

SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement (“Agreement”) is made and entered into this ____ day of _____, 20__, by and between _____, with its principal offices at _____ (“Service Provider”), and the company, person or entity executing this Agreement as the “Licensee” in the space provided below (“Licensee”):

RECITAL:

WHEREAS, Licensee has licensed the specified software from Service Provider pursuant to the terms of an End User License Agreement (as the same may be amended or modified from time to time, the “EULA”); and

WHEREAS, Licensee desires to obtain, and Service Provider is willing to provide, maintenance and technical support services for the specified software and the delivery of generally released upgrades and enhancements with respect to such software;

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) Documentation. “Documentation” means (1) to the extent available, the “Help Files” included in the Software, or (2) if no such “Help Files” are included in the Software, such other documentation published by Service Provider, in each case, which relate to the functional, operational or performance characteristics of the Software.

(b) Error. “Error” means any defect or condition inherent in the Software that causes the Software to fail to perform in accordance with the current Documentation published by Service Provider or its supplier.

(c) EULA. “EULA” is defined in the recitals to this Agreement.

(d) Maintenance and Support Services. “Maintenance and Support Services” means all technical services provided under this Agreement by Service Provider.

(e) Software. “Software” means (1) the current released version of the computer software licensed by Licensee from Service Provider from time to time under the EULA (the initial list of which is included on Exhibit A attached hereto), and (2) at any time after Service Provider has delivered to Licensee a new version of such computer software as an Upgrade and Enhancement under this Agreement, the released version of such computer software last released prior to the current released version; provided, that the Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Service Provider or its supplier first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software.

(f) Upgrades and Enhancements. “Upgrades and Enhancements” means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Service Provider or its supplier commercially releases to its end users generally during the term of this Agreement to correct 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, re-platformed Software or new functionality.

2. **MAINTENANCE AND SUPPORT SERVICES.**

(a) Generally. Subject to Licensee’s payment of the applicable annual maintenance fees, Service Provider shall: (1) use its commercially reasonable efforts to correct any properly reported Error(s) in the Software reported in accordance with Service Provider’s current policies for the reporting of Errors, and which are confirmed by Service Provider in the exercise of its commercially reasonable judgment; (2) use its commercially reasonable efforts to correct any properly reported defect(s) (non-conformity to functional specifications mutually agreed upon by Service Provider and Licensee) in any configurations of the Workflow or WorkView modules of the Software that are created by Service Provider or any integrations of the Software with other applications, software or hardware that are configured or created by Service Provider, which are confirmed by Service Provider, in the exercise of its commercially reasonable judgment; and (3) upon the request of Licensee, provide technical support and assistance and advice related to the operation and use of the Software by Licensee, or any problems with any of the foregoing. Licensee’s report must include updated information on its installed version of the Software and information reasonably necessary to describe the circumstances under which the reported Error is manifest. Service Provider shall undertake to confirm any reported defect(s) described in clause (2) above promptly after receipt of proper notice from Licensee in accordance with Service Provider’s current defect reporting procedures. Service Provider shall

perform services in an effort to correct confirmed Errors in the Software or defects in configurations or integrations created by Service Provider promptly after making such confirmation. Maintenance and Support Services generally will be available on a 24/7 basis, Monday through Friday, excluding holidays, or as otherwise provided by Service Provider to its end users purchasing continuing Maintenance and Support Services in the normal course of its business, by on-line connectivity, telephonically or both. Licensee acknowledges and agrees that Service Provider and its suppliers require on-line access to the Software installed on Licensee's systems in order for Service Provider to provide Maintenance and Support Services hereunder. Accordingly, Licensee shall install and maintain, at Licensee's sole cost and expense, appropriate communications software as specified by Service Provider; and Licensee shall establish and maintain, at Licensee's sole cost and expense, an adequate connection with Service Provider and its suppliers to facilitate Service Provider's on-line Maintenance and Support Services.

(b) On-Site Services. Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis in accordance with Appendix C, to DIR Contract No. DIR-TSO-4378 and Section 5(a)(4), Service Provider may provide on-site Maintenance and Support Services at Licensee's facilities in connection with the correction of any Error(s) involving a mission critical function of the Software that is not functioning in a production/operating environment.

