

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
FEBRUARY 7, 2012 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
2012 OnBase Annual Maintenance Agreement	✓ Resolution Ordinance Motion Discussion Only	Liangfu Wu Director of Information Services

SYNOPSIS

A resolution has been prepared authorizing a maintenance agreement for OnBase with Hyland Software, Inc. of Westlake, Ohio in an amount not to exceed \$30,400.00

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 include *Exceptional Municipal Organization*.

FISCAL IMPACT

The FY12 budget includes \$32,540 for in the General Fund for this agreement.

RECOMMENDATIONS

Approval on the February 7, 2012 consent agenda.

BACKGROUND

Hyland, the manufacturer of OnBase, is the sole provider of maintenance for the Village's OnBase system, the Village-wide content management software that integrates document management, business process management and records management into a single application. Staff continues to convert a significant amount of paperwork, such as FOIA requests and engineering plans, into a digital format. Previously, this service was provided by Crow Chizek & Company, LLC.; however, in 2011, Hyland began maintaining its own product. This is the second year that the Village has entered into a maintenance agreement directly with Hyland.

The maintenance agreement renewal is required on an annual basis.

ATTACHMENTS

Resolution
 Software Maintenance Agreement
 License Itemization

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
SOFTWARE MAINTENANCE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND HYLAND SOFTWARE, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (“Licensee”) and Hyland Software, Inc. (“Hyland”) , for the maintenance of the OnBase document management system software, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

**OnBase® Information Management System
SOFTWARE MAINTENANCE AGREEMENT**

This Agreement is made and entered into effective as of the date this Agreement is signed by the last party that signs, as determined based upon the dates set forth after their respective signatures (the "Effective Date"), by and between Hyland Software, Inc., an Ohio corporation with its principal offices at 28500 Clemens Road, Westlake, Ohio 44145 ("Hyland"), and Village of Downers Grove, with its principal offices at 801 Burlington Avenue, Downers Grove, Illinois 60515 ("Licensee").

RECITAL:

A. Hyland has licensed to Licensee the Software specified in Hyland's OnBase® End User License Agreement with Licensee (as the same may be amended or modified from time to time, the "EULA") and Licensee desires to purchase, and Hyland is willing to provide, Maintenance and Support for such Software in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties mutually agree as follows:

1. **DEFINED TERMS.** The following terms shall have the meanings set forth below for all purposes of this Agreement:

(a) Annual Maintenance Fees. "Annual Maintenance Fees" means the amounts charged by Hyland and payable by Licensee for Maintenance and Support of Supported Software or Extended Support Software for a maintenance period.

(b) Certified Software Employee. "Certified Software Employee" means an employee of Licensee who meets the applicable certification or qualification requirements set forth on Attachment 1 to this Agreement under the caption "Certified Software Employee Requirements," as such Attachment 1 may be amended from time to time by Hyland upon at least ninety (90) days advance written notice to Licensee.

(c) Documentation. "Documentation" means the "Help Files" included in the Software which relate to the functional, operational or performance characteristics of the Software.

(d) Error. "Error" means any defect or condition inherent in the Software that causes the Software to fail to function in all material respects as described in the Documentation.

(e) Error Correction Services. "Error Correction Services" means Hyland's services described in Section 2.1(b).

(f) EULA. "EULA" is defined in the recital to this Agreement.

(g) Initial Maintenance Period. "Initial Maintenance Period" means the twelve (12) month period that begins on the Effective Date of this Agreement.

(h) Maintenance and Support. "Maintenance and Support" means:

(1) for Supported Software: (A) Error Correction Services, (B) Technical Support Services, and (C) the availability of Upgrades and Enhancements in accordance with Section 2.1(d); or

(2) for Extended Support Software: (A) Technical Support Services and (B) the availability of an Upgrade and Enhancement in accordance with Section 2.1(d).

Maintenance and Support does not include any services that Hyland may provide in connection with assisting or completing an upgrade of Supported Software or Extended Support Software with any available Upgrade and Enhancement.

(i) Qualified Employee. “Qualified Employee” means an employee of Licensee who meets the applicable requirements set forth on Attachment 1 to this Agreement under the caption “Qualified Employee Requirements,” as such Attachment 1 may be amended from time to time by Hyland upon at least ninety (90) days advance written notice to Licensee.

