Alfresco End User Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SUPPORT. BY USING SOFTWARE OR SUPPORT, USER ACCEPTS THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF USER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE SOFTWARE OR SUPPORT.

This Alfresco End User License Agreement (the "**Agreement**") is between Hyland and the individual or entity that accepts the terms of this Agreement ("**User**"). The effective date of this Agreement ("**Effective Date**") is the *earlier* of the date that User formally accepts this Agreement or first uses the Software or Support. As used herein, "**Hyland**" means, in any case where User is located in the United States or Canada, Hyland Software, Inc., 28105 Clemens Road, Westlake, Ohio 44145 USA, and in any case where User is located elsewhere, Hyland UK Operations Limited, The Place, Bridge Avenue, Maidenhead SL6 1AF, UK.

1. SCOPE OF AGREEMENT

1.1 **Software and Support**. This Agreement governs User's use of the Software and, if applicable, Support. **"Support"** means standard maintenance and support provided by Hyland for the Software. "**Software**" means the software accompanying this Agreement and branded Alfresco; provided, Software does not include third-party open- source software that may be provided therewith or Community Versions. "**Community Versions**" means the free, open-source community versions that Hyland makes available at no charge, including *without limitation* Digital Business Platform, Alfresco Content Services, Alfresco Process Services and Records Management software. "**Order Form**" means the ordering documents placed by User. "**Subscription**" means access to the Software and, where applicable, Support for a defined period of time (the "**Subscription Period**"), as set forth in an Order Form.

1.2. **Business Partners**. User is purchasing Software and Support from a Hyland business partner (a "**Business Partner**"). Hyland will provide the purchased Software and Support to User under the terms of this Agreement but is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners may have to User, or (c) any non-Hyland products or services that Business Partners supply to User.

2. REPORTING AND RECORDS

2.1 **Reporting**. User will notify Hyland or the Business Partner promptly if User exceeds the number of Cores and/or authorized Named Users purchased under the applicable Order Form. In its notice, User will include the number of excess Cores and/or Named Users, and the date(s) on which the additional Cores were first used and/or the date User exceeded its licensed Named Users. Hyland (or the Business Partner) will invoice User for the applicable fees and User will promptly pay such fees.

2.2 **Records Retention**. User will maintain accurate records necessary to verify the number of Cores it uses and Named Users it authorizes. Upon Hyland's written request, User will provide Hyland such records within ten (10) business days.

3. LICENSE AND OWNERSHIP

3.1 **Grant to User**. Subject to User's compliance with this Agreement and payment of the applicable fees to Hyland, one of its affiliates, or a Business Partner, Hyland grants to User, during the Subscription Period: (a) a non-exclusive, non-transferable, non-sublicensable license to use, copy, test, and modify the Software solely for User's own internal use and limited to the number of Cores, Named Users, and/or Active Processes designated in the Order Form, as applicable; (b) unless otherwise stated in an Order Form, the rights to use one (1) production copy of the Software licensed; (c) the rights in the third party open-source software provided with the Software, which rights are set forth in the applicable third-party licenses; (d) for the term designated in an Order Form, the right to receive Support; and (e) a license to use the Software on the number of Cores designated in the Order Form for backup and disaster-recovery testing purposes. "Cores" means physical computer processing cores or virtual Central Processing Units (vCPUs), sold by Hyland in groups of four Cores. As licensed by Hyland, an initial set of four Cores allows User to deploy the Software on up to four physical cores, or up to four vCPUs, on a single server instance. If User purchases eight or more Cores, User may deploy the Software on physical cores or vCPUs equal to the number of Cores it has purchased, without limitation as to the number of server instances upon which they can run. For example, if User purchases Alfresco Content Services (with eight Cores), User may deploy the Software on up to eight physical cores, or up to eight vCPUs, on any number of server instances. "Named User" means an individual who has been given a unique user name or identifier to access the Software from the User's domain name. No more than one individual may use an issued user name or identifier, and the sharing of such credentials is expressly prohibited. "Active Process," as used with purchases of Alfresco Process Services software, means a process instance within the Software that has not been completed, cancelled, or formally suspended. Processes that have been initiated—but which have not been completed, cancelled, or formally suspended, or which are in a "wait" state—shall constitute Active Processes regardless of the level of user or machine activity associated with those processes over time.

