

## **Hyland (formerly known as Perspective) Pass-Through Terms for Inclusion in Client Contracts**

**DEFINED TERMS:** All capitalized terms used in this Agreement shall have the meanings ascribed them in this Agreement:

"Delivery" means: (i) the electronic downloading of the Software onto User's systems, (ii) the Software being made available by Solution Provider to User for electronic download onto User's systems; or (iii) the delivery by Hyland to User of a Production Certificate for such Software module(s) by Hyland either shipping (physically or electronically) the Production Certificate to User or making the Production Certificate available for electronic download by User (including through one of Hyland's authorized solution providers).

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

"Effective Date" means the date this Agreement is signed by the last party that signs this Agreement, as determined based on the dates set forth after their respective signatures.

"Error" means any defect or condition inherent in the Software which is reported by User in accordance with this Agreement and which is confirmed by Solution Provider, that causes the Software to fail to function in any material respects as described in the Documentation.

"Error Correction Services" means Solution Provider's reasonable efforts to correct an Error, which may be effected by a reasonable workaround.

"Existing Software" means Hyland's proprietary software products previously licensed to User on a perpetual basis. (Definition applicable to **existing perpetual user converting to subscription either through a full conversion or add-on**).

"Hyland" means Hyland Software, Inc. or one of its affiliates, and its successors and assigns.

"Maintenance and Support" means for the Software, (i) Error Correction Services; (ii) Technical Support Services; and (iii) the availability of Upgrades and Enhancements in accordance with this Agreement.

"Production Certificate" means license codes, a license certificate, or an IFM file issued by Hyland or its Solution Provider and necessary for User to activate Software for User's production use.

"Prohibited Act" or "Prohibited Acts" means any action taken by User that is: (i) in violation of Section 3 of this Agreement; or (ii) in violation of or contrary to Section 4 of this Agreement.

"Resolution" means Solution Provider provides User with a reasonable workaround, correction, or modification that solves or mitigates a reported Error.

"Software" means (i) Hyland's proprietary software products licensed by User from Solution Provider, including any third party software bundled by Hyland together with Hyland's proprietary software products as part of a unified product; and (ii) all Upgrades and Enhancements of the software products described in clause (i) which User properly obtains under this Agreement, Software does not include ShareBase. **[CHOOSE ONE OF THE FOLLOWING OPTIONS AS APPLICABLE: (OPTION 1) IF THIS TEMPLATE IS BEING USED TO CONVERT EXISTING PERPETUALLY LICENSED SOFTWARE TO SUBSCRIPTION, USE THIS: Software includes Existing Software; (OPTION 2) IF THIS TEMPLATE IS BEING USED TO ADDRESS ADD-ON SUBSCRIPTION LICENSES BUT THE PREVIOUSLY LICENSED PERPETUAL SOFTWARE WILL REMAIN PERPETUAL, AND HYLAND ENTERED INTO THE PERPETUAL LICENSE AGREEMENT OR EULA WITH THE CUSTOMER (EITHER WRITTEN OR VIA CLICK-THRU), USE THIS: For**

purposes of Maintenance and Support, Software includes Existing Software. **(OPTION 3): IF THIS IS FOR A NET NEW SUBSCRIPTION CUSTOMER, CHOOSE NEITHER OPTION 1 NOR OPTION 2)**

"Subscription Fees" means periodic fees for the licensing of Software under this Agreement and for Maintenance and Support for such Software, and payable by User to Solution Provider.

"Retired Software", means at any particular time during a maintenance period covered by this Agreement, any Software product or version of the Software licensed by User from Solution Provider under this Agreement which is identified as being retired on Hyland's applicable secure end user web site, currently <https://www.hyland.com/community>. The effective date of such change will be twelve (12) months from the date Hyland initially posts the status change on its end user web site, and User will receive notice as a registered user of Hyland's applicable secure end user web site.

"Technical Support Services" means telephone or online technical support related to problems reported by User and associated with the operation of any Software, including assistance and advice related to the operation of the Software.

"Upgrades and Enhancements" means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Solution Provider makes available to User or to Solution Provider's end users generally during any maintenance period under this Agreement to correct Errors or deficiencies or enhance or change 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, or re-platformed Software.

