

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**

**Hyland Software, Inc.**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Hyland Software, Inc. (hereinafter "Vendor"), with its principal place of business at 28500 Clemens Road, Westlake, Ohio 44145.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-416, on 2/26/2018, for Software Products, Software as a Service, and Enterprise Resource Planning Software Modules Products and Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-416 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Product and Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, End User License Agreement; Appendix E, Subscription and Hosting Licenses; Appendix F; Hosting Agreement; Appendix G, Software Maintenance Agreement; Appendix H, Work Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-416, including all addenda; and Exhibit 2, DIR-TSO-TMP-416, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Appendix G, Appendix H, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with two (2) optional two-year renewals. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party

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wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

### 3. Product and Service Offerings

#### A. Products

Products available under this Contract are limited to Software, including Software as a Service, products and related products as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

#### B. Services

Services available under this Contract are limited to Software, including Software as a Service, services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

#### C. Emerging Technologies and Future Acquisitions

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products and services that are within the scope the solicitation described in Section 1.B above. Vendor may propose such products and services throughout the term of the contract. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final. In addition, Texas DIR and Vendor may mutually agree to add future acquisitions of Vendor to the contract. Subsequent terms of the acquisition(s) and pricing will be mutually agreed upon in writing and amended under the contract.

### 4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

### 5. DIR Administrative Fee

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759  
Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

General Counsel  
Hyland Software, Inc.  
28500 Clemens Road  
Westlake, Ohio 44145  
Phone: (440) 788 - 5000  
Facsimile: (440) 788 - 5100  
Email: [hylandcontracts@onbase.com](mailto:hylandcontracts@onbase.com)

**7. Software License, Shrink/Click-wrap and Service Agreements**

**A. Software License Agreements**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Appendix D, End User License Agreement, Appendix E, Subscription and Hosting Licenses, and/or Appendix F, Hosting Agreement, whichever is applicable, as set forth in this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D, Appendix E, or Appendix F; provided however, that a Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License/Hosting Agreements, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiller shall make the Software License/Hosting Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software License/Hosting Agreements is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License/Hosting Agreements. If DIR purchases software licenses/hosting for its own use under this Contract, it shall be responsible for its compliance with the Software License/Hosting Agreement terms and conditions.

**B. Shrink/Click-wrap License Agreements**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been

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proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**C. Service Agreements**

Services provided under this Contract shall be in accordance with the Software Maintenance Agreement as set forth in Appendix G of this Contract and the Work Agreement as set forth in Appendix H. No changes to the Software Maintenance or Work Agreement's terms and conditions may be made unless previously agreed to by Vendor and DIR.

**D. Conflicting or Additional Terms**

In the event that conflicting or additional terms in Vendor Software License/Hosting Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not without prior written agreement from Customer's authorized signatory, require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

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The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Services Contracts.**

**A. Appendix A, Section 5, Intellectual Property** is hereby deleted and replaced in its entirety as follows:

**5. Intellectual Property Matters**

This contract does not contemplate, authorize or support the acquisition of custom software products or services. If Vendor and Customer seek to contract for such products or services, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

**B. Appendix A, Section 10.O, Required Insurance Coverage, is hereby amended to read as follows:**

**O. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer.

If Vendor's services contracted under this Contract will not require Vendor to perform work on Customer's premises, or to use employer vehicles (whether owned or otherwise) to conduct work on behalf of Customers, Vendor may certify to the foregoing facts, and agree to provide notice and the required insurance if the foregoing facts change. The certification and agreement must be provided by executing a *Certification of Off-Premise Customer Services*, which shall serve to meet the insurance requirements.

All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage except Workers' Compensation coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor thereunder. The minimum acceptable insurance provisions are as follows:

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**1) Commercial General Liability**

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; and
- d) Waiver of Subrogation

**2) Workers' Compensation Insurance**

**WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.**

**3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

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This Contract is executed to be effective as of the date of last signature.

**Hyland Software, Inc.**

**Authorized By:** Signature on File

**Name:** Noreen B. Kilbane

**Title:** Chief Administrative Officer

**Date:** 12/5/2019

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 12/9/2019

**Office of General Counsel:** Signature on File, 12/6/2019