

DOD SOFTWARE LICENSE AGREEMENT ATTACHMENT B

ATTACHMENT B – DoD SOFTWARE LICENSE AGREEMENT

**SOFTWARE LICENSE AGREEMENT**

This Software License Agreement ("Agreement") is made effective _____ by and between **Virtual Corporation, Inc.**, a New Jersey corporation with a principal place of business at Village Green Annex, 98 Route 46, Suite 12, Budd Lake, New Jersey, 07828 ("Virtual") and _____, with a principal place of business at _____ ("Licensee").

WHEREAS, Virtual has developed and licenses to users a software program supporting business continuity planning marketed under the name Sustainable Planner (the "Software"); and

WHEREAS, Licensee desires to utilize the Software pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Virtual and Licensee agree as follows:

1. **License**. Virtual hereby grants to Licensee a perpetual (subject to Section 11 hereof), fee-bearing, non-exclusive, non-transferable other than as described herein, limited license as described in Exhibit A attached to this Agreement and made a part thereof, to use the Software pursuant to the terms of this Agreement solely for the internal business purposes of Licensee and its affiliates and subsidiary and parent organizations. This license shall be transferable within any Department of Defense (DoD) or other federal government agency (Licensing Agency) except that such transfer of license shall not occur prior to the license being in effect for one (1) year with the then current Licensee. The license acquired hereunder provides for usage by Licensee of a single instance of the Software residing on a single server. Licensee may acquire from Virtual additional licenses for the ability to maintain multiple instances per server and/or for licenses of copies of the Software to run on additional servers upon payment of license fees required by Virtual. Upon execution of this Agreement and Virtual's receipt of the license fee required hereunder upon such execution, Virtual shall deliver the Software to Licensee electronically and upon receipt thereof, Licensee shall notify Virtual in writing of the location of the server

where the Software will reside. Licensee shall provide Virtual with prior written notice of any change in server location. Licensee shall be responsible for securing any third party hardware or software necessary or desirable to operate in conjunction with the Software at Licensee's sole cost and expense. The Software and related documentation are copyrighted by and proprietary to Virtual. Virtual retains title and ownership of the Software and documentation. Virtual shall also retain title and ownership of any upgrades, modifications or enhancements made to the Software, regardless of whether made at the request or suggestion of Licensee. Licensee acknowledges that the Software and related documentation contain valuable trade secrets and other proprietary information belonging to Virtual. Licensee agrees to hold the Software and related documentation in confidence and take all reasonable steps to prevent disclosure to others. Title to any and all data processed through, uploaded, or submitted by Licensee or its subsidiaries, parents, and affiliates to the Software shall be the exclusive property of Licensee and Virtual shall not have or accrue any other licenses or any title or ownership interests to such data. Any such data (except data otherwise available to the general public) is confidential and Virtual shall treat such data as confidential and shall not reveal or discuss such data with any other person or entity, except as authorized or directed by Licensee or compelled by law or court order. Virtual may not sell, license, disclose, assign, or otherwise transfer any such data without Licensee's prior written consent except for disclosure of such data within the context of the Software to those employed by Virtual to assist in the operation and support of the Software. To the extent the Software is embedded with material owned by third parties for which a license is required, Virtual shall identify such material and secure for Licensee a license to use such material in the Software, which license shall be subject to Licensee's approval.