## **2. TERM; TERMJNATION:**

2.1 Generally. Subject to early termination as provided 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.

### **2.2 Termination.**

2.2.1 Automatic. This Agreement shall terminate automatically, without any other or further action on the part of either of the parties, immediately upon termination or expiration of the Reseller Agreement between Hyland and Solution Provider. In such event, User may contact Hyland and use reasonable efforts to enter into a mutually agreeable agreement to replace this Agreement.

2.2.2 By Either Party. Either party may terminate this Agreement 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 the written notice of the breach given by the non-breaching party; provided that Solution Provider shall not be required to give User 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.

### **2.3 Certain Effects or Consequences of Termination; Survival of Certain Provisions.**

2.3.1 Generally. 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 User's obligation to pay to Solution Provider all 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.

2.3.2 Survival of Certain Obligations. All provisions of this Agreement, which by their nature extend

beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to all disclaimers of warranties, confidentiality obligations and limitations of liability set forth in this Agreement.

**2.3.3 Effects or Consequences of Termination.** Upon any termination of this Agreement, any license to use the Software will automatically terminate without other or further action on the part of any party; and User shall immediately: (a) discontinue any and all use of the Software and Documentation; and (b) either (1) return the Software and Documentation to Solution Provider, or (2) with the prior permission of Solution Provider, destroy the Software and Documentation; and certify in writing to Solution Provider that User has completed such destruction.

### **3. LICENSE:**

3.1 Subject to User's payment in full of the Subscription Fees and any other amounts due and payable under this Agreement, and subject further to User's compliance with this Agreement, Solution Provider grants to User a revocable, non-exclusive, non-assignable (except as provided in this Agreement), limited license to the Software, in machine-readable object code form only, and the associated Documentation, solely for use:

(a) by User internally, and only for storing, processing and accessing User's own data; and

(b) subject to Section 3.7 below, by a third-party contractor retained by User as a provider of services to User ("Contractor"), but only by the Contractor for storing, processing and accessing User's own data in fulfillment of the Contractor's contractual obligations as a service provider to User.

The Software and associated Documentation is licensed for use by a single organization and may not be used for the processing of third-party data as a service bureau, application service provider or otherwise. User shall not make use of the Software or associated Documentation in any manner not expressly permitted by this Agreement. Software subject to a regulatory control may only be installed in the country identified as the end user location in the purchase order. The Software may be located and hosted on computer servers owned and controlled by a third party. Such third-party hosting provider shall be considered a Contractor, and subject to the requirements of Section 3.7 below.

3.2 **Use Restriction.** 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 the Software may control such use. Software products that are volume-based may: (i) no longer function if applicable volume limits have been exceeded; (ii) require User to pay additional fees based on User's volume usage; and/or (iii) include functionality which monitors or tracks User usage and reports that usage. User may not circumvent or attempt to circumvent this restriction by any means, including but not limited to changing the computer calendars. Use of software or hardware that reduces the number of users 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 the Software Client modules or a Software application programming interface ("API") 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 Solution Provider has given its prior written consent to User's use of such other software and User has paid to Solution Provider Subscription Fees with respect to such access. User further agrees that the Software shall not be copied and installed on additional servers unless User has purchased a license therefore, and the number of users of the Software shall not exceed the number of users permitted by the Software Client licenses purchased by User.

3.3 **Production and Test Systems.** User shall be entitled to use one (1) production copy of the Software licensed and one (1) additional copy of the production environment licensed for customary remote disaster recovery purposes which may not be used as a production system concurrently with the operation of any other copy of the Software in a production environment. Subject to the payment of any additional applicable license fees or subscription fees, User shall be entitled to license a reasonable number of additional copies of the production environment licensed Software to be used exclusively in a non-production environment and solely for the purposes of experimenting and testing the Software, developing integrations between the Software and other applications that integrate to the Software solely using integration modules of the Software licensed by User under

this Agreement, and training User's employees on the Software ("Test Systems"). User may be required to provide to Solution Provider certain information relating to User's intended use of such Test Systems such as the manufacturer, model number, serial number, and installation site. Solution Provider reserves the right to further define the permitted use(s) and/or restrict the use(s) of the Test Systems. User's sole recourse in the event of any dissatisfaction with any Software in any non-production system is to stop using such Software and return it to Solution Provider, provided that, to the extent that User is using the Test System for the purposes of testing an Upgrade or Enhancement of the Software prior to implementing the same in User's production environment, then User may contact Solution Provider for the provision of Maintenance and Support as described in this Agreement. User shall not make any copies of the Software not specifically authorized by this Section.

