

# Annual Product Maintenance Agreement *for* **[ORGANIZATION]**



Zope Corporation  
513 Prince Edward Street  
Lafayette Technology Center  
Fredericksburg, VA 22401

Zope Corporation POC:  
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# Zope Corporation Annual Product Maintenance Agreement

This Software Product Maintenance Agreement ("Maintenance Agreement") is made between [ORGANIZATION LONG NAME] ("[ORGANIZATION]") with offices located at [ORGANIZATION ADDRESS] and Zope Corporation, a Delaware corporation, with administrative offices located at 513 Prince Edward Street, Fredericksburg, Virginia 22401, and is considered effective as of [DATE] ("Maintenance Effective Date").

## 1. Background.

1.1. [ORGANIZATION] wishes Zope Corporation to provide certain software maintenance and update services relating to a commercial Zope Corporation product. Zope Corporation is willing to provide its services to [ORGANIZATION] in accordance with this Maintenance Agreement.

## 2. General Terms and Conditions.

### 2.1. Services Performed by Zope Corporation.

2.1.1. Zope Corporation shall provide to [ORGANIZATION] "Software Maintenance Services" including periodic updates of software, documentation and related supporting materials.

2.1.2. Zope Corporation may, in its sole discretion, select the means for distributing the Software Maintenance Services. Only the Authorized Software Maintenance Point of Contact is permitted to use the Internet systems used to distribute the Software Maintenance Services.

2.1.3. New feature requests and bug fix requests filed by [ORGANIZATION] will receive prioritized scheduling in Zope Corporation's software maintenance process.

2.1.4. TECHNICAL SUPPORT AND TRAINING ARE SPECIFICALLY NOT PROVIDED UNDER THIS SOFTWARE MAINTENANCE AGREEMENT.

### 2.2. Service Coordination.

2.2.1. Within five (5) days of the Maintenance Effective Date [DATE] [ORGANIZATION] shall identify the Software Maintenance Point of Contact in writing. [ORGANIZATION] may change the Software Maintenance Point of Contact at any time and in their sole discretion by notifying Zope Corporation not less than three (3) days in advance of such change.

### 2.3. Customer Lists.

2.3.1. Upon the execution of this Maintenance Agreement [ORGANIZATION] agrees that: Zope Corporation will be permitted to list [ORGANIZATION] as a Customer on Zope Corporation's marketing materials. Such reference shall include the use of the then current [ORGANIZATION] logo, which shall be provided to Zope Corporation by [ORGANIZATION] from time to time.

### 2.4. Covered Products.

2.4.1. The Software Maintenance Services will be provided by Zope Corporation for the products listed in the Attachment 1 - List of Covered Products of this Maintenance Agreement.

## 3. Invoices.

3.1. Zope Corporation shall invoice [ORGANIZATION] for the Annual Software Maintenance Subscription and full payment must be received before the subscription will be activated and services rendered.

4. Intellectual Property Ownership.

4.1. Zope Corporation and its licensors shall retain all copyright, patent, trade secret and other Intellectual Property Rights Zope Corporation and they may have in all commercial Zope Corporation products. This section shall not grant [ORGANIZATION] any ownership rights in any established Zope Corporation trademark, service mark, or logo that Zope Corporation uses in connection with the products.

5. Warranties.

5.1. Zope Corporation warrants that it has the right, power and authority to enter into this Maintenance Agreement and to perform all of its respective obligations hereunder.

5.2. [ORGANIZATION] warrants that it has the right, power and authority to enter into this Maintenance Agreement and to perform all of its respective obligations hereunder.

5.3. Disclaimer of Warranty. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH ABOVE, NEITHER ZOPE CORPORATION NOR [ORGANIZATION] MAKES ANY OTHER WARRANTIES, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Use of Third Party Software. Zope Corporation may, in its sole discretion, include third party software into the work products delivered under this Maintenance Agreement. Zope Corporation shall notify [ORGANIZATION] of the terms of any third party license agreements applicable to such materials and the parties shall work together in good faith to coordinate their respective obligations and compliance with any applicable license agreements.

7. Limitation on Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OF THE OTHER PARTY, OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. ZOPE CORPORATION'S AND [ORGANIZATION]'S TOTAL LIABILITY UNDER THIS MAINTENANCE AGREEMENT FOR DAMAGES, COSTS AND EXPENSES, REGARDLESS OF CAUSE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO ZOPE CORPORATION BY [ORGANIZATION] UNDER THIS MAINTENANCE AGREEMENT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS, BREACH OF CONFIDENTIALITY, OR TO ZOPE CORPORATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. General Provisions.

8.1. Authority To Enter Into Agreement: The parties and their representatives signing this Maintenance Agreement hereby acknowledge and represent that the representatives signing this Maintenance Agreement are duly authorized agents of the parties hereto and are authorized and have full authority to enter into this Maintenance Agreement on behalf of the parties for whom they are signing.

8.2. Severability: If any part of this Maintenance Agreement is held unenforceable, the rest of the Maintenance Agreement will continue in full force and effect.

8.3. Arbitration.

8.3.1. In the event of any dispute between the parties that arises under this Maintenance Agreement, such dispute shall be settled by arbitration in accordance with the rules for commercial arbitration of the American Arbitration Association (or a similar organization) in effect at the time such arbitration is initiated. A list of arbitrators shall be presented to the Claimant and Respondent from which one will be chosen using the applicable rules. The hearing shall be conducted in Washington, DC, unless both parties consent to a different

location. The decision of the arbitrator shall be final and binding upon all Parties. Notwithstanding the foregoing, each party may at any time apply to a court of competent jurisdiction for injunctive relief that may be available to such party at law.

- 8.3.2. The arbitrators may, in their reasonable discretion and if appropriate, award to a prevailing party attorney's fees arising out of a dispute. Administrative and other costs of enforcing an arbitration award, including the costs of subpoenas, depositions, transcripts and the like, witness fees, payment of reasonable attorneys' fees, and similar costs related to collecting/enforcing an arbitrator's award, will be added to, and become a part of, the amount due pursuant to this Maintenance Agreement. Any questions involving contract interpretation shall use the laws of the State of Delaware. An arbitrator's decision may be entered in any jurisdiction in which the party has assets in order to collect any amounts due hereunder.
- 8.4. **Applicable Law:** the laws of the State of Delaware will govern this Maintenance Agreement without regard to its choice of law rules.
- 8.5. **Multiple Counterparts:** This Maintenance Agreement may be executed in several counterparts, all of which taken together shall constitute one single Maintenance Agreement between the parties.
- 8.6. **Force Majeure:** Neither party shall be liable in damages or have the right to terminate this Maintenance Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its reasonable control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- 8.6.1. Neither party shall be liable for any failure or delay in performance under this Maintenance Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Maintenance Agreement, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
- 8.6.2. **Taxes.** The Software Maintenance Fees do not include taxes. If Zope Corporation is required to pay any federal, state or local sales, use, property or value added taxes based on the Maintenance Services provided under this Maintenance Agreement, [ORGANIZATION] shall be responsible for notifying Zope Corporation of this fact and the taxes shall be separately billed to [ORGANIZATION]. However, [ORGANIZATION] shall not be responsible for the payment of any income or similar taxes incurred by Zope Corporation.
- 8.7. **Section Headings; Exhibits --** The section and subsection headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. The exhibits referred to herein and attached hereto, or to be attached hereto, are incorporated herein to the same extent as if set forth in full herein.
- 8.8. **No Delay:** No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Maintenance Agreement shall impair any such right or power or be construed to be a waiver

thereof. The terms and conditions of this Maintenance Agreement may be waived or amended only in writing and only by the party that is entitled to the benefits of the term(s) or condition(s) being waived or amended. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained (whether or not the provision is similar). Unless stated otherwise, all remedies provided for in this Maintenance Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise.

- 8.9. Notices: All notices and other communications given in connection with this Maintenance Agreement shall be deemed given either (a) when transmitted by acknowledged facsimile or (b) two business days after depositing the notice in the U.S. mail, first-class postage prepaid, if the notice was sent to the other party's Contract Coordinator at the address or facsimile number specified above, or at such other address or facsimile number as the party may specify in writing in accordance with this paragraph.
- 8.10. Survival. All terms of this Maintenance Agreement that by their nature or understanding should survive the termination or expiration of this Maintenance Agreement shall survive, including ownership, confidentiality, indemnity, limitations of liability, general and additional provisions.
- 8.11. Assignment: Neither Zope Corporation nor [ORGANIZATION] may assign or transfer its rights or obligations under this Maintenance Agreement without the other party's written consent which shall not be unreasonably withheld.

*Maintenance Agreement accepted as follows:*

	[ORGANIZATION]	Zope Corporation
<b>Signature</b>		
<b>Name</b>		Robert S. Page
<b>Date</b>	_____	
<b>Title</b>		CEO
<b>Phone</b>		540 361 1710
<b>Email</b>		rob.page@zope.com

## ***Zope Corporation Product Maintenance Agreement*** **Attachment 1 - List of Covered Products**

The following products are covered by this Maintenance Agreement:

- [PRODUCT]

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