Vaughan ChamberSafe Program

TERMS OF USE AGREEMENT – ELIGIBLE BUSINESS

(hereinafter the "**Agreement**")

BETWEEN:

Vaughan Chamber of Commerce

(hereinafter "**Chamber**")

and

Harkel Office Furniture Ltd.

(hereinafter "**Distributor**")

and

_____

(hereinafter "**Business**")

(collectively the "**Parties**)

Overview:

- At present, COVID-19 rapid antigen testing is primarily conducted through the provincial public health care system.
- To assist in facilitating private sector workplace screening, the Chamber has partnered with the Distributor and the federal and provincial governments to assist in the distribution of approved COVID-19 Rapid Testing Devices, which currently include the Abbott Panbio™ Rapid Antigen Test (the "**Devices**") to private businesses seeking to implement Point of Care screening ("**Rapid Antigen Screening**") at their workplaces (the "**Program**").
- As the Business has resumed operations, or in order to continue operating, the Business has expressed interest in privately conducting asymptomatic testing and/or offering testing to employees who are not eligible for publicly-funded testing under the current COVID-19 Provincial Testing Guidance framework.[1]

Accordingly, the Chamber (via the Distributor) has agreed to provide the Business with the Devices in accordance with the following terms:

1. The Devices provided to the Business pursuant to the Program are provided free of charge, on an "as-is" basis, without warranties, express or implied, or representations as to accuracy, reliability, or functionality. The Chamber and the Distributor disclaim any and all representations, warranties and conditions, whether express, implied, written or oral, in relation to the Devices, including fitness for use for any particular purpose

[1] Ministry of Health – COVID-19 Provincial Testing Guidance Update. Revision: March 5, 2021 - https://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019_testing_guidance.pdf

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and, in this regard, neither the Chamber nor the Distributor shall be liable to the Business for any loss, claim, or demand made by the Business, or made against the Business by any other party, due to or arising from the transfer, handling, storage, use or disposal of the Devices and the Business shall indemnify the Chamber and the Distributor from and against any and all such losses, claims or demands (including in respect of any other party). The Business acknowledges and confirms that the sole recourse of the Business shall be against the manufacturer of the Devices.

2. The Business acknowledges that Rapid Antigen Screening is not considered to be an effective, preventive measure for COVID-19 on its own, and does not replace public health strategies such as symptom screening, physical distancing and other requirements under applicable provincial guidelines and law, including pursuant to the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2021* ("**ROA**"), the *Health Protection and Promotion Act* ("**HPPA**"), the *Occupational Health and Safety Act* ("**OHSA**"), the *Emergency Management and Civil Protection Act* ("**EMCPA**"), or any other applicable legislation.
3. Availability of Devices is subject to distribution plans and mechanisms imposed by the federal and provincial governments, that are beyond the Chamber's or the Distributor's control. The Chamber and the Distributor make no guarantees regarding the availability or volumes of Devices.
4. The Business shall be **SOLELY AND EXCLUSIVELY RESPONSIBLE** for meeting all compliance requirements that govern private sector Rapid Antigen Screening under Ontario law, including:
    a. Ontario's *Considerations for Privately Initiated Testing* ("**Considerations**"), a current copy of which is provided as **Schedule "A"**. The Considerations are determined in the sole discretion of the Ontario Ministry of Health, and may be subject to change at any time. At present, the Considerations require, at a minimum:

        - Prior to initiating testing, organizations must contact their local public health unit to make them aware that they will be engaging in a private testing program.
        - Private testing can only be performed using one of the types of tests currently available in Ontario as per the COVID-19 Testing Guidance.
        - Organizations should have a systematic procedure in place to provide follow up on test results.
        - Organizations should have plans in place to respond should any individuals be exposed to, or diagnosed with, COVID-19.
        - All positive COVID-19 tests performed using a validated test, including preliminary positive results obtained through the Devices, must be reported to the local public health unit in accordance with the *Health Protection and Promotion Act* or "**HPPA**".

        The Business will be solely responsible for ensuring that it is complying with the most up-to-date requirements under the then-current version of the Considerations.

    b. Any applicable legislative requirements under the HPPA, including with respect to the authorized collection, retention, use and disclosure of Personally Identifiable Information ("**PII**"), including Personal Health Information ("**PHI**");
    c. Any applicable legislative requirements under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2021* ("**ROA**");
    d. Any applicable legislative requirements under the *Emergency Management and Civil Protection Act* ("**EMCPA**");
    e. Any applicable legislative requirements under the *Occupational Health and Safety Act* ("**OHSA**").
    f. Ensuring any and all used Devices and related materials are properly disposed of in accordance with public health guidelines and regulations, at their own cost and liability.
5. The Business acknowledges and agrees to comply with all manufacturer's recommendations and guidelines with respect to the Devices, including, without limitation, storage requirements and temperature controls.
6. The Business will be solely responsible for ensuring that all staff members or persons responsible for administering Rapid Antigen Screening at their workplace have met all applicable training requirements designated by the Ministry of Health, including but not limited to, the specific training materials for Rapid

Antigen Screening listed on the COVID-19 Health System Response Materials website[2]. The Business acknowledges and agrees that staff members or persons performing Rapid Antigen Screening using the Devices at the Business's site are health professionals or trained individuals that have the appropriate knowledge, skills, judgement, and oversight to perform the test correctly, and hereby declares such staff members or persons have watched the training video available at: https://www.youtube.com/watch?v=fgux1buhBog.

