

FORTISPHERE, INC.

SOFTWARE LICENSE TERMS AND CONDITIONS

1. DEFINITIONS. Certain capitalized terms used in this Agreement, not otherwise defined on the Cover Page, shall have the meanings set forth or cross-referenced below.

1.1 "Authorized Systems" shall mean computer systems, storage devices and networks owned, operated or under the supervision and control of Licensee, for which a unique License Key has been purchased by Licensee.

1.2 "Authorized User" shall have the meaning set forth in Section 2.3.

1.3 "Confidential Information" shall mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, the Fortisphere Software and the Documentation shall be considered Fortisphere's Confidential Information.

1.4 "Cover Page" shall mean the cover page to which these Software License Terms and Conditions are attached.

1.5 "Documentation" shall mean Fortisphere's standard user manuals and/or related documentation generally made available to licensee's of the Fortisphere Software.

1.6 "Fortisphere Software" shall mean the executable, object code version of Fortisphere's proprietary application software specifically identified on the Cover Page.

1.7 "License Key" shall mean a unique code provided by Fortisphere to Licensee for purposes of activating full functionality of the Fortisphere Software.

1.8 "Term" shall have the meaning set forth in Section 8.1.

2. LICENSE AND USAGE OF SOFTWARE.

2.1 Use License.

(a) Subject to the terms and conditions of this Agreement, Fortisphere hereby grants to Licensee a non-exclusive, non-transferable, non-sublicenseable right and license during the Term (i) to install and operate one copy of the Fortisphere Software for each License Key purchased by Licensee, solely on an Authorized System, solely in accordance with applicable Documentation provided by Fortisphere, solely for use by Authorized Users, and solely for Licensee's internal business purposes; and (ii) to make a reasonable number of copies of the Fortisphere Software solely for non-operating archival and backup purposes.

(b) Licensee acknowledges that no copy of the Fortisphere Software will function without first being activated by the one time input of a License Key that is specific and unique for that particular copy. Fortisphere will generate and deliver a License Key to Licensee upon Licensee's online registration of the applicable copy of the Fortisphere Software. Licensee further acknowledges that, after use of a particular License Key to activate a copy of the Fortisphere Software, the same License Key may not be used to activate another copy, and that the process of registration will prevent use of a single License Key for multiple installations of Fortisphere Software.

2.2 Documentation License. Subject to the terms and conditions of this Agreement, Fortisphere hereby grants to Licensee and non-exclusive, non-transferable, non-sublicenseable right and license during the Term to make copies of the Documentation provided by Fortisphere, solely for use by Authorized Users in connection with the exercise of rights granted in Section 2.1.

2.3 Authorized Users. For purposes of this Agreement, the term "Authorized Users" shall mean any individual employee, agent or contractor of Licensee accessing or using the Fortisphere Software solely on behalf and for the benefit of Licensee in the operation of

Licensee's business. Licensee acknowledges and agrees that it shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by Licensee, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Licensee. Licensee shall undertake reasonable efforts to make all Authorized Users aware of the provisions of this Agreement as applicable to such Authorized User's use of the Fortisphere Software, and shall cause Authorized Users to comply with such provisions.

2.4 Delivery of Licensee Copies. As soon as commercially practicable after the Effective Date, Fortisphere shall deliver to Licensee one (1) copy of each of the Fortisphere Software, the Documentation, and the applicable number of License Keys purchased by Licensee under this Agreement, for use by Licensee in exercising its rights under the licenses granted in Sections 2.1 and 2.2, provided that any use of the Fortisphere Software shall at all times remain subject to the limitations and restrictions set forth in Section 2.6. Delivery shall be deemed complete upon receipt by Licensee of either (i) media upon which the Fortisphere Software, Documentation, and applicable License Key(s) are digitally stored; or (ii) such information as necessary to enable Licensee to download a copy of each of the foregoing from a Web site or FTP site made available by Fortisphere. Unless otherwise agreed between the Parties in an Addendum to this Agreement or in a separate written agreement, Fortisphere shall have no obligation to install or configure the Fortisphere Software for or on behalf of Licensee.

