

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 14, 2017

FALCONSTOR SOFTWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware	000-23970	77-0216135
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
2 Huntington Quadrangle, Melville, New York		11747
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code: 631-777-5188

N/A

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 2.05 Costs Associated with Exit or Disposal Activities.

In June 2017, the Board of Directors (the “Board”) of FalconStor Software, Inc. (the “Company”), approved a comprehensive plan to increase operating performance (the “Plan”).

The Plan will result in a realignment and reduction in workforce. When substantially completed by the end of the Company’s fiscal year ending December 31, 2017, the Company expects that the Plan when combined with previous workforce reductions in the second quarter of Fiscal 2017 will have reduced the Company’s workforce to approximately 90 employees. These actions are anticipated to result in an annualized cost savings of approximately \$10.0 million. In connection with the Plan, the Company expects to incur total estimated charges of up to \$800,000, consisting primarily of severance. In making these changes, the Company prioritized customer support and development while consolidating operations and cutting direct sales resources allowing the company to focus on the install base and develop alternate channels to the market.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Appointment of Todd Oseth as Chief Executive Officer

As of June 14, 2017, the Board appointed Todd Oseth, [53] as Chief Executive Officer effective July 1, 2017.

Mr. Oseth served as Chief Executive Officer and President of Intermap Technologies Corp. from December 2010 to October 2016. During the last 30 years Mr. Oseth has held executive positions with Sony, EMC, McData/Brocade. In addition he has been involved for numerous startups and turn arounds. Mr. Oseth holds a B.S. degree in Electrical Engineering and Computer Science from the University of Minnesota and an M.B.A. degree from the University of St. Thomas.

In connection with Mr. Oseth’s appointment as Chief Executive Officer, the Board approved an offer letter to Mr. Oseth (the “Offer Letter”), which was executed on June 14, 2017. The Offer Letter provides that Mr. Oseth is entitled to receive an annualized base salary of \$350,000, payable in regular installments in accordance with the Company’s general payroll practices. Mr. Oseth will also be eligible for an annual cash bonus of up to \$227,500, subject to attainment of performance objectives to be mutually agreed upon and established. Pursuant to the offer letter, it is the intention of the Company to create an equity plan for all employees subject to stockholder approval, for up to 20% of the equity of the Company on a fully diluted basis at the time the equity plan is adopted following stockholder approval. Vesting of the equity issued under the plan would occur only upon a sale of the Company’s assets or capital stock at a premium to the valuation of the Company at the time the equity plan is adopted.

Mr. Oseth’s employment can be terminated at will. If Mr. Oseth’s employment is terminated by the Company other than for cause he is entitled to receive severance equal to 12 months of his base salary if (i) he has been employed by the Company for at least 12 months at the time of termination or (ii) a change of control has occurred within six months of Mr. Oseth’s employment. Except as set forth in the preceding sentence, Mr. Oseth is entitled to receive severance equal to six months of his base salary if he has been employed by the Company for less than six months and his employment was terminated by the Company without cause. Mr. Oseth is also entitled to vacation and other employee benefits in accordance with the Company’s policies as well as reimbursement for an apartment.

The foregoing description of the Offer Letter does not purport to be complete and is qualified in its entirety by reference to the Offer Letter, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Resignation of Gary Quinn as Chief Executive Officer, President and a Director

On June 14, 2017, the Company accepted the resignation of Gary Quinn from his position as Chief Executive Officer and President and as a Director of the Company effective July 1, 2017. Mr. Quinn will assist in the transition of the Chief Executive Officer role until his departure from the Company. Mr. Quinn’s resignation was not the result of any disagreement related to any matter involving the Company’s operations, policies or practices.

In connection with Mr. Quinn's departure, on June 14, 2017 the Company and Mr. Quinn entered into a Separation Agreement and General Release (the "Separation Agreement") attached hereto as Exhibit 10.1. Under the terms of the Separation Agreement, the Company will, among other things, pay Mr. Quinn his current salary through July 24, 2017 and any COBRA expenses through January 31, 2019 to the extent that Mr. Quinn's health insurance is not covered by the health insurance plan of another entity.

The foregoing description of the Separation Agreement does not purport to be complete and is qualified in its entirety by reference to the Separation Agreement, which is attached as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On June 19, 2017, the Company announced the appointment of Mr. Oseth in a press release. A copy of the press release is attached to this report as Exhibit 99.1.

The information contained in this Item 7.01 to this Current Report on Form 8-K and the exhibit attached hereto pertaining to this item shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall such information or such exhibits be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing. The information set forth in the exhibits to this Form 8-K relating to this item 7.01 shall not be deemed an admission as to the materiality of any information in this report that is required to be disclosed solely to satisfy the requirements of Regulation FD.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
10.1	Offer Letter between FalconStor Software, Inc., and Todd Oseth, dated June 14, 2017
10.2	Separation Agreement and General Release between FalconStor Software, Inc., and Gary Quinn, dated June 14, 2017
99.1	Press release of the Company dated June 20, 2017, announcing the appointment of Todd Oseth as President & Chief Executive Officer of FalconStor Software, Inc.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FALCONSTOR SOFTWARE, INC.

Date: June 20, 2017

By: /s/ Daniel Murale

Name: Daniel Murale

Title: Executive Vice President, Chief Financial Officer and
Treasurer

June 15, 2017

Mr. Todd Oseth
1915 Cantwell Grove
Colorado Springs, CO 80906

Dear Todd:

The FalconStor Software (the “Company”) management team and Board of Directors are excited to work with you to build a great company. We believe that you will be an outstanding leader for FalconStor and, thereafter, a key relationship not only for the Company but also for its major stakeholders including Hale Capital Partners and the Company’s board members. It is with pleasure that I confirm FalconStor’s offer of employment to you for the position of Chief Executive Officer. The principal terms of the Company’s offer are outlined in this letter. Based in the Company’s office in Melville, NY, your employment with the Company will commence on the day you report for work, currently targeted as July 1, 2017 (the “Hire Date”), and shall be subject to and contingent upon obtaining satisfactory results from a background check. We are pleased to enter into this letter agreement (this “Agreement”) with you regarding the terms and conditions of your employment.

1. Position and Responsibilities. While you are employed by the Company, you shall serve as Chief Executive Officer for the Company. In that capacity, you will shall report to the Board of Directors of the Company (your “Manager”), and perform such duties as the Manager may direct from time to time. You shall be obligated to work full time for the Company and to devote your full time, attention, energy, knowledge and skills to carrying out your duties and responsibilities. You agree to perform the duties required by this Agreement faithfully, diligently and to the best of your ability in a manner that is in the best interests of the Company and its members and with such care as an ordinary prudent person in a like position would use under similar circumstances. You also agree that you will not use any confidential information or trade secrets of any third party in violation of any agreement or the rights of such third party in the performance of your duties required by this Agreement, and that you will not knowingly violate any United States federal, provincial, state or local laws or regulations applicable to you, the Company, its products, services or operations including, without limitation, the provisions of the United States Foreign Corrupt Practices Act or the regulations promulgated thereunder in the performance of such duties. You acknowledge that the Company’s Common Stock is registered under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Act”) and accordingly the Company is required to make public filings under Section 13 of the Act. In connection with such filings, you will be deemed the principal executive officer of the Company and You are aware of your obligations under the securities laws with respect to being designated the principal executive officer. A trade secret shall have the meaning provided by law, and is generally intended to mean information, including a formula, pattern, compilation, program, device, method, technique or process, that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means

by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. You will be subject to and must comply fully with all Company policies and procedures that may be adopted that are applicable to employees, as may be established or amended from time to time.

