

Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20160504

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2H ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.

 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

- (d) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.
- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

Virtru Pro Subscription Agreement

Terms and Conditions

1. Definitions

For purposes of this Agreement, the following terms shall have the following meanings:

1.1 “Customer Content” means the information and content Customer and Customer Users create and/or distribute using the Virtru Pro Services.

1.2 “Customer User” means any Customer-authorized employee, contractor or agent who is permitted to utilize the Virtru Pro Services in accordance with the terms and conditions of this Agreement.

1.3 “Derivative Work” means a new or modified work that is based on or derived from a preexisting work, including, without limitation, a work that, in the absence of a license, would infringe the copyright in such preexisting work or that uses trade secrets or other proprietary information with respect to such preexisting work.

1.4 “Materials” means the Virtru Pro software (including any object code, executable files, or browser plug-ins) or materials related thereto provided by Virtru to Customer hereunder, including, without limitation, any software downloaded from Virtru’s website or from the Virtru Pro Services; any related materials and documentation therefor; and any modifications, error corrections, bug fixes, new releases, enhanced functionality (including platform integration features not generally available to non-commercial users of Virtru’s software) or other updates thereto that may be provided hereunder by Virtru to Customer during the term of this Agreement.

1.5 “Order Form” means the Virtru-generated order documentation executed by Virtru and Customer that forms a part of this Agreement.

1.6 “Support Services” means the delivery of front-end support to Customer Users by telephone, email or other methods and the training of Customer Users, in each case relating to the use of the Materials and Virtru Pro Services.

1.7 “Third Party Services” means any services used in connection with the Materials that are hosted by a party other than Virtru or Licensee.

1.8 “Virtru Application Data” means the Customer- and Customer User-related data that is necessary to operate, improve and maintain the Virtru Pro Services, including, without limitation, key access policies (including updates or revisions to those policies), authorized user email addresses, IP addresses, access requests, error reports, crash reports, platform information, sender email addresses, recipient email addresses, encryption keys, message expiration dates and times, and display names for files and email subject lines.

1.9 “Virtru Pro Services” means the Virtru-hosted services made available by Virtru to Customer in connection with the Materials.

2. Rights in Materials and to use Service

2.1 Grant of Rights. Subject to the terms and conditions of this Agreement, Virtru (a) hereby grants to Customer a restricted, non-exclusive, nontransferable, nonsublicensable, royalty-free (except as set forth in Section 2.3), revocable right to use, during the term of this Agreement and in accordance with the documentation provided by Virtru, the Materials (the “License”), and (b) Virtru will make the Virtru Pro Services available to Customer pursuant to this Agreement during the term of this Agreement. Except as set forth in this Section 2.1, no other right or license of any kind is granted by Virtru to Customer hereunder with respect to the Materials or the Virtru Pro Services. Customer acknowledges and agrees that, unless otherwise agreed in writing between the parties, Customer shall be solely responsible for procuring and complying with any license or right to use any Third Party Services,

including those offered by Customer's email services provider. Neither this Agreement nor Virtru's Privacy Policy (defined below) shall apply with respect to data stored on, manipulated, or transmitted by means of your use of Third Party Materials.

2.2 Restrictions. Customer shall not, without the prior written consent of Virtru: (a) copy all or any portion of the Materials or Virtru Pro Services; (b) decompile, disassemble, scrape or otherwise reverse engineer the Materials, Virtru Pro Services or any portion thereof, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Materials or used in the Virtru Pro Services or any portion thereof; (c) modify, translate or create any Derivative Works based upon the Materials or Virtru Pro Services; (d) distribute, disclose, market, rent, lease, assign, sublicense, pledge or otherwise transfer the Materials, in whole or in part, to any third party or export the Materials outside the United States; (e) engage in any activity that interferes with or disrupts the Virtru Pro Services (or the servers and networks that are connected to the Virtru Pro Services); (f) remove or alter any copyright, trademark, trade name or other proprietary notices, legends, symbols or labels appearing on or in copies of the Materials or the Virtru Pro Services; (g) perform, or release the results of, benchmark tests or other comparisons of the Materials or Virtru Pro Services with other programs or services; (h) transfer the Materials to any computer other than a computer owned by Customer and used by Customer in Customer's operations; (i) permit the Materials or Virtru Pro Services to be used for processing the data of any third party; (j) incorporate the Materials, Virtru Pro Services or any portion thereof into any other program, product or service, or use the Materials or Virtru Pro Services to provide similar services or functionality to third parties; (k) provide any third party with access to the Virtru Pro Services other than as expressly permitted herein; (l) trade or resell the Materials or Virtru Pro Services for any purpose; (m) use the Materials or Virtru Pro Services for any unlawful or tortious purpose; (n) use the Virtru Pro Services to transmit Customer Content that is illegal or that infringes or misappropriates any third party's privacy or intellectual property rights; (o) use the Virtru Pro Services to transmit any viruses, worms, time bombs, Trojan horses or any other harmful or malicious code; (p) use the Materials or Virtru Pro Services for any purpose where an accurate verification of identity has critical or life-threatening consequences; or (q) use the Materials or Virtru Pro Services for any purpose other than in accordance with the terms and conditions of this Agreement or Virtru's then-current privacy policy (see Schedule D)(the "Privacy Policy"). Customer shall ensure that all Customer Users of the Virtru Pro Service and Materials comply with the terms and conditions of this Agreement. Customer shall be responsible for compliance with this Agreement by each Customer User and it shall monitor and manage all Customer Users in connection with this Agreement.

2.3 Fees; Payment. In consideration of the Virtru's provision of the Virtru Pro Services and Materials, Customer shall make payments to Carahsoft Technology Corporation (Carahsoft) and Carahsoft shall pay Virtru in accordance with the terms set forth on the Order Form.

2.4 Seats; Reporting. Customer shall initially be permitted to use the Materials and Virtru Pro Services with respect to the number of seats set forth on the Order Form (the "Baseline Seat Count"). Each seat shall be used by one Customer User. During the term of this Agreement, Customer will report to Virtru the total number of users of the Materials and Virtru Pro Services on an annual basis. Such report will be submitted to sales@virtru.com and shall be due thirty (30) days prior to each anniversary of the date of this Agreement (each, a "Reporting Date") based on the actual number of users as of the date thirty (30) days prior to such Reporting Date (each, a "Seat Count Date"). If the actual number of Customer Users as of any Seat Count Date is higher than the Baseline Seat Count, Carahsoft, on behalf of Virtru, shall invoice Customer for the "Subscription Fee per Seat" set forth in the Order Form (the "Subscription Fee") for each such additional user for any Renewal Term.

2.5 Adjustment Events. In addition to the annual reporting required under Section 2.4 above, Customer shall report to Virtru any increase of ten percent (10%) or more in the aggregate number of Customer Users in excess of the Baseline Seat Count that occurs between Reporting Dates (an "Adjustment Event"). Carahsoft, on behalf of Virtru, shall invoice Customer a prorated Subscription Fee for each such additional user for the remaining portion of the applicable term and for any Renewal Term.

2.6 Seat Count Audit. At any time during the term of this Agreement, Virtru shall have the right to audit Customer's usage of the Virtru Pro Services and Materials (a "Seat Count Audit"). If the actual number of Customer Users as of the date of any Seat Count Audit is higher than the Baseline Seat Count, Carahsoft, on behalf of Virtru, shall invoice Customer for the "Subscription Fee per Seat" set forth in the Order Form for the remaining portion of the applicable term and for any subsequent Renewal Term.

