PLEASE READ THIS AGREEMENT CAREFULLY

between
General Storage Software GmbH („Licensor“) …
and
customer („Licensee“) …

§ 1 Scope of this Agreement

Licensor has agreed with Licensee to maintain the software („Licensed Product“) set out in Schedule 1 and to support Licensee in its use of the Licensed Product subject to the conditions of this Software Maintenance and Support Agreement („Agreement“).

§ 2 Scope of Services

(1) Licensor shall provide the following services („Customer Support“) subject to the terms of this Agreement:

- consultancy and support services in connection with the functions of the Licensed Product;
- dealing with errors which occur during the proper use of the Licensed Product or which become apparent in the respective documentation;
- delivery of updates and/or upgrades of the Licensed Product.

(2) Customer Support also covers the documentation which accompanies the Licensed Product.

(3) The services also include dealing with errors or other defects in the Licensed Product, which become known to Licensor independent of its use by Licensee. Existing warranty rights of Licensee shall remain unaffected.

(4) Dealing with errors for the purposes of this Agreement comprises narrowing down the causes of the error, error diagnostics as well as services directed towards correcting the error (particularly patches and service packs). Licensor undertakes no liability for correction of the error. Services for dealing with errors may, at the option of Licensor, also be provided through workarounds, delivery of updates or upgrades or, upon prior consultation with Licensee, through delivery of a new version.

(5) To the extent that under this Agreement Licensor supplies computer programs or other works capable of independent copyright protection, such computer programs as well as the rights to use them granted to Licensee shall be governed by the software license agreement for the maintained software.

(6) The details of the extent of services are set out in Schedule 1 to this Agreement.

(7) Only the Licensed Product which is installed at the installation locations which have been notified by Customer to Licensor in writing is covered by Customer Support. Any changes to the installation location must be notified to Licensor in writing. Licensor may only refuse Customer Support for the Licensed Product installed at a new installation location for good cause. Additional costs for the provision of the services under this Agreement which are incurred through the change of installation location shall be borne by Licensee.

(8) Customer Support does not include:

- services outside the agreed times of support availability;
- services for the Licensed Product, which is not used in accordance with the conditions of use set out by Licensor;
- services for the Licensed Product, which has been changed by programming not carried out by Licensor;
- services for computer programs or parts thereof, which do not form part of the Licensed Product;
- services for the Licensed Product, where updates or other measures to correct the error, provided by Licensor have not been installed and where the error would have been cured by such updates or bug fixes, unless the installation thereof is unreasonable for the Licensee for which it is not responsible;
- services for the Licensed Product at a release version that is no longer generally supported by Licensor;
- services that could be performed on Licensor's site, however, which upon Licensee's request were performed elsewhere; and
- services that become necessary due to Licensee's failure to cooperate.

§ 3 Customer Support Availability

(1) Customer Support shall be provided during the times as set out in Schedule 1. All times of support availability refer to the time zone at Licensor's registered offices.

(2) The reaction times of Licensor set out in Schedule 1 shall apply upon receipt of a sufficiently specific error description, including malfunction, affected product components, and yet undertaken steps. Reaction time shall mean the period, within which Licensor commences its work. Outside the times of support availability agreed in Schedule 1 the reaction time shall be suspended.

§ 4 Cooperation and Duties of the Parties

(1) The parties agree that they shall cooperate with each other closely and efficiently, whereby the personnel, organizational, expert and technical responsibility of Licensee shall also be important, in particular

- to supply proper notes, documentation and information necessary for the provision of the services, in particular concerning available facilities, equipment, computer programs and parts of computer programs, which are intended to function with the services to be provided;
- to make available the necessary working offices and materials;
- to make available test plans and test data as well as to prepare and make available the test environment;
- to document and inform Licensor without delay of errors determined in the course of the test or production running of the services provided in a form that can be reproduced, in any event which is comprehensible;
- to make available at its own cost all facilities, equipment and suitably qualified personnel for the cooperation, to the extent necessary for the provision of the services; and
- to fulfil the (cooperation) obligations on time, to carry out the (cooperation) activities on time and to give declarations in accordance with the time limits.

