

DIGITAL SCEPTER CORPORATION
TIME AND MATERIALS AGREEMENT

THIS TIME AND MATERIALS AGREEMENT (the "Agreement") is made as of July 1, 2015 (the "Effective Date") by and between the following parties (sometimes individually a "Party" and collectively as "Parties"): Ocean View School District of Orange County located at 17200 Pinehurst Lane Huntington Beach CA 92647, ("Client") and Digital Scepter Corporation, a California corporation, with offices at 18100 Von Karman Ave Suite 850 Irvine CA 92612 ("Consultant").

DEFINITIONS

- **"E-mail Support"** means ability to make requests for technical support assistance by e-mail at any time (with reasonable efforts by Consultant to respond within one business day) concerning a Supported Product or Service listed in **Exhibit A**.
- **"Fix"** means the repair or replacement of object or executable code versions of a Supported Product or documentation to remedy an Issue.
- **"Issue"** means an error in a Supported Product that has been replicated by Consultant that prevents such Supported Product from operating in substantial conformity to Consultant's applicable Documentation.
- **"Issue Correction"** means the use of reasonable commercial efforts to correct Issues.
- **"Previous Sequential Release"** means the release of a Supported Product which has been replaced by a subsequent release of the same Supported Product. Notwithstanding anything else, a Previous Sequential Release will be supported by Consultant only for a period of six (6) months after release of the subsequent release.
- **"Severity 1 Issue"** means an Issue which renders the core functionality of a Supported Product inoperative causing business operational impact to Client.
- **"Severity 2 Issue"** means an Issue which substantially degrades the performance of a Supported Product or materially restricts Client's use of such Supported Product.
- **"Severity 3 Issue"** means an Issue which causes only a minor impact on the Client's use of a Supported Product.
- **"Severity 4 Issue"** means an inquiry regarding capabilities of the Supported Products; Client's use of the Supported Products is not impeded.
- **"Telephone Support"** means technical support telephone assistance during Consultant's regular business hours concerning the installation and use of the then current release of a Supported Product and the Previous Sequential Release.
- **"Web Support"** means information available at www.digitalscepter.com.

- **"Workaround"** means a change in the procedures followed or data supplied by Client to avoid an Issue without substantially impairing Client's use of a Supported Product.

RECITALS

WHEREAS, the Consultant is engaged in the business of providing Internet and computer network security services and related products, including, but not limited to, consultation services related thereto (the "Business");

WHEREAS, the Client desires to engage the Consultant for the specific services hereinafter set forth, subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, it is agreed as follows:

OPERATIVE PROVISIONS

1. Engagement of Services.

The Client hereby engages the Consultant to render the services set forth and attached hereto as **Exhibit A**, incorporated herein by this reference and made a part hereof (collectively, the "Services"). Failure by the Consultant to materially perform all the Services required under this Agreement shall constitute a material breach of the Agreement.

2. Compensation for Services.

In full consideration for the performance of the Services hereunder, and for any rights granted or relinquished by the Consultant to the Client under this Agreement, the Client shall pay the Consultant as fixed fees for those certain types of Services and in the amounts set forth and attached hereto as **Exhibit B**, incorporated herein by this reference and made a part hereof. Payments shall be preceded by an invoice from the Consultant (to be submitted monthly), which the Client shall then pay to the Consultant within thirty (30) business days of the date of the invoice. The Client shall reimburse the Consultant for reasonable and necessary expenses incurred in the performance of the Services; provided, however, that all such expenses shall be subject to the Client's prior approval.

3. Assurance of Services.

The Consultant acknowledges, represents, and warrants that the Services shall be provided in a professional manner for the Client's industry without the advice or material direction of the Client. Notwithstanding the foregoing, during the Consultant's business negotiations with the Client, the Consultant represented and warranted to the Client that Jon Robinson (collectively, the "Accepted Individuals"); would be performing most, if not all, of the Services to be provided hereunder because of those individuals' respective experience and expertise in said Services.

While the Consultant has complete and sole discretion for the manner in which the Services under this Agreement shall be performed, including, without limitation, utilizing other individuals or parties to perform the Services on behalf of the Consultant, the Consultant represents and warrants that any individual or party that are to perform the Services hereunder shall be, at the minimum, of equal experience, and carry, at the minimum, the same or equal qualifications of the Accepted Individuals, for the respective Services that are to be performed.

