

TORONTO STAFF REPORT

February 23, 2004

To: Board of Health

From: Dr. Barbara Yaffe, Acting Medical Officer of Health

Subject: Granting Licences for the Case and Contact Management System

Purpose:

This report outlines a proposal to grant licences to other publicly funded health bodies for the use of database software developed by Toronto Public Health Information Technology staff for case and contact management of emerging communicable diseases like SARS.

Financial Implications and Impact Statement:

Staff costs incurred to develop the Case and Contact Management System database software amounted to approximately \$200.0 thousand. These costs were funded 100% by the Ministry of Health & Long Term Care as part of the 2003 SARS program. Expenses to prepare the application for licensing are expected to be nominal and will be recovered from the revenue generated from collection of licensing fees. It is recommended that a licence fee of \$1,000 plus tax per unit be charged to recover the costs of administration, delivery and training.

In view of the specialized nature of the software, the potential revenue generated by licensing the software is unknown, but it is unlikely that this revenue will have any significant net impact on Toronto Public Health's operating budget.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that the Board of Health recommend to City Council that:

- (1) the City be authorized to enter into a non-exclusive, non-transferable licensing agreement with any publicly-funded health body inside or outside Canada wishing to use the City's Case and Contact Management System database software ("the Software"), in a form satisfactory to the City Solicitor and containing terms and conditions substantially as set out

in the Appendix to this report, subject to such additions or other consistent modifications as are in the interests of the City and satisfactory to the Medical Officer of Health, and the Executive Director of Information and Technology, Corporate Services following consultation with the City Solicitor;

- (2) the City charge each Licencee the licence fees and, if applicable, other charges set out in this report in connection with the Software;
- (3) the City Solicitor be directed to apply for the registration of the copyright in the Software; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In response to a need to organize case, contact and quarantine information during the SARS outbreak in 2003, I&T staff of Toronto Public Health developed the Software, an in-house Microsoft Visual Basic/SQL Server database application to keep track of demographic, contact and quarantine follow-up plus epidemiological information for persons identified as "Cases", or contacts of Cases. The Software proved so successful in fulfilling its intended function that the Ministry of Health & Long Term Care ("the Ministry") has requested a licence to use it so that it can be implemented throughout Ontario by other local health units and the Ministry itself in the event of a future SARS or SARS-like outbreak. The Software would be used until Health Canada's Integrated Public Health Information System (iPHIS) is enhanced to support outbreak management.

Comments:

Following meetings and presentations by staff to a number of jurisdictions and associations regarding the capabilities of the Software, the Ministry, the Regional Municipality of Peel Health Department, and the cities of New York, Atlanta, and Portland have requested TPH to grant them licences to use it. It is possible that other publicly funded health bodies will make the same request.

Precedent exists for licensing City-owned software. By its adoption at its meeting of April 16, 17 and 18, 2002, of Clause No. 15 of Report No. 4 of the Administration Committee, City Council granted authority for the Social Housing Information System software, developed by the Shelter, Housing and Support Division of the Community and Neighbourhood Services Department, to be licenced. The department had engaged a firm to create a program to facilitate administration of the City's downloaded subsidy responsibilities for social housing. The software is to be licensed to other "Service Managers" under the Social Housing Reform Act, 2000 for fees that were approved which would permit recovery of an amount slightly in excess of the \$ 455.0 thousand development costs if those that had expressed interest in fact became licencees. A one-day licencee training session was factored into the fee structure and customization was also authorized on a cost-recovery

basis. The provision of possible future upgrades to licencees was also authorized at fees to be determined by Council.

Similarly, by its adoption at its meeting of July 30 and 31 and August 31, 2002, of Clause No. 7 of Report No. 10 of the Administration Committee, City Council granted authority for the Record Series Management Tools software, developed by City Clerk's Office to be licenced. This software was developed to improve and document the workflow associated with records management, at an estimated staff-time cost of \$ 12.5 thousand. A one-time licence fee of \$ 5.0 thousand (including training) for other Canadian municipalities was described as representing a reasonable return in a specialized and unknown market. Customization and upgrades were authorized similar to the Social Housing Information System software.

Toronto Public Health staff propose a one-time licence fee of \$ 1.0 thousand to cover the administrative costs of packaging and delivering the Software to each licencee and performing the required training. The TPH, I&T costs incurred for the development of the software were funded at 100% by the Ministry of Health and Long Term Care, at an estimated cost of \$200.0 thousand. TPH proposes to not charge a licensing fee to the Ministry since it provided the funding to develop the software.

In granting licences for use of the Software, the City would be acting under the "natural person" and grants powers given to it by sections 8 and 107 of the Municipal Act, 2001, and under the Copyright Act. Copyright arises upon the creation of an original literary work, such as a computer program, and, for an original work created in Canada, extends beyond Canada to most major countries of the world as a result of international conventions and agreements.

Copyright does not require registration in order to be effective or valid, but its registration has procedural advantages: in legal proceedings such as a copyright infringement action, the registered owner's rights are presumed to be valid, and as well it is presumed that the alleged infringer knew or ought to have known that copyright existed on the copyright, thus entitling the registered owner to remedies in addition to an injunction through a notice of copyright prominently marked on the work probably has the same effect. Therefore, the onus is on the other party in the proceedings to prove (if it can) that the registered person does not own it and that the party did not know and could not have been expected to know of the existence of the copyright.

Licensing agreements for the use of the Software should include key elements to protect the City's proprietary and business interests in its intellectual property, which are set out in Appendix A. The Appendix is a generically worded version of the licensing provisions authorized by the adoption of the two 2002 licensing reports described above, adapted to the circumstances applicable to the Software. It is being recommended that additions or other modifications to the provisions acceptable to the Medical Officer of Health and the Executive Director, Information and Technology, Corporate Services, be permitted if considered to be in the best interests of the City following consultation with the City Solicitor, as long as they are not inconsistent with the spirit of the Appendix's content.

Conclusions:

The Case and Contact Management System database Software developed by the City has attracted the interest of the Ministry and cities in Ontario and the United States. Permitting its use under licence will allow the City to share its expertise in dealing with SARS-like outbreaks as well as raise the profile of best practices developed by Toronto Public Health staff. City Legal Services and Corporate I&T were consulted in the preparation of this report and have no objection to the recommendations.

Contact:

Peter Oliver
Manager, Public Health, Information & Technology
Toronto Public Health
Telephone: 416-338-8104
Fax: 416-392-7418
E-Address: poliver@toronto.ca

Donalda McCabe
Regional Director, West Region
Toronto Public Health
Telephone: 416-338-6181
Fax: 416-392-0713
E-Address: dmcca@toronto.ca

Dr. Barbara Yaffe
Acting Medical Officer of Health

List of Attachments:

Appendix A: Terms and Conditions for Licensing Agreements.

Appendix A

Terms and Conditions for Licensing Agreements

I. To become a licensee of the Software, a publicly-funded health body will be required to pay to the City a one-time fee of \$1000.00 plus taxes upon the delivery of the program disk, and will receive in return a perpetual, non-exclusive, non-transferable licence for concurrent network use of the Software by any number of the licensee's employees.

II. Any revisions, modifications and enhancements made to the Software by the City and placed into production within a year of the execution of the licensing agreement will be provided without charge to every licensee, so long as the licensing agreement has not been terminated.

III. Any revisions, modifications and enhancements made to the Software by the City and placed into use more than a year after a licensing agreement has been signed will be made available to each licensee for an additional fee, which will be established by Council from time to time.

IV. The City will without further charge provide each licensee an initial one-day training session on City premises for up to three of the licensee's staff members (or more at the City's discretion), on the business and technical aspects of the Software, within (subject to the exigencies of the City's day-to-day operations) One (1) Month of signing of the licensing agreement, but all transportation and accommodation costs for the trainees will be the sole responsibility of the licensee, and there will be no refund of any part of the licence fee if the licensee does not take advantage of the training option.

V. The City of Toronto will continue to be the sole owner of all intellectual property rights in the Software. The user licence will not grant the licensee an ownership interest in the source code or the system logic, or the right to change or modify the source code, or engage any third party to change or modify the source code. Reverse engineering of the Software will be prohibited to protect the City's interests.

VI. The Software having been developed to operate in the City's own technical environment, its distribution to licensees will be in unmodified form. A licensee requiring modifications to the Software to allow its operation in a different technical environment may request that the City do the modifications, but it will be prohibited from doing so on its own or with the assistance of an outside contractor. The response to any such request will be at the sole discretion of the Medical Officer of Health, and the Executive Director of Information and Technology, Corporate Services, who will either decline it or see that modifications are carried out by staff of the IT section of Toronto Public Health and/or external consulting resources engaged in accordance with the City's prevailing procurement procedures. The internal/external costs incurred by the City in performing any modifications will be passed on to the requesting licensee, and will not be refundable in the event that the modifications are in any way, or entirely, unsuccessful. The City will retain all copyright and other ownership rights in to any modified version of the Software, including the right to licence such version to any other licensee.

VII. Any paid-up licensee will be entitled to a 30-day trial period of the Software calculated from the date of delivery, within which, it will be permitted to return the Software for any reason, and receive a refund subject to an administration fee of Five Percent (5%) of the licence fee paid, subject to its written certification that all copies of the Software, including any back-up copies made as permitted under the *Copyright Act*, have been returned to the City.

VIII. Except for initial training, the City will have no obligation to provide support services to any licensee. In any event, the City will not be responsible for any support that it does provide. Subject to the restrictions set out in the report to which this Appendix is attached, it will be the responsibility of the licensee, not the City, to ensure that the Software works in its environment. The City will make no warranty or other assurance in this regard and will offer the Software on an as-is basis, subject to Term VI above.

IX. Each licensee will be required to acknowledge and accept a disclaimer of liability by the City and to provide to the City a release of liability arising from its use of the Software, and a general indemnification of the City for any loss suffered by others as a result of the licensee's use of the Software, whether attributable to system errors, calculation errors or otherwise.

X. The City will provide each licensee with a single copy of the user manual for the Software, which the licensee may copy, but only for its internal business use.

XI. The licensing arrangement will be non-exclusive and non-transferable, and no sublicenses will be permitted, except that if the licensee is the Ontario Ministry of Health & Long Term Care, it will be permitted to make the Software available to other publicly-funded health bodies in Ontario either directly or through dial-up or password-controlled Internet access, but subject to the obligation to ensure that each such other body abides by the Terms of this Appendix to the same extent as if it had executed a licensing agreement with the City.

XII. The provision by the City of any revisions, modifications or enhancements for the Software pursuant to Terms I or II above or otherwise shall not oblige the City to provide any further such revisions, modifications or enhancements.