

# SOFTWARE MAINTENANCE AGREEMENT

Agreement No.: \_\_\_\_\_

This Software Maintenance Agreement ("Agreement") is made as of November 30, 2006, ("Effective Date") by and between the City of Portland, Oregon ("City/Customer") and Cayenta Canada, Inc. ("Cayenta" or "Vendor") and shall be in force through November 29, 2011 with one (1) option to renew for an additional five (5) years.

Licensor Contact: John Yau

Customer Contact: Julie Shervey

#250 – 2955 Virtual Way

1120 SW 5<sup>TH</sup> Ave, RM 1301

Vancouver, B.C. V5M 4X6

Portland, OR 97204

TEL: (604) 570-4300 x417

TEL: (503) 823-4973

Recitals:

In conjunction with its business operations, the City of Portland issued an RFP in December of 2002 in order to select a Contractor to provide billing and customer services software for the Bureau of Environmental Services and the Bureau of Water Works. The Successful contractor selected was Cayenta Canada, Inc. and the City entered into an Agreement with Cayenta. The Cayenta Utilities System (also referred to by the City as the Customer Information System or "CIS") was implemented and licensed perpetually under City of Portland Contract #35151, and all Existing Product Licenses, Including Third Party Licenses shall continue to survive therein.

The City intends to continue the "Software Maintenance Services" for the Cayenta Utilities Billing System, and those Maintenance Services of the following Third Party Software, under the terms of this Agreement.

- Actuate Reporting Bundle
- Uniface Runtime
- DataBeeacon
- Quickquery

As provided by provision herein, it is the City's intent that this Agreement shall govern Maintenance Services on all Existing Product listed above and Upgrades, as well as Maintenance Services on all New Product that may be acquired from Cayenta at a later date. For the Cayenta Utilities this Agreement shall supercede any and all previous agreements that may have been executed with regard to Maintenance Services only. Third Party Software Maintenance Agreements shall be governed by their respective provisions attached hereto in Exhibit D.

By signature to this Agreement Cayenta represents and warrants that they have complete authority and resources sufficient to support the maintenance for the City's Cayenta Utilities System and the authorization to act as a Third Party Software Maintenance Reseller for such software maintenance indicated herein.

Cayenta further represents and warrants that, in accordance with the terms of this Agreement, it shall (a) provide Maintenance and Support of all Products Licensed to the City of Portland, notwithstanding Third Party Software; and (b) shall place, at City's expense, into escrow, Source Code for all prior and future versions of the Products Licensed to the City of Portland under Contract # 35151 and for such enhancement, modifications or Product that may result from Agreement # \_\_\_\_\_, notwithstanding Third Party Software. Such fees shall be invoiced by Licensor/Vendor at their cost, with additional markup, in accordance with the schedule in Section 3. Such costs may be adjusted in accordance with Cayenta's actual costs, however, the City reserves the right to request source code be held by an alternate provider should, at their sole discretion, believe the fees to be unreasonable or in excess of the standard market value for such services.

Now therefore, the Parties agree:

The following terms and conditions describe delivery of Maintenance and Support during any paid Maintenance term.

<b>Term:</b> 60 Months	<b>Total Maintenance Fee</b>
<b>Renewable</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <b>Other:</b>	See Exhibit 3.0 Pricing
<b>Licensor's Hotline phone/fax/E-mail numbers and addresses:</b>	The total cost of this Agreement will be \$224,023.54* for the first year, with a not to exceed 5% annual allowable increase, (applicable only so long as the City remains on a general supported release), to total \$1,237,871.48* over the initial sixty (60) Month term. With an optional sixty (60) month renewal, the total value of this initial Agreement and renewal should it be exercised by the City would be a not to exceed amount of \$2,817,744.03
Helpline Phone No 1-800-382-7769	Renewals shall be at the City's Sole discretion, and this agreement shall not exceed a total of 120 months in aggregate of its initial term and renewal if any.
Helpline Fax No.: 604-291-0742	Service will be billed annually
E-Mail Address: <a href="mailto:support@cayenta.com">support@cayenta.com</a>	*Cayenta Utility Maintenance Fees are based on licenses volumes, and may change based on the Matrix provided in Section 3.0. The City's current placement on the matrix as of the Execution date of this is Tier 1 under 200,000.
eSupport Site: <a href="http://support.harriscomputer.com">http://support.harriscomputer.com</a>	

## 1.0 Definitions.

“Acceptance” means that Customer has determined to its reasonable satisfaction that (A) the Repairs, Service or Maintenance have met at a minimum, functional diagnostics and other standards required, to permit Product to operate in accordance with the Documentation, have been satisfied in full following delivery of service; or (B) any other Acceptance Criteria mutually agreed to by Customer and Vendor and attached to or referenced in any respective maintenance request have been satisfied in full.

“Acceptance Criteria” means functionality and performance to be determined and mutually agreed to by Customer and Vendor with respect to a Product, Repair, Maintenance or Service identified on any respective Maintenance Request for the purpose of conducting an Acceptance Test.

“Acceptance Date” means, if any Repair, Service or Maintenance acquired hereunder may be subject to an Acceptance Test, the date on which Customer certifies to Vendor in writing that (A) the Acceptance Test has been either performed or expressly waived in whole or in part and (B) the Acceptance Criteria are either satisfied in full pursuant to this Agreement or expressly waived in whole or in part.

“Acceptance Test” means those certain procedures used by Customer to determine whether a Product, if such Product acquired hereunder may be subject to an Acceptance Test as identified on a respective Order, meets or satisfies Acceptance Criteria.

“Customer” means City of Portland, Oregon, and its successors or assigns.

“Customer User” means any person employed by Customer and any person or entity under contract to provide services to Customer, who is authorized to use Customer’s computer systems in the course of conducting Customer’s business.

“Coverage Hours” means those hours specified in this Agreement during which period Vendor shall provide Maintenance.