2. Compensation.

(a) While you are employed by the Company, your base salary (the “Base Salary”) on an annualized basis shall initially be \$US350,000. Your Base Salary shall be payable in regular installments in accordance with the Company’s general payroll practices and shall be subject to taxes and withholding deductions as are required by applicable law and as may be made in connection with the Company’s benefit plans and programs. The Base Salary for any payment period in which your employment commences or terminates will be prorated on a daily basis, and you will be entitled to receive the prorated amount of the Base Salary for the actual number of days in the applicable payment period that you were employed with the Company.

(b) You shall be eligible to earn incentive compensation of an annual bonus of up to US\$227,500 based upon the achievement of goals as determined by the Manager, in consultation with you, and as described in a separate Incentive Compensation Agreement that shall be consistent with an incentive plan for the senior management of the team. It is intended that cash bonuses shall be paid quarterly at 12.5% of the target amount for the results obtained in each of the first three quarters of a fiscal year with the balance, equivalent to 62.5% of the target amount, paid upon full year achievement. Positive EBITDA shall be required for achievement of incentive compensation. We anticipate each senior executive shall have a small number of quarterly goals such as maintenance renewal rate measured by ACV achieved vs. ATR and New Named Account billings as well as a small number of mutually agreed upon individual outputs.

(c) You will be eligible for paid time off (“PTO”) of 15 days per calendar year, in accordance with the policies of the Company, commencing on your start date. Additionally you will be entitled to such Federal holidays observed by the Company each year, which are established based upon the NYSE Holiday Schedule. We encourage employees to use their accrued PTO. All PTO must be used during the calendar year in which it accrues. No PTO may be carried over into the following calendar year unless otherwise required by state law.

(d) You and any eligible family members will be entitled to participate in the Company’s group employee benefit programs (such as group medical, dental and vision insurance), on the same basis as other employees, in accordance with the terms of those programs, as they may be amended from time to time.

(e) Upon your acceptance of this Offer, the Company intends to form a new equity incentive plan. While the terms of the equity incentive plan will be decided by the Manager and voted upon by shareholders, we believe the following key components will align the interests of management with shareholders: The initial grant (15% of equity) will be based upon the dilution adjusted post money valuation to the extent that the Company undertakes a recapitalization, meaning that you will only participate to the extent the net proceeds of a Company sale are in excess of the post money valuation of any recapitalization including the dilution from the option pool; two

additional tranches (at 2.5% each) would have strike prices at 25% step ups in valuation; the plan would vest only upon a sale of a majority of the Company's assets or capital stock (other than to HCP); and 30% of the equity plan would be set aside for new hires. All equity-based incentive compensation pools shall be subject to change at the sole discretion of the Manager.

3. Reimbursement of Expenses. The Company shall reimburse you for all reasonable, ordinary and necessary expenses you incur in connection with the performance of your duties on behalf of the Company, provided that all requests for expense reimbursement must be submitted on forms and documented in accordance with and subject to the reimbursement policies and procedures of the Company. It is understood that the Company will pay for mutually agreed upon apartment and travel expenses with this view that you will generally be on site from Monday through Friday when not visiting customers.

4. Termination of Employment. At the Company, your employment is at will. This means that either you or the Company may terminate your employment at any time, for any reason or no reason, with or without notice, and with or without cause, without further obligation or liability. Without modifying the foregoing, the Company appreciates your consideration of its business needs and convenience if you choose to end your employment, and requests that you consult with the Manager to determine a period of reasonable notice (e.g., at least two weeks) that would allow for an orderly transition of your duties. The Company reserves the right to change your job duties and other terms and conditions of employment, with or without notice, as it deems appropriate. No amendment or exception to the Company's at-will employment policy can be made at any time, for any reason, unless it is in writing, directed to you personally, signed by the Chairman of the Compensation Committee. Nothing in this letter creates or constitutes, or should be construed to create or constitute, a contract of employment for a set term between you and the Company. This letter supersedes any prior representations or agreements, whether written or oral, regarding employment with the Company. Your covenants under this Section 4 and Sections 5, 6, 7, 8, 11 and 12 shall survive any termination of your employment with the Company regardless of the circumstances of the termination. Immediately upon the termination of your employment with the Company, or at such earlier time as requested by the Company, you shall (i) return or cause to be returned to the Company (and will not keep in your possession or deliver or cause to be delivered to any other person) (A) all documents, property, information, software, materials, files, mailing lists, database information and other records of or relating to the Company or its affiliates or portfolio companies or that were compiled, acquired or generated by you, or which you had access to, or possession, care, custody or control of, during your employment with the Company (and all copies thereof) and (B) all keys, credit cards, identification cards, personal computers and other property of the Company, in each case within your possession, custody or control, copies of any Confidential Information (as defined below) in your possession or otherwise subject to your control, and (ii) execute and deliver to the Company a certificate, in form and substance satisfactory to the Company, to the effect that you have complied with your obligations under this paragraph. Notwithstanding the foregoing, if you are let go by the Company for any reason other than cause or your decision to terminate your employment, and upon signing a separation agreement, the Company will pay severance equal to your base salary based on the following:

- Under 12 months: 6 months

- 12+ months: 12 months

In addition, if within six months of this Agreement, the Company (i) consummates a Change of Control (as hereinafter defined) involving any counter-party other than HCP-FVA, LLC or entities affiliated with HCP-FVA, LLC and such Change of Control occurs prior to the adoption of the equity incentive plan referred to in Section 2(e) , (ii) the total proceeds received by the Company or its stockholders in the Change of Control (regardless of whether such Change of Control occurred before or after any recapitalization) exceeds \$19,000,000 and (iii) the Company or its successor terminates your employment, other than for Cause, within six months of the date of this Agreement, then you shall be entitled to 12 months of severance.

For purposes of this Agreement, Change of Control is defined as (i) the consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries, other than a corporate transaction which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such corporate transaction or (ii) the sale or other disposition of all or substantially all of the assets of the Company to any person, other than a transfer to any corporation or other person of which a majority of its voting power or its voting equity securities or equity interest is owned, directly or indirectly, by the Company.

For purposes of this Agreement, your employment with the Company will be deemed to have been involuntarily terminated for Cause if your services are terminated by the Company for one or more of the following reasons: (i) willful and repeated failure to perform duties or contravention in any material respect of specific written lawful directions related to a material duty or responsibility which is directed to be undertaken by the Manager; (ii) conviction of guilty or nolo contendere plea to, a misdemeanor which is materially and demonstrably injurious to the Company or any felony; (iii) commission of an act, or a failure to act, that constitutes fraud, gross negligence or willful misconduct (including without limitation, embezzlement, misappropriation or breach of fiduciary duty resulting or intending to result in personal gain at the expense of the Company); and (iv) violation of any applicable laws, rules or regulations or failure to comply with the ongoing confidentiality, non-solicitation and non-competition obligations to the Company, corporate code of business conduct or other material policies of the Company in connection with or during performance of your duties to the Company that could, in the Manager's opinion, cause material injury to the Company, which violation, if curable, is not cured within thirty (30) days after notice thereof to you.

