

**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 A SOFTWARE MAINTENANCE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND CROWE CHIZEK AND COMPANY, LLC", as presented.



**SUMMARY OF ITEM:**

Adoption of the attached resolution will authorize a maintenance agreement between the Village of Downers Grove and Crowe Chizek and Company, LLC for the OnBase document management system software.

**RECORD OF ACTION TAKEN:**

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RESOLUTION NO. \_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION OF  
A SOFTWARE MAINTENANCE AGREEMENT BETWEEN THE  
VILLAGE OF DOWNERS GROVE AND CROWE CHIZEK AND COMPANY, LLC**

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 Software Maintenance Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Crowe Chizek and Company, LLC ("Crowe Chizek"), 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 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 That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.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® Information Management System  
SOFTWARE MAINTENANCE AGREEMENT**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between **Crowe Chizek and Company LLC**, a **Limited Liability Company** with its principal offices at **One Mid-America Plaza, Suite 700, Oakbrook Terrace, IL** ("Service Provider"), and the company, person or entity executing this Agreement as the "Licensee" in the space provided below ("Licensee"):

RECITAL:

WHEREAS, Service Provider is an authorized reseller of Hyland Software, Inc. and has marketed to Licensee certain OnBase® Information Management System software modules of Hyland Software, Inc.;

WHEREAS, Licensee has licensed the specified software from Hyland Software, Inc. pursuant to the terms of an OnBase® 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 from Hyland Software, Inc.;

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 electronic on-line material, including user manuals, provided by Hyland Software, Inc. for the Software and that 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 Hyland Software, Inc.

(c) **EULA.** "EULA" is defined in the recitals to this Agreement.

(d) **Maintenance and Support Services.** "Maintenance and Support Services" means all professional 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 Hyland Software, Inc. under the EULA and as listed 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 Hyland Software, Inc. 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 Hyland Software, Inc. 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.** Service Provider shall: (1) use its commercially reasonable efforts to correct any properly reported Error(s) in the Software that are confirmed by Hyland Software, Inc., in the exercise of its commercially reasonable judgment; and (2) 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. Service Provider shall undertake to report to Hyland Software, Inc. for confirmation any reported Errors promptly after receipt of proper notice from Licensee, in accordance with Section 4(c) of this Agreement and Service Provider's current Error reporting procedures. Service Provider shall perform services in an effort to correct confirmed Errors promptly after making such confirmation. Maintenance and Support Services generally will be available during the hours of **8:00 a.m. to 5:00 p.m., Central Time**, 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 modem, telephonically or both. Should Licensee experience an emergency situation outside of normal hours, Licensee may contact Service Provider 24 hours per day, 7 days per week, by calling Service Provider's regular telephone Maintenance and Support Services number and using Service Provider's after hours paging system. Service Provider's designated support engineer on call will contact Licensee regarding the emergency situation within a reasonable time (usually not more than 3 hours) after the page. Service Provider reserves the right to notify Licensee that it is making unauthorized (i.e., not in an emergency situation) or excessive use of after hours Maintenance and Support Services and to terminate the provision of such Services thereafter, unless Licensee pays Service Provider for such continued after-hours Services at the rate of **\$(to be determined via supplemental contract)** 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 or excessive use call and Licensee shall have the opportunity to terminate the call and delay Maintenance and Support Services until normal hours on the next business day. Licensee acknowledges and agrees that Service Provider and Hyland Software, Inc. 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, a properly functioning modem and the appropriate communications software as specified by Service Provider; and Licensee shall establish and maintain, at Licensee's sole cost and expense, an adequate or dedicated connection with Service Provider and Hyland Software, Inc. 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 Section 5(b), 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 environment. On-site Maintenance and Support Services will commence within such period of time after the request and submission of the requisite purchase order by Licensee, not to exceed five (5) business days, as the parties shall mutually agree upon.

