

CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

Department of Fire and Emergency Services

10 Main Street


605-394-4180

Fax: 605-394-6754

February 17, 2004

LF022504-03

TO: Maggie Paul

FROM: Frankie 

RE: Agenda Item

Please place the following on the Council Agenda:

Request for approval to enter into a contractual agreement with Sweet Computer Services, Inc. for technical support. Monies for this contract, in the amount of \$1,000.00, will be charged to the Ambulance budget 0890.

If you have any questions, please contact EMS Chief Mike Thompson.



an Ortivus Company

2324 SWEET PARKWAY RD.
P.O. BOX 276
DECORAH, IA 52101-0276
(563) 387-3191

DATE
2/5/2004

PAGE: 1 of 1

INVOICE # 20040205 - 65

BILL TO:

Rapid City Fire/EMS
10 Main Street

SHIP TO:

Rapid City

SD 57701-283

PURCHASE ORDER NO.		CUSTOMER I.D.		SALES I.D.	SHIPPING METHOD	PAYMENT TERMS	REQ'D SHIP DATE	MASTER NUMBER	
		SD01Z		HOUSE		NET 60			
QTY. ORDERED	QTY. SHIPPED	QTY. B/O	ITEM NUMBER	DESCRIPTION			DISCOUNT	UNIT PRICE	EXTENDED PRICE
1			0899F	Software Support Contract from 4/8/2004 to 01/27/2005 covering:					
				AMAZON FIELD DATA REMOTE	1 Users	AMAZON FIELD DATA STATION			
						FDC Product Contract Subtotal		\$1,000.00	
<i>Thank You</i>							SUBTOTAL	\$1,000.00	
							TAX	0.00	
							TOTAL	\$1,000.00	

58451V

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

This Technical Support Agreement ("Agreement") is dated as of February 5, 2004 by and between Sweet Computer Services, Inc., d/b/a, **SWEET, an Ortlivus 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.

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.



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.