

31 December 2020

Rapid COVID-19 testing from 4 January: explanation of legal documentation

Dear School/College Leader/Teacher

To help you prepare for testing from the first week of January, we have added some documents into the schools and colleges document [sharing portal](#).

The 'How to' Guide should be your first port of call. This is an easy reference document, which is straightforward to follow and should have everything you need to prepare and undertake testing within your school or college.

The 'How to' Guide is based on the Clinical Standard Operating Procedure (SOP). This is the clinical document that sets out the parameters for operating a testing site. The Clinical SOP is a live document and will be updated to reflect changes in policy as new understanding about COVID-19 (and how best to respond to it) emerges. Changes in later editions will be clearly highlighted. These changes will be reflected in updates to the 'How to' Guide, which is your main reference document.

You will find the Clinical SOP appended to the terms and conditions between you and the Department of Health and Social Care. The terms and conditions outline your responsibilities and what you can expect from government in terms of support. While this is a detailed document, it is important that you read and understand your requirements for setting up and completing the tests in a safe and compliant way.

Further resources are available on the [gov.uk mass testing page](#). If you need answers to wider questions on testing, you can call the DfE helpline on 0800 046 8687.



Department of Health & Social Care

Terms and conditions for Covid-19 testing (Schools and Further Education Providers)

Agreement relating to facility for Covid-19 testing by the Provider

The Secretary of State for Health and Social Care of 39 Victoria Street, Westminster, London, SW1H 0EU, United Kingdom (“**DHSC**”) and schools and further education providers in England are seeking to collaborate to combat the SARS-CoV2-19 (“**Covid-19**”) pandemic.

In these terms and conditions (“**T&Cs**”), “**Provider**” means the school or further education provider to which the T&Cs have been provided.

DHSC and the Provider have agreed that the DHSC will support the Provider’s running of Covid-19 testing at the Provider to test volunteer students and staff (including third party contractors and others as appropriate) from the Provider and/or other schools or further education providers (“**Test Subjects**”).

The Testing has the following objectives:

- to have an in-house capability to test asymptomatic staff and students;
- to identify asymptomatic but potentially infectious individuals, helping to break the chain of transmission of Covid-19 at the Provider;
- to give increased confidence to students and staff around in-person education; and
- to enable, through daily testing, those identified as close contacts of confirmed cases of Covid-19 to continue in-person education instead of self-isolating.

For the purpose of Decision 2012/21/EU of the European Commission of 20 December 2011, these T&Cs entrusts the Provider with the performance of public service obligations, which are set out in these T&Cs.

DHSC and the Provider have agreed to proceed with the Testing upon and subject to the following terms.

1 Commencement and term

- 1.1 By proceeding to participate in the Testing programme under these T&Cs, the Provider agrees to the terms of these T&Cs.
- 1.2 This agreement begins on commencement of the supply by DHSC of DHSC Supplies and/or Testing (both defined below) by the Provider under these T&Cs (whichever is earlier) (“**Commencement Date**”).
- 1.3 The agreement continues from the Commencement Date until and including the end of the Provider’s Easter term (“**Term**”), at which point the agreement expires (subject to clause 1.4 below).
- 1.4 DHSC may choose to extend the agreement by providing at least 7 days’ written notice to the Provider, setting out the details of the extension. The extension takes effect on

expiry of the notice unless the Provider has first given notice to DHSC that it does not wish to proceed with the extension.

- 1.5 Any work such as training or preparation for the Testing by the parties prior to the Commencement Date shall be treated as having been performed under the terms of these T&Cs.