Payment will be due in a lump sum upon termination or in regular pay periods over the prescribed period at the discretion of the Company. The Company will cover COBRA expenses during the same time period.

5. Confidentiality.

(a) During the course of your employment with the Company, you acknowledge that you will learn about, acquire, have access to, be provided with, and/or have possession, custody or control of Confidential Information (as defined below) regarding the business, operations, activities, products, services, clients, customers, accounts, and finances of the Company and its affiliates and portfolio companies, as well as third parties with whom the Company may do business or contemplate transactions from time to time. Accordingly, you agree to maintain and ensure the strictest confidentiality of all Confidential Information, and that, without the prior written consent of the Company, you will not, directly or indirectly, at any time whether during or after your employment with the Company:

- (i) except in the performance of services for the Company or one of its affiliates or portfolio companies, reproduce, distribute, transmit, reverse engineer, decompile, disassemble, or transfer, directly or indirectly, in any form, or for any purpose, any Confidential Information;
- (ii) disclose, divulge or reveal any Confidential Information to anyone other than an officer, director, employee, or authorized representative of the Company who has a need to know such Confidential Information; or
- (iii) use any Confidential Information for any purpose other than for the sole benefit of the Company or its affiliates or portfolio companies' in the proper conduct of the Company's or such affiliates' or portfolio companies' business,

provided, however, that this restriction shall not apply to (i) any Confidential Information that is or becomes generally known to the public through no fault on your part, and (ii) any Confidential Information that you are required to disclose pursuant to an enforceable order of a court of competent jurisdiction or another government agency having appropriate authority.

(b) If you are ordered by a court or other government agency to disclose any Confidential Information, you shall (i) promptly notify the Company of such order, including providing the Company with a copy of any order, (ii) upon the request of the Company, diligently contest such order, (iii) upon the request of the Company, seek to obtain such confidential treatment as may be available under applicable laws for any information disclosed under such order, and the Company shall reimburse you for the reasonable legal costs you incur in connection with (ii) and (iii) within the time frame of your obligation to pay such costs, and (iv) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the order.

(c) For the purposes of this Agreement, "Confidential Information" means trade secrets and other confidential or proprietary information and property pertaining to the business and affairs of the Company and/or the Company's affiliates, and the respective clients, customers, licensees, licensors, distributors, contractors, suppliers and developer of, for or to any of them, including, without limitation, data, databases, works in progress or not in fact published, know-how, concepts and ideas, methods, techniques and technical information, research and development, records, forecasts, data, files or other information of the Company relating to products, services,

operations, processes, procedures, designs, drawings, formula, test data, software, firmware and computer programs (including source code and documentation) and elements of design (including, for example, programming data bases), customer lists, prospect lists and other information, business plans, or any other confidential information of, about, or concerning the Company's business. Confidential Information shall also include marketing and promotional plans, opportunities and strategies, cost and pricing information and strategies and/or other subject matter pertaining to any business of the Company or any of its clients, customers, consultants, licensees or affiliates, which you may produce, obtain or otherwise acquire during the course of your employment. You further agree not to deliver, reproduce or in any way allow any such Confidential Information, or any documentation relating thereto, to be delivered or used by any third parties without specific direction or consent of a duly authorized representative of the Company.

(d) The obligations of this Section 5 shall continue in perpetuity.

(e) Notwithstanding the foregoing, in the event that the Company or one of its affiliates should become party to a confidentiality or similar agreement with respect to the confidential information of a third party, and you are exposed to, have possession of or otherwise know any of such third party confidential information, you shall comply with the terms and provisions of such confidentiality agreement to the extent that they are more stringent than the terms of this Agreement.

(f) From time to time, you may also be required to sign separate confidentiality agreements with the Company.

(g) The terms of this Agreement are confidential and must not be discussed by you with any person or entity other than the Company's signatory to this Agreement, or in confidence with your spouse or personal financial or legal advisors.

6. Non-Solicitation and Non-Competition. In consideration of the grant of the Units from the equity incentive plan when completed:

(a) Grantee covenants and agrees that, for the period commencing upon the date hereof and ending 18 months after Employment Termination (the "Restrictive Period"), Grantee shall not, and shall not influence any other person or entity to in any manner, directly or indirectly, (i) solicit, call on, entice, induce or contact, or attempt to solicit, call on, entice, induce or contact, any Person or business that is a customer or business partner of the Company or its Affiliates to terminate or otherwise restrict, limit, reduce or alter its relationship with the Company or its Affiliates or to become a customer of any other Person or business for the purpose of obtaining competitive products, (ii) solicit, call on, entice, induce or contact, or attempt to solicit, call on, entice, induce or contact, any Person that is a licensee, licensor, distributor or supplier of or developer for the Company or its Affiliates to terminate its relationship with the Company or its Affiliates with respect thereto or to become a licensee, licensor, distributor, supplier of or developer for any other Person or business which designs, develops, produces, licenses, sells or distributes products or services that are competitive with the products or services sold, marketed, offered, provided, developed or planned by the Company (or its Affiliates but solely with respect to such competitive business of such other Person or business), or (iii) maliciously or willfully interfere or attempt to interfere with

or hinder, or use any Confidential Information to interfere or attempt to interfere with or hinder, the relationship of the Company or its Affiliates with any Person or business that, during the 12 month period immediately prior to Employment Termination, was a customer, licensee, licensor, distributor, supplier or developer or business partner of the Company or its Grantee covenants and agrees that, during the Restrictive Period, Grantee will not personally or in association with others, and whether on behalf of or in conjunction with any Person or business, directly or indirectly, hire or cause any other Person or business to hire any Person who is, or at any time during the 3 month period prior to Employment Termination was, an employee, consultant, agent, or independent contractor of the Company or its Affiliates, or solicit, aid in the solicitation of, raid, induce, encourage, persuade or recruit, or attempt to solicit, raid, induce, encourage, persuade or recruit, any Person who is, or at any time during the 3 month period prior to Employment Termination was, an employee, consultant, agent, or independent contractor of the Company or its Affiliates, to terminate or alter such employment, retention or engagement with the Company or its Affiliates, or to apply for or accept employment, retention or engagement with any Person or entity other than the Company or its Affiliates.

(b) Grantee covenants and agrees that, during Grantee's employment with the Company as Chief Executive Officer or its Affiliates, and in the Geographic Territory for a period of one year following Employment Termination, Grantee shall not, directly or indirectly, whether individually or in conjunction with others, as a director, officer, CEO, member, stockholder, partner, owner, employee, independent contractor, consultant, joint venturer, principal, or agent of any business, or in any other capacity, other than on behalf of the Company or its Affiliates, organize, establish, own, operate, manage, control, engage in, participate in, invest in, permit Grantee's name to be used by, act as a consultant or advisor to, render services for (alone or in association with any Person or business), or otherwise assist any Person or business that engages in or owns, invests in, operates, manages or controls any venture or enterprise, which engages in any business conducted by the Company or any of its subsidiaries on the date of Employment Termination or within 12 months prior to Employment Termination (the "Business"). Geographic Territory means any state, province or non-U.S. country in which the Company or its Affiliates conducts business.