3.2 **Restrictions**. User will not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to: (i) the Software, (ii) any modified version or derivative work of the Software created by the User or for the User, or (iii) Community Versions; (b) remove or alter any copyright, trademark or proprietary notice in the Software; (c) transfer, use or export the Software in violation of any laws or regulations of any government; (d) combine, call, link to, or otherwise use the Software in conjunction with any Community Version, or use any Support for Community Versions or for unlicensed Cores or Named Users; or (e) reverse engineer, decompile or modify any encrypted or encoded portion of the Software.

3.3 **Proprietary Rights**. Hyland and its licensors will own all right, title, and interest to the Software, Support, technology, information, code or software provided to User by Hyland, including all copies or modifications made by Hyland.

3.4 **ACS Specific Restriction Only**. If User makes a new purchase of Alfresco Content Services (ACS) on or after September 1, 2017, the following restriction shall apply:

The Alfresco Content Services (ACS) includes a workflow capability along with a predetermined set of document-review and approval workflows, and a set of predetermined management-task functions. User may use and modify the predetermined workflows and management tasks that are provided with the ACS subscription. However, User may not use the workflow software to design, create or run other types of workflows, business processes and/or management tasks. A separate subscription for Alfresco Process Services (APS) software is required for any such uses.

4. TERM AND TERMINATION

4.1 **Term and Termination of Agreement**. This Agreement will remain in effect for the duration of any active Subscription Period. Upon termination of User's Subscription Period, User's use of the Software will be limited to read-only access.

If User materially breaches the terms of this Agreement, and the breach is not cured (or curable) within thirty (30) days after written notice of the breach, then Hyland may, upon written notice, to the breaching party, terminate this Agreement and User's access to the Software and Support.

4.2 **Survival**. If this Agreement is terminated for any reason, Sections 3.2, 3.3, 4.2, 5, 6.2, 7, 8 and 9 of this Agreement will survive termination.

5. CONFIDENTIALITY

5.1 Confidential Information.

(a)   Definition. In connection with this Agreement, either party (the "**Recipient**") may obtain confidential and proprietary information ("**Confidential Information**") from the other (the "**Discloser**"). Confidential Information may include, without limitation, information about systems designs, pricing, cost data, financial information, business, sales, and marketing plans, products, product roadmaps, service programs, trade secrets, know-how, inventions, techniques, processes, programs, schematics, software, and data. Confidential Information includes information designated in writing as confidential, and any information a reasonable person would understand to be confidential or proprietary under the circumstances of its disclosure.

(b)   Exclusions. "Confidential Information" does not include information that: (i) has been independently developed by or for the Recipient without access or reference to, or use of, Confidential Information; (ii) is lawfully received free of restriction from another source having the right to furnish such information; (iii) is or becomes lawfully in the public domain other than through a breach of this Agreement; (iv) was lawfully known by the Recipient prior to disclosure; (v) Discloser agrees in writing is free of such restrictions; or (vi) is generally disclosed by the Discloser to third parties without a duty of confidentiality.

(c)   Duties With Respect To Confidential Information. At all times during and after the term of this Agreement, Recipient shall keep Discloser's Confidential Information confidential using the same degree of care that it uses to protect its own Confidential Information, but not less than a reasonable degree of care, and shall not disclose Discloser's Confidential Information to a third party without the Discloser's written consent, or use the Confidential Information for purposes other than the performance of this Agreement. Where disclosure is required by law, such disclosure shall not constitute a breach of this Agreement provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information.

6. REPRESENTATIONS AND WARRANTIES

6.1 **General Representations and Warranties**. Hyland represents and warrants that: (a) it will use reasonable skill and care in providing contracted Support; (b) the Support will be performed in a professional and workmanlike manner by qualified personnel; (c) it has the authority to enter into this Agreement with User; and (d) Hyland has taken commercially reasonable measures to ensure the Software does not, at the time of delivery to User, include malicious mechanisms or code designed to damage or corrupt the Software.