3. Support

3.1 General. Virtru will provide support to Customer and Customer Users through Virtru's generally available online ticketing and support system. The Virtru Pro Services may be inaccessible from time to time due to planned or unplanned maintenance, or due to unavailability of third-party sites or servers. Except as expressly provided in this Section 3 or as may otherwise be provided under a written support agreement entered into by Virtru and Customer, Virtru is under no obligation to support the Materials or Virtru Pro Services in any way, nor to provide any modification, error correction, bug fix, new release or other update (each an "Update") to or for the Materials or Virtru Pro Service. In the event Virtru, in its sole discretion, supplies or makes available any Update to Customer, such Update shall be deemed to be part of the Materials or Virtru Pro Services (as applicable) hereunder and shall be subject to the terms and conditions of this Agreement.

3.2 Support Services. Virtru will provide Customer Users with Support Services. Virtru will provide the Support Services during Virtru's normal business hours, Monday to Friday, except holidays. Virtru will respond to Customer support inquiries or requests within one business day. 3.3 Updates Virtru will provide Customer with one copy of each Update made generally available by Virtru to its customers that pay for customer support and maintenance during the term of this Agreement.

4. Proprietary Rights

4.1 General. As between Virtru and Customer, Virtru retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Materials, Virtru Pro Services and any portion thereof, including, without limitation, any copy or Derivative Work of the Materials, Virtru Pro Services or any portion thereof and any Update thereto. Customer agrees to take any action reasonably requested by Virtru to evidence, maintain, enforce or defend the foregoing. Customer shall not take any action to jeopardize, limit or interfere in any manner with Virtru's ownership of and rights with respect to the Materials, Virtru Pro Services or any Derivative Work or Update. Customer shall have only those rights in or to the Materials, Virtru Pro Services and any Derivative Work or Update granted to it pursuant to this Agreement.

4.2 Feedback. Customer and Customer Users may provide suggestions, requests, recommendations and other feedback concerning Customer's use of the Materials and Virtru Pro Services (including, without limitation, any errors or difficulties discovered with respect thereto) (the "Feedback"). Customer agrees that all Feedback shall be the sole property of Virtru and Virtru may use such Feedback at its discretion without the consent of Customer.

5. Customer Content and Application Data

5.1 Acknowledgements. Customer acknowledges that Virtru does not monitor Customer Content or the content third parties create and/or distribute using the Virtru Pro Services, nor does Virtru have the ability to decrypt Customer Content that has been encrypted. Customer acknowledges that Virtru has no responsibility (or related liability) for backing up any Customer Content and that, following expiration or termination of this Agreement, Customer may no longer have access to Customer Content.

5.2 Ownership of Customer Content. As between Virtru and Customer, Customer retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Customer Content and any portion thereof.

5.3 License to Use Virtru Application Data. Customer hereby grants to Virtru a worldwide, non-exclusive, transferable, sublicensable, royalty-free, perpetual, irrevocable right and license to use, reproduce, distribute, adapt, create Derivative Works of, and transmit the Virtru Application Data for the purpose of performing its obligations hereunder, including the operation, improvement and maintenance of the Virtru Pro Services, and for any other purposes permitted under the Privacy Policy.

6. Proprietary Information

6.1 Proprietary Information. Both parties acknowledge that, in the course of this Agreement each may obtain confidential or proprietary information of the other party (“Proprietary Information”). “Proprietary Information” will include, without limitation, (a) trade secrets, know-how, inventions (whether or not patentable), techniques, processes, programs (whether in source code or object code form), ideas, algorithms, formulas, schematics, testing procedures, software design and architecture, computer code, documentation, design and functional specifications, product requirements, problem reports, performance information, software documents, hardware, devices, designs, drawings, unpublished patent applications, data, plans, strategies and forecasts, and (b) technical, engineering, manufacturing, product, marketing, servicing, financial, personnel and other information. Virtru’s “Proprietary Information” will include, without limitation, the Materials (including all Derivative Works and Updates) and all confidential information related thereto provided by Virtru to Customer in connection with this Agreement. Virtru’s Proprietary Information shall, as between Customer and Virtru, belong solely to Virtru, and Customer’s Proprietary Information shall, as between Customer and Virtru, belong solely to Customer.

6.2 Use and Disclosure Restrictions. Each party agrees (a) to protect the other party’s Proprietary Information from unauthorized dissemination and use; (b) to use the other party’s Proprietary Information only for the performance of this Agreement and the exercise of any rights under this Agreement; (c) not to disclose any Proprietary Information, or any part or parts thereof, to any of its employees, agents, contractors or any other individuals except to its employees who are under confidentiality obligations no less restrictive than the requirements of this Section 6; (d) with respect to Customer, not to disclose or otherwise provide to any third party, without the prior written consent of Virtru or as otherwise set forth in a separate written agreement between the parties hereto entered into after the date hereof, as applicable, any of Virtru’s Proprietary Information, materials or any data or other information produced, obtained or created by Customer in connection with Customer’s use of the Materials, including, without limitation, the existence of this Agreement and the existence and possible applications of the Materials; (e) to undertake whatever action is necessary (or authorize the other party to do so in the name of such party) to prevent or remedy any breach of such party’s confidentiality obligations herein set forth or any other unauthorized disclosure of any Proprietary Information by its current or former employees, agents or contractors; and (f) not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Proprietary Information provided to such party by the other party.

6.3 Exclusions. The foregoing restrictions on disclosure and use shall not apply with respect to any Proprietary Information that: (a) is or becomes publicly known through no act or omission of the other party; (b) was rightfully known by the receiving party without confidential or proprietary restriction before receipt from the other party, as evidenced by the receiving party’s contemporaneous written records; (c) becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party that does not owe a duty of confidentiality with respect to such Proprietary Information; or (d) is independently developed without the use of the Proprietary Information as evidenced by the receiving party’s written records. In addition, a party may use or disclose Proprietary Information to the extent (i) approved in writing by the other party and (ii) a party is legally compelled to disclose such Proprietary Information, provided, however, that prior to any such compelled disclosure, such party shall cooperate fully with the other party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Proprietary Information. Further, each party may disclose the terms and conditions of this Agreement: (A) in confidence, to legal counsel; (B) in

confidence, to accountants, banks, and financing sources and their advisors; and (C) in connection with the enforcement of this Agreement or any rights hereunder.

6.4 Equitable Relief. Each party agrees that, due to the unique nature of the other party's Proprietary Information, the unauthorized disclosure or use of the other party's Proprietary Information or any other breach of any provision of this Section 6 will cause irreparable harm and significant injury to the other party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, each party agrees that the other party, in addition to any other available remedies, shall have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 6 without the necessity of posting any bond or other security. Each party shall notify the other party in writing immediately upon becoming aware of any such breach or threatened breach.

7. No Warranty

THE MATERIALS AND VIRTRU PRO SERVICES ARE PROVIDED "AS IS" AND VIRTRU DISCLAIMS ALL IMPLIED WARRANTIES RELATING TO THE MATERIALS AND VIRTRU PRO SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. VIRTRU DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION INCLUDED IN, TRANSMITTED THROUGH OR MADE AVAILABLE BY THE MATERIALS OR VIRTRU PRO SERVICES, WHICH MAY INCLUDE INACCURACIES OR ERRORS. FOR THE AVOIDANCE OF DOUBT, VIRTRU MAKES NO WARRANTIES OR REPRESENTATIONS AND WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY THIRD PARTY MATERIALS. VIRTRU DOES NOT REPRESENT OR IMPLY THAT IT ENDORSES ANY THIRD PARTY MATERIALS, OR THAT IT BELIEVES THE OPERATION OF ANY THIRD PARTY MATERIALS WILL BE ACCURATE, USEFUL OR NON-HARMFUL. THIRD PARTY MATERIALS MAY HAVE TECHNICAL INACCURACIES, MAY CAUSE MISTAKES OR ERRORS, AND MAY TRANSMIT, STORE, OR OTHERWISE MANIPULATE DATA IN A MANNER THAT IS OBJECTIONABLE TO CUSTOMER. CUSTOMER IS RESPONSIBLE FOR TAKING PRECAUTIONS TO PROTECT ITSELF AND CUSTOMER'S COMPUTER SYSTEMS IN CONNECTION WITH THE USE OF THIRD PARTY MATERIALS.