4. Confidential Information.

During the term of this Agreement, one Party, its employees, officers, directors, agents, contractors or other related parties (individually and collectively the "Receiving Party") may acquire access to the Confidential Information (as defined hereafter) pertaining to the other Party (the "Disclosing Party").

For purposes of this Agreement, "Confidential Information" shall mean Disclosing Party's proprietary information, including, without limitation, trade secrets, technical data, business methods, software, hardware, product formulas, designs, drawings, Clients lists, marketing plans, finances, patents, patent licenses, patentable material, business methods, products, new products, marketing strategies for new products, sales figures, annual reports, financial statements, trademarks, potential business deals and opportunities, pupil record information and all other information provided by Disclosing Party to Receiving Party marked "Confidential Information." In the event that Confidential Information must be provided visually or orally, obligations of confidence shall still attach to that information.

The Receiving Party shall hold and maintain the Confidential Information in strictest confidence and in trust for the sole and exclusive benefit of the Disclosing Party, and this Agreement creates no obligation on Disclosing Party to disclose any of its Confidential Information. Any materials or documents which have been furnished by the Disclosing Party to the Receiving Party shall be promptly returned, accompanied by all copies of such documentation, after the termination of this Agreement, or at any time upon the Disclosing Party's request. No copies of Confidential Information may be made unless approved in writing by the Disclosing Party.

Nothing in this Agreement shall be construed as granting any rights to the Receiving Party under any patent, copyright, trade secrets or other intellectual property rights of the Disclosing Party, nor this Agreement be construed to grant the Receiving Party any rights in or to the Confidential Information of the other except the limited right to review such Confidential Information solely for the purposes of determining whether to enter into the proposed business relationship.

The Receiving Party understands and acknowledges that its obligations are necessary and reasonable in order to protect the Disclosing Party's business and expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach of any covenant or agreement set forth herein. Accordingly, Receiving Party agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party shall be entitled to obtain injunctive relief against the breach or

threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

5. Non-Solicitation and Non-Circumvention.

Receiving Party agrees that for a period of twelve (12) months following the termination of this Agreement, Receiving Party shall not, on behalf of itself or any other person or entity, solicit the services of any person who was engaged by the Disclosing Party or employed by the Disclosing Party. The Parties acknowledge that the Receiving Party may have access to relationships developed by Disclosing Party during the term of this Agreement. Receiving Party agrees that Receiving Party shall not contact, either directly or indirectly, any such parties introduced by Disclosing Party to Receiving Party except as authorized in writing by Disclosing Party to Receiving Party. During the term of this Agreement and twelve (12) months thereafter, Receiving Party shall not, for itself or any third party, solicit, divert or attempt to divert from Disclosing Party (or any affiliate of it that might be formed) any business. Receiving Party shall not solicit or materially interfere with any of the Disclosing Party's Clients or vendors. Receiving Party acknowledges that pursuit of the activities forbidden by this Paragraph would necessarily involve the use or disclosure of Confidential Information in breach of this Agreement, but that proof of such breach would be extremely difficult.

6. Independent Contractor Status.

The Consultant agrees to perform the Services hereunder solely as an independent contractor. The Parties hereto recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the parties. The Consultant is not authorized to enter into or commit the Client to any agreements, and the Consultant shall not represent itself as the agent or legal representative of the Client. Further, the Consultant shall not be entitled to participate in any of the Client's benefits, including, without limitation, any health or retirement plans. The Client shall not be liable for taxes, worker's compensation, unemployment insurance, employers' liability, employer's FICA, social security, withholding tax, or other taxes or withholding for or on behalf of the Consultant or any other person consulted or employed by the Consultant in performing Services under this Agreement. All such costs shall be the Consultant's responsibility. The Consultant shall supply all tools, materials, and equipment required to perform the Services under this Agreement, or conversely, the Client may provide a workstation or other items and equipment necessary to complete the Services, but the Consultant is not obligated to use said items.

7. Proprietary Rights.

The Client hereby assigns to the Consultant any and all right, title, and interest the Client may have in and to such Services and the products thereof (hereinafter collectively referred to as the "Materials"), including all copyrights, all publishing rights, and all rights to use, reproduce, and otherwise exploit the Materials in any and all formats or media and all channels, whether now known or hereafter created. The Client agrees to execute such instruments as the Consultant may from time to time deem necessary or desirable to evidence, establish, maintain, and protect the Consultant's ownership of such Materials, and all other rights, title, and interest therein. Upon

termination of this Agreement, the Client shall provide to the Consultant any and all copies, in whole or in part, of the Materials (as they exist) and any and all tangible materials the Consultant provided to the Client in connection with the Services and this Agreement.

