

AGREEMENT
BY AND BETWEEN
THE CITY OF NEW HAVEN
AND
HYLAND SOFTWARE, INC.
FOR
PROFESSIONAL SERVICE

A21-1534

PART I

This Agreement, consisting of Parts I and II, Exhibit A, SaaS Security Attachment, Documentation and applicable Service Class Manual, effective as of the date that the last party to sign this Agreement has executed the same (as indicated by the date entered by such party with its signature below), (the "Effective Date"), by and between the City of New Haven, with offices at 165 Church Street, New Haven, CT 06510 (hereinafter referred to as the "City"), and Hyland Software, Inc. with address of 28500 Clemens Road, Westlake, OH 44145 (hereinafter referred to as the "Contractor").

WITNESSETH THAT:

WHEREAS, the City has determined that it needs access to cloud services for managing databases, operating systems, virtualization technology, hosted third party software and host website; and

WHEREAS, the Contractor is qualified to address this need; and

WHEREAS, the City has selected the Contractor and the Contractor has agreed to meet the need for the terms and conditions set forth herein; and

WHEREAS, funds for this Agreement are available in accordance with a certain cloud maintenance service agreement between the City and Computer SI Corporation (the "Reseller") executed in tandem with this Agreement and effective the 28th of May 2021 ("CSI Cloud Service Agreement");

NOW, THEREFORE, the City and the Contractor hereby agree as follows:

SECTION I: ENGAGEMENT

101. The City hereby engages the Contractor and the Contractor hereby agrees to perform the services set forth herein in accordance with the terms and conditions and for the consideration set forth in Exhibit A, which is hereby fully incorporated as if set out herein in its entirety.

102. The person in charge of interacting directly with Hyland regarding City's Hyland Cloud Service under this Agreement on behalf of the City shall be Chet Sawicki, or such other person as designated in writing.

103. Except in the event of a City Data Incident of the Hyland Cloud, the City shall interact with the Contractor through the Reseller as set forth in Exhibit A. In the event of a data breach, communication between the City and the Contractor shall be direct. In the event of a City Data Incident, the City may contact the Contractor directly as provided in Section 709 of this Agreement. For the avoidance of any doubt, "City Data Incident" means an unauthorized disclosure of Customer Data resulting from Hyland's failure to comply with the SaaS Security Attachment. Without limitation, City Data Incident does not include any of the following that results in no unauthorized access to Customer Data or to any Hyland's systems storing City Data: (a) pings and other broadcast attacks on firewalls or edge servers; (b) port scans; (c) unsuccessful log-on attempts; (d) denial of service attacks; or (e) packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers).

SECTION 2: HYLAND CLOUD SCOPE OF SERVICES

201. The Contractor shall perform the services set forth under this Agreement, including Exhibit A, which includes the SaaS Security Attachment, Documentation and applicable Service Class Manual, and only use Customer Data to provide, develop, and improve the Hyland Cloud Service and other services, to prevent or address service or technical problems, or in accordance with City's instructions..

202. Intentionally Blank.

203. In performing the obligations required under this Agreement, the Contractor shall consult with the City's Department of Information Technology, and shall meet, as appropriate, with other City employees or officials and with other persons or entities, as necessary, including State and Federal officials and/or neighborhood groups or organizations.

204. The obligations to be performed by the Contractor are set out in Exhibit A attached hereto and incorporated herein by reference. In the event any provision of Exhibit A conflicts with any provision of Part I or Part II of this Agreement, said Part I or Part II shall be controlling.

SECTION 3: INFORMATION TO BE FURNISHED TO THE CONTRACTOR

301. The City will provide the Contractor with all documents, data, and other materials in its possession appropriate to the obligations to be performed hereunder and in Exhibit A and will endeavor to secure materials or information from other sources requested by the Contractor for the purpose of carrying out obligations under this Agreement.