(c) Exclusions. Service Provider is not responsible for providing, or obligated to provide, Maintenance and Support Services or Upgrades and Enhancements under this Agreement: (a) 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, including any configuration of the Workflow or WorkView modules of the Software that was not undertaken by Service Provider or its supplier or authorized in writing in advance by Service Provider; (b) in connection with any Error if Service Provider (directly or through its supplier) has previously provided corrections for such Error, which correction Licensee chooses not to implement; (c) 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 bundled with the Software by Service Provider or its supplier), hardware or any system or networking utilized by Licensee; (d) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (e) if any party other than Service Provider or its supplier has provided any services in the nature of Maintenance and Support Services to Licensee with respect to the Software.

3. UPGRADES AND ENHANCEMENTS. Service Provider will provide to Licensee, in accordance with Service Provider or its supplier's then current policies, all Upgrades and Enhancements to the Software released by Service Provider or its supplier during the term of this Agreement. Licensee acknowledges and agrees that Service Provider or its supplier has the right, at any time, to change the specifications and operating characteristics of the Software and Service Provider or its supplier's policies respecting Upgrades and Enhancements and the release thereof to its end users. Any Upgrades and Enhancements to the Software and Documentation shall remain proprietary to Hyland Software, Inc. and the sole and exclusive property of Hyland Software, Inc., and shall be subject to all of the restrictions, limitations and protections of the EULA. 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 Software, Inc.

4. LICENSEE'S RESPONSIBILITIES.

(a) Operation of the Software. Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction. Service Provider and its supplier shall have no responsibility or liability for data loss regardless of the reasons for said loss. Service Provider and its supplier shall have no responsibility or liability for Licensee's selection or use of the Software or any hardware, third party software or systems.

(b) 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 Service Provider, all Error corrections and Upgrades and Enhancements. Licensee's failure to implement any Error corrections or Upgrades and Enhancements of the Software as provided in this Section 4(b) shall relieve Service Provider 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, but in no such event shall Licensee be relieved of the responsibility for the payment of fees and charges otherwise properly invoiced during the term hereof except as provided for by Appendix A, Section 11, to DIR Contract No. DIR-TSO-4378.

(c) Notice of Errors; Documentation of Errors. Licensee shall provide prompt notice of any Errors in the Software discovered by Licensee, or otherwise brought to the attention of Licensee, in accordance with Service Provider's then current policies for reporting of Errors. Proper notice may include, without limitation, prompt telephonic and written notice to Service Provider of any alleged Error. If requested by Service Provider, Licensee agrees to provide written documentation of Errors to substantiate the Errors and to assist Service Provider in the detection and correction of said Errors.

(d) Access to Premises and Systems. Licensee shall make available reasonable access to and use of Licensee's premises, computer hardware, peripherals, Software and other software as Service Provider deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support Services.

5. FEES, PAYMENTS, CURRENCY AND TAXES.

(a) Annual Maintenance Fees. Licensee shall pay to Service Provider annual maintenance fees in the amounts invoiced by Service Provider in accordance with Appendix C, to DIR Contract No. DIR-TSO-4378.

(1) Initial Software. The table on Exhibit A attached hereto sets forth the aggregate invoice amounts for initial annual maintenance fees for each Software module initially licensed, and for all Software modules initially licensed in the aggregate. Licensee shall be required to submit a purchase order for this Agreement, in the amount of the initial annual maintenance fees due hereunder, simultaneously with Licensee's submission of its purchase order for the license of the Software under the EULA.

(2) Additional Software. Service Provider shall invoice Licensee for annual maintenance fees for all Software modules that Licensee additionally licenses under the EULA promptly upon acceptance of Licensee's purchase order for the purchase of Maintenance and Support Services for such Software.

(3) Renewal Periods. Service Provider shall invoice Licensee for annual maintenance fees for renewal terms in accordance with Appendix C, to DIR Contract No. DIR-TSO-4378, at least forty-five (45) days prior to the end of the then-current term of this Agreement. In the event that any term of this Agreement for which annual maintenance fees are payable is a period of less than twelve (12) calendar months, the annual maintenance fees for such term will be pro rated based upon the number of calendar months in such period (including the calendar month in which such term of this Agreement commences only if such period commences prior to the 15th day of such month).