8. Term.

The initial term of this Agreement shall commence on the Effective Date and shall continue for the earlier of: one calendar year or until the Services have been completed (hereinafter the "Initial Term"). The Initial Term shall automatically extend for successive one year term increments (each, an "Extended Term"), unless this Agreement is terminated as provided below.

9. Termination of Agreement.

The Agreement may be terminated: (A) By either Party upon thirty (30) days prior written notice if the other Party breaches or is in default of any obligation hereunder and such default has not been cured within such thirty (30) day period; or (B) by either Party upon thirty (30) days written notice before the expiration of the Initial Term or any Extended Term. Neither Party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of Service resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation or any causes beyond the control of such Party.

10. Damages, Remedies, and Associated Liabilities.

In the event of termination of this Agreement by the Consultant pursuant to Paragraph 9(A) above, the non-breaching Party shall have all remedies available to it at law and in equity, subject to the restrictions set forth herein. Any and all Materials prepared for and/or delivered to the Client prior to the termination of this Agreement shall remain the property of the Consultant. In the event of termination of this Agreement pursuant to Paragraph 9(B) above, and provided that the Consultant is not in material breach of its obligations hereunder, the Consultant shall be entitled to keep all monies already paid pursuant to this Agreement and the Client's obligation shall be to pay the Consultant the amount due for Services already reasonably performed and Materials already accepted, pro rata. In no event shall the Consultant be liable for any lost profits or consequential, incidental or special damages.

11. Disclaimer.

THE CONSULTANT DOES NOT WARRANT THAT USE OF THE SERVICES OR MATERIALS WILL BE UNINTERRUPTED OR ERROR FREE OR AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR MATERIALS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY, INTEGRATION, AND ALL IMPLIED WARRANTIES ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING OR

COURSE OF PERFORMANCE. EXCEPT AS PROVIDED IN THIS AGREEMENT, THE CLIENT'S USE OF THE MATERIALS ARE AT THE CLIENT'S OWN RISK.

THE CONSULTANT PROVIDES THE SERVICES HEREIN ON AN "AS-IS, AS AVAILABLE" BASIS AND MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND HEREBY DISCLAIMS ANY WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM ERRORS, AVAILABILITY, CORRECTNESS, ACCURACY AND RELIABILITY AND ALL WARRANTIES ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

12. Limited Warranty on Products Only.

Unless otherwise expressly agreed to in writing by Consultant, Consultant warrants, to the Client of the following products only (excluding consumables), that the products will be provided with reasonable care and skill: IBM Software Subscription and Support. Consultant warrants that

Happening of one or more of the following events will serve to void all warranties and remedies, including any obligations to service, repair, replace or otherwise remedy defects, errors or failures, and Consultant shall be in no way responsible for:

- A. Failure or damage resulting from negligence, alteration, or modification, abuse or misuse of the product, or operation of the product inconsistent with Consultant's published operating instructions;
- B. Removal, alteration, or effacement of the serial number on the product, unauthorized attempted or actual dismantling, disassembling, service, repair, or improper maintenance of the product, or additions or modifications to the product not authorized by Consultant;
- C. Failure to pay all amounts due to Consultant, including any portion of the purchase price or other payment due, whether under contract or otherwise;
- D. Abrasive wear and tear, or use under abnormal conditions, including environments which are unclean, dusty, or in extremes of electromagnetic radiation, temperature, or humidity;
- E. Use for other purposes than that for which the product or part is designed;
- F. Damage during movement of product or damage resulting from an event outside of Consultant's control including, without limitation, fire, flood, lightning, or vandalism;
- G. Damage to or failure of the product caused by (a) a failure or fault in the premises accommodating the product or (b) use of or with a third party product, part, or component not approved in writing by Consultant, including, but not limited to, new, used, or refurbished systems or handpieces manufactured, sold, or repaired by a third party;

H. Refusal or failure by or on the part of the Client or its agent(s) to cooperate with Consultant in carrying out any necessary repairs or deal in conformity with applicable law, rule, regulation or requirement, including without limitation, the US Export Administration Act; and

I. Resale, lease, loan, or renting for use by anyone other than the Client.
In any of the above situations, the product may be serviced, if at all, in Consultant's sole discretion, at Client's request and expense at Consultant's then prevailing rates for labor, travel, transportation, service, and materials. Consultant reserves the right, without liability, not to service product that includes or uses unauthorized or counterfeit parts or components.