3.4 **Evaluation Software.** From time to time User may elect to evaluate certain Software modules ("Evaluation Software") for the purpose of determining whether or not to purchase a production license of such Evaluation Software. Evaluation Software is licensed for User's use in a non-production environment. Notwithstanding anything to the contrary, as to any Evaluation Software, the Agreement and the limited license granted hereby will terminate on the earliest of: (a) last day of the evaluation period specified in the accepted purchase order delivered for such Evaluation Software; or (b) immediately upon the delivery of written notice to such effect by Solution Provider to User. Upon expiration or other termination of such period, User immediately shall either (y) discontinue any and all use of the Evaluation Software and related Documentation and remove the Evaluation Software; or (z) deliver a purchase order for purchase of such Evaluation Software.

3.5 **Third Party Licenses.** The Software may be bundled with software owned by third parties, including but not limited to those manufacturers listed in the Help About screen of the Software. Such third-party software is licensed solely for use within the Software and is not to be used on a stand-alone basis. Notwithstanding the above, User acknowledges that, depending on the modules licensed, the Software may include open-source software governed by an open source license, in which case the open source license (a copy of which is provided in the Software or upon request) may grant you additional rights to such open source software. Additionally, in the case of such software to be downloaded and installed on a mobile device, if such software will be downloaded from the application market or store maintained by the manufacturer of the mobile device, then use of such software will be governed by the license terms for the software included at the applicable application store or market or presented to User or User's user in the software, and this Agreement will not govern such use.

3.6 **Integration Code.** If applicable, Software also includes all adapters or connectors created by Hyland and provided to you by Solution Provider as part of an integration between the Software and a third party line of business application ("Integration Code"). Software also includes any desktop host or other content services software provided by Hyland and downloaded on a user's computer used to extend functionality in Hyland's products. Such Integration Code and desktop host may only be used in combination with other Software and in accordance with the terms of this Agreement.

3.7 **Contractor Use Agreement.** User agrees that if it desires to allow a Contractor to do any of the following:

- (a) make use of the Software configuration tools, Software administrative tools or any of the Software's application programming interfaces ("APIs");
- (b) make use of any training materials or attend any training courses, either online or in person, in either case related to the Software; or
- (c) access any of Hyland's secure websites (including, but not limited to, [users.onbase.com](http://users.onbase.com), [teamonbase.com](http://teamonbase.com), [training.onbase.com](http://training.onbase.com), [demo.onbase.com](http://demo.onbase.com), and [Hyland.com/Community](http://Hyland.com/Community)), either through Contractor's use of User's own log-in credentials or through credentials received directly or indirectly by Contractor;

then, User must cause such Contractor to execute a use agreement with Hyland in a form available for download at Hyland's Community website ("Contractor Use Agreement"). User understands and agrees that: (x) User may not allow a Contractor to do any of the foregoing if such Contractor has not signed a Contractor Use Agreement, and (y) Contractors may use the Software only in compliance with the terms of this Agreement, and (z) User is responsible for such compliance by all Contractors that do not execute a Contractor Use Agreement. User agrees that it shall indemnify Hyland from and against all claims, liabilities, losses, damages, and costs, including, but not limited to,



reasonable attorneys' fees and court costs, which are suffered or incurred by Hyland and arise from or in connection with the breach or noncompliance with the terms of this Agreement by any Contractor that does not sign a Contractor Use Agreement.

3.8 No High Risk Use. The Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. The Software is not designed or intended for use in any situation where failure or fault of any kind of the Software could lead to death or serious bodily injury to any person, or to severe physical or environmental damage ("High Risk Use"). User is not licensed to use the Software in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of the Software for administrative purposes, as an information resource for medical professionals, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non- controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function. User agrees not to use, distribute or sublicense the use of the Software in, or in connection with, any High Risk Use." User agrees to indemnify and hold harmless Solution Provider from any third-party claim arising out of User's use of the Software in connection with any High Risk Use.

