File Storage Services aka Cloud Storage**

**Contract Amendment**

**Date Issued:** 5/8/15  
**Effective Date:** Upon Final DES signature  
**Amendment Number:** 1  
**Contractor Name:** Box, Inc.

This Contract Amendment is issued under the provisions of the On-Line File Storage Services aka Cloud Storage Contract 04913. The changes authorized are within the scope of the original contract. All rights and obligations of the parties are governed by the terms of the original contract, including any subsequent amendments, which are hereby incorporated by reference.

**Purpose of Amendment**

To extend the term of the On Line Storage Services Contract 04913 for two (2) years. The new period of performance will be from May 16<sup>th</sup> 2015 through May 15<sup>th</sup> 2017.

All other terms and conditions remain unchanged.

**Authorizing Signatures**

**For Contractor: Box, Inc.**  
**Audrie Plant, Box, Inc.**  
(310) 880 -2990  
4440 El Camino Real  
Los Altos, CA 94022  
[aplant@Box.com](mailto:aplant@Box.com)

DocuSigned by:  
Signature Audrie Plant  
Date May 14, 2015

**For State of Washington:**

**Marci Disken, Contract Specialist**  
(360) 407-9405  
PO Box 41408  
Olympia WA 98504-1408  
[Marci.disken@des.wa.gov](mailto:Marci.disken@des.wa.gov)

Signature Marci Disken

Date 5/14/15

**CPRM Authorizing Manager:**

Signature [Signature]

Date 5/14/15