In any of the above situations, the product may be serviced, if at all, in Consultant's sole discretion, at Client's request and expense at Consultant's then prevailing rates for labor, travel, transportation, service, and materials. Consultant reserves the right, without liability, not to service product that includes or uses unauthorized or counterfeit parts or components.

All merchandise should be inspected for obvious damage upon arrival. If merchandise has been damaged in transit, Consultant's Service Department must be notified within 72 hours. Consultant shall not be responsible for delays or failure to render service or products due to strikes, fires, floods, acts of God, terrorism, or war, government regulations, acts of the federal or any state or local government or agency thereof, judicial action, civil disorder, curtailment of transportation facilities, disaster, or any other cause beyond Consultant's control.

All claims for nonconforming or defective product must be made in writing within ten (10) days after delivery to the Client, and any claims not made within that period shall be deemed waived and released.

IN NO CASE SHALL THE DAMAGES EXCEED THE REPLACEMENT VALUE OF THE PRODUCT. THE FOREGOING CONSTITUTES CONSULTANT'S SOLE LIABILITY AND THE CLIENT'S SOLE REMEDY WITH RESPECT TO PRODUCTS SOLD BY CONSULTANT. EXCEPT AS THUS PROVIDED IN THIS AGREEMENT, CONSULTANT DISCLAIMS ALL OTHER REPRESENTATIONS, AGREEMENTS, GUARANTEES, CONDITIONS, AND WARRANTIES, ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY CONSULTANT PRODUCT, OTHER GOODS, AND SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IT IS AGREED THAT CONSULTANT'S LIABILITY IS SO LIMITED.

Following expiration of these limited warranties, it is Client's responsibility to contact Consultant's Service Department to inquire of service agreements that may be purchased, if available. Products not passing directly from these limited warranties to a service agreement shall be subject to inspection and, if necessary, repaired to Consultant's satisfaction at Client's expense prior to inclusion under any service agreement. Client shall bear all inspection fees and repair costs, charged at the then-prevailing Consultant rates for labor, shipping, parts, and materials.

13. Additional Work.

After receipt of an order which adds to the Services, the Consultant may, at its sole discretion, take reasonable action and expend reasonable amounts of time and money based on such order. The Client agrees to pay the Consultant for such action and expenditures as set forth in Exhibit B of this Agreement for payments related to the Services.

14. Notices.

Any notices to either Party under this Agreement shall be in writing and delivered by hand or sent by nationally recognized messenger service, or by first class registered or certified mail, return receipt requested, to the address set forth above or to such other address as that Party may hereafter designate by notice. Notice shall be effective when received which shall be no greater than one (1) business day after being sent by a nationally recognized messenger service or three (3) days after being sent by mail.

15. Increase in Supported Machines.

Client is responsible for the license of any software products for which the Consultant provides updates or support. If Client desires to increase the number of machines, they will be purchased from the appropriate vendor under a different agreement.

16. Support and Maintenance.

Support and Maintenance consist of: (a) Issue Correction and Telephone Support provided to a single consistent technical support contact concerning the installation and use of the then-current release of a Supported Product and the Previous Sequential Release; (b) E-mail Support; (c) Web Support; and (d) Supported Product updates that Consultant in its discretion makes generally available to its support and maintenance customers without additional charge.

17. Issue Severity Levels.

Consultant shall exercise commercially reasonable efforts to correct any Issue reported by Client in accordance with the severity level reasonably assigned to such Issue by Consultant. Consultant will use commercially reasonable efforts to initially respond to Issues reported by Client during Telephone Support hours within the target response times indicated below; however, these are targets only and there is no guarantee that Consultant can or will resolve issue during such time.

- Severity 1 Issues -- Consultant shall promptly commence the following procedures: (i) assign Consultant engineers to correct the Issue; (ii) notify Consultant management that such Issues have been reported and of steps being taken to correct such Issue(s); (iii) provide Client with periodic reports on the status of the corrections; (iv) initiate work to provide Client with a Workaround or Fix; and (v) continue such commercially reasonable efforts until a Workaround or Fix has been made available to Client. Target initial response time: same business day.
- Severity 2 Issues -- Consultant shall exercise commercially reasonable efforts to provide Client with a Workaround or Fix. Consultant may include the Fix for the Issue in the next major release

of the Supported Product. Target initial response time: one (1) business day.