(j) Software. “Software” means the OnBase® Information Management System software licensed by Licensee from Hyland under the EULA.

(k) Supported Software; Extended Support Software; Retired Software. At any particular time during a maintenance period under this Agreement:

(1) “Supported Software” means the current released version of the Software and any other version of such Software that is not Extended Support Software or Retired Software.

(2) “Extended Support Software” means any version of the Software which is identified on Hyland’s secure end user web site (currently <https://users.onbase.com>) as being subject to extended support.

(3) “Retired Software” means any version of the Software which is identified on Hyland’s secure end user web site as being retired.

Hyland will specify on its end user web site Software versions are Extended Support Software or Retired Software. The effective date of such change will be twelve (12) months after the date Hyland initially posts the status change on its end user web site.

(l) Technical Support Services. “Technical Support Services” means Hyland’s services described in Section 2.1(a).

(m) Upgrades and Enhancements. “Upgrades and Enhancements” means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Hyland makes available to Licensee or to Hyland’s end users generally during the term of this Agreement to correct Errors or deficiencies or enhance the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules or re-platformed Software.

2. MAINTENANCE AND SUPPORT.

2.1 Maintenance and Support Terms. Hyland will provide Maintenance and Support as follows:

(a) Technical Support Services.

(1) During the hours of 8:00 a.m. to 8:00 p.m., USA Eastern Time, Monday through Friday, excluding holidays, or as otherwise provided by Hyland to its direct customers for Maintenance and Support in the normal course of its business (“Regular Technical Support Hours”), Hyland will provide telephone or online Technical Support Services related to problems reported by Licensee and associated with the operation of any Supported Software or Extended Support Software, including assistance and advice related to the operation of the Supported Software or Extended Support Software. Only a Certified Software Employee or Qualified Employee (who shall be an applicable employee to make requests or reports related to Maintenance and Support only during a transitional period when Licensee does not have a Certified Software Employee as required under Section 2.3(c)) of Licensee shall make a request or report a matter requiring Technical Support Services under this Section 2.1(a).

(2) Technical Support Services are not available for Retired Software.

(b) Error Correction Services.

(1) During Regular Technical Support Hours, with respect to any Errors in the Supported Software which are reported by Licensee and which are confirmed by Hyland, in the exercise of its reasonable judgment, Hyland will use its commercially reasonable efforts to correct the Error, which may be effected by a commercially reasonable workaround. Hyland shall promptly commence to confirm any reported Errors after receipt of a proper report of such suspected Error from Licensee. Hyland may elect to correct the Error in the current available or in the next available commercially released version of the Supported Software and require Licensee to implement an Upgrade and Enhancement to the version selected by Hyland in order to obtain the correction. Only a Certified Software Employee or, if applicable, Qualified Employee of Licensee shall make a request or report on a matter requiring Error Correction Services under this Section 2.1(b).

(2) During any time outside of Regular Technical Support Hours, Hyland will receive and initially respond to reports of Errors in Supported Software by Licensee only to the extent that the Supported Software is inaccessible or the functionality of the Supported Software is substantially impaired, in either case in Licensee's production environment, and Licensee's business operations are materially adversely impacted by such circumstances. Reports of Errors outside of Regular Technical Support Hours will be made by calling Hyland's regular telephone support number and using Hyland's after hours paging system. Hyland's designated support engineer on call will contact Licensee regarding the problem within three (3) hours after the page. Licensee will not call outside of Regular Technical Support Hours for any other purpose or in any other circumstances. Hyland reserves the right to notify Licensee that it is making unauthorized use of Maintenance and Support outside of Regular Technical Support Hours and to terminate the provision thereof after such notice is given, unless Licensee pays Hyland for such continued after-hours Maintenance and Support at the rate of \$150 per hour (with a minimum charge of one hour per call). Licensee shall be informed at the time of a call if such call is considered an unauthorized call and Licensee shall have the opportunity to terminate the call and delay Maintenance and Support until Regular Technical Support Hours on the next business day.

(3) Error Correction Services are not available for Extended Support Software or Retired Software.

(c) Reporting Policies and Procedures Applicable to Technical Support Services and Error Correction Services.

(1) Technical Support Services. In requesting Technical Support Services, Licensee will report any problems or questions related to the operation of any Supported Software or Extended Support Software in accordance with Hyland's then-applicable reporting policies. Hyland's current policies require Licensee to report such a problem or question only during Regular Technical Support Hours and either by telephone, using Hyland's regular technical support telephone line (440-788-5600), or by e-mail, using Hyland's regular technical support e-mail address (support@onbase.com).

(2) Error Correction Services. In reporting any suspected Errors in Supported Software, Licensee shall provide prompt notice of any Errors in Supported Software discovered by Licensee, or otherwise brought to the attention of Licensee, in accordance with Hyland's then current policies for reporting of Errors. Hyland's current policies require Licensee to report Errors by telephone using Hyland's regular technical support telephone line (440-788-5600) or by e-mail using Hyland's regular technical support e-mail address (support@onbase.com), except that outside of Regular Technical Support Hours all qualified suspected Errors must be reported by telephone. If requested by Hyland, Licensee agrees to provide written documentation of Errors to substantiate the Errors and to assist Hyland in the detection, confirmation and correction of such Errors.

(d) Upgrades and Enhancements.

(1) Hyland will provide, in accordance with Hyland's then current policies, as set forth from time to time on Hyland's secure end user web site (currently <https://users.onbase.com>), all Upgrades and Enhancements, if and when released during the term of this Section 2 of this Agreement. Licensee acknowledges and agrees that Hyland has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland's policies respecting Upgrades and Enhancements and the release thereof to its end users.

(2) Any Upgrades and Enhancements to the Software and Documentation shall remain proprietary to Hyland and the sole and exclusive property of Hyland, and shall be subject to all of the restrictions, limitations and protections of the EULA and this Agreement. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing and trade secrets in the Software and Documentation and any Upgrades and Enhancements are and shall remain the exclusive property of Hyland.

(3) In the case of Extended Support Software, the only Upgrade and Enhancement available is a full Upgrade and Enhancement to the latest released version of Supported Software.

(4) Upgrades and Enhancements are not available for Retired Software.

(e) Licensee's Implementation of Error Corrections and Upgrades and Enhancements. In order to maintain the integrity and proper operation of the Software, Licensee agrees to implement, in the manner instructed by Hyland, all Error corrections and Upgrades and Enhancements to the Supported Software or Extended Support Software, as applicable. Licensee's failure to implement any Error corrections or Upgrades and Enhancements of the Software as provided in this paragraph shall relieve Hyland of any responsibility or liability whatsoever for any failure or malfunction of the Software, as modified by a subsequent Error correction or Upgrade and Enhancement.

(f) On-line Access. Licensee acknowledges and agrees that Hyland requires on-line access to the Software installed on Licensee's systems in order to provide Maintenance and Support. Accordingly, Licensee shall install and maintain, at Licensee's sole cost and expense, means of communication and the appropriate communications software as specified by Hyland and an adequate connection with Hyland to facilitate Hyland's on-line Maintenance and Support.

2.2 Exclusions.

(a) Generally. Hyland is not responsible for providing, or obligated to provide, Maintenance and Support under this Agreement: (1) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, or from any design defect in any configuration of the Software, which activities in any such case were undertaken by any party other than Hyland; (2) in connection with any Error if Hyland has previously provided corrections for such Error which Licensee fails to implement; (3) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software embedded in the Software by Hyland), hardware or any system or networking utilized by Licensee; (4) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (5) if any party other than Hyland, or an authorized subcontractor specifically selected by Hyland, has provided any services in the nature of Maintenance and Support to Licensee with respect to the Software.

(b) Software API and Work Products. Maintenance and Support is not provided for any problems (other than Errors) or questions related to the operation or use of the Software application programming interfaces (APIs). In addition, Maintenance and Support is not provided for any Work Products (as defined hereinbelow) delivered under any work agreement. "Work Products" means all work products in the nature of computer software, including source code, object code, scripts, and any components or elements of the foregoing that are developed, discovered, conceived or introduced by Hyland, working either alone or in conjunction with others, in the performance of professional services.

(c) Excluded Software and Hardware. This Agreement does not govern, and Hyland shall not be responsible for, the maintenance or support of any software other than Supported Software or Extended Support Software, or for any hardware or equipment of any kind or nature, whether or not obtained by Licensee from Hyland.

