

The following Agreement describes the terms and conditions under which WEBSense offers you the opportunity to become a Websense Certified Engineer. By clicking on the “I Agree” button below or by participating, in the Websense Certified Engineer Program by using this portal, **YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND IT, AND YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

## **WEBSense CERTIFIED ENGINEER PROGRAM AGREEMENT**

This Websense Certified Engineer Program Agreement (the “Agreement”) sets forth the terms and conditions agreed upon between Websense and you (“Applicant” or “you”), the individual applying for participation in the Websense Certified Engineer Program (“Program”). The parties to this Agreement are Websense (as defined below) and Applicant. If Applicant is located in the United States, Canada or Japan, “Websense” means Websense, Inc., a Delaware corporation (“Websense”). If Applicant is located in any other country, “Websense” means Websense International Limited, a company incorporated in the Republic of Ireland (“Websense International”). All references to Websense herein shall correspondingly either refer to Websense or Websense International (individually or collectively as applicable).

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND WEBSense. PLEASE CAREFULLY REVIEW THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY INDICATING YOUR ACCEPTANCE BELOW, YOU CERTIFY THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT, THAT YOU ARE BECOMING A PARTY TO THIS AGREEMENT, AND THAT YOU CONSENT TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DECLINE WHERE INSTRUCTED, AND YOU WILL NOT BE ABLE TO TAKE THE WEBSense CERTIFIED ENGINEER (WCE) EXAM OR OTHER WEBSense EXAM, AS APPLICABLE, OR PARTICIPATE IN THE PROGRAM. THIS AGREEMENT IS NOT EFFECTIVE UNLESS AND UNTIL APPLICANT HAS SUCCESSFULLY PASSED THE APPLICABLE WEBSense EXAM AND RECEIVED NOTICE OF ACCEPTANCE INTO THE PROGRAM FROM WEBSense.

In consideration of the mutual promises and covenants contained in this Agreement, Websense and Applicant hereby agree to the following:

### **1. Definitions.**

1.1. “Certification Requirements” means the requirements listed in Exhibit A, which may be changed by Websense from time to time in Websense’s sole discretion.

1.2 “Effective Date” means the date on which Applicant receives notice from Websense confirming Applicant’s acceptance in the Program.

1.3 “Major Upgrade” refers to a product upgrade designated by a change in version number to the left of the decimal place, or otherwise designated as a Major Upgrade under this Agreement by Websense.

1.4 “Materials” means the Welcome Kit provided by Websense and such other related items, if any, provided by Websense to Applicant under this Agreement.

1.5 “Registration Fee” means the registration fees set forth in Exhibit A, as amended from time to time by Websense in its sole discretion.

1.6 “Trademarks” means the Websense Certification Program logo and all Websense trademarks in word form, or in any style or translated form, which designates the product(s) for which Applicant has qualified pursuant to an WCE Exam or other Websense Exam, as applicable.

1.7 “Use Guidelines” means the Program Trademarks Use Restrictions set forth in Exhibit B and the Websense Trademark Guidelines at <http://www.websense.com/global/en/LegalInfo.php>, as amended from time to time by Websense in its sole discretion.

## **2. Acceptance into Program; License Grant.**

2.1 Acceptance into Program. As of the Effective Date of this Agreement and subject to the terms and conditions of this Agreement, Websense accepts Applicant as a participant in the Program.

2.2 License Grant. Upon Websense's receipt of satisfactory evidence of Applicant's successful completion of the Certification Requirements and subject to the terms and conditions of this Agreement, Websense grants to Applicant a personal, nonexclusive, nonassignable, nonsublicensable, nontransferable, revocable license to use the Trademarks and Materials (i) strictly in accordance with the Use Guidelines and (ii) solely in reference to the approved version(s) of a Websense product for which certification has been granted and for no other products or product versions. Websense reserves the right to modify the Use Guidelines from time to time upon thirty (30) days' notice to Applicant, and Applicant must promptly and strictly adhere to such modified Use Guidelines. Applicant may not alter, modify or change the Trademarks or Materials in any way. This license shall immediately terminate if Applicant fails to successfully complete and pass any of the available Websense Certified Engineer Exams or other Websense Exam, as applicable, within ninety (90) days after it is first published by Websense following a commercial release of a Major Upgrade of such product.

