

Bill No. 414
2017

By-law No. A.- _____

A by-law to approve The Data Provision Agreement between The Corporation of the City of London and Her Majesty the Queen in Right of Canada as represented by the Federal Minister of Employment and Social Development Canada, and to authorize the Mayor and City Clerk to execute this Agreement.

WHEREAS section 2 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters;

AND WHEREAS section 3.1 of the *Municipal Act, 2001* states that the Province acknowledges that a municipality has the authority to enter into agreements with the Crown in right of Canada with respect to matters within the municipality's jurisdiction;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

AND WHEREAS under the *Housing Services Act, 2011*, S.O. 2011, c. 6, Sched. 1, the City of London is designated as the service manager for the service area 'City of London and County of Middlesex';

AND WHEREAS section 6 of the *Housing Services Act, 2011* requires the service manager to have a plan to address housing and homelessness;

AND WHEREAS under the *Housing Services Act, 2011*, the service manager has prepared a *Homeless Prevention and Housing 2010-2024 Plan*;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Data Provision Agreement between The Corporation of the City of London and Her Majesty the Queen in Right of Canada as represented by the Federal Minister of Employment and Social Development Canada, attached as Schedule "A", is approved;
2. The Managing Director of Neighbourhood, Children and Fire Services, or designate, is delegated authority to undertake all the administrative acts that are necessary in connection with the Data Provision Agreement approved under section 1. above on the condition that no additional funding is required, or if funding is required it is provided for in the City's current budget, and that there is no increase in indebtedness or contingent liabilities of The Corporation of the City of London;
3. The Mayor and City Clerk are authorized to execute the Data Provision Agreement approved under section 1. above; and,
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 19, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – September 19, 2017
Second Reading – September 19, 2017
Third Reading – September 19, 2017

Schedule "A"

DATA PROVISION AGREEMENT ("Agreement") BETWEEN

Her Majesty the Queen in Right of Canada as Represented by
the Minister of Employment and Social Development ("ESDC")

AND

"Service Provider" or "You"

Service Provider name, please print

BACKGROUND:

ESDC has developed the Homeless Individuals and Families Information System Software ("**HIFIS SOFTWARE**"), an electronic data collection software that may be used by service providers to improve the efficiency of their day-to-day operations;

ESDC owns all right, title and interest in the **HIFIS SOFTWARE** and related Documentation and all of the files and intellectual property associated with it, including trade secrets and copyright;

The Service Provider wishes to obtain a licence to use the full version of the **HIFIS SOFTWARE** and ESDC is willing to grant such licence in return for non-identifiable personal information related to the Service Provider and its clientele ("Personal Information").

The Service Provider, an organization providing services to homeless individuals and families, has the authority to collect, use and disclose personal information related to its clients;

ESDC has the authority under the *Department of Employment and Social Development Act (the "DESD Act")* and the *Privacy Act* to collect the Personal Information for the administration of the Homelessness Partnering Strategy. The Personal Information will be used for the purpose of improving services to the homeless population and enhancing the Government of Canada's ability to respond to homelessness in Canada. It may also be used for policy analysis, research or evaluation purposes of policies and programs respecting homelessness in Canada.

The Parties therefore agree as follows:

1. ENTIRE AGREEMENT

This Agreement, its annexes and the End-User Licence Agreement you or your representative entered into when you downloaded the "Demo" version of the HIFIS Software, is the entire agreement between you and ESDC



concerning the use of the **HIFIS SOFTWARE** and Documentation. It supersedes any prior communication or representation concerning the **HIFIS SOFTWARE**.

The Parties agree that should there be ambiguity or inconsistencies between the terms and conditions of this Agreement and those in the previous End-User Licence Agreement, the provisions of this Agreement prevail.

2. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to outline the terms and conditions related to:

- a) the licence that ESDC will grant to the Service Provider in return for certain Personal Information listed in Appendix A; and
- b) the collection and disclosure of Personal Information by the Service Provider in such a manner as to protect the privacy and dignity of its client.

3. LICENCE

ESDC grants the Service Provider a non-exclusive, non-transferable and non-assignable right to use a registered copy of the full version of the **HIFIS SOFTWARE** in return for certain Personal Information listed in Appendix A. To obtain access to the full version of the **HIFIS SOFTWARE** you must register this licence with ESDC.

The **HIFIS SOFTWARE** is protected by intellectual property laws and treaties. No right, title or interest in or to any intellectual property rights in relation to the **HIFIS SOFTWARE** is granted under this Agreement.

