



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH DATE: September 22, 2016

RE: *Competitive award to Orchard Software Corporation for Laboratory Information System*

PETITION # 26-16

That the Southern Nevada District Board of Health *approve the competitive award and service agreement (SNHD-4-SA-16-092) between the Southern Nevada Health District and Orchard Software Corporation for purchase of a Laboratory Information Management System.*

PETITIONERS:

Karen F. Carifo, PhD, *Laboratory Director*
Michael Johnson, PhD, *Director of Community Health*
Andrew J. Glass, FACHE, MS, *Director of Administration*
Joseph P. Iser, MD, DrPH, MSc, *Chief Health Officer*

6-3-2016
MJ 6-3-2016
AK 6/3/16

DISCUSSION:

This is a contract for purchase of a Laboratory Information System to allow electronic testing records, reports and statistical data of laboratory testing performed by the SNHD Clinical Services Laboratory and facilitate electronic billing for services. This system will eventually interface to the patient electronic medical record.

FUNDING:

Capital project fund: 06-400-5740-000

**ORCHARD SOFTWARE CORPORATION
LABORATORY INFORMATION SYSTEM**

**PURCHASE AGREEMENT FOR SOUTHERN NEVADA HEALTH DISTRICT
CLINICAL LABORATORY
SNHD-4-SA-16-092**

WRITTEN ON JUNE 21, 2016 AND VALID IF SIGNED BY SEPTEMBER 30, 2016

This Purchase Agreement ("Agreement") is dated this _____ day of _____, 2016 (the "Effective Date") between the Southern Nevada Health District ("CLIENT") and Orchard Software Corporation ("Orchard") and governs the acquisition by CLIENT and installation by Orchard of an Orchard® Harvest™ Laboratory Information System ("System") and defines the on-going business relationship related to CLIENT's acquisition and use of the System.

- I. **Product Description:** Orchard® Harvest™ Laboratory Information System ("Harvest LIS") is a Windows-based software system that processes, stores, and manages laboratory data during stages of testing and workflow as outlined in their Response to Request for Proposal dated April 4, 2016. Harvest LIS manages test order entry, specimen processing, result entry and patient demographics, storing the information in its database for future reference. Harvest LIS is designed to be used for both clinical and environmental test data and contains special case management tools for public health laboratory testing. It utilizes process automation; robust instrument, electronic medical record, and reference lab interfaces; and rules-based technology to improve efficiency, and reduce errors.

- II. **Description of Services:** The Scope of Work for this Agreement generally describes the configuration and installation of Harvest LIS. Subject to the terms and conditions set forth in this Agreement, Orchard agrees to perform any and all necessary work in order to provide CLIENT with the services specifically described in their Response to Request for Proposal dated April 4, 2016, and identified in the Scope of Work (Attachment B).

Orchard shall perform its services with the degree of skill, care, and diligence in accordance with the applicable professional standards currently recognized by such profession and observed by national firms performing the same or similar services.

Orchard shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the provision of the services under this Agreement.

III. **Configuration:** The configuration for CLIENT is as follows: Five (5) concurrent Harvest Client Licenses, includes setup for an Integrated Harvest LIS application and Webstation with Web access for up to Ten (10) Concurrent Webstation Users.

IV. **Hardware Components:**

1. CLIENT will provide the servers and workstation hardware at its own cost and expense. Minimum specifications are outlined in Attachment A.
2. Ancillary Hardware: Provided By CLIENT as outlined in Attachment A.
3. CLIENT will provide all necessary cabling, phone lines, dedicated fax line(s), and support services required to interface the System to CLIENT's existing LAN and/or WAN.

NOTE: If any workstations on the System network require communications via a Wide Area Network, then CLIENT will be responsible for providing and maintaining a secure physical link of at least 512kbps (preferably T1), such as access to a network infrastructure or dedicated data line and all necessary terminating hardware between the remote workstations and the primary system network.

4. CLIENT assumes all responsibility to provide network connectivity for all computers that are to connect to the System. This applies to computers located both on Local and Wide Area Networks. CLIENT is also responsible for SSL certificates and VPN deployments for those computers and users connecting to the System from a Wide Area Network connection.
5. If CLIENT desires to deploy the System in either a Virtual Machine environment or Virtual Desktop Infrastructure, then Orchard can provide recommendations for the requirements of the System within these deployment options. Orchard is not responsible for the selection, installation, or support of either the Virtual environment or the VDI systems.

V. **Software:**

1. **Software Components.** In consideration of CLIENT's payment of the relevant license fees to Orchard, Orchard will provide the following software components:
 - a. Application License for Orchard Harvest Laboratory Information System for 64-bit Microsoft Windows;
 - b. Five (5) concurrent Harvest LIS Licenses;
 - c. Integrated Harvest LIS Webstation Module with Web access for up to Ten (10) concurrent users;
 - d. Server and user licenses (as necessary) for remote access utilities;