## **3. Term and Termination.**

3.1 Term. This Agreement shall become effective on the Effective Date and shall continue until terminated by either party as provided below.

3.2 Termination. Websense may terminate this Agreement with or without cause upon thirty (30) days' notice to Applicant. Websense may terminate this Agreement with cause immediately upon written notice to Applicant. Applicant expressly acknowledges that the Trademarks are and the Materials contain valuable intellectual property rights of Websense, and Websense may terminate for cause for many reasons including, without limitation, Websense's disapproval at any time during the term of this Agreement of the nature or quality of Applicant's products or services rendered in connection with use of the Trademarks.

3.3 Effect of Termination; Survival. Upon termination of this Agreement, Applicant's participation in the Program and the license to the Trademarks and Materials shall terminate immediately. Applicant shall discontinue any and all uses of the Trademarks and Materials and either destroy or return all Trademarks and Materials to Websense within thirty (30) days of the termination date. If Applicant chooses to destroy the Trademarks and Materials, then Applicant shall provide Websense with written verification of such destruction. Each party understands that the rights of termination hereunder are absolute. Neither party shall incur any liability whatsoever for any damage, loss or expense of any kind suffered or incurred by the other arising from or incident to any termination of this Agreement by such party, whether or not such terminating party is aware of any such damage, loss or expense. Sections 3.3 and 5-8 shall survive termination of this Agreement for any reason.

**4. Modification by Websense.** Upon ten (10) days' notice to Applicant including notice by posting on its website at [www.websense.com/wce](http://www.websense.com/wce), Websense, in its sole discretion, reserves the right to modify the terms and conditions of this Agreement. These modifications shall become effective immediately at the end of such notice period and shall be deemed to modify and supplement the terms and conditions of this Agreement.

APPLICANT'S CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING SUCH NOTICE WILL CONSTITUTE BINDING ACCEPTANCE OF THE MODIFICATIONS. IF ANY MODIFICATION IS UNACCEPTABLE TO APPLICANT, APPLICANT'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT WITHIN TEN (10) DAYS OF SUCH NOTICE.

## **5. Disclaimer of Warranties; Limitation of Liability.**

5.1 Disclaimer of Warranties. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WEBSSENSE MAKES, AND APPLICANT RECEIVES, NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, UNDER THE LAWS OF ANY COUNTRY OR JURISDICTION RELATED TO OR ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES UNDER THIS AGREEMENT. WEBSSENSE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, EXCEPT INsofar AS CANNOT BE EXCLUDED OR LIMITED BY COMPULSORY LAW. IN NO EVENT SHALL

WEBSense BE LIABLE FOR ANY INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR THE INABILITY TO USE ANY OF THE MATERIALS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, EVEN IF WEBSense HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.2 Limitation of Liability. WEBSense'S LIABILITY (i) WITH RESPECT TO ANY PROVISION OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT, OR (ii) IN THE EVENT THAT A COURT OF COMPETENT JURISDICTION HOLDS ANY OF THE ABOVE DISCLAIMERS OF WARRANTIES INVALID, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY APPLICANT UNDER THIS AGREEMENT. WEBSense'S LIABILITY IS CUMULATIVE, WITH ALL OF APPLICANT'S LOSSES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. APPLICANT HEREBY RELEASES AND FOREVER DISCHARGES WEBSense FROM ANY AND ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THE FOREGOING LIMITATION. THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION.

Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential, special, or incidental damages or the exclusion of implied warranties, some of the above limitations and disclaimers may not apply to Applicant. This Agreement does not exclude, restrict or modify any liability imposed under law that cannot, by such law, be excluded, restricted or modified when applied to Applicant.

**6. Indemnity.** Applicant hereby agrees that it will be solely responsible for and that it will indemnify, defend and hold Websense and Websense's officers, directors, agents, employees and representatives harmless from and against any and all claims, suits, damages, actions, proceedings, losses, obligations, penalties and expenses, including attorneys' fees, arising out of, related to, or caused directly or indirectly by (i) Applicant's use of the Trademarks and Materials, (ii) Applicant's provision of services or goods in connection with this Agreement, (iii) Applicant's negligent or illegal acts or omissions, or (iv) Applicant's breach of its obligations under this Agreement.