SECTION 4: TIME OF PERFORMANCE

401. The Contractor shall perform the obligations set forth in Section 2 of this Agreement at such times and in such sequence as set out in Exhibit A .

402. Subject to the early termination provisions below, the initial term of this Agreement will be the three (3) year period that commences on the Effective Date (the "Initial Term"); and such term will automatically renew thereafter for successive terms of one (1) year each, unless and until either party provides at least thirty (30) days advance written notice of non-renewal, in which case this Agreement shall terminate at the end of the then-current term.

403. Termination.

Either party may terminate this Agreement in its entirety, effective immediately upon written notice to the other party, if the other party has committed a breach of a material provision of this Agreement and has failed to cure the breach within thirty (30) days after receipt of written notice of the breach given by the non-breaching party; provided, that Contractor shall not be required to give City any opportunity to cure any breach in the case of a Prohibited Act or thirbreach of the U.S. Government End User section, all of which are considered for all purposes to be material provisions of this Agreement. If, in the reasonable opinion of City or Contractor, the compliance by either party with the terms of this Agreement will be in violation of any law or regulation implemented or modified after the commencement of the Hyland Cloud Service provided pursuant to this Agreement, City or Contractor, as the case may be, may terminate this Agreement upon thirty (30) days written notice to the other party.

- (a) Notice of Change In Payment Terms. If Contractor provides written notice as described in 4.1 and 4.2 above, and Hyland and Customer fail to execute, within ninety (90) days from the date of such written notice, a mutually acceptable amendment to this Agreement, in accordance with Section 4.3, pursuant to which, among other things, Customer shall agree to pay applicable fees and charges relating to the Hyland Cloud Service directly to Hyland and Hyland shall agree to provide maintenance and technical support of the Hyland Cloud Service directly to Customer, then either party may terminate this Agreement upon ninety (90) days written notice to the other party.

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

- (a) Generally. Immediately upon any termination or expiration of this Agreement, City shall cease any and all uses of the Hyland Cloud Service and Documentation. Any termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under this Agreement at the time of termination, including City's payment obligation of fees and charges accrued or due for any period or event occurring on or prior to the effective date of termination or expiration of this Agreement; and all liabilities which have accrued prior to the date of termination shall survive.

(b) Survival of Certain Obligations. The provisions of this Agreement, which by their nature or express terms extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations thereunder are satisfied. All disclaimers of warranties and limitations of liability set forth in this Agreement will survive any termination or non-renewal of this Agreement.

405. This Agreement shall remain in effect for the Initial Term, unless otherwise terminated by the parties hereto pursuant to Exhibit A.

406. Termination by the City for Non-Appropriation. The City may, at its option and without prejudice to any other remedy it may be entitled at law or equity, or elsewhere under this Agreement, terminate this Agreement in whole or in part, by giving prior written notice thereof to Contractor as soon as the City is made aware of the its non-appropriation of funds action, with the understanding that this Agreement shall cease upon the date specified in such notice (the "Notice Date"). The City shall equitably compensate Contractor in accordance with the terms of this Agreement for Contractor's performance of its obligations under this Agreement until and including the Notice Date. Contractor shall not, however, be entitled to lost or anticipated profits should the City choose to exercise this option to terminate. Notwithstanding the previous foregoing, the City agrees not to obtain any other goods, services, equipment, computer system or to obtain data processing services from any third party to perform substantially the same applications and/or functions as set forth in this Agreement for a period of at least one(1) year following a contract termination resulting from a nonappropriation of funds without first giving Contractor the option to reinstate this Agreement in whole or part.

407. Either party may terminate this Agreement in its entirety, effective immediately upon written notice to the other party, if the other party has committed a breach of a material provision of this Agreement and has failed to cure the breach within thirty (30) days after receipt of written notice of the breach given by the non-breaching party; provided, that Contractor shall not be required to give City any opportunity to cure any breach in the case of a Prohibited Act or breach of the U.S. Government End User section, all of which are considered for all purposes to be material provisions of this Agreement.

408. If, in the reasonable opinion of City or Contractor, the compliance by either party with the terms of this Agreement will be in violation of any law or regulation implemented or modified after the commencement of the Hyland Cloud Service provided pursuant to this Agreement, City or Contractor, as the case may be, may terminate this Agreement upon thirty (30) days written notice to the other party.

409. Intentionally Blank.

410. Immediately upon any termination or expiration of this Agreement, City shall cease any and all uses of the Hyland Cloud Service and Documentation. Any termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under this Agreement at the time of termination, including City's payment obligation of fees and charges accrued or due for any period or event occurring on or prior to the effective date

of termination or expiration of this Agreement; and all liabilities which have accrued prior to the date of termination shall survive.

411. The provisions of this Agreement, which by their nature or express terms extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations thereunder are satisfied. All disclaimers of warranties and limitations of liability set forth in this Agreement will survive any termination or non-renewal of this Agreement.

412. Except in the case of termination by Contractor due to City breach of this Agreement, in the event of any other termination of this Agreement, both parties will reasonably cooperate and use their commercially reasonable efforts to provide for an orderly transition period that is designed to minimize the disruption to City's business operations. Accordingly, for a period of up to ninety (90) calendar days following such a termination (the "Transition Period"), and provided Customer pays all applicable Subscription Fees, Hosting Fees, and Consumption Fees for such Transition Period, Customer shall retain a license to use the Hosted Solution in accordance with the terms and conditions of this Agreement while transitioning to another solution, and Contractor will continue to provide Hosting Services and Hosted Solution Support during such Transition Period.

SECTION 5: COMPENSATION

501. The City shall compensate the Contractor pursuant to Exhibit A;

502. Compensation provided under this Section 5 constitutes full and complete payment for all costs assumed by the Contractor in performing this Agreement including but not limited to salaries; consultant fees; costs of materials and supplies; printing and reproduction; meetings, consultations, and presentations; travel expenses; postage; telephone; clerical expenses; and all similar expenses. No direct costs shall be reimbursed by the City other than as provided in Section 501.

503. Payments to the Contractor under this Agreement shall be made by the City on approval of payment requisitions certified by a principal of the Contractor submitted not more often than once a month and in accordance with the City's Electronic Invoicing and Invoice Submission & Payment Policy.

504. No contract for employment is intended or implemented by this Agreement and no fringe benefits will be paid to the Contractor hereunder. The Contractor's relationship to the City is that of an independent contractor.

SECTION 6: INSURANCE AND INFRINGEMENT INDEMNIFICATION

601. INSURANCE REQUIREMENTS. Hyland will maintain and keep in force the following insurance coverage:

(i) Worker's Compensation and Employer's Liability Insurance Coverage. The worker's compensation coverage shall be in the minimum amounts required by statute. Employer's

Liability Insurance Coverage shall be \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease each employee and policy limit;

(ii) General Liability Insurance Coverage. The policy limit under the General Liability Insurance Coverage shall be One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate;

(iii) Automobile Liability Insurance Coverage. The policy limit under the Automobile Liability Insurance Coverage policy shall be for One Million Dollars (\$1,000,000.00) per occurrence;

(iv) Cyber Liability Insurance: The policy limit under the Cyber Liability Insurance Coverage shall be for Five Million Dollars (\$5,000,000.00) per occurrence;

(v) Professional Liability (Errors & Omissions): The policy limit under the Professional Liability Insurance Coverage shall be Five Million Dollars (\$5,000,000.00) per occurrence;

Hyland shall provide a certificate of insurance listing the above coverages upon City's reasonable written request.