2 Standard Operating Procedure

- 2.1 A 'How To' guide is attached at Schedule 1 which provides an easily accessible description of the testing set up and procedure. Attached at Schedule 3 is the current version of the "Clinical Standard Operating Procedure (SOP) for Rapid Testing with Lateral Flow Antigen Testing Devices and Serial Testing in Schools" ("**SOP**") which sets out a detailed description and plan of the testing and ancillary responsibilities that are to be carried out by the Provider under these T&Cs.
- 2.2 The Provider agrees to carry out Covid-19 testing on Test Subjects in accordance with the SOP ("**Testing**").
- 2.3 Each Party agrees to perform the obligations that are allocated to it in the SOP in accordance with the SOP, these T&Cs and all applicable laws and regulations.
- 2.4 DHSC may update the SOP during the Term from time to time and following such update will provide the Provider with a copy of the updated SOP as soon as reasonably practicable.
- 2.5 If DHSC makes a change to the SOP which would have a material adverse impact on the Provider, the Provider shall have a period of seven days (or such other longer period as notified by DHSC or otherwise agreed by the parties) ("**SOP Update Period**") to comply with the updated SOP. The Provider may request that DHSC makes further changes to the SOP to avoid or mitigate any adverse impact. If DHSC does not make such further changes to the SOP within the SOP Update Period or the Provider notifies DHSC that it is not able to comply with the updated SOP before expiry of the SOP Update Period, either party may immediately on written notice terminate this agreement.
- 2.6 In the event of conflict between the SOP and the terms of these T&Cs, the terms of these T&Cs shall prevail.

3 Provider Responsibilities

- 3.1 The Provider shall provide all of the resources and materials that are necessary to enable the Provider to run, manage and control one or more testing facilities for the Test Subjects (each a "**Facility**"), save for those to be provided by DHSC as set out in the bill of materials at Schedule 2 ("**Bill of Materials**").
- 3.2 In addition to its obligations under clause 2.3, the Provider shall:

Communication and Set-up

- 3.2.1 liaise with the appointed representative(s) of any stakeholders (for example relevant union representatives) at or connected to the Provider in connection with the Testing;

- 3.2.2 cooperate with DHSC in liaising with the applicable local authority bodies as required in connection with the Testing;
- 3.2.3 undertake and deliver all communications in accordance with DHSC guidance, including the communication of the Testing to potential Test Subjects;
- 3.2.4 be responsible for the set-up and configuration of the Facility and ensuring the configuration is in accordance with applicable laws and guidance;

Procurement of personnel

- 3.2.5 in accordance with the SOP and applicable law, regulations and guidance, including the statutory guidance “Keeping children safe in education” issued by the Secretary of State for Education, provide, procure or otherwise arrange for suitable trained employees, contractors and/or other third parties to operate the Testing;
- 3.2.6 ensure that personnel who are to be involved in carrying out the Testing (a) attend any training as required by the SOP or DHSC in advance of being involved in the Testing, and (b) perform their role in relation to the Testing in accordance with any such training and in accordance with the SOP;

Carrying out of the Testing

- 3.2.7 inspect the DHSC Supplies after delivery in accordance with clause 5.4.2;
- 3.2.8 be responsible for the health and safety of Test Subjects and any Provider, DHSC, or third party personnel whilst such persons are present at the Facility;
- 3.2.9 be responsible for obtaining any necessary consents from Test Subjects, or from parents or legal guardians in respect of the Testing;
- 3.2.10 discharge their duties towards each Test Subject to ensure safeguarding, including following internal safeguarding and child protection policies and relevant guidance (including “Keeping children safe in education”);
- 3.2.11 in accordance with relevant guidance, perform all necessary pre-appointment checks, including checking the identity of all contractors and staff on their arrival at the Provider;
- 3.2.12 at all times comply with applicable laws and regulation in carrying out the Testing, including but not limited to the Control of Substances Hazardous to Health 2002;
- 3.2.13 perform the Testing with all reasonable skill and care and in accordance with the SOP and applicable law, regulations and guidance, including the statutory guidance “Keeping children safe in education” issued by the Secretary of State for Education;
- 3.2.14 use the test kits provided by DHSC solely for the purpose of the Testing pursuant to these T&Cs and promptly on request return any unused or surplus test kits to DHSC;

- 3.2.15 not store or use test samples for any purpose other than for the Testing;
 - 3.2.16 report any material problems or incidents with the DHSC Supplies to DHSC as soon as reasonably practicable in accordance with any processes agreed by the parties from time to time; and
 - 3.2.17 provide such aggregated and anonymised data relating to potential Test Subjects as the parties may agree from time to time.
- 3.3 For the avoidance of doubt, the Provider has the right to deny a Test Subject who is displaying symptoms of Covid-19 from participating in the Testing and shall instead direct the individual to the appropriate symptomatic guidelines and practices.

4 DHSC Responsibilities

- 4.1 In addition to its obligations under clause 2.3, DHSC shall:
- 4.1.1 provide a guidance and risk assessment template to support the Provider's carrying out of the Testing, though any template provided is non-exhaustive and the Provider should consider what site-specific risks it may wish to reflect in its own risk log;
 - 4.1.2 cooperate with the Provider in liaising with the applicable local authority bodies as required in connection with the Testing;
 - 4.1.3 provide access to an online training and assessment tool for use by the individuals selected by the Provider to carry out the Testing in order for such persons to be suitably trained to carry out the Testing in accordance with the SOP;
 - 4.1.4 provide a reasonable level of advice and support to the Provider on matters relating to the Testing; and
 - 4.1.5 in accordance with clause 5, provide LFD antigen testing kits (as more fully described in the SOP) to the Facility, together with appropriate kit peripherals and other items that are listed as to be provided by DHSC in the Bill of Materials ("**DHSC Supplies**") and in such quantities as are agreed between the parties.
- 4.2 DHSC shall be responsible for ensuring that:
- 4.2.1 save where the SOP expressly states otherwise, the SOP is appropriate for Testing in accordance with these T&Cs and applicable law and regulation (provided that the Provider acknowledges that the implementation of the SOP by the Provider needs to take account of the particular circumstances of the Provider and accordingly the SOP cannot include a comprehensive list of all actions that will be required to carry out the Testing at the Provider);
 - 4.2.2 the DHSC Supplies are appropriate for use by the Provider to carry out the Testing in accordance with the SOP and these T&Cs; and
 - 4.2.3 the DHSC Supplies are of the necessary quality and standard to enable the Provider to carry out the Testing and are free from material defects. Subject to clause 5.4.1, if the Provider notifies DHSC that any DHSC Supplies have

material defects, DHSC shall endeavour to provide replacements in accordance with clause 5.

5 DHSC Supplies

- 5.1 The Provider shall place orders with DHSC for DHSC Supplies in accordance with any process and using any documents or tools provided or made available by DHSC from time to time. DHSC may include in such process requirements around the timeframes for placing orders, details of the quantities of DHSC Supplies that are required, the quantities of DHSC Supplies that have been used and the quantities of DHSC Supplies the Provider has remaining.
- 5.2 The Provider shall provide in writing regular reports to DHSC in relation to the Testing using any template report or reporting tools provided or made available by DHSC from time to time, including information about the Testing and any issues or lessons learned.
- 5.3 Subject to the availability of DHSC Supplies, DHSC shall arrange for the delivery of the DHSC Supplies to an agreed Facility or such other location agreed between the parties.
- 5.4 Unless otherwise agreed by the parties in writing, any DHSC Supplies provided by DHSC for use by the Provider:
 - 5.4.1 shall be provided at DHSC's sole discretion (save that DHSC will use reasonable endeavours to meet any volumes agreed with the Provider);
 - 5.4.2 shall be inspected by the Provider after receipt in order that the Provider can confirm that the DHSC Supplies that have been delivered include the expected quantity and type of DHSC Supplies;
 - 5.4.3 must be returned to DHSC within any agreed timescales for such return or otherwise upon DHSC's request; and
 - 5.4.4 subject to clauses 5.4.2 and 5.4.3 above, shall be used by the Provider at the Provider's risk.