**7. No Other Product Warranties by Applicant.** Neither Applicant nor any of its employees or agents shall have any right to make any representation, warranty, or promise to any third party on behalf of Websense.

## **8. Miscellaneous.**

8.1 Notice. Any notices required or permitted to be given pursuant to this Agreement shall be in writing, sent via email, certified mail, return receipt requested, postage pre-paid, or delivered by hand, to the business or email addresses of the parties set forth in the examination registration form or to such other address as may be furnished in writing to the other party. Notices shall be deemed effective on the earlier of the date of receipt or the fourth day after deposited in the mail. If notice is sent to Websense, it shall be sent to the attention of the General Counsel and to [contracts@websense.com](mailto:contracts@websense.com). In addition, Applicant will refer to the web sites specified herein from time to time during the term of this Agreement to ensure Applicant's continued compliance with the terms of this Agreement, including without limitation, the web sites specified in Section 3 of Exhibit A and Section 5 of Exhibit B.

8.2 Relationship of the Parties. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. Applicant is solely responsible for payment of, and will pay when due, all applicable business license fees, value added tax (VAT) and similar taxes, withholding taxes, and business and income taxes related to its activities in connection with this Agreement.

8.3 Governing Law; Forum. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States and the laws of the State of California, USA for all claims arising in or related to the United States, Canada, or Mexico and Dublin, Ireland for all other claims without regard to or application of choice of laws, rules or principles. In any event, this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Both parties hereby consent to the exclusive jurisdiction of (1) the state and federal courts in San Diego, California, USA, for all claims arising in or related to the United States, Canada or Mexico, or (2) the competent courts in

Dublin, Ireland for all other claims. Both parties expressly waive any objections or defense based upon lack of personal jurisdiction or venue.

8.4 Attorneys' Fees. In the event an action is commenced to enforce either party's rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and attorneys' fees.

8.5 Assignment. Applicant may not assign its rights or obligations under this Agreement. Any attempted assignment by Applicant shall be null and void.

8.6 Remedies. The parties expressly agree that a violation of Section 2.2 of this Agreement will cause irreparable harm to Websense and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Websense will be entitled to an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation or any or all of the provisions hereof. Applicant hereby waives any requirement that Websense post a bond or other security in conjunction with any application for injunctive or other equitable relief.

8.7 Waiver; Severability. The waiver by a party of a breach of any provisions contained herein shall be deemed effective only when in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself. In the event that any provision of this Agreement is determined to be invalid or unenforceable under any law or by a court of competent jurisdiction, then the other provisions hereof shall continue unabated and in full force and effect. Such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable invalid provision within the limits of applicable law of applicable court decisions.

8.8 Entire Agreement. Each Exhibit attached hereto and the Materials delivered separately is incorporated by reference and made a part of this Agreement as if its terms were fully set forth in the body of this Agreement. This Agreement, including all such Exhibits and such Materials, constitutes the entire agreement between Websense and Applicant, and supersedes and terminates any and all prior agreements or contracts, written or oral, entered into between the parties relating to the subject matter hereof.

8.9 Independent Investigation. APPLICANT ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, HAS HAD AN OPPORTUNITY TO CONSULT WITH ITS OWN LEGAL ADVISERS IF IT SO DESIRED, AND AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. APPLICANT AGREES THAT, IN INTERPRETING THIS AGREEMENT, NO WEIGHT SHALL BE PLACED UPON THE FACT THAT THIS AGREEMENT HAS BEEN DRAFTED BY WEBSSENSE.