7. Non-Disparagement. From and after the date hereof, you shall not publish or communicate, make any statement, comment or remark, whether oral or written, to any person or entity, about any other employee or former employee of the Company, the Company, any of the Company's affiliates or portfolio companies, including without limitation any member of the Company or any of their respective affiliates or representatives, or any other investment entity for which the Company (or any affiliate of the Company) serves as investment CEO or adviser or acts in a similar capacity which could reasonably be construed to be derogatory, defamatory or disparaging to such other person or entity in any way or which could impair the name, reputation and goodwill of such other person or entity, including without limitation remarks, comments or statements that impugn the character, honesty, integrity or morality or business acumen or abilities in connection with any aspect of the operation of business of the individual or entity being disparaged.

8. Assignment of Inventions. You acknowledge and agree that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, works of authorship and all similar or related information (whether or not patentable) that relate to any of

the actual or anticipated business of the Company, and all research and development or existing or future products or services that relate to any of the actual or anticipated business of the Company and are conceived, developed or made by you (whether alone or jointly with others) while employed by the Company and all intellectual property rights inherent in or related to the foregoing (“Work Product”), belong to the Company to the full extent allowable by Section 2870 of the California Labor Code or any like statute of any other state and you hereby assign and transfer to the Company your entire right, title and interest that you may have in and to such Work Product. Section 2870 provides as follows:

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer.

(2) Result from any work performed by the employee for his employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

9. Assignment or Waiver of Moral Rights. Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights” (collectively “Moral Rights”). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, you hereby waive such Moral Rights and consent to any action of the Company that would violate such Moral Rights in the absence of such consent. You will confirm any such waivers and consents in writing from time to time as requested by the Company.

10. Disclosure of Inventions. You promise and agree to promptly disclose to your immediate supervisor or to such other person designated by Company, such Work Product, and to perform all actions reasonably requested by the Company (whether or not during or after your employment with the Company) to establish and confirm such ownership (including, without limitation, assignments, consents, powers of attorney and other instruments). The terms and provisions of this paragraph shall survive the termination of your employment with the Company. You will also disclose to the Chief Executive Officer or President (or other person designated by the Company) all inventions and works of authorship that would be Work Product if made during the period of your employment with the Company and that are made, discovered, conceived, reduced to practice, or developed by you within six (6) months after the termination of your employment with the Company which resulted, in whole or in part, from your prior employment by the Company. Such disclosures will be received by the Company in confidence (to the extent such Work Product

are not assigned to the Company pursuant to this Agreement), and do not extend the assignment made in this Agreement. You agree that the remuneration you receive pursuant to this Agreement, includes any bonuses or remuneration which you may be entitled to under applicable law for any “works made for hire,” “inventions made for hire” or other Work Product assigned to the Company pursuant to this Agreement.

11. Execution of Documents. In connection with section 8, you further agree to execute, acknowledge and deliver to the Company or its nominee upon request and at its expense all such documents, including without limitation, applications for patents and copyrights and assignments of inventions, patents and copyrights to be issued therefore as the Company may determine necessary or desirable to apply for and obtain patents and copyrights on such assignable inventions in any and all countries and/or to protect the interest of the Company or its nominee in such inventions, patents and copyrights and to vest title thereto in the Company or its nominee. You hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as your agents and attorney-in-fact to act for and on your behalf and instead of you, to execute and file any documents, applications or related findings and to do all other lawfully permitted acts to further the purposes set forth above in this Section 11, including, without limitation, the perfection of assignment and the prosecution and issuance of patents, patent applications, copyright applications and registrations, trademark applications and registrations or other rights in connection with such Work Product and improvements thereto with the same legal force and effect as if executed by you.

12. Maintenance of Records. You agree to keep and maintain adequate and current written records of all inventions made by you (in the form of notes, sketches, drawings and as may be specified by the Company), which records shall be available to and remain the sole property of the Company at all times. All Company Documents and Materials are and will be the sole property of the Company. “Company Documents and Materials” include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other electronic, printed, typewritten or handwritten documents, sample products, prototypes and models. You agree that during your employment by the Company, you will not remove any Company Documents and Materials from the business premises of the Company or deliver any Company Documents and Materials to any person or entity outside the Company, except as you are required to do in connection with performing the duties of your employment. You further agree that, immediately upon the termination of your employment by you or by the Company for any reason, or during your employment if so requested by the Company, you will return all Company Documents and Materials, apparatus, equipment and other physical property, or any reproduction of such property, excepting only (i) your personal copies of records evidencing your hire, compensation and benefits as an employee of the Company; (ii) your personal copies of any materials generally distributed to stockholders of the Company that you received in your capacity as a stockholder of the Company; and (iii) your copy of this Agreement.

13. Prior Inventions. It is understood and agreed that all inventions, if any, patented or unpatented, which you make prior to your employment by the Company, are excluded from the scope of this Agreement. To preclude any possible uncertainty, you shall set forth on Exhibit 1, attached hereto, a complete list of all of your prior inventions, including numbers of all patents and patent applications, a brief description of all unpatented inventions which are not the property of a

previous employer. You represent and covenant that the list is complete and that if no items are on the list, you have no such prior inventions. You agree to notify the Company in writing before you make any disclosure or perform any work on behalf of the Company which appears to threaten or conflict with proprietary rights you claim in any invention or idea. In the event of your failure to give such notice, you agree that you will make no claim against the Company with respect to any such inventions or ideas. If in the course of your employment with the Company, you incorporate into a Company product, process, machine or other deliverable a prior invention owned, controlled or licensable by you or in which you have an interest, the Company is hereby granted and will have a nonexclusive, royalty-free, fully paid up, irrevocable, perpetual, sublicensable, transferable, worldwide license under all intellectual property rights in and to such prior invention to make, have made, modify, use, market, sell, offer to sell, import, distribute, make derivative works of, and otherwise exploit any product or offer any service.

14. Other Obligations. You acknowledge that the Company from time to time may have agreements with other persons, which impose obligations or restrictions on the Company regarding inventions made during the course or work thereunder or regarding the confidential nature of such work. You agree to be bound by all such obligations and restrictions and to take all action necessary to discharge the obligations of the Company thereunder.

15. Trade Secrets of Others. You represent that your performance of all the terms of this Agreement, and as an employee of the Company, does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by you in confidence or in trust prior to your employment with the Company, and you will not disclose to the Company, or induce the Company to use, any confidential or proprietary information or material belonging to any previous employer or others, and you agree not to enter into any agreement either written or oral in conflict herewith.

16. Representation. You represent that your execution, delivery, performance and observance of this Agreement and your employment with the Company as contemplated hereby do not and will not conflict with, result in any breach of the terms of, or constitute a default under any other agreement to which you are a party or by which you are bound, or any policy or rules to which you are subject, including but not limited to any agreement with, or policies or rules of, your current, or any prior, employer. You represent that you are not subject to any duties as an officer, director, employee or partner or other fiduciary of any current or prior employer or other entity or person that will or could cause you to breach the terms of Section 1 of this Agreement. You represent that on your first day of work you will be free to accept employment hereunder without any contractual restrictions, express or implied, with respect to any of your current or prior employers.