8. Virtru's Entire Liability

TO THE EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY: (a) IN NO EVENT SHALL VIRTRU OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, INADVERTENT DISCLOSURE OF DATA, OR INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR OTHER ECONOMIC LOSS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT HEREOF, EVEN IF VIRTRU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER CAUSED, AND (b) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, VIRTRU'S ENTIRE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT HEREOF, UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE), IF ANY, SHALL NOT EXCEED TEN THOUSAND DOLLARS (US\$10,000).

9. Term and Termination

9.1 Term. This Agreement shall commence on the Effective Date and, unless sooner terminated pursuant to the terms hereof, shall continue in full force and effect for one (1) year (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term"), unless either party provides the other party with written notice of its intent not to renew at least thirty (30) days prior to the end of the then-

current term. The automatic renewal of this Agreement will be for the Baseline Seat Count, as adjusted pursuant to Sections 2.4, 2.5 and/or 2.6, on the same payment terms as set forth on the cover page of this Agreement.

9.2 Termination. Either party may terminate this Agreement immediately upon written notice to the other party if the other party fails to perform any of its duties or obligations hereunder and, except with respect to Customer's breach of Section 2.1 or 2.2, which breach shall not be subject to any cure period, fails to cure such default within thirty (30) days following receipt of written notice from the non-defaulting party specifying the occurrence or existence of the default. Customer shall notify Virtru within twenty-four (24) hours of Customer becoming aware of any breach (other than by Virtru) of the terms and conditions of this Agreement, including, without limitation, Sections 2 and 5.

9.3 Effect of Termination. Upon the expiration or termination of this Agreement, the rights granted to Customer hereunder shall terminate, Customer will cease all use of the Materials, return to Virtru or destroy the Materials in its possession, and, upon Virtru's request, so certify such actions to Virtru. Any costs incurred in returning or destroying the Materials upon termination shall be borne by Customer. The provisions of Sections 2.2, 4.2, 5, 6, 7, 8, and 9.3, and 10 and those provisions of the Order Form that by their nature should survive expiration or termination of this Agreement shall survive the expiration or any termination of this Agreement. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a party shall be without prejudice to any other right or remedy of such party under this Agreement or applicable law.

10. General Provisions

10.1 Notices. Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) seven (7) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the cover page of this Agreement and to the notice of the person executing this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 10.1).

10.2 Termination. This Agreement may not be assigned, in whole or part, whether voluntarily, by operation of law or otherwise, by Customer without the prior written consent of Virtru. Subject to the preceding sentence, the rights and liabilities of the parties hereto shall bind, and inure to the benefit of, their respective assignees and successors and is binding on the parties and their successors and assigns. Any attempted assignment other than in accordance with this Section 10.2 shall be null and void.

10.3 Effect of Termination. This Agreement is to be construed in accordance with and governed by the internal laws of the Commonwealth of Virginia (but expressly excluding the Uniform Computer Information Transactions Act ("UCITA") as enacted in Virginia) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the Commonwealth of Virginia (excluding UCITA) to the rights and duties of the parties. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in a federal court in the Eastern District of Virginia or in state courts with jurisdiction over Fairfax County, Virginia, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.

10.4 Attorneys' Fees. If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this Agreement or the breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a dismissal without prejudice, shall be entitled to the full amount of all reasonable expenses, including all court costs, arbitration fees and actual attorneys' fees paid or incurred in good faith.

10.5 Waiver. The waiver by either party of a breach of or a default under any provision of this Agreement, shall be in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

10.6 Severability. If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby.

10.7 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the parties. Neither party nor its agents have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times shall continue to be, that of independent contractors.

10.8 Restricted Rights. If Customer is an agency or instrumentality of the United States Government, the Materials are “commercial computer software” and “commercial computer software documentation,” and, pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use reproduction and disclosure of the Materials are governed by the terms of this Agreement.

SCHEDULE A

TERMS AND CONDITIONS TO VIRTRU PRO SUBSCRIPTION AGREEMENT

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

1.1 “Derivative Work” shall mean a new or modified work that is based on or derived from a preexisting work, including, without limitation, a work that, in the absence of a license, would infringe the copyright in such preexisting work or that uses trade secrets or other proprietary information with respect to such preexisting work.

1.2 “Materials” shall mean the Virtru Pro software (including any object code, executable files, or browser plug-ins) or materials related thereto provided by Virtru to Customer hereunder, including, without limitation, any software downloaded from Virtru’s website or from the Virtru Pro Services; any related materials and documentation therefor; and any modifications, error corrections, bug fixes, new releases, enhanced functionality (including platform integration features not generally available to non-commercial users of Virtru’s software) or other updates thereto that may be provided hereunder by Virtru to Customer during the term of this Agreement.

1.3 “Third Party Services” shall mean any services used in connection with the Materials that are hosted by a party other than Virtru or Licensee.

1.4 “Virtru Pro Services” shall mean the Virtru hosted services made available by Virtru to Customer in connection with the Materials.

2. RIGHTS IN MATERIALS AND TO USE SERVICE

2.1 Grant of Rights. Subject to the terms and conditions of this Agreement, Virtru (a) hereby grants to Customer a restricted, non-exclusive, nontransferable, nonsublicensable, royalty-free (except as set forth in Section 2.3), revocable right to use, during the term of this Agreement and in accordance with the documentation provided by Virtru, the Materials (the “License”), and (b) Virtru will make the Virtru Pro Services available to Customer pursuant to this Agreement during the term of this Agreement. Except as set forth in this Section 2.1, no other right or license of any kind is granted by Virtru to Customer hereunder with respect to the Materials or the Virtru Pro Services. Customer acknowledges and agrees that, unless otherwise agreed in writing between the parties, Customer shall be solely responsible for procuring and complying with any license or right to use any Third Party Services, including those offered by Customer’s email services provider.

2.2 Restrictions. Customer shall not, without the prior written consent of Virtru: (a) copy all or any portion of the Materials or Virtru Pro Services; (b) decompile, disassemble, scrape or otherwise reverse engineer the Materials, Virtru Pro Services or any portion thereof, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Materials or used in the Virtru Pro Services or any portion thereof; (c) modify, translate or create any Derivative Works based upon the Materials or Virtru Pro Services; (d) distribute, disclose, market, rent, lease, assign, sublicense, pledge or otherwise transfer the Materials, in whole or in part, to any third party or export the Materials outside the United States; (e) remove or alter any copyright, trademark, trade name or other proprietary notices, legends, symbols or labels appearing on or in copies of the Materials or the Virtru Pro Services; (f) perform, or release the results of, benchmark tests or other comparisons of the Materials or Virtru Pro Services with other programs or services; (g) transfer the Materials to any computer other than a computer owned by Customer and used by Customer in Customer’s operations; (h) permit the Materials or Virtru Pro Services to be used for processing the data of any third party; (i) incorporate the Materials, Virtru Pro Services or any portion thereof into any other program, product or service, or use the Materials or Virtru Pro Services to provide similar services or functionality to third parties; (j) provide any third party with

access to the Virtru Pro Services other than as expressly permitted herein or by the Terms of Service (as defined below); (k) use the Materials or Virtru Pro Services for any unlawful or tortious purpose; or (l) use the Materials or Virtru Pro Services for any purpose other than in accordance with the terms and conditions of this Agreement or Virtru's then-current terms of service (see Schedule C) (the "Terms of Service"). Customer shall ensure that all Customer end users of the Virtru Pro Service and Materials comply with the terms and conditions of this Agreement. Customer shall be responsible for compliance with this Agreement by each Customer end user and it shall monitor and manage all Customer users in connection with this Agreement.