- e. Integrated Zetafax Software Module to allow for outbound faxing from 1 line.
 - f. CLIENT shall receive a copy of all installed Software (to be used only for backup purposes).
2. **Right to Use.** Orchard hereby grants to CLIENT the right to use the above-listed licensed software on a non-exclusive basis until this Agreement is terminated pursuant to Section XVII. Orchard represents and warrants to CLIENT that Orchard has the right to license the same.
 3. **Documentation.** CLIENT shall have the right to copy and use written manuals and documentation of the software provided by Orchard under this Agreement (including, but not limited to, the Training Outline and technical Help Manual.) CLIENT shall have the right to excerpt and post such materials onto an Intranet website for instructional or reference purposes only, and limited to the materials directly related to the Internet-enabled portions of the System described in this Agreement.
 4. **Zetafax Software.** Orchard shall provide support for the Zetafax software as set forth in Section VIII, except that all fees related to upgrades, updates and/or new versions of the Zetafax software must be paid by CLIENT as directed by Orchard.
 5. **Third Party Software.** All third party software provided by Orchard and required to operate the System is set forth in this Agreement. Orchard agrees and acknowledges that it hereby grants to CLIENT (and has all rights necessary to make such grant) all licenses and rights necessary to enable CLIENT to use such third party software to operate the System in the manner contemplated under this Agreement. To the fullest extent possible, Orchard will pass on to CLIENT all applicable warranties on such third party software so that CLIENT, either in its own name or through Orchard, may enforce the terms of any applicable warranty which has been extended to Orchard by such third party vendors to the same extent to which Orchard itself may enforce such warranties. Orchard will take such steps as may be reasonably requested by CLIENT to cooperate in the enforcement of such third party warranties. Except as specifically provided with respect to the Zetafax software, CLIENT will not be responsible for any fees for its use or maintenance of any third party software; however, in the case of a need for replacement of any licensed copies of third party software due to loss or destruction of the licensed back up copies, CLIENT will have to purchase new copies.
 6. **Test Environment.** Orchard agrees to supply software at no additional charge to allow CLIENT to set up a test environment.

VI. Interfaces:

1. In consideration of CLIENT's payment of the relevant fees to Orchard, Orchard will provide the interfaces listed below as part of this Agreement. The instrument interfaces listed below will be completed during the System installation outlined in this Agreement. The instruments must be installed and ready to interface prior to the completion of the System installation as documented in the Project Plan (as defined in Section VII).
2. Orchard hereby grants to CLIENT the right to use the interfaces listed below on a non-exclusive basis until this Agreement is terminated pursuant to Section XVII. Orchard represents and warrants to CLIENT that Orchard has the right to license the same.
3. Instruments:
 - a. Panther
 - b. Evolis
 - c. Cepheid GenExpert
 - d. Genius
 - e. Bioplex
 - f. Dynex D52
4. Other Interfaces:
 - a. Billing System Interface: Orchard Harvest LIS will send billing information from Orchard Harvest LIS to the Billing System as determined and identified by CLIENT. Details of implementation and go live will be included in the Project Plan. Orchard will take responsibility to lead the team comprised of representatives from Billing System Company, Orchard, and CLIENT to successfully complete the interface.
 - b. Reference Laboratory Interfaces: See Section XV, Options.
 - c. ADT Interface: Orchard Harvest LIS will receive patient demographics, including admission, discharge, and transfers, from e-ClinicalWorks (CLIENT's Electronic Health Record (EHR) system). Details of implementation and go live will be included in the Project Plan. Orchard will take responsibility to lead the team comprised of representatives from e-ClinicalWorks, Orchard, and CLIENT to successfully complete the interface.
 - d. EHR Orders Interface: Orchard Harvest LIS will receive patient's laboratory test orders from the e-ClinicalWorks Health Record System. Details of implementation and go-live will be included in the Project Plan. Orchard will take responsibility to lead the team comprised of

representatives from EHR System Company, Orchard, and CLIENT to successfully complete the interface.

- e. EHR Orders Interface: Orchard Harvest LIS will send patient's laboratory test orders to e-ClinicalWorks. Details of implementation and go live will be included in the Project Plan. Orchard will take responsibility to lead the team comprised of representatives from e-ClinicalWorks, Orchard, and CLIENT to successfully complete the interface.
- f. EHR Results Interface: Orchard Harvest LIS will send patient's laboratory test results to e-ClinicalWorks. Details of implementation and go-live will be included in the Project Plan. Orchard will take responsibility to lead the team comprised of representatives from e-ClinicalWorks, Orchard, and CLIENT to successfully complete the interface.
- g. Additional Interfaces will be quoted as requested.
- h. CLIENT shall be responsible for ensuring that each instrument, and/or other information system interfaced has, in working order, all necessary software and input/output ports for interfacing with the System.
- i. CLIENT is responsible for all costs and expenses imposed by other vendors for their portions of an interface.
- j. Orchard is not responsible for the interfacing limitations of host computer system or reference laboratory to be interfaced.
- k. An interface between the System and any host computer system or reference laboratory requires cooperation of all parties – Orchard, CLIENT, and the host computer vendor or reference laboratory – to be successfully completed. It is CLIENT's responsibility to contact the other parties and secure a commitment to complete their portions of the interface prior to the start of the project.
- l. Orchard will validate that the components Orchard provides to make an interface effective are in place and functioning correctly. If an interface is not functioning completely or correctly due to a component provided by another vendor, then CLIENT will not unreasonably delay acceptance of the System. It is the responsibility of CLIENT to contact the vendor in order to assure that the device is in working order and that all software and components necessary to accomplish the interface are available and of the correct revision level.
- m. If any instrumentation, with interfaces outlined in this Agreement, is not installed and ready to be interfaced prior to the completion of the System installation as outlined in the Project Plan, then Orchard will supply

quotations for the interfaces to be completed at another time under a separate agreement.

