

## Attachment A to Agenda File No. 2021-0323



### **Master Services Agreement**

This Master Services Agreement (“Agreement”), dated as of the 27<sup>th</sup> day of August 2021 (“Effective Date”), is entered into by and between Premise Health Employer Solutions, LLC, a Delaware limited liability company, on behalf of its affiliate eHealthScreenings, with its corporate office located at 5500 Maryland Way, Suite 120, Brentwood, TN 37027 (“EHS”) and San Diego Unified Port District with corporate office located at 3165 Pacific Hwy, San Diego, CA 92101 (“Client”). EHS and Client may be individually referred to herein as a “Party” or collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, Client desires to engage EHS to perform certain services (“Services”), more fully described in on Exhibit A, attached to this Agreement and incorporated herein by reference, on the terms and subject to the conditions set forth herein; and

**WHEREAS**, EHS desires and agrees to perform Services for Client.

### **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the promises and the mutual representations, warranties, covenants, agreements, and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

### **ARTICLE I PROVISION OF SERVICES**

1.1 **Services.** EHS, either directly or through one or more EHS subcontractors (“Technician(s)”), will provide the Services described in Exhibit A to Client on the terms and subject to the conditions set forth herein and in accordance with the Terms and Conditions set forth on Exhibit B (“Terms and Conditions”), attached hereto and incorporated herein for all purposes. To request Services pursuant to this Agreement, Client will complete and execute the Request Form, attached hereto as Attachment 1 to Exhibit A, and email it to [requests@ehealthscreenings.com](mailto:requests@ehealthscreenings.com). Upon receipt of a completed and executed Request Form, EHS will counter-sign and schedule date(s) and time(s) for EHS to perform Services. EHS will comply with all reasonable policies and procedures required by Client in connection with EHS’s performance of any Services hereunder, provided that Client provides EHS with reasonable advance written notice of any such policies and procedures.

1.2 **Modification of Services by Client.** If Client requests EHS to make modifications to Services, EHS will use all commercially reasonable efforts to accommodate any reasonable request and will advise Client as soon as reasonably practicable whether it is able to accommodate such modifications, together with the cost estimate and timeframe for implementation and provision of such modifications. If Client accepts EHS’s offer to provide such modifications, EHS and Client authorized representatives will execute an amendment to this Agreement.

1.3 **Warranty.** EHS hereby represents, warrants and affirms the following:

- (i) EHS will cause all employees, independent contractors, subcontractors, or other personnel employed or contracted by EHS to provide the Services pursuant to the terms set forth herein;
- (ii) EHS will provide all Services in accordance with applicable professional standards;
- (iii) EHS will provide all Services in compliance with all applicable federal, state, local rules, regulations, statutes, and laws; and
- (iv) EHS will maintain in good standing all licenses necessary to provide the Services.

1.4 **Client’s Responsibilities.** Client will, at its expense, provide and maintain facilities and premises suitable for the delivery of the Services and provide all water, electricity, and any other services as determined by the



Parties and as detailed in Exhibit B.

## ARTICLE II COMPENSATION FOR SERVICES

2.1 Compensation for Services. Charges and expenses for Services are set forth on Exhibit B. EHS will give Client sixty (60) days prior written notice of any change in its charges.

2.2 Invoice and Payment. Each invoice will accurately state the applicable fees and expenses associated with the Services. All amounts are due and payable thirty (30) days from the invoice date. If available, Client agrees to provide EHS the contact information for its accounts payable department to ensure payment is timely: Name: \_\_\_\_\_; Telephone # \_\_\_\_\_; and Email: \_\_\_\_\_. If Client defaults in payment of any charges when due, EHS may immediately suspend further performance hereunder.

2.3 Late Fees. Unpaid invoices shall accrue interest at the rate of 1.5% per month beginning ten (10) days following the due date of the invoice. In the event of non-payment, EHS shall be entitled to its reasonable attorneys' fees and other costs of collection. Upon termination of the Services for any reason, no later than the effective date of termination, Client shall pay EHS all unpaid amounts due under this Agreement, including amounts due for Services rendered up to and including the date of termination.