2. **Restrictions.** Licensee shall not (i) modify, copy, duplicate, reproduce, license or sublicense the Software or the documentation related thereto, or transfer (electronically or otherwise) or convey the Software or any right in the Software to anyone else, except Licensee may make one copy of the Software to be maintained on a back-up server at Licensee's or a third party disaster recovery facility strictly for disaster recovery or disaster recovery testing purposes, which copy may not be used contemporaneously with the licensed copy of the Software, except for a limited duration during a disaster or testing of its disaster recovery procedures, provided Licensee provides Virtual with written notice of the location of such copy; (ii) use the Software except as permitted in this Agreement; (iii) translate, reverse engineer, decompile or disassemble the Software or any part thereof, nor create any derivative works; or (iv) remove, obliterate, alter or obscure any copyright and/or trademark notices, labels or marks or serial numbers on the Software or accompanying documentation; in any case without the express prior written consent of Virtual. Licensee acknowledges that the copy of the Software provided will be in executable object code format. Notwithstanding any ability to modify the Software in such format, Licensee agrees to the foregoing restrictions, except in the event of a release event as described in Section 3 wherein the foregoing restrictions on modification shall no longer apply to the extent provided in Section 3, and Licensee expressly acknowledges that any modification of the Software shall immediately terminate any warranties provided hereunder and Licensee shall have no further right to receive maintenance or support (without any refund of funds paid therefore). This is a license and not an agreement for sale. Licensee obtains no rights other than the license granted in this Agreement and Virtual reserves all rights not expressly granted herein. Licensee shall limit access to the Software to its employees, agents and representatives who are required to have such access, and Licensee shall ensure that such employees, agents and representatives agree to comply with the restrictions in this Agreement. Licensee acknowledges and agrees that violation in any respect of the provisions of this Section or this Agreement may cause irreparable injuries to Virtual and, in addition to the termination of this Agreement, Virtual may seek injunctive relief to prevent or discontinue any such violation, which shall be in addition to, and in no way in limitation of, any and all remedies or rights to recover damages Virtual may have at law or in equity or under this Agreement for the enforcement of such provision and/or for breach of this Agreement by Licensee. Disputes in connection with the enforcement of such provision, breach of this Agreement by Licensee and/or the retrieval of the Software shall be subject to the Contract Disputes Act, Title 41 Chapter 9 – Contract Disputes.

3. **Release Event.** Upon the occurrence of a release event as defined herein, subject to the terms of this Section, Licensee shall have the right to use the source code for the Software for the sole purpose of continuing the benefits afforded to Licensee by this Agreement and Licensee shall have any

and all rights necessary to support the Software for the internal business purposes of Licensee and its subsidiaries, parents, and affiliates. A release event shall mean: (i) Virtual files a petition in voluntary bankruptcy or an assignment for the benefit of creditors, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of insolvents by or against Virtual, except for the filing of a petition in involuntary bankruptcy which is dismissed within sixty (60) days thereafter; (ii) Virtual permanently discontinues offering support or maintenance of the Software or Virtual materially violates its support and maintenance obligations by failing to provide support and maintenance for a period of one hundred eighty (180) days in accordance with the terms of this Agreement; or (iii) Virtual discontinues commercial licensing of the Software. In the event the source code is released to Licensee hereunder, Licensee agrees to use the source code exclusively to support the use of the Software as authorized hereunder. Licensee further agrees to maintain the source code in accordance with the confidentiality provisions of this Agreement and consistent with Virtual's proprietary rights thereto. If this Agreement is rejected by Virtual as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then Licensee may elect to retain its rights as provided in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). The parties intend that no bankruptcy or bankruptcy proceeding, petition, law or regulation (and no other proceeding, petition, law or regulation of a similar nature in any state or foreign jurisdiction) will impede, delay or prevent the use of the source code by Licensee in accordance with the provisions of this Agreement. The source code is an "embodiment" of "intellectual property" as those terms are used in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)).

4. **Maintenance and Support.** Upon payment of applicable fees, Licensee shall be entitled to receive maintenance and support services for use of the Software during Virtual's business hours, Monday through Friday, except normal business holidays, consisting of unlimited telephone and e-mail support for a number of Editors and Administrators defined in Exhibit A of this Agreement and designated by Licensee (as such positions are defined in Virtual's user guides), unlimited electronic access to user manuals, including the User Quick Reference Guide and the Editor and Administrator Guides to the extent such manuals are offered and maintained by Virtual as generally available to its licensees, and unlimited participant enrollment in training classes offered by Virtual. Such maintenance and support services shall be provided by Virtual in accordance with its policies thereon. Licensee shall provide Virtual with reasonable assistance, information and resources to perform all maintenance and support services. Virtual shall not be obligated to provide maintenance and support services in any of the following situations: (a) the Software has been changed, modified or damaged; (b) Licensee fails to implement any major release of the Software provided by Virtual hereunder (i.e., a version release that changes the single digit on the left of the decimal); provided that Licensee's obligation to implement major releases shall not apply if Virtual provides more than one major release in an annual term; (c) the Software is used on a platform not supported by Virtual or otherwise not in accordance with the Software documentation; (d) the problem is caused by Licensee's negligence, hardware malfunction or other causes beyond the reasonable control of Virtual; (e) Licensee has not paid maintenance and support fees due hereunder when due; or (f) this Agreement is terminated in accordance with the terms hereof. In the event Virtual ceases offering maintenance and support services with respect to the Software, Licensee shall be entitled to a pro rata refund of maintenance fees paid for the balance of the annual term remaining after cessation of such services.