2.3 Certain Other Responsibilities of Licensee.

(a) Operation of the Software and Related Systems. Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software and all related hardware and software (including the database software); and for obtaining or providing training for its personnel; and for instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use.

(b) Access to Premises and Systems. Licensee shall make available reasonable access to and use of Licensee's computer hardware, peripherals, Software and other software as Hyland deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support. Such right of access and use shall be provided at no cost or charge to Hyland.

(c) Certified Software Employee. Licensee agrees to use commercially reasonable efforts at all times during the term of this Agreement to maintain on its staff at least one (1) Certified Software Employee.

2.4 Professional Services for Projects Not Covered by Technical Support Services or Error Correction Services. If Licensee requests technical services related to the Software that Hyland is not obligated to provide under this Agreement, and Hyland nevertheless agrees to provide such requested services, then in any such case Licensee agrees that such services shall not be covered by this Agreement or the Annual Maintenance Fees and such services only shall be engaged and provided pursuant to a separate work agreement for professional services fees in accordance with such terms as the parties may mutually agree upon.

3. **PURCHASE ORDERS.**

Licensee shall be required to submit a purchase order for the purchase of Maintenance and Support under this Agreement for the first maintenance period applicable to each Supported Software or Extended Support Software module. Each such purchase order shall be subject to acceptance or rejection by Hyland.

4. **FEES, PAYMENTS, CURRENCY AND TAXES.**

(a) Annual Maintenance Fees. Licensee shall pay to Hyland Annual Maintenance Fees for each maintenance period under this Agreement in the amounts invoiced by Hyland for Supported Software or Extended Support Software for the applicable maintenance period. For the first maintenance period of this Agreement applicable to a Supported Software or Extended Support Software module, Hyland shall invoice Licensee for Annual Maintenance Fees set forth on Exhibit A, attached hereto, promptly upon Hyland's acceptance of this Agreement. Licensee shall pay each such invoice in full net 60 days from the invoice date. For renewal maintenance periods under this Agreement, Hyland shall invoice Licensee for Annual Maintenance Fees at least forty-five (45) days prior to the end of the then-current maintenance period. If Licensee elects to renew Maintenance and Support, Licensee shall pay each such invoice in full prior to the commencement date of the maintenance period to which such Annual Maintenance Fees relate. In the event that any maintenance period under this Agreement for a Supported Software or Extended Support Software module is a period of less than twelve (12) calendar months, the Annual Maintenance Fees for such maintenance period for such module will be pro-rated based upon the number of calendar months in such maintenance period (including the calendar month in which such maintenance period commences if such period commences prior to the 15th day of such month).

(b) Taxes and Governmental Charges. All payments under this Agreement are exclusive of all applicable taxes and governmental charges (such as duties), all of which shall be paid by Licensee (other than taxes on Hyland's income). In the event Licensee is required by law to withhold taxes, Licensee agrees to furnish Hyland all required receipts and documentation substantiating such payment. If Hyland is required by law to remit any tax or governmental charge on behalf of or for the account of Licensee, Licensee agrees to reimburse Hyland within thirty (30) days after Hyland notifies Licensee in writing of such remittance. Licensee agrees to provide Hyland with valid tax exemption certificates in advance of any remittance otherwise required to be made by Hyland on behalf of or for the account of Licensee, where such certificates are applicable.

(c) Resolution of Invoice Disputes. If, prior to the due date for payment under any invoice, Licensee notifies Hyland in writing that it disputes all or any portion of an amount invoiced, both parties will use commercially reasonable efforts to resolve the dispute within thirty (30) calendar days of Hyland's receipt of the notice. If any amount remains disputed in good faith after such 30-day period, either party may escalate the disputed items to the parties' respective executive management to attempt to resolve the dispute. The parties agree that at least one of each of their respective executives will meet (which may be by telephone or other similarly effective means of remote communication) within ten (10) calendar days of any such escalation to attempt to resolve the dispute. If the parties' executive managers are unable to resolve the dispute within ten (10) calendar days of such meeting, either party thereafter may file litigation in a court of competent jurisdiction under Section 10(a) of this Agreement to seek resolution of the dispute.