2.3 Fees; Payment. In consideration of the Virtru's provision of the Virtru Pro Services and Materials, Customer shall make payments to Virtru in accordance with the terms set forth on the cover page of this Agreement. Sales and use tax, VAT, or GST are Customer's sole responsibility, and Customer acknowledges and agrees that all fees are exclusive of all such taxes.

2.4 Seats; Reporting. Customer shall initially be permitted to use the Materials and Virtru Pro Services with respect to the number of seats set forth on the cover page of this Agreement (the "Baseline Seat Count"). Each seat shall be used by one Customer user. During the term of this Agreement, Customer will report to Virtru the total number of users of the Materials and Virtru Pro Services on an annual basis. Such report will be submitted to sales@virtru.com and shall be due thirty (30) days prior to each anniversary of the date of this Agreement (each, a "Reporting Date") based on the actual number of users as of the date thirty (30) days prior to such Reporting Date (each, a "Seat Count Date"). If the actual number of Customer users as of any Seat Count Date is higher than the Baseline Seat Count, Carahsoft, on behalf of Virtru, shall invoice Customer for the "Subscription Fee per Seat" set forth on the cover page of this Agreement (the "Subscription Fee") for each such additional user for any Renewal Term.

2.5 Adjustment Events. In addition to the annual reporting required under Section 2.4 above, Customer shall report to Virtru any increase of ten percent (10%) or more in the aggregate number of Customer users in excess of the Baseline Seat Count that occurs between Reporting Dates (an "Adjustment Event"). Carahsoft, on behalf of Virtru, shall invoice Customer a prorated Subscription Fee for each such additional user for the remaining portion of the applicable term and for any Renewal Term.

2.6 Seat Count Audit. At any time during the term of this Agreement, Virtru shall have the right to audit Customer's usage of the Virtru Pro Services and Materials (a "Seat Count Audit"). If the actual number of Customer users as of the date of any Seat Count Audit is higher than the Baseline Seat Count, Carahsoft, on behalf of Virtru, shall invoice Customer for the "Subscription Fee per Seat" set forth on the cover page of this Agreement for the remaining portion of the applicable term and for any Renewal Term.

3. SUPPORT

Virtru will provide support to Customer and its end users through Virtru's generally available online ticketing and support system. Except as expressly provided in Schedule B, which is incorporated herein by reference, in this Section 3 or as may otherwise be provided under a written support agreement entered into by Virtru and Customer, Virtru is under no obligation to support the Materials or Virtru Pro Services in any way, nor to provide any modification, error correction, bug fix, new release or other update (each an "Update") to or for the Materials or Virtru Pro Service. In the event Virtru, in its sole discretion, supplies or makes available any Update to Customer, such Update shall be deemed to be part of the Materials or Virtru Pro Services (as applicable) hereunder and shall be subject to the terms and conditions of this Agreement.

4. PROPRIETARY RIGHTS

4.1 General. As between Virtru and Customer, Virtru retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Materials, Virtru Pro Services and any portion thereof, including, without limitation, any copy or Derivative Work of the Materials, Virtru Pro Services or any portion thereof and any Update thereto. Customer agrees to take any action reasonably requested by Virtru to

evidence, maintain, enforce or defend the foregoing. Customer shall not take any action to jeopardize, limit or interfere in any manner with Virtru's ownership of and rights with respect to the Materials, Virtru Pro Services or any Derivative Work or Update. Customer shall have only those rights in or to the Materials, Virtru Pro Services and any Derivative Work or Update granted to it pursuant to this Agreement.

4.2 Feedback. Customer and its authorized users may provide suggestions, requests, recommendations and other feedback concerning Customer's use of the Materials and Virtru Pro Services (including, without limitation, any errors or difficulties discovered with respect thereto) (the "Feedback"). Customer agrees that all Feedback shall be the sole property of Virtru and Virtru may use such Feedback at its discretion without the consent of Customer.

5. PROPRIETARY INFORMATION

5.1 Proprietary Information. Both parties acknowledge that, in the course of this Agreement each may obtain confidential or proprietary information of the other party ("Proprietary Information"). "Proprietary Information" will include, without limitation, (a) trade secrets, know-how, inventions (whether or not patentable), techniques, processes, programs (whether in source code or object code form), ideas, algorithms, formulas, schematics, testing procedures, software design and architecture, computer code, documentation, design and functional specifications, product requirements, problem reports, performance information, software documents, hardware, devices, designs, drawings, unpublished patent applications, data, plans, strategies and forecasts, and (b) technical, engineering, manufacturing, product, marketing, servicing, financial, personnel and other information. Virtru's "Proprietary Information" will include, without limitation, the Materials (including all Derivative Works and Updates) and all confidential information related thereto provided by Virtru to Customer in connection with this Agreement. Virtru's Proprietary Information shall, as between Customer and Virtru, belong solely to Virtru, and Customer's Proprietary Information shall, as between Customer and Virtru, belong solely to Customer.

5.2 Use and Disclosure Restrictions. Each party agrees (a) to protect the other party's Proprietary Information from unauthorized dissemination and use; (b) to use the other party's Proprietary Information only for the performance of this Agreement and the exercise of any rights under this Agreement; (c) not to disclose any Proprietary Information, or any part or parts thereof, to any of its employees, agents, contractors or any other individuals except to its employees who are under confidentiality obligations no less restrictive than the requirements of this Section 5; (d) with respect to Customer, not to disclose or otherwise provide to any third party, without the prior written consent of Virtru or as otherwise set forth in a separate written agreement between the parties hereto entered into after the date hereof, as applicable, any of Virtru's Proprietary Information, materials or any data or other information produced, obtained or created by Customer in connection with Customer's use of the Materials, including, without limitation, the existence of this Agreement and the existence and possible applications of the Materials; (e) to undertake whatever action is necessary (or authorize the other party to do so in the name of such party) to prevent or remedy any breach of such party's confidentiality obligations herein set forth or any other unauthorized disclosure of any Proprietary Information by its current or former employees, agents or contractors; and (f) not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Proprietary Information provided to such party by the other party.

5.3 Exclusions. The foregoing restrictions on disclosure and use shall not apply with respect to any Proprietary Information that: (a) is or becomes publicly known through no act or omission of the other party; (b) was rightfully known by the receiving party without confidential or proprietary restriction before receipt from the other party, as evidenced by the receiving party's contemporaneous written records; (c) becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party that does not owe a duty of confidentiality with respect to such Proprietary Information; or (d) is independently developed without the use of the Proprietary Information as evidenced by the receiving party's written records. In addition, a party may use or disclose Proprietary Information to the extent

(i) approved in writing by the other party and (ii) a party is legally compelled to disclose such Proprietary Information, provided, however, that prior to any such compelled disclosure, such party shall cooperate fully with the other party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of

such disclosure and/or use of the Proprietary Information. Further, each party may disclose the terms and conditions of this Agreement: (A) in confidence, to legal counsel; (B) in confidence, to accountants, banks, and financing sources and their advisors; and (C) in connection with the enforcement of this Agreement or any rights hereunder.

5.4 Equitable Relief. Each party agrees that, due to the unique nature of the other party's Proprietary Information, the unauthorized disclosure or use of the other party's Proprietary Information or any other breach of any provision of this Section 5 will cause irreparable harm and significant injury to the other party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, each party agrees that the other party, in addition to any other available remedies, shall have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 6 without the necessity of posting any bond or other security. Each party shall notify the other party in writing immediately upon becoming aware of any such breach or threatened breach.