3.9 Audit Rights. Upon reasonable notice to User, Solution Provider shall be permitted access to audit User's use of the Software solely in order to determine User's compliance with the licensing and pricing terms this Agreement, including, where applicable, to measure User's volume usage. Additionally, if requested by Solution Provider in connection with Software licensed on a volume basis, User shall provide reports that show User's volume usage. User shall reasonably cooperate with Solution Provider with respect to its performance of such audit. User acknowledges and agrees that User is prohibited from publishing the results of any benchmark test using the Software to any third party without Hyland's prior written approval, and that User has not relied on the future availability of any programs or services in entering into this Agreement.

3.10 AnyDoc. The optional AccuZip component of the OCR for AnyDoc and AnyDoc EXCHANGEit Software products contains material obtained under agreement from the United States Postal Service (USPS) and must be kept current via an update plan provided by Solution Provider to maintain User's continued right to use. The USPS has contractually required Solution Provider to include "technology which automatically disables access to outdated [zip code] products." This technology disables only the AccuZip component and is activated only if AccuZip is not updated on a regular and timely basis. Solution Provider regularly updates the zip code list as part of Maintenance and Support for the AccuZip module.

3.11 The Software may contain functionality that allows User to access, link or integrate the Software with User's applications or applications or services provided by third parties. Solution Provider has no responsibility for such applications or services, websites or content and does not endorse any third-party web sites, applications or services that may be linked or integrated through the Software; any activities engaged in by User with such third parties is solely between User and such third party.

3.12 With respect to certain Software products licensed for use in a healthcare setting, pricing for the Software is based upon the number of Studies and Non-DICOM Objects that are generated annually by User using the Software and pricing will be adjusted based on such usage. For the purposes of this Agreement, "Study" or "Studies" means a collection of one of or more images generated for a single patient which is identified by a study instance unique identifier (SUID) and "Non-DICOM Object" means a collection of one of or more images or documents which are not identified by an SUID and are stored as a single file. For clarification, the number of Studies and Non-DICOM does not include any pre-existing Studies that are migrated into the Software. During the term of the Agreement, following receipt of a written request from Hyland, User shall promptly provide to Hyland reasonable access to Hyland to enable Hyland to report to User in writing the number of Studies and Non-DICOM Objects generated by User during the reporting period identified by Hyland (the "Hyland Reported Number"). User shall have the right to review and object in writing to such Hyland Reported Number. If User objects to the Hyland Reported Number, the parties shall cooperate in good faith to attempt to resolve the dispute within ten (10) days of User's objection. If, within twenty (20) days of User's objection, the parties are not able to resolve the dispute,

either party may submit such dispute to a mutually agreed upon independent third party, who shall act as an independent consultant ("Independent Consultant"). The Independent Consultant shall determine the procedure to be followed to resolve the dispute and the parties shall provide to the Independent Consultant such information, and access to such records, as the Independent Consultant may request in connection with its review. The Independent Consultant shall report in writing to Hyland and User a calculation of the number of Studies and Non- DICOM Objects for such reporting period in accordance herewith as promptly as practicable, and such determination shall be final, binding and conclusive as to the parties. All fees and disbursements of the Independent Consultant for services rendered shall be shared equally by Hyland and User. As used herein, the number of Studies and Non-DICOM Objects resulting from the process described above shall be final and binding upon Hyland and User.

#### **4. OWNERSHIP AND PROHIBITED CONDUCT:**

4.1 Ownership. Solution Provider's direct and indirect suppliers, including Hyland, own the Software and Documentation, including, without limitation, any and all worldwide copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the foregoing. The Software and Documentation are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software or Documentation are transferred to User. User agrees that nothing in this Agreement or associated documents gives it any right, title or interest in the Software or Documentation, except for the limited express rights granted in this Agreement. User acknowledges and agrees that, with respect to Hyland's end users generally, Hyland has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland's policies respecting Upgrades and Enhancements (including but not limited to its release process). THIS AGREEMENT IS NOT A WORK FOR HIRE AGREEMENT. At no time shall User file or obtain any lien or security interest in or on any components of the Software or Documentation.

4.2 Prohibited Conduct. User agrees not to: (a) remove copyright, trademark or other proprietary rights notices that appear on or during the use of the Software or Documentation; (b) sell, transfer, rent, lease or sub-license the Software or Documentation; (c) alter or modify the Software or Documentation; or (d) reverse engineer, disassemble, decompile or attempt to derive source code from the Software or Documentation, or prepare derivative works therefrom.