17. Successors and Assigns. This Agreement will bind upon, inure to the benefit of, and be enforceable by you and the Company and the Company's successors and permitted assigns. Your personal services are of the essence of this Agreement, and you may not assign or delegate any of your rights or duties under this Agreement to any other party without the prior consent of the Company, and any attempted assignment or delegation by you without such consent shall be void and of no effect.

18. Governing Law; Jurisdiction. This Agreement will be construed in accordance with the laws of the State of New York without regard to any choice of law principles that would require or permit the application of the laws of any other jurisdiction, and, subject to Section 18, exclusive jurisdiction will be in a court of competent subject matter jurisdiction in New York, New York. Each party hereby irrevocably consents to the personal jurisdiction of any such court for purposes of any proceeding relating to this Agreement and waives any objection to the convenience of any such court.

19. Arbitration.

(a) You and the Company shall attempt in good faith to resolve any disagreement, dispute, controversy or claim arising out of or relating to this Agreement, your employment by the Company or the termination thereof (a "Dispute") promptly by negotiations between you and the Company. Each party hereto agrees that all Disputes that cannot be resolved in a timely manner shall be resolved by binding arbitration in New York, NY, before the American Arbitration Association ("AAA"), in accordance with rules of the AAA then in effect.

(b) Any party to this Agreement may give any other party a written notice of any Dispute not resolved in a timely manner (a "Dispute Notice"), specifying the nature of the asserted Dispute and requesting a meeting to resolve the same. If no resolution of the Dispute is reached within ten (10) days after the delivery of the Dispute Notice, the party that delivered the Dispute Notice (the "Disputing Party") may, within twenty (20) days after the delivery of the Dispute Notice, commence arbitration hereunder by delivering to each other party involved in the Dispute (the "Respondent") a notice of arbitration (a "Notice of Arbitration"). The parties will cooperate with each other in causing the arbitration to be held in as efficient and expeditious a manner as practicable.

(c) The arbitrator shall be selected by the mutual agreement of the parties, if possible. If the parties fail to reach agreement on the appointment of the arbitrator within thirty (30) days following receipt by the Respondent of the Notice of Arbitration, the AAA shall appoint the arbitrator for the Dispute.

(d) It is the intention of the parties hereto that discovery, if any, shall be limited in nature and scope, shall be conducted expeditiously, shall have as its sole purpose the obtaining of information that is directly relevant and necessary to the presentation of the requesting party's case, shall be conducted in a fair, cooperative and courteous manner, and shall be accomplished primarily if not exclusively by the voluntary exchange of documents and information. Unless the parties otherwise mutually agree in writing, (i) all discovery will be completed within sixty (60) days following the selection of the arbitrator, and (ii) no depositions will be taken.

(e) Any submission of a matter to arbitration shall include joint written instructions of the parties requiring the arbitrator to render a decision resolving the Dispute within thirty (30) days following the submission thereof.

(f) Each party hereto agrees that the arbitrator's decision will be final and binding on both parties on all claims which were raised or which could have been raised and agrees to waive

its rights to seek any remedies in court, including its right to a jury trial. Notwithstanding the foregoing, any proceeding for equitable relief in respect of an actual, alleged, or threatened breach of Section 4, 5, 6, 7 or 8 hereof, and any action to enforce any arbitration order, may be commenced and conducted in any court of competent jurisdiction.

20. Entire Agreement. This Agreement contains the entire understanding between you and the Company with respect to your employment by the Company and may be modified only in a document signed by you and the Company and referring explicitly to this Agreement. You represent that you have (1) read this Agreement in full; and (2) been herein advised to retain your own counsel to answer your questions associated with this Agreement. In executing this Agreement, you represent that you have not relied on any representation or statement not set forth herein, and you expressly disavow any such representations or statements.

21. Severability. The invalidity or unenforceability of any term or provision hereof in any circumstances shall not affect the validity or enforceability of any other term or provision hereof or of such term or provision in other circumstances. In the event any provision of this Agreement is found for any reason to be invalid or unenforceable, any court of competent jurisdiction is hereby authorized to reform this Agreement by replacing such invalid or unenforceable provision with a valid and enforceable provision that, to the fullest extent possible, achieves the purposes of the provision found to be invalid or unenforceable. Without limiting the generality of the foregoing, if at any time any provision of Sections 5-9 shall be found to be invalid or unenforceable by reason of being vague or unreasonable as to duration, geographic scope, or scope of activities restricted, or for any other reason, any court of competent jurisdiction is hereby authorized to reform this Agreement by deleting such invalid or unenforceable provision and/or replacing such invalid or unenforceable provision with a valid and enforceable provision that applies to the maximum possible duration, geographic scope, and scope of activities.

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. Remedies. You acknowledge that (a) a breach of one or more of the covenants set forth herein would be likely to result in immediate irreparable injury to the Company for which money damages would not be an adequate remedy, and (b) equitable remedies, including orders for specific performance and ex parte relief, are appropriate in case of an actual, apparent, or threatened breach of any such Section. In addition, without limiting the remedies for any breach of any restriction on you set forth in Sections 5-9, if you breach the covenants applicable to you contained in Section 5-9, the Incentive Units (or any contractual rights substituted therefore) shall immediately terminate and any Shares issued upon the exercise of the Warrants shall be forfeited. The covenants and restrictions set forth in this letter shall survive termination of your employment with the Company. If you breach any covenant set forth in this Agreement, you acknowledge and agree that the duration of any covenant so violated shall automatically be tolled from the date of the first breach until the date judicial relief providing effective remedy for such breach or breaches is obtained by the Company, or until Company states in writing that it will seek no judicial relief for such breach.

24. Personal Development. The Company believes in developing its executives and will fund your enrollment in 3 PSI Personal Development classes with the expectation that you will be able to complete these classes prior to year-end. If you find these classes useful, we welcome working with you to sponsor the Company's key executives for the introductory Basic Seminar.

25. Section 409A. Compensation under this Agreement is intended to be exempt from or to comply with Section 409A of the Internal Revenue Code of 1986 (and any interpretive guidance promulgated thereunder), as amended from time to time ("Section 409A"), including, but not limited to, the exceptions for short-term deferrals, reimbursements, and in-kind distributions, and shall be administered accordingly. The Agreement shall be construed and interpreted with such intent.

Any reimbursement or allowance provided to you under this Agreement that would constitute nonqualified deferred compensation subject to Section 409A shall be subject to the following additional rules: (i) no allowance or reimbursement of any expense shall affect your right to allowance or reimbursement in any other taxable year; (ii) allowance or reimbursement shall be made, if at all, promptly, but not later than the end of the calendar year following the calendar year in which the expense was incurred or for which the allowance was provided; and (iii) the right to allowance or reimbursement shall not be subject to liquidation or exchange for any other benefit.

Notwithstanding anything herein to the contrary, (i) if at the time of your termination of employment with the Company, you are a "specified employee" as defined in Section 409A and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to you until the date that is six months following your termination of employment with the Company (or the earliest date as is permitted under Section 409A) and (ii) if any other payments of money or other benefits due to you hereunder could cause the application of an accelerated or additional tax under Section 409A, such payments or benefits shall be deferred if deferral will make such payments or other benefits compliant under Section 409A, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, determined by the Company, that does not cause such an accelerated or additional tax.