6.2 **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND SUPPORT PROVIDED BY HYLAND ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. HYLAND DOES NOT GUARANTEE THAT THE USE OF THE SOFTWARE OR SUPPORT WILL BE UNINTERRUPTED, ERROR FREE, OR THAT HYLAND WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 6.1, USER'S EXCLUSIVE REMEDY AND HYLAND'S ENTIRE LIABILITY WILL BE TO UNDERTAKE COMMERCIALLY REASONABLE EFFORTS TO REMEDY THE SUPPORT DEFICIENCY, SUPPLY A TEMPORARY FIX, OR MAKE AN EMERGENCY BYPASS. IF HYLAND CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, USER MAY TERMINATE THE RELEVANT SOFTWARE SUBSCRIPTION AND RECEIVE A PRO RATA REFUND OF FEES PAID FOR THE REMAINING SUBSCRIPTION PERIOD AS OF THE EFFECTIVE DATE OF THE TERMINATION.

7. LIMITATION OF LIABILITY AND DISCLAIMER OF DAMAGES

7.1 Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER IN TORT, (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON- COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN A PARTY OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

7.2 Limitation of Liability. NEITHER PARTY'S (OR ITS AFFILIATES') AGGREGATE AND CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE WILL EXCEED THE AMOUNTS PAID OR OWED TO HYLAND BY USER, EITHER DIRECTLY OR THROUGH A BUSINESS PARTNER, DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY: (A) TO THE EXTENT SUCH LIMITATONS ARE PROHIBITED BY LAW; (B) FOR PAYMENTS TO A THIRD PARTY ARISING FROM HYLAND'S INDEMNIFICATION OBLIGATION FOR INTELLECTUAL PROPERTY INFRINGEMENT; OR (C) FOP THE FEES OWED BY USER UNDER THIS AGREEMENT FOR SOFTWARE OR SERVICES, OR FOR EXCEEDING THE SCOPE OF THE LICENSES GRANTED OR VIOLATING THE RESTRICTIONS IN SECTION 3.

8. INDEMNIFICATION

8.1 Defense. If a third party initiates or threatens a legal action alleging that User's use of the Software directly infringes the third party's patent, copyright, trademark or misappropriates the third party's trade secret rights ("**Third Party Rights**") (such action, a "**Claim**"), then Hyland will (a) promptly assume the defense of the Claim and (b) pay costs, damages and/or reasonable attorneys' fees that are included in a final judgment against User (without right of appeal) or in a settlement approved by Hyland that are attributable to User's use of the Software; provided that User (i) is current in the payment of all applicable fees, or becomes current, prior to requesting indemnification, (ii) notifies Hyland in writing of the Claim promptly after receipt of the Claim, (iii) provides Hyland the right to control the defense of the Claim with counsel of its choice, and to settle such Claim at Hyland's sole discretion (unless the settlement requires payment by User or requires User to admit liability), and (iv) reasonably cooperates with Hyland in the defense of the Claim.

8.2 Injunctive Relief. If the Software becomes the subject of any actual or anticipated third party infringement claim, Hyland may, at its sole option and expense, (i) procure for User the right

to continue using the affected Software consistent with this Agreement, (ii) replace or modify the affected Software with functionally equivalent software that does not infringe, or, if either (i) or (ii) is not available on a basis that Hyland finds commercially feasible, (iii) terminate the Agreement or applicable Order Form and refund any prepaid fees for all unused portions of the Subscription Period.

8.3 Exclusions. Hyland will have no liability for any Claim based upon (a) use of non-current versions of the Software when Hyland has made newer, non-infringing versions available to the User; (b) altered versions of the Software (unless the specific alteration was made by or for Hyland); (c) use, operation or combination of the applicable Software with non-Hyland programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (d) Hyland's compliance with designs, specifications or instructions provided by User where those designs, specifications or instructions cause the infringement; (e) use by User after notice by Hyland to discontinue use of all or a portion of the Software; or (f) third- party open-source software. This section constitutes the entire liability of Hyland, and User's sole and exclusive remedy, with respect to any third party claims of infringement or misappropriation of intellectual property rights.

9. GENERAL

9.1 Notices. Notices under this Agreement must be in writing and delivered: (a) if to Hyland, to its Chief Financial Officer, with a copy to its General Counsel; (b) if to User, to its Chief Financial Officer or any individual identified in the Order Form. Notices will be deemed received when (1) delivered personally; or (2) upon confirmed delivery by a commercial express carrier.

9.2 Compliance with Applicable Laws. Each party will comply with all applicable laws, including applicable export control restrictions. In order for Hyland to provide Support to User, it may be necessary for Hyland to share information with its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide. In such event, Hyland will comply with Section 5 of this Agreement and with applicable data privacy laws governing the transfer of that information.