(d) Certain Remedies for Non-Payment or for Late Payment. In the event of any default by Licensee in the payment of any amounts invoiced by Hyland, which default continues unremedied for at least ten (10) calendar days after the due date of such payment, Hyland shall have the right to suspend or cease the provision of Maintenance and Support, including the delivery of any Upgrades and Enhancements, to Licensee unless and until such default shall have been cured.

(e) U.S. Dollars. All fees, costs and expenses under this Agreement shall be determined and invoiced in, and all payments required to be made in connection with this Agreement to Hyland shall be made in, U.S. dollars.

(f) User's Billing and Payment Procedures. Payment by User will be made upon receipt of an invoice referencing User's purchase order number. Once an invoice and receipt of materials or service have been verified by User, the invoice will be processed for payment in accordance with the User payment schedule. User will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to Hyland within 60 days of receipt of a proper bill or invoice. If payment is not issued to Hyland within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made. User shall review in a timely manner each bill or invoice after its receipt. If User determines that the bill or invoice contains a defect making it unable to process the payment request, User shall notify Hyland as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

(g) Receipt of Invoices. All invoices shall be sent electronically by Hyland to User to the attention of: Village of Downers Grove, Accounts Payable, 801 Burlington, Downers Grove, IL 60515 and all such invoices shall be deemed to have been received by Customer on the next business day after the date sent.

5. LIMITED WARRANTY.

(a) Limited Warranty. For a period of sixty (60) days from the date of completion of Technical Support Services or Error Corrections Services, Hyland warrants to Licensee that such services have been performed in a good and workmanlike manner and substantially according to industry standards. Provided that, within the 60-day period referred above, Licensee notifies Hyland in writing of any non-conformity of such services to the foregoing limited warranty, Hyland's sole obligation, and Licensee's sole and exclusive remedy, shall be for Hyland to use commercially reasonable efforts to re-perform the nonconforming services in an attempt to correct the nonconformity(ies). If Hyland is unable to correct such nonconformity(ies) after a reasonable period of time,

Licensee's sole and exclusive remedy shall be to exercise its termination rights under Section 7.2. This limited warranty specifically excludes non-performance issues caused as a result of incorrect data or incorrect procedures used or provided by Licensee or a third party or failure of Licensee to perform and fulfill its obligations under this Agreement or the EULA.

(b) No Warranty of Upgrades and Enhancements. The EULA shall govern any limited warranty or disclaimers relating to Upgrades and Enhancements of the Software provided to Licensee under this Agreement, and no warranty is given under this Agreement with respect to Upgrades and Enhancements.

(c) DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5(a) ABOVE, HYLAND MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE AND SUPPORT OR ANY UPGRADES AND ENHANCEMENTS TO SOFTWARE PROVIDED UNDER THIS AGREEMENT. HYLAND DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. HYLAND DOES NOT WARRANT THAT ANY MAINTENANCE AND SUPPORT SERVICES OR UPGRADES AND ENHANCEMENTS TO SOFTWARE PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY OF THE FOREGOING WILL BE UNINTERRUPTED. HYLAND DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

(d) No oral or written information given by Hyland, its agents, or employees shall create any additional warranty. No modification or addition to the limited warranties set forth in this Agreement is authorized unless it is set forth in writing, references this Agreement, and is signed on behalf of Hyland by a corporate officer.

6. LIMITATIONS OF LIABILITY.

IN NO EVENT SHALL HYLAND'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY LICENSEE TO HYLAND UNDER THIS AGREEMENT DURING THE CURRENT MAINTENANCE PERIOD OF THIS AGREEMENT WHEN THE EVENTS OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY OCCUR OR ARISE. IN NO EVENT SHALL HYLAND BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF HYLAND HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

7. TERM AND TERMINATION.

7.1 Term.

(a) Generally. Subject to the early termination provisions of this Section 7.1(a) and Sections 7.2 and 7.3, the term of this Agreement shall be for the Initial Maintenance Period as defined in Section 1(i) of this Agreement. In the case of any additional Supported Software or Extended Support Software that is licensed by Licensee at any time after the commencement of the Initial Maintenance Period under this Agreement, the first maintenance period applicable to such additional Software under this Agreement shall commence on the date of Hyland's acceptance of the purchase order under which Licensee has ordered Maintenance and Support for such Software and shall end simultaneously with the end of the then current maintenance period covering the other Supported Software or Extended Support Software. Notwithstanding anything to the contrary, this Agreement shall immediately terminate at the time the version of the Software licensed by Licensee and in use in its production environment becomes Retired Software.

