

SWEET COMPUTER SERVICES, INC.**TECHNICAL SUPPORT AGREEMENT**

This Technical Support Agreement ("Agreement") is dated as of November 4, 2003 by and between Sweet Computer Services, Inc., d/b/a, **SWEET, an Ortivus Company**, a Delaware Corporation with offices at 2324 Sweet Parkway Road, Decorah, Iowa and _____, with offices at _____, ("Customer").

I. Definitions

- a. The term "*Program*" shall have the meaning set forth in the Licensing Agreement.
- b. "*Anniversary Date*" shall refer to each anniversary of the Commencement Date.
- c. "*Commencement Date*" shall refer to the date the Program was delivered to Customer.
- d. "*Licensing Agreement*" shall mean the licensing agreement dated _____ between **SWEET** and Customer.
- e. "*Initial Support Term*" shall mean the 12-month period commencing on the Commencement Date.
- f. "*Renewal Term*" shall mean each 12-month period commencing on the expiration of the Initial Support Term.
- g. "*Technical Support*" shall mean those maintenance and technical services described in detail on Schedule A to this Agreement.
- h. "*Support*" when used without a modifier shall mean Technical Support.

II. Affirmation of Licensing Agreement

Customer hereby certifies that it has read, agrees with and hereby reaffirms each of the terms and conditions contained in the Licensing Agreement.

III. Technical Support

During the Initial Support Term and any applicable Renewal Term, **SWEET** shall provide to Customer the Technical Support described in Schedule A. **SWEET'S** obligations under this Section III with respect to a Renewal Term are contingent upon Customer's timely making the payments required by section IV.1.

IV. Fees and Payment; Renewal of Technical Support

1. **Support Fees and Renewal.** Customer by purchasing a license to the Program has already paid for Technical Support for the Initial Support Term. Approximately 60 days prior to the expiration of the Initial Support Term, **SWEET** will invoice Customer for the upcoming Renewal Term, payable 12 months in advance. Customer may accept Technical Support for the upcoming Renewal Term by paying **SWEET'S** invoice in U.S. Dollars. If Customer fails to pay such invoice within 30 days after the commencement of the Renewal Term, **SWEET** may, notwithstanding Section VI and without further notice to Customer, terminate and treat this Agreement as terminated.
2. **Taxes.** Support fees and other charges set forth in this Agreement do not include applicable taxes. In addition to the fees and charges due **SWEET** under this Agreement, Customer shall remain liable for and shall pay all local, state, and federal sales, use, excise, personal property, or other similar taxes or duties, and all other taxes, which may now or hereafter be imposed upon this Agreement or possession or use of the Program, excluding taxes based on **SWEET'S** income.

V. Warranties and Limitations of Liability

1. **Limited Performance Warranty.** *SWEET* warrants that it will use its reasonable best efforts to ensure that any Support it provides will be performed in a professional and workmanlike manner. *SWEET* agrees to use reasonable efforts to correct any error or defect in its provision of Support under this Agreement. The foregoing warranty and remedy do not expand or extend any limited warranties relating to the Program set forth in the relevant License Agreement. **THE PROVISIONS OF THIS SECTION SET FORTH THE ENTIRE LIABILITY OF *SWEET* AND THE SOLE REMEDIES OF CUSTOMER WITH RESPECT TO *SWEET*'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT.**
2. **Disclaimer of Other Warranties.** **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES, AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL, OR WRITTEN STATEMENTS OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, TITLE, THE CONDITION OF ANY PRODUCT OR SERVICES, OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED.**
3. **No Consequential Damages.** **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL *SWEET* OR ITS SUPPLIERS BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE PROGRAM, EVEN IF *SWEET* HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
4. **Additional Limitation of Liability.** **IN NO EVENT SHALL *SWEET*'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR THE TECHNICAL SUPPORT PROVIDED UNDER THIS AGREEMENT.**

VI. Termination

If either party defaults in performing any material obligations required under this Agreement, the non-defaulting party may give written notice of its intention to terminate this Agreement, describing in reasonable detail the default. If the defaulting party fails to remedy such material default within thirty (30) days following such written notice, or if such default is not capable of cure within such thirty (30)-day period, and the defaulting party fails to commence cure procedures within such thirty (30)-day period and diligently prosecute such procedures until the default is cured, then the non-defaulting party may terminate this Agreement.