The Company makes no representation or warranty and shall have no liability to you or any other person if any provisions of the Agreement are determined to constitute deferred compensation subject to Section 409A but do not satisfy an exemption from, or the conditions of, such Section.

[signature page follows]

Please note this offer is contingent upon your providing proof to the Company (as required by Federal law) of your legal right to work in the United States within the first three days of work. Please indicate your acceptance of this offer of employment on the terms and conditions of employment contained in this Agreement by signing in the space provided below and returning to us a copy of this Agreement bearing your signature.

Sincerely,

FalconStor Software

By: /s/ Martin Hale Jr.

Martin Hale Jr., Member of the Board of
Directors & Chairman of Compensation
Committee

Accepted and Agreed:

/s/ Todd Oseth
Todd Oseth

Date: June 15, 2017

Exhibit 1

TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, have under my control, or have access to, nor have I failed to return, any originals or any copies of any records, documents, data specifications, drawings, blueprints, reproductions, sketches, notes, files, reports, proposals, including any evidence of any software, computer programs and elements of design (including for example, programming techniques, algorithms, inference structures and knowledge or data bases) or other documents, materials, equipment or other property belonging to the Company (as that term is defined in that certain employment letter agreement between FalconStor Software and me (the "Agreement").

I further certify that I have complied with and will continue to comply with all of the terms of the Agreement, including the reporting of any inventions (as defined therein) conceived or made by me covered by the Agreement.

I further agree that in compliance with the Agreement, I will preserve as confidential all trade secrets, Confidential Information (as that term is defined in the "Agreement"), knowledge, data or other information relating to products, processes, know-how, designs, formulae, test data, customer lists or other subject matter pertaining to any business of the Company or any of its clients, customers, consultants, licensees or affiliates.

Todd Oseth

Exhibit 2

LIST OF PRIOR INVENTIONS

IDENTIFYING NUMBER (if any):

DATE OF INVENTION:

DESCRIPTION:

SEPARATION AGREEMENT AND GENERAL RELEASE (“AGREEMENT”)

In return for the mutual promises in this Agreement, FalconStor Software, Inc. (the “Company”), 2 Huntington Quadrangle, Melville, NY 11747, its predecessor companies, and its and their respective stockholders, affiliates, subsidiaries, divisions, successors and assigns and the current and former employees, officers, directors and agents thereof (collectively referred to throughout this Agreement as “Employer”), and Gary Quinn, his heirs, executors, administrators, successors, and assigns (collectively referred to throughout this Agreement as “You”), agree as follows:

1. **Purpose.** This is a Separation Agreement between Company and You and an exchange of General Releases of claims between You and the Employer.

2. **Time to Return and Legal Review.** You understand and agree that You have until July 5, 2017 to sign and return this Agreement. You are advised to consult with an attorney, at your own expense, before signing. By signing, You acknowledge that Company has advised You to consult with an attorney before signing, at your own expense, and that You have had enough time to do so. You further understand that if You do not sign and return this Agreement by July 5, 2017, Company shall have no obligation to make any payments or provide any benefits to You under this Agreement.

3. **Revocation.** You may revoke (cancel) this Agreement for a period of seven (7) calendar days after the day You sign this Agreement. Any revocation within this period must be submitted, in writing, to Jason Pitre, Company’s Director of Human Resources, and state, “I hereby revoke my acceptance of our Agreement.” The revocation must be personally delivered to Jason Pitre or a person he designates, or mailed to Jason Pitre and received within seven (7) calendar days of your signing of this Agreement and General Release. This Agreement shall not become effective or enforceable until the revocation period has expired without revocation by You. If the last day of the revocation period is a Saturday, Sunday, or legal holiday in New York, then the revocation period shall not expire until the next following day which is not a Saturday, Sunday, or legal holiday.

4. **Resignation.** Effective July 1, 2017, You voluntarily resign from all positions, whether as an employee, as an officer, or as a director, at the Company and any of its direct and indirect subsidiaries, foreign or United States entities, effective on July 1, 2017. Both You and the Company agree that in response to inquiries regarding your departure from the Company both You and the Employer will state that You voluntarily resigned to pursue other opportunities. Furthermore, it is acceptable if You are not in the office every day while the transition is taking place.

5. **Duty of Confidentiality.** You expressly agree and confirm that You will comply with all of the terms and provisions of the Confidentiality, Proprietary Information and Invention Agreement between You and the Company (the “Confidentiality Agreement”). A copy will be provided to You upon request.

6. **Return of Company Property; Expenses.** You represent and warrant that, You have returned to Company all property belonging to Company, including but not limited to keycard, master and office keys, computer equipment, files, records, computer access codes, cell phones, beepers, personal digital assistants (such as BlackBerry or iPhone), memoranda, letters, files, computer software, business plans, instruction manuals and any other property whether furnished to You by the Company or which You have prepared or helped to prepare in conjunction with Your employment with Company. You further agree to return to Company any such property You find in Your possession after the date You sign and deliver this Agreement to Company. You will submit a final expense report by July 31, 2017.

7. **Nondisparagement and References.** It is understood and agreed that neither the Company nor its officers and directors or You will disparage the other or any other “Released Party” (as defined in Paragraph 11) or encourage or induce others to disparage Company or any other Released Party. If the Company receives an inquiry regarding You from a prospective employer, the Employer agrees to confirm the positions You held, the date You were employed by the Company, and that You resigned to pursue other opportunities. Nothing in this Agreement shall be construed to prevent You, the Company or any Released Party from providing truthful and accurate testimony in any civil, criminal or regulatory proceeding. Subject to your obligations under the Confidentiality Agreement, nothing in this Agreement shall be construed to prevent You from providing factual information to a prospective employer that you resigned to pursue other opportunities.

8. **Consideration.**

- a. In consideration for (i) Your signing and returning this Agreement, (ii) Your meeting with the Company’s new Chief Executive Officer at a mutually agreeable time within seven (7) days of the signing of this Agreement to provide the Company, to the best of your recollection, with a summary of matters that you have been primarily responsible for or have been involved with, (iii) the Company agreeing to eliminate your obligations under Section 6(c) of the Employment Agreement, dated July 24, 2015 between You and the Company (the “Employment Agreement”) and (iv) Your performance of the obligations under this Agreement, the Company agrees to pay You all amounts owed to You through July 24, 2017 under Section 5(b)(iv)(A) of the Employment Agreement (minus applicable withholdings and deductions). All restricted stock granted to you that has not vested, shall not vest and shall terminate on the date you sign and return this Agreement. All stock options previously granted to You will be governed by the terms of any option agreement between You and the Company and the Company’s Amended and Restated 2006 Incentive Stock Plan or the 2016 Incentive Stock Plan, as applicable.
- b. In consideration for (i) Your signing and returning this Agreement, (ii) Your meeting with the Company’s new Chief Executive Officer at a mutually agreeable time within seven (7) days of the signing of this Agreement to provide the Company, to the best of your recollection, with a summary of matters that you have been primarily responsible for or have been involved with, including but not limited to customer

agreements, insurance policies, corporate record keeping, and in-progress work product that needs to be finalized, (iii) the Company agreeing to eliminate your obligations under Section 6(c) of the Employment Agreement, and (iv) Your performance of the obligations under this Agreement, the Company shall reimburse You for the employer's portion of the premium associated with COBRA coverage until the earlier of (i) January 31, 2019 or (ii) the first date on which You become eligible for coverage under another group health insurance plan, provided You timely elect and are eligible for COBRA coverage. The Company will make such payments on your behalf, directly to the appropriate authority on or before the due date for Your payment.