#### **5. MAINTENANCE AND SUPPORT:**

5.1 Maintenance and Support Terms. Subject to the payment of Subscription Fees, except with respect to Retired Software, Solution Provider will provide Maintenance and Support in accordance with this Section 5.

5.1.1 Technical Support Services. Solution Provider will provide telephone or online technical support related to problems reported by User and associated with the operation of any Software, including assistance and advice related to the operation of the Software. Technical Support Services are not available for Retired Software.

5.1.2 Error Correction Services. With respect to any Errors in the Software which are reported by User and which are confirmed by Solution Provider, in the exercise of its reasonable judgment, Solution Provider will use its reasonable efforts to correct the Error, which may be effected by a reasonable workaround. Solution Provider shall promptly commence to confirm any reported Errors after receipt of a proper report of such suspected Error from User. Solution Provider may elect to correct the Error in the current available or in the next available commercially released version of the Software and the Resolution may require the User to implement an Upgrade and Enhancement to obtain the correction. Error Correction Services are not available for Retired Software.

5.1.3 Reporting Policies and Procedures Applicable to Technical Support Services and Error Correction Services. In requesting Technical Support Services and Error Correction Services, User will submit such requests in accordance with

Service Provider's current reporting procedures. Maintenance and Support generally will be available in accordance with the Master Agreement between Solution Provider and Client.

5.1.4 Upgrades and Enhancements. Solution Provider will provide, in accordance with Hyland's then current policies, as set forth from time to time on Hyland's secure end user web site (currently [www.hyland.com/community](http://www.hyland.com/community)), all Upgrades and Enhancements, if and when released during the term of this Agreement. Upgrades and Enhancements are not available for Retired Software.

## 5.2 Exclusions.

5.2.1 Generally. Solution Provider is not responsible for providing, or obligated to provide, Maintenance and Support under this Agreement: (1) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, or from any error or defect in any configuration of the Software, which activities in any such case were undertaken by any party other than Solution Provider or Hyland; (2) in connection with any Error if Solution Provider (directly or through Hyland) has previously provided corrections for such Error, which User fails to implement; (3) 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 embedded in the Software by Hyland), hardware or any system or networking utilized by User; (4) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (5) if any party other than Solution Provider or Hyland has provided any services in the nature of Maintenance and Support to User with respect to the Software. Maintenance and Support does not include any services that Solution Provider may provide in connection with assisting or completing an upgrade of Software with any available Upgrade and Enhancement.

5.2.2 Excluded Software and Hardware. This Agreement does not govern, and Solution Provider shall not be responsible for, the maintenance or support of any software other than the Software or for any hardware or equipment of any kind or nature, whether or not obtained by User from Solution Provider.

## 5.3. Certain Other Responsibilities of User.

5.3.1 Operation of the Software and Related Systems. User acknowledges and agrees that it is solely responsible for the operation, configuration, supervision, management and control of the Software and all related hardware and software (including the database software). User is solely responsible for: obtaining or providing training for its personnel; taking appropriate measures to isolate and backup or otherwise archive its computer systems, programs, data or files; and instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use.

5.3.2 Access to Premises and Systems. User shall make available reasonable access and use of User's premises, and online access to User's computer hardware, peripherals, Software and other software as Solution Provider deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support. Accordingly, User shall install and maintain means of communication and the appropriate communications software as mutually agreed upon by Solution Provider and User and an adequate connection with Solution Provider and Hyland to facilitate Solution Provider's on-line Maintenance and Support. Such right of access and use shall be provided at no cost or charge to Solution Provider or Hyland.

5.4 Professional Services for Projects Not Covered by Technical Support Services or Error Correction Services. If User requests professional services which are outside the scope of Technical Support Services or Error Correction Services, User agrees that such services shall not be covered by this Agreement and such services only shall be engaged pursuant to a separate services agreement.

5.5 Implementation of Upgrades and Enhancements to Regulated Products. User acknowledges and agrees that for regulatory compliance purposes, Solution Provider may be required to engage Hyland under a services agreement to implement Upgrades and Enhancements to a regulated product. If Hyland offers a self-service option for implementing Upgrades and Enhancements to a regulated product, and the User chooses

this option, User agrees to comply with the training, reporting, and documentation requirements established by Hyland to ensure that the implementation is performed and documented as required by applicable regulations.