“Error” means any defect, problem, condition, bug, or other partial or complete inability of the Software to operate either (A) in accordance with the applicable Specifications and Documentation or (B) if subject to acceptance testing, in the same manner in which the Software operated as of the acceptance date.

“Existing Product” means Software acquired by Customer as of or prior to the date of this Agreement.

“Maintenance” means those services provided by Vendor to Customer that are designed to keep Software operating in optimum condition.

“Maintenance Fee” means the fee paid by Customer for Maintenance.

“Maintenance Request” Means communication from the Customer to the Vendor requesting service, repair or maintenance, either in writing, through Vendor’s Self Service Portal, mail, email, facsimile, or via telephone through the Vendor’s Hotline.

“Material Breach” means: (A) any breach that causes or may cause substantial harm to the non-breaching party; (B) any breach where the injured party will be substantially deprived of the benefit it reasonably expected under the Agreement; or (C) any aggregate non-Material Breaches where the cumulative effect of such non-Material Breaches by the same party satisfies the standards for materiality under this definition. More than two (2) interim fixes within a three (3) month period may be considered breach by the injured party.

“New Product” Means any new software licenses, equipment, material, Third Party Software, upgrades, enhancements, or Product that may be acquired by the City, from the Vendor under Contract #35151, Agreement # \_\_\_\_\_, or by other means yet to be executed by the Parties.

“Product(s)” means all Software, Documentation, Repairs, Maintenance Upgrades, and Supplies relating to Software and services, which Customer acquires from Vendor, AND that Vendor requires, to accomplish the work required.

“Repair” means to patch, reprogram, or replace Software so as to eliminate Errors, to Customer’s satisfaction; provided, however, that a work-around or patch which temporarily eliminates the symptoms of the particular problem

reported, but impairs the efficiency of Customer’s operations, shall be deemed an interim fix, not a Repair. A interim fix can not last longer than 7 calendar days, unless otherwise mutually agreed in writing by both parties.

“Third Party Software” means Software that Vendor is authorized by the Manufacture to License to the City subject to the Original Manufacture’s standard provisions.

“Vendor” means Cayenta Canada, Inc., and its successors or assigns, or affiliates with respect to a named individual or entity, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control of Cayenta Canada, Inc. The term “control” means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

**2.0 Term.** Unless otherwise specified, the duration of Vendor’s obligations in connection with Maintenance shall be Sixty (60) months, commencing on the date of expiration of the Warranty Period and thereafter for so long as any renewal terms shall be in effect. Vendor shall notify Customer in writing at least sixty (60) days prior to the expiration of the initial term and of any subsequent renewal terms. Upon receipt of written notice, Customer may, at its election, renew Maintenance for an additional time period, or negotiate a new agreement.

## 3.0 General:

**3.1 Assignment.** Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Agreement, or any interest therein, without the other Party’s prior written consent, which shall not be unreasonably withheld.

**3.2 Termination for Cause by Vendor.** Vendor may terminate this Agreement if Customer is in Material Breach of this Agreement, which Breach has not been cured in the period or manner agreed to by the Parties under this Agreement.

**3.3 Termination for Cause by Customer.** Customer may terminate this Agreement for the following reasons, which constitute cause for purposes of this Section:

**3.3.1 Material Breach.** If Vendor is in Material Breach of this Agreement.

**3.3.2 Vendor Default due to Bankruptcy.** Customer may regard Vendor as in default of this Agreement: (A) if Vendor becomes insolvent, makes a general assignment for the benefit of creditors; or (B) suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) day period; or (C) has wound up or liquidated, voluntarily or otherwise. In the event of Vendor default, Customer shall become immediately entitled to the source code for the software under this agreement.

**3.3.3 Source Code Escrow Agreement.** Source code rules will be governed by Agreement # 35151 and Agreement # \_\_\_\_\_.

**3.3.4 Vendor’s Maintenance Default.** Vendor shall also be deemed in default if (A) Vendor fails to provide Warranty or Maintenance services or Upgrades provided Customer has acquired Maintenance, as specified in this Agreement, and Vendor has failed to cure such breach in accordance with this Agreement; or (B) Software supported under this Agreement continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, over a continuous period of six (6) months or more; in this event, Customer shall have the right to one or more of the following non-exclusive remedies: Customer may request that: (A) Vendor provide engineering support on site at Customer’s location with Source Code for the Software with the intent of resolving the problem causing the breach. Customer has the option to assign one or more of its full time employees to assist Vendor’s engineer(s) in developing a fix for the problem. Vendor retains copyright and all ownership rights to the Source Code and any changes made during this on-site period. Customer agrees to maintain confidentiality of the Source Code and all residual know-how and knowledge that may be transferred to Customer’s employees as a result of this effort, however, notwithstanding the foregoing, Customer shall be entitled to use the subject software source code for purposes of error correction or operations continuity, at Customer’s sole discretion; or (B) Customer may terminate this Agreement in its entirety or solely as to the affected Software or

Service and exercise the remedies included in this Agreement, in Customer’s sole discretion. Notwithstanding anything in this Agreement, in the event of any Material Breach by Vendor, which Breach shall not have been cured as agreed to between the Parties, Customer shall have the ability to pursue Customer’s rights at law.

**3.3.5 Force Majeure.** In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of (or if loss of any Software licensed or developed hereunder is caused by) natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (hereinafter referred to as a “Force Majeure Event”), the Party who has been so affected immediately shall give notice to the other Party by telephone within two (2) days of the force majeure event, followed by confirmation in writing to include in reasonable detail the nature of the event and the actions to be taken, and shall do everything possible to resume performance. Upon receipt of such notice, this Agreement shall immediately be suspended. If the period of nonperformance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may by giving written notice terminate this Agreement. Provided the duration of delay in delivery due to Force Majeure does not exceed thirty (30) days, in which case Customer shall be permitted to terminate this Agreement hereunder upon written notice to Vendor, in accordance with this Section.

**3.3.6 Modification.** No term of this Agreement may be validly amended, supplemented, or modified unless (A) reviewed by Customer’s Contract Review or Legal Department and (B) executed in writing with reference to this Agreement; any amendment which is not in strict compliance with this Section shall be deemed null, void, and of no binding effect.

**3.3.7 Venue.** This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the Customer and Vendor arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon. Vendor hereby waives and relinquishes any right to a jury trial it may now or hereafter have under any constitution or law in any dispute arising out of or relating to this Agreement. No waiver or any breach hereunder shall be held to be a waiver of any other or subsequent breach of this Agreement.

**3.3.8 Time is of the essence.** In the event that Vendor fails to timely pay any liability or indemnification, then, in addition to other rights and remedies, Customer shall have the right to setoff any amount due hereunder against amounts due to Vendor. Any section of this Agreement which is held or declared, void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Agreement and the remainder of this Agreement shall continue to be binding and of full force and effect. This Agreement shall be binding upon and inure to the benefit of Customer and its successors and assigns. This Agreement has been drafted by Customer as a convenience to the Parties only and shall not, by reason of such action, be construed against Customer.

**3.3.9 Written Notifications.** All written notifications and written amendments shall be sent to the following:

<p><b>For Customer:</b>          Name: Julie Shervey          Title: Project Manager          Address: 1120 SW 5<sup>th</sup> Ave. Ste. 1301           City, State: Portland, OR 97204</p>	<p><b>For Vendor:</b>          Name: Nigel Richardson          Title: Director, Customer Support          Address: 2955 Virtual Way, Suite 250,          City, State: Vancouver, BC Canada V5M 4X6</p>
<p><b>Copy to:</b>          Marianne Metzger, Contract Mgr.          Bureau of Technology Services          3732 SE 99<sup>th</sup> Ave          Portland, OR 97266</p>	<p>Melanie Judge, CFO          Harris Computer Systems          1 Antares Drive, Suite 400          Ottawa, Ontario, Canada K2E 8C4</p>

**3.3.10 Dispute Resolution.** Vendor shall cooperate with Customer to assure that all claims and controversies which arise during the performance of the vendor’s Services under this Agreement and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

**3.3.10.1** Any dispute between Customer and Vendor arising prior to completion of Vendor’s services or the earlier termination of the Agreement shall be resolved, if possible by the Bureau of Technology Services Contracts Manager or their designee on behalf of Customer and the Cayenta Director of Customer Support or their designee on behalf of the Vendor for resolution, if possible.

**3.3.10.2** If the City of Portland, Bureau of Technology Services Contracts Manager or their designee and the Cayenta Director of Customer Support or their designee are unable to resolve any dispute within three (3) business days, or such other timeline as both parties agree to in writing, after notice of such dispute is given by either party to the other, the matter shall be submitted to Bureau of Technology Services Chief Technology Officer on behalf of Customer and the Cayenta Director of Customer Support or their designee on behalf of the Vendor for resolution, if possible.

**3.3.10.3** Should an equitable solution not result from (3.3.7.1) and (3.3.7.2) the Customer and Vendor shall be free to pursue other remedies allowed under this Agreement or applicable law.

**3.3.10.4** Unless ordered by Customer to suspend all or any portion of Vendor’s Services under this Agreement, Vendor shall proceed with the performance of such Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed on change orders which Customer may issue regarding the acceleration of all or any portion of the Services in accordance with the terms of this Agreement. During the pendency of any of the foregoing dispute resolution procedures, Customer shall continue to make all payments that are not in dispute, in accordance with the provisions of this Agreement. Vendor agrees to bill and invoice accordingly.

**4.0 Insurance.** Vendor agrees to maintain workers compensation insurance for the duration of this Agreement to the extent required by Oregon Law. Additionally, Vendor shall maintain a minimum of, \$1,000,000 with a \$2,000,000 aggregate Commercial General Liability, and \$1,000,000 with a \$2,000,000 aggregate of Business Auto Liability. Upon execution of this Agreement and prior to any work being performed hereunder, Vendor shall provide proof of such insurance through a letter of self- insurance, and/or an insurance certificate, listing the Customer, its employees, management, and officials as additional insured. Further, should Vendor subcontract any of the work herein, Vendor will require such subcontractor(s), or affiliates if not covered under Vendor’s insurance, to obtain and keep in force for the duration of the work, insurance equal to the minimum values indicated herein. Prior to the performance of any work under this agreement, Vendor and its subcontractors shall provide to the Customer/CITY AUDITORS OFFICE a certificate showing the required insurance including compliance with the workers’ compensation law, ORS Chapter 656, as it may be amended, and if worker’s compensation insurance is required by ORS Chapter 656, Vendor and its contractors shall maintain coverage for all subject workers as defined by ORS Chapter 656 for the entire period during which work is performed under this agreement.

**4.1 Insurance Certificate.** All insurance certificate(s) shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the Customer’s City Auditor’s Office. If the insurance is canceled or terminated prior to the completion of this Agreement, Vendor and/or its subcontractors shall provide a Certificate of Insurance to show proof of a new policy with the same terms and limits. Vendor and its subcontractors shall have continuous, uninterrupted coverage for the duration of this agreement. The adequacy of the insurance shall be subject to the reasonable approval of the Customer/City Attorney. Failure to maintain insurance as required by this agreement shall be cause for immediate termination of this agreement by the Customer.

**5.0 Business License.** The Vendor shall obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

**6.0 Indemnification.** Vendor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or

actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Vendor or its subcontractors, agents or employees under this Agreement.

**7.0 EEO Certification.** Prior to executing this Agreement, Vendor shall obtain certification as an Equal Employment Opportunity Affirmative Action Employer as prescribed by Portland City Code Chapter 3.100 by filing necessary documentation with the Bureau of Purchases.

**7.1 Non-Discrimination in Benefits.** In April 2006, the Portland City Council unanimously passed the Equal Benefits Ordinance (City Ordinance 180077). The ordinance made revisions to Portland City Code 3.100 requiring certain City contractors to provide benefits to their employees with domestic partners equivalent to those provided to employees with spouses. This new requirement applies to construction contracts, Professional, Technical and Expert Services (PTE), and goods and services contracts exceeding the formal solicitation limits for those contracts awarded on or after January 1, 2007. Due to the Value of this Agreement, it falls into this requirement, Licensor/Vendor is required to visit <http://www.portlandonline.com/omf/index.cfm?c=43774> , and complete the Equal Benefits Compliance Declaration. Questions concerning this requirement may be directed to Loretta Young at (503) 823-6850.

**8.0 Fees Inclusive.** The fee for Maintenance specified herein shall constitute the price in full for all Maintenance in connection with the Software, including all Upgrades and Documentation relating to the Software and Upgrades.

**9.0 Services Included.** Except as otherwise expressly provided to the contrary, Maintenance shall include the following services, in addition to any other services that may be specified in Exhibit B:

**9.1 Preventative.** Maintenance shall include preventative services and tools for Software such as, without limitation, (A) the development, release and assistance in installation of Upgrades which are designed to prevent operational errors, bugs, viruses, and the like and (B) the provision by Vendor to Customer of monitoring, queue management, evaluation, or any other similar diagnostic applications or tools, and assistance in the installation and operation of same.

**9.2 Repair.** Within the time specified herein, Vendor shall repair all errors that have been identified by Vendor or otherwise by Customer in problem reports, either by (A) providing patches on diskette, CD ROM, VPN Access or by electronic mail; (B) providing additional or supplementary new operating software code; or (C) replacing the Software with a different operating software code. In the event that the repair cannot be made, the remedies, as stated within this Agreement, at Customer's sole discretion shall apply.

**9.3 Telephone Help line/Staffing.** During the Coverage Hours Vendor shall maintain a no-cost local or toll-free long-distance telephone hot-line for support of the Software. Vendor shall staff the hot-line with

competent technical consultants who shall be trained in and thoroughly familiar with the Software supported hereunder and with Customer's applicable configuration. Vendor's technical staff shall be certified by applicable governmental or regulatory authorities, if law or regulations require such certification. Telephone support shall be delivered in English.

**9.4 New Releases/Upgrades.** For each copy of the Software supported Vendor shall, at no additional charge to Customer, provide Customer with one (1) copy of any Upgrade, within thirty (30) days of the date such Upgrade is released to potential licensees and customers generally.

**9.5 [Left intentionally blank]**

**9.6 Back Level Support.** If Customer elects not to install any Upgrade, Vendor shall, at Customer's request, maintain the ability to support up to two (2) back-level versions of the Software in operation. Vendor shall provide Customer with at least twelve (12) months prior written notice, before discontinuing Maintenance in support of versions currently in use by Customer. After such discontinuation, Customer may obtain back-level support upon payment of a fee that shall not exceed one hundred and twenty five percent (125%) of the annual Maintenance fee for the most current version of the Software, based on the number of licenses requiring such back-level support.

**9.7 Severity Level, Escalation, and Response Time.** Vendor shall respond to problem reports by, depending upon the nature of the Error identified, diagnosing the problem on-line; assisting over the telephone; sending patches, code fixes or workarounds; replacement, installation and testing of the Software; or, if necessary, sending personnel to Customer's site to deliver Maintenance services in person. In the event of an Error, Customer shall have direct access, without prior escalation, to competent technical consultants who shall be trained in and thoroughly familiar with the Software licensed under Contract # 35151 and Agreement #\_\_\_\_\_ and supported hereunder and with Customer's applicable configuration. Should remote access be required, Vendor will complete and follow all City Policies regarding such.

**9.8 Access.** Vendor agrees that Vendor's access to Customer facilities and confidential information shall be subject to the security interests and controls necessary to protect confidential and/or public property, and Customer shall not be liable for any delays necessary in granting Vendor access to any portion of the facilities or systems. The City reserves the right to require fingerprinting and background checks of the Vendor's personnel prior to granting access at it's sole discretion.

**Table 1: Severity Levels and Commitments**

Priority	Definition	Call-back Commitments	Resolution Commitments
0	<p>Notice will occur when the Cayenta Software is suffering from a deficiency that will result in a Critical System failure before the next release or is currently failing. A Critical System failure is defined as anything that causes:</p> <ul style="list-style-type: none"> <li>➤ A Critical System Process to be inoperable</li> <li>➤ A Critical System calculation to be incorrect</li> <li>➤ Data to be corrupted by the System affecting a Critical System</li> <li>➤ A Critical System output to be displayed incorrectly</li> </ul>	<p>Upon receiving a Priority 0 notice from City, Cayenta will call back City within one (1) hour.</p>	<p>Upon receiving a Priority 0 notice from City, Cayenta will call back City no longer than one (1) hour. Cayenta development staff will evaluate the Tracker within one (1) Business Day of the Tracker's creation and an estimation of the resolution timeframe provided to City via Cayenta support when determined. Development resources will be assigned immediately to fix and provide a release as soon as possible.</p>
1	<p>Notice will occur when the Cayenta Software is suffering from a deficiency which is resulting in a System failure for which:</p> <ul style="list-style-type: none"> <li>➤ The solution cannot wait for inclusion in the next scheduled release</li> <li>➤ Requiring the city to upgrade to the next Software Enhancement Release is unreasonable</li> <li>➤ A reasonable and cost effective way to work around or bypass the deficiency without undue expenses does not exist</li> </ul>	<p>Upon receiving Priority 1 Maintenance Request from the City, Vendor will call back City in one (1) and no longer than two (2) business Days of such request.</p>	<p>Vendor shall schedule the delivery date/release version number within five (5) business days. The scheduled date will be provided to the City via Cayenta Support. Cayenta Support will work with the City to determine a mutually acceptable delivery timeframe.</p>
2	<p>Notice will occur when the Cayenta Software needs to be modified to accommodate a request that cannot wait for release in a future version of the Software, but for which the luxury of scheduling exists for:</p> <ul style="list-style-type: none"> <li>➤ Software deficiency corrections where the current workaround is cumbersome</li> <li>➤ Software deficiency corrections where failure to correct the issue before the next Software Enhancement Release will result in a Priority 1 situation</li> </ul>	<p>Upon receiving a Priority 2 Maintenance Request from the City, Vendor will evaluate request and schedule it into the current development cycle with ten (10) business days.</p>	<p>The scheduling of Priority 2 Trackers will be done through the Cayenta Development Contract process, reviewed monthly. Priority 2 Trackers are scheduled in the Development Contract subject to priority and availability of resources. If the tracker cannot be scheduled in the current month, they will be scheduled for subsequent months. Modifications are placed in the current development release of the Development Contract. The City will be notified as to which release the Tracker has been scheduled. The City will be required to upgrade to the upcoming Software Enhancement Release in order to receive Priority 2 enhancements.</p>
3	<p>Notice will occur from City, Cayenta will evaluate the Maintenance Request and schedule development of the Software Enhancement or fix into future software releases.</p>	<p>Upon Receiving the Priority 3 Maintenance Request, Vendor shall schedule such Enhancement or fix into future software release with sixty (60) Business Days thereafter.</p>	<p>City will be required to upgrade the version of their Cayenta Software in order to receive a Priority 3 Enhancement.</p>

**10.0 Inability to Repair.** In the event that Vendor cannot, by way of either replacement of the Software or repair of the Software by remote telephone or other electronic assistance, resolve the Error and restore the Software to complete operational capacity within timeframes allotted above, Vendor shall dispatch, at no additional cost to Customer, a competent technical consultant thoroughly trained in and familiar with the Software and Customer's applicable configuration to the site to provide 7x24 on-site assistance for resolution of the Error and restoration of the Software. In the event that Vendor cannot, by way of an on-site technical engineer, resolve the Error and restore the Software to complete operational capacity in accordance with Table 1, Customer shall have the option to (A) migrate at Vendor's expense to other consultants; (B) terminate, temporarily or permanently at Customer's option, Maintenance and migrate to other software at Vendor's expense, including expedited charges; (C) remedies as stated within the Agreement. All response and restore times set forth in this Section shall toll in the event that the Error is directly attributable to any platform on which the Software operates.

**11.0 Maintenance Fees/Caps.** Maintenance Fees for any initial term shall not exceed five percent (5%) per year from the prior annual maintenance fee, so long as the City remains on a general supported release. Any metric or industry units by which Maintenance Fees might be determined, including, without limitation, additional MIPS, additional users, additional CPUs, shall be subject to discounts and price caps as set forth in this Section. If Maintenance is initiated for additional Software at any time during an annual payment period, the

Maintenance Fee for the additional Software shall be pro rated based on the established Maintenance Fee for the existing Software in such annual payment period. Nothing in this Agreement shall be construed to permit Vendor to increase fixed term Maintenance Fees, fees for other services, or any other fees that may be fixed.

**12.0 Cost Escalation.** Costs in this Agreement shall remain fixed for the first twelve (12) months. Thereafter, notwithstanding installation of new versions, cost may only be increased by the Vendor delivering to the Customer, not less than thirty (30) Calendar Days prior to the effective annual payment date, a written notification of such increase, AND then only within the limitations cap provided in Section 9.0 of this Software Maintenance Agreement.

**13.0 Decommissioning and Reinstatement of Maintenance for Software.** If required by Customer's business operations, Customer may discontinue Maintenance for Software upon expiration of a Maintenance Term. If Maintenance is discontinued through expiration or terminated by either party for any reason other than any breach hereunder, Customer may reinstate Maintenance. The reinstatement fee for Maintenance shall not exceed 100% of the previous year in which the maintenance is to be reinstated.

**14.0 Reimbursement for Expenses.** In the event that Customer agrees to reimburse any expenses for services related to this Agreement, Customer

will reimburse such expenses as Customer may authorize in accordance with Customer's Vendor Travel Guidelines, Exhibit C, attached to and incorporated by reference.

**15.0 Priority.** Any conflict of terms and conditions shall be resolved in the following order:

- a. Software Maintenance Agreement # \_\_\_\_\_
- b. Exhibit B – Acceptance Criteria
- c. Exhibit C – Travel Guidelines
- d. Exhibit A – Statement of work
- e. Exhibit D – Third Party Maintenance Agreements
- f. COP Contract # 35151 to the extent it is specifically referenced herein.

**SIGNATURE PAGE**

This Agreement, together with all Exhibits or other attachments referenced herein, constitutes the entire agreement between Licensor and Customer and supersedes all proposals, oral and written agreements, between the parties on this subject.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date.

CITY OF PORTLAND:  
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy City Attorney

Date: \_\_\_\_\_

CITY OF PORTLAND, by and through its Elected  
Officials:

By: \_\_\_\_\_  
Mayor Tom Potter

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Auditor

Date: \_\_\_\_\_

Cayenta Canada, Inc.:  
APPROVED AS TO FORM:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

### Scope of Services

#### 1.0 Cayenta Software Utility Maintenance.

1.1 Throughout the Warranty Period and maintenance term(s), Cayenta will provide primary Maintenance, Patches and support Services to City between the hours of 6:00 AM though 6:00 PM PST/PDT. Cayenta will provide the City with additional Maintenance and support via pager service on a seven (7) day, twenty-four (24) hour basis based on the fee structure indicated herein.

1.2 In addition to any forgoing provisions of this Agreement, Maintenance and Support Services shall include:

- 1.2.1 Technical support from Vendor's electronic support facilities and telephone assistance through its "helpline",
- 1.2.2 Problem diagnosis and problem resolution with Vendor's software,
- 1.2.3 Software upgrades and/or Software Enhancement Releases for the Cayenta Software
- 1.2.4 Patches for repair and bug fixes
- 1.2.5 E-support website for problem reporting

1.3 Cayenta shall respond to Maintenance Requests by the City, as outlined in Table 1 Severity Levels and Commitments. Depending on the nature of the problem identified, vendor will diagnose the problem electronically through a computer connection to the City (i.e., "on-line"); assisting over the telephone, sending patches, code fixes or reasonable suggestions to work around a problem (i.e. "Workarounds"); replacement, installation and testing of the Cayenta Software; or, if necessary and as mutually agreed in writing, sending personnel to City's site to deliver maintenance and support services in person and in accordance with Exhibit C Travel Guidelines.

1.4 Vendor shall provide a mechanism for City to track all reported Maintenance Requests using Cayenta's self service portal. Through this web-based interface the City may track all reported issues in real time by logging on to the service portal. The City will also be able to submit support cases, view the updated information about each issue through the service portal. Additionally the City may attach follow up information such as screen prints, trace logs and documentation to an existing issue via the Self Service Portal. SUCH CITY ACCESS SHALL NOT WAIVE ANY OF THE VENDOR'S RESPONSIBILITY FOR WRITTEN, ORAL, OR PERIODIC UPDATES AND STATUS REPORTS AS REQUIRED BY TABLE 1 SEVERITY LEVELS AND COMMITMENTS.

1.5 Vendor shall notify the City in writing if City requests and changes, modifications, or repairs to the Cayenta Software that would void this Agreement or otherwise cause the support, or part thereof as described herein to be unavailable. Work on such a repair or modification shall not begin until the City acknowledges such support reduction or termination to Vendor in writing. Should such a situation occur, the remaining Maintenance shall be prorated base on a twelve (12) month payment period, and refunded to the City in US Dollars.

**2.0 Third Party Software Maintenance.** The Use of any third Party Software delivered to the City by the Vendor Shall be subject to the Terms and conditions of the Third Party Specific Maintenance Agreement (**with the exception of Uniface Runtime\* which shall be supported by the Vendor and Subject to all the provisions of this Agreement as though it was NOT a Third Party Software**), which are attached hereto as Exhibit D. All maintenance requests for the Third Party Software shall be made by City directly to the Third Party Software Manufacture or Service Department.

#### 3.0 Pricing.

Name	Type	Maintenance Start	Current			Maintenance Increase	Projected 2007 Amount
			Period Start	Period End	2006 amount		
Actuate eReport Designer Professional	3rd Party	1-Nov-04	1-Nov-05	31-Oct-06	993.23	3.00%	1,023.03
Actuate Reporting Bundle	3rd Party	17-Mar-05	16-Mar-07	16-Mar-07	11,255.17	3.00%	11,592.83
Databeacon	3rd Party	17-Mar-05	16-Mar-07	16-Mar-07	3,028.20	3.00%	3,119.05
Quickquery	3rd Party	17-Mar-05	16-Mar-07	16-Mar-07	3,028.20	3.00%	3,119.05
Uniface Runtime	*3rd Party	17-Mar-05	16-Mar-07	16-Mar-07	19,776.31	3.00%	20,369.60
Cayenta Utilities*		1-Apr-06	1-Apr-06	31-Mar-07	160,000.00	3.00%	164,800.00



Clean River Rewards Enhancements - Maintenance		31-Oct-06	31-Oct-06	31-Oct-06	20,000.00		20,000.00
					Year 1		224,023.54
					Year 2	1.05	235,224.72
					Year 3	1.05	246,985.95
					Year 4	1.05	259,335.25
					Year 5	1.05	272,302.02
					Year 6	1.05	285,917.12
					Year 7	1.05	300,212.97
					Year 8	1.05	315,223.62
					Year 9	1.05	330,984.80
					Year 10	1.05	347,534.04
					<b>5 Year Total</b>		<b>1,237,871.48</b>
					<b>10 Year Total</b>		<b>2,817,744.03</b>

\* Utility Maintenance Fees are based on Service Bureau Affiliates licenses volumes, and may Change based on the Matrix provided below. The City's current placement on the matrix as of the Execution date of this is Tear 1 under 200,000. In the event City becomes a customer information system Service Bureau to Affiliates, the licensing and maintenance and support fees stated below shall apply:

<b>Service Bureau License and Maintenance support</b>			
Cayenta Software	Active Accounts	Price Pre Active Account (USD)	Annual Maintenance and Support Fee (USD)
Cayenta Utilities v 7.x Or the most current installed version	1 to 200,000	\$4.00	=20% x Price per Active Account
	200,001 to 225,000	\$3.75	=20% x Price per Active Account
	225,001 to 275,000	\$3.50	=20% x Price per Active Account
	275,001 to 300,000	\$3.25	=20% x Price per Active Account
	>300,000	\$3.00	=20% x Price per Active Account

<b>Escrow Fees</b>		
Programs	Annual Fees	Update Fees
Cayenta Utilities v 7.x Or the most current installed version	\$1,000.00	\$500.00

## Exhibit B

### Acceptance Criteria

#### 1.0 Acceptance Testing.

1.1 Right to Perform Acceptance Testing. If Customer requires and so specifies, Customer shall have the right to perform Acceptance Testing. Unless otherwise agreed to between the Parties, prior to Delivery of Products, Vendor shall cooperate with Customer in the development of Acceptance Criteria and the Acceptance Test which shall set forth the location, date and other specifications of the Test. A copy of the Acceptance Criteria and Test shall be attached as an exhibit to the applicable Maintenance Request.

1.2 Procedure and Timetable. Unless otherwise specified in any respective Maintenance Request, (A) Customer shall commence the Acceptance Test no later than five (5) business days after delivery of the Product(s); (B) Vendor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation regarding the Product(s) in order to facilitate Acceptance Testing; (C) Acceptance Testing shall not exceed thirty business (30) days; and (D) Customer will make all reasonable efforts to complete the Acceptance Test within the time period specified Maintenance Request. If Acceptance Tests are successful, Customer shall execute a Certificate of Acceptance and immediately notify Vendor of the Acceptance Date.

1.3 Failure of Acceptance Test. If Customer determines that it cannot issue a Certificate of Acceptance for the Product(s), due to a Priority 0 or Priority 1 issue, Customer shall notify Vendor in writing, specifying in reasonable detail the respects in which the Product(s) failed to pass the Acceptance Test. Vendor shall, within ten (10) business days, correct or modify the Product(s). Upon notice of completion, Customer shall commence a second Acceptance Test. If Customer's determines that it cannot issue a Certificate of Acceptance for the Product(s) based on the second Acceptance Test, Customer shall notify Vendor in writing, and may, at its election:(A) terminate the applicable Maintenance Request, with no further liability; or (B) request Vendor to reprogram or make corrections as necessary to prepare for retesting again.

1.4 No Waiver. Acceptance shall not relieve Vendor from its responsibility under any warranty. Payment for any Maintenance or Service shall not be deemed Acceptance of the Repair or Service or waiver of any warranty.

## Exhibit C

### Travel Guidelines for Vendor

**1.0 Guidelines.** Vendor may be reimbursed, upon written Pre-Approval, for certain expenses incurred in connection with Vendor personnel assigned to provide services for Customer on Customer Site. Such expenses shall not be charged if the travel is due to Software failure or repair that is not attributed to direct actions of the Customer, NOR shall expenses be charged for any travel that would be required for training or other services which are inclusive of the standard maintenance services provided hereunder, or that are inclusive of the annual fees. Copies of original receipts shall accompany all invoices as required and any additional backup that may be appropriate. Reimbursement will be made based on the following guidelines:

**1.1 Commercial Air Travel.** Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. Customer shall reimburse Vendor for one round trip to the subject work location, unless otherwise agreed to by Customer. When possible, air travel arrangements should be reserved at least seven (7) days to fourteen (14) days in advance. Direct billing for commercial air travel is NOT permitted; however, Customer may elect to arrange travel reservations on behalf of Vendor personnel, or Vendor may arrange travel through Customer's authorized travel agency. Weekend travel is not reimbursable, unless otherwise agreed to by Customer's Project Manager. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement. **(Copies of receipts are required)**

**1.2 Rental Cars - Surface Transportation.** Approved Transportation will be reimbursed as follows **(Copies of receipts are required)**:

- 1.2.1** 1 to 2 Vendor Personnel: 1 Compact Auto not to exceed a daily rate/tax/fees of \$60.15
- 1.2.2** 3+ Vendor Personnel: 1 Intermediate Auto not to exceed a daily rate /tax/fees of \$67.75
- 1.2.3** Taxi/Town car: Actual fee based on receipt from and to all associated airports and travel locations required for completion of the work hereunder. (Use of town cars is limited to a minimum of 2-4 vendor personnel)
- 1.2.4** Shuttle: Not to exceed, Airport to downtown Portland OR \$13.00
- 1.2.5** Airport Parking: Actual fee based on receipt for all days Vendor Personnel require airport parking.

**1.2.6** Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. CITY DOES NOT ASSUME ANY LIABILITY OF ANY TYPE IN CONNECTION WITH RENTAL VEHICLES RESERVED OR OPERATED BY CONTRACTOR PERSONNEL. Direct billing for rental vehicles is NOT permitted.

**1.3 Lodging.** Contractor shall arrange for their own lodging if required, and approved in writing by the City. Contractor shall arrange for one-bedroom units for personnel assigned to deliver services to the City. City will reimburse Contractor for a total daily lodging expenses based on the most current Runzhiemer Index, currently at \$123.65 per 1 night stay. **(Copies of receipts are Not required)**

**1.4 Per Diem.** City will provide a Per Diem for each full day (eight hours) worked for Contractor personnel assigned to deliver services hereunder at a flat rate of \$55.00 per day, per individual. Per Diem includes the following expenses **(Copies of receipts are Not required)**:

- 1.4.1** Meals
- 1.4.2** Laundry
- 1.4.3** tips and gratuities
- 1.4.4** communications for personal reasons
- 1.4.5** any additional miscellaneous expenses

**1.5 Personal Entertainment.** Expenses incurred for personal entertainment while traveling on City business are NOT reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc.

**1.6 ALL REIMBURSABLE COSTS.** NOTWITHSTANDING THE FOREGOING, ALL TRAVEL COSTS TO CONTRACTOR SHALL BE REIMBURSED IN ACCORDANCE WITH THE MAXIMUM AMOUNTS ALLOWED UNDER THE CITY'S TRAVEL EXPENSE GUIDELINES (CURRENTLY THE RUNZHEIMER INDEX).

## Exhibit D

### Third Party Software Maintenance Agreements

#### **Actuate Customer Support and Maintenance Offerings:**

##### ***Customer Support Objectives***

To ensure that our customers are successfully achieving their business objectives with Actuate products, Actuate Customer Support is committed to provide the highest quality of service to each and every one of our customers through dedication, expertise, innovation, and professionalism.

Actuate Support for OEM Customer includes support for mission-critical reporting applications. This option provides around the clock support for down systems in production.

Package includes:

- 24x7 support for down systems in production
  - Access to local customer support call center during business hours (Email/Web/Phone)
  - Web-based case submission and review
  - Unlimited access to Actuate user forums
  - Access to self-help portal
  - Online software updates
  - Local Support Center & 24x7 for Priority 1 - Production Down Scenario
  - Supported Language: English\*\*, French, German, Japanese
  - Notification on release of new Actuate Patch, Fix or Release Cycle
- (\*\* 24x7 service is provided in English only)

##### ***Maintenance Agreement***

In order to receive service from Actuate Customer Support, a current maintenance agreement must be in place. Actuate Customer Support cannot guarantee immediate assistance to customers who allowed their maintenance agreement to lapse or to those customers who chose not to purchase a maintenance agreement.

Customer Support Definitions and Service Level Objectives

##### ***Definition of an Incident***

An Incident is a single, reproducible, discrete technical problem or symptom, which cannot be reasonably divided, and also which is not overly broad in scope. Multiple unrelated issues cannot be stacked into one Incident. Actuate Customer Support will use reasonable judgment to decide the number of Incidents to be associated with multiple reported issues or if an Incident is too overly broad in scope.

##### ***Case Closure Policy***

The following are possible reasons for case closure. One of the following alone could lead to a case closure.

- The customer decides to close the case.
- Actuate Customer Support is waiting for a response from the customer and the case has been outstanding with no activity for 3 business days without a response from the customer.
- The identified problem deemed to be a product defect or enhancement. In these cases, a defect or enhancement is logged and the case is closed.
- The problem has been identified as not related to the Actuate product.
- A solution was provided and the customer is satisfied with the resolution.
- The reported problem is a duplicate of an existing case.

## ***Support for a Custom Application***

Custom Applications are developed by the use of custom code in conjunction with the Actuate product. These Custom Applications could have been developed from scratch or based upon an example supplied by Actuate.

With regards to Custom Application, Actuate's support service extends to:

- Determining if the problem is with the core Actuate product or the Custom Application. If the issue is with the Custom Application, we will try to offer some suggestions, but ultimately, it is the customer's responsibility to resolve any errors generated by the Custom Application.
- Actuate Customer Support will answer specific questions regarding documented properties, methods, events, function calls and parameters.

Actuate Customer Support only provides assistance with the types of issues noted above in regards to a Custom Application.

## **CASE PRIORITIES:**

### **Priority 1: Down Production System**

The Actuate system is failing in a production environment resulting in a complete loss of productive capability. This type of problem severely impacts the customer's business objectives and requires rapid response and resolution. Examples of a down production environment are a non-recoverable server crash or the complete failure of one of the Actuate system components.

### **Priority 2: Deployment Stoppage**

The Actuate system is failing in a pre-deployment environment which will result in a significant delay in the deployment of the customer's system into production. This type of problem severely impacts the schedule of the rollout of the customer's production system. Typically, the problem will have to occur in a period where all implementations have been completed and the customer is in the process of testing the production environment or the staging environment just prior to going into production.

In addition, if Customer has any problem during the first installation of an Actuate product, the problem will fall into this priority. Installation problems, typically, encompass situations where install scripts or programs failed to run or the product failed to start after the installation process completed.

### **Priority 2: Major Feature Failure**

One of the major functions or features of the Actuate system is failing. This type of problem also requires rapid response and resolution. Examples of a major feature failure are the failure of reports to run or the return of incorrect results by an Actuate API function.

### **Priority 3: Feature is not working as documented**

A feature in the Actuate software is not behaving as documented by Actuate. Productive work can continue but the Actuate software is not performing to specification and a remedy is required.

### **Priority 4: General questions**

These problems are of a general nature and pertain to how the Actuate software should operate in both a production and development environment. This category also includes feature requests for subsequent releases.

## **Acknowledgment**

Acknowledgment is defined as contact by either email or phone by a trained Customer Support professional to advise of the receipt of a customer support issue

## **Initial Response**

Initial response is defined as contact by either email or phone by a trained Customer Support professional to gather additional information about a customer support issue and to determine the steps to reproduce the problem.

## **Status Frequency**

This is the frequency with which Actuate Customer Support will update our customers on their open support issues. This frequency may be extended by mutual agreement between the customer and Actuate Customer Support.

## **Temporary Fix**

This is a relief from the experienced behavior. It may take the form of a workaround, a patch, or an alternate design approach.

## Service Level Objectives

The following table summarizes Actuate Customer Support's Service Level Objectives for the OEM Customers.

Service Levels	Priority 1	Priority 2 Deployment	Priority 2 Major Feature Failure	Priority 3	Priority 4
Acknowledgment	15 Minutes	15 Minutes	3 Hours	4 Hours	4 Hours
Initial Response	30 Minutes	1 Hour	6 Hours	6 Hours	8 Hours
Status Frequency	Every Day	Every Day	Every 3 Days	Every 5 Days	Every 7 Days
Temporary Fix	1 Day	2 Days	8 Days	10 Days	12 Days (if applicable)

**Note:** All P1s and P2 Deployments must be logged via a phone call to the designated support center for the Service Level Objectives to be obtainable.

## Product release definitions

### Major release

A version of an Actuate software product with significant new functionality, minor features, supported product updates, and maintenance fixes. Naming for a major release uses only whole numbers, such as Actuate 6 and Actuate 5. One copy of each product for which a current maintenance agreement is in place is distributed to all customers. To upgrade to a major release, customers may need to make minor code changes, recompile reports, or import/export Report Encyclopedia.

### Service pack

A full release upgrade to a major release of an Actuate software product with supported product updates and maintenance fixes. Naming for a service pack uses whole numbers followed by service pack number, such as Actuate 5 Service Pack 1 and Actuate 5 Service Pack 2. One copy of each product for which a current maintenance agreement is in place is distributed to all customers upon request. A customer can migrate to a service pack within the same major release without code changes.

### Patch

A complete release that provides longer term relief from a product defect until a generally available release that contains the fix is available. Naming for a patch uses whole numbers followed by service pack number, followed by patch number, such as Actuate 5 Service Pack 1 Patch 1 and Actuate 5 Service Pack 2 Patch 1. A patch is provided on a limited basis to specific customers to solve specific problems and is always considered temporary. A customer can migrate to a patch within the same major release without code changes.

### Fix

A complete release, product, set of files, or file designed to provide temporary relief from a product defect until a patch or a generally available release that contains the fix is available. A fix is provided on a limited basis in order to solve specific problems and is always considered temporary. A fix becomes non-supported immediately after a service pack or patch containing the fix is made available. A fix is based on the latest service pack or patch and customers are required to upgrade to this level before applying the fix.