4. THINGS YOU MAY DO

This licence will allow you to do the following:

- a) Archival or Backup Copies: You may copy the **HIFIS SOFTWARE** for back-up and archival purposes, provided that the original and each copy are kept in your possession and that your installation and use of the **HIFIS SOFTWARE** does not exceed the scope of this licence.
- b) Server Deployment or Use: You may install copies of the **HIFIS SOFTWARE** on computer file server(s) for the purpose of downloading and installing or for use of the **HIFIS SOFTWARE** on computers within your internal network.
- c) Third Party Components and Plug-Ins: Any third party software, including any third party's plug-in, may be used at your discretion with the **HIFIS SOFTWARE**. If you choose to use such third party software, then such use shall be governed by such third party's licence agreement. ESDC is not responsible for any third party software and will not be liable for your use of third party software.

5. THINGS YOU MAY NOT DO

For greater certainty, you agree not to:

- a) copy the **HIFIS SOFTWARE** except for archival or backup copying;
- b) modify or adapt the **HIFIS SOFTWARE**, except where software design allows for customization, reverse engineer, disassemble, decompile or make any attempt to discover the source code of the **HIFIS SOFTWARE**;
- c) sub-licence, rent, lease or lend any portion of the **HIFIS SOFTWARE** or Documentation.

6. ROLES AND RESPONSIBILITIES

You will:

- a) collect the Personal Information using the **HIFIS SOFTWARE**, and ensure compliance with your applicable provincial or territorial legislative standards respecting personal information;
- b) ensure that individuals are informed that their Personal Information will be provided to ESDC for the purposes of policy analysis, research and evaluation of policies and programs respecting homelessness in Canada;
- c) designate a representative to review, verify and clean the Personal Information on a quarterly basis;
- d) export the Personal Information listed in Appendix A to this Agreement quarterly to ESDC using the tools provided by ESDC;
- e) use best efforts to ensure the completeness and accuracy of the Personal Information provided to ESDC;
- f) create a back-up of electronic data on a regular basis, and store all Personal Information in a secure location; and
- g) maintain the security of the Personal Information in your custody, by protecting it against such risks as unauthorized access, collection, use, disclosure or disposal.

ESDC will:

- a) only use the Personal Information for the purposes of policy analysis, research and evaluation of policies and programs respecting homelessness in Canada. Any reports emanating from this policy analysis, research and evaluation will contain only aggregate, non-identifiable information. These reports may also be shared with federal institutions and other stakeholders;
- b) inform the Service Provider of any quality issues that are discovered in the Personal Information;
- c) implement and maintain a secure storage system for the Personal Information collected under this Agreement and inform the Service Provider of any changes related to the collection, use, disclosure or retention of this Personal Information.
- d) ESDC agrees to facilitate the sharing of technical information about software, functionality and security requirements, as required for use of the **HIFIS SOFTWARE**.

7. ESDC OBLIGATIONS RELATING TO THE USE AND DISCLOSURE OF THE PERSONAL INFORMATION

- a) ESDC will maintain and protect the confidentiality of all Personal Information it receives from the Service Provider, in accordance with the *Privacy Act* and Part 4 of the *DESD Act*.
- b) ESDC will not use Personal Information for a purpose other than that for which it was provided unless it:
 - (i) obtains the written consent of the Service Provider, provided that the Service Provider has obtained the requisite authority to grant such consent;
 - (ii) obtains the consent of the individual to whom the Personal information pertains; or
 - (iii) is required by law.
- c) ESDC will not disclose the Personal Information to any person or body for a purpose other than that for which it was provided unless such disclosure is in a form that cannot reasonably be expected to identify the individual to whom the Personal Information relates.
- d) Subject to paragraph (c), ESDC may disclose Personal Information to a third party only if ESDC obtains written authorization from the Service Provider, ESDC has a written agreement with the third party

imposing the same privacy protection obligations that ESDC assumes under this Agreement, and the purpose of the disclosure is authorized by this Agreement.

- e) In the event of a request under *Canada's Access to Information Act* or *Privacy Act* for Personal Information, ESDC agrees to consult, where required, with the Service Provider prior to any disclosure of such information.

8. INFORMATION MANAGEMENT AND SECURITY

- a) ESDC will make reasonable arrangements to maintain the security of the Personal Information in its custody, by protecting it against such risks as unauthorized access, collection, use, disclosure or disposal.
- b) ESDC will ensure that only those persons it deems necessary will have access to and use of Personal Information as required for the performance of their duties.
- c) ESDC will advise the Service Provider immediately of any circumstances, incidents or events which to its knowledge have jeopardized or may in future jeopardize the privacy of any individual or the security of any computer system in its custody that is used to access the Personal Information. When required, ESDC will investigate these circumstances, incidents or events.
- d) ESDC will report the results of any such investigation and the steps taken to address any remaining issues or concerns about the security of the Personal Information or computer systems, or the privacy of individuals to whom the Personal Information relates.

9. WARRANTY AND DISCLAIMER

The Service Provider accepts the **HIFIS SOFTWARE** "AS IS". By using the **HIFIS SOFTWARE** you agree that its use is entirely at your own risk.

ESDC disclaims any and all implied or express warranties or conditions, including any implied warranty of title, non-infringement, merchantability or fitness for a particular purpose, regardless of whether ESDC knows or had reason to know of your particular needs.

10. LIABILITY AND INDEMNIFICATION

ESDC, its employees and agents, shall not be liable for any claims, damages, injuries, loss, of any kind, whether direct or indirect, consequential or incidental, arising from the use of the inability to use the **HIFIS SOFTWARE** or the failure to safeguard the data contained in the **HIFIS SOFTWARE**. This includes, without limitation, loss of revenue, profit or savings, lost, damaged or stolen data, or other commercial or economic loss.

The Service Provider agrees to indemnify and hold ESDC, its employees and agents, harmless from and against any claims, damages, complaints, costs or expenses, loss, actions or causes of action you or any third party incurred or suffered, as a result of the use or inability to use the **HIFIS SOFTWARE** or your failure to safeguard the data contained in the **HIFIS SOFTWARE**.

11. CONFIDENTIALITY

The **HIFIS SOFTWARE** contains trade secrets and proprietary know-how that belong to us and it is being made available to you in strict confidence. Any use or disclosure of the software, or of its algorithms, protocols or interfaces, other than in strict accordance with this licence agreement, may be actionable as a violation of our trade secret rights.

12. TERMINATION

Either Party may terminate this Licence Agreement for any reason, including failure to comply with any term or condition of this Agreement, upon 60 days written notice.

In the event of termination of this Agreement,

- a) all Personal Information will be retained by ESDC in accordance with the *Library and Archives of Canada Act*, SC 2004 c.11.
- b) the Service Provider agrees to destroy all copies of the **HIFIS SOFTWARE** and Documentation in its possession.

13. DESIGNATED OFFICIALS

ESDC and the Service Provider agree to each designate an official to act as their contact person for any issues related to the development, implementation, and administration of this Agreement.

For ESDC:

Catherine Scott, Director General
Community Development and Homelessness
Partnerships Directorate
Employment and Social Development Canada
Place du Portage, Phase IV
140 Promenade du Portage
Gatineau, Quebec K1A 0J9
hifis-sisa@hrsdc-rhdcc.gc.ca

For the Service Provider(s):

Name:

Title:

Organization:

Address (Street, City, Province, Postal Code):

Email:

14. GENERAL PROVISIONS

- a) This Agreement becomes effective when signed by both parties. It will remain in effect until terminated.
- b) ESDC may amend the terms of this Agreement at any time. Any amendment will be valid only if in writing and signed by both Parties.
- c) ESDC may amend the Personal Information listed in Appendix A by providing notice of this change on the HIFIS Software updates.
- d) This Agreement is a licence agreement only, not a contract for services or a contract of service or employment. Nothing in this Agreement shall be construed as creating a partnership, employment or agency relationship between ESDC and yourself.
- e) This Agreement is governed by the laws of Canada.
- f) The signatory to this Agreement represent and warrant that s/he has the capacity and the authority to sign this Agreement on behalf of the Service Provider.



IN WITNESS WHEREOF this Agreement has been signed on behalf of the Parties by their duly authorized representatives.

For the Service Provider: (Site ID: _____)

For ESDC:

(Service Provider Name)

Community Development and Homelessness
Partnerships Directorate

Signed this _____ day of _____, _____

Signed this _____ day of _____, _____

(Name, please print)

Catherine Scott

(Signature)

(Signature)

(Position)

Director General

(Position)



APPENDIX A – HIFIS EXPORT FIELDS

The following is a list of the fields included in the HIFIS Export Fields. Fields where information is not supplied will remain blank. If information is entered in these fields, it will be included in the HIFIS Export Fields.

Service Provider Information

- Service Provider ID*
- Service Provider Name*
- Service Provider type*
- Bed counts*
- Bed Types*
- Community*

Client Information

- Unique Client Identifier*
- Gender*
- Year and Month of Birth*
- Family Role*
- Family Head ID*
- Citizenship/Immigration Status*
- Aboriginal Indicator*
- Veteran Status*
- Life Events
- Contributing Factors
- Contributing Factor Start Date
- Contributing Factor End Date
- Employment Status
- Country of Origin
- Education
- Sources of Income
- Income Start Date
- Income End Date
- Health Conditions
- Housing Types
- Housing Start Date
- Housing End Date

Shelter Stay Information

- Reason for Service*
- Reason for Discharge*
- Book-in Date*
- Book-out Date*

Turnaway Information

- Reason for Turnaway*
- Date of Turnaway*
- Anonymous Gender*
- Anonymous Age Category*
- Anonymous Aboriginal indicator (assumed)
- Anonymous Disability indicator (observed)

(*) Mandatory field