## **6. SUBSCRIPTION FEES, PAYMENT TERMS AND TAXES:**

6.1 **Subscription Fees.** User shall pay Subscription Fees to Solution Provider for the Software licensed under this Agreement in such amounts as are invoiced by Solution Provider; provided, that during the Initial Term of this Agreement, User shall pay Subscription Fees to Solution Provider for the initial Software licensed hereunder in accordance with **Purchase Agreement/Quote.** Following expiration of the Initial Term of this Agreement, Solution Provider will increase the Subscription Fees for the Software for any renewal period in accordance with its Master Agreement with User.

6.2 **General Payment Terms.** So long as User is not in default of any payment obligations under this Agreement, except as otherwise provided in this Agreement, User shall pay in full each invoice issued hereunder net thirty (30) days from the date of User's receipt of such invoice.

6.3 **Certain Remedies for Non-Payment or Late Payment.** At the election of Solution Provider, exercisable by written notice to User, any past due amounts shall bear interest at the rate of one and one-half percent (1.5%) 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 User in the payment of any amounts due hereunder, which default continues unremedied for at least thirty (30) calendar days after the due date of such payment, Solution Provider shall have the right to suspend or cease the provision of any services under this Agreement, including the delivery of any Upgrades and Enhancements, to User unless and until such default shall have been cured.

6.4 **Taxes and Governmental Charges.** All payments under this Agreement are exclusive of all applicable taxes and governmental charges (such as duties), all of which shall be paid by User to Solution Provider (other than taxes on Solution Provider's income). In the event User is required by law to withhold taxes, User agrees to furnish Solution Provider all required receipts and documentation substantiating such payment. If Solution Provider is required by law to remit any tax or governmental charge on behalf of or for the account of User, User agrees to reimburse Solution Provider within thirty (30) days after Solution Provider notifies User in writing of such remittance. User agrees to provide Solution Provider with valid tax exemption certificates in advance of any remittance otherwise required to be made by Solution Provider on behalf of or for the account of User, where such certificates are applicable.

6.5 **Resolution of Invoice Disputes.** If, prior to the due date for payment under any invoice, User notifies Solution Provider in writing that it disputes all or any portion of an amount invoiced, both parties will use reasonable efforts to resolve the dispute within thirty (30) calendar days of Solution Provider's receipt of the notice. If any amount remains disputed in good faith after such 30-day period, either party may escalate the disputed items to the parties' respective executive management to attempt to resolve the dispute. The parties agree that at least one of each of their respective executives will meet (which may be by telephone or other similarly effective means of remote communication) within ten (10) calendar days of any such escalation to attempt to resolve the dispute. If the parties' executive managers are unable to resolve the dispute within ten (10) calendar days of such meeting, either party thereafter may file litigation in a court of competent jurisdiction under Section 11.2 of this Agreement to seek resolution of the dispute.

## **7. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES:**

7.1 **Software Warranty.** For a period of sixty (60) days from and including a Software module has been Delivered to User, Solution Provider warrants to User that such Software module, when properly installed and properly used, will function in all material respects as described in the Documentation. The terms of this warranty shall not apply to, and Solution Provider shall have no liability for any non-conformity related to: (a) any Retired Software modules; or (b) any Software module that has been (i) modified by User or a third party, (ii) used in combination with equipment or software other than that which is consistent with the Documentation, or (iii) misused or abused.

7.2 **Remedy.** Solution Provider's sole obligation, and User's sole and exclusive remedy for any non-



conformities of the express limited warranties under Section 7.1 shall be as follows: provided that, within the applicable period, User notifies Solution Provider in writing of the non-conformity, Solution Provider will either (a) repair or replace the non-conforming Software module, which may include the delivery of a reasonable workaround for the non-conformity; or (b) if Solution Provider determines that repair or replacement of the Software module is not practicable, then terminate this Agreement with respect to the non-conforming Software module, in which event, upon compliance by User with its obligations under Section 2.3 of this Agreement, Solution Provider will refund any portion of the Subscription Fees paid prior to the time of such termination with respect to such Software.