VII. Installation and Training:

1. A Project Plan, incorporating the Scope of Work will be mutually agreed upon between CLIENT and Orchard and will be used as the primary coordination document for the entire installation project. The Project Plan will be completed by the Parties within thirty (30) days of the date of the last signature affixed to this Agreement. Updates to the Project Plan will be made only upon the mutual agreement of CLIENT and Orchard.
2. Installation and training will begin based on the Project Plan agreed upon by CLIENT and Orchard.
3. Installation and training expenses, including airfare, hotel, and per diem, are included in the System purchase price. Orchard will make all necessary travel arrangements for Orchard's team and CLIENT's representatives.
4. Orchard's technical staff will set up all computer hardware provided by Orchard, establish all physical connections, and set up all licensed software on-site at CLIENT's facility.
5. Installation and training will consist of:
 - a. Two (2) people to attend Harvest LIS System Administrator Training (Training held in Carmel, Indiana).
 - b. Four (4) weeks of professional services time, which consists of dedicated installation and training time that may be completed on-site at CLIENT's facility or remotely to facilitate the setup and installation of the system as described in the configuration as outlined in Section III, Configuration, plus training for CLIENT's technical staff on 4th Dimension database maintenance as needed for administering and maintaining Harvest LIS, querying via tools inherent within Harvest LIS, and reporting via data browsers and standard System available reports within Harvest LIS.

It is understood that installation and training may not be on contiguous time frames.

6. All travel arrangements for the CLIENT's employee(s) to the off-site training included within this Agreement will be scheduled in advance of the class. Once travel arrangements are made, any charges relating to changes requested by the CLIENT will be the responsibility of the CLIENT. This includes all changes, transfers, cancellations, etc. to hotel, transportation, and airfare.

7. All travel arrangements for Orchard's employee(s) to the CLIENT facility for the installation and training included within this Agreement will be scheduled in advance of the time on-site. Once travel arrangements are made, any charges relating to changes made at the CLIENT's request will be the responsibility of the CLIENT. This includes changes, transfers, cancellations, etc. to hotel, transportation, and airfare.
8. On-site Working Week: A work week consists of 32 on-site hours and 8 hours of travel for a total of 40 hours; hours available for scheduling are during a standard business week, Monday through Friday, and excludes weekends and holidays. Weeks with multiple Orchard staff members on-site will be counted as multiple weeks, one per person.
9. CLIENT will assign two people to act as project coordinators for the entire project: One person for laboratory decisions and one for IT decisions.
10. One Harvest LIS System Administrator will be trained and certified at Orchard's corporate office, and three operators will be trained and certified on-site at CLIENT's facility.
11. Training will be coordinated between Orchard and CLIENT in advance. Individual Orchard Systems Engineers will not be expected to work more than 12 hours during a 24-hour period.
12. Completion of System installation is defined as delivery of hardware and software, training, and Orchard's verification of the System, for the System configuration outlined in this Agreement.
13. Acceptance of System is defined as CLIENT's verification that system is materially performing to CLIENT's specifications in critical laboratory business processes, including:
 - a. Installation of system components, as applicable, on all compatible laboratory workstations present during contract period.
 - b. Confirmation that patient data can be correctly entered, worksheets made, and results printed (minimum of 5 verified results in each filed of testing)
 - c. System to allow operators to query and build administrative reports and assign permissions.
 - d. Confirmation of successful access and specific user role security settings.
 - e. Report formats for patient and administrative reports to meet CLIENT specifications, including appearance, content, and export to .CSV file format, based on current standard System available reports.

- f. Audit logs to provide information on user access and changes.
- VIII. **No Included Software Modifications or Customizations:** No modifications or customizations to the version of the System current as of the Effective Date are included as part of this Agreement. CLIENT will receive all general release software upgrades as part of the standard support agreement, for so long as CLIENT maintains a support agreement.
- IX. **Modifications or Customizations at the Direction of CLIENT:** To the extent the Parties contract for modifications or customizations (all of which are outside the scope of this Agreement, as set forth in Section VII), Orchard shall own all such modifications or customizations even if made at the direction of and/or with the input of CLIENT. The Parties agree that any and all intellectual property rights in and to such modifications or customizations (including but not limited to any copyrights) are owned solely by Orchard, and CLIENT hereby agrees to assign, convey, and otherwise transfer to Orchard free of charge all of its right, title, and interest in and to such intellectual property rights, and agrees to execute any documentation necessary to carry out such assignment, conveyance and transfer. For avoidance of doubt, the Parties acknowledge that such modifications or customizations (and the accompanying intellectual property rights) shall be included within the software licensed to CLIENT hereunder, and may be used by CLIENT on a non-exclusive basis pursuant to the grant herein.
- X. **Service and Support:**
1. For five (5) full years from the execution of this Agreement, online telephone software service and support will be provided by Orchard, including modem diagnostics and all general release software upgrades to the System.
 - a. Following year one and provided that CLIENT is current on payment of all amounts due to Orchard under this Agreement, the annual Silver software support agreement for years 2 through 5 for the System configuration outlined in this Agreement will be (\$18,198.65) and is subject to increase if the System is expanded.
 - b. System Expansion includes additional licenses or users of any type, modules, additional host interfaces, and reference laboratory interfaces.
 - c. CLIENT is responsible for installation and maintenance of an Internet connection or VPN to the System to accommodate remote technical support by Orchard.

