

**COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Websense, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide annual subscription and software maintenance/support for the Websense Web Security software for 3500 seats.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 34,872.00.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from March 1, 2013 to February 28, 2014, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A	Scope of Services/Payment Provisions
Exhibit B	Amendment of County of Monterey Standard Agreement
Exhibit C	Justification for Auto Endorsement Waiver

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

9.0 INSURANCE REQUIREMENTS.

- 9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

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

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

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 for malpractice 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 three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

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 five 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 five 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.

10.0 RECORDS AND CONFIDENTIALITY.

10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Dianah Neff - Director of Information Technology	
Name and Title	Name and Title
1590 Moffett Street Salinas, Ca. 93905	10240 Sorrento Valley Road San Diego, CA 92121
Address	Address
831-759-6923	858-320-8000
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Contracts/Purchasing Officer

Websense Inc.
Contractor's Business Name*

Date: _____

By: _____
Department Head (if applicable)

By: _____
(Signature of Chair, President, or
Vice-President)*

Date: _____

Approved as to Form¹

Name and Title

By: _____
County Counsel

Date: _____

Date: _____

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

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Name and Title

Date: _____

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

*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.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 7 or 8

EXHIBIT A
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 3500 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 3500 seats
- c. Database updates
- d. Technical support over the phone during standard business hours of 8:00am – 5:00pm up to five (5) times each 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, 2013 through February 28, 2014** 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 1591 Los Gatos Blvd, Ste 15, Los Gatos, CA 95032. 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 3500 seats for the period specified in Section V the maximum obligation of the County will be **\$34,872** 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 prepaid 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.