

**AMENDMENT #1 TO PROFESSIONAL SERVICES AGREEMENT
COUNTY OF MONTEREY & WEBSense, INC**

THIS AMENDMENT is made to the AGREEMENT for additional seats and annual subscription and maintenance/support services by and between WEBSense, INC, hereinafter "CONTRACTOR", and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County".

WHEREAS, the County and CONTRACTOR wish to amend the AGREEMENT to add additional services and to increase the total amount of the AGREEMENT due to the addition of services.

NOW THEREFORE, the County and CONTRACTOR hereby agree to amend the AGREEMENT, effective August 6, 2015, in the following manner:

1. Section 2. "PAYMENT PROVISIONS" shall be amended by removing, "*The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$54,855.00.*" and replacing it with "*The total amount payable by County to CONTRACTOR under this AGREEMENT shall not exceed \$61,110.00.*"
2. EXHIBIT A – Scope of Services shall be amended by increasing the level of available Premium technical support to an unlimited number of calls per year, as per EXHIBIT A-1, section II(d), attached hereto.
3. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT and shall continue in full force and effect as set forth in the AGREEMENT.
4. A copy of this AMENDMENT shall be attached to the original AGREEMENT executed by the County on March 10, 2015.

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IN WITNESS WHEREOF, the parties have executed this AMENDMENT on the day and year written below.

MONTEREY COUNTY

Dianah Neft
~~Contracts/Purchasing Officer~~
DIRECTOR OF INFORMATION TECHNOLOGY

Dated: 9/14/15

Approved as to Fiscal Provisions:
[Signature]
Deputy Auditor/Controller

Dated: 9-8-15

Approved as to Liability Provisions:
[Signature]
Risk Management

Dated: _____

Approved as to Form:
[Signature]
Deputy County Counsel

Dated: Sept 4, 2015

CONTRACTOR

By: [Signature]
Signature of Chair, President, or Vice-President

John Borgerding - President
Printed Name and Title

Dated: 8-21-15

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

James Hagan - CFO
Printed Name and Title

Dated: 8-26-15

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

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EXHIBIT A-1
SCOPE OF SERVICES/PAYMENT PROVISIONS

I. Scope of Services

The Contractor shall provide software subscription and maintenance/support for the Websense Web Security software for up to 4500 seats within the county for internet content management and filtering.

II. Support Services Provided for the Websense Web Security Software Under this Agreement during the Subscription term:

- a. All new software releases, fixes, service pack upgrades available during the term of this Agreement
- b. Validated subscription key which entitles the County to access the data for 4500 seats
- c. Database updates
- d. Websense Premium technical support over the phone during standard business hours of 8:00am – 5:00pm, an unlimited number of calls per year (Pacific Standard Time)
- e. Technical support includes first, second, and third level phone support for the software licensed to the County
- f. CONTRACTOR will provide the assigned ticket number associated with the technical support request at the onset of the call
- g. County can check status of open tickets through the technical support online portal
- h. County may check technical support activities through the online portal
- i. Online support through the Websense Technical Support
- j. Escalation of technical support as needed
- k. Response for inbound telephone calls made during business hours within 10 minutes.
- l. Resolution for 30% of issues generally one business day
- m. Web Based Ticket Form: Response time is based on the Contractor's published SLA available on the technical support site and the County's support level entitlement
- n. Escalation Response Levels: If it is determined that the Technical Services team cannot resolve the call, then the call will be escalated to the Websense Development team. The Support Technician updates the customer on the plan of action and provides timely status updates. Such an action plan may include, but shall not be limited to, a call disposition or issue resolution.

III. Use Restrictions

- a. Websense agrees to provide the subscription services ("Subscription") as described in this agreement to the County. As part of the non-transferable Subscription, certain proprietary software applications ("Software"), proprietary database(s) of URL addresses, applications and other valuable information ("Database(s)"), changes to the content of the Database(s) ("Database Updates") and certain modifications or revisions to the Software ("Software Upgrades"), together with applicable documentation (collectively, the "Products") shall be made accessible to the County on a periodic basis, as set forth in this Agreement. For clarification, the term "Software" shall include Software Upgrades and the term "Database(s)" shall include Database Updates.