- Severity 3 Issues -- Consultant may include the Fix for the Issue in the next major release of the Supported Product. Target initial response time: two (2) business days.
- Severity 4 Issues -- Consultant will provide relevant information to Client. Target initial response time: three (3) business days.

If Consultant believes that a problem reported by Client may not be due to an Issue with a Supported Product, Consultant will so notify Client. At that time, Client may (1) instruct Consultant to proceed with problem determination at its possible expense as set forth in **Exhibit B**, or (2) instruct Consultant that Client does not wish the problem pursued at its possible expense. Client shall not be liable for: (i) problem determination or repair to the extent problems are due to Issues with a Supported Product; or (ii) work performed under this paragraph in excess of its instructions; or (iii) work performed after Client has notified Consultant that it no longer wishes work on the problem determination to be continued at its possible expense (such notice shall be deemed given when actually received by Consultant). If Client instructs Consultant that it does not wish the problem pursued at Client's possible expense or if such determination requires effort in excess of Client's instructions, Consultant may, at its sole discretion, elect not to investigate the Issue with no liability therefore.

18. Exclusions.

Consultant shall have no obligation to support: (i) modified, altered or damaged Supported Products or any portion of a Supported Product incorporated with or into other software; (ii) any Supported Product that is not the then-current release or immediately Previous Sequential Release; (iii) Supported Product problems caused by Client's negligence, abuse or misapplication, use of Supported Products other than as specified in the Consultant's user manual or other causes beyond the control of Consultant; or (iv) Supported Products installed on any hardware that is not supported by Consultant. Consultant shall have no liability for any changes in Client's hardware which may be necessary to use Supported Products due to a Workaround or maintenance release.

19. Secure Remote Access.

Client shall provide Consultant secure remote access to required systems, machines or devices via VPN, RDP or equivalent means.

20. Miscellaneous.

This Agreement shall be governed and construed in accordance with the laws of the State of California applicable to contracts made and fully performed therein, and the state and federal courts located in San Diego County shall have exclusive jurisdiction of all suits and proceedings arising out of or in connection with this agreement. Both Parties hereby submit to the jurisdiction of said courts for purposes of any such suit or proceeding, and waive any claim that any such forum is an inconvenient forum. Neither Party shall not, without the written consent of

the other Party, assign, or otherwise transfer this Agreement to any third party. The waiver by either Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any subsequent or other breach or violation. Following the expiration or termination of this Agreement, whether by its terms, operation of law, or otherwise, the terms and conditions set forth, as well as any term, provision or condition required for the interpretation of this Agreement or necessary for the full observation and performance by each Party hereto of all rights and obligations arising prior to the date of termination, shall survive such expiration or termination until the expiration of the applicable statute of limitations. This Agreement represents the entire agreement between the Parties. The Agreement may not be amended, changed, or supplemented in any way except by written Agreement signed by both Parties. In the event of a conflict between the provisions of any attachments or Exhibits hereto and the provisions set forth in this Agreement, the provisions of such attachments or Exhibits shall control.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement as of the Effective Date.

CLIENT:

CONSULTANT:

Dr. Michael Conroy
Print Name

Jon Robinson, President

Deputy Superintendent
Title

Signature

EXHIBIT A
SERVICES and SUPPORTED PRODUCTS

1. Software subscription and support for IBM Endpoint Manager for Lifecycle Management , Power Management and Core Protection (Trend Micro) for 2000 clients
2. Firewall Managed Service – Includes quarterly healthchecks, rule changes, and custom report creations along with schedule upgrades for new OS releases.
3. Network engineering, Software deployment, Fixlet creation, Administrative Tasks or other technology consulting, e.g. relay maintenance, software use report creation via remote channel or onsite

EXHIBIT B
COMPENSATION FOR SERVICES

1. IBM software subscription and support: \$24,107.20 for item one in Exhibit A, payable upon execution of this agreement
2. Firewall Managed Service: \$6,000 billed annually
3. Consulting: \$150 per hour or \$1200 per day. One day minimum for onsite work. All work must be scheduled 72 hours in advanced or emergency rate of \$300 per hour will apply. Consultant will add notes and execute tickets using Client's ticketing system.