Terms and Conditions

In conjunction with Licensee's purchase of a Subscription License for Licensed Software provided as a service, Licensee agrees to these additional terms and conditions. Capitalized terms not defined in this document have the same meaning as in the applicable license agreement.

1. Software as a Service

   Software as a service ("SaaS") consists of system administration, system management, and system monitoring activities of the Licensed Software (generally, the "SaaS Offering"). As part of the SaaS Offering, Licensee is entitled to use the Licensed Software and accompanying Support and Maintenance Services in accordance with the Subscription License purchased by Licensee.

2. Initial System Configuration

   Webcurl will configure the initial system as outlined in a statement of work signed by both parties. Additional configuration and training services requested by Licensee will be defined in a separate statement of work.

3. Unique Authentication

   Access to and use of the Licensed Software is restricted to Licensee's authorized users only. Licensee shall be responsible for ensuring that all of its users maintain the security of any password, username, or other form of authentication involved in obtaining access to the Software. Usernames and passwords must be uniquely assigned to a specific individual and may not be shared by multiple individuals at any one time or transferred.

4. Availability

   Webcurl agrees to provide Licensee with access to the currently published SaaS version of the Licensed Software via the Internet. During any calendar month, the Licensed Software shall be available to Licensee 99.9% of the time via the Internet except for:
   (i) the time during which the Licensed Software is unavailable so that Webcurl or the hosting provider can perform maintenance for security and system integrity purposes and provide Upgrades, also known as "Planned Maintenance Downtime";
   (ii) downtime caused by circumstances beyond Webcurl’s control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, acts of terror, war, third party strikes and other labor problems, or other events of force majeure;
iii) general Internet outages, failure of Licensee's infrastructure or connectivity, computer and telecommunications failures and delays not within Webcurl’s control; and
(iv) network intrusions or denial-of-service attacks.

1. If the Licensed Software is not available (i.e. Licensee is unable to connect to the Licensed Software), Licensee shall notify Webcurl during the period of unavailability in writing and by telephone so that Webcurl can confirm and determine the cause of the unavailability. As part of the notification, Licensee shall provide (i) Licensee name and contact information, (ii) beginning time of the outage, (iii) a description of the characteristics of the outage, and (iv) the end user location, (v) the URL(s) affected, (vi) the internet service provider used to access the Licensed Software, (vii) network traceroutes, and (viii) any attempts made by Licensee to resolve the outage.

5. **Maintenance Downtime**

Planned Maintenance Downtime shall generally not exceed two (2) hours per calendar month. However, in the exceptional case that Planned Maintenance Downtime will exceed two (2) hours per calendar month, Webcurl shall give Licensee notice by e-mail to the e-mail accounts provided by Licensee. When possible, Planned Maintenance Downtime will be planned for Licensee's non-core business hours.

6. **Service Credits**

In the event that Webcurl fails to maintain the foregoing availability of the Licensed Software during any calendar month of the subscription, Licensee's sole and exclusive remedy shall be to request a service credit in the following percentages of the prorated monthly fees paid for the SaaS Offering: a) for availability less than 99.9%, but greater than 99.5%, a service credit of 10%; b) for availability less than 99.5%, but greater than 99.0%, a service credit of 25%; or c) for availability less than 99.0%, a service credit of 50%. Service credits may be used only to extend the SaaS Offering and shall be applied to Licensee's account at the end of the license term. Licensee acknowledges and agrees that the terms of this section relating to service credits constitute a genuine pre-estimate of the loss or damage that Licensee might suffer as a result of any unavailability of the SaaS Offering and are adequate compensation for any loss or damage caused by any unavailability of the SaaS Offering.

1. To qualify for a service credit, Licensee must notify Webcurl of the unavailability in accordance with Section 5.1 and file a claim with Webcurl within five (5) business days of the end of the calendar month in which the unavailability occurred. As part of its notification, Licensee shall provide the
date and the beginning and end time of each instance of unavailability. Within thirty (30) days of Licensee's request, Webcurl will either deny the request or issue a credit memo acknowledging the credit or extension. Service credit exclusions include, but are not limited to failures caused by the following:

1. Factors outside of Webcurl's reasonable control;
2. Licensee or third party hardware or software;
3. Actions or inaction by Licensee or third parties;
4. Licensee's failure to modify its use of the service after being advised to modify its use of the service;
5. Use of beta or trial services; or
6. Acts or omissions of Licensee, its employees, agents, or contractors, or anyone gaining access to the services by means of Licensee's passwords or equipment.

7. Disclaimer

WEBCURL DOES NOT GUARANTEE THAT THE SAAS OFFERING WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT WEBCURL WILL CORRECT ALL ERRORS. LICENSEE ACKNOWLEDGES THAT WEBCURL DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS OFFERING MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. WEBCURL IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

8. Software Upgrades and Updates

Within ninety (90) days of availability to Webcurl’s general user base, Webcurl will target Licensee to be automatically upgraded to the latest version or patch. Upgrades and Updates are provided to Licensee at no additional fee, including all Documentation describing the purpose and function of the Upgrades and Updates. Webcurl will coordinate Updates, Upgrades, or any related issues with Licensee and provide a suitable maintenance window for updates and upgrades. Additional fees for professional services may be required. Webcurl reserves the right to determine how and when to develop and apply any Upgrades and Updates.

9. System Data

Licensee retains all ownership and intellectual property rights in and to its data. Licensee will be reasonable and prudent in the data it uses with the SaaS Offering. Licensee understands that the SaaS Offering is not intended for sensitive information that reveals race, ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, information about an individual's
health or sex life, Social Security Number, drivers' license number, or other
government-issued identification number, credit or debit card number, or financial
account information. Licensee will not use any such data with the SaaS
Offering. Licensee is also responsible for distributing access, passwords,
logins, and permissions. Licensee will take appropriate security measures to protect
its data, both in transit to and from the SaaS Offering as well as at rest.

Webcurl retains all ownership and intellectual property right to the SaaS
Offering, Licensed Software, the Support and Professional Services and the knowledge
associated with the Support and Professional Services delivered by Webcurl, its contractors,
or agents. For purposes of performing Support and Professional Services, Licensee agrees
that Webcurl may disclose Licensee data to Webcurl, Webcurl related affiliates and their
respective owners, officers, directors, employees, contractors, consultants, and agents.