(4) Time and Materials Charges. Notwithstanding anything to the contrary, if Licensee requests (1) Maintenance and Support Services that Service Provider is not obligated to provide because of the provisions of Section 2(c), and Service Provider agrees to provide such requested Services notwithstanding the provisions of Section 2(c), (2) on-site Maintenance and Support Services in accordance with Section 2(b), or (3) any other services in the nature of Maintenance and Support Services that Service Provider is not obligated to provide, or is not obligated to provide in the manner requested, and Service Provider agrees to provide the requested Maintenance and Support Services, then in any such case Licensee agrees that such Maintenance and Support Services shall not be covered by the annual maintenance fees under Section 5(a) and Licensee agrees to pay for such Maintenance and Support Services at Service Provider's standard time and materials charges payable in accordance with Appendix C, to DIR Contract No. DIR-TSO-4378, by end users who have not purchased a continuing Software Maintenance Agreement from Service Provider. Service Provider shall invoice Licensee for all time and materials charges hereunder.

(b) Incidental Costs and Expenses. Licensee shall be responsible for all incidental costs and expenses incurred by Service Provider in connection with the performance of this Agreement. Examples of incidental costs and expenses include, without limitation, all costs and expenses for tools, supplies, accessories, media and other expendables purchased or otherwise used by Service Provider, on-line connection charges and out-of-pocket expenses incurred at Licensee's request, including but not limited to travel, meals and lodging expenses for on-site Maintenance and Support Services. Service Provider shall invoice Licensee for all incidental costs and expenses hereunder in accordance with Appendix A, Section 8 and Appendix C, to DIR Contract No. DIR-TSO-4378.

(c) Payments; Remedies.

(1) Annual Maintenance Fees. Licensee shall pay all invoices for annual maintenance fees in full on or before the last day of the then-current term of this Agreement.

(2) Other Payments. Licensee shall pay all other invoices hereunder in accordance with Appendix A, Section 8, to DIR Contract No. DIR-TSO-4378.

(3) Remedies. In the event of any default by Licensee in the payment of any amounts due hereunder, which are not being disputed in accordance with Appendix A, Section 11A of DIR Contract No. DIR-TSO-4378, which default continues unremedied for at least ten (10) calendar days after the due date of such payment, Service Provider shall have the right to cease to provide any Maintenance and Support Services and Upgrades and Enhancements to Licensee unless and until such default, and any and all other defaults by Licensee under this Agreement, shall have been cured.

(4) U.S. Dollars. All payments by Licensee to Service Provider shall be made in U.S. dollars.

(d) Taxes and Governmental Charges. In accordance with Appendix A, Sections 8E, to DIR Contract No. DIR-TSO-4378, Licensees under this Agreement are exempt from the assessment of State sales, use and excise taxes. Further, Licensees under this Agreement are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Licensees shall provide evidence of tax-exempt status to Service Provider upon request.

6. LIMITED WARRANTY.

(a) Limited Warranty of Services. Service Provider warrants that the Maintenance and Support Services shall be performed in a good and workmanlike manner and substantially according to industry standards. In order to assert any claim that any Maintenance and Support Services fail to conform to this limited warranty, Licensee must notify Service Provider in writing of such claim within thirty (30) days after the date the alleged non-conforming Services are completed. If, after such timely notice from Licensee, the Maintenance and Support Services in question are determined not to conform to this limited warranty, Service Provider's sole obligation, and Licensee's sole remedy, shall be for Service Provider to use commercially reasonable efforts to re-perform the nonconforming Services in an attempt to correct the nonconformity. If Service Provider is unable to correct such nonconformity after a reasonable period of time, Licensee's sole and exclusive remedy shall be termination of this Agreement in accordance with Section 8(b)(3)(B). This 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 6(a), SERVICE PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE AND SUPPORT SERVICES, ANY SOFTWARE OR ANY UPGRADES AND ENHANCEMENTS PROVIDED UNDER THIS AGREEMENT. SERVICE PROVIDER 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. SERVICE PROVIDER DOES NOT WARRANT THAT ANY MAINTENANCE AND SUPPORT SERVICES, SOFTWARE OR UPGRADES AND ENHANCEMENTS PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR UPGRADES AND ENHANCEMENTS WILL BE UNINTERRUPTED. SERVICE PROVIDER DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

7. **LIMITATIONS OF LIABILITY.** LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10L, OF DIR CONTRACT NO. DIR-TSO-4378.