602. INFRINGEMENT INDEMNIFICATION. Contractor agrees to indemnify City against all liability and expense, including reasonable attorneys' fees, arising from or in connection with any third party claim, action or proceeding instituted against City based upon any infringement or misappropriation by the Hyland Cloud Service of any patent, registered copyright or registered trademark of a third party that is enforceable in the United States, provided that Contractor: (a) is notified promptly after City receives notice of such claim; (b) is solely in charge of the defense of and any settlement negotiations with respect to such claim, provided, that Contractor will not settle any such claim without the prior written consent of City if such settlement contains a stipulation to or admission or acknowledgement of any liability or wrongdoing on the part of the City or otherwise requires payment by City; (c) receives City's reasonable cooperation in the defense or settlement of such claim; and (d) has the right, upon either the occurrence of or the likelihood (in the opinion of Contractor) of the occurrence of a finding of infringement or misappropriation, either to procure for City the right to continue use of the Hyland Cloud Service, or to replace the relevant portions of the Hyland Cloud Service with other equivalent, non-infringing portions. If Contractor is unable to accomplish either of the options set forth in the preceding sentence, Contractor shall terminate this Attachment upon thirty (30) days advance written notice to City and refund to City the "unused portion of prepaid subscription fees" as defined below paid during the then current term (or applicable twelve-month period within the Initial Term). For these purposes, the "unused portion of prepaid subscription Fees" shall mean an amount equal to the total usage fees paid by City for the term (or applicable twelve-month period within the Initial Term) during which termination occurs, multiplied by a fraction, the numerator of which shall be the number of full calendar months remaining during the term (or applicable twelve-month period within the Initial Term) during which such termination occurs, and the denominator or which shall be twelve (12). Notwithstanding anything to the contrary, Contractor shall have no obligation to

indemnify City against any claims made against City and otherwise described in this Section that arise from: (v) any Customer Data; (w) use of the Hyland Cloud Service other than as expressly permitted by this Agreement; (x) the combination of the Hyland Cloud Service or any component thereof with any product not furnished by Contractor; (y) the modification or addition of any component of the Hyland Cloud Service, other than by Contractor or any of its authorized resellers specifically retained by Contractor to provide such modification or addition; or (z) the City's business methods or processes. THIS SECTION 602 STATES HYLAND'S ENTIRE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CITY WITH RESPECT TO ANY ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR PROPRIETARY PROPERTY BY THE HYLAND CLOUD SERVICE.

SECTION 7: TERMS AND CONDITIONS

701. This Agreement is subject to and incorporates the provisions attached hereto as City of New Haven Contract for Professional or Technical Services Part II, Terms and Conditions, Exhibit A, SaaS Security Attachment, Documentation and applicable Service Class Manual. In the event any provision of said Part II conflicts with any provision of this Part I of this Agreement, Part I shall be controlling.

702. The 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 Connecticut (and not by the 1980 United Nations Convention on Contracts for the International Sale of Goods, as amended), without regard to the conflicts of laws provisions thereof. Venue and jurisdiction for any action, suit or proceeding arising out of this Agreement shall vest exclusively in the federal or state courts of general jurisdiction located in the State of Connecticut.

703. The parties agree that they waive a trial by jury as to any and all claims, causes of action or disputes arising out of this Agreement or services to be provided pursuant to this Agreement. Notwithstanding any such claim, dispute, or legal action, the Contractor shall continue to perform services under this Agreement in a timely manner, unless otherwise directed by the City.

704. The Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign, transfer or sublicense all or part of this Agreement or its rights or obligations under the Agreement, in whole or in part, to any other person or entity without the prior written consent of the other party; provided that such consent shall not be unreasonably withheld in the case of any assignment or transfer by a party of the Agreement in its entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of such party's assets that assumes in writing all of such party's obligations and duties under the Agreement. Any assignment made without compliance with the provisions of this Section 14.7 shall be null and void and of no force or effect. City acknowledges that Hyland and/or any of its affiliates may fulfill any of Hyland's obligations contemplated by the Agreement..

705. This Agreement incorporates all the understandings of the parties hereto as to the matters contained herein and supersedes any and all agreements reached by the parties prior to the execution of this Agreement, whether oral or written, as to such matters.

706. In the event that any term or provision of the 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 the 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 the Agreement. .

707. Any waiver of the terms and conditions of this Agreement by either of the parties hereto shall not be construed to be a waiver of any other term or condition of this Agreement.

708. 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. References herein in the masculine gender shall also be construed to apply to the feminine gender.

709. Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such items shall be effective and valid only when given in writing signed by a duly authorized officer of the City or the Contractor, and delivered in hand or sent by mail, postage prepaid, to the party to whom it is directed, which until changed by written notice. Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under the Agreement shall be deemed effective when sent and made in writing by either: (A) reputable overnight courier, specifying next day delivery to the address specified below, or (B) email to the Contractor, without receipt of a notice of failed delivery.

Hyland:
28500 Clemens Road
Westlake, OH 44145
Attn: General Counsel
hylandcontracts@onbase.com

City:
City of New Haven
165 Church Street
New Haven, CT 06510
Attn: Director, Information Technology
With a Copy to: Corporation Counsel

710. 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 Contractor's protection and, accordingly, the parties 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.

711. Except as otherwise specifically provided herein, each party shall bear and pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

712. Force Majeure. No failure, delay or default in performance of any obligation of a party to the 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 712 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 the Agreement is postponed or extended pursuant to this Section 7124 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 the Agreement.

713. Integration. The Agreement, including any and all attachments, exhibits, schedules and separate written agreements related to any Hyland Cloud Service and referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in the Agreement. The Agreement may only be modified by a written document signed by duly authorized representatives of the parties. The Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. City and Hyland specifically acknowledge and agree that any other terms varying from or adding to the terms of The Agreement, whether contained in any purchase order or other electronic, written or oral communication made from City to Hyland are rejected and shall be null and void and of no force or effect, unless expressly agreed to in writing by both parties. The Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

714. 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 the Agreement; provided, however, that third party suppliers of software products bundled with the Software are third party beneficiaries to the Agreement as it applies to their respective software products.

715. Export. Any Software, Hyland Cloud Service, or Documentation provided under the Agreement are subject to export control laws and regulations of the United States and other jurisdictions. City agrees to comply fully with all relevant export control laws and regulations, including the regulations of the U.S. Department of Commerce and all U.S. export control laws, including, but not limited to, the U.S. Department of Commerce Export Administration Regulations (EAR), to assure that the Software, Hyland Cloud Service, or Documentation is not exported in violation of United States of America law or the laws and regulations of other jurisdictions. City agrees that it will not export or re-export the Software, Hyland Cloud Service, or Documentation to any organizations or nationals in the United States embargoed territories of Cuba, Iran, North Korea, Sudan, Syria or any other territory or nation with respect to which the U.S. Department of Commerce, the U.S. Department of State or the U.S. Department of Treasury maintains any commercial activities sanctions program. City shall not use the Software, Hyland Cloud Service, or Documentation for any prohibited end uses under applicable laws and regulations of the United States and other jurisdictions, including but not limited to, any application related to, or purposes associated with, nuclear, chemical or biological warfare, missile technology (including unmanned air vehicles), military application or any other use prohibited or restricted under the U.S. Export Administration Regulations (EAR) or any other relevant laws, rules or regulations of the United States of America and other jurisdictions.

716. Compliance with Laws. Subject to the Limitations of Liability set forth in Section 13 of Exhibit A, Hyland agrees to comply in all material respects with all laws applicable to Hyland in its performance of services under the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CONTRACTOR:
HYLAND SOFTWARE, INC.

CITY:
CITY OF NEW HAVEN

By: _____

[NAME]

[TITLE]

Duly Authorized

Date: _____

Hyland Legal

Approved by: _____

Date: _____

By: _____

Justin Elicker

Mayor

Date: _____

Approved as to Form and Correctness:

Catherine E. LaMarr

Deputy Corporation Counsel

Date: _____

DRAFT FOR REVIEW