VII. Business Associate Assurances

In the event that *SWEET* is deemed to be a "Business Associate" of Customer, and Customer is a "Covered Entity," as those terms are defined in 45 C.F.R. § 160.103, *SWEET* shall, effective on or after April 14, 2003, or such other implementation date established by law, carry out its obligations under this Agreement in material compliance with the regulations published at 65 Federal Register 82462 (December 28, 2000) (the "Privacy Regulations") pursuant to Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and

Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, et seq., as amended ("HIPAA"), to protect the privacy of any personally identifiable, protected health information ("PHI") that is collected, processed or learned in connection with the Technical Support services set forth in Schedule A hereto. In conformity therewith, **SWEET** agrees that it will use its reasonable best efforts to:

- Not use or further disclose PHI except: (i) as permitted under this Agreement (that is, for those activities specified in Schedule A hereto; and related administrative functions pertaining to these activities); (ii) as required for the proper management and administration of **SWEET** in its capacity as a HIPAA Business Associate of Customer, in the event **SWEET** is deemed to be a Business Associate of Customer for these specified purposes; or (iii) as required by law;
- Use appropriate reasonable safeguards to prevent use or disclosure of PHI except as permitted by this Agreement;
- Report to Customer any use or disclosure of PHI not provided for by this Agreement of which **SWEET** becomes aware;
- Ensure that any agents or subcontractors to whom **SWEET** provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to **SWEET** with respect to such PHI;
- Make PHI available to the individual who has a right of access as required under HIPAA in the event **SWEET** maintains any PHI in a designated record set as defined by 45 C.F.R. § 164.501;
- Make available for amendment and incorporate any amendments to PHI when notified to do so by Customer in the event that **SWEET** maintains any PHI in a designated record set as defined by 45 C.F.R. § 164.501;
- Make available to Customer the information required to provide an accounting of the disclosures of PHI, if any, made by **SWEET** on Customer's behalf, provided such disclosures are of the type for which an accounting must be made under the Privacy Regulations;
- Make its internal practices, books and records relating to the use and disclosure of Customer's PHI available to the Secretary of the Department of Health and Human Services for purposes of determining Customer's compliance with HIPAA and the Privacy Regulations; and
- At the termination of this Agreement, return or destroy all PHI received from, or created or received by **SWEET** on behalf of Customer. In the event the return or destruction of such PHI is infeasible, **SWEET'S** obligations under this section VII shall continue in force and effect so long as **SWEET** possesses any PHI, notwithstanding the termination of this Agreement for any reason.

Notwithstanding any provisions of this Agreement to the contrary, Customer may terminate this Agreement if Customer determines that **SWEET** has violated a material term of this Agreement with respect to its functions as a Business Associate.



VIII. General

- 1) Entire Agreement. This Agreement and the License Agreement constitute the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, representations, and statements with respect to such subject matter are superseded hereby. This Agreement may not be altered, modified, amended, changed, rescinded, or discharged in whole or in part, except by written agreement executed by both Customer and **SWEET**.
- 2) Assignment. This Agreement may not be assigned without prior written consent from **SWEET** and any attempt to do so without permission shall be void.
- 3) Force Majeure. Notwithstanding anything to the contrary in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement (other than nonpayment of money or breach of confidentiality provisions) if such default, delay or failure to perform is shown to be due entirely to causes beyond reasonable control of the party charged with a default, including, but not limited to, causes such as strikes, lock-outs or other labor disputes, riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, or nuclear disasters.
- 4) Governing Law. The validity and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, excluding that body of law applicable to choice of law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Sweet Computer Services, Inc., d/b/a
SWEET, an Ortivus Company,
a Delaware Corporation