9. **Disclosure of this Agreement.** You acknowledge that You understand that the Company is required to file this Agreement with the SEC within four business days after it is fully executed. That filing shall be in the form of the Form 8-K which shall state that You resigned to pursue other opportunities and you will have the opportunity to review and comment on a draft of this Form 8-K before it is filed with the SEC and the Parties shall reach a mutually agreeable wording of the contents thereof.

10. **Nonadmission.** You and Company each understand and agree that neither the signing of this Agreement nor the payment of any money or benefits constitutes an admission by Company, or any other Released Party of any wrongdoing. Company and each other Released Party expressly denies any liability or violation of law.

GENERAL RELEASE OF ALL CLAIMS

11. **Release of Company and other Released Parties.** In consideration of (in return for) the benefits from Company as outlined in Paragraph 8 as well as the release of You pursuant to Paragraph 13, You hereby irrevocably and unconditionally release, waive and forever discharge Company, its affiliates, parents, successors, predecessors, subsidiaries, assigns, stockholders, directors, officers, employees, representatives, agents, and attorneys (collectively, the "Released Parties"), from any and all claims, agreements, causes of action, demands, or liabilities of any nature whatsoever, including under the Company's Amended and Restated 2005 Key Executive Severance Protection Plan, the Company's 2016 Stock Incentive Plan or the Company's Management Incentive Plan for fiscal 2017 or any quarterly period in fiscal 2017 (collectively referred to as "Claims") arising, occurring or existing at any time prior to the signing of this Agreement or arising out of any facts or circumstances that occurred or existed at any time prior to the signing of this Agreement, whether known or unknown, except as to all claims that cannot be released under applicable law (including Claims of discrimination arising under federal law filed with or through a federal agency) or Claims related to the validity of this Agreement.

Examples of Claims Released. You understand that this release is intended to and does waive:

- a. Your ability to file a lawsuit against the Company for any and all Claims arising from or relating to Your employment with Company and/or the termination of Your employment with Company. This includes, but is not limited to, any and all claims

for breach of Company's or its predecessor's policies, rules, regulations, or handbooks or for breach of expressed or implied contracts or expressed or implied covenants of good faith, and any and all claims for promissory estoppel, wrongful discharge, defamation, invasion of privacy, violation of public policy, retaliation, mental distress or any other personal injury; any and all claims for back pay, front pay, or for any kind of compensatory, special or consequential damages, punitive or liquidated damages, attorneys' fees, costs, disbursements or expenses of any kind whatsoever.

- b. Any and all claims arising under the Family Medical Leave Act, as amended, that were available on or prior to the date You sign this Agreement, whether known or unknown.
- c. Any and all claims arising under the Age Discrimination in Employment Act, as amended, that were available on or prior to the date You sign this Agreement, whether known or unknown.
- d. Any and all other claims of any kind whatsoever that You had or may have against Company or any other Released Party at the time You sign this Release, whether known or unknown. This includes, but is not limited to, any and all rights or claims of any kind that You may have against Company or any other Released Party arising, existing or occurring (or that arise out of any facts or circumstances that occurred or existed) before You became an employee and/or during any period of time You acted as a consultant to the Company.
- e. Any and all claims for payment for vacation pay.

This provides examples of the Claims that are waived and is not a complete listing of waived claims.

Notwithstanding the foregoing, nothing in this Agreement shall be construed to prevent You from being indemnified as an officer or Director of the Company pursuant to the Company's Amended and Restated By-Laws, the Indemnification Agreement, dated June 5, 2017 between You and the Company, or the General Corporation Law of the State of Delaware or from filing a charge with or participating in an investigation conducted by any governmental agency, including, without limitation, the United States Equal Employment Opportunity Commission ("EEOC") or applicable state or city fair employment practices agency, to the extent required or permitted by law. Nevertheless, You understand and agree that You are waiving any relief available (including, for example, monetary damages or reinstatement), under any of the claims and/or causes of action waived in this Paragraph 11, including but not limited to financial benefit or monetary recovery from any lawsuit filed or settlement reached by the EEOC or anyone else with respect to any claims released and waived in this agreement.

12. **No Claims Exist.** You confirm that You have not filed, caused to be filed, or are a party to, any claim, charge, complaint, or action against any Released Party in any court. **In the event that any such claim, charge, complaint, or action is filed in any court and You obtain a**

judgment, it is the intent of You and Company parties that all payments made to You under this Agreement shall be offset against (the amount will be deducted from) any judgment You obtain. You further confirm that You have no known workplace injuries. In addition, You agree that it is the Company's policy to comply with all applicable laws and regulations, including its own policies. You are not aware of any violations of any such applicable laws or Company policies by the Company or anyone associated with the Company.

You agree that you shall not, at any time in the future, encourage any current or former Company employee, or any other person or entity, to file any legal or administrative claim of any type or nature against the Company or any of its directors, officers, or employees. You further agree that you shall not, at any time in the future, assist in any manner any current or former Company employee, or any other person or entity, in the pursuit or prosecution of any legal or administrative claim of any type or nature against the Company or any of its officers or employees, unless pursuant to a duly-issued subpoena or other compulsory legal process.

13. **Release of You.** In consideration of (in return for) You entering into this Agreement and the release set forth in Section 11, the Company hereby irrevocably and unconditionally releases, waives and forever discharges You from any and all claims, agreements, causes of action, demands, or liabilities of any nature whatsoever (collectively referred to as "Claims") arising, occurring or existing at any time prior to the signing of this Agreement or arising out of any facts or circumstances that occurred or existed at any time prior to the signing of this Agreement, whether known or unknown or Claims related to the validity of this Agreement other than (i) any Claims resulting from fraud or gross negligence committed by You, (ii) any Claim that cannot be released under applicable law or (iii) Claims related to the validity of this Agreement.

14. **No Claims Exist.** The Company confirms that it has not filed, caused to be filed, or are a party to, any claim, charge, complaint, or action against You in any court.

15. **COBRA Rights.** Your regular coverage under Company's medical and dental plans ends on July 31, 2017. You become eligible to receive health care continuation coverage under the respective plans under COBRA and under applicable laws the day after the regular coverage under the respective plans ends. If You timely elect health care continuation coverage under COBRA in accordance with Section 4980B of the Code, You shall be entitled to receive COBRA continuation coverage for eighteen (18) months in accordance with Paragraph 8, and in accordance with the provisions of COBRA, which provisions are more fully explained in the COBRA information provided to You by the Company. However, You will no longer be eligible for any continuation coverage under COBRA if Your eligibility for continuation coverage ceases pursuant to the provisions of COBRA.

16. **No Entitlement to Severance.** You acknowledge that the compensation You are receiving is being received solely in exchange for Your promises in this Agreement. You understand that severance pay is not ordinarily available under Company's policy to employees whose employment relationship ends. You further acknowledge that You have been paid all wages and provided all benefits (including, but not limited to, base salary, bonuses, and paid time off/vacation).

17. **Cooperation.** You shall assist in the orderly transition of all current projects and assignments. You will sign (and, as necessary, at the Company's expense, have notarized) all documents as reasonably requested by the Company, including all documents relating to resignation from executive or director positions with the Company's subsidiaries.

You shall cooperate fully with Company and with Company's counsel in connection with any present or future, actual or threatened, litigation or administrative proceeding involving Company or any predecessor of Company that relates to events, occurrences or conduct occurring (or claimed to have occurred) during the period of Your employment by Company or any predecessor to Company. This cooperation by You shall include, at the Company's expense, but not be limited to (i) being reasonably available for interviews and discussions with Company's counsel as well as for depositions and trial testimony; (ii) if depositions or trial testimony are to occur, being reasonably available and cooperating in the preparation therefore as and to the extent that Company's or other party's counsel reasonably requests; (iii) refraining from impeding in any way Company's prosecution or defense of such litigation or administrative proceeding; and (iv) cooperating fully in the development and presentation of prosecution or defense of such litigation or administrative proceeding.

You will be reimbursed by Company for reasonable travel, lodging, telephone and similar expenses incurred in connection with such cooperation.

18. **Governing Law.** This Agreement shall be governed by the laws of the State of New York except to the extent preempted by Federal law.

19. **Venue.** Both You and the Company hereby irrevocably waive any objection that they now or hereafter may have to the laying of venue of any action or proceeding arising out of or relating to this Agreement brought in the United States District Court for the Eastern District of New York, or any New York state court in New York City or Nassau or Suffolk counties, and any objection on the ground that any such action or proceeding in either of such Courts has been brought in an inconvenient forum. This means that if Company sues you for violating this Agreement, Company may do so in a state or federal court located in New York, including Suffolk County.

20. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU AND THE COMPANY IRREVOCABLY WAIVE YOUR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION, CLAIM OR OTHER PROCEEDING ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. This means that only a judge, not a jury, will decide any lawsuit.

21. **Amendment.** This Agreement may not be modified, altered or changed except upon express written consent of both parties in a document that specifically refers to this Agreement.

22. **Severability.** Each provision of this Agreement is severable from the entire Agreement. In the event that any provision is declared invalid or unenforceable, that provision shall be amended if possible to be enforceable, but in any event, the remaining provisions of this Agreement shall remain in effect.

23. **Entire Agreement.** You and the Company agree that: (a) this Agreement contains the entire agreement between the Released Parties, the Company and You; and (b) that neither Company, any other Released Party, nor You has made any other representations except those set forth in this Agreement to induce the other parties to agree to this Agreement.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU HAVE BEEN GIVEN AN OPPORTUNITY TO HAVE ANY PARAGRAPHS EXPLAINED, AND THAT YOU UNDERSTAND EACH PARAGRAPH OF THE AGREEMENT.

YOU HAVE BEEN ADVISED THAT YOU HAVE TWENTY-ONE (21) CALENDAR DAYS TO CONSIDER THIS AGREEMENT AND YOU HAVE BEEN ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS AGREEMENT.

YOU AGREE THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE (21) CALENDAR DAY CONSIDERATION PERIOD.

HAVING ELECTED TO SIGN THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH IN THIS AGREEMENT, AND TO RECEIVE THE AMOUNTS SET FORTH IN PARAGRAPH "8" ABOVE, YOU FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS YOU HAVE OR MIGHT HAVE AS OF THE DATE OF SIGNING AGAINST THE COMPANY OTHER THAN SET FORTH IN PARAGRAPH 11 ABOVE.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below:

NAME	FalconStor Software, Inc.
By: <u>/s/ Gary Quinn</u> Gary Quinn	By: <u>/s/ Daniel Murale</u> Daniel Murale Executive Vice President, Chief Financial Officer and Treasurer
Date: <u>June 14, 2017</u>	Date: <u>June 14, 2017</u>

FalconStor Announces Todd Oseth as President & Chief Executive Officer *Industry Executive Brings More Than 30 Years of Experience in Building Businesses*

MELVILLE, N.Y., June 19, 2017 — FalconStor Software, Inc. (NASDAQ: FALC), a market leader in storage software, today announced the appointment of Todd Oseth as President and Chief Executive Officer effective July 1, 2017. The company also announced that Gary Quinn, formerly FalconStor President and Chief Executive Officer, has voluntarily resigned effective July 1, 2017.

Mr. Oseth is a high-performance, hands-on chief executive who will be focused on delivering profitable business growth by working directly with customers, partners, employees and investors in the pursuit of the company's strategic objectives. Prior to joining Falconstor, he was President and Chief Executive Officer of Intermap Technologies where he led the transformation of the company into a leading provider of geospatial solutions. Previously, Oseth held executive positions with McDATA, EMC, Sony and Ramtron.

“FalconStor’s strong heritage in data protection and mobility, particularly focused on lowering storage costs through utilizing public cloud services, is unrivalled” said Todd Oseth FalconStor President and CEO. “I’m honored to lead the team as we focus first on serving our substantial customer base and second on innovating in addressing storage challenges where FalconStor leads the market such as VTL and cloud mobility. In my first one hundred days, I’ll be meeting with customers and partners around the world to ensure we meet their current and future needs, while focusing internally on returning the company to profitable growth.”

"We want to thank Gary Quinn for his service, leadership and contributions to the Company during his tenure as President and Chief Executive Officer. We wish him all the best for his continued success in the future," said Martin Hale, Member of the Board of Directors of FalconStor. "As we look ahead, we are excited about FalconStor's future with Todd at the helm. He's the right person at the right time to lead the way."

About FalconStor Software

FalconStor Software, Inc. (NASDAQ: FALC) is a leading software-defined storage company offering a converged data services software platform that is hardware agnostic. Our open, integrated flagship solution FreeStor® reduces vendor lock-in and gives enterprises the freedom to choose the applications and hardware components that make the best sense for their business. We empower organizations to modernize their data center with the right performance, in the right location, all while protecting existing investments. FalconStor's mission is to maximize data availability and system uptime to ensure nonstop business productivity while simplifying data management to reduce operational costs. Our award-winning solutions are available and supported worldwide by OEMs as well as leading service providers, system integrators, resellers and FalconStor. The Company is headquartered in Melville, N.Y. with offices throughout Europe and the Asia Pacific region. For more information, visit www.falconstor.com or call 1-866-NOW-FALC (866-669-3252).

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FalconStor Press Release Safe Harbor Statement

This press release includes forward-looking statements that involve risk and uncertainties that could cause actual results to differ materially from the forward-looking statements.

These risks and uncertainties include: delays in product development; market acceptance of FalconStor's products and services; technological change in the storage and networking industries; competition in the network storage software market; the potential failure of FalconStor's OEM partners to introduce or market products incorporating FalconStor's products; the ability to achieve profitability; intellectual property issues; and other risk factors discussed in FalconStor's reports on Forms 10-K, 10-Q and other reports filed with the Securities and Exchange Commission.

For more information, contact:

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