Hardware Warranty: All new hardware components provided by Orchard are warranted by the original manufacturer and may be repaired or replaced at the option of the

manufacturer. CLIENT should contact Orchard first so that a determination may be made as to the required corrective action.

- XI. **Representations and Warranties:** Orchard hereby represents and warrants that the licensed Software will conform in all material respects to the functional specifications included in this Agreement and the technical Help Manual supplied with the System for a period of ninety (90) days after the completion of System installation. In the event of a breach of this representation and warranty, Orchard will take such actions as may be necessary to conform the licensed Software to the functional specifications at no additional charge to CLIENT. THE WARRANTY SET FORTH IN THIS SECTION XII IS THE ONLY WARRANTY MADE BY ORCHARD RELATING TO THE LICENSED SOFTWARE. ORCHARD EXPRESSLY DISCLAIMS, AND CLIENT HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ORCHARD DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS IN THE LICENSED SOFTWARE CAN OR WILL BE CORRECTED. ORCHARD'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF ORCHARD FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF THE LICENSED SOFTWARE.
- XII. **Access to Source Code:** In the unlikely event that continued support of the CLIENT's System by Orchard or its successor is not available during any active support period during the term of this Agreement (i.e., a declaration of bankruptcy, cessation of business by Orchard or breach of support agreement by Orchard) a complete copy of the most current version of the System source code, with internal documentation, will be provided to CLIENT (in confidence) for the sole purpose of maintaining the licensed use of the System at CLIENT's laboratory location at the time of the Effective Date and most recent general release update, and to provide laboratory information for the CLIENT's patients only. Except for such individual use by CLIENT at its business location(s) for the purposes of maintaining its laboratory information system, such code and documentation shall at all times be maintained in confidence. No disclosure of such information shall be made other than that required to carry out the foregoing except by the authority of Orchard. No rights to all or any part of the source code shall be transferred to CLIENT pursuant to this Agreement other than rights of use by CLIENT explicitly provided in this Section XIII.
- XIII. **Confidentiality of Patient Information:** Orchard represents and warrants that the software and related equipment or products referenced in this Agreement will operate in a manner that enables CLIENT to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing privacy, security, breach notification and enforcement rules at 45 C.F.R. Parts 160 and 164 ("HIPAA Rules"), the applicable provisions of the Health Information and Technology for Economic and Clinical Health ACT of 2009 ("HITECH") and any future

implementing regulations and guidance issued by the Department of Health and Human Services.

In the normal course of business (installation and product support), Orchard may occasionally require access to protected healthcare information, personally identifiable, and/or proprietary information. Materials provided to Orchard in connection with the performance under this Agreement shall not, without the prior written consent of CLIENT, be used by Orchard for any purpose other than the performance under this Agreement. All CLIENT data shall be destroyed upon termination of this Agreement.

Orchard warrants that all employees, agents, and representatives will hold confidential any and all information regarding CLIENT's clinical practices, administrative procedures, patients, and providers. Orchard will keep a record of all access by employees, agents, and representatives to the System and will limit access only to those individuals who have a compelling need in order to complete a specific and defined activity. To the extent personally identifying information and/or proprietary information is accessed or disclosed in furtherance of this Agreement, consistent with state and federal privacy laws, Orchard will at all times have in place procedures to maintain the privacy and confidentiality of any such information with at least the same degree of care as it maintains the confidentiality of its own confidential information of like importance.

To comply with the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, to protect the security, confidentiality, and integrity of protected health information, the Parties will execute a Business Associate Agreement, attached hereto as Attachment C and incorporated by reference herein.

All data, including all protected healthcare information, created or collected by CLIENT as a result of its routine use of the System remains the property of CLIENT and its designated agents and representatives.

XIV. Options :

1. CLIENT may contract, as a separate agreement, with Orchard for additional software, hardware, and support at any time during the term of this Agreement.
 - a. Quest Diagnostics Bidirectional Reference Laboratory Interface (HL7 2.3x): Orchard Harvest LIS will send patient demographics, test orders, and billing information from Orchard Harvest LIS to Quest Diagnostics Reference Laboratory and receive patient test results sent from Quest Diagnostic Reference Laboratory to Orchard Harvest LIS. Interface to be scheduled for delivery upon receipt of a project agreement and purchase order from Quest Diagnostic Reference Laboratory or CLIENT. Implementation of this interface will not be outlined in the Project Plan for this Agreement. - \$14,850.00

- b. Quest Diagnostics Bidirectional Reference Laboratory Interface (HL7 2.5x): Orchard Harvest LIS will send patient demographics, test orders, and billing information from Orchard Harvest LIS to Quest Diagnostics Reference Laboratory and receive patient test results sent from Quest Diagnostic Reference Laboratory to Orchard Harvest LIS. Interface to be scheduled for delivery upon receipt of a project agreement and purchase order from Quest Diagnostic Reference Laboratory or CLIENT. Implementation of this interface will not be outlined in the Project Plan for this Agreement. - \$16,500.00
- c. LabCorp Bidirectional Reference Laboratory Interface: Orchard Harvest LIS will send patient demographics, test orders, and billing information from Orchard Harvest LIS to LabCorp Reference Laboratory and receive patient test results sent from LabCorp Reference Laboratory to Orchard Harvest LIS. Interface to be scheduled for delivery upon receipt of a project agreement and purchase order from LabCorp Reference Laboratory or CLIENT. Implementation of this interface will not be outlined in the Project Plan for this Agreement. - \$7,700.00

2. The pricing for the options listed above will be effective for twelve (12) months from the Effective Date of this Agreement.