(c) Improper Maintenance or Use. Service Provider is not responsible for providing, or obligated to provide, Maintenance and Support Services or Upgrades and Enhancements under this Agreement: (a) if the Software has been altered, revised, changed, enhanced or modified in any manner that was not authorized in writing in advance by Hyland Software, Inc.; (b) in connection with any Error if Service Provider (directly or through Hyland Software, Inc.) has previously provided corrections for such Error; (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 Hyland Software, Inc.), 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 Hyland Software, Inc. 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 Hyland Software, Inc.'s then current policies, all Upgrades and Enhancements to the Software released by Hyland Software, Inc. during the term of this Agreement. Licensee acknowledges and agrees that Hyland Software, Inc. has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland Software, Inc.'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 Hyland Software, Inc. shall have no responsibility or liability for data loss regardless of the reasons for said loss. Service Provider and Hyland Software, Inc. 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.

(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. In addition, Licensee acknowledges and agrees that Hyland Software, Inc. may be retained by Service Provider to provide Error corrections or other Maintenance and Support Services directly to Licensee and, accordingly, Licensee shall provide such same access directly to Hyland Software, Inc. Such right of access and use shall be provided at no cost or charge to Service Provider or Hyland Software, Inc.

#### 5. FEES, PAYMENTS, CURRENCY AND TAXES.

(a) Annual Maintenance Fees. Licensee shall pay to Service Provider annual maintenance fees in accordance with the Annual Maintenance Fee Schedule set forth as Exhibit A attached hereto, as the same may be changed from time to time by Service Provider upon written notice to Licensee. 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. For the period of the first full twelve (12) months following the date Hyland Software, Inc. issues license codes for the Software to Licensee, Service Provider shall invoice Licensee for the initial annual maintenance fees simultaneously with Service Provider's invoicing of Licensee for the license fees associated with the licensing of the Software under the EULA. Thereafter, Service Provider shall invoice Licensee for subsequent annual maintenance fees at least seventy-five (75) 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).

(b) 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 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.

(c) Incidental Costs and Expenses. All incidental costs and expenses are included in the maintenance fee.

(d) 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 full net sixty (60) days from the date of invoice.

(3) Remedies. All past due amounts shall bear interest at the rate of one percent (1.0%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by Licensee in the payment of any amounts due hereunder, 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.

(e) Taxes and Governmental Charges. In addition to any and all other payments required to be made by Licensee hereunder, Licensee shall pay all taxes and governmental charges, foreign, federal, state, local or otherwise (other than income or franchise taxes of Service Provider), however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, including but not limited to sales and use taxes, excise taxes and customs duties or charges. Licensee agrees to make any and all required tax payments directly to the appropriate taxing authority.

#### 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 any circumstances described in Section 2(c), 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**. IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY LICENSEE TO SERVICE PROVIDER UNDER THIS AGREEMENT DURING THE CURRENT TERM OF THIS AGREEMENT. IN NO EVENT SHALL SERVICE PROVIDER OR HYLAND SOFTWARE, INC. 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 SERVICE PROVIDER OR HYLAND SOFTWARE, INC. HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

#### 8. TERM, RENEWAL AND TERMINATION.

(a) Term. Subject to the early termination provisions of Section 8(b), 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 the first annual anniversary of such date; and, except as otherwise provided in Section 8(c)(3) below, the term of this Agreement shall be renewed: (1) at the end of the Initial Term, for a period from the first day after the end of the Initial Term through December 31 of the calendar year in which the Initial Term ends; and (2) thereafter, annually on a calendar year by calendar year basis.

(b) Early Termination.

(1) Automatic. This Agreement shall terminate automatically, without any other or further action on the part of either of the parties, immediately upon any termination of the EULA.

(2) By Service Provider For Cause. Service Provider 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), the breach or non-compliance within (A) in the case of non-payment, any breach of Section 1 of the EULA or any breach of Section 3 of this Agreement, ten (10) calendar days after receipt of such written notice, or (B) in the case of any other breach or non-compliance, twenty (20) business days after receipt of such written notice, Service Provider 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.

(3) By Licensee.

(A) For Convenience. Licensee may terminate this Agreement at any time, for any reason or for no reason, upon not less than sixty (60) days advance written notice to Service Provider.

(B) For Cause. Licensee shall be entitled to give written notice to Service Provider of any breach by Service Provider or other failure by Service Provider to comply with any material term or condition of this Agreement, specifying the nature of such breach or non-compliance and requiring Service Provider to cure the breach or non-compliance. If Service Provider 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 twenty (20) business 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; and thereafter, so long as Licensee has complied in all material respects with its obligations under the EULA and this Agreement and is current on all payment obligations under the EULA and this Agreement, Licensee shall be entitled to a refund from Service Provider of the "unused portion of the annual maintenance fees" for the then-current term of this Agreement. For these purposes, the "unused portion of the annual maintenance fees" shall mean that portion of the annual maintenance fees paid by Licensee under Section 5(a) with respect to the term of this Agreement 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 term of this Agreement that remain until the end of such then-current term, 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 term determined without regard to such termination.

(C) Non-Renewal. Licensee may elect not to renew this Agreement at the end of the then-current term of this Agreement by written notice to Service Provider on or prior to the date payment is due under Section 5(d)(1) of Service Provider's invoice for annual maintenance fees for the next succeeding renewal term of this Agreement.

(4) By Either Party in Accordance with Section 9. Either party may terminate this Agreement in accordance with the procedures set forth in Section 9.

(c) Effect of Termination.

(1) Payments. Notwithstanding any termination of this Agreement, Licensee shall be obligated to pay Service Provider for (A) all Maintenance and Support Services provided on a time and materials basis in accordance with this Agreement at any time on or prior to the effective date of termination; (B) all annual maintenance fees due with respect to any period commencing prior to the effective date of termination. All such payments shall be made in accordance with Section 5, which shall survive any such termination for these purposes.

(2) Survival of 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 termination of the Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Section 3 (as it relates to title and ownership), Section 5(e), Section 6(c), Section 7, Section 8, Section 10 and Section 11. No action arising out of this Agreement, regardless of the form of action, may be brought by Licensee more than one (1) year after the date the action accrued.

(3) Reinstatement of Agreement. In the event of the termination of this Agreement by Licensee under Section 8(b)(4) (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(c)(3). 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 under Section 8(b)(4)) 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(c)(3) 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.

**EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 8(c)(3), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.**

9. **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 9 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 9 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.

10. **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.

11. GENERAL PROVISIONS.

(a) Jurisdiction. 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, 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 DuPage County, IL.

(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, the RFP and Response thereto 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 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 this Agreement. 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. The terms in the RFP and Response thereto will prevail over any conflicting stipulations contained or referenced in any other document.

(e) Binding Agreement and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Service Provider 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 Service Provider. 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 11(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 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) Third Party Beneficiary. Licensee and Service Provider acknowledge and agree that Hyland Software, Inc. is an express third party beneficiary of this Agreement and shall be entitled to enforce this Agreement to the full extent of the law as if Hyland Software, Inc. were a party hereto. Hyland Software, Inc. shall be afforded all remedies available to any party to this Agreement under the terms hereof or under applicable law.

(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) U.S. Government Restricted Rights. The Software and Upgrades and Enhancements are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of the rights in Technical Data and Computer Software clause at DFAR 252.227-7013 and the Commercial Computer Software Restricted Rights FAR 52.277-19(c)(1) and (2), as applicable. Manufacturer is Hyland Software, Inc., 28500 Clemens Road, Westlake, Ohio 44145.

(k) 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 Service Provider's protection and, accordingly, Service Provider 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.

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

Village of Downers Grove, IL  
LICENSEE  
Business Address: 801 Burlington Drive  
Downers Grove, IL 60515

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Crowe Chizek and Company LLC  
SERVICE PROVIDER  
Business Address: One Mid-America Plaza, Suite 700  
Oakbrook Terrace, IL 60181

By: Kevin J. Ohl  
Name: Kevin J. Ohl  
Title: Executive  
Date: 6/24/2004

Exhibit A

<u>SOFTWARE MODULES</u>	<u>ANNUAL MAINTENANCE FEES</u>
OnBase Server Multi-User License	\$900.00
OnBase Server EDM Services	\$900.00
OnBase Server Outlook Integration	\$900.00
OnBase Concurrent Client	\$2,160.00
Workflow Departmental Server	\$1,800.00
Workflow Concurrent Client	\$900.00
E-Forms	\$1,800.00
Production Document Imaging	\$900.00
Production Document Imaging	\$360.00
Verity Full Text Indexing Server	\$1,800.00
Verity Full Text Indexing Concurrent Client	\$270.00
Document Retention	\$1,620.00
<b>Total Annual Maintenance</b>	<b>\$14,310.00</b>