(b) Reinstatement. In the event of the termination of this Agreement either by Customer's decision not to agree to renew or by the Software becoming Retired Software, Licensee may during the term of this Agreement after the effective date of such termination elect to reinstate this Agreement in accordance with this Section 7.1(b). To obtain reinstatement, Licensee shall: (1) deliver written notice to such effect to Hyland; (2) pay Hyland: (A) Annual Maintenance Fees for all periods which have elapsed from the effective date of such termination through the effective date of such reinstatement (as determined under Section 7.1(a) as if this Agreement had not been terminated); and (B) an amount equal to one hundred ten percent (110%) of the Annual Maintenance Fee for the renewal period of this Agreement commencing on the effective date of such reinstatement; and (3) if the Software has become Retired Software, upgrade to the latest released version of the Software which is Supported Software. Any reinstatement under this Section 7.1(b) shall be effective as of the first business day after Hyland has received the notice of reinstatement and all payments required to be made hereunder in connection with such reinstatement. The renewal period commencing with the effective date of reinstatement of this Agreement shall be for a period ending on the first annual anniversary of such effective date; and thereafter this Agreement shall be renewed for an additional maintenance period as described in Section 7.1(a).

EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 7.1(b), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.

7.2 Early Termination by Licensee.

(a) For Convenience. At any time Licensee may terminate this Agreement, for any reason or for no reason, upon not less than thirty (30) days advance written notice to Hyland to such effect.

(b) For Cause. Licensee shall be entitled to give written notice to Hyland of any breach by Hyland or other failure by Hyland to comply with any material term or condition of this Agreement, specifying the nature of such breach or non-compliance and requiring Hyland to cure the breach or non-compliance. If Hyland has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within thirty (30) calendar days after receipt of written notice, Licensee shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement.

7.3 Termination by Hyland For Cause. Hyland shall be entitled to give written notice to Licensee of any breach by Licensee or other failure by Licensee to comply with any material term or condition of the EULA or this Agreement, specifying the nature of such breach or non-compliance and requiring Licensee to cure the breach or non-compliance. If Licensee has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), any breach or non-compliance within thirty (30) calendar days after receipt of such written notice, Hyland shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement.

7.4 Certain Effects or Consequences of Termination; Survival of Certain Provisions.

(a) Limited Refund of Annual Maintenance Fees. In the event Licensee has terminated this Agreement in accordance with the provisions of Section 7.2(b), so long as Licensee has complied in all material respects with its obligations under this Agreement and is current on all payment obligations under this Agreement, Licensee shall be entitled to a refund from Hyland of the "unused portion of the Annual Maintenance Fees" for the then-current maintenance period. For these purposes, the "unused portion of the Annual Maintenance Fees" shall mean that portion of the Annual Maintenance Fees paid by Licensee, with respect to the maintenance period during which such termination of this Agreement is effective, equal to the total of such Annual Maintenance Fees multiplied by a fraction, the numerator of which shall be the number of calendar months during the then-current maintenance period that remain until the end of such then-current period, commencing with the calendar month after the calendar month in which such termination is effective, and the denominator of which shall be the total number of calendar months in such then-current maintenance period determined without regard to such termination.

(b) Survival of Certain Obligations. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under the Agreement at the time of

termination. The provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Section 2.1(d)(2) (as it relates to title and ownership), Section 4(c) and (d), Section 5, Section 6, Section 7, Section 9 and Section 10.

8. FORCE MAJEURE. No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other party) and without negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other party. This Section 8 shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 8 for longer than ninety (90) calendar days, the other party, by written notice given during the postponement or extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

9. NOTICES. Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective: (a) when sent and made in writing by either (1)(A) registered mail, (B) certified mail, return receipt requested, or (C) overnight courier, in any such case addressed and sent to the address set forth herein and to the attention of the person executing this Agreement on behalf of that party or that person's successor, or to such other address or such other person as the party entitled to receive such notice shall have notified the party sending such notice of; or (2) facsimile transmission appropriately directed to the attention of the person identified as the appropriate recipient and at the appropriate address under (a)(1) above, with a copy following by one of the other methods of notice under (a)(1) above; or (b) when personally delivered and made in writing to the person and address identified as appropriate under (a)(1) above.