(2) Licensee shall nominate at least one employee employed at the installation location of the Licensed Product to Licensor as its contact partner. Licensee undertakes to notify to Licensor any changes to the contact partners without undue delay. The contact partner must have experience in the use of the Licensed Product. Only the contact partner is entitled to register errors with Licensor.

(3) Licensee shall carry out an analysis of the system environment as far as possible before registering an error, in order to ensure that the error is not caused by system components which are not the subject of this Agreement.

(4) Licensee undertakes to install the updates, or other measures to correct the error, provided by Licensor without undue delay.

(5) Licensee undertakes to maintain a continuing system management of the system environment in which the Licensed Product runs and to continue the support and maintenance of Licensee's system environment (hardware and software)

(6) It is Licensee's obligation to regularly backup its data with the due care of a prudent businessman. Licensee shall, in particular prior to any installation and/or access by Licensor or third parties mandated by Licensor to its system, take a complete data security backup of all system and application data. The data backup is to be stored in such a way that the recovery of the secured data is possible at any time.

(7) Licensee must ensure that Licensor is given the right to use the systems of third parties, to the extent that this is necessary in order to provide the services owed hereunder.

(8) If Licensee fails to perform the activities for which it is responsible, then the obligations of Licensor which cannot be rendered without such activity or only by incurring disproportionate additional expenses, shall be suspended for the duration of such default. Additional expenses caused thereby shall be reimbursed by Licensee to Licensor in addition to the agreed fees on the basis of the then current rates per man working day/hourly rates. This shall not affect any legal rights of Licensor to terminate this Agreement.

§ 5 Fees

(1) The annual fee owed by Licensee to Licensor for the services hereunder is set forth in Schedule 1.

(2) Services outside the agreed extent of Customer Support or subject matter of this Agreement shall be paid for by Licensee separately. Licensor's then applicable rates shall apply for this purpose.

(3) Licensor reserves the right to change the fee following written notification giving six weeks' notice to the end of any contractual year. Each such change may increase fees by not more than 5 percent over the preceding twelve month period. To the extent there is an increase of the fees by more than 5 percent of the fees for the preceding twelve month period, Licensee may give 6 weeks' written notice to terminate the Agreement as of the effective date of the increase.

(4) Where Licensor receives payment on the basis of time spent, Licensee is under an obligation to sign off the presented time sheets to show its agreement without delay, however at the latest within 14 days of receipt. To the extent Licensee does not agree with the presented time sheets, it shall detail any objections to the time sheets in writing within this period. The parties shall then attempt to clarify the situation without delay, whereupon the time sheets shall be signed off by Licensee without delay.

(5) Licensor will invoice the fees to Licensee in accordance with the payment schedule set forth in Schedule 1. Invoices are payable without deduction within 14 days of the date of the invoice. If Licensee is in default of payment, the outstanding amount shall bear interest at the rate of eight percent over the then current basic rate of interest. This shall not affect any more extensive rights.

(6) All amounts stated in Schedule 1 are excluding any applicable Value Added Tax, unless explicitly stated otherwise. The current rate of statutory Value Added Tax shall be invoiced and paid in addition to all fees. Licensor shall state the rate and amount of Value Added Tax separately on the invoice.

§ 6 Warranty for Defects of updates, upgrades and new releases

(1) Under this Agreement to the extent updates, upgrades, new releases or other purchased items are delivered to Licensee or work is performed for Licensee, the warranty for defects in respect of the new features implemented therein, which do not merely remove errors, is set forth in the following para. (2) to (10).

(2) Licensor warrants that the software provided by it is substantially in accordance with the product description. Warranty claims are excluded in the case of minor or immaterial deviations from the agreed or assumed characteristics and in the case of just slight impairment of use. Product descriptions shall not be deemed guaranteed unless separately agreed in writing.

(3) If Licensee demands replacement performance because of a defect, Licensor has the right to choose between the improvement, replacement delivery or replacement of services. If the defect is not cured within a first time limit and Licensee has set Licensor a reasonable second time limit without success or if a reasonable number of attempts to remedy, replacement deliveries or replacement services are unsuccessful, then Licensee may, subject to the statutory prerequisites, terminate this Agreement or reduce the price and claim damages or reimbursement of costs. The remedying of the defect may also take place through the delivery or installation of a new program version or a work-around. If the defect does not or not substantially impair the functionality, then Licensor is entitled, to the exclusion of further warranty rights, to remedy the defect by delivering a new version or an update as part of its version, update and upgrade planning.

