

**VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY**

INITIATED: Information Services **DATE:** August 17, 2004
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN END USER LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND HYLAND SOFTWARE, INC.", as presented.



SUMMARY OF ITEM:

Adoption of the attached resolution will authorize an agreement between the Village of Downers Grove and Hyland Software, Inc for the OnBase end user license for document management system software.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF
AN END USER LICENSE 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 End User License Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Hyland Software, Inc. ("Hyland"), for license to utilize OnBase 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 Village Manager 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 That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.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® End User License Agreement **IMPORTANT- READ CAREFULLY**

This OnBase® End User License Agreement ("EULA") is made between Hyland Software, Inc. ("Hyland"), 28500 Clemens Road, Westlake, Ohio 44145 USA, an Ohio corporation, and the User of the OnBase® Software modules listed on Exhibit A attached hereto ("Software") that has signed this EULA in the space provided below ("User"). User's acceptance and further use of the Software shall indicate User's agreement to be bound by the terms of this EULA. If User does not agree to be bound by the terms of this EULA, User should exit the program and discontinue the use of the Software.

1. **LICENSE:** Upon payment in full of the Software license fees in accordance with the provisions of Exhibit A, Hyland grants to User a perpetual (except as herein provided), non-exclusive, non-assignable, limited license to the Software, in machine-readable object code form only, solely for use by User internally, and only for capturing, storing, processing and accessing User's own data. User acknowledges that each module of the Software is licensed for a specific type of use, such as concurrently or on a specified workstation or by a specified individual and that the Software controls such use. User shall not make additional copies of the Software. User shall not make any use of the Software in any manner not expressly permitted by this EULA. If User has any questions concerning permitted uses of the Software, User should contact Hyland immediately for clarification. The Software is licensed for use by a single organization and may not be used for processing of third-party data as a service bureau, application service provider or otherwise. User agrees: (a) not to remove any Hyland notices in the Software; (b) not to sell, transfer, rent, lease or sub-license the Software or documentation to any third party; (c) not to alter or modify the Software; and (d) not to reverse engineer, disassemble, decompile or attempt to derive source code from the Software, or prepare derivative works therefrom. Use of software or hardware that reduces the number of clients directly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of Software licenses required. The required number of Software licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware. User is prohibited from using any software other than Hyland's Client modules or Query API module to access the Software or any data stored in the Software database for any purpose other than generating reports or statistics regarding system utilization, unless Hyland has given its prior written consent to User's use of such other software and User has paid to Hyland Software license fees with respect to such access to the Software or data stored in the Software database in accordance with Hyland's licensing policies applicable to the Software modules that provide access to the Software application modules and data stored in the Software database. User may not assign, transfer or sublicense all or part of this EULA without the prior written consent of Hyland.
2. **OWNERSHIP:** Hyland and its suppliers own the Software, including, without limitation, any and all worldwide copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software are transferred to User. User agrees that nothing in this EULA or associated documents gives it any right, title or interest in the Software, except for the limited express rights granted in this EULA.
3. **INSTALLATION, TESTING AND ACCEPTANCE OF SOFTWARE:** User is responsible for hardware and non-licensed software for the installation, operation and support of the Software. If the Software does not pass acceptance, User will notify Hyland in writing of the specific defect encountered within fourteen (14) days following installation. If User fails to notify Hyland of any defect in the Software within fourteen (14) days following installation, User will be deemed to have accepted the Software "as is." If Hyland receives from User timely written notice of a defect, Hyland will use commercially reasonable efforts to correct the defect as promptly as practicable. User may retest the Software following installation of any fix or replacement to confirm that the defect has been corrected. If the defect has not been corrected after re-testing, User has the option, exercisable by delivering written notice to Hyland within seven (7) days following installation of the fix or replacement, to either: (a) continue to use and accept the Software "as is," in which event User shall have waived any and all claims resulting from defect; or (b)(1) permit Hyland to make further corrections, reserving the rights under (a) above or the remedy under (b)(2) below in the event such further corrections do not correct

the defect; or (2) terminate this EULA, and upon such termination and compliance by User with the provisions of Section 6 Hyland will refund any Software license fees actually paid by User prior to such termination.

