TO: CHAIR AND MEMBERS
COMMUNITY AND PROTECTIVE SERVICES COMMITTEE
MEETING ON SEPTEMBER 14, 2009

FROM: ROSS L. FAIR
GENERAL MANAGER OF COMMUNITY SERVICES

SUBJECT SERVICE AGREEMENT BETWEEN DEARNESS HOME AND THE
CANADIAN INSTITUTE FOR HEALTH INFORMATION FOR CLIENT
ACCESS TO REPORTS

RECOMMENDATION

That, on the recommendation of the General Manager of Community Services, the attached
proposed By-law (Appendix A) BE INTRODUCED at the Council meeting of September 14,
2009:

a) TO APPROVE the agreement with the Canadian Institute for Health
Information (CIHI) and The Corporation of the City of London for access to
and use of CIHI’s electronic “Continuing Care System”

b) TO AUTHORIZE the Mayor and City Clerk to execute the agreement in (a)
above.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

“None”.

BACKGROUND

The Ministry of Health and Long-Term Care (MOHLTC) is implementing an automated
assessment tool, RAI-MDS 2.0, in all long-term care homes to provide a standardized and inter-
disciplinary approach to care planning. Implementation of this system is mandatory.

The data collected through the RAI-MDS 2.0 system is uploaded to the Canadian Institute for
Health Information on a quarterly basis. This data is then available to the Long-Term Care
Home through record level reports and quarterly reports. To gain access, each organization
must sign the service agreement.

The service agreement discusses terms for sharing information from the reports. Record-level
reports contain resident information which cannot be shared outside of the client organization.
Quarterly Reports can be shared outside of the organization provided that this does not result in
another organization being publically identified.
The acceptance of this agreement is required for the Dearness Home to continue its implementation of RAI-MDS 2.0.

PREPARED BY:

Bob Drage
A/Manager, Business Operations
Dearness Home

SUBMITTED BY:

Denise Bedard
Director
Dearness Home

RECOMMENDED BY:

Ross L. Fair
General Manager
Department of Community Services
APPENDIX A

Bill No.
2009

By-law No.

A By-law to authorize and approve an Agreement between The Corporation of the City of London and the Canadian Institute for Health Information (CIHI) for access to and use of CIHI's electronic "Continuing Care Reporting System"; and to authorize the Mayor and Acting City Clerk to execute the agreement; and to designate an Organizational Contact pursuant to the terms of the agreement.

WHEREAS subsection 5(3) of the Municipal Act, 2001 S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS sections 9 and 10 and 23.1 through 23.5 of the Municipal Act, 2001 authorize a municipality to delegate its powers and duties under this or any other Act to a person or body;

AND WHEREAS the Canadian Institute for Health Information (CIHI) is an independent, not-for-profit organization that provides essential data and analysis on Canada's health system and the health of Canadians;

AND WHEREAS the Canadian Institute for Health Information was established in 1994 and is funded by federal, provincial and territorial governments;

AND WHEREAS the Canadian Institute for Health Information is a prescribed entity to which a health information custodian may disclose personal health information, pursuant to the Personal Health Information Protection Act, 2004 and Ontario Regulation 329/04, and that the Privacy Commissioner has approved its practices and procedures;

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

1. (a) The Agreement to be entered into between The Corporation of the City of London and CIHI, attached as Schedule A to this by-law, regarding access to and use of CIHI's electronic Continuing Care Reporting System, is hereby authorized and approved.

(b) The Mayor and Acting City Clerk are authorized to execute the agreement authorized and approved under subsection 1(a) above.

2. (a) Denise Bedard is designated as the City's Organizational Contact. The Organizational Contact is authorized to sign Schedule 1 to the Agreement. The Organizational Contact shall be responsible to determine which individual users within the City will have access to the Reports under the Agreement. The Organizational Contact shall ensure that only Designated Users under the Agreement will be permitted to access the Reports. The Organizational Contact shall only distribute any Means of Access under the Agreement to Designated Users. The Organizational Contact shall not disclose any Means
of Access to any other person for any reason. The Organizational Contact shall maintain all Confidential Information under the Agreement in strict confidence, except as otherwise required by applicable law. The Designated User shall provide CIHI with a current list of its Designated Users upon CIHI’s request.

(b) The Organizational Contact designated under subsection 2(a) above is authorized to execute Schedule 1 of the agreement approved under subsection 1(a) above.

(c) Should the Organizational Contact named in subsection 2(a) above be unable to perform her duties under the Agreement, the person holding the position of Director of the Dearness Home is designated as the City’s Organizational Contact, having all of the responsibilities and authorities set out in subsection 2(a) above. The Organizational Contact shall contact CIHI to advise them of the change of Organizational Contact.

3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council, 2009

Anne Marie DeCicco-Best
Mayor

Acting City Clerk
Linda Rowe

First reading -
Second reading -
Third reading -
CIHI SERVICE AGREEMENT FOR CLIENT ACCESS TO REPORTS
Continuing Care Reporting System

This service agreement (the “Agreement”) constitutes the entire agreement between the health care organization specified at the end of this Agreement (the “Client”) and the Canadian Institute for Health Information (“CIHI”) with respect to Client’s access to and use of (i) CIHI’s electronic Continuing Care Reporting System (“CCRS”) submission reports (the “Submission Reports”), including submission, verification and data quality audit reports, being reports concerning the processing and quality of Client’s Data (as defined below) and which generally set out the number of records submitted by Client, accepted or rejected by CIHI, and may include record-level data related to rejected or audited records; and (ii) CIHI’s electronic CCRS statistical reports (the “CCRS Statistical Reports”), being reports containing facility-level aggregate data only concerning the results of the successfully submitted CCRS data of Client and other users, including quality indicators and outcomes (collectively, the “Reports”).

1. ACCEPTANCE OF TERMS
CIHI hereby agrees to provide the Reports in accordance with the terms and conditions of this Agreement. Client acknowledges and agrees that its use of the Reports is subject to this Agreement.

CIHI hereby grants to Client a personal, non-transferable and non-exclusive right to use the Reports on CIHI’s web server solely for Client’s management, research, analysis, or decision support activities in connection with the CCRS. The Client provides data (the “Data”) to CIHI in respect of CCRS in accordance with any data sharing agreement between CIHI and the relevant authority and also in accordance with all applicable law and CIHI’s privacy policies as set out in the document Privacy and Confidentiality of Health Information at CIHI, 3rd ed., 2002, as may be amended from time to time (“CIHI Privacy Policies”). No other right, title, license or interest in or to the Reports and/or any other property of CIHI or its licensors is hereby granted to the Client.

Some or all of the CCRS materials in the Reports are based upon the RAI-MDS 2.0 which includes the RAI-MDS 2.0 assessments and Resident Assessment Protocols (RAPs). The RAI-MDS 2.0 is protected by Canadian copyright laws and international treaties. © InterRAI Corporation, 2001. Modifications for Canadian use were made with permission under license to CIHI. Canadianized items and their descriptions are also protected by Canadian copyright laws and international treaties. © Canadian Institute for Health Information, 1996.

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SCHEDULE A
2. ACCESS TO THE REPORTS

(a) **Organizational Contact.** Client shall designate one person as its organizational contact (the "Organizational Contact") to facilitate administration of procedures to access the Reports. Client shall confirm, and have the Organizational Contact sign, Schedule 1 which is attached to, and forms part of, this Agreement. Upon entering into this Agreement, Client shall provide to CIHI the name, job title, and work email address of the Organizational Contact and any delegate.

(b) **Obligations.** Client agrees that:

1. the Organizational Contact shall be responsible for determining which individual users within Client’s organization will have access to the Reports;

2. only the Designated Users that require access to the Reports shall be permitted by the Client and the Organizational Contact to access the Reports;

3. the Organizational Contact shall not request from CIHI more Means of Access (as defined below) than the number of Designated Users (as defined below);

4. Client shall ensure that the Organizational Contact distributes any Means of Access provided to the Organizational Contact by CIHI only to Designated Users;

5. upon CIHI's request, the Organizational Contact shall provide CIHI with a current list of its designated users of the Reports ("Designated Users") which include job titles and work email addresses; Designated Users shall mean employees and permitted contractors of Client;

6. the Organizational Contact shall sign the acknowledgement set out in Schedule 1 to this Agreement, ensuring they have the authority to do so on behalf of their organization;

7. it shall notify CIHI if an Organizational Contact is no longer employed by Client or if the Organizational Contact’s Means of Access is to be changed or cancelled for any reason or if a Designated User is no longer permitted to access the Reports; and

8. it shall identify to CIHI a new designated Organizational Contact when the need arises.
CIHI Service Agreement

(c) **Means of Access.** Each of Client's Designated Users shall access the Reports through such Designated User's existing Client Services user name, or alternatively, if the Designated User does not have a Client Services user name, then the Designated User must create a user profile including a user name and password on CIHI's secure application site as instructed by CIHI. The Organizational Contact will need to obtain from CIHI a 16-digit access code for each Designated User in order for the Designated User to access the Reports. All Means of Access are non-transferable and are confidential. "Means of Access" means collectively, any user name(s), password(s) and/or access code(s) issued by CIHI.

Client, the Organizational Contact and each Designated User shall not disclose any Means of Access to any other person for any reason.

(d) **Registration Data.** In consideration of Client's acceptance of the terms of this Agreement and the use of the Reports, Client agrees to provide true, accurate, current and complete information about the Organizational Contact and each Designated User of the Reports (such information being the "Registration Data"). Client agrees to maintain and promptly update, as may be required from time to time, the Registration Data to keep it true, accurate, current and complete.

**3. CONFIDENTIAL INFORMATION**

(a) Client acknowledges that the Reports contain confidential information. For purposes of this Agreement, "Confidential Information" includes all Reports as well as all Data and information (including health information) which Client, the Organizational Contact, or any of Client's Designated Users or others have obtained as a result of accessing or using the Reports and includes, without limitation, the Reports, Data from other subscribers to the Reports in an organization-identifiable format, any user name(s), password(s) and/or access code(s) issued by CIHI but excludes any data or information that Client can show:

i) is or becomes publicly available or otherwise ceases to be secret or confidential, except through a breach of this Agreement by Client;

ii) is already in the possession of Client at the time of receiving the same without obligations of confidence to CIHI, which includes the Client's own data and information;

iii) is received by Client from a third party without restriction on its disclosure or use; or

iv) is required to be disclosed by law.

(b) Except as otherwise required by applicable law, Client, its Organizational Contact and each of its Designated Users shall maintain all Confidential Information
obtained in connection with this Agreement in strict confidence. Confidential Information shall only be used for Client's internal, non-commercial purposes, limited to Client's management, data quality, research, analysis, or decision support activities in connection with the CCRS.

(c) Client, on behalf of itself, its Organizational Contact and Designated Users agrees:

1) to use at least the same degree of care that it uses to protect its own confidential information of like nature, but no less than reasonable care, to prevent any unauthorized access to, or disclosure of, Confidential Information;

2) not to disclose any Confidential Information to anyone except its employees and contractors who have a need to know such Confidential Information, and in accordance with the terms and conditions of this Agreement;

3) not to use Confidential Information for any purpose other than internal, non-commercial purposes relating to the Client's management, data quality, research, analysis, or decision support activities in connection with the CCRS unless explicitly permitted in writing by CIHI;

4) to maintain any CCRS Statistical Reports containing Confidential Information received from other subscribers confidential in accordance with this Agreement. Client shall not disclose to any third party, other than another subscriber, any Statistical Reports that contain Confidential Information unless the written permission of the subscriber to whom the Confidential Information relates, has been obtained prior to release; and

5) not to attempt to identify any individual using information contained in the Reports other than as necessary, using Data submitted by Client (or on behalf of Client) to facilitate the collection and submission of Client's Data.

(d) Client shall inform its employees and contractors of the obligations set out in this Agreement and shall take all reasonable steps to ensure their compliance.

(e) if Client receives notice indicating that it may or shall by law be compelled to disclose any Confidential Information, Client shall promptly notify CIHI. Client shall cooperate with CIHI to seek an appropriate remedy, and to limit the disclosure of Confidential information only to the extent so compelled.
CIHI Service Agreement

4. DISCLOSURE OF REPORTS

(a) CIHI shall not provide Client's Submission Reports to another health care organization or other subscriber, other than the appropriate Ministry of Health or Regional Health Authority, except:
(i) with Client's permission; or
(ii) in accordance with CIHI Privacy Policies;

(b) CIHI shall provide organization-identifiable, aggregate-level Statistical Reports to Client and, in CIHI's sole discretion, to other health care organizations or other subscribers whose Data have also been utilized for the Statistical Reports. The Client, the other health care organizations and other subscribers shall only use the information contained in the statistical reports in accordance with the terms of this Agreement.

(c) Client agrees that CIHI is a secondary collector of any personal health information and that CIHI shall not be responsible for Client's compliance with the consent, use and disclosure requirements of its applicable legislation.

(d) Client represents, warrants and covenants that it has obtained all necessary consents and has complied with all applicable law, and shall continue to obtain all necessary consents and shall comply with applicable law in order to permit CIHI to use and further disclose the Data in accordance with this Agreement. Client shall notify CIHI immediately of any problem, issue or concern that comes to the Client's attention with respect to any of the foregoing.

5. DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE REPORTS ARE PROVIDED "AS IS" WITHOUT OTHER WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE ACCURACY AND USE OF THE REPORTS ARE ASSUMED BY THE CLIENT.

IN NO EVENT SHALL CIHI BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER SIMILAR DAMAGES, THAT MAY ARISE UNDER THIS AGREEMENT, HOWSOEVER CAUSED, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE, WHETHER ARISING UNDER CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

IN NO EVENT SHALL CIHI'S TOTAL LIABILITY TO CLIENT FOR ANY DAMAGES, LOSSES, AND/OR CAUSES OF ACTION UNDER OR ARISING OUT OF THIS
CIHI Service Agreement

AGREEMENT EXCEED THE AMOUNT PAID BY CLIENT TO CIHI (IF ANY) FOR THE SPECIFIC REPORTS PROVIDED HEREUNDER THAT GAVE RISE TO THE CLAIM.

6. TERM

The term of this Agreement shall begin on date of acceptance of this Agreement by Client and shall end when terminated by Client or by CIHI.

Either party may terminate this Agreement by providing the other party with not less than thirty (30) days written notice of its intention to terminate the Agreement. CIHI may immediately terminate this Agreement and/or any User’s access to the Reports: (i) if CIHI believes that Client or any User has breached the Agreement; (ii) if any of CIHI’s underlying rights necessary for it to provide the Reports are terminated; or (iii) if CIHI, in its sole discretion, elects to discontinue offering the Reports.

7. MEMBER ACCOUNT, PASSWORD AND SECURITY

Client and its Designated Users are responsible for maintaining the confidentiality of all Means of Access in accordance with the terms of this Agreement. Client is fully responsible for all activities that occur under Client’s and its Designated Users’ Means of Access.

Client agrees to ensure that all Designated Users shall exit from the account at the end of each session.

Client further agrees to immediately notify CIHI of any unauthorized use of any of Client’s or its Designated Users’ Means of Access or any other breach of confidentiality or security.

8. INDEMNITY

Client shall defend, indemnify and hold CIHI and its officers, directors, employees and subcontractors harmless from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, including, reasonable legal fees, made by any third party due to or arising out of Client’s use of the Reports, any Organizational Contact or other Client employee’s or Designated User’s use of the Reports, or any breach of this Agreement including without limitation the breach of any representation or warranty.

9. GENERAL

These terms and conditions shall be governed by the laws in force in the Province of Ontario, Canada without regard to conflict of laws. Any dispute that may arise under this Agreement shall be resolved in the Province of Ontario. If any provision hereof is held by a court of competent jurisdiction to be invalid, it shall be severed and the remaining
provisions shall remain in full force without being invalidated in any way. The parties hereto are independent contractors. This Agreement and any additional terms are not intended to create a partnership, joint venture, or agency relationship between the parties. This is the entire agreement between the Client and CIHI relating to the matters contained herein and shall not be modified except in writing by CIHI. This Agreement may not be assigned without CIHI's written permission. No party will be deemed to have waived the exercise of any right unless such waiver is in writing. Sections 3, 4, 5, 8 and 9 shall survive termination of this Agreement.
CIHI Service Agreement

CANADIAN INSTITUTE FOR HEALTH INFORMATION

CLIENT

Name of Health Care Organization

Province

Signature of Administrator or CEO

Name:

(Please Print)

Title:

Date:

Signature

Director, Continuing and Specialized Care Information Services

Date:
Confirmation of Appointment of Organizational Contact

I confirm that ______________________ has been designated as the Organizational Contact.

Signature of Administrator or CEO: ______________________

Title: ______________________

Date: ______________________

I have authority to sign on behalf of the Organization.

Acknowledgement of Organizational Contact

I, ______________________, have been designated the Organizational Contact for ______________________.

I hereby confirm that I have read and understood the obligations of the Organizational Contact as set out in Sections 2, 3, and 7 of this Agreement.

Signature: ______________________

Title: ______________________

Email: ______________________

Date: ______________________

Please sign and return (by fax or mail) this Agreement to:

Project Coordinator, Continuing Care
Canadian Institute for Health Information
495 Richmond Road, Suite 600
Ottawa, Ontario
K2A 4H6

ccrst@cihi.ca
Fax: (613) 241-8120

CIHI will return one executed copy to you for your records.

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