2.5 Ownership of Fortisphere Software Subject to the rights granted in Sections 2.1 and 2.2, Fortisphere retains all right, title and interest in and to the Fortisphere Software, the Documentation and associated intellectual property rights, and Licensee acknowledges that it neither owns nor acquires any rights in any of the foregoing not expressly granted by this Agreement. Licensee further acknowledges that Fortisphere retains the right to use the Fortisphere Software for any purpose in Fortisphere's sole discretion, and Fortisphere reserves all rights not expressly granted in this Agreement. Licensee also acknowledge that all License Keys are Fortisphere's Confidential Information and are subject to all applicable provisions of this Agreement, including, without limitation, Section 4, below.

2.6 General Usage Restrictions.

(a) Licensee will not use the Fortisphere Software or Documentation for any purposes beyond the scope of the licenses granted in this Agreement.

(b) Without limiting the generality of the foregoing, Licensee will not (i) authorize or permit use of the Fortisphere Software or Documentation by persons other than Authorized Users; (ii) market or distribute the Fortisphere Software, the Documentation or any License Key; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Licensee's rights under the licenses granted in Sections 2.1 and 2.2; (iv) use the Fortisphere Software in any time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (v) modify the Fortisphere Software or Documentation, except with the prior written consent of Fortisphere; (vi) combine or integrate the Fortisphere Software with hardware, software or technology not provided to Licensee by Fortisphere hereunder; or (vii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Fortisphere Software is compiled or interpreted, and Licensee hereby acknowledges that nothing in this Agreement shall be construed to grant Licensee any right to obtain or use such source code.

(c) Licensee shall undertake all measures necessary to ensure that its use of the Fortisphere Software and the Documentation complies in all respects with any contractual or other legally binding obligations of Fortisphere to any third party, provided that Fortisphere has notified Licensee with respect to any such obligations. Licensee shall not enter into any contractual relationship or other legally binding obligation with any third party which shall have the purpose or effect of encumbering the use by Fortisphere of the Fortisphere Software or the Documentation.

(d) Licensee shall undertake all measures necessary to ensure that its use of the Fortisphere Software and the Documentation complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties, the Fortisphere Software or the Documentation, including, without limitation, by means of obtaining any permits, licenses and/or approvals required with respect to export regulations promulgated by the Bureau of Export Administration or any other agency or department of the federal government of the United States of America. Licensee acknowledges that Fortisphere makes no representation or warranty that the Fortisphere Software may be exported without appropriate licenses or permits under applicable law, or that any such license or permit has been, will be or can be obtained.

(e) Licensee shall duplicate all proprietary notices and legends of Fortisphere and its suppliers or licensors upon any and all copies of the Fortisphere Software and Documentation made by Licensee. Licensee shall not remove, alter or obscure any such proprietary notice or legend.

2.7 Compliance Records; Auditing Rights.

(a) Licensee shall create and maintain complete and accurate records of all copies of the Fortisphere Software and/or Documentation made by or on behalf of Licensee, including the date such copies are made and the locations of Authorized Systems where such copies are installed. Licensee shall promptly provide a copy of such records upon request by Fortisphere.

(b) Throughout the Term of this Agreement, Fortisphere will have the right, at its own expense, upon reasonable prior notice, periodically to inspect and audit Licensee's use of the Fortisphere Software and Documentation for purposes of determining Licensee's compliance with the terms and conditions herein. Licensee agrees to cooperate with Fortisphere in the performance of any such audit, and shall provide to Fortisphere such access to Licensee's relevant records, data, information, personnel and/or facilities as Fortisphere may reasonably request for such limited purposes.

2.8 Maintenance and Support. Subject to payment by Licensee of the applicable support fees specified on Exhibit A, Fortisphere will, during the Term, provide the support services specified on maintenance and support addendum, attached hereto as Schedule A.

3. FEES AND PAYMENTS.

3.1 License Fees. In consideration for the licenses granted to Licensee hereunder and the performance of Fortisphere's obligations hereunder, Licensee shall pay to Fortisphere, without offset or deduction, certain fees, in such amounts as may be determined by reference to the formula set forth (or cross-referenced) on the Cover Page, which fees shall be due and payable within thirty (30) calendar days after an invoice is issued by Fortisphere with respect thereto.

3.2 Other Fees and Required Payments. In addition to the fees payable under Section 3.1, Licensee may be required to make certain additional payments under the terms of any Addenda to this Agreement. Unless otherwise expressly provided in such Addenda, such payments shall be due within thirty (30) calendar days after an invoice is issued by Fortisphere with respect thereto.