### 7.3 DISCLAIMER OF WARRANTIES.

7.3.1 EXCEPT FOR THE WARRANTIES PROVIDED BY SOLUTION PROVIDER AS EXPRESSLY SET FORTH IN SECTION 7.1, SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS), MAKE NO WARRANTIES OR REPRESENTATIONS REGARDING ANY SOFTWARE, INNOVATIONS, INFORMATION, MAINTENANCE AND SUPPORT OR ANY OTHER SERVICES PROVIDED UNDER THIS AGREEMENT. SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS) DISCLAIM AND EXCLUDE 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. SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS) DO NOT WARRANT THAT ANY SOFTWARE OR MAINTENANCE AND SUPPORT PROVIDED WILL SATISFY USER'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT WILL BE UNINTERRUPTED. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SOLUTION PROVIDER AND HYLAND DO NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

7.3.2 USER SPECIFICALLY ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND MAINTENANCE AND SUPPORT TO ACHIEVE ITS BUSINESS OBJECTIVES.

7.3.3 SOLUTION PROVIDER MAKES NO WARRANTIES WITH RESPECT TO ANY SOFTWARE USED IN ANY NON-PRODUCTION SYSTEM AND PROVIDES ANY SUCH SOFTWARE "AS IS."

7.3.4 No oral or written information given by Solution Provider, its agents, or employees shall create any additional warranty. No modification or addition to the limited warranties set forth in this Agreement is authorized unless it is set forth in writing, references this Agreement, and is signed on behalf of Solution Provider by a corporate officer.

## 8. **LIMITATIONS OF LIABILITY:**

8.1 IN NO EVENT SHALL SOLUTION PROVIDER'S OR ITS DIRECT OR INDIRECT SUPPLIERS' (INCLUDING HYLAND) AGGREGATE LIABILITY FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE PERFORMANCE OR NON- PERFORMANCE OF SERVICES OR THE USE OR INABILITY TO USE SOFTWARE, EXCEED THE AGGREGATE AMOUNTS ACTUALLY PAID BY USER TO SOLUTION PROVIDER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL SOLUTION PROVIDER OR ITS DIRECT OR INDIRECT SUPPLIERS (INCLUDING HYLAND) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY TYPE OF CLAIM FOR 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 SOLUTION PROVIDER OR SUCH SUPPLIERS (INCLUDING HYLAND) HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

8.2 IF USER USES THE SOFTWARE IN A CLINICAL SETTING, USER ACKNOWLEDGES THAT THE SOFTWARE DOES NOT OFFER MEDICAL INTERPRETATIONS OF DATA, DIAGNOSE PATIENTS, OR RECOMMEND THERAPY OR TREATMENT; THE SOFTWARE IS AN INFORMATION RESOURCE AND IS NOT A SUBSTITUTE FOR THE SKILL, JUDGMENT AND KNOWLEDGE OF USER'S USERS OF THE SOFTWARE IN THE PROVISION OF HEALTHCARE SERVICES. IN ADDITION TO THE LIMITATIONS OF LIABILITY PROVIDED HEREIN, NEITHER SOLUTION PROVIDER NOR HYLAND SHALL NOT HAVE ANY LIABILITY FOR ANY ASPECT OF USER'S SERVICES PROVIDED IN CONJUNCTION WITH ITS USE OF THE SOFTWARE.

## **9. CONFIDENTIAL INFORMATION:**

9.1 "Confidential Information" shall be such information of Solution Provider, User or Hyland, as the case may be, that is marked "Proprietary" or "Confidential," that is known by the recipient to be confidential or that is of such a nature as customarily would be confidential between business parties, except as provided in the next sentence. Confidential Information shall not include information that: (a) is or becomes generally known to the public without breach of this Agreement by the recipient, or (b) is demonstrated by the recipient to have been in the recipient's possession prior to its disclosure by the disclosing party, or (c) is received by the recipient from a third party that is not bound by restrictions, obligations or duties of non-disclosure to the disclosing party, or (d) is demonstrated by recipient to have been independently developed by recipient without breach of its obligations.

9.2 Each party agrees that, as a recipient, it shall at all times maintain the confidentiality of all Confidential Information, using the same degree of care that such party uses to protect its own confidential information, but in any event not less than reasonable care, and not use or disclose to any third party any such Confidential Information, except as may be required by law or court order or as provided under this Agreement. User agrees to take all reasonable steps to protect all Software and any related Documentation, delivered by Solution Provider or Hyland to User under this Agreement from unauthorized copying or use. Each party shall be liable and responsible for any breach of this Section 9 committed by any of such party's employees, agents, consultants, contractors or representatives.

