



Department of Health & Social Care

Terms and conditions for Covid-19 testing (Primary Schools)

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

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

In these terms and conditions (“**T&Cs**”), “**School**” means the relevant primary school, school-based nursery or maintained nursery to which the T&Cs have been provided.

DHSC and the School have agreed that the DHSC will support the School’s running of Covid-19 testing at the School to test staff (including third party contractors and others as appropriate) from the School (“**Test Subjects**”).

The Testing has the following objectives:

- to distribute Covid-19 lateral flow device antigen testing kits (as more particularly described in the SOP) (“**Testing Kits**”) to Test Subjects to enable them to test themselves for Covid-19;
- to identify asymptomatic but potentially infectious individuals, helping to break the chain of transmission of Covid-19 at the School; and
- to give increased confidence to pupils and staff around in-person education.

DHSC and the School 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 School agrees to these T&Cs.
- 1.2 This agreement begins on commencement of the supply by DHSC of Testing Kits and/or, subject to clause 1.3, Testing (both defined below) by Test Subjects using the Testing Kits supplied by DHSC to the School (whichever is earlier) (“**Commencement Date**”).
- 1.3 The School agrees that Testing by Test Subjects shall not commence before 25 January 2021.
- 1.4 The agreement continues from the Commencement Date until and including the end of the School’s Easter term (“**Term**”), at which point the agreement expires (subject to clause 1.5 below).
- 1.5 DHSC may choose to extend the agreement by providing at least 7 days’ written notice to the School, setting out the details of the extension. The extension takes effect on

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

- 1.6 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 Testing guidance

- 2.1 A 'How To' guide is attached at Schedule 1 which provides an easily accessible guide to the distribution and use of Testing Kits as anticipated by these T&Cs. Attached at Schedule 3 is the current version of the "Clinical Standard Operating Procedure (SOP) for Mass Testing with Lateral Flow Antigen Testing Devices in Primary Schools, Maintained and Onsite Nurseries (Self-Test)" ("**SOP**") which sets out the detailed description and plan of the Testing and the responsibilities of the School under these T&Cs in relation to the distribution of the Testing Kits and includes the current instructions for use for the Testing Kits (being version 1.3.2 as at the Commencement Date) which are to be provided to Test Subjects by the School pursuant to these T&Cs and the SOP ("**Instructions for Use**").
- 2.2 The School agrees to distribute in accordance with the SOP, Testing Kits and the Instructions for Use to Test Subjects to enable them to test themselves for Covid-19 ("**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 (including the Instructions for Use) during the Term from time to time and following such update will provide the School 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 School, the School 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 School 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 School 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 DHSC responsibilities

- 3.1 DHSC shall arrange for the delivery of Testing Kits to the School (subject to the availability of DHSC supplies of the same). The supply of Testing Kits shall be at DHSC's sole discretion (save that DHSC will use reasonable endeavours to meet any volumes agreed with the School).
- 3.2 DHSC shall be responsible for ensuring that:
 - 3.2.1 the SOP (including the Instructions for Use) is appropriate for Testing in accordance with these T&Cs and applicable law and regulation;

3.2.2 the Testing Kits are appropriate for use by Test Subjects to carry out the Testing in accordance with the SOP and these T&Cs; and

3.2.3 the Testing Kits are of the necessary quality and standard to enable Test Subjects to carry out the Testing and are free from material defects. Subject to clause 3.1, if the School notifies DHSC that any Testing Kits have material defects, DHSC shall endeavour to provide replacements.

4 School responsibilities

4.1 The School shall establish and maintain a template Covid-19 test kit log using the template set out in Schedule 2 in accordance with the requirements of these T&Cs ("**Test Kit Log**").

4.2 Promptly after receipt of each delivery of Testing Kits from DHSC under this agreement, the School shall:

4.2.1 inspect the Testing Kits to confirm that the expected quantity and type of Testing Kits have been delivered and that they have been supplied with the correct Instructions for Use as set out in the SOP (being version 1.3.2 of the Instructions for Use as at the Commencement Date as the same may be updated or changed from time to time in accordance with clauses 2.4 and 2.5); and

4.2.2 record in the Test Kit Log the lot number and date of receipt of each Testing Kit.

4.3 Following receipt, the School shall:

4.3.1 store the Testing Kits safely and securely in accordance with the SOP; and

4.3.2 distribute the Testing Kits with the Instructions for Use to Test Subjects in accordance with the SOP. The School shall use reasonable endeavours to distribute the Testing Kits with the Instructions for Use in accordance with any timeframes set out in the SOP.

4.4 Promptly after the School provides each Testing Kit and Instructions for Use to a Test Subject, the School shall update the Test Kit Log to confirm:

4.4.1 the name of the Test Subject to whom it has provided a Testing Kit;

4.4.2 that the current Instructions for Use as provided for in the SOP were provided to the relevant Test Subject;

4.4.3 the date that the Test Subject has received the Testing Kit with the correct Instructions for Use; and

4.4.4 the lot number of the Testing Kit.

4.5 On written request by DHSC, the School shall submit a copy of its Test Kit Log to DHSC (in the format as notified to the School by DHSC).

4.6 The School shall:

- 4.6.1 distribute the Testing Kits to Test Subjects solely for the purpose of the Testing pursuant to these T&Cs and not make any other use of the Testing Kits or distribute the Testing Kits to anyone other than the Test Subjects;
- 4.6.2 distribute the Testing Kits with the correct Instructions for Use as set out in the SOP from time to time (being version 1.3.2 of the Instructions for Use as at the Commencement Date) and the School shall not do anything to modify, obscure or contradict the Instructions for Use;
- 4.6.3 promptly on request return any unused or surplus Testing Kits to DHSC;
- 4.6.4 report any material problems or incidents with the Testing Kits to DHSC as soon as reasonably practicable in accordance with any processