



# Cayenta Canada Corp.

## Customer - Services Agreement

SERVICES AGREEMENT by and between Cayenta Canada Corp. ("Cayenta"), having offices at #250 – 2955 Virtual Way, Vancouver, B.C. V5M 4X6 and City of Milpitas ("Customer"), having offices at 1265 N. Milpitas Blvd, Milpitas California, 95035, is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

SERVICES TO BE PROVIDED BY CAYENTA			
Phase 1 - Initiation			\$4,800.00
Phase 2 - Configuration			\$24,300.00
Phase 3 - Testing / Training			\$23,550.00
Phase 4 - Cutover / Go-Live			\$8,900.00
Phase 5 - Transition Support			\$4,200.00
<b>TOTAL</b>			<b>\$65,750.00</b>

TOTAL OF ALL SERVICES PROVIDED AS PART OF THIS SUPPLEMENT	
<b>GRAND TOTAL</b>	<b>\$65,750.00</b>

### 1. SERVICES:

**1.1 Statement of Work:** The Statement of Work attached for reference hereto as Appendix "A" describes more particularly all services listed in the table above which are to be provided under this Agreement and the fees for those services. No changes or revisions to the Statement of Work or obligation for payment of additional fees will be made except in writing. Cayenta will perform all services in a manner and according to the standards observed by a competent practitioner of the profession in which Cayenta is engaged. All deliverables will be prepared in a manner that conforms to the standards of quality normally observed by a person in Cayenta's profession. Cayenta shall have the right, upon 30 days notice to the Customer, to change, modify or otherwise alter the scope of the work or type of service described more particularly in the Statement of Work attached for reference hereto as Appendix "A". In the event that Customer does not accept such modification(s), Customer shall have the right to terminate this Agreement without further liability or obligation to Cayenta, except for the payment of fees accrued as of the effective date of such termination.

**1.2 Confidential Information:** All Cayenta Confidential Information, which consists of nonpublic ideas and other information relating to the Services provided pursuant to this Agreement shall remain the sole property of Cayenta and may not be communicated, reproduced, transmitted or otherwise used without the express permission of Cayenta, except in accordance with the terms of this Agreement, or if a Cayenta program, in accordance with a License Agreement entered into between the parties. This Confidential Information may or may not be stamped "Confidential", or in the form of a proposal, list, training course, materials, process, technique, or other tangible or intangible thing. This Subsection 1.2 shall survive the termination of this Agreement. The parties acknowledge that the City is subject to the disclosure requirement of the California Public Records Act, Government code section 6250 et seq.

**1.3 Installation:** If the Services listed above include installation of a Cayenta or third party program ("Program"), then the Program(s) is deemed to be installed, when the Program has been loaded onto the system hardware and is turned over to Customer as ready for testing and implementation, or as provided in the Statement of Work, whichever comes first. Unless otherwise provided in the Statement of Work, Cayenta is responsible for the first installation and Customer is responsible for each installation thereafter, along with file and data conversion, changes in systems administration or operational procedures, changes in operating system setup and user access, changes in user procedures, changes in internal support and cutover to operational use.

**1.4 Support:** Until the expiration of Warranty for each Program, Customer will direct all support calls to the Project Manager, Technical Specialist and/or Application Consultant assigned to Customer, otherwise following the procedures outlined in the License Agreement entered into between the parties hereto. In the event that a Priority 1 problem occurs and none of the above mentioned project personnel are available, Customer may telephone the Cayenta Helpline. Fees for Support services are summarized above.

**2. FEES FOR SERVICES:** The basis of the fees for services provided under this Agreement are time and materials and are estimated based on the scope of work as defined in the attached Statement of Work, unless specified elsewhere in this Agreement. Fees are normally quoted for a standard eight-hour workday. If less than a day of work is performed, billing will be prorated based on the number of quarter days, rounded to the

nearest quarter day. Any service lasting less than a quarter day will be billed as a quarter day. Any service lasting more than 8 hours shall be billed on an hourly basis, such rate to be calculated as the pro-rated amount of the 8 hour daily rate.

**3. PAYMENT TERMS:** Excepting invoices that are due upon execution of this Service Agreement, all fees shall be paid within thirty (30) days of invoice date. Customer shall pay all applicable shipping charges and sales taxes, exclusive of Cayenta's income and corporate franchise taxes. In addition to the fees for services separately listed above, Customer shall reimburse Cayenta for all reasonable travel and living expenses and reproduction costs of handouts incurred by Cayenta in rendering all services. After notice, past due amounts owing from Customer shall bear interest at the rate of 1% per month. Customer shall reimburse Cayenta for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts owed by Customer. Alternatively, Cayenta may, at its sole option, suspend Customer's service if Customer is more than 30 days past due in the payment of fees incurred pursuant to this Agreement. Customer shall pay for all services, consistent with the agreed upon Statement of Work. Total fees for Implementation Services shall become due no later than the first day of the 12th month following Customer's execution of this Agreement. All payments shall be in U.S. Funds.

**4. LIMITATION OF LIABILITY:** Cayenta's total liability for any Service provided pursuant to or arising out of this Agreement, including but not limited to liability arising out of, resulting from or in any way related to contract, tort, breach of warranty, intellectual property infringement or otherwise, shall not in any event exceed the total fees paid by Licensee with respect to this Agreement. Neither Cayenta nor its licensors shall be liable for loss of profits, indirect, special, incidental, or consequential damages. This provision shall survive the termination of this Agreement or any amendment thereto.

**5. FORCE MAJEURE:** Neither party will be responsible for any failure to perform hereunder due to unforeseen circumstances or due to causes beyond the non-performing party's reasonable control, including, without limiting the generality of the foregoing, acts of God, war, riot, embargoes, acts of government, catastrophe, fire, flood, accidents, strikes, shortages of transportation, fuel, energy, labor or material acts of a public enemy.

**6. FACILITIES AND EQUIPMENT:** Customer will provide Cayenta the following documents, access, facilities, services and site information:

- a) Access to files and documents, which are a product of the system to be replaced or generated by the Program(s).
- b) Information relative to Customer's hardware and software on which the Program must run or with which the Program must interact.
- c) Access to Customer's computer facilities, related software, work areas and equipment at times and on days approved by Customer. Customer agrees to enable Cayenta remote access to Customer's system for the purposes of problem diagnosis and file transfer.
- d) Personnel, facilities, equipment and time for training, installation and other services to be performed by Cayenta.
- e) Ongoing access to the system via an Internet connection acceptable to Cayenta.
- f) A representative with authority to approve the plans and deliverables described in the Statement of Work.

**7. GENERAL PROVISIONS:**

**7.1 Assignment:** Neither party hereto shall be entitled to assign that party's rights and obligations under this Agreement without the express written agreement of the other party, such agreement not to be unreasonably withheld.

**7.2 Severability:** Any provision of this Agreement which is prohibited by law or is unenforceable will be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

**7.3 Enurement:** This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and assigns.

**7.4 Modification:** This Agreement may not be modified except in writing by an authorized signatory of each party.

**7.5 Non-Solicitation:** The parties agree that during the term of this Agreement, and for a period of two (2) years thereafter, they will not, without the express prior written consent, directly or indirectly, solicit any person for employment, who is currently employed by the other party. In addition, any person who has been previously employed by either party shall be prohibited from servicing or providing consultation within the scope of work contemplated by this Agreement for a minimum of two (2) year after their current employment.

**7.6 Marketing:** Customer agrees that Cayenta may publicly refer to Customer orally and in writing as a client of Cayenta. Any other reference to Customer by Cayenta requires the written consent of Customer.

**7.7 Notification:** All notices under this Agreement shall be in writing and delivered by overnight delivery service or certified mail, return receipt requested, to the address specified above. Either party may change its address by providing notice in accordance with this Section.

**7.8 Governing Law:** The Agreement shall be governed by and construed in accordance with the laws of the California. This Agreement shall attorn to the jurisdiction of a competent court within a mutually agreed upon county in the California.

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be duly executed as of \_\_\_\_\_, 2007.