**10. 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 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 10 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.

## **11. GENERAL PROVISIONS:**

11.1 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.

11.2 **Waivers:** 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.

11.3 **Integration:** This Agreement, 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 and supersedes all prior agreements, negotiations and discussions between them on the same subject matter. User acknowledges and agrees in entering into the Agreement and its purchases hereunder are not contingent on the availability of any future functionality, features, programs, or services. 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. User and Solution Provider specifically acknowledge and agree that any other terms varying from or adding to the terms of this Agreement, whether contained in any purchase order or other electronic, written or oral communication made from User to Solution Provider are rejected and shall be null and void and of no force or effect, unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document. **[CHOOSE ONE OF THE FOLLOWING OPTIONS AS APPLICABLE: (OPTION 1) IF THIS TEMPLATE IS BEING USED TO CONVERT EXISTING PERPETUALLY LICENSED SOFTWARE TO SUBSCRIPTION, USE THIS:** The parties acknowledge and agree that this Agreement supersedes and replaces any and all previous agreements, including click-thru or shrink-wrap agreements, related to all Software previously licensed to User. **(OPTION 2) IF THIS TEMPLATE IS BEING USED TO ADDRESS ADD-ON SUBSCRIPTION LICENSES BUT THE PREVIOUSLY LICENSED PERPETUAL SOFTWARE WILL REMAIN PERPETUAL, AND HYLAND ENTERED INTO THE PERPETUAL LICENSE AGREEMENT OR EULA WITH THE CUSTOMER (EITHER WRITTEN OR VIA CLICK-THRU), USE THIS:** The parties acknowledge and agree that this Agreement supersedes and replaces any and all previous agreements, including click-thru or shrink-wrap agreements, related to all Software other than Existing Software. **(OPTION 3): IF THIS IS FOR A NET NEW SUBSCRIPTION CUSTOMER, CHOOSE NEITHER OPTION 1 NOR OPTION 2]**

11.4 **Binding Effect; No Assignment:** This 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 this 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 this 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 this Agreement. Any assignment made without compliance with the provisions of this Section 11.6 shall be null and void and of no force or effect.

11.5 **Export:** Any Software or Documentation provided under this Agreement are subject to export control laws and regulations of the United States and other jurisdictions. User 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 or Documentation is not exported in violation of United States of America law or the laws and regulations of other jurisdictions. User agrees that it will not export or re-export the Software or Documentation to any organizations or nationals in the United States embargoed territories of Cuba, Iran, Iraq, 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. User shall not use the Software 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.

11.6 **U.S. Government End Users:** To the extent applicable to User, the terms and conditions of this Agreement shall pertain to the U.S. Government's use and/or disclosure of the Software and shall supersede any conflicting contractual terms or conditions. By accepting the terms of this Agreement and/or the delivery of the Software, the U.S. Government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of ALL U.S. federal acquisition regulation(s) applicable to this

procurement and that the Software is developed exclusively at private expense. If this license fails to meet the U.S. Government's needs or is inconsistent in any respect with Federal law, the U.S. Government agrees to return this Software to Solution Provider. In addition to the foregoing, where DFARS is applicable, use, modification, reproduction, release, display, or disclosure of the Software or Documentation by the U.S. Government is subject solely to the terms of this Agreement, as stated in DFARS 227.7202, and the terms of this Agreement shall supersede any conflicting contractual term or conditions.

11.7 **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 aggrieved party's protection and, accordingly, the aggrieved party shall have the right to seek, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

11.8 **English Language Controls:** This Agreement was originally prepared in the English language. Although Solution Provider may provide one or more translations of this Agreement into another language, and you may actually sign one of those translations, this is done solely for your convenience. The English language version of this Agreement will control for all purposes in the case of any conflict or discrepancy between the English language version and any translations.

11.9 **Expenses:** 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.

11.10 **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 this Agreement; provided, however, that third party suppliers of software products bundled with the Software are third party beneficiaries to this Agreement as it applies to their respective software products. Notwithstanding the foregoing, User and Solution Provider expressly acknowledge and agree that Hyland is a third-party beneficiary of this Agreement and shall be entitled to enforce this Agreement to the full extent of the law as if Hyland were a party hereto. Hyland shall be afforded all remedies available to any party to this Agreement under the terms hereof or under applicable law.