XVI. **Indemnification:** Neither Party shall be responsible or liable for any act, omission, negligence, misfeasance, malfeasance, debt, or default of the other Party, its employees, officers, directors, agents, representatives, physicians, other health care professionals or para-professionals, or any third party. Orchard at its expense agrees to indemnify, defend, and hold harmless CLIENT from any claim, judgment, costs, expenses, and attorneys' fees ("Claim") to the extent that such Claim is based on a claim that the Orchard software, hardware, or instrument interfaces used by CLIENT infringe any patent, copyright, license, or other property right of a third party. If as a result of any such claims CLIENT is enjoined from using the Orchard software, hardware, or other products, Orchard at its expense shall either procure the right for CLIENT to continue to use such software, hardware, or other products or discontinue the licenses granted herein and refund the purchase price paid by CLIENT.

XVII. **Term and Termination:** This Agreement is effective as of the Effective Date and shall continue until terminated as set forth herein. Grounds for termination are as follows:

1. This Agreement may be terminated by mutual agreement of the Parties, effective at the time designated by the Parties.
2. Either Party may terminate this Agreement with or without cause upon thirty (30) days written notice to the other Party.

3. Either Party may terminate this Agreement upon a material breach of this Agreement by the other Party if the terminating Party provides written notice to the other Party specifying with particularity the details of the other Party's material breach of this Agreement and the other Party does not cure such material breach within thirty (30) days after receipt of the written notice from the terminating Party.
 4. This Agreement is subject to the availability of funding and shall be terminated immediately if for any reason State and/or Federal funding ability, or private grant funding ability, budgeted to satisfy this Agreement is withdrawn, limited, or impaired.
- XVIII. **Effect of Termination:** Upon termination of this Agreement by any Party for whatever reason, CLIENT shall have no further right to access and use the System, and CLIENT shall uninstall the licensed Software from its servers and workstation hardware. If this Agreement is terminated by CLIENT based upon a breach by Orchard, and such termination occurs before completion of System installation, then Orchard shall refund the applicable pro rata amount of costs and fees paid by CLIENT to Orchard. If termination by CLIENT based upon a breach by Orchard occurs after the completion of System installation, or if this Agreement is terminated for any other reason, then no costs or fees shall be refunded to CLIENT; *provided, however,* that if CLIENT terminates this Agreement based upon a breach by Orchard within the twelve (12) months immediately following completion of System installation, then Orchard will refund to CLIENT the applicable pro rata amount of prepaid fees for service and support only.
- XIX. **Employee Recruiting:** During the term of this Agreement and for a period of six (6) months after termination for any reason, each Party agrees that it shall not directly or indirectly, in any way, solicit, offer employment to or hire any person who is employed by the other Party, unless (i) the employee was terminated by the other Party prior to the solicitation, employment or hiring, or (ii) the employee is hired as a result of the activity of a third party recruiter or hired after responding to a general advertisement or general solicitation for employment not targeted at the other Party's employees.
- XX. **Assignment:** CLIENT may not assign this Agreement or any of its rights or delegate any of its obligations hereunder to any third party without the prior written consent of Orchard, except that CLIENT may transfer all of its rights and obligations under this Agreement in conjunction with a merger, consolidation or sale of substantially all of its assets to which this Agreement pertains upon written notice to Orchard. This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assignees.
- XXI. **Proprietary Information Systems Applications:** Orchard acknowledges that Orchard employees and/or contractors may have an opportunity to view or

interact with software applications currently under development at CLIENT. Orchard agrees that the systems under development are proprietary and may not be copied or replicated in any manner.

XXII. **Severability:** If any provision of this Agreement shall be unlawful, void, or for any reason, unenforceable, it shall be deemed severable from, and shall in no way affect the validity or enforceability of, the remaining provisions of this Agreement, which shall remain valid and enforceable according to its term.

XXIII. **Shipping and Freight Cost:** All goods will be shipped FOB destination, prepaid by Orchard.

XXIV. **Notices:** All notices or communications shall be deemed effective upon notice of delivery. All notices or other communications required hereunder shall be in writing and shall be made by personal delivery or delivered via traceable carrier to the other Party at their address set out below:

Southern Nevada Health District
Financial Services Department
280 S. Decatur Blvd.
Las Vegas, NV 89107

Orchard Software
Curt Johnson, COO
701 Congressional Blvd., Ste. 360
Carmel, IN 46032

XXV. **Investment and Payment Terms:**

Year 1 Purchase Price: \$152,111.51
Service and Support years 2-5: \$ 72,794.60 (\$18,198.65 x 4)
Total 5 year System Investment: \$224,906.11

Actual payment is contingent upon deliverables as detailed in the Project Plan. Payment terms are as follows: 25% of Year 1 purchase price due upon assignment of an Orchard Project Manager, 25% of Year 1 purchase price due upon delivery of the software license files, 25% of Year 1 purchase price upon completion of the initial hardware and software installation, and 25% of Year 1 purchase price upon acceptance of the System as described in Section VII.13.