10. GENERAL PROVISIONS.

(a) **Governing Law.** This Agreement and any claim, action, suit, proceeding or dispute arising out of this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Illinois (and not the 1980 United Nations Convention on Contracts for the International Sale of Goods, as amended), without regard to the conflicts of laws provisions thereof.

(b) **Interpretation.** The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms "hereunder," "herein," "hereby" and similar terms refer to this Agreement.

(c) **Waiver.** No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

(d) **Integration.** This Agreement and the EULA, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior agreements, negotiations and discussions between them on the same subject matter, specifically including, but not limited to the Software Maintenance Agreement between the parties dated on or about February 8, 2011. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification or documentation, from Licensee or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

(e) Binding Agreement; No Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Hyland may assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity. Licensee may not assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of Hyland. Any change in control of Licensee resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this Section 10(e) shall be null and void and of no force or effect.

(f) Severability. In the event that any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

(g) Independent Contractor. The parties acknowledge that Hyland is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance and Support.

(h) Subcontracting. Hyland may subcontract all or any part of Maintenance and Support, provided that Hyland has received consent from the User, which consent shall not be unreasonably withheld, conditioned, or delayed. Hyland shall remain responsible to Licensee for the provision of any subcontracted services.

(i) Export. Licensee agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and all U.S. export control laws, including but not limited to the U.S. Export Administration Act, to assure that the Upgrades and Enhancements are not exported in violation of United States law.

(j) Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights will not be adequate for Hyland's protection and, accordingly, Hyland shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

(k) Counterparts. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one and the same instrument.

(l) Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies by reason of this Agreement.

(m) Campaign Disclosure. On or after the Effective Date of this Agreement, Hyland shall execute the Campaign Disclosure Certificate, attached hereto as Exhibit B.

(n) Patriot Act Compliance. Hyland represents and warrants to User that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. Hyland further represents and warrants to User that Hyland and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. Hyland hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

(o) Equal Employment Opportunity. Hyland is an equal opportunity employer. As part of its affirmative action policies and obligations, Hyland is subject to and will comply with the applicable provisions governing federal contractors as set forth in 41 CFR 60-1.4(a), 41 CFR 60-741.5(a) and 41 CFR 60-250.5(a), and these regulations are hereby incorporated into this contract by reference

(p) Affirmative Action and Non-Discrimination. Failure to comply with the conditions of this clause may result in Hyland becoming declared an "ineligible" contractor and termination of this Agreement. In connection with the performance of work under this Agreement, Hyland agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation or national origin as such term may be defined in the applicable federal regulations. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Except with respect to sexual orientation, Hyland further agrees to take affirmative action to ensure equal employment opportunities. Hyland agrees to post in conspicuous places, available for employees and applicants for employment, notices of non-discrimination.

(q) General Indemnification. Hyland expressly agrees to indemnify User from and against all claims, liabilities, losses, damages and costs, including reasonable attorneys' fees and court costs, alleging personal injury, including death, or damage to tangible personal property or real property proximately caused as a result of Hyland's gross negligence or willful misconduct in the performance of its obligations under this Agreement.

(r) Sexual Harassment Policy. At all times during the term of this Agreement, Hyland, as a party to a public contract, shall have a written sexual harassment policy.

(s) Drug Free Workplace. At all times during the term of this Agreement, Hyland, as a party to a public contract, certifies and agrees that it will provide a drug free workplace and has in place a drug free workplace policy.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives:

VILLAGE OF DOWNERS GROVE

HYLAND SOFTWARE, INC.

By: _____

By: *Noreen Kilbane*

Name (Print): _____

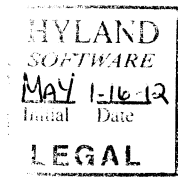
Name (Print): NOREEN KILBANE

Title: _____

Title: V.P.