3.3 Licensee Operating Expenses. As between the Parties, Licensee shall bear all expenses incurred in performance of its obligations or exercise of its rights hereunder.

3.4 Taxes. All amounts payable hereunder shall exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges. Licensee will be responsible for payment of all such taxes (other than taxes based on Fortisphere's income), fees, duties and charges, and any related penalties and interest, arising from the payment of any fees hereunder, the grant of license rights hereunder, or the delivery of related services. Licensee will make all payments required hereunder to Fortisphere free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on any payments hereunder to Fortisphere will be Licensee's sole responsibility, and Licensee will, upon Fortisphere's request, provide Fortisphere with official receipts issued by the appropriate taxing authority, or such other evidence as Fortisphere may reasonably request, to establish that such taxes have been paid. Upon request, Licensee will provide Licensor a Sales and Use tax exemption certificate.

3.5 Late Payments; Interest. Any portion of any fee or other amount payable hereunder that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

3.6 Auditing Rights and Required Records. If any amounts payable under this Agreement (including under any Addendum) are not based upon a fixed sum ascertainable as of the Effective Date (or the effective date of the applicable Addendum), Licensee agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two (2) years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Fortisphere will have the right, at its own expense, upon reasonable prior notice, periodically to inspect and audit the records of Licensee with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Licensee has underpaid Fortisphere with respect to any amounts due and payable during the period to which such inspection and audit relate, Licensee shall promptly pay such amounts as are necessary to rectify such underpayment, together with interest in accordance with Section 3.5, and further provided that if the amount of such underpayment equals or exceeds five percent (5%) of the total amounts due and payable by Licensee during such period, Licensee shall reimburse Fortisphere for the cost of such inspection and audit. Such inspection and auditing rights shall extend throughout the Term and for a period of two (2) years after the termination of this Agreement.

4. CONFIDENTIALITY RIGHTS AND OBLIGATIONS.

4.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

4.2 Mutual Confidentiality Obligations. Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy, pursuant to Section 7.4, all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

4.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 4.1 and 4.2 shall not apply to

Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

5. WARRANTIES; DISCLAIMERS.

5.1 Representations and Warranties. Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; and (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

5.2 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FORTISPHERE DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT, AND THE FORTISPHERE SOFTWARE IS PROVIDED "AS IS". NO WARRANTY IS MADE BY FORTISPHERE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. FORTISPHERE DOES NOT WARRANT THAT THE FORTISPHERE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE FORTISPHERE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE ACKNOWLEDGES THAT FORTISPHERE'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF LICENSEE ONLY.

5.3 Exclusions of Remedies; Limitation of Liability. IN NO EVENT SHALL FORTISPHERE BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF FORTISPHERE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF FORTISPHERE TO LICENSEE FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES THEN-PAID TO FORTISPHERE BY LICENSEE UNDER SECTION 3.1 DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

5.4 Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 5 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

6. INDEMNIFICATION.

6.1 Indemnification of Licensee. Fortisphere agrees to indemnify, defend and hold harmless Licensee from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Fortisphere Software infringes or misappropriates, as applicable, such third party's U.S. patent rights issued as of the Effective Date, or such third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America, provided that, notwithstanding the foregoing, Fortisphere shall have no obligation to indemnify Licensee hereunder if the alleged infringement arises, in whole or in part, due to modification of the Fortisphere Software by Licensee, on Licensee's behalf, or upon Licensee's request or direction, or if such alleged infringement arises, in whole or in part, due to combination or integration of the Fortisphere Software with hardware, software and/or technology not supplied by Fortisphere hereunder, if such infringement would have been avoided by use of the Fortisphere Software absent such combination or integration. If any claim for which indemnity is or may be sought hereunder is made or appears reasonably possible, Licensee agrees (i) promptly to notify Fortisphere in writing; (ii) to cooperate with Fortisphere, and to allow Fortisphere sole authority to control the defense and settlement of such claim; and (iii) to permit Fortisphere, at Fortisphere's sole discretion, to enable Licensee to continue to use the Fortisphere Software, or to modify or replace any such infringing material to make it non-infringing, provided that, if Fortisphere determines that none of the foregoing alternatives is reasonably available, Licensee shall, upon written request from Fortisphere, cease use of, and, if applicable, return, such materials as are the subject of the relevant infringement claim.