2.4 Cancellation. If Client cancels Services at any time within ten (10) days prior to the date Services are scheduled, Client will be responsible for paying EHS 100% of the charges and expenses incurred by EHS for such Services (*i.e.*, hotel bookings, shipping, staffing, organization time, supplies, etc.); *provided, however*, that if such Services are rescheduled to be held within 1 week, EHS may, in its discretion, charge Client for only non-recoverable costs.

## ARTICLE III TERM AND TERMINATION

3.1 Term. This term of this Agreement will commence on the Effective Date and will continue for a period of one (1) year and may be renewed by Client in writing for successive periods of one (1) year each, unless sooner terminated in accordance with this Agreement. Term does not require client to conduct business after initial testing period.

3.2 Termination of this Agreement. Either Party may terminate this Agreement with or without cause upon sixty (60) calendar days' prior written notice to the other Party. Either Party may terminate this Agreement (i) immediately by mutual agreement of the Parties; or (ii) upon thirty (30) days' prior written notice for a material breach by the other Party of this Agreement, provided that such termination shall not be effective if the breaching party cures the specified breach within the thirty (30) day notice period.

3.3 Effect of Termination. If Client terminates this Agreement prior to the completion of scheduled Services delivery, Client will be responsible for reimbursing EHS for all non-recoverable hard costs (*i.e.*, hotel bookings, shipping, staffing, organization time, supplies, etc.) that EHS has incurred prior to the date of its receipt of notification of termination.

## ARTICLE IV INDEMNIFICATION AND LIMITATION OF LIABILITY

4.1 General. EHS and Client will each indemnify, defend, and hold the other harmless from and against any and all losses, claims, suits, damages, liabilities, and expenses (including without limitation reasonable attorney's fees) based upon, arising out of or attributable to the negligent and/or willful misconduct of such Party, its employees, servants, and/or agents. The provisions of this paragraph will survive the termination of this Agreement. Notwithstanding the forgoing, neither Party shall be entitled to indemnification to the extent that its own action or



inaction, not directed by the other Party hereunder, caused or contributed to the underlying claim.

4.2 Limitation of Damages. Neither Party nor its respective officers, directors, employees, agents, or affiliates will be liable for any special, exemplary, incidental, consequential, or punitive damages, whether in contract, warranty, tort, strict liability, or otherwise. These limitations will apply even if a Party has been advised of the possibility of recovery for these damages.

## **ARTICLE V INSURANCE**

5.1 Types of Coverage. EHS agrees to maintain the following coverage throughout the term of this Agreement:

- (i) Workers' Compensation and Employers' Liability as required by applicable statute including (blanket) waiver of subrogation to Client, where allowed by law;
- (ii) Automobile Liability with combined single limit of \$1,000,000 per occurrence;
- (iii) General and Professional Liability as provided through Green Hills Insurance Company, a non-rated Vermont domiciled risk retention group principally owned by Premise Health, its subsidiaries and affiliates:
  - a. General Liability - \$2,000,000 per occurrence and a \$6,000,000 aggregate
  - b. Professional Liability - \$2,000,000 per occurrence and a \$6,000,000 aggregate

5.2 Evidence of Coverage. Prior to the Effective Date and upon Client request, EHS will furnish certificates evidencing that all insurance required hereunder is in full force and effect.

## **ARTICLE VI GENERAL PROVISIONS**

6.1 Non-Solicitation. During the term of this Agreement, Client will not solicit any employee or independent contractor of EHS that has provided Services to Client without the prior written consent of EHS.

6.2 Entire Agreement; Amendments and Waivers. This Agreement, together with the Exhibits attached hereto and all executed Request Forms, constitutes the entire understanding between the Parties and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties. This Agreement may not be amended except by an instrument in writing signed by each of the Parties hereto. No waiver of any of the provisions of this Agreement is deemed or constitutes a waiver of any other provision hereof (whether or not similar), nor does such waiver constitute a continuing waiver unless otherwise expressly provided. If any provision in this Agreement conflicts with any other provision in an Exhibit to this Agreement or any other agreement between EHS and Client, the provisions in this Agreement shall control to the extent applicable.