6. NO WARRANTY

THE MATERIALS AND VIRTRU PRO SERVICES ARE PROVIDED "AS IS" AND VIRTRU DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, RELATING TO THE MATERIALS AND VIRTRU PRO SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. VIRTRU DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION INCLUDED IN, TRANSMITTED THROUGH OR MADE AVAILABLE BY THE MATERIALS OR VIRTRU PRO SERVICES, WHICH MAY INCLUDE INACCURACIES OR ERRORS. VIRTRU DOES NOT GUARANTEE THAT THE MATERIALS OR VIRTRU PRO SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT BUGS OR MALFUNCTIONS WILL BE CORRECTED OR THAT THE MATERIALS, VIRTRU PRO SERVICES OR VIRTRU'S SERVERS ARE FREE OF HARMFUL COMPONENTS. VIRTRU DOES NOT GUARANTEE THAT THE MATERIALS OR VIRTRU PRO SERVICES ARE ACCURATE, WITHOUT ERROR OR RELIABLE.

7. VIRTRU'S ENTIRE LIABILITY

TO THE EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY: (a) IN NO EVENT SHALL VIRTRU OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, INADVERTENT DISCLOSURE OF DATA, OR INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR OTHER ECONOMIC LOSS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT HEREOF, EVEN IF VIRTRU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER CAUSED, AND

(b) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, VIRTRU'S ENTIRE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT HEREOF, UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE), IF ANY, SHALL NOT EXCEED ONE THOUSAND DOLLARS (US\$1,000).

8. INDEMNIFICATION

Customer shall defend, indemnify and hold Virtru harmless against any loss, liability, damage or cost (including reasonable attorneys' fees) in connection with claims, actions, demands, suits, or proceedings made or brought against Virtru by a third party alleging (a) that any modification or addition to the Materials or Virtru Pro

Services made by or for Customer (other than by Virtru) infringes a copyright, mask work right, trade secret, trademark right or patent of the third party; (b) in combination with any other product or service not provided, specified or recommended in writing by Virtru for use with the Materials or Virtru Pro Services; or (b) with respect

to the development, manufacture, marketing, sales, distribution or use of any of the Materials or Virtru Pro Services, including, without limitation, a product liability claim or a claim for breach of any warranty or support obligations. In connection with a claim under this Section 9, Virtru shall: (i) provide Customer with prompt notice of the claim; (ii) permit Customer to control the defense and any settlement of the claim (provided that Customer may not settle any claim unless such settlement unconditionally releases Virtru of all liability in connection with such claim); and (iii) Provide cooperation as reasonably requested by Customer (at Customer's expense).

9. TERM AND TERMINATION

9.1 Term. This Agreement shall commence on the Effective Date and, unless sooner terminated pursuant to the terms hereof, shall continue in full force and effect for one (1) year (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term"), unless either party provides the other party with written notice of its intent not to renew at least thirty (30) days prior to the end of the then-current term. The automatic renewal of this Agreement will be for the Baseline Seat Count, as adjusted pursuant to Sections 2.4, 2.5 and/or 2.6, on the same payment terms as set forth on the cover page of this Agreement.

9.2 Termination. Either party may terminate this Agreement immediately upon written notice to the other party if the other party fails to perform any of its duties or obligations hereunder and, except with respect to Customer's breach of Section 2.1 or 2.2, which breach shall not be subject to any cure period, fails to cure such default within thirty (30) days following receipt of written notice from the non-defaulting party specifying the occurrence or existence of the default. Customer shall notify Virtru within twenty-four (24) hours of Customer becoming aware of any breach (other than by Virtru) of the terms and conditions of this Agreement, including, without limitation, Sections 2 and 5.

9.3 Effect of Termination. Upon the expiration or termination of this Agreement, the rights granted to Customer hereunder shall terminate, Customer will cease all use of the Materials, return to Virtru or destroy the Materials in its possession, and, upon Virtru's request, so certify such actions to Virtru. Any costs incurred in returning or destroying the Materials upon termination shall be borne by Customer. The provisions of Sections 2.2, 4.2, 5, 6, 7, 8, 9.3, and 10 shall survive the expiration or any termination of this Agreement. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a party shall be without prejudice to any other right or remedy of such party under this Agreement or applicable law.

10. GENERAL PROVISIONS

10.1 Notices. Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) seven (7) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the cover page of this Agreement and to the notice of the person executing this Agreement (or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 10.1).

10.2 Assignment. This Agreement may not be assigned, in whole or part, whether voluntarily, by operation of law or otherwise, by Customer without the prior written consent of Virtru. Subject to the preceding sentence, the rights and liabilities of the parties hereto shall bind, and inure to the benefit of, their respective assignees and successors and is binding on the parties and their successors and assigns. Any attempted assignment other than in accordance with this Section 10.2 shall be null and void.

10.3 Governing Law, Jurisdiction and Venue. This Agreement is to be construed in accordance with and governed by the internal laws of the Commonwealth of Virginia (but expressly excluding the Uniform Computer Information Transactions Act (“UCITA”) as enacted in Virginia) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the Commonwealth of Virginia (excluding UCITA) to the rights and duties of the parties. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in a federal court in the Eastern District of Virginia or in state courts with jurisdiction over

Fairfax County, Virginia, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.

10.4 Attorneys’ Fees. If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this Agreement or the breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a dismissal without prejudice, shall be entitled to the full amount of all reasonable expenses, including all court costs, arbitration fees and actual attorneys’ fees paid or incurred in good faith.

10.5 Waiver. The waiver by either party of a breach of or a default under any provision of this Agreement, shall be in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

10.6 Severability. If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.7 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the parties. Neither party nor its agents have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times shall continue to be, that of independent contractors.

10.8 Restricted Rights. If Customer is an agency or instrumentality of the United States Government, the Materials are “commercial computer software” and “commercial computer software documentation,” and, pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use reproduction and disclosure of the Materials are governed by the terms of this Agreement.

10.10 Entire Agreement. This Agreement, any Schedules and any Exhibits attached hereto and incorporated herein by reference, and the Terms of Service constitute the entire agreement between the parties concerning the subject matter hereof and supersede all prior or contemporaneous representations,

discussions, proposals, negotiations, conditions, agreements and communications, whether oral or written, between the parties relating to the subject matter of this Agreement and all past courses of dealing or industry custom. No amendment or modification of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized signatory of each of Virtru and Customer.

10.11 Counterparts and Electronic Signatures. The Parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered electronically or by facsimile transmission, and the parties hereby agree that any electronic or facsimile signatures hereto are legal, valid and enforceable as originals.

SCHEDULE B

MAINTENANCE AND SUPPORT SERVICES SCHEDULE

1. DEFINITIONS

For purposes of this Schedule, the following term shall have the following meaning:

(a) “Support Services” means the delivery of front-end support to Customer’s end users by telephone, email or other methods and the training of Customer’s end users, in each case relating to the use of the Materials and Virtru Pro Services.

2. SUPPORT SERVICES.

Virtru will be responsible for providing Customer’s end users with Support Services. Virtru will not be required to provide the Support Services if Customer has failed to pay any amount payable to Virtru under this Agreement and such amount is more than thirty (30) days overdue.

3. UPDATES.

Virtru will provide Customer with one copy of each Update made generally available by Virtru to its customers that pay for customer support and maintenance during the term of this Agreement.

4. SUPPORT HOURS.

Virtru will provide the Support Services during Virtru’s normal business hours, Monday to Friday, except holidays. Virtru will respond to Customer support inquiries or requests within one business day.

Schedule C

Website Terms of Service

These Terms of Use govern your access to and use of the online site currently located at www.virtu.com (together with any materials and services available therein, and successor site(s) thereto, the "Site") provided by Virtru Corporation, a Delaware Corporation ("Virtru," "we" or "us").

By accessing or using the Site or any feature, service, or data provided thereby, you acknowledge that you understand and agree to abide by these Terms of Use.