4. LIMITED WARRANTY:

- (a) For a period of sixty (60) days from the date of first installation of the Software at User's site, Hyland warrants the media on which the Software is distributed are free from defects in materials and in workmanship. Hyland does not warrant that the functions contained in the Software will meet User's requirements or that the operation of the Software will be uninterrupted or error free. **USER AND HYLAND'S AUTHORIZED RESELLER SPECIFICALLY ASSUME RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE ITS BUSINESS OBJECTIVES.** Due to the inherent complexity of computer software, User is advised to verify User's work. Provided that, within the 60-day period referred to above, User returns the Software with a copy of User's receipt and all agreements, Hyland will, at its sole discretion, either (a) replace the defective media; or (b) terminate this EULA, in which event, upon compliance by User with its obligations under Section 6, Hyland will refund any portion of the Software license fees paid prior to the time of such termination.
- (b) **HYLAND AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.** No oral or written information given by Hyland, its agents, or employees shall create any additional warranty. No modification or addition to this warranty is authorized unless it is set forth in writing, references this EULA, and is signed on behalf of Hyland by a corporate officer.
- (c) **IN NO CASE SHALL HYLAND'S LIABILITY EXCEED THE AMOUNT OF THE SOFTWARE LICENSE FEES ACTUALLY PAID BY USER. IN NO EVENT WILL HYLAND OR ITS DIRECT OR INDIRECT SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR OTHER PECUNIARY LOSS ARISING OUT OF OR IN CONNECTION WITH THIS EULA OR ANY USE OR INABILITY TO USE THE SOFTWARE, EVEN IF Hyland OR SUCH SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES. HYLAND AND ITS SUPPLIERS ARE NOT RESPONSIBLE FOR ANY COSTS INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, THE COST OF RECOVERING SUCH INFORMATION, THE COST OF SUBSTITUTE SOFTWARE, OR CLAIMS BY THIRD PARTIES.**
- (d) In Section 4 (b) and (c) of this EULA, the term "supplier" does not refer to the Hyland authorized reseller from which User purchased the licenses of the Software listed on Exhibit A.

5. **MAINTENANCE:** User may purchase maintenance and technical support services from Hyland pursuant to the terms of a separate Software Maintenance Agreement.

6. **TERMINATION:** Except in the case of a breach or failure to comply by User the provisions of any of clauses a), b), c) or d) of Section 1 of the License Agreement (with respect to which User shall have no right to cure a breach or non-compliance and Hyland may terminate the EULA immediately upon written notice to such effect to User), Hyland may terminate the EULA if User breaches or fails to comply with any provision of the EULA and Hyland first gives written notice to User of the breach or non-compliance with the EULA, which notice shall specify in reasonable detail such breach or non-compliance, and User fails to cure such breach or non-compliance within thirty (30) calendar days after receipt of such notice. Upon termination of this EULA for any reason, including but not limited to as specified in this Section 6 or in Sections 3 or 4, User shall immediately (a) discontinue any and all use of the Software and related documentation, (b) return the Software and any related documentation to Hyland, and (c) certify in writing to Hyland that User has completed the preceding actions. All disclaimers of warranties and limitations of liability set forth in this EULA shall survive any termination.

EXHIBIT A
TO
EULA

Software licensed for use pursuant to the EULA:

1. Current Software licensed:

<u>Product Name</u>	<u>Product Code</u>	<u>Qty</u>
OnBase Server Multi-User License	OBIPW1	1
OnBase Server EDM Services	DMIP11	1
OnBase Server Outlook Integration	OLIP11	1
OnBase Concurrent Client	CTIPC1	10
Workflow Departmental Server	WFIPD1	1
Workflow Concurrent Client	WFIPC1	5
E-Forms	FMIP11	1
Production Document Imaging	DIIPW1	1
Production Document Imaging	DIIPW2	1
Verity Full Text Indexing Server	VTIP11	1
Verity Full Text Indexing Concurrent Client	VTIPC1	5
Document Retention	DRIP11	1
Total Phase I		

2. Such additional modules of the OnBase® Information Management System with respect to which User properly submits a written purchase order to, and pays Software license fees to, Hyland or its authorized reseller. All such modules accurately listed on User's properly submitted written purchase order(s) shall, upon payment in full of the Software license fees, automatically be deemed to be added to the Software listed on this Exhibit A, whether or not the parties actually amend the form of this Exhibit A.

3. All "Upgrades or Enhancements" to the Software described in paragraphs (1) and (2) above that User properly obtains pursuant to the terms of a Software Maintenance Agreement between User and Hyland or its authorized reseller.

Payment of Software license fees:

Unless and until Hyland notifies User in writing to the contrary, the Software license fees due and payable by User shall be mutually agreed upon by User and Hyland's authorized reseller from which User ordered the Software; User is authorized to make any and all payments of such Software license fees to such authorized reseller pursuant to such payment terms as User shall have mutually agreed to with such authorized reseller; and User agrees to pay such Software license fees and to make all such payments in accordance with such mutually agreed terms. Payment terms are outlined in Exhibit #1 to the Crowe Chizek and Company LLC Consulting Agreement.