6.3 HIPAA. The Parties understand and agree that Client's health and welfare plan is a Covered Entity under the Health Insurance Portability and Accountability Act (42 U.S.C. §1320d) ("HIPAA"). Accordingly, the Parties acknowledge and agree that this transaction may be impacted by HIPAA and other state and federal laws, rules, and/or regulations relating to the privacy, confidentiality, and security of patient information as well as other subjects. As required under the HIPAA Privacy Rule (45 C.F.R. Part 164), a business associate addendum is attached hereto as Exhibit C and incorporated herein by this reference.

6.4 Force Majeure. Neither Party is liable for any delay or failure in performance of any part of this Agreement by reason of any act of nature, act of civil or military authority, government regulation, embargo, epidemic, terrorist act, riot, insurrection, fire, explosion, earthquake, nuclear accident, flood, work stoppage, equipment failure, cable cut, power blackout, volcanic eruption, other major environmental disturbance or unusually severe weather condition, or similar event or cause beyond its control and without its fault or negligence, but only to the extent prevented by the Force Majeure event.



6.5 Intellectual Property. All current and future worldwide patents and other patent rights, utility models, copyrights, mask work rights, trademarks, trade secrets, and all other intellectual property rights and related documentation or other tangible expression thereof is owned and maintained by each respective Party that retains all rights, title, and interest to it. Neither Party will alter or delete any copyright or other proprietary notice of the other Party without prior written consent of such Party. Consent for the use of name and/or logo must be authorized in writing before use. This section will survive termination of the Agreement. Except as otherwise provided herein, all rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity are cumulative and not alternative, and the exercise or beginning of the exercise of any right, power, or remedy thereof by a Party does not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

6.6 Relationship of the Parties. Each Party performs services hereunder as an independent contractor and nothing herein is construed as creating any other relationship between the Parties. Client does not control the specific manner of performance of EHS's duties hereunder. In no event will Client exercise control and/or management over the employment, discharge, compensation, and/or working conditions of any EHS personnel.

6.7 Notices. All notices, requests, demands, and other communications which are required will be in writing and considered to be given if sent by registered or certified mail, and sent to the addresses set forth in the preamble to this Agreement.

6.8 Litigation. EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHT, POWER, OR REMEDY UNDER OR IN CONNECTION WITH THIS AGREEMENT. The Parties agree that any cause of action based on or arising out of this Agreement shall be commenced within one year of the date of the event, act, or omission giving rise to the cause of action, without regard to the date the event, act, or omission is discovered. Any action not brought within that one-year time period will be barred, without further regard to any other limitations set forth by law or statute. The Parties further agree that, in the event of any litigation with regard to this Agreement, the prevailing Party, as determined by the court, will be entitled to recover from the non-prevailing Party all reasonable attorney and paralegal fees, costs, and expenses (at pre-trial, trial, and appellate levels).

6.9 Severability. In the event that any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability of the provision will not affect any other provision hereof.

6.10 Counterpart; Signatures. This Agreement may be executed in one or more counterparts, each of which is deemed an original and all of which together constitutes one and the same instrument. The Parties agree that signatures on this Agreement, as well as any other documents to be executed in connection with this Agreement may be delivered by facsimile or emailed PDF copy in lieu of an original signature, and that the Parties will treat facsimile or emailed PDF signatures as original signatures.

**IN WITNESS WHEREOF,** the Parties have caused their duly authorized representatives to enter into this Agreement, effective as of the Effective Date.

**Premise Health Employer Solutions, LLC  
on behalf of its affiliate eHealthScreenings**

**Port of San Diego**

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_



Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit A**

**Services**

Workplace (onsite) rapid result COVID-19 nasal pharyngeal swab Antigen testing services.



**Attachment 1 to Exhibit A**

Request Form – attached as corresponding exhibit Attachment 1 to Exhibit A



## **Exhibit B** **Terms and Conditions**

### **A. REQUIREMENTS AND CONSIDERATIONS**

1. Testing will take place in a room large enough to accommodate the number of Participants being tested. Sufficient tables, chairs, small trash containers and 110V outlets. Social distancing guidelines aligned with state and federal regulations shall be applied. For outdoor events, Client is responsible for procurement, set up and take down of any tenting, tables, and related needs for the space.
2. Client will provide a designated site coordinator to serve as the main point of contact.
3. Client agrees to adhere to all EHS testing room specifications. As a standard, events are requested to be scheduled six weeks in advance.
4. Staffing models will be dictated by EHS and will include support for check-in staff and sample collection.
5. Client will provide one laptop with internet access to EHS technician as part of the event set up for the purposes of entering test results only for participants who have signed an authorization to disclose the data to the client during the registration process for testing. Client is responsible for security of the laptops and EHS will not be held liable for incidents attributed to the client-provided technology.