Limitations on Use

You may use the Site only for purposes that are permitted by these Terms of Use and the laws and regulations in your state and country and any other laws and regulations that apply to your use of the Site (including any laws regarding the export of data or software to and from the United States or other relevant countries as further described below).

In connection with the Site, you agree not to:

- Transmit or otherwise make available through or in connection with the Site any materials that are or may be: (a) threatening, harassing, degrading, hateful or intimidating, or otherwise fail to respect the rights and dignity of others; (b) defamatory, libelous, fraudulent or otherwise tortious; (c) obscene, indecent, pornographic or otherwise objectionable; or (d) protected by copyright, trademark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner.
- Transmit or otherwise make available through or in connection with the Site any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment.
- Use the Site for any purpose that is fraudulent or otherwise tortious or unlawful.
- Harvest or collect information about users of the Site.
- Interfere with or disrupt the operation of the Site or the servers or networks used to make the Site available, including by hacking or defacing any portion of the Site; or violate any requirement, procedure or policy of such servers or networks.
- Restrict or inhibit any other person from using the Site.
- Reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute or otherwise exploit any portion of (or any use of) the Site except as expressly authorized herein, without Virtru's express prior written consent.
- Reverse engineer, decompile or disassemble any portion of the Site, except where such restriction is expressly prohibited by applicable law.
- Remove any copyright, trademark or other proprietary rights notice from the Site.
- Frame or mirror any portion of the Site, or otherwise incorporate any portion of the Site into any product or service, without Virtru's express prior written consent.
- Systematically download and store Site content.
- Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or otherwise gather Site content, or reproduce or circumvent the navigational structure or presentation of the Site, without Virtru's express prior written consent. Notwithstanding the foregoing, and subject to compliance with any instructions posted in the robots.txt file located in the Site's root directory, Virtru grants to the operators of public search engines permission to use spiders to copy materials from the Site for the sole purpose of (and solely to the extent necessary for) creating publicly available, searchable indices of such materials, but not caches or archives of such materials. Virtru reserves the right to revoke such permission either generally or in specific cases, at any time and without notice.

Information Submitted Through the Site

Your submission of information through the Site is governed by Virtru's Privacy Policy (see Schedule D). You represent and warrant that any information you provide in connection with the Site is and will remain accurate and complete, and that you will maintain and update such information as needed.

Transactions

We may make available the ability to purchase or otherwise obtain certain encryption, access control and revocation services (the "Services") through the Site (a "Transaction"). If you wish to enter into a Transaction, you may be asked to supply certain relevant information, such as your credit card number and its expiration date, your billing address and your shipping information. **YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT TO USE ANY CREDIT CARD THAT YOU SUBMIT IN CONNECTION WITH A TRANSACTION.** By submitting such information, you grant to us the right to provide such information to third parties for purposes of facilitating Transactions. Verification of information may be required prior to the acknowledgment or completion of any Transaction. By making a Transaction, you represent that the applicable Services will be used only in a lawful manner.

Feedback

In addition, if you provide to us any ideas, proposals, suggestions or other materials ("Feedback"), whether related to the Site or otherwise, you hereby acknowledge and agree that such Feedback is not confidential, and that your provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place Virtru under any fiduciary or other obligation. You retain ownership of your Feedback and grant to us a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, transferable and fully sublicensable (through multiple tiers) license, without additional consideration to you or any third party, to reproduce, distribute, perform and display (publicly or otherwise), create derivative works of, adapt, modify and otherwise use and exploit such Feedback, in any format or media now known or hereafter developed, and for any purpose (including promotional purposes, such as testimonials). You represent and warrant that you have all rights necessary to grant the foregoing license, and that your Feedback, and your provision thereof through and in connection with the Site, are complete and accurate, and are not fraudulent, tortious or otherwise in violation of any applicable law or any right of any third party. You further irrevocably waive any "moral rights" or other rights with respect to attribution of authorship or integrity of materials regarding the Feedback that you may have under any applicable law under any legal theory. We may disclose any Feedback and the circumstances surrounding its transmission to anyone for any reason or purpose.

Virtru Proprietary Rights

Virtru and its suppliers own the Site, which is protected by proprietary rights and laws. Subject to your compliance with these Terms of Use, and solely for so long as you are permitted by Virtru to use the Site, you may view and use the Site, provided that you keep intact all copyright and other proprietary notices.

Virtru does not grant you any intellectual property or proprietary rights in the Site that are not specifically stated in these Terms of Use. Except as expressly stated herein, nothing in these Terms of Use grants you any right to use, distribute, copy or modify any Virtru intellectual property, including but not limited to any of Virtru's copyrights, patents, trade names, trademarks, service marks, logos, domain names or other distinctive brand features.

Third Party Materials; Links

Certain Site functionality may make available access to materials made available by third parties, including Submissions ("Third Party Materials"), or allow for the routing or transmission of such Third Party Materials, including via links. By using such functionality, you are directing us to access, route and transmit to you the applicable Third Party Materials.

We neither control nor endorse, nor are we responsible for, any Third Party Materials, including the accuracy, integrity, quality, legality, usefulness or safety of Third Party Materials, or any intellectual property rights therein. Certain Third Party Materials may, among other things, be inaccurate, misleading or deceptive. Nothing in this Agreement shall be deemed to be a representation or warranty by Virtru with respect to any Third Party Materials. We have no obligation to monitor Third Party Materials, and we may block or disable access to any Third Party Materials (in whole or part) through the Site at any time. In addition, the availability of any Third Party Materials through the Site does not imply our endorsement of, or our affiliation with, any provider of such Third Party Materials, nor does such availability create any legal relationship between you and any such provider.

YOUR USE OF THIRD PARTY MATERIALS IS AT YOUR OWN RISK AND IS SUBJECT TO ANY ADDITIONAL TERMS, CONDITIONS AND POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS (SUCH AS TERMS OF USE OR PRIVACY POLICIES OF THE PROVIDERS OF SUCH THIRD PARTY MATERIALS).

Disclaimer of Warranties

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Indemnity

Except to the extent prohibited under applicable law, you agree to defend, indemnify and hold harmless Virtru and the Affiliated Entities from and against all claims, losses, costs and expenses (including attorneys' fees) arising out of (a) your use of, or activities in connection with, the Site; and (b) any violation or alleged violation of these Terms of Use by you.

Termination

These Terms of Use are effective until terminated. Virtru may terminate or suspend your use of the Site at any time and without prior notice, including if Virtru believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Use. Upon any such termination or suspension, your right to use the Site will immediately cease, and Virtru may, without liability to you or any third party, immediately deactivate or delete your user name and account, and all associated materials, without any obligation to provide any further access to such materials. Those provisions that by their nature should survive expiration or termination of these Terms of Use shall survive the termination of these Terms of Use.

Additional Terms

Portions of the Services may be accompanied by additional terms (including, in the case of paying customers, the terms of a Virtru Pro Subscription Agreement) which apply to specific features or areas of the Services. Those additional terms supplement these Terms of Use with respect to your use of those features or areas.

Updates to the Terms of Use and Other Policies

Virtru may update these Terms of Use. Virtru shall provide a copy of the revised Terms of Use to Carahsoft and Carahsoft shall provide the copy to their GSA Schedule Contracting Officer. Carahsoft shall also deliver a copy of the revised Terms of Use to all Customers who previously purchased Virtru products and services and a prior version of the Terms of Use was incorporated into their Purchase Order. Any such updates will not apply to any dispute between you and us arising prior to the date on which we posted the revised Terms of Use were accepted by the GSA or Customer's Contracting Officer and incorporated into the Schedule Contract or Purchase Order. The effective date of the revision shall be the date the revised Terms of Use are incorporated into the Schedule Contract or Purchase Order and will be notated on the first page of the revised document. We may, at any time and without liability, modify or discontinue all or part of the Site (including access to the Site via any third-party links); charge, modify or waive any fees required to use the Site; or offer opportunities to some or all Site users.