6 Data protection

- 6.1 Each party will process personal data under or in connection with these T&Cs. Each party will be a controller in respect of the information that it processes under or connection with these T&Cs. Without limitation to the foregoing, the parties intend that:
 - 6.1.1 subject to 6.1.2, the Provider shall be the data controller in respect of the personal data it collects from or relating to Test Subjects, and their parents or carers (including in obtaining relevant consents and contact information and arranging the attendance of Test Subjects at the Facility); and
 - 6.1.2 DHSC shall be the data controller in respect of any personal data it collects from the Provider and/or Testing personnel for the purposes of procuring the provision of training under clause 4.1.3 and in respect of any personal data processed through the NHS Test and Trace digital system.
- 6.2 To the extent that the parties each process personal data relating to the Test Subjects and their parents or carers under or in connection with these T&Cs, each will do so as a separate controller.

- 6.3 In carrying out its obligations under these T&Cs, each party shall comply with its obligations under the Data Protection Act 2018, or, for the period it remains in force in the UK, the General Data Protection Regulation (EU) 2016/679 (as applicable) and any other applicable laws relating to the protection of personal data and the privacy of individuals (all as amended, updated or re-enacted from time to time).
- 6.4 In the event that either party receives a data rights request relating to personal data processed under or in connection with these T&Cs, such party will ensure that such request is appropriately actioned in respect of the personal data for which the recipient of the request is a data controller.

7 Confidential information

- 7.1 For the purposes of these T&Cs, “**Confidential Information**” shall mean information, data and material of any nature, which either party may receive or obtain in connection with these T&Cs which is designated as confidential by either party or that ought reasonably to be considered as confidential.
- 7.2 Each party shall take all proper steps to keep confidential all Confidential Information of the other party which is disclosed to or obtained by it under or as a result of these T&Cs, and shall not disclose the same to any third party and shall allow access to the same to its own employees only on a need-to-know basis, except to the extent that any such Confidential Information becomes public through no fault of that party and except for use reasonably necessary for the performance of these T&Cs.
- 7.3 Notwithstanding clause 7.2:
- 7.3.1 either party shall be entitled to disclose Confidential Information received from the other to its contractors to the extent necessary to enable them to comply with their obligations under these T&Cs; and
- 7.3.2 DHSC shall be entitled to use and disclose the Confidential Information for the purpose of improving the process and operations involved in the Testing.
- 7.4 Upon termination of these T&Cs, each party shall return to the other party or destroy any written data (without retaining copies) provided for the purposes of these T&Cs.
- 7.5 Notwithstanding the termination or expiry of these T&Cs, this clause shall be valid for a further period of seven years from the date of termination or expiry.

8 Freedom of Information Act

- 8.1 The parties acknowledge that DHSC has and the Provider may have obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 8.2 A party (“**Notifying Party**”) shall notify the other party (“**Collaborating Party**”) in writing within forty eight (48) hours if it receives a Request for Information (as defined in the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 as relevant).
- 8.3 Within the required timescales the Collaborating Party shall give the Notifying Party full co-operation and information needed so that the Notifying Party can comply with any Freedom of Information Act or Environmental Information Regulations request.

8.4 The Notifying Party may consult the Collaborating Party to help it decide whether to publish information under this clause 8. However, the extent, content and format of the disclosure is the Notifying Party's decision, which does not need to be reasonable.

9 Liability

9.1 The parties expressly exclude liability for loss of data, profits, business, goodwill or anticipated savings, and all other indirect or consequential loss or damages suffered or incurred by a party under or in connection with these T&Cs.

9.2 Nothing in these T&Cs shall limit or exclude either party's liability for:

9.2.1 death or personal injury or damage to property caused by negligence on the part of that party or its employees, contractors or agents; or

9.2.2 any matter in respect of which it would be unlawful for that party to exclude or restrict liability.

9.3 Subject to clauses 9.1 and 9.2, the total liability of the Provider to DHSC under or in connection with these T&Cs, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the greater of £100,000 and the value of any applicable insurance held by the Provider.

10 Costs

10.1 DHSC will provide funding to the Department for Education, who will allocate and distribute such funding to the Provider retrospectively to support reasonable costs incurred by the Provider in carrying out the Testing. This will be subject to the terms of a funding arrangement agreed between the Department for Education and DHSC.