**City of Milpitas**

**Cayenta Canada Corp.**

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

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

Name Printed: \_\_\_\_\_

Name Printed \_\_\_\_\_

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

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



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**Cayenta Canada Corporation  
CU 7.4 CF 7.3 Upgrade**

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**Statement of Work for  
City of Milpitas**

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## Sign-off Control

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### City of Milpitas

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

Name Printed: \_\_\_\_\_

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

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

### Cayenta Canada Corporation

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

Name Printed: \_\_\_\_\_

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

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

## Executive Summary

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The objective of this project is to provide services to the City of Milpitas (Milpitas) for the purpose of upgrading Cayenta Utilities (CU) to version 7.4 and Cayenta Financials (CF) to version 7.3.

The City of Milpitas is currently at CU and CF version 7.2.0.28.

This is a 'Like to Like' upgrade, although there may be cases where it makes sense to turn on new functionality. This does not imply that extensive training or configuration will be carried out by Cayenta with regard to new functionality in the applications.

Human Resources (HR) is broken out in the project plan, but for the purposes of this document CF is assumed to include HR.

Actuate will remain at version 7 for the duration of this upgrade.

Cayenta will provide project management, consulting services and technical services, as well as tools and templates to assist the City of Milpitas. The activities and fees as detailed in this Statement of Work (SOW) will not be modified without prior written approval of a mutually agreed upon change in the scope of work.

The phases of the project are:

- ✓ WO 06-189 CU CF Test Server Migration
- ✓ Phase 1. Initiation
- ✓ Phase 2. Configuration
- ✓ Phase 3. Testing / Training
- ✓ Phase 4. Cutover / Go-Live
- ✓ Phase 5. Transition Support

The two Work Orders referenced in the project plan (WO 06-189 and WO 07-008) are considered part of this SOW.

Cayenta and the City of Milpitas's respective involvement and responsibilities related to the project are defined in this Statement of Work and in the Constraints and Assumptions sections set out below each phase.

The work and fees as described in this Statement of Work is a total amount not to exceed the budget provisions specified in Section 4. If a change to the scope of work has been determined, then Cayenta will prepare a Scope Change document that is signed by authorized officers on behalf of both parties and becomes an addendum to this Statement of Work. Sign off of a Scope Change must be made before the work can begin. All dollars in this Statement of Work are quoted in United States currency.

## Implementation

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### *Project Phases*

#### **WO 06-189 CU CF TEST Server Migration**

##### **Purpose**

The purpose of this is to configure an all windows environment for a new Milpitas TEST environment.

##### **Deliverables**

Cayenta will deliver the following as part of this phase:

- An all Windows CU/CF environment which is a copy of the current PROD environment
- CU and CF Upgrade path information to Milpitas Technical Resource

##### **Constraints and Assumptions**

1. Milpitas will have new hardware in place before the Cayenta work will begin.
2. Milpitas will run CU and CF upgrade wizards to move CU/CF 7.2.0.28 up to CU 7.4.0.6 and CF 7.3.0.19 (not including HR).
3. HR will not be upgraded until the 7.2 to 7.3 Conversion work is complete in Phase 2.

#### **Phase 1: Initiation**

##### **Purpose**

The purpose of Phase 1 is to:

- Set up a Milpitas CU QA environment in Vancouver and generate parallel testing scenarios in order to reduce the impact of issues prior to on-site configuration and testing.
- Configuration and setup of W2s and 1099s in Word. Also Technical time for working with Milpitas to setup a solution for printing on RXLaser without UniQue

##### **Deliverables**

Cayenta will deliver the following as part of this phase:

- Vancouver CU QA environment will consist of two full copies of the Milpitas CU database. The first database will employ a copy of Milpitas' CU Application (v7.2.0.28) while the second database will employ a copy of the CU Application at version 7.4.0.6.
- QA Testing report detailing batch and 'primary process' testing completed, as well as all Trackers generated. P0/P1 Trackers will be given to Development for fast-track turn around prior to Milpitas in-house testing beginning.
- CU Application Consultant will provide input to Milpitas on 'Upgrade Special Instructions' needed to be carried out in the Milpitas CU TEST environment.

**Constraints and Assumptions**

1. Milpitas will provide a copy a snapshot of their PROD database for the creation of the QA environment in Vancouver.
2. The City of Milpitas will carry out all 'Upgrade Special Instructions' for the new Milpitas CU and CF environments in Milpitas.

**Phase 2: Configuration****Purpose**

The purpose of Phase 2 for:

- CU is to provide a review of 'Upgrade Special Instructions' to ensure completeness, as well as a review of all new and relevant Preference Codes, Control Codes and Setup Forms.
- CF is to provide available assistance for dealing with issues prior to the beginning of testing.
- HR is to provide conversion from 7.2 to 7.3 as well as configuration review with the client and System Administrator review of changes in functionality.

**Deliverables**

Cayenta will deliver the following as part of this phase:

- Relevant documentation with regard to changes in functionality.

**Constraints and Assumptions**

1. CF (non-HR) assistance will be handled remotely.

**Phase 3: Testing / Training****Purpose**

The purpose of Phase 3 is to test upgrade functionality to ensure that it continues to meet the business needs of Milpitas. As well during this phase the City of Milpitas End Users will be trained on any functionality changes which they may experience after Go-Live.

**Deliverables**

Cayenta will deliver the following as part of this phase:

- Assistance with CU, CF and HR functionality issues which may arise during the testing process.
- A Review of the current CU PROD Financial Reconciliation Issue (BMI) as well as assistance with the configuration of the Financial Manager batch processing functionality.

**Constraints and Assumptions**

1. Milpitas will conduct all End User training using in-house staff.

## **Phase 4: Cutover / Go-Live**

### **Purpose**

The purpose of Phase 4 is to prepare for and execute the upgrade Go-Live.

### **Deliverables**

Cayenta will deliver the following as part of this phase:

- Instruction for Go-Live preparation as a supplement to Milpitas' in-house planning and preparation
- Technical Resources to execute the upgrade over the Go-Live weekend

### **Constraints and Assumptions**

1. Milpitas will have technical and non-technical staff available for Go-Live weekend.
2. Milpitas will provide staff to carry out limited PROD testing as a confirmation of Go-Live readiness.

## **Phase 5: Transition Support**

### **Purpose**

The purpose of Phase 5 is to use provide Post Go-Live transition support prior to turnover to standard Cayenta Support.

### **Deliverables**

Cayenta will deliver the following as part of this phase:

- Assistance with CU, CF and HR functionality issues which may arise during this period.

### **Constraints and Assumptions**

1. The City of Milpitas will switch to standard Cayenta Support after the Transition Support period as outlined in the Project Plan.

## ***Cayenta Project Management Methodology***

Cayenta will provide project management services through all phases of this project.

Cayenta will administer and manage the plan as outlined by the scope of work defined within this Statement of Work. Cayenta does not assume the City of Milpitas's responsibility for management of its obligations, or the management of other vendors and suppliers retained by the City of Milpitas.

Cayenta will assist the City of Milpitas's Project Manager by providing advice and attending scheduled meetings.

## ***Project Teams***

The City of Milpitas will provide a Project Manager responsible for the overall direction of the project. Cayenta's Project Manager responsible for planning and coordinating of all Cayenta deliverables described in this Statement of Work. Working cooperatively the two parties will administer the project plan.

In addition to assigning a Project Manager, the City of Milpitas is required to supply the following resources to the project team as required.

### ***System Administrator***

*The System Administrator will be responsible for system configuration, testing and process issues identified in the testing process. They must be familiar with the current City of Milpitas setup.*

### ***Testing Staff***

*Various Milpitas resources will be responsible for testing and signing off on functionality for CU and CF. The resources should be familiar with the areas they are testing.*

### ***Technical Resources***

*The technical resources must be available as required but not limited to the areas of Oracle, Windows and Actuate.*

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## Budget and Travel Expenses

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The services listed below are quoted on a Fixed Price basis for the defined scope of work. This quote is in United States currency.

WO 06-189 CU CF Test Server Migration	\$7,000		
Phase 1 – Initiation		\$4,800	
Phase 1 – CU (WO 07-008)	\$18,600		
Phase 2 – Configuration		\$24,300	
Phase 3 – Testing / Training		\$23,550	
Phase 4 – Cutover / Go-Live		\$8,900	
Phase 5 – Transition Support		\$4,200	
<b>TOTAL</b>	<b>\$25,600</b>	<b>\$65,750</b>	<b>\$91,350</b>

Estimated travel cost for the 2 planned trips (plus 1 contingency trip, if necessary) is an additional \$5,280.