6.2 Indemnification of Fortisphere. Licensee agrees to indemnify, hold harmless and, at Fortisphere's option, defend Fortisphere from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from (i) Licensee's negligence or willful misconduct; (ii) a breach by Licensee of its obligations, representations or warranties hereunder; and (iii) any claim by any third party that the Fortisphere Software infringes such third party's intellectual property rights, if such alleged infringement arises, in whole or in part, due to modification of the Fortisphere Software by Licensee, on Licensee's behalf, or upon Licensee's request or direction, or if such alleged infringement arises, in whole or in part, due to combination or integration of the Fortisphere Software with hardware, software and/or technology not supplied by Fortisphere hereunder, if such infringement would have been avoided by use of the Fortisphere Software absent such combination or integration, provided that Licensee shall not settle any claim unless such settlement completely and forever releases Fortisphere from all liability with respect to such claim or unless Fortisphere provides its prior written consent to such settlement, and further provided that Fortisphere shall have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice.

7. TERM AND TERMINATION.

7.1 Term. The term of this Agreement shall commence on the Effective Date and shall thereafter continue in effect as provided on the Cover Page unless and until terminated in accordance with this Section 7 (the period during which this Agreement remains in effect, the "**Term**").

7.2 Termination for Breach. Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a

written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement shall terminate in the event that such cure is not made within such thirty (30)-day period. Fortisphere may immediately terminate this Agreement upon written notice in the event that Licensee becomes insolvent or enters bankruptcy prior to payment of all amounts due under Section 3.1.

7.3 Effect of Termination. Upon any termination of this Agreement, Licensee (i) shall immediately discontinue all use of the Fortisphere Software and Documentation, as well as any use of Fortisphere's Confidential Information; (ii) shall delete any Fortisphere Confidential Information from Licensee's computer storage or any other media, including, but not limited to, online and off-line libraries; (iii) shall return to Fortisphere or, at Fortisphere's option, destroy, all copies of Fortisphere's Confidential Information then in Licensee's possession; and (iv) shall promptly pay to Fortisphere all amounts due and remaining payable hereunder.

7.4 Survival. The provisions of Sections 2.5, 2.6, 4, 4, 5, 6, 7.3, 7.4 and 8 will survive the termination of this Agreement.

8. GENERAL PROVISIONS.

8.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein.

8.2 Independent Contractors. In making and performing this Agreement, Licensee and Fortisphere act and shall act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

8.3 Notices. All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid, to the Parties to the Agreement and addressed, if to Licensee, as set forth on the Cover Page, or if to Fortisphere, as follows:

If to Fortisphere: Fortisphere, Inc.
4530 Walney Road; Suite 203
Chantilly, VA 20151
Attention: [V. Zumbo, CFO]

with a copy to: Cooley Godward, LLP
One Freedom Square, Reston Town Center
11951 Freedom Drive
Reston, Virginia 20190
Attention: Todd W. Harris, Esq.
Adam J. Ruttenberg, Esq.

or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by facsimile, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices shall be effective on the date indicated in such confirmation. In the event that either Party delivers any notice hereunder by means of facsimile transmission in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

8.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by the Party against whom enforcement of such amendment or modification is sought.

8.5 Assignment; Delegation. Licensee shall not assign any of its rights or delegate any of its duties hereunder without the prior written consent of the Fortisphere, and, absent such consent, any attempted assignment or delegation shall be null, void and of no effect.

8.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

8.7 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

8.8 Waiver. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

8.9 Force Majeure. Except with respect to payment obligations under this Agreement, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, war, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay shall not be deemed to constitute a material breach of this Agreement, but such obligation shall remain in full force and effect, and shall be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

8.10 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. FOR PURPOSES OF ALL CLAIMS BROUGHT UNDER THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED WITHIN THE COMMONWEALTH OF VIRGINIA.

8.11 U.S. Government End-Users. Each of the components that constitute the Fortisphere Software and Documentation is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Fortisphere Software with only those rights set forth herein.

8.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.

8.13 Headings. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

[END OF SOFTWARE LICENSE TERMS AND CONDITIONS]