TERMS OF USE AGREEMENT - (hereinafter the “Agreement”)

Overview:

- At present, COVID-19 rapid antigen testing is primarily conducted through the provincial public health care system.
- To assist in facilitating private sector screening, the Guelph Chamber of Commerce (“the Chamber”) has partnered with the federal and provincial governments to assist in the distribution of Abbott Panbio rapid antigen tests (“Rapid Antigen Tests”) to private businesses seeking to implement Point of Care (“POC”) screening at their workplaces.
- 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.

Accordingly, the Chamber has agreed to provide the Business with Rapid Antigen Test kits in accordance with the following terms:

1. The Rapid Antigen Test kits provided by the Chamber to the Business are provided free of charge, on an “as-is” basis, without warranties, express or implied, or representations as to accuracy, reliability, or functionality. Other than any warranty provided by the manufacturer, the Chamber disclaims any and all representations, warranties and conditions, whether express, implied, written or oral, in relation to the Rapid Antigen Test kits, including fitness for use for any particular purpose.

2. The Business acknowledges that Rapid Antigen Testing 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 Rapid Antigen Testing kits is subject to distribution plans and mechanisms imposed by the federal and provincial governments, that are beyond the Chamber’s control. The Chamber makes no guarantees about the availability or volumes of Rapid Antigen Test kits.

4. The Business shall be SOLELY AND EXCLUSIVELY RESPONSIBLE for meeting all compliance requirements that govern private sector rapid antigen testing under Ontario law, including:
    1. Ontario's Considerations for Privately Initiated Testing ("Considerations"), a current copy of which is appended 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:
        i. 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.
        ii. Private testing can only be performed using one of the types of tests currently available in Ontario as per the COVID-19 Testing Guidance.
        iii. Organizations should have a systematic procedure in place to provide follow up on test results.
        iv. Organizations should have plans in place to respond should any individuals be exposed to, or diagnosed with, COVID-19.
        v. All positive COVID-19 tests performed using a validated test, including … preliminary positive results obtained through POC antigen tests, must be reported to the local public health unit in accordance with the [Health Protection and Promotion Act or "HPPA"].
    2. 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.
    3. 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");
    4. Any applicable legislative requirements under the Reopening Ontario (A Flexible Response to COVID-19) Act, 2021 ("ROA");
    5. Any applicable legislative requirements under the Emergency Management and Civil Protection Act ("EMCPA");
    6. Any applicable legislative requirements under the Occupational Health and Safety Act ("OHSA").

5. Pursuant to its collateral agreements with the provincial and federal governments, the Chamber is required to disclose certain aggregated statistical data for the purposes of Rapid Antigen Test kit inventory and supply chain management, as well as quality control ("Reporting Obligations"). In order for the Chamber to meet the Reporting Obligations, the Business must, on at least a weekly basis, report the following information to the Chamber, via it's web portal located at www.guelphchamber.com/business-resources/covid-19-support/rapid-screening

1. Anonymized statistical data regarding:
    i. The number of employees participating in the rapid screening program;
    ii. The number of Rapid Antigen Test kits utilized within that week;
    iii. The number of “preliminary positive” test results rendered within that week;
    iv. The number of “preliminary negative” test results rendered within that week;
    v. The number of “inconclusive” test results rendered within that week;

Under no circumstances shall the Business provide to the Chamber any PII or PHI relating to any persons who participate in Rapid Antigen Testing administered by the Business.

6. The Business will ensure that Rapid Antigen Testing kits provided to the Business by the Chamber are used ONLY for the purposes of screening persons who may be required to enter the Business’ physical workplace, or any authorized use permitted by the Program.

7. Rapid Antigen Test kits provided to the Business by the Chamber shall not be resold or distributed to any other person, under any circumstances. If the Business no longer requires Rapid Antigen Test kits provided to the Business pursuant to the Program, it will notify chamber@guelphchamber.com to arrange for immediate retrieval of unused Rapid Antigen Test kits.

8. Any failure by the Business to meet the terms of this Agreement, including without limitation compliance with the reporting obligations identified at paragraph 4 herein, will result in the Business’ future inability to participate in the Program.

9. The Business agrees to indemnify and release the Chamber, it’s staff and volunteers, and any other persons acting by, through, or in concert with any of the persons or entities listed in this provision and assigns 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 POC rapid antigen testing at its workplace.

10. 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.