Jurisdictional Issues

The Site is controlled or operated (or both) from the United States, and is not intended to subject Virtru to any non-U.S. jurisdiction or law. The Site may not be appropriate or available for use in some non-U.S. jurisdictions. Any use of the Site is at your own risk, and you must comply with all applicable laws, rules and regulations in doing so. We may limit the Site's availability at any time, in whole or in part, to any person, geographic area or jurisdiction that we choose.

Information or Complaints

If you have a question or complaint regarding the Site, please send an e-mail to info@virtru.com. You may also contact us by writing to 1808 Florida Avenue NW, Washington, DC 20009. Please note that e-mail communications will not necessarily be secure; accordingly you should not include credit card information or other sensitive information in your e-mail correspondence with us. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

Export Controls

You are responsible for complying with United States export controls and for any violation of such controls, including any United States embargoes or other federal rules and regulations restricting exports. You represent, warrant and covenant that you are not (a) located in, or a resident or a national of, any country subject to a U.S. government embargo or other restriction, or that has been designated by the U.S. government as a “terrorist supporting” country; (b) on any of the U.S. government lists of restricted end users.

General Terms

These Terms of Use do not create a partnership, joint venture, agency, fiduciary or employment relationship between you and us. No failure or delay by Virtru in exercising any right hereunder shall constitute a waiver of such right.

These Terms of Use are governed by laws of the State of Delaware, without respect to its conflict of laws principles. The sole jurisdiction and venue for any claim arising from the Services and these Terms of Use shall be the state and federal courts located in New Castle County, Delaware, and each party hereby consents to the exclusive jurisdiction and venue of such courts. These Terms of Use constitute the entire agreement between you and us regarding the subject matter hereof, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and Virtru relating to such subject matter. Notices to you may be made via posting to the Site or by e-mail (including in each case via links), or by regular mail. Without limitation, a printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Virtru will not be responsible for any failure to fulfill any obligation due to any cause beyond its control.

If a court having proper authority decides that any portion of these Terms of Use is invalid, only the part that is invalid will not apply. The rest of these Terms of Use will still be in effect. If we waive any of our rights under these Terms of Use in any particular instance, it does not mean that we are waiving our rights generally or in the future. Furthermore, just because we may not enforce all our rights all of the time, it does not mean that we are waiving our rights. We may decide to enforce them at a later date. These Terms of Use, and any rights and licenses granted under these Terms of Use, may not be transferred or assigned by you (whether by operation of law or otherwise) without Virtru's prior written consent, but may be assigned by us without restriction.

Schedule D

Privacy Policy

This Privacy Policy describes our practices in connection with information that we collect from you when you use our website at www.virtu.com (the “Site”) or our hosted encryption, access control and revocation services (the “Services”).

Your Information

For us, “Personal Information” means:

- Information which identifies you, like your name or email address; or
- A combination of several pieces of information which couldn't identify you on their own, but which we believe would be sufficient to identify you when combined.

Any information that falls outside of this is “Other Information.” If we combine your Personal Information with Other Information, we will consider the combination as Personal Information.

Personal Information We Collect

Through our Site:

- When you use our Site, we may collect Personal Information such as your name, email address, and telephone number, if you choose to provide such information to us.

Through our Services:

When you register for or use our free or paid Services, we may collect Personal Information such as your email address, and Virtru Application Data. Virtru Application Data consists of:

- **Key Access Policies.** We store Key Access Policies for each message or file you secure, as well as all updates to those Policies, such as revocation and adding or removing authorized users. Key Access Policies include the minimal metadata required to enforce the policy, such as authorized user email addresses, encryption keys and expiration date/time as well as a “Display Name” per policy for use in the online dashboard, which may be a file name or email subject line.
- **Application Activations.** We store a list of which applications have been activated for use by each user as well as when those activations expire.

If you purchase our paid Services, we also may collect full name and billing address. We use third party payment services to collect and process users’ payment card transactions.

How We Use Personal Information

We may use Personal Information:

- To provide the Services.
- To respond to your inquiries and fulfill your requests, such as to send you e-mail updates you have requested or information regarding the Services, changes to our terms, policies or other administrative announcements.
- To process your payments, provide you with the products or services you have purchased, communicate with you regarding your purchase and provide you with related customer service.
- To send you communications regarding additional services that may be of interest to you. If you no longer wish to receive newsletters or other marketing-related email communications from Virtru, you can opt out from receiving them by following the “unsubscribe” instructions in the next such email you receive from us. Note that you may not opt-out of receiving some administrative announcements (such as changes to our policies).
- To perform security analyses to verify that the Services are working properly and have not been compromised.

- For our internal business purposes, such as data analysis, audits, developing new products, enhancing our website, improving our services, identifying usage trends and determining the effectiveness of our promotional campaigns.

When We Share Personal Information

We may disclose Personal Information in the following situations:

- To our service providers to enable them to provide services on our behalf.
- We may use and disclose Personal Information as required to comply with applicable law. We will handle any government requests for encryption keys in accordance with our Frequently Asked Questions on Government Surveillance (See Schedule D).
- We may use or disclose Personal Information when we have a good-faith belief that it is reasonably necessary to protect the rights, property or safety of you, our other users, Virtru or the public.
- If our organizational structure or status changes (if we undergo a restructuring, are acquired, or go bankrupt,) we may pass your information to an acquirer, successor or affiliate.
- We may disclose your Personal Information in other circumstances when we tell you and you consent to the sharing.

Other Information We Collect

We and our third party service providers may collect other information in a variety of ways, including:

- Through your browser: Certain information is collected by most browsers and sent to web servers so that sites can behave reliably, such as browser version, resolution and operating system.
- Through server log files: An Internet Protocol (IP) address is a number that is automatically assigned to the computer that you are using by your Internet Service Provider (ISP), and is identified and logged automatically in our server log files whenever a user visits the Site, along with the time of the visit and the page(s) that were visited. We use IP addresses for purposes such as calculating Site usage levels, helping diagnose server problems, and administering the Site.
- Using cookies: Cookies allow a web server to transfer data to a computer for recordkeeping and other purposes. We and our service providers use cookies and other technologies to, among other things, better serve you with more tailored information and facilitate your ongoing access to and use of the Site, as well as for online tracking purposes. If you do not want information collected through the use of cookies, there is a simple procedure in most browsers that allows you to decline the use of cookies. To learn more about cookies, please visit <http://www.allaboutcookies.org/>. If you choose to decline cookies, some or all of the features, functionality and promotions available through the Site may not be available to you.
- On our Site, we use cookies from Google in order to be able to serve ads on external web sites across the internet for marketing purposes. If you wish to opt out of interest-based advertising from our third-party vendors, visit the [Network Advertising Initiative opt-out page](#). You can use Ads Settings to manage the Google ads you see.
- Email Image Downloads – The downloading of images embedded in the introduction template for Services may be used for internal business metrics such as click-through rates and to measure the success of our marketing campaigns.
- From you: We may collect demographic information such as your location, as well as other information, such as your preferred means of communication, when you voluntarily provide this information to us. Unless combined with Personal Information, this information does not personally identify you or any other user of the Site or Services.

- **By aggregating information:** We may aggregate Personal Information so that the end-product does not personally identify you or any other user of the Site or Services, for example, by using Personal Information to calculate the percentage of our users who have a particular telephone area code. Aggregated Personal Information does not personally identify you or any other user of the Site or Services.

We may use and share Other Information for any purpose, provided that it does not constitute Personal Information as defined above.

Third Party Sites

This Privacy Policy does not address, and we are not responsible for, the privacy, information or other practices of any third parties, including any third party operating any site to which this Site contains a link. The inclusion of a link on the Site does not imply endorsement of the linked site by us or by our affiliates.

Security

Security is our business! We use reasonable organizational, technical and administrative measures to protect Personal Information under our control. We also require our third-party service providers with access to Personal Information to use reasonable measures to protect the confidentiality and security of the Personal Information they maintain for us. Unfortunately, no data transmission or data storage system can be guaranteed to be 100% secure. If you have reason to believe that your interaction with us is no longer secure (for example, if you feel that the security of any account you might have with us has been compromised), please immediately notify us of the problem by contacting us in accordance with the “Contacting Us” section below.

Use of Site by Minors

The Services are not directed to individuals under the age of thirteen (13), and we request that these individuals do not provide Personal Information through the Services.

Jurisdiction

The Services are controlled and operated by us from the United States, and are not intended to subject us to the laws or jurisdiction of any state, country or territory other than that of the United States.

Updates to this Privacy Policy

We may update this Privacy Policy from time to time. Any changes to this Privacy Policy will become effective upon acceptance by the GSA or Customer’s Contracting Officer and incorporated into the GSA Schedule Contract or Purchase Order

Updating Your Personal Information

If you would like to update your Personal Information that you have previously provided to us, you may contact us at: info@virtru.com

Contacting Us

If you have any questions about this Privacy Policy, please contact us by email at info@virtru.com, or please write to the following address: 1808 Florida Ave NW Washington, DC 20009.

Schedule E
Government Surveillance FAQ

At Virtru, we believe you should be able to protect your emails, files, and other data in the same way you can protect private papers that are locked in a cabinet in your home or office. We also believe you are entitled to the same legal protections for digital data as you are for physical files and papers. At Virtru, our business is digital privacy.

The government has an important job in keeping us safe, but it must do so while respecting our rights. Virtru doesn't have any of your messages or files — your content will be on your device or in the hands of another provider — so if the government wants to read your files, it can't get them from us.

However, you're entrusting us to help you maintain your privacy; you should know how we will respond if the government asks us for access to your encryption keys. The government would need those keys if it wanted to read any encrypted files it does obtain. Without them, the files are useless.

We won't provide your keys to anyone without your consent — unless we are ordered to divulge them by a judge with jurisdiction over us. If we are ordered to divulge them, we will fight for you to have notice and an opportunity to object.

This FAQ is our frank explanation of how we expect to handle government requests for encryption keys. We owe it to you to explain our policy in a realistic, transparent manner. Anyone who claims they would never, ever, under any circumstances provide such assistance even if ordered to do so by a court — or that they have engineered a technology that will make the government go away — is making unrealistic promises. We believe you deserve better.

Q: Will the government be able to read my protected emails or files?

No, not unless it has both the files and the encryption key.

Right now, the United States and other governments, along with any other third party who can obtain access to your data, can probably read your emails, attachments, shared files, or other data you are sharing.

Virtru uses the most advanced encryption available, AES, using 256-bit keys. This encryption has been proven secure. The only way to read encrypted files is to have the encryption keys. Virtru doesn't have access to the content of your emails, files, or other data — it only has the keys. Virtru won't be able to read your content because it doesn't have content — and others (including the government) will be unable to read your content because they won't have the keys.

Q: What would Virtru do if it received a request for your keys from any private party or any foreign government?

We would refuse this request and notify you immediately.

Q: What would Virtru do if it received a request from the United States government for encryption keys?

We will require the government to go to court, and if we can, we will notify you.

If we receive a request from the United States government, we will respond by saying that we will not comply with any request other than a court order from a court with jurisdiction over us. We will then notify you that we have received such a request unless we are prohibited by law from doing so, so that you may have an opportunity to defend your rights to keep your data confidential.

Q: Would Virtru comply with any voluntary government program of searches or surveillance of email, files, or other data?

No.

Q: Would Virtru cooperate with court-ordered searches or surveillance of email, files, or other data?

We would do so if ordered by a court based on probable cause under time-honored Fourth Amendment principles. We will also fight to notify you so you may defend your rights.

Virtru believes that the contents of your emails, files, and other data and communications should be and are fully protected by the Fourth Amendment to the United States Constitution, and that this generally should and does mean that the government needs an individualized court order, based on probable cause, to access the data you have chosen to keep private. This means that we will not comply with blanket requests for access to our encryption keys, only specific court-ordered directives relative to an individual.

In the same way that locking a briefcase or sealing an envelope shows a clear legal expectation of privacy, by protecting your data with Virtru's encryption services you will have sent a very unambiguous message that you regard your data as private. This will strengthen your legal expectation of privacy under the Constitution. Some statutes permit the government to obtain content (such as stored emails) on a lesser showing than probable cause. Virtru believes the Fourth Amendment should and does provide greater protection than these statutes for the content of email, files, and other data — particularly when such data is encrypted — and would argue this position in court in an appropriate case if necessary.

Q: Why would Virtru receive a court order, if it doesn't have my content?

We may be ordered to provide assistance to facilitate an order that is primarily directed at the holder of your encrypted data.

As an encryption provider, Virtru would not be the subject of requests for your content because it does not have it. However, federal law authorizes the government to require third parties to provide “technical assistance” to facilitate surveillance authorized by statutes such as Title 18 of the United States Code and the Foreign Intelligence Surveillance Act. Virtru may be required to provide technical assistance (and this might include encryption keys) needed to conduct lawful searches or surveillance of email, files or other data. We would do so only in accordance with the principles we have laid out in this policy.

Q: Would Virtru cooperate with broad surveillance orders permitting blanket surveillance by the NSA or other government agencies?

No — we do not think the law requires this, and we would fight an order to cooperate.

Virtru does not believe these orders should apply to encryption providers and would vigorously contest any attempt to extend such orders to us.

Changes to FISA under the Patriot Act and the FISA Amendments Act permit some forms of surveillance that are not based on individualized court orders. Virtru would challenge any order to assist in broad surveillance programs by the NSA or other government agencies that are not based on individualized court orders.

Under the “business records” provision of FISA (as amended by the Patriot Act), any person can be required by the FISA court to provide records or other tangible things in international terrorism and other foreign intelligence investigations. The FISA court has approved the government's requests under this provision for very broad access to telephone metadata (e.g., phone numbers called and phone numbers received; date, time, and length of call).

Under Section 702 of FISA (as added by the FISA Amendments Act), communications service providers can be required to provide the content of communications and other data under blanket orders pursuant to court-approved procedures where the target of the surveillance is not a US citizen or permanent resident and is reasonably believed to be outside the United States.

Virtru does not believe that these provisions allowing non-targeted surveillance authorize the government to obtain encryption keys or other technical assistance from Virtru. Virtru believes that a court would agree with its legal position if it were asked to cooperate with government requests for encryption keys under these provisions.

If Virtru received an order for encryption keys under either of these provisions of FISA or under any other legal theory that was not based on individualized court orders, it would vigorously contest it.

Q: Does Virtru have an obligation to design its systems to facilitate lawful government surveillance?

No, because the law that requires this for telecommunications providers does not apply to us.

The Communications Assistance to Law Enforcement Act (CALEA) currently requires telecommunications providers to engineer their systems to facilitate lawful surveillance orders from the government. Virtru is not a telecommunications provider and does not have any obligations under CALEA.

Virtru will vigorously resist any proposed legislation to mandate that security providers engineer their systems to facilitate government surveillance. Virtru believes that it is a mistake to require security companies to build in back doors or other methods to facilitate government surveillance, because such requirements could compromise security.

Q: Could the government outlaw the kind of encryption solution that Virtru is offering?

We don't think so.

Virtru believes the use of encryption is protected by the First Amendment, both because encryption is a way of "speaking" and because, in a digital age, encryption is integral to private communication. Virtru would vigorously oppose any attempt to outlaw encryption or require that encryption be compromised through back doors or other mechanisms such as key escrow with the government.