☐ Please initial that the all staff members or persons responsible for administering Rapid Antigen Screening have viewed such video.

Aside from the Devices, the Business acknowledges and agrees to provide and supply, at its own cost, the appropriate human resources and all equipment and supplies required to perform Rapid Antigen Screening in compliance with the Program and terms of this Agreement.

7. The Business must, on at least a weekly basis, report the following information to the Chamber via any method prescribed by the Chamber:

    a. Anonymized statistical data regarding:
        i. The number of Devices utilized within that week;
        ii. The number of "preliminary positive" screening results rendered within that week;
        iii. The number of "preliminary negative" screening results rendered within that week;
        iv. The number of "invalid" screening results rendered within that week;
        v. The number of "preliminary positive" screening results that were:
            - Confirmed positive for COVID-19 through a follow-up, lab-based polymerase chain reaction ("**PCR**") test;
            - Confirmed negative for COVID-19 through a follow-up, lab-based PCR test; and
            - Unconfirmed through a follow-up, lab-based PCR test because results are pending or unknown.

    UNDER NO CIRCUMSTANCES SHALL THE BUSINESS PROVIDE TO THE CHAMBER OR THE DISTRIBUTOR, NOR SHALL THE CHAMBER OR THE DISTRIBUTOR ACCEPT, ANY PII OR PHI RELATING TO ANY PERSONS WHO PARTICIPATE IN RAPID ANTIGEN SCREENING ADMINISTERED BY THE BUSINESS.

8. The Business will ensure that Devices provided to the Business by the Chamber and the Distributor are used ONLY for the purposes of screening persons who may be required to enter the Business's physical workplace, or any authorized use permitted by the Program, and are provided free of charge to the persons being tested.
9. Devices provided to the Business by the Chamber and the Distributor shall not be resold or distributed to any other person, under any circumstances, or used for any purpose other than any purpose related to the Program. If the Business no longer requires Devices provided to the Business pursuant to the Program, it will notify Ruchika Sharma at antigentesting@vaughanchamber.ca to arrange for immediate retrieval of unused Devices.
10. Any failure by the Business to meet the terms of this Agreement, including, without limitation, compliance with the reporting obligations identified at paragraph 7 herein, will result in the Business's future inability to participate in the Program.
11. The Business agrees to indemnify and release the Chamber and the Distributor, including all current and former parents, subsidiaries, related companies, partnerships, or joint ventures and, with respect to each of them, their predecessors and successors; and, with respect to each such entity, all of its past, present,

[2] Ministry of Health - COVID-19 Health System Response Materials - https://www.ontariohealth.ca/COVID-19/Health-System-Response-Resources#panbio

and future employees, officers, directors, stockholders, members, owners, representatives, assigns, attorneys, agents, insurers, and any other persons acting by, through, or in concert with any of the persons or entities listed in this provision, of and from any and all liability for any purpose related to the implementation of the Program and/or any issues, claims, actions, demands or legal proceedings of any sort, which may be related to the Program. For greater certainty, the Business shall be solely responsible for any and all claims, causes of action, demands, liabilities, and expenses (including legal costs) with respect to the Business' implementation of Rapid Antigen Screening at its workplace, the Program and the use of the Devices.

12. This Agreement is made under and shall be construed according to the laws of the province of Ontario and the laws of Canada applicable therein.

ACKNOWLEDGEMENT

By signing and providing the required information below, the signatories confirm both the acceptance of this Agreement and that they are authorized to bind the respective Parties to the terms of this Agreement.

On behalf of **Vaughan Chamber of Commerce**:

Employee Name & Position

_____

Employee Signature:

_____

I am authorized to bind **Vaughan Chamber of Commerce**.

On behalf of **Harkel Office Furniture Ltd.**:

Employee Name & Position

_____

Employee Signature:

_____

I am authorized to bind **Harkel Office Furniture Ltd.**

On behalf of _____:

Name & Position (Please print)

_____

Signature:

_____

I am authorized to bind the Business.

Business Name:

_____

Business Address:

_____

_____

Size of Workforce: _____

_____

Date: _____ **, 2021**

Email: (please print)

_____

Telephone Number:

_____

SCHEDULE "A"

Attach current copy:

http://health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/Considerations_for_Privately-Initiated_Testing.pdf