8. TERM, RENEWAL AND TERMINATION.

(a) Term and Terminations. Subject to the termination provisions of Appendix A, Section 11B, to DIR Contract No. DIR-TSO-4378, the initial term of this Agreement (the "Initial Term") shall commence on the day that Service Provider issues to Licensee license codes for the Software modules licensed by Licensee under the EULA and shall expire on December 31 of the calendar year in which such license codes are issued; and the term of this Agreement shall be renewed thereafter, annually on a calendar year by calendar year basis, only by mutual agreement of the parties. With respect to any renewal maintenance period, mutual agreement may be evidenced by Service Provider's invoicing of annual maintenance fees in accordance with Appendix C, to DIR Contract No. DIR-TSO-4378 for such renewal maintenance period and Licensee's timely payment of such annual maintenance fees.

(b) Early Termination. Early termination of this Agreement will be handled in accordance with Appendix A, Section 11B, of DIR Contract No. DIR-TSO-4378.

(c) Reinstatement of Agreement. In the event of the termination of this Agreement by Licensee under Section 8(b)(4)(C) (Non-Renewal), Licensee may at any time after the effective date of such termination elect to reinstate this Agreement in accordance with this Section 8(d). To obtain reinstatement, Licensee shall deliver written notice to such effect to Service Provider, together with payment in full of: (A) annual maintenance fees, based upon Service Provider's Annual Maintenance Fee Schedule in effect as of the time of such reinstatement, for all periods (as determined under Section 8(a) as if the Agreement had not been terminated that have elapsed from the effective date of such termination through the effective date of such reinstatement; and (B) an amount equal to one hundred ten percent (110%) of the annual maintenance fee, based upon Service Provider's Annual Maintenance Fee Schedule in effect as of the time of such reinstatement, for the renewal term of this Agreement commencing on the effective date of such reinstatement. Any reinstatement under this Section 8(d) shall be effective as of the first business day after Service Provider has received the notice of reinstatement and all payments required to be made hereunder in connection with such reinstatement. The renewal term commencing with the effective date of this Agreement shall be for a period ending on the first annual anniversary of such effective date; and thereafter the term of this Agreement shall be renewed: (i) at the end of such first renewal term, for a period from the first day after the end of such first renewal term through December 31 of the calendar year in which such first renewal term ends; and (ii) thereafter, annually on a calendar year by calendar year basis.

9. **FORCE MAJEURE.** Force Majeure shall be handled in accordance with Appendix A, Section 11C, to DIR Contract No. DIR-TSO-4378.

10. **NOTICES.** Notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-4378.

11. GENERAL PROVISIONS.

(a) Law and Venue. 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 Texas, without regard to the conflicts of laws provisions thereof. Venue for any action, suit or proceeding arising out of this Agreement shall vest exclusively in the state courts of general jurisdiction located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the state of Texas.[HYLAND DRAFTING NOTE: HYLAND ADDED THE LANGUAGE REQUESTED BY DIR.]

(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. DIR Contract No. DIR-TSO-4378 and this Agreement (including the exhibits and schedules attached hereto) constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, documents and proposals, oral or written, between the parties with respect thereto. All purchase orders submitted shall be subject solely to the terms of DIR Contract No. DIR-TSO-4378 and this Agreement and the additional terms contained

in any invoice delivered by Service Provider, and any preprinted terms on any purchase order form used for the convenience of Licensee are objected to and shall not alter or amend the terms of this Agreement or any such invoice. This Agreement may be amended or modified only by an agreement in writing signed by each of the parties and may not be modified by course of conduct. In the event of any conflict among the documents comprising the agreement entered into by the parties, DIR Contract No. DIR-TSO-4378 shall prevail.

(e) Binding Agreement and Assignment. Customer or Service Provider may assign this Agreement without prior written approval to: i) a successor in interest (for Customer, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of this Agreement under the above terms shall require written notification by the assigning party and, for Service Provider, a mutually agreed written Contract amendment. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

(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 Service Provider is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance and Support Services.

(h) 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.

(i) Intentionally Omitted.

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

Licensee

Service Provider

Business Address: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

<u>SOFTWARE MODULES</u>	<u>ANNUAL MAINTENANCE FEES</u>