Date: _____

Date: 11/17/12



Attachment 1

CERTIFIED SOFTWARE EMPLOYEE REQUIREMENTS

A Certified Software Employee is:

- With respect to the Supported Software or Extended Support Software generally, an OnBase Certified System Administrator.
- With respect to the Supported Software or Extended Support Software Workflow module specifically, an OnBase Certified System Administrator or any employee of Licensee who is an OnBase Certified Workflow Engineer.
- With respect to the Supported Software or Extended Support Software WorkView module specifically, an OnBase Certified System Administrator or any employee of Licensee who is OnBase WorkView certified.
- With respect to the Supported Software or Extended Support Software Application Programming Interfaces specifically, an OnBase System Administrator or an employee of Licensee who is OnBase API certified.

The education and certification requirements for each certified status identified above are set forth on Hyland's training web site: <https://training.onbase.com>.

QUALIFIED EMPLOYEE REQUIREMENTS

“Qualified Employee” means, if Licensee at any time does not have a Certified Software Employee, then an employee of Licensee that fulfills the following knowledge and reporting requirements in connection with any communication to Hyland for Maintenance and Support:

- (a) is at the computer where the Error or problem that is being reported occurred or has viewed captured screen shots of all error messages appearing on the computer where the Error or problem that is being reported occurred;
- (b) knows and reports the version of the Supported Software that Licensee is using;
- (c) knows and reports any hardware interacting with or impacting the efficiency or effectiveness of the Supported Software;
- (d) knows and reports any third-party software interacting with or impacting the efficiency or effectiveness of the Supported Software;
- (e) knows and reports any recent changes to any hardware or third-party software described in clause (c) and (d) above;
- (f) knows and reports the wording of any “error messages” or other messages that appeared on the computer screen; and
- (g) knows and reports what happened, step-by-step, when the Error or problem occurred and any steps completed to attempt to rectify the Error or problem.

Exhibit A

<u>Software Modules</u>	<u>Product Code</u>	<u>Quantity</u>	<u>Paid Through</u>	<u>Next Maintenance Period</u>	<u>Maintenance Fees for Next Period</u>
Application Enabler	AEMPI1	1	12/31/2011	01/01/2012-12/31/2012	\$3,000.00
Agenda Management	AMMPW1	1	12/31/2011	01/01/2012-12/31/2012	\$1,000.00
Concurrent Client (1-100)	CTMPC1	20	12/31/2011	01/01/2012-12/31/2012	\$4,800.00
Production Document Imaging (Kofax or Twain) (1)	DIMPW1	1	12/31/2011	01/01/2012-12/31/2012	\$1,000.00
Production Document Imaging (Kofax or Twain) (2+)	DIMPW2	6	12/31/2011	01/01/2012-12/31/2012	\$2,400.00
EDM Services	DMMPI1	1	12/31/2011	01/01/2012-12/31/2012	\$1,000.00
Document Retention	DRMPI1	1	12/31/2011	01/01/2012-12/31/2012	\$2,000.00
E-Forms	FMMP11	1	12/31/2011	01/01/2012-12/31/2012	\$2,000.00
Full-Text Indexing Concurrent Client for Autonomy IDOL	IDMPC1	5	12/31/2011	01/01/2012-12/31/2012	\$300.00
Full-Text Indexing Server for Autonomy IDOL	IDMPI1	1	12/31/2011	01/01/2012-12/31/2012	\$2,000.00
Multi-User Server	OBMPW1	1	12/31/2011	01/01/2012-12/31/2012	\$1,000.00
Batch OCR	OCMPW1	1	12/31/2011	01/01/2012-12/31/2012	\$300.00
PDF Framework	PDFMPI1	1	12/31/2011	01/01/2012-12/31/2012	\$600.00
Virtual Print Driver	PTMPC1	1	12/31/2011	01/01/2012-12/31/2012	\$1,000.00
Workflow Concurrent Client	WFMP11	10	12/31/2011	01/01/2012-12/31/2012	\$2,000.00
Departmental Workflow Server	WFMPD1	2	12/31/2011	01/01/2012-12/31/2012	\$4,000.00
Web Server	WTMPW1	1	12/31/2011	01/01/2012-12/31/2012	\$2,000.00
TOTAL ANNUAL MAINTENANCE FEES					\$30,400.00

CAMPAIGN DISCLOSURE CERTIFICATE

Exhibit B

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity entering into a contract with the Village to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the Agreement, vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

Bidder/vendor has not contributed to any elected Village position within the last five (5) years.

NOREEN KILBANE

Noreen B. Kilbane
Signature

Print Name

Bidder/vendor has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name