Service and Support for years 2-5 will be invoiced annually beginning one (1) year from the date the System is put into production at CLIENT's Clinical Laboratory and the first result is reported from the System. Service and Support is subject to increase in years 2-5 if the System is expanded. Sales tax will be collected when applicable. Any payments which are not submitted by the due date will incur a late payment penalty of one percent (1%) per month interest on the balance of the amount past due.

XXVI. **Governing Law and Venue:** Each Party agrees that any and all disputes, claims, or litigation arising from or related in any way to this Agreement shall be

resolved exclusively by the courts in the State of Nevada with Clark County, Nevada as the exclusive venue of any action or proceeding arising out of this Agreement without regard to conflict of law provisions.

- XXVII. **Time Essence:** **Time is** of the essence in the payment and performance of this Agreement.
- XXVIII. **Entire Agreement:** This Agreement contains all of the agreements and understandings between the Parties with respect to the subject matter hereof. No agreement or other understanding in any way modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both Parties.
- XXIX. **Public Records:** Pursuant to NRS 239.010, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by CLIENT to public inspection and copying. CLIENT will have a duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.
- XXX. **Exclusivity:** CLIENT reserves the right to employ other contractors in connection with the various projects worked upon by Orchard.
- XXXI. **Limited Liability:** CLIENT will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626. Agreement liability of both Parties shall not be subject to punitive damages.
- XXXII. **Non-Discrimination:** As an Equal Opportunity Employer, Orchard has an ongoing commitment to hire, develop, recruit, and assign the best and most qualified individuals possible. Orchard employs employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender identity or expression. Orchard likewise agrees that it will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, and the American with Disabilities Act.
- XXXIII. **Status of Parties; Independent Contractor:** The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement and in respect to the provision of services hereunder. In the performance of such services, Orchard and any person employed by or contracted with Orchard shall at all times act as and be an independent contractor, and not an employee or agent of CLIENT. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement will be construed to *create a joint*

venture, partnership, association, or other affiliation or like relationship between the Parties.

Orchard has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by it in the performance of the services hereunder. Orchard shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, demands, and regulations of any nature whatsoever.

XXXIV. Third Party Interest: The Parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this Agreement shall not be construed to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties determining and performing their obligations under this Agreement.

XXXV. Execution in Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. Facsimile or electronic transmissions of documents and signatures shall have the same force and effect as originals.

By signing below, each representative represents that they have been authorized by their respective company to enter into this contractual Agreement.

Southern Nevada Health District

Orchard Software Corporation

By: _____
Name: Andrew J. Glass, FACHE, MS
Title: Director of Administration

By: _____
Name: Curt Johnson
Title: Chief Operating Officer

Date: _____

Date: _____

ATTACHMENT A
SNHD-4-SA-16-092

Orchard Harvest LIS

Minimum Recommended Hardware Specification:

1. Customer will provide the server and workstation hardware with required software. Minimum recommended specifications are outlined below.

- 1a. Any Necessary Harvest LIS Workstation Configurations: Provided by CLIENT
 - Modern Desktop Process (1.89 GHz or better)
 - 4+ GB of Memory
 - 250GB of Hard Drive Space
 - Windows Professional Edition (Home is not supported)
 - Orchard recommends workstations be dedicated for HL7, faxing, and instruments. Putting multiple systems within a single workstation will increase the chance of errors and system failures.*

- 1b. One (1) Harvest LIS Network Server Configuration: Provided by CLIENT
 - Modern Server Processors (Intel Xeon quad core 2.0GHz or above)
 - 12+ GB of Memory
 - 250GB of Hard Drive Space (Raid 1 minimum)
 - Windows Server 2008 or greater (64 Bit)
 - An Offsite Backup Solution

OR

- One (1) Harvest LIS Virtual Server Configuration: Provided by CLIENT
 - Operating System (OS) = Windows 2008 R2 SP1, 64-bit or Later
 - Processor Core Allocation = Minimum 4
 - Random Access Memory (RAM) = 16GB Statically Allocated
 - OS Store = 60GB + RAM Allocation
 - Storage = 300GB (can be dynamically allocated)
 - Storage Performance = 400 Input / Output Per Second (IOPS)
 - Application = Orchard System Client / Server Software with Local 4th Dimension (4D) Database

**ATTACHMENT B
SCOPE OF WORK
SNHD-4-SA-16-092**

SOFTWARE: PROVIDED BY ORCHARD SOFTWARE

Orchard Harvest LIS Application Licensing <ul style="list-style-type: none">• Includes (1) Orchard Harvest Laboratory Information System Application License.• License for backup and remote access utilities.• License for Orchard Harvest test environment.• License for ZetaFax faxing software for 1 line (analog).
5 Concurrent Harvest LIS User Licenses
Integrated Orchard Harvest LIS Webstation
10 Concurrent Orchard Harvest LIS Webstation Users

INTERFACES: PROVIDED BY ORCHARD SOFTWARE

Instrument Interfaces <ul style="list-style-type: none">• Included as part of the System Installation• Laboratory instruments at Southern Nevada Health District, at the time of System installation, will be interfaced to their capabilities (unidirectional, bi-directional, host query, or not at all) as part of the initial implementation. Does not include Automation line integration.
To Be Determined (TBD) Billing System Interface <ul style="list-style-type: none">• Orchard will send billing information to the To Be Determined Billing System
To Be Determined (TBD) ADT Interface <ul style="list-style-type: none">• Orchard will send patient demographics, including admission, discharge, and transfers, to the To Be Determined Electronic Health Record (EHR) System
e-ClinicalWorks Orders and Results Interface <ul style="list-style-type: none">• Orchard will receive patient's laboratory test orders from e-ClinicalWorks.• Orchard will send patient's laboratory test orders to e-ClinicalWorks.• Orchard will send patient's laboratory test results to e-ClinicalWorks.