5. **Fees and Payment.** In consideration for the grant of the license and the use of the Software as set forth in this Agreement, Licensee agrees to pay Virtual a non-refundable license fee in the amount defined in Exhibit A of this Agreement, payable upon execution of this Agreement. The first year of maintenance and support services as set forth in Section 4 of this Agreement shall be provided by Virtual at no additional charge. Thereafter, Licensee has the option to pay Virtual an annual maintenance and support fee equal to 20% of the acquisition price of the license. If Licensee elects not to renew maintenance and support services and pay the annual maintenance fee for any renewal term and thereafter desires to obtain such services from Virtual, Licensee shall be required to pay a reinstatement fee equal to the amount of the one hundred fifty percent (150%) of the annual maintenance and support fee and an additional one hundred fifty percent (150%) for each year Licensee did not pay for maintenance and support services. Further, Licensee shall be required to pay the annual maintenance

and support fee for the year following the reinstatement date. The annual maintenance and support fee for any maintenance term upon renewal in accordance with the terms hereof shall be fixed at the rate of 20% of the license fees paid by Licensee hereunder for the initial five (5) year term of this BPA. Thereafter, the annual maintenance and support fee shall be determined by the mutual agreement of both parties. All amounts owed by Licensee to Virtual pursuant to this Agreement shall be invoiced and paid by Licensee in compliance with 31 USC 3903.

6. **Verification.** Virtual may, at any time during and after the term of this Agreement, request and gain access to Licensee's premises and to Licensee's servers (wherever located), to the extent permitted within government security constraints, for the purpose of conducting an audit to determine and verify that Licensee is in compliance with the terms and conditions of this Agreement. Licensee will promptly grant such access and cooperate with Virtual in any such compliance review. If any review reveals that Licensee has breached any term or condition contained herein, Licensee shall immediately remedy such breach. In addition, and without limiting the foregoing, during the term of this Agreement and for a period of one (1) year thereafter, upon notice to Licensee by Virtual, Virtual shall have the right to request that Licensee audit its relevant books and records using its internal audit controls and procedures, however not more than one per quarter. The request shall include a scope of the audit as well as a request for any specific information needed by Virtual. Within thirty (30) days following the notice from Virtual, Licensee shall provide Virtual with a report of the results of the audit and a copy of the relevant books, records and other documents reasonably necessary to verify the accuracy of Licensee's audit. Licensee may redact from the books, records and other documents provided to Virtual any information that reveals the identity or confidential information of Licensee or other confidential information that is not relevant to the purposes of the audit. Any disputes concerning the results of an audit of Licensee's books and records shall be addressed in compliance with Contract Disputes Act, Title 41 Chapter 9 – Contract Disputes and FAR 52.212-4. Virtual shall have no right to conduct an audit of Licensee's financial books and records on its or its auditor's behalf except in accordance with this Section and in furtherance of the terms of this Agreement.