10.2 DHSC may issue a revised funding arrangement to the Provider at any time. If the Provider does not wish to continue with Testing under any revised funding arrangement, the Provider may terminate this agreement by giving written notice to DHSC.

10.3 Save as set out in clause **Error! Reference source not found.**, each party shall bear its own costs in relation to the Testing and carrying out its responsibilities under these T&Cs.

11 Termination

11.1 Either party may immediately terminate this agreement by issuing a notice in writing to the other party if the other party is in material breach of any obligation in these T&Cs which is either incapable of remedy or, where capable of remedy, that breach is not remedied within seven (7) days of receiving notice specifying the breach and requiring it to be remedied.

11.2 DHSC may immediately terminate this agreement (or suspend compliance with its obligations under clauses 4 and 5) by issuing a notice in writing to the Provider if the Provider is not carrying out the Testing materially in accordance with the SOP or applicable law and regulation.

11.3 Either party may terminate this agreement at any time by giving 14 days' prior written notice to the other party.

- 11.4 On termination or expiry of this agreement, the Provider shall return to DHSC, at DHSC's request, all equipment, materials and property, including any unused DHSC Supplies, which DHSC had supplied to the Provider in connection with the Testing.
- 11.5 The termination of this agreement shall be without prejudice to the rights and remedies of a party which may have accrued at the date of termination.

12 Change in applicable law or guidance

- 12.1 Neither party shall be liable to the other party for any delay or failure to perform its obligations under these T&Cs (other than a payment of money)
- 12.1.1 to the extent that such delay or failure results from changes in applicable law and/or government guidance which mean that the Testing cannot be carried out (in all material respects) without such laws and/or government guidance being breached, or
- 12.1.2 if either party can reasonably demonstrate that despite all reasonable endeavours it is unable to secure the supply of non-Covid-19 infected personnel to perform the Testing due to the levels of Covid-19 infections in the population of the United Kingdom.
- 12.2 Notwithstanding clause 12.1, each party shall use all reasonable endeavours to continue to perform its obligations under these T&Cs to the extent possible (in accordance with applicable laws and guidance), which may include only providing part of the Testing.
- 12.3 However, if either party is prevented from performing its material obligations under the Agreement and the parties are unable to agree a way to facilitate the continued performance of these T&Cs, either party may terminate this agreement with immediate effect by notice in writing.

13 Publicity

- 13.1 Save for the publicity carried out by the parties in promoting the Testing to potential Test Subjects in accordance with these T&Cs, neither party shall make any press announcement in relation to, or publicise, this agreement or any part of it in any way, without the prior written consent of the other party.

14 General

- 14.1 The parties irrevocably agree that this agreement shall be subject to the laws of England and that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any dispute in connection with these T&Cs.
- 14.2 In the event of the transfer of all or a substantial part of DHSC's activities to one or more government bodies, DHSC's rights and obligations shall, notwithstanding any provision to the contrary in the Agreement, automatically transfer to such other government body.
- 14.3 Except as provided elsewhere in these T&Cs, a person who is not a party to the Agreement shall not have any rights under or in connection with it.

- 14.4 If any part of these T&Cs is prohibited by law or judged by a court to be unlawful, void or unenforceable, the T&Cs must be read as if as much of that part was removed as necessary without affecting the rest of these T&Cs.
- 14.5 No purported alteration or variation of these T&Cs shall be effective unless it is in writing and is signed by each of the Parties to these T&Cs.
- 14.6 Notices shall be sent to such address as the relevant party may give notice to the other party for the purpose of service of notices under these T&Cs.

Schedule 1

How to Guide

Schedule 2

Bill of Materials

The following shall be provided by DHSC:

- Innova Swab Collection Kit
- Test registration cards
- LFD barcodes
- Face visors with foam
- EN146683 Surgical Mask
- Disposable Aprons
- Nitrile disposable gloves
- Emesis bowls
- PCR tests

Schedule 3

Clinical Standard Operating Procedure (SOP) for Rapid Testing with Lateral Flow Antigen Testing Devices and Serial Testing in Schools