### **B. STAFFING AND TEST CHARGES**

1. Client agrees to pay \$15 per antigen test and \$75 per hour per wellness technician administering the program. The hourly cost is inclusive of labor, personal protective equipment (*i.e.*, mask, glove, and eyewear). Event minimum is charged at 4 hours per event.
2. Events require a day of event EHS day of event check-in staff team member at a rate of \$75 per hour for the duration of the event.
3. Client will be invoiced, and payment is due in accordance with the terms of the Agreement.
4. If Client cancels the testing at any location within ten (10) days before a scheduled testing event, Client will be responsible for all non-refundable hard costs (*i.e.*, hotel booking, shipping, staffing, organization time, supplies) that EHS incurs prior to the date of receipt of its notification of cancellation from Client.
5. If extensive travel is required (defined as a distance greater than 40 miles round trip from the EHS Health staff member starting point), a per mile charge will be billed as a pass-through expense in an amount not to exceed the current federal tax guidelines.
6. If hotel stay(s) are needed for the EHS Health staff member, the total cost will be \$130 per night per staff member.
7. If event location requires paid parking this is not validated, pass-through parking expenses to be billed back to Client.

### **C. SCHEDULING**

1. Client will be provided with a Request Form that must be filled out and submitted for each Services event (Attachment 1 to Exhibit A).
2. EHS will provide supplies for the Client estimated # of test to be administered per event location and date.
3. Upon receipt of a Request Form, EHS will verify that staffing is available and inform Client of any additional costs that may be associated with Service delivery (mileage, hotels, etc.) within 1-3 business days.
4. Once EHS has confirmed availability, EHS will confirm with Client that the event is to be put into the system. Once a Services date has been verified to book, all cancellation policies will apply.
5. EHS will provide support to site coordinator and Client as indicated.

### **D. PROCESS**

1. EHS shall administer nasal pharyngeal tests to include COVID-19 Antigen. Participants will be observed by a qualified and trained technician completing a self-administered nasal sample. The technician team will process the sample as a Point of Care (POC) test. POC tests are performed onsite for Participants under a Clinical Laboratory Improvement Amendments (“CLIA”) Certificate of Waiver.





2. EHS will remove all medical waste from event

## **E. PARTICIPANT EXPERIENCE**

1. Offering options for registration, including an online/mobile optimized scheduler, walk-in, Interactive Voice Response (“IVR”) toll-free line, or through the Client HR representative. The online scheduling system enables the Participant to schedule an appointment at an onsite testing. All Participants must pre-register for testing.
2. Providing online/mobile optimized access to complete consent and HIPAA authorization forms and viewing/changing scheduled appointments. Emails sent to Participants confirm appointments/cancellations and provide appointment reminders.
3. Providing online/mobile optimized access for Participants to view their results in an online results portal.

## **F. REPORTING**

EHS will provide Client on-demand reporting. Reporting will track number of Participants tested, and upon authorization from Participant, EHS will report positive results to Client. EHS will comply with all state and federal regulatory reporting for testing completed.

## **G. LOCATIONS**

COVID-19 testing services will be held at the following client locations:

<b>Location name</b>	<b>City</b>	<b>State</b>	<b>Zip code</b>
Administration Building	San Diego	CA	92101
General Services	National City	CA	91950
Harbor Police	San Diego	CA	92101



**Exhibit C**  
**Business Associate Addendum**

In performing Services, EHS (“Business Associate”) will receive protected health information (“PHI”), as that term is defined under the HIPAA Rules, as defined below, from and on behalf of Client’s health and welfare plan (“Covered Entity”). In accordance with the terms of the HIPAA Rules, Business Associate and Covered Entity agree to these business associate terms:

1. **Definitions.** “Breach” shall mean the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security and privacy of the PHI, subject to the exclusions as provided in 45 C.F.R. § 164.402; “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI; “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164; “Individual” shall mean the person who is the subject of the PHI; “Protected Health Information” or “PHI” shall mean any information created or received by Covered Entity, whether oral, electronic, or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and “Security Incident” means the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
2. **Authorized Uses or Disclosures.** From time to time, Business Associate is providing aggregated reports to Covered Entity, or its designated wellness provider, containing PHI obtained from the services provided for the benefit of Covered Entity employees and/or spouses covered under the Covered Entity’s benefit plan (“Services”) and the terms of this Addendum apply solely with regard to such Services. This Business Associate Addendum does not apply to any other data EHS has access to or receives from Covered Entity under the Agreement. Business Associate will use or disclose PHI only for the purposes of performing the Services, for its proper management and administration or as required by law.
3. **Duties related to PHI** Business Associate agrees to only use and disclose PHI if such use or disclosure is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) of the Privacy Rule and not further use or disclose PHI provided or made available by Covered Entity other than as permitted or required by this Agreement or as required by applicable law or regulation.
  - b. Business Associate will limit any uses, disclosures, and requests for PHI to the minimum amount necessary to perform or fulfill a specific function required or permitted by this Agreement in accordance with the HIPAA Rules.
  - c. Business Associate will report to Covered Entity any use or disclosure of PHI that is not provided for or allowed by the HIPAA Rules and any Security Incident of which it becomes aware, and to assist in determinations relating to the notification process.
  - d. Business Associate will implement administrative, physical, and technical safeguards as required by applicable HIPAA Rules that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
  - e. Business Associate will require any of its agents or subcontractors, or other third parties that are provided, maintain, create, and/or receive PHI on behalf of Covered Entity, to agree, in writing to be bound by the same restrictions, conditions and obligations that apply to Business Associate with respect to PHI.
  - f. Business Associate will make available to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures, to the extent required for determining compliance with this Addendum and the HIPAA Rules.
  - g. Business Associate will (i) forward to Covered Entity any requests it receives from an Individual where the Individual requests access to the Individual’s PHI held by Business Associate, which request shall be responded to by Covered Entity; and (ii) maintain a record of accountable disclosures of PHI by Business Associate as required for Covered Entity to make an accounting to the Individual as required by the HIPAA Rules.



1. **Breach Notification.** In the event that Business Associate discovers that a Breach has occurred, Business Associate will notify the Covered Entity no later than thirty (30) days after discovering the Breach. Such notifications will include information regarding the nature of the Breach, including a description of what happened, the date of the Breach, and the date the Breach was discovered; specific elements of PHI that were subject to the Breach; and identification of each Individual who has been, or is reasonably believed by Business Associate to have been affected by the Breach. Business Associate will work with Covered Entity, promptly and as reasonably required by Covered Entity, to identify all individuals whose PHI has been breached, to gather any other information required to be reported under HIPAA Rules and to ensure that the cause giving rise to the Breach has been remediated.
2. **Covered Entity Obligations.** Covered Entity will notify Business Associate of: (i) any limitations in its Notice of Privacy Practices; (ii) any changes in, or revocation of permission by Individuals to use or disclose PHI; and (iii) any arrangements permitted or required of the Covered Entity under the HIPAA Rules that may impact in any manner the use and/or disclosure of PHI by Business Associate.
3. **Term and Termination.**
  - a. This Addendum is effective on the Effective Date of the Agreement.
  - b. This Addendum will terminate when the Agreement terminates or if Covered Entity determines that Business Associate has violated a material term of this Addendum, or applicable law, that is not cured within thirty (30) days after delivery of notice of the specific violation(s) to Business Associate.
  - c. Upon termination or expiration of this Addendum, Business Associate will return to Covered Entity any and all PHI received from, or created by, Business Associate on behalf of Covered Entity that is maintained by Business Associate in any form whatsoever, including any copies or replicas. Should the return or destruction of the PHI be determined by Business Associate to not be feasible, the Parties agree that the terms of this Agreement shall extend to the PHI until otherwise indicated by the Covered Entity, and any further use or disclosure of the PHI by Business Associate shall be limited to that purpose which renders the return or destruction of the PHI infeasible.
4. **Amendment to Comply with Law.** The Parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The Parties agree to take such action as is necessary to comply with the standards and requirements of the HIPAA Rules and other applicable laws relating to the security or confidentiality of PHI.
5. **No Third Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.