SUPPORT: PROVIDED BY ORCHARD

Orchard Service & Support

- All general release software upgrades
- Phone support 24 hours a day, 7 days a week, and 365 days a year.
- Access to Orchard's Online Forums.
- Access to web training sessions.

TRAINING & INSTALLATION: PROVIDED BY ORCHARD SOFTWARE

Orchard Harvest LIS System Administrator Training

- One (1) week each for Two (2) CLIENT employees at Orchard Software in Carmel, Indiana, for Harvest LIS System Administrator Training.
- Cost includes all travel, lodging, and meal expenses associated with training.

Onsite Training and Installation

- Four (4) weeks of on-site installation and training to facilitate the setup and installation of the system.
- Costs incurred, by Orchard resources, for travel lodging, and meal expenses associated with on-site time will be invoiced separately.

Web Training Courses

- In advance of the on-site installation and training, client may complete web training sessions. The following six web courses are offered at no additional charge: Introduction to Orchard Harvest LIS; Using Order Patient Samples; Using Review Results; Using Release Stored Orders; Using Find a Patient; Using Quality Control

TRAINING & INSTALLATION: PROVIDED BY CLIENT

Client Responsibilities

- Client is responsible to develop test plans and execute functional, regression and integrated test plans.
- Client is responsible for development of training materials and delivering end-user training.
- Client is responsible for activation support.
- Client is responsible for third party software changes.
- Client is responsible for all changes to policies and procedures.
- Client to assign a Project Manager or single point of contact.

**ATTACHMENT C
BUSINESS ASSOCIATE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
ORCHARD SOFTWARE CORPORATION
SNHD-4-SA-16-092**

This Business Associate Agreement ("Agreement") is made and entered into this ___ day of _____, 2015 between the Southern Nevada Health District ("Covered Entity"), and Orchard Software Corporation ("Business Associate"), (individually referred to as "Party" or collectively as "Parties").

WITNESSETH:

WHEREAS, the Department of Health and Human Services ("HHS") has promulgated regulations at 45 CFR Part 160 and 164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provision of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"); and

WHEREAS, Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and are hereinafter referred to as "Service Agreements," and

WHEREAS, in the course of fulfilling its responsibilities under such Service Agreements, Business Associate may have access to, use, and/or disclose Protected Health Information (as defined below); and

WHEREAS, Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document as if fully set out herein; and

WHEREAS, the enactment of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 establishes certain requirements relating to the use, disclosure, and safeguarding of protected health information by persons providing services to Covered Entities, and both Parties have mutually agreed to satisfy such requirements through this Agreement; and

NOW THEREFORE, in consideration of the Parties continuing obligations under the Service Agreement(s) and other good and valuable consideration, the Parties mutually agree to the provisions of this Agreement to address the requirements of the HIPAA Rules, establish satisfactory assurances Business Associate will appropriately safeguard any Protected Health Information received from or on behalf of Covered Entity, and, therefore, execute this Agreement.

A. Agreements Affected by this Business Associate Agreement

Business Associate will provide services to Covered Entity pursuant to the following Service Agreements:

Purchase Agreement for Southern Nevada Health District Clinical Laboratory
SNHD-4-SA-16-092

B. Definitions

Any terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160 and 164.

- a) "Breach" means the acquisition, access, use, or disclosure of PHI a manner that is not permitted under the privacy regulations which compromises the security or privacy of the PHI. Any unpermitted access, use, or disclosure is presumed a breach absent a demonstration of a low probability that the PHI has been compromised.
- b) "Protected Health Information" (PHI) means individually identifiable health information including, without limitation, all data, documentation, demographic, medical, and financial information collected from an individual which relates to the past, present, or future physical or mental health, condition, provision of health care, or payment for the provision of health care to an individual. PHI includes without limitation "Electronic Protected Health Information" as defined below.
- c) "Electronic Protected Health Information" (ePHI) means PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.
- d) "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
- e) "Required by Law" has the same meaning as the term "required by law" in 45 CFR § 164.103.
- f) "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

C. BUSINESS ASSOCIATE CONFIDENTIALITY REQUIREMENTS (Privacy Rule)

Business Associate acknowledges and agrees:

- a. To not use or disclose PHI other than as permitted or required by this Agreement, the Service Agreements, or as Required by Law.
- b. To use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement.
- c. In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.
- d. All PHI created, received, maintained, or transmitted by Covered Entity and disclosed or made available in any form or format by Covered Entity or its operating units to Business Associate or is created, received maintained or transmitted by Business Associate on Covered Entity's behalf shall be subject to this Agreement.
- e. To use or disclose any PHI solely for meeting its obligations as set forth in the Service Agreement(s) and as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity.

- f. Ensure all such uses and disclosures of PHI are subject to the limits set forth in 45 CFR § 164.514 regarding limited data sets and minimum necessary requirements.
- g. Ensure any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restriction and conditions that apply through this Agreement to Business Associate with respect to such information (45 CFR § 164.314).
- h. To fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the HIPAA Rules.
- i. Subject to the exceptions contained in the HITECH Act, Business Associate will not directly or indirectly receive remuneration for the sale or exchange of any PHI without a valid authorization from the applicable individual. Business Associate will not engage in any communication which might be deemed "marketing" under the HIPAA Rules.

D. BUSINESS ASSOCIATE SECURITY REQUIREMENTS (Security Rule)

Business Associate acknowledges and agrees:

- a. To implement appropriate safeguards and internal controls to prevent the use or disclosure of PHI other than as permitted in this Agreement or by the HIPAA Rules.
- b. To use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement, or as Required by Law. This includes the implementation of administrative, physical, and technical safeguards to reasonably and appropriately protect and secure the Covered Entity's ePHI against any reasonably anticipated threats or hazards, utilizing technology commercially available to the Business Associate. (45 CFR §§ 164.308, 164.310, 164.312). Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training, and sanctions of its workforce member. (45 CFR §164.316).
- c. To notify Covered Entity immediately of any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

In the case of an unsuccessful attempt to gain unauthorized access, Business Associate need only notify Covered Entity of an attempt that had a reasonable probability of success.

- d. To notify Covered Entity immediately upon discovery of a breach pursuant to the terms of 45 CFR § 164.410 and cooperate in Covered Entity's breach analysis procedures, including risk assessment and final determination on whether to notify affected individuals, media, or HHS.
 - i. A breach shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate.

- II. Business Associate shall provide Covered Entity with all required content of notification pursuant to 45 CFR § 164.410 and 45 CFR 404 within 15 business days of discovery of the Breach.
- e. For breaches determined to have resulted from the Business Associate actions and/or its subcontractors, Business Associate will handle and pay all costs for any breach notifications and/or mitigation to affected individuals and notifications to HHS and the media, on behalf of the Covered Entity.

E. BUSINESS ASSOCIATE PERMITTED USES AND DISCLOSURES

Notwithstanding the prohibitions otherwise set forth in this Agreement, Business Associate may use and disclose PHI as follows:

- a. Subject to the limitations of this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(b).
- c. Business Associate shall report to Covered Entity any use or disclosure of PHI which is not in compliance with the terms of this Agreement of which it becomes aware. Business Associate shall report to Covered Entity any Security Incident it becomes aware, including breaches of unsecured PHI.
- d. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

F. SPECIFIC USE AND DISCLOSURES

- a. HHS has the right to review, audit, or investigate Business Associate's records and practices related to the use and disclosure of PHI to ensure Covered Entity's compliance with the terms of the HIPAA Rules.
- b. Upon request, provide Covered Entity with timely and appropriate access to records, electronic records, personnel, or facilities sufficient for Covered Entity to gain reasonable assurance that Business Associate is in compliance with the HIPAA Rules and the provisions of this Agreement.
- c. At Covered Entity's Request, Business Associate agrees:
 - i. To comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed and of which Business Associate has been notified.
 - ii. Within 15 days of a request by Covered Entity, account for disclosures of PHI and make an account of such disclosure available to Covered Entity as required by 45 CFR § 164.528.

G. TERMINATION

- a. Covered Entity shall have the right to terminate this Agreement and the Service Agreement(s) immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement.
- b. If Covered Entity reasonably believes that Business Associate has violated a material term of this Agreement, where practicable, Covered Entity shall either:
 - i. give written notice to Business Associate with an opportunity to reasonably and promptly cure or end the violation and terminate the Agreement if the Business Associates does not cure the breach or end the violation within the reasonable time specified; or
 - ii. terminate this Agreement and the Service Agreement(s) immediately.
- c. Upon termination of the Service Agreement(s), this Agreement, or at the request of Covered Entity, Business Associate will return or destroy all PHI received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information.
 - i. If such return or destruction is not feasible, Business Associate shall provide written assurances as to the means of continued protection of the data and extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible for so long as Business Associate maintains the same.
 - ii. Business Associate shall consult with Covered Entity as necessary to ensure an appropriate means for the return and/or destruction of any PHI and notify the Covered Entity in writing when such destruction is complete.
 - iii. If PHI is returned, the Parties shall document when the PHI has been received by the Covered Entity.

H. MISCELLANEOUS

- a. The Parties agree that the provisions of HIPAA and the HITECH Act that apply to Business Associate are incorporated by reference into this Agreement in their entirety.
- b. Business Associate agrees to make PHI available for amendment and incorporate any amendments to PHI in accordance with the requirements of 45 CFR § 164.526.
- c. Except as expressly stated herein or the HIPAA Rules, the Parties to this Agreement do not intend to create any rights in any third parties.
- d. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Service Agreement(s) and/or the business relationship of the Parties, and shall continue to bind Business Associate, its subcontractors, agents, employees, contractors, successors, and assigns.
- e. This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

- f. The Parties are independent entities and nothing contained herein shall be construed or deemed to create a relationship of employer and employee, principal and agent, partners, or any relationship other than that of independent parties voluntarily cooperating with each other solely for the purpose of carrying out the provisions herein.
- g. This Agreement will be governed by the laws of the State of Nevada.
- h. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or Service Agreement(s) or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
- i. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the HIPAA Rules.
- j. Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- k. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: Andrew J. Glass, FACHE, MS

Name:

Title: Director of Administration

Title:

Date: _____

Date: _____