**EXHIBIT A**  
**TO WEBSense CERTIFIED ENGINEER PROGRAM AGREEMENT**  
**Certification Requirements and Registration Fee**

All of the following requirements must be met for each Websense product or Major Upgrade for which Applicant seeks certification under the terms and conditions of this Agreement:

1. Applicant must accept the terms and conditions of the Agreement for each Websense product version for which Applicant seeks certification.
2. Applicant must successfully complete and pass the Websense Certification Exam or the Websense Recertification Exam, as applicable, for each product version for which certification is sought. Successful completion of the Websense Certification Exam or the Websense Recertification Exam, as applicable, is good only for the particular product and version (including minor) that is the subject of the examination. The Websense Certification Exam or the Websense Recertification Exam, as applicable, must be successfully completed and passed within ninety (90) days after it is made available for Major Upgrades to avoid termination of the license granted to Applicant under Section 2.2 of the Agreement in connection with certification previously obtained for the applicable version of the product. Upon the termination of such license pursuant to the preceding sentence, Applicant shall immediately cease any and all uses of the Trademarks and Materials; provided, however, that Applicant may continue to use only text references to Applicant's certification under the Program if and provided that Applicant clearly states the version of the Websense product for which he/she was certified pursuant to this Agreement and otherwise adheres to the terms of the Agreement, unless the right to Applicant's continued use of the text reference is otherwise terminated by Websense.

**EXHIBIT B**  
**TO WEBSense CERTIFIED ENGINEER PROGRAM AGREEMENT**  
**PROGRAM TRADEMARKS**  
**USE RESTRICTIONS**

The following guidelines are restrictions on use of the Trademarks and are mandatory. Applicant's failure to abide by these provisions may result in termination of this Agreement by Websense.

1. Under no circumstances may the Trademarks be used by Applicant in any manner until Applicant has successfully completed, to Websense's satisfaction, all Certification Requirements for at least one Websense product.
2. If Applicant has not obtained certification from Websense with respect to the Major Upgrade within ninety (90) days following the date that an Websense Certification Exam or an Websense Certification Recertification Exam is first published by Websense for release of a Major Upgrade of such product, Applicant must discontinue any and all use of the Trademarks in relation to such product. If Applicant does not obtain certification within such ninety (90) day period, Applicant must discontinue any and all use of the Trademarks. To "discontinue all use" includes, but is not necessarily limited to, destroying or revising all stationery, business cards, advertisements, brochures, and training manuals showing the Trademarks used in reference to Websense.
3. Applicant agrees to use the Trademarks only in connection with services that: (a) are advertised in compliance with all applicable U.S. and foreign fair advertising laws and regulations; (b) comply with all other applicable U.S. and foreign laws and regulations; (c) are of a quality and reputation consistent with the high quality of Websense products and services; and (d) are advertised in a manner consistent with industry standards.
4. Upon reasonable request from Websense, Applicant shall notify Websense of the locations of Applicant's use of the Trademarks and furnish Websense with suitable specimens of Applicant's use of the Trademarks. If Websense so requests, Applicant agrees to submit to Websense any uses of the Trademarks for Websense's approval prior to the dissemination of these materials, such approval not to be unreasonably withheld. Applicant agrees to undertake such steps as Websense may reasonably request to assist in monitoring and maintaining the quality and form of use of the Trademarks. Websense may review Applicant's use of the Trademarks at any time to evaluate Applicant's compliance with the quality standards described in this Agreement. If at any time Websense determines that Applicant is not maintaining adequate quality standards, Applicant shall be considered in breach of this Agreement and subject to the termination provisions of Section 3 of the Agreement. Applicant shall remedy any material deficiencies in its use of the Trademarks, as determined by Websense in its sole discretion and upon reasonable notice from Websense, as soon as reasonably possible but in any event not later than thirty (30) days following notice from Websense.
5. Applicant's use of the Trademarks, including without limitation marking requirements, shall comply at all times with this Agreement, the "Websense Trademark Guidelines" currently available at <http://www.websense.com/global/en/LegalInfo.php>, including any successor web site thereto as modified from time to time in Websense's sole discretion.
6. Applicant acknowledges Websense's ownership of the Trademarks. Applicant shall employ best efforts to use the Trademarks in a manner that does not derogate from Websense's rights and will take no action that will interfere with or diminish Websense's right in the Trademarks. Further, Applicant shall not use the Trademarks in a manner which is likely to mislead any third party regarding Applicant's relationship to Websense, or in connection with any obscene, pornographic, libelous, or defamatory material, product or services.