

## END USER LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into as of \_\_\_\_\_, 201\_ (the "Effective Date") by and between FalconStor Software, Inc. ("FalconStor"), a Delaware corporation with its principal offices at 2 Huntington Quadrangle, Melville, NY 11747, and \_\_\_\_\_, ("Licensee"), a \_\_\_\_\_ corporation with its principal offices at \_\_\_\_\_.

WHEREAS, FalconStor is a developer and supplier of network storage software solutions (the "Software"); and

WHEREAS, Licensee desires to license certain software from FalconStor and/or purchase appliances from FalconStor, as described in one or more purchase orders;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, FalconStor and Licensee hereby agree as follows:

### 1. Grant of License

FalconStor grants to Licensee a non-exclusive license to use the Software and accompanying documentation (collectively the "Product") in the manner described below.

### 2. Ownership

(a) FalconStor retains the ownership of each copy of the Product. FalconStor and/or its third party partners retains ownership of all copyright, patent, trade secret and other intellectual property rights in the Product. The Product is protected by the United States and other international copyright laws and treaties.

(b) The marks and logos identifying the Products are the trademarks or registered trademarks of FalconStor.

### 3. Terms and Conditions of Use

A. Subject to DIR Contract No. DIR-TSO-3407, if the Product is received on a stand-alone basis, Licensee may:

(a) use the Product on any supported computer configuration, provided the Product is used on only one such computer and by one user at a time;

(b) use the Product up to the maximum capacity licensed;

(c) copy the Product or make adaptations for archival purposes or when copying or adaptation is an essential step in the authorized use of the Product, provided any copy or adaptations must contain all of the original Product's proprietary notices; or

(d) if Licensee has purchased multiple licenses, make copies of the Product up to the number of licenses purchased in the manner specified by FalconStor, provided any copy must contain all of the original Product's proprietary notices. The number of copies is the total number of copies that may be made for all platforms.

B. If Licensee purchased FalconStor-branded hardware on which the Product was pre-installed (an "Appliance"), Licensee may use the Product solely on the Appliance, except that Licensee may transfer the Product to a new Appliance if the Appliance is replaced pursuant to the hardware warranty.

C. In no instance may Licensee:

(a) transfer, distribute, rent, sub-license, or lease the Product, or use the Software to provide services to third parties, except as provided herein.

(b) alter, modify, or adapt the Product, or portions thereof including, but not limited to, reverse engineering, translation, decompiling, disassembling, or creating derivative works.

(c) other than as provided in this Agreement, make copies of the Product, or portions thereof.

(d) remove any proprietary notices or labels on the Product.

(e) export or use the Product in violation of any United States export laws, rules or regulations.

### 4. Purchasing and Payment Procedure

(a) Purchases shall be handled in accordance with Appendix A, Section 8, of DIR Contract No. DIR-TSO-3407. Licensee shall e-mail each purchase order to salesorders@falconstor.com (each an "Order").

## 5. Support

(a) Software and Appliance support, if purchased by Licensee, shall be provided in accordance with the terms of FalconStor's Technical Support Handbook, available at

[http://www.falconstor.com/dmdocuments/support/Technical\\_Support\\_Handbook.pdf](http://www.falconstor.com/dmdocuments/support/Technical_Support_Handbook.pdf). Any term found to be in conflict with DIR Contract No. DIR-TSO-3407 shall be deemed null and void.

(b) The purchase of Software technical support entitles Licensee, during the support term, to receive Maintenance Releases, defined as Product temporary fixes, error corrections, work-arounds and corrections made available by FalconStor to supported End Users of the Products. Maintenance Releases do not include new versions of the Product (X.0 releases) or new products available from FalconStor. New versions of the Product will be provided to End User if End User has purchased Upgrade Assurance. If End User has not purchased Upgrade Assurance, FalconStor may make new versions of the Product available to End User for an additional fee.

(c) The purchase of Appliance support includes Software technical support and Hardware support.

## 6. Limited and As Is Warranty

### A. Software

FalconStor warrants that the optical media on which the Product is distributed is free from defects in materials and workmanship. FalconStor will replace defective media at no charge, provided you return the defective item with dated proof of payment to FalconStor within ninety (90) days of the date of delivery. This is your sole and exclusive remedy for any breach of warranty. FalconStor warrants that the Product, other than the Ancillary Software (as defined below) will substantially perform the functions of its published documentation for a period of thirty (30) days from delivery to you. To the extent permitted by applicable law, the Ancillary Software is provided to you "as is" without warranties of any kind. THE LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY FALCONSTOR. EXCEPT AS SPECIFICALLY PROVIDED ABOVE, FALCONSTOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT, INCLUDING ITS QUALITY,

PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE. Some jurisdictions do not allow the exclusion of implied warranties or conditions, so that the above limitation or exclusion may not apply to you to the extent prohibited by such local laws. You may have other rights that vary from country to country, state to state, or province to province.

#### B. Hardware

Any hardware purchased from FalconStor, whether stand-alone or as part of an Appliance, is resold by FalconStor on an "AS-IS" basis. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Technical support and warranty support are available for purchase.

#### 7. Limitation of Liability

Shall be handled in accordance with Appendix A, Section 10K to DIR Contract No. DIR-TSO-3407.

#### 8. Indemnification

Indemnification shall be handled in accordance with Appendix A, Section 10 A&B of DIR Contract No. DIR-TSO-3407.

## 9. Force Majeure

Force Majeure shall be handled in accordance with Appendix A, Section 10 A&B of DIR Contract No. DIR-TSO-3407.

## 10. High Risk Activities

Unless Licensee purchases and obtains a license for either the Active-Active Failover option or the Synchronous Mirroring option, the Product is not fault-tolerant. In addition, the Product is not designed, manufactured or intended for use or resale on equipment used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Product could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). FalconStor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

## 11. General Provisions

(a) Severability. If any part of this Agreement is order or regulation of any government, or by the final determination of any state or federal court, that part of this Agreement shall be amended to achieve as nearly as possible the same economic effect as the original provision and the remaining provisions of this Agreement shall remain in full force and effect.

(b) Entire Agreement. DIR Contract No. DIR-TSO-3407 and this Agreement, together with the schedules attached hereto, constitute and contain the complete agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior correspondence, agreements, representations, statements, negotiations and undertakings between the parties relating to the subject matter hereof. Amendments to this Agreement must be in writing, specifying such amendment, signed by duly authorized representatives of both parties.

(c) Governing Law. The laws of the state of Texas shall govern the construction and enforceability of this Agreement. The parties agree that any action arising under or relating to this Agreement or the Products shall lie within the exclusive jurisdiction of any State courts located in Travis County Texas. Licensee consents to venue in State court located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas or the sovereign or official immunity of Licensee, or its officers or employee.

(d) No Waiver. No waiver by either party of any default shall operate as a waiver of any other default or of a similar default on a future occasion. No waiver of any term or condition shall be effective unless in writing and signed by the party against whom enforcement of the waiver is sought. Neither party shall be responsible for any failure to perform any obligation hereunder (except a failure to pay) due to causes beyond its reasonable control.

(e) Notices. Notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3407.

(f) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives, effective as of the date first written above.

Licensee

FalconStor Software, Inc.

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

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

-----  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

-----  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

Exhibit A

Bank Wiring Instructions

**Bank Name:** Wells Fargo Bank, N.A.

**Bank Address:** 420 Montgomery Street  
San Francisco, CA 94104

**Bank Routing or ABA #:** 121000248

**Account #:** 4122355761

**Account Name:** FalconStor, Inc.

**Bank Swift # (used for international ONLY):** WFBIUS6S