By: _____

Print Name: _____

Title: _____

Sweet Computer Services, Inc. d/b/a
SWEET an Ortivus Company
2324 Sweet Parkway Road
Decorah, Iowa 52101

Customer

By: [Signature]

Print Name: MICHAEL THOMPSON

Title: GMS CHIEF

Customer

Site Address: 10 MAIN ST.
RAPID CITY, S.D. 57701

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

[Signature]
Attorney

12-2-03
Date

Schedule A

This Schedule describes the terms and conditions relating to Technical Support that **SWEET** will provide to Customer during the Initial Support Term and any Renewal Terms. The Technical Support Agreement described into this Schedule does not expand on or change the Program warranty provisions set forth in the License Agreement.

Product Updates:

From time to time **SWEET** may develop permanent fixes or solutions to known problems or bugs in the Program and incorporate them in a formal "Update" to the Program. If Customer is receiving Technical Support from **SWEET** on the general release date for an Update, **SWEET** will provide the Customer with the Update and related Documentation, both at no additional charge to the Customer.

Technical Support Services:

Telephone Assistance. Customer will be given the telephone number for **SWEET'S** support line and will be entitled to contact the support line during normal operating hours, (between 8:00 a.m. and 5 p.m. U.S. Central Standard Time) on regular business days, excluding **SWEET** holidays, to consult with **SWEET** Technical Support staff concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. Assistance may include communicating via pcAnywhere, modem, or electronic bulletin board.

Web Site Support. Online support is available 24 hours per day, offering Customer the ability to resolve its own problems with access to **SWEET'S** most current information. Customer will need to enter its designated user name and password to gain access to the technical support areas on **SWEET'S** Web site. **SWEET'S** technical support areas allow Customer to: (i) search an up-to-date knowledge-base of technical support information, technical tips, and featured functions; (ii) access answers to frequently asked questions (FAQ); and (iii) access current program releases and documentation.

Software Problem Reporting. Customer may submit to **SWEET** requests identifying potential problems in the Program. Requests should be in writing and directed to **SWEET** by e-mail or FAX. **SWEET** retains the right to determine in its sole discretion the final disposition of all requests, and will inform Customer of the disposition of each request. If **SWEET** decides in its sole judgment to act upon a request, it will do so by providing a bug fix as described above.

Exclusions from Technical Support Services:

SWEET shall have no support obligations with respect to any hardware or software product ("Nonqualified Products") other than the Program. If **SWEET** provides support services for a problem caused by a Nonqualified Product, or if **SWEET'S** service efforts are increased as a result of a Nonqualified Product, **SWEET** will charge time and materials for extra service at its current published rates for custom software services. If, in **SWEET'S** opinion, performance of Technical Support is made more difficult or impaired because of Nonqualified Products, **SWEET** shall so notify Customer, and Customer will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render Technical Support under this Agreement. Customer shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Program.



Customer Responsibilities:

In connection with **SWEET'S** provision of Technical Support as described in this Exhibit, Customer acknowledges that Customer has the responsibility to do each of the following:

- 1) Maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to **SWEET** are not due to hardware malfunction;
- 2) Maintain the designated computer system at the latest code revision level deemed necessary by **SWEET** for proper operation of the Program;
- 3) Supply **SWEET** with access to and use of all information and facilities determined to be necessary by **SWEET** to render the Technical Support described in this Exhibit;
- 4) Perform any test or procedures recommended by **SWEET** for the purpose of identifying and/or resolving any problems;
- 5) Maintain a procedure external to the Program for reconstruction of lost or altered files, data, programs to the extent deemed necessary by Customer;
- 6) At all times follow routine operator procedures as specified in the Documentation;
- 7) Remain solely responsible at all times for the safeguarding of Customer's proprietary, confidential, and classified information; and
- 8) Ensure that the designated computer system is isolated from any process links or anything else that could cause harm before requesting or receiving remote support assistance.

Definitions of 45 C. F.R. § 160.103

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

- 1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- 2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