(4) Defects must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error. This shall not affect the statutory obligation of Licensee to inspect and notify defects.

(5) The warranty is limited to 12 months and shall begin on the date of delivery of the update, upgrade or new release.

(6) Licensee shall inspect the delivered items without delay for any transport damage and other apparent defects preserve the appropriate evidence and assign any claims for recourse to Licensor while handing over the documents.

(7) Any claims for damages in respect of defective services are subject to the limitations set forth under § 8.

(8) If the defect is caused by the defective products of a supplier and the supplier does not act as an assistant in performance of Licensor, rather Licensor is merely passing on a third party product to Licensee, then Licensor's warranty shall be limited to the assignment of its warranty claims against the supplier. This shall not apply, when the defect is caused by improper handling of the supplier's product for which Licensor is responsible. If Licensee is unable to assert his warranty claims against the supplier out of court, the subsidiary warranty by Licensor shall remain unaffected.

(9) Amendments or additions to the updates, upgrades or new releases delivered which Licensee carries out itself or through third parties, shall cause Licensor's warranties to be cancelled, unless Licensee proves that the amendment or addition did not cause the defect. Licensor shall also not be responsible for defects, which are caused by improper use or improper operation or the use of unsuitable means of operation by Licensee.

(10) Licensor may refuse to remedy defects or deliver replacements, if and while Licensee is in default of payment with an amount not less than 2 monthly installments.

§ 7 Warranty for Defects in Title of updates, upgrades and new releases

(1) If under this Agreement updates, upgrades, new releases or other objects of purchase or work are delivered or performed to Licensee, the warranty for defects in title in respect of the new features implemented, which do not merely remove errors, are set forth by the following para. 2 to 6.

(2) Licensor warrants that the software delivered or provided by it shall be free from third party rights, which prevent the use in accordance with the contract. Excepted from this are customary retentions of title.

(3) If third parties are entitled to such rights and they pursue these, then Licensor shall do everything in its power, in order to defend the software at its own expense against the third party rights claimed. Licensee shall inform Licensor in writing without delay of the claiming of such rights by third parties and shall give Licensor all powers of attorney and authorizations which are necessary in order to defend the software against the third party rights claimed.

(4) To the extent that there are defects in title, Licensor is (a) entitled at its option to either (i) take legitimate measures to remove the third party rights, which impair the contractual use of the software, or (ii) remedy the enforcement of such claims, or (iii) change or replace the hardware and software in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software, and (b) under an obligation to reimburse Licensee for its necessary refundable costs incurred in the enforcement of legal claims.

(5) If a release under para. (3) is not possible within a reasonable time limit, then Licensee may, subject to the statutory prerequisites, at its option terminate this Agreement or reduce the price and claim damages.

(6) In all other respects § 6 para. (5), (7) and (10) shall apply accordingly.

§ 8 Liability, Damages

(1) Licensor shall be liable for losses under the terms of this Agreement only in accordance with the provisions set out under (a) to (e):

(a) Licensor shall be unrestricted liable for losses caused intentionally or with gross negligence by Licensor, its legal representatives or senior executives and for losses caused intentionally by other assistants in performance; in respect of gross negligence of other assistants in performance Licensor's liability shall be as set forth by the provisions for simple negligence in (e) below.

(b) Licensor shall be unrestricted liable for death, personal injury or damage to health caused by the intent or negligence of Licensor, its legal representatives or assistants in performance.

(c) Licensor shall be liable for losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for Licensor at the time the warranty was given.

(d) Licensor shall be liable in accordance with the Product Liability Act in the event of product liability.

(e) Licensor shall be liable for losses caused by the breach of its primary obligations by Licensor, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which Licensee may rely. If Licensor breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by Licensor at the time the respective service was performed.

(2) Licensor shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.

(3) Any more extensive liability of Licensor is excluded on the merits.