**Note:**

1. All license fees and related support and maintenance fees shall be billed in accordance with the accompanying license agreement.
2. Actual travel and living costs will be billed as incurred. Cayenta will make every effort to minimize travel and living expenses. Travel and living expenses include:
  - Airfare
  - Lodging
  - Meals
  - Transport
  - Parking (if required)

Cayenta Canada Inc. travel guidelines will be used by all Cayenta Canada personnel traveling to the City of Milpitas's site, unless specifically stated in this section of the Statement of Work.

## Payment Schedule

### Payment Terms

All fees shall be paid within thirty (30) days of invoice date. Customer shall pay all applicable shipping charges and sales taxes, exclusive of Cayenta's income and corporate franchise taxes, in addition to the fees for services separately listed.

### Payment Schedule

The services listed are provided at a fixed price basis for the defined scope of work. All travel expenses will be billed as incurred.

<b>Milestones and Estimated Dates of Completion</b>	<b>Planned Billing Date</b>	<b>Billings based on Project Schedule</b>
<b>WO 06-189 CU CF Test Server Migration</b>	26-Jan-07	\$7,000
<b>Phase 1 – Initiation</b>	09-Mar-07	\$23,400
<b>Phase 2 – Configuration</b>	13-Apr-07	\$24,300
<b>Phase 3 – Testing / Training</b>	11-May-07	\$23,550
<b>Phase 4 – Cutover / Go-Live</b>	29-May-07	\$8,900
<b>Phase 5 – Transition Support</b>	01-Jun-07	\$4,200
<b>TOTAL</b>		<b>\$91,350</b>

## Plan and Schedule

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### Project Schedule

Following is a sample high-level schedule for the entire project as outlined in this Statement of Work. This high level timeline is purely for illustrative purposes and subject to change with revisions to the Project Plan.

<b>Project Phase</b>	<b>Targeted Start Date</b>	<b>Targeted End Date</b>
WO 06-189 CU CF Test Server Migration	08-Jan-07	26-Jan-07
Phase 1 – Initiation	15-Jan-07	09-Mar-07
Phase 2 – Configuration	26-Feb-07	13-Apr-07
Phase 3 – Testing / Training	12-Mar-07	11-May-07
Phase 4 – Cutover / Go-Live	14-May-07	29-May-07
Phase 5 – Transition Support	28-May-07	01-Jun-07

## Supplemental Services

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Additional services will be made available at Cayenta's then current standard rates if the City of Milpitas requirements change or the scope of the project is altered. Cayenta reviews its rates annually effective January 1<sup>st</sup> of each year. Such increases will reflect the cost of retaining and attracting the core of expertise.

The City of Milpitas can request supplemental services through the project Change Control process.

Rates of as January 1, 2003:

Project Manager	\$175.00/hr USD
Technical Consultant	\$150.00/hr USD
Application Consultant	\$150.00/hr USD

### Extended Support

Extended Support is available to Cayenta customers when software support is required outside of Cayenta business hours.

Extended Support Services can be arranged by contacting your Account Manager. At least 48 business hours notice should be given to guarantee support staff availability.

Support for the requested time period will be provided by a Cayenta employee(s) equipped with a pager or cell phone. Cayenta employees providing the on-call service will have dial-in capabilities to the Cayenta Canada offices and, if possible, to the Customer's system.

The following are rates for Extended Support Services, per Cayenta employee on call (carrying a pager or cell phone):

US\$25 for each hour during regular shift (7AM to 11PM PST)  
US\$50 for each hour during overnight shift (11PM to 7AM PST)

For work performed in response to a pager/cell call, the following rates apply:  
US\$250/hr for each hour or portion of an hour spent time by Cayenta staff on actual problem resolution.

There is a minimum charge of \$200 per day for any pre-arranged support service.

### Continuance

The above Project Services fees include implementation assistance as described above. These are based on the assumption that the Live Operation dates for the products remain as specified in the Project Schedule section of this Statement of Work. In the event that the City of Milpitas unreasonably extends the project beyond these dates or requests work beyond the scope as specified in this Statement of Work, the City of Milpitas agrees that additional fees for implementation assistance along with reimbursement for related travel and living expenses incurred may apply. These proposed fees would be mutually considered and agreed between Cayenta and the City of Milpitas.