9.3 Entire Agreement. Except as otherwise provided in a signed agreement between the parties, this Agreement constitutes the exclusive and complete agreement between Hyland and User with respect to User's use of Software and/or Alfresco Support, and supersedes all prior oral or written discussions, agreements or understandings.

9.4 Force Majeure. Force majeure events shall excuse the affected party (the "Non-Performing Party") from its obligations under this Agreement so long as the event and its effects continue. Force majeure events include, without limitation, Acts of God, natural disasters, war, riot, network attacks, acts of terrorism, fire, explosion, accident, sabotage, strikes, inability to obtain power, fuel, material or labor, or acts of any government. As soon as feasible, the Non-Performing Party shall notify the other party of (a) its best reasonable assessment of the nature and duration of the force majeure event, and (b) the steps it is taking to mitigate its effects. If the force majeure event prevents performance for more than sixty (60) consecutive days, and the parties have not agreed upon a revised basis for performance, then either party may immediately terminate the Agreement upon written notice.

9.5 **Severability/Waiver.** If any provision of this Agreement is ruled invalid or unenforceable, the provision shall be severable from this Agreement so that the remaining provisions are unaffected. No waiver of any rights under this Agreement will constitute a subsequent waiver unless otherwise stated in writing.

9.6 **Dispute Resolution.** In the case "Hyland" is Hyland Software, Inc., the laws of the State of Ohio, U.S.A. shall govern all aspects of this Agreement, without regard to the conflict of laws principles. Any dispute arising from this Agreement shall be subject to the exclusive jurisdiction of state and federal courts located in Cuyahoga County, Ohio.

In the case "Hyland" is Hyland UK Operations Limited, English law shall govern all aspects of this Agreement, without regard to the conflict of laws principles. Any dispute arising from this Agreement shall be subject to the exclusive jurisdiction of courts located in England and Wales.

The parties mutually agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, each as amended, shall not be applicable with respect to this Agreement.

9.7 **Headings.** All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

9.8 **Amendment.** This Agreement may not be amended or modified except in a writing signed by the parties, with specific reference to this Agreement.

Attachment 1
(Alfresco Support)

1. Alfresco Support Programs. Hyland's support offerings, service levels, and guidelines for the Software ("Alfresco Support") are set forth at **http://www.alfresco.com/support/guidelines.** If User has purchased Alfresco Support, User's applicable support program(s) will be set forth in the Order Form.

Alfresco Support may be used only for User's internal purposes. Use of Alfresco Support on behalf of a third party that is not a party to the Agreement, or for Community Versions, is a material breach of the Agreement.

2.1 **Scope of Support.** In using Alfresco Support, User agrees it will: (a) provide Hyland with sufficient information and resources to correct the applicable support issue; (b) install and operate the Software on an Alfresco-supported stack, as identified at http://www.alfresco.com/services/support/stacks/; (c) promptly install all service packs provided by Hyland; and (d) procure, install and maintain all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Software.

User is responsible for reading the release notes and any other available documentation before installing or upgrading the Software, and for testing the Software before deploying it in a production environment. User should also backup its production systems on a regular basis and have those backups available if needed for support purposes. Hyland is not obligated to provide support for the following: (a) Software that has been modified or damaged by User or a third party (unless at Hyland's direction); (b) issues caused by User's negligence, hardware malfunction or other causes beyond the reasonable control of Hyland; (c) issues caused by third party software not licensed through Hyland or provided by Hyland.

2.2 **Technical Support Contacts**. Hyland will provide Alfresco Support to the designated contacts, as identified in an Order Form ("**Technical Support Contacts**"). The Technical Support Contacts should have "read, write and execute" access to the necessary files, English language communication skills and relevant technical knowledge. User may modify its designated Technical Support Contacts at any time during the term of a Subscription by notifying Hyland in writing and giving Hyland five (5) business days to process the change. Technical Support Contacts will be the only interface to the Hyland customer support center. It is recommended that the Technical Support Contacts obtain the applicable Software certification by attending the required Hyland training courses. In an emergency, an Hyland customer support engineer will respond to an issue for an unauthorized contact on an exception basis subject to later verification and involvement of a named Technical Support Contact.