§ 9 Duty of Confidentiality

(1) The parties agree to keep all confidential information which becomes known to them during the performance of this Agreement strictly confidential and only to use such information for the contractually agreed purposes. Confidential information for the purpose of this provision shall mean information, documents, details and data, which is marked as such or is to be seen as confidential because of its nature. Licensor agrees to allow only such of its employees, who are entrusted with the provision of services in the course of this contract, access to the confidential information of Licensee. Both parties agree at the request of the other party to require their employees to sign an appropriate confidentiality declaration and to present this to the other party. The parties shall not seek to register intellectual property rights in respect of confidential information of the other party.

(2) If confidential information within the above definition is requested by a public authority, then the other party shall be informed without delay and before the information is supplied to the public authority.

(3) The rights and obligations under (1) and (2) shall not be affected by the termination of this Agreement. Both parties agree at the option of the other party to return or destroy the confidential information of the other party upon the termination of this Agreement, to the extent that such information still exists.

§ 10 Term of the Agreement

(1) This Agreement shall enter into force after delivery of the software.

(2) The Agreement shall have a term of 36 months and thereafter shall be automatically renewed in each case for a further period of 12 months unless either party gives notice at least 3 months prior to the end of the current contractual period.

(3) The right of termination for cause shall remain unaffected.

(4) Terminations notices must be given in writing.

§ 11 Final Provisions

(1) Licensor has the right to engage subcontractors to provide the services under this Agreement.

(2) Amendments or additions to this Agreement must be made in writing to be effective. This shall also apply to amendments of this written form requirement.

(3) This Agreement shall be governed by the laws of the Federal Republic of Germany except for the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods dated 11. 4. 1980).

(4) The courts for Licensor's registered office shall have exclusive jurisdiction over all disputes under and in connection with this Agreement, provided that Licensee is a merchant within the meaning of the German Commercial Code or if upon the commencement of legal proceedings, Licensee has no place of business or ordinary residence in the Federal Republic of Germany.

Schedule 1: Support Services – General Storage Software Products

Service	Warranty (free)	Contractual support (ADVANCED[1] fee-based)	Contractual support (PREMIUM fee-based)
Response time for a support case	Max. 5 working days (actual fault rectification may take longer)	Next Business Day 5 days x 9 hours call-in (actual fault rectification may take longer)	Max. 8 hours 7 days x 24 hours call-in (actual fault rectification may take longer)
Type of support	exclusively for support incidents which directly relate to a fault in the Product	support incidents both with regard to faults in the Product as well as for support for optimal use of the Product	support incidents both with regard to faults in the Product as well as for support for optimal use of the Product
Communication channel for support incidents	exclusively through email and/or support portal	through email and/or support portal; if a support incident cannot be resolved within 2 working days it can be escalated to obtain support through additional communication channels, namely by telephone and/or through remote web access, to be provided by General Storage	through email and/or support portal; if a support incident cannot be resolved within 2 working days it can be escalated to obtain support through additional communication channels, namely by telephone and/or through remote web access, to be provided by General Storage
Time period throughout which support is available	Germany: 1 year otherwise: 30 days	throughout the term of the support contract	throughout the term of the support contract
Correction or workaround for a fault	in so far as required by law	yes/free of charge	yes/free of charge
Modifications to support a newer version of a platform which is not fully compatible with the previous one	not included*	yes/free of charge	yes/free of charge
License to use the current maintenance release of the licensed Product	not included*	yes/free of charge	yes/free of charge
Availability (download) of the latest maintenance release of the licensed product	not included*	yes/free of charge	yes/free of charge
Availability (download) of the licensed product	up to availability of the next major release	throughout the term of the support contract	throughout the term of the support contract
Update to the current main version of the licensed product	at the update list price	yes/free of charge	yes/free of charge

* this service is not included in the warranty, but may nevertheless occasionally be offered by General Storage Software GmbH at the sole discretion of General Storage Software GmbH

[1] Only available in Europe

Schedule 2: Maintenance Costs – General Storage Software Products

dsmISI – ISP/ISP+/VEEAM/DATABSE/MULTIAPPLICATION/VMware

dsmISI QUANTUM STORNEXT

dsmISI MAGS

GSCC SPORD

Prices on request.
Please call our worldwide distributor Concat AG for further price information. (www.concat.de)

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