7. **Warranty of Functionality.** For a period of ninety (90) days after Licensee is granted access to the Software through the hosted version or delivery of the Software for an installed version, as the case may be (whichever is earlier), Virtual warrants that the Software shall perform in all material respects according to Virtual's specifications concerning the Software when used with the appropriate computer equipment and when operated in accordance with the Software documentation. In the event of any breach or alleged breach of this warranty, Licensee shall promptly notify Virtual. Licensee's sole remedy shall be that Virtual shall correct the Software so that it operates substantially according to the warranty. This warranty shall not apply to the Software if modified or altered by anyone, if damaged, or if used improperly or on an operating environment not approved by Virtual or not operated in accordance with the Software documentation. Licensee acknowledges that the Software may include internal auditing programming to monitor and enforce compliance with the terms of this Agreement restricting the number of servers the Software may reside upon, the number of instances on each server and the number of users, named and concurrent, granted access. Such internal auditing programming may restrict use of the Software in excess of the number of users or the single instance of the Software residing on a single server; provided, however, that upon Licensee's written request and payment of additional license fees, at any time, Virtual shall modify such programming as may be necessary to permit increased usage of the Software subject to the terms of this Agreement. Subject to the foregoing programming, Virtual represents and warrants that: (i) the Software shall not have any system interface intentionally designed to allow it or an authorized user to bypass storage or fetch protection, password checking, system/application security, or obtain control in any authorized state; (ii) there will be nothing designed within the Software that is intended to allow it or an authorized user to compromise the host system's operating system; (iii) the Software shall not have any back doors to the computer system; (iv) the directory structure of the Software and its access can be controlled and maintained by a systems administrator(s) of Licensee or, in the case of the hosted version of the Software, a server administrator of Licensee; provided that such personnel is qualified in systems or server administration, as the case may be, specific to the platform for the Software utilized by Licensee; and (v) Virtual uses commercially reasonable efforts to test or protect the Software against any virus, time bombs, Trojan horses, and/or other intentionally disabling devices,

including (without limitation) codes, commands, or instructions designed to maliciously access, alter, delete, damage or disable the Software or any Licensee software, hardware, or data.

8. **Software Enhancements.** For so long as Licensee is entitled to receive maintenance and support services hereunder and has made payment required therefore, Virtual shall provide to Licensee any new, corrected or enhanced versions of the Software as created by Virtual. Such enhancements may include modifications to the Software which increase the speed, efficiency or ease of use of the Software, correct errors in the Software or add additional capabilities or functionality to the Software. This does not include additional modules nor does it include any additional standalone applications that are integrated with the Software. Licensee acknowledges that Virtual is under no obligation to update, modify, or enhance the Software, except defect or problem fixes as set forth in Section 7 and Licensee acknowledges that changes in technology or other factors may render the Software obsolete.

9. **Defect Resolution.** For so long as Licensee is entitled to receive maintenance and support services hereunder and has made payment required therefore, Virtual shall use reasonable commercial efforts to review, analyze, resolve, and correct any material deficiency or problem in using, operating, or executing the Software or any substantial deviation from the actual performance, utility, and functionality of the Software as represented in the Software documentation issued by Virtual from time to time ("Defects") within a reasonable time after such Defect is reported to Virtual by Licensee. Virtual shall utilize qualified software engineers for the purpose of supporting the Software and resolving or correcting Defects hereunder. If appropriate as determined in the reasonable professional judgment of Virtual, Virtual shall provide support on-site at the facilities of Licensee or its affiliates (as the case may be) or any other location as agreed to in writing by the parties.

10. **Warranty Disclaimer.** EXCEPT THE SPECIFIC WARRANTIES SET FORTH IN SECTION 7 OF THIS AGREEMENT, VIRTUAL DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE GOODS AND SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE SOFTWARE, EXCEPT AS EXPRESSLY PROVIDED HEREIN. VIRTUAL HEREBY EXCLUDES ALL IMPLIED WARRANTIES TO THE EXTENT PERMITTED BY LAW, INCLUDING, SPECIFICALLY, ANY IMPLIED WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. VIRTUAL HEREBY EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY, OR OF MERCHANTABILITY, OR OF FITNESS FOR ANY PURPOSE, PARTICULARLY, SPECIFIC OR OTHERWISE, OR OF NONINFRINGEMENT, CONCERNING THE SOFTWARE AND ANY SERVICES PROVIDED HEREUNDER. VIRTUAL DOES NOT WARRANT THAT ALL ERRORS IN THE SOFTWARE CAN OR WILL BE CORRECTED OR THAT THE FUNCTIONALITY OF THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS.

11. **Limitation of Liability and Indemnification.**

A. Excluding liability for third party claims arising out of Section 11 B hereof, neither party shall be responsible for, and neither party shall pay, any amount of incidental, consequential or other indirect damages, whether based on lost revenue or otherwise, regardless of whether the party was advised of the possibility of such losses in advance. Excluding liability for third party claims arising out of Section 11 B hereof and liability for Licensee's breach of the license grant under Section 1 or restrictions under Section 2, in no event shall either party's liability hereunder exceed the license fees paid, or to be paid, in accordance with Section 5 hereof, regardless of whether the claim is based on contract, tort, strict liability, product liability or otherwise. Virtual shall not be responsible for any costs or damages associated with the loss of use of the Software or any other resources, loss of business or profits, any loss of data, or costs of substitute programs. Licensee expressly acknowledges and agrees that despite the nature of the Software, Virtual shall not be responsible for any damages relating to business continuity or the failure thereof.

B. Virtual represents that, to its knowledge, no portion of the Software is derived from any copyrighted material or is subject to any interest, proprietary or otherwise that is not properly licensed by Virtual, or any asserted claim of any third party. Virtual agrees to indemnify and hold harmless Licensee and its subsidiaries, parents, and affiliates under its control, and their directors, officers, employees and agents, against any and all losses, liabilities, judgments, awards and costs (including reasonable legal fees and expenses) arising out of or related to any claim that Licensee's authorized use or possession of the Software, or the license granted hereunder, infringes or violates any United States patent, copyright, trade secret or other proprietary right of any third party. If the Software or any portion thereof is held, or in Virtual's reasonable opinion is likely to be held, to infringe or violate any United States patent, copyright, trade secret, or other proprietary right of any third-party, Virtual may within a reasonable time not to exceed sixty (60) days, at its option and sole expense, either: (i) secure for Licensee the right to continue use of such item; (ii) replace such item with a substantially equivalent item not subject to any such claim; or (iii) modify such items so that it becomes no longer subject to any such claim; provided, however, that after any such replacement or modification, the Software or portion thereof must continue to substantially conform to any requirements or specifications, and further provided, that any modified or replaced item shall be subject to any representation or warranty contained herein. Anything in this Section to the contrary notwithstanding, Virtual shall have no liability for any third party claim of infringement based upon (i) Licensee fails to implement any major release of the Software provided by Virtual hereunder (i.e., a version release that changes the single digit on the left of the decimal) if such infringement would have been avoided by Licensee's implementation of such major release; provided that Licensee's obligation to implement major releases shall not apply if Virtual provides more than one major release in an annual term; (ii) use, operation or combination of the applicable Software with non-Virtual programs, data, equipment or documentation not recommended or acknowledged by Virtual, if such infringement would have been avoided but for such use, operation or combination; or (iii) the use of the Software beyond the scope of the license provided hereunder if such infringement would have been avoided but for such use.

12. **Termination.** This Agreement shall be effective on the date it is fully executed and shall continue until terminated in compliance with FAR 52.212-4.

13. **Internet Disclaimer.** Licensee understands and agrees that use of or connection to the Internet is inherently insecure and that connection to the Internet provides opportunity for unauthorized access by a third party to Virtual's or Licensee's computer systems (including, but not limited to, the Site), networks and any and all information stored therein. INFORMATION TRANSMITTED AND RECEIVED THROUGH THE INTERNET CANNOT BE EXPECTED TO REMAIN CONFIDENTIAL, AND VIRTUAL DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY AND NON-CORRUPTION OF ANY INFORMATION SO TRANSMITTED, OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. VIRTUAL SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF LICENSEE'S CONNECTION TO OR USE OF THE INTERNET, AND VIRTUAL SHALL NOT BE RESPONSIBLE FOR ANY USE BY LICENSEE OR ANY SUBSCRIBER OR PATRON OF LICENSEE'S INTERNET CONNECTION IN VIOLATION OF ANY RULE, LAW OR REGULATION. Virtual shall not be responsible for failure of Licensee to access and use the hosted version of the Software and/or the Site as a result of Internet network outages or other causes not within the control of Virtual.

14. **Notice.** Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services at the address set forth in this Agreement.

15. **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

16. **Survival.** Any provision of this Agreement that requires or reasonably contemplates the performance or existence of obligations by either party after the termination of this Agreement shall survive the termination period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year hereinafter written.

VIRTUAL CORPORATION, INC.

By: _____
Name:
Title:

LICENSEE

By: _____
Name:
Title: