ACUTE CARE ENHANCED SURVEILLANCE ("ACES") DATA SHARING and

HEALTH INFORMATION NETWORK PROVIDER AGREEMENT

THIS AGREEMENT is made as of	(the "Effective Date")

Board of Health for the Kingston, Frontenac and Lennox & Addington Public Health Unit ("KFLA")

and

Local Public Health Agency ("LPHA")

and

Health Care Institution ("HCI")

(also referred to individually as "Party" or collectively referred to as the "Parties")

WHEREAS the Medical Officers of Health of KFLA and of LPHA are health information custodians under section 3(1) of the Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sch. A ("PHIPA");

AND WHEREAS KFLA and LPHA are acting as *PHIPA* agents, as defined in section 2 of *PHIPA*, of their respective Medical Officers of Health for the purposes of this Agreement;

AND WHEREAS pursuant to section 17 of *PHIPA*, a Medical Officer of Health may permit its *PHIPA* agents to collect, use, disclose, retain and dispose of personal health information on behalf of the Medical Officer of Health, subject to certain limitations;

AND WHERES HCI is a health information custodian under section 3(1) of PHIPA;

Between:

AND WHEREAS pursuant to section 39(2)(a) of *PHIPA*, a health information custodian may disclose personal health information to a Medical Officer of Health for a purpose of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7 ("HPPA");

AND WHEREAS pursuant to section 39(2)(a.1) of *PHIPA*, a health information custodian may disclose personal health information to the Ontario Agency for Health Protection and Promotion ("PHO") for a purpose of the *Ontario Agency for Health Protection and Promotion Act*, 2007, S.O. 2007, c. 10, Sch. K ("OAHPPA");

AND WHEREAS pursuant to sections 37(1)(a) and 37(1)(j) of *PHIPA*, respectively, a Medical Officer of Health may use personal health information for a purpose of the *HPPA* where disclosure is made for that purpose, or for research conducted by the Medical Officer of Health, subject to certain requirements of *PHIPA*;

AND WHEREAS KFLA is the host of ACES, a real-time public health surveillance system, and is acting as a health information network provider as defined in section 6 of *PHIPA* Regulation 329/04, for the purposes of this Agreement;

AND WHEREAS the Parties agree that although KFLA has two roles under this Agreement, as PHIPA agent of the Medical Officer of Health for KFLA and as health information network provider for ACES, KFLA acting in each capacity shall nevertheless be referred to throughout this Agreement as "KFLA" and shall be understood to be acting in the capacity necessary for each respective role described herein, as the context requires;

NOW THEREFORE in consideration of the mutual covenants contained in this Agreement, and subject to the terms and conditions set out in this Agreement, KFLA, LPHA and HCI covenant and agree as follows:

1. ACES

- 1.1) This Agreement relates to the sharing, by electronic means, of selected data elements from hospital admissions records (listed in Schedule 'A' hereto) for use in an automated, real-time public health syndromic surveillance system called ACES.
- 1.2) ACES uses automated data translation engines to analyse selected elements of hospital admissions data in order to create, in aggregate form, derivative summary analyses, epidemic curves and maps of syndromes (referred to collectively hereinafter as the "Output" of ACES) that reflect the public's health status.
- 1.3) ACES updates the Output it creates in accordance with the speed of data input, enabling real-time, or near real-time, visualization of the public's health status based on hospital admissions data. ACES operates with statistical alarms that may alert Medical Officers of Health and public health officials to potential disease outbreaks, emerging public health trends, public health threats and significant public health events.

2. Compliance with Privacy Protections and Purposes of the Agreement

- 2.1) The Parties acknowledge that the collection, use and disclosure of personal health information is regulated and restricted by provincial laws, including *PHIPA*. The Parties acknowledge that the information listed in Schedule 'A" may in certain circumstances meet the definition of personal health information in section 4 of *PHIPA*. Therefore, the Parties agree to treat the information collected, used and disclosed under this Agreement as personal health information and to comply with all relevant provisions of *PHIPA* in respect of that information.
- 2.2) The Parties agree that collectively they are collecting, using and/or disclosing information under this Agreement for public health purposes, including public health surveillance, collection and analysis of epidemiological data, control of infectious and reportable diseases, health promotion and protection, and disease and injury prevention, pursuant to the *HPPA*. The Parties agree that additional purposes for the collection, use and/or disclosure of information under this Agreement may include, as set out herein in paragraphs 8.1 and 8.2, public health research and the purposes of the *OAHPPA*.
- 2.3) The Parties agree that they shall only collect, use and/or disclose as much information under this Agreement as is reasonably necessary to meet the purpose of the collection, use or disclosure.

3. Access to the Output

- 3.1) KFLA warrants that the Output of ACES is unidentifiable, aggregated information and not personal health information. As such, the Parties agree that the Output is not subject to *PHIPA* or other privacy legislation.
- 3.2) The Parties acknowledge that all participants in ACES may be given access to the Output of ACES.
- 3.3) The Parties also acknowledge that KFLA may, in its discretion, enable the Ministry of Health and Long-Term Care ("MOHLTC"), PHO or other similar public health authorities to access the Output of ACES. In addition, KFLA may, in its discretion, enable persons conducting public health research to access the Output of ACES for public health research purposes. KFLA may also, in its discretion, enable the general public, to access specific parts of the Output of ACES for the purposes of public health education and information.

3.4) The Parties acknowledge that any intellectual property interests that may exist in the Output belong to KFLA, and that KFLA may, for public health purposes contemplated by the *HPPA*, provide further and additional access to, or make other uses of, the Output of ACES beyond that set out in this Agreement.

4. Site Contacts for Administration of Agreement

- 4.1) Each Party to this Agreement will designate a person responsible for the administration of this Agreement ("Site Contact") and will inform the other Parties of the identity of that Site Contact on or before the Effective Date.
- 4.2) KFLA will provide the Site Contacts for HCl and LPHA with a User Manual for ACES, KFLA's Privacy and Confidentiality Charter for ACES, a Privacy Impact Analysis for ACES and a list of the other hospitals and public health units participating in ACES.

5. Transmission of Information from HCI to ACES

- 5.1) Commencing on the Effective Date, HCI will transmit to ACES on a prospective basis, from each emergency department and hospital-based urgent care clinic (if any) visit record, as well as from each emergent and elective hospital admission record at HCI created as of the Effective Date, as much of the information listed in Schedule "A" to this Agreement as is reasonably practical. The information transmitted from each such record is hereinafter referred to as a "Dataset" or collectively as "Datasets".
- 5.2) Where HCl generates split records for any one admission to its emergency department (i.e. more than one admission record for a single admission event), HCl agrees to provide KFLA with a randomly assigned identifier that will enable ACES to categorize all the information pertaining to a single admission event into one Dataset for that admission.
- 5.3) HCI will also transmit, in a period of time that it deems practical, acting reasonably, Datasets for as many emergency department and hospital-based urgent care clinic (if any) visits and as many emergent and elective admissions prior to the Effective Date as is technically feasible in order that this historical information may be used by ACES to formulate baselines against which to measure trends occurring after the Effective Date.
- 5.4) Collectively, all the Datasets transmitted to ACES by HCI pursuant to this Agreement, both prospectively and retrospectively, are defined herein as the "HCI Input".
- 5.5) The Parties acknowledge that the Datasets shall include no more than the minimum amount of information necessary for the effective and optimal use of ACES as a public health tool. However, the Parties acknowledge that as the technology behind ACES' data translation engines evolves, the effectiveness of ACES as a public health tool may be enhanced by the inclusion of additional information in a Dataset.
- 5.6) In the event that KFLA determines that the list of information in Schedule "A" needs to be altered or expanded for epidemiological purposes and/or for the effective use of ACES as a public health tool, KFLA will request that HCl transmit additional or different information to create the HCl Input and will propose modifications to Schedule "A". HCl may decline any such request by KFLA and may refuse to modify Schedule "A". If HCl agrees to KFLA's proposed modifications to Schedule "A", KFLA shall provide the Site Contacts for HCl and LPHA with access to a new Schedule "A", which shall then form part of this Agreement in place of the current Schedule "A".
- 5.7) HCI will transmit the HCI Input to ACES according to the protocol described in the User Manual.
- 5.8) HCI will transmit the HCI Input to ACES as close to visit and/or admission time as is reasonably possible. HCI acknowledges that the closer the transmission time of a Dataset occurs to the visit and/or admission time of each patient, the greater the accuracy of the surveillance mechanisms provided by ACES will be.
- 5.9) HCI will continue to transmit the HCI Input to ACES until the termination of this Agreement.

5.10) The Parties acknowledge that the only Party under this Agreement who has access to the personal health information from which HCl derives the HCl Input is HCl, in its role as the health information custodian of this personal health information.

6. Complaints Regarding or Requests for Access to or Correction of Datasets

- 6.1) If any Party to this Agreement receives a request for access to or correction of any Dataset included in the HCl Input, it shall be the responsibility of HCl to respond to the request, at its sole discretion. To the extent that such request is received by KFLA or LPHA, they shall promptly notify HCl. KFLA and LPHA agree to cooperate reasonably with HCl to facilitate its response to any such request.
- 6.2) If a complaint is made, under any applicable legislation, by a particular patient whose Dataset is included in the HCI Input, it shall be the responsibility of HCI as collector of that Dataset and health information custodian of the original personal health information from which the Dataset was collected, to respond to the complaint. In the event that KFLA receives any such complaint, KFLA shall promptly notify HCI. All Parties agree to cooperate reasonably with each other in ensuring that HCI may respond promptly to any such complaint.

7. Access to HCI Input by Authorized Persons

- 7.1) Each Party agrees that it will grant access to the HCI Input only to those persons whom the Party has authorized to have such access ("Authorized Persons") and in accordance with *PHIPA* and any other applicable laws. Each Party shall authorize only those persons who, in accordance with the Party's usual internal protocols, have been granted access to its own electronic health information systems.
- 7.2) HCI and LPHA agree to provide KFLA with a list of their respective Authorized Persons and to keep that list current. The Parties agree to obtain signed Confidentiality Agreements from all Authorized Persons at their respective places of business, and to keep copies of such agreements available for reference as required.
- 7.3) The Parties shall ensure that their respective Site Contacts, defined in paragraph 4.1 herein, are "Authorized Persons".
- 7.4) The Parties agree that they are responsible for the use of ACES by their respective Authorized Persons and that they will make each such person aware of their obligations under this Agreement and provincial law.
- 7.5) HCI and LPHA acknowledge responsibility for properly and adequately training any Authorized Persons whom they designate as responsible for conducting epidemiological analysis, public health surveillance or other review and analysis contemplated by this Agreement of either the HCI Input or the Output of ACES.
- 7.6) If any Party to this Agreement revokes or suspends an Authorized Person's rights of access to its own electronic health information system, it shall at the same time revoke or suspend, as the case may be, such person's access to the HCI Input in ACES and at the same time shall remove that person's status as an Authorized Person and, if such suspension or revocation is the result of an actual or alleged breach of this Agreement or provincial law, promptly notify the other Parties of such suspension or revocation and the reasons for it.
- 7.7) HCI shall have the right at any time and from time to time to electronically audit and verify compliance with this Agreement upon reasonable notice to KFLA. The Parties shall cooperate reasonably in connection with a request for audit and verification. KFLA acknowledges that it shall maintain audit logs for ACES, showing the person, date and time of access, of all access to the HCI Input in ACES for the duration of this Agreement or for such other time as KFLA may notify the Site Contact at HCI. KFLA agrees to make audit logs of all access to the HCI Input available to HCI upon request.
- 7.8) HCI and LPHA agree that, in the unforeseen event that in spite of the security measures in place for ACES, their Authorized Persons become able, for any reason, to obtain unauthorized access to the Input of any other hospital participating in ACES, they will collectively forebear from taking advantage of such access and will inform KFLA immediately in writing of the possibility of such access.

8. Uses and Disclosures of the HCI Input

KFLA and LPHA as *PHIPA* Agents

- 8.1) HCI agrees to disclose the HCI Input to KFLA and LPHA for the purposes of the *HPPA*, and KFLA and LPHA agree that they will only use the HCI Input, for the purposes of the *HPPA*, or as required or permitted by law. The Parties agree that the purposes of the *HPPA* may include the use of the HCI Input for research, but in any event, the Parties agree that KFLA and LPHA are permitted to use the HCI Input for research purposes pursuant to section 37(1)(j) of *PHIPA*, subject to the requirements of section 37(3) of *PHIPA*.
- 8.2) KFLA and LPHA agree not to disclose the HCI Input to any third party, unless required by law. Notwithstanding paragraph 8.2 herein, HCI authorizes KFLA to disclose the HCI Input to PHO pursuant to section 39(2)(a.1) of *PHIPA*.
- 8.3) KFLA and LPHA will take all reasonable steps to prevent anyone from re-identifying individuals from the HCI Input, subject to any requirement under the *HPPA* pursuant to which LPHA may be required to use the HCI Input to re-identify an individual.

KFLA as Health Information Network Provider

- 8.4) The Parties agree that KFLA has a dual role in ACES as both a *PHIPA* agent of a health information custodian and a health information network provider. The Parties agree that KFLA is therefore subject to different restrictions in *PHIPA* respecting the use and disclosure of the HCI Input, depending on the capacity in which KFLA is acting. The Parties also agree that KFLA is subject to specific obligations under *PHIPA* in its capacity as a health information network provider.
- 8.5) KFLA agrees, that as health information network provider of ACES, it shall comply with all relevant provisions of *PHIPA* and the regulation(s) thereunder, including section 10 of *PHIPA* and section 6 of *PHIPA* Regulation 329/04.
- 8.6) Notwithstanding paragraph 8.1 herein, the Parties agree that KFLA, in its capacity as health information network services provider of ACES and pursuant to section 6(1)1 of *PHIPA* Regulation 329/04, may use the HCI Input as necessary in the course of hosting and maintaining ACES.

9. Safeguards

- 9.1) The Parties agree to take all reasonable steps to ensure that the HCI Input is protected against theft, loss, or the use, disclosure, copying, modification or disposal in any manner not authorized under this Agreement or law.
- 9.2) Where either KFLA or LPHA print copies of the HCI Input from ACES, they shall securely retain the copies in accordance with their usual internal protocols and any other confidentiality or security measures set out herein.
- 9.3) The Parties agree to maintain such policies, procedures and systems as reasonably necessary to protect against unauthorized persons having access to, collecting, using, disclosing, modifying, disposing, copying, stealing or otherwise committing any other act that could breach or compromise the privacy, availability, accessibility, integrity, structure, format or content of the HCI Input. In connection with this Agreement, HCI and LPHA agree to cooperate fully with each other and with KFLA to coordinate secure communications access between their respective electronic health information systems and ACES, in accordance with any system requirements set out in the User Manual.
- 9.4) Access to ACES will be only by the protocol set out in the User Manual. HCI and LPHA agree that any person whom they authorize to use ACES shall be required to follow the User Manual when doing so. The Parties agree to maintain the confidentiality of any computer passwords, access codes or other security measures required by the protocols in the User Manual. For the sake of clarity, this includes not sharing passwords or other computer access codes with employees, agents, subcontractors or representatives, unless disclosure to such a party is reasonably necessary to facilitate the fulfillment of the terms of this Agreement or any law.

- 9.5) KFLA shall ensure that ACES conforms to the specifications and security standards contained in KFLA's Privacy and Confidentiality Charter for ACES. KFLA shall also ensure that the interface between ACES and HCI's electronic health information system is secured using industry standard measures, and transmission and storage of HCI Input is encrypted; for clarity, data shall be encrypted at rest using industry proven methods.
- 9.6) The Parties agree that they will not transfer the HCI Input to any mobile data-storage device, including laptop computers, tablets or other data-storage devices that may be removed from the premises of the Party.
- 9.7) The Parties agree to report, in writing, any and all incidents of the unauthorized use, modification, copying, disclosure or disposal of the HCI Input, including any and all incidents of the HCI Input being stolen, lost, accessed by unauthorized persons, at the first reasonable opportunity but in any event no more than three (3) days following discovery of any of the foregoing. Any Party who discovers such an incident shall provide the written reports to the other Parties to this Agreement. The Party where the incident originated will be responsible for coordinating the investigation into the incident, in cooperation with the other Parties. The Parties agree to take all reasonable steps necessary to mitigate, to the greatest extent possible, any deleterious effects arising from such incidents and to cooperate fully with each other in the investigation and remediation of such incidents.
- 9.8) HCI shall be responsible, at its discretion, for notifying any patient whose Dataset was involved at the first reasonable opportunity following the incident where the patient's Dataset has been stolen, lost or accessed by unauthorized persons. LPHA and KFLA agree to cooperate with HCI as may reasonably be required, in the event that HCI so notifies any patient.

10. Termination/Modification of the Agreement/Destruction of HCI Input

- 10.1) This Agreement shall commence on the Effective Date and shall remain in effect until terminated pursuant to clause 10.2 or 10.3, below.
- 10.2) The Parties agree that any one of them may terminate this Agreement at any time and for any reason upon providing 30 days' prior written notice to the other Parties unless earlier termination is required by any applicable law or authority or is permitted by paragraph 10.3 herein.
- 10.3) HCI may terminate this Agreement immediately if it deems, acting reasonably, that the continuation or modification of this Agreement would cause it to violate its duties as a public hospital in Ontario or as a health information custodian under *PHIPA*.
- 10.4) Upon the termination of this Agreement by any Party, the other Parties agree to sever any electronic data sharing network connections or other communications systems implemented for this Agreement with the terminating Party and to terminate the access rights of Authorized Persons of the terminating Party.
- 10.5) If HCI terminates this Agreement, HCI may request and KFLA and LPHA shall agree, that KFLA shall promptly and irrevocably delete from ACES any of the HCI Input transmitted to ACES by HCI, and that KFLA and LPHA shall promptly destroy any copies of such HCI Input that they have in their possession or control.
- 10.6) The Parties agree that the Output produced from the HCI Input need not be deleted and copies of same need not be destroyed by any Party upon termination of this Agreement.
- 10.7) The Parties agree that their obligations pursuant to this Agreement and law in respect of the HCI Input shall survive termination of this Agreement.
- 10.8) This Agreement may only be modified by written agreement executed by the Parties, subject to any amendments to Schedule "A" made in accordance with paragraph 5.6 of this Agreement.

11. Indemnity and Insurance

- 11.1) KFLA and LPHA affirm that they are authorized by their respective Medical Officers of Health to collect, use or disclose personal health information where permitted under this Agreement.
- 11.2) KFLA shall indemnify, defend and hold harmless HCI and LPHA, their respective elected officials, if any, employees, officers, directors, assigns, representatives and agents, from any and all losses, injuries, harm, costs or expenses, including without limitation, reasonable legal fees, incurred as a result of KFLA's negligence, willful misconduct, or breach of this Agreement.
- 11.3) LPHA shall indemnify, defend and hold harmless HCI and KFLA, their respective elected officials, if any, employees, officers, directors, assigns, representatives and agents, from any and all losses, injuries, harm, costs or expenses, including without limitation, reasonable legal fees, incurred as a result of LPHA's negligence, willful misconduct, or breach of this Agreement.
- 11.4) HCI shall indemnify, defend and hold harmless KFLA and LPHA, their respective elected officials, if any, employees, officers, directors, assigns, representatives and agents, from any and all losses, injuries, harm, costs or expenses, including without limitation, reasonable legal fees, incurred as a result of HCI's negligence, willful misconduct, or breach of this Agreement.
- 11.5) Each Party represents and warrants to the other Parties that it or its Board of Health possesses and maintains, at its own expense, general liability insurance with liability limits not less than \$5 million (\$5,000,000) per occurrence as well as any other insurance required to cover its obligations and liabilities hereunder.

12. Other

- 12.1) HCI and LPHA acknowledge that they have been advised that ACES has been evaluated and is supported financially by the Province of Ontario through the Public Health Division of MOHLTC pursuant to a grant made to KFLA. Funding of this grant is formalized in a funding agreement between the Minister of Health and Long-Term Care and KFLA (the "funding agreement"). HCI and LPHA acknowledge that they have been advised that pursuant to the terms of the funding agreement, MOHLTC has inspection and audit rights with respect to ACES, including to any personal health information, and that the funding agreement grants these rights pursuant to, and makes them subject to applicable provisions of *PHIPA*, the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("*FIPPA*") or other applicable legal authority and specifically provides that before MOHLTC inspects any records relating to a third person, MOHLTC shall, if required by law, obtain the consent of the third person before inspecting or copying such records.
- 12.2) Notwithstanding any other term of this Agreement, KFLA makes no representation respecting ACES and does not warrant ACES. In particular, KFLA makes no representation respecting and does not warrant the timeliness, quality or accuracy of the HCI Input, the data transmitted to ACES by any other hospital participating in ACES, or all or any part of the Output created by ACES. KFLA does not warrant or represent that it is appropriate or suitable to rely on ACES for the purpose of public health decision-making and both HCI and LPHA agree to exercise independent judgment in their respective uses of ACES. KFLA does not warrant or represent that the Output of ACES will assist in the detection of any public health trend, emergency, disease outbreak, health threat or other occurrence. Nor does KFLA make any representation respecting or warrant the sensitivity or accuracy of the alerting mechanism (statistical alarms) produced by ACES. HCI and LPHA acknowledge the possibility of ACES producing false alerts or failing to produce alerts.
- 12.3) HCI shall make reasonable efforts to provide the HCI Input as set out in this Agreement. Except for the foregoing, and notwithstanding any other term of this Agreement, HCI makes no representation respecting and does not warrant the timeliness, quality or accuracy of the HCI Input, or any part of the Output that ACES creates by using the HCI Input.
- 12.4) HCI and LPHA acknowledge that, as with any data management system, ACES may be subject to threat by computer viruses, internet hackers and/or system failure. HCI and LPHA agree to participate in ACES at their own risk, subject to the assurances of KFLA set out in paragraph 9.5 herein.

- 12.5) HCI and LPHA agree that KFLA is not responsible for any damage to the computers, computer systems or other property of HCI and LPHA, as a result of their participation in or usage of ACES, including damage caused by computer viruses, computer hackers or system failure, except to the extent caused by the negligence, willful misconduct or breach of this Agreement by KFLA.
- 12.6) Each of the Parties acknowledges and agrees that this Agreement shall not create or be construed as a partnership, joint venture or other business relationship between any of the Parties.
- 12.7) Unless expressly provided for herein, no Party shall owe any other Party any financial considerations in relation to this Agreement.
- 12.8) The Parties agree that section 77.6 of the *HPPA* prevails over the collection, use and disclosure terms of this Agreement.
- 12.9) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

13. Notices

13.1) All legal notices, requests, demands, approvals or communications under this Agreement, shall be in writing and served either in person or by registered mail providing proof of delivery, addressed to the Party to be served as follows:

In the case of HCI:

In the case of KFLA:

KFL&A Public Health Medical Officer of Health KFL&A Health Unit 221 Portsmouth Avenue Kingston, Ontario, K7M 1V5

In the case of LPHA:

14. Prior Agreements

14.1) Upon execution, this Agreement shall constitute the entire agreement between the Parties with respect to its subject matter and this Agreement shall merge, integrate and supersede any and all prior agreements between the Parties concerning the HCI Input, ACES or other electronic syndromic surveillance systems using the HCI Input.

IN WITNESS WHEREOF each of the Parties has executed and delivered this Agreement by the hand of an officer duly authorized to do so on the dates set out below.

Board of Health for the Kingston Frontenac and Lennox & Addington Public Health Unit

Ву:	Date:
Print Name:	
Title:	
Local Public Health Agency	
Ву:	Date:
Print Name:	
Title:	
Health Care Institution	
By:	Date:
Print Name:	
Title:	
By:	Date:
Print Name:	
Title:	

Schedule "A"

Information (Dataset) to be Collected by HCI for Transmission to ACES

- i) Hospital name;
- First five descriptors of patient's home postal code; ii)
- iii) Patient gender;
- Patient age; iv)
- Date and time of visit/admission; v)
- vi) Chief complaint(s);
- vii)
- Canadian Triage Acuity Score (CTAS) code; Emergency Department or Acute Care Clinic or Elective or Emergent Admission diagnosis; viii)
- Discharge diagnosis; ix)
- Febrile Respiratory Illness screening tool result; x)
- xi) Whether arrival by emergency medical service;
- Whether admission to Intensive Care Unit. xii)