- b. Subject to the terms and conditions of this Agreement, and only prior to termination or expiration of this Agreement, Websense hereby grants the County a limited, non-exclusive, non-sub-licensable, non-transferable right solely to access and use internally Software and Software Upgrades (in object code form only) to: (i) access Websense's Database(s) and Database Updates; and (ii) manage the County's Internet and application use and/or traffic, during the term of this Agreement and as described in this Agreement. This right extends only to the number of Seats and/or servers set forth in the Agreement and is effective only upon the payment of the Subscription Fee for the applicable term. The Products shall reside on a designated server.
- c. Upon execution of this Agreement, Websense shall issue the County a fee-based encrypted alphanumeric subscription access code ("Subscription Key") that allows the County to access Databases and/or use the Software in accordance with the terms and conditions set forth herein. The County may download the Software from Websense's web site located at <http://www.websense.com> or transfer it to the County's server from compact disk, diskette, tape or other media provided by Websense. The County may use the Software to access certain Database(s) only on a specified server, in and for the County's own or the County's subsidiaries' or affiliates' internal purposes and business operations. The Subscription Key may be relocated and/or transferred to operate on another the County's server within the County's location. However, the number of the servers on which the County may use the Subscription Key is limited by the terms of this Agreement.
- d. The County's payment of the Subscription Fee noted in this agreement entitles the County to (1) access the ordered Database(s) based on the number of Seats that the Subscription Fee covers for the term of the Subscription and/or (2) use the Software for the number of servers that the Subscription Fee covers for the term of the Subscription. "Seat" means each computer, electronic appliance or device that is authorized to access or use the Database(s), directly or indirectly, whether or not through, or in conjunction with, a server. The amount due will be set forth in this Agreement and billed via an invoice from Websense or one of its authorized resellers ("Resellers"). The County's usage may exceed the number of seats and / or the number of servers only upon the payment of additional subscription fees for additional seats and / or servers, as applicable. Any required additional fees that exceed the value of this Agreement shall be subject to a separate Standard Agreement using the same Terms and Conditions of this Agreement. Websense may audit the County 's usage of the Products remotely at any time or on-site during normal business hours upon reasonable notice. The County will be invoiced and required to pay the applicable fees for any Seats and/or servers not previously subscribed to by the County after execution of an agreement for those fees and services. Any and all fees specified in this Agreement include sales, use, property, value-added, withholding or other taxes, duties or fees, associated with the rights granted hereunder, the Products supplied herein or services provided through this Agreement ("Taxes"). Any such Taxes shall be the sole responsibility of the County and will be billed to the County by Websense or one of its Resellers and paid by the County to that reseller. This Section shall not apply to Taxes based on Websense or Reseller's net income or payroll taxes.
- e. All right, title and interest in and to the Products and any modifications, translations, or derivatives thereof, even if unauthorized, and all applicable rights in patents, copyrights, trade secrets, trademarks and all intellectual property rights in the same shall remain exclusively with Websense and its licensors, if any. Products provided hereunder are

valuable, proprietary, and unique, and the County agrees to be bound by and observe the proprietary nature thereof. “Websense®,” “Websense Enterprise®,” “WebCatcher™” and “AppCatcher™” are trademarks of Websense. Websense’s failure to list a trademark in this Agreement shall not constitute a waiver of any trademark rights. The County may not, and shall not allow third parties within its control to: (i) reverse engineer, decompile, or disassemble the Products, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (ii) modify the Products or incorporate the Products into, or with, any other software; (iii) remove any Products’ identification or other notices; or (iv) loan, reproduce, transfer, distribute or resell the Products or any portion thereof, without the prior written consent of Websense. The County may make copies of the Software for backup and archival purposes only. The County may not, and shall not allow third parties within its control to, publish, distribute or disclose the results of any benchmark tests performed on the Products without Websense’s prior written approval.

IV. Contractor Warranty

- a. Websense warrants that the Products will operate in substantial conformance with the current published documentation under normal use for the Term. Notwithstanding the previous sentence, Websense does not warrant that: (i) the Products will be free of defects; (ii) the Products will satisfy all of the County's requirements; (iii) the Products will be used without interruption or error; (iv) the Products will always block access to the addresses, applications and executable files that are contained in the Databases; (v) the Databases will contain every foreseeable URL address, application or executable file that should potentially be blocked; or (vi) addresses, applications and executable files contained in the Databases will be appropriately categorized
- b. Websense shall use reasonable efforts to remedy any significant non-conformance in the Products, which the County reports to Websense that Websense can reasonably identify and confirm. Websense or its representative will repair or replace any such non-conforming or defective Products or refund a pro-rata share of the Subscription Fees paid by The County for the balance of the then current Term, in Websense’s discretion. The County acknowledges that this paragraph sets forth the County's exclusive remedy and Websense’s exclusive liability for any breach of warranty or other duty related to the Products. Any unauthorized modification of the Products, tampering with the Products, use of the Products inconsistent with the accompanying documentation, or related breach of this Agreement by The County shall void the aforementioned warranty
- c. In the event of Websense’s material breach of this Warranty, Websense shall give the County a pro-rata refund of the Subscription Fees paid by the County for the remainder of the Subscription Term during which such breach occurred, provided that such material breach remains uncured 30 days after the County's written notice of such breach to Websense
- d. Except as explicitly set forth herein and to the extent allowed by law, there are no other warranties, express or implied, including but not limited to, the implied

warranties of merchantability non-infringement, title or fitness for a particular purpose with respect to the Products or the subject matter of this Agreement

V. Term of the Agreement

The term of this Agreement shall be from **March 1, 2015 through February 28, 2016** unless sooner terminated pursuant to the terms of this Agreement.

VI. Schedule of Rates and Payment Provisions

The County is purchasing its subscription to Websense Web Security from a reseller, Network Computing Architects (NCA), at 855 106th Ave NE, Bellevue, WA 98004. All payments for the subscription are to be paid to NCA by the County.

For the software subscription and maintenance/support for the Websense Web Security software for up to 4500 seats for the period specified in Section V the maximum obligation of the County will be **\$61,110.00** to be invoiced and paid to the reseller of the County's choice (in this case NCA) prior the begin date of the Agreement term. This special payment provision will provide the County with the discounted cost.

Invoices shall be mailed to:

Monterey County Information Technology
1590 Moffett Street
Salinas, Ca. 93905
Attn: Accounts Payable

If this Agreement is cancelled other than for good cause, County is not entitled to a refund of prepaid fees, and County's maximum liability shall be the total amount of fees to the date of cancellation not to exceed the maximum amount listed above.

EXHIBIT B
AMENDMENT TO COUNTY OF MONTEREY STANDARD AGREEMENT

The County of Monterey Standard Agreement (Not to Exceed \$100,000) is hereby amended as follows:

1. Section 8.01 is hereby replaced with the following: “8.01 CONTRACTOR Intellectual Property Indemnification. In the event of any claim by a third party against the County asserting, or involving, a patent or copyright violation to the extent based on the Products subscribed to by the County hereunder, Websense will defend the County, at Websense’s expense, and will indemnify the County against cost, expense, attorneys’ fees and liability arising from such claim whether or not such claim is successful; however, the County must notify Websense in writing within ten (10) days after the County has received notice of any such claim of infringement. Websense shall have sole control of the defense and related settlement negotiations for the claim. The County shall fully assist and cooperate in the defense and settlement negotiations as reasonably requested by Websense so long as Websense pays the County’s out-of-pocket expenses associated with such assistance and cooperation. Subject to Websense’s right to control the defense and settlement of such claims, the County may, at its cost and expense, engage its own counsel to advise the County regarding any claims.

In the event an injunction or order shall be obtained against the County's use of Products, or if in the opinion of Websense, the Products are likely to become the subject of a claim of infringement, Websense shall, at its sole option and expense: (i) procure for the County the right to continue using the Products; (ii) modify the Products so that they become non-infringing; (iii) replace the Products with substitute Products which perform substantially the same; or (iv) refund a pro-rata share of the County’s Subscription Fees for the remainder of the then current Term. Websense will have no liability to the County with respect to any claim of patent or copyright infringement which is based upon: (a) the combination or use of the Products with any other equipment or program not furnished by Websense; (b) any modification of the furnished Products by a party other than Websense; (c) any use of the Products by the County that exceeds the scope of the rights set forth in this Agreement; or (d) the failure to promptly use/install any Database Update or Software Upgrade provided by Websense. The County shall indemnify Websense for any third party claims of patent or copyright infringement arising out of the County’s actions or inaction.

The foregoing states the County’s sole and exclusive remedy for infringement of intellectual property rights and the entire liability of Websense with regard thereto.”

2. Section 9.03 is hereby modified as follows:
 - a. The paragraph titled “Commercial General Liability Insurance” is hereby replaced with the following:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Products and Completed Operations,

with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

- b. The paragraph titled "Professional Liability Insurance" is hereby replaced with the following:

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least two years following the expiration or earlier termination of this Agreement.

3. Section 9.04 is hereby modified as follows: Replace the fourth and fifth paragraphs with the following:

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within thirty calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have thirty calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

4. Section 9.05 is hereby added as follows: "9.05 Limitation of Liability. Except for breaches of confidentiality, personal injury, damage to tangible property or intellectual property indemnification, to the fullest extent permitted by law, under no circumstances will Websense, its affiliates, its licensors or resellers be liable for any indirect, consequential, special, punitive or incidental damages, whether foreseeable or unforeseeable, based upon any claims arising out of or related to this Agreement even if Websense has been advised of the possibility of such damages. Except for breaches of confidentiality, personal injury, damage to tangible property or intellectual property indemnification, in no event will Websense's aggregate liability arising out of or related to this Agreement exceed the total amount actually paid by the county to Websense over the one year period prior to the event

out of which the claim arose for the specific subscription for the product that directly caused the damage.

5. Section 10.05 is hereby deleted.

EXHIBIT C
JUSTIFICATION FOR AUTO ENDORSEMENT EXEMPTION

As set forth in Section 9.03, the Contractor will maintain auto liability insurance coverage that meets the County's minimum requirements, however, the Contractor is exempt from the requirements that the automobile liability policy includes an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds.

The Contractor is providing software licensing, support, and maintenance either remotely or by phone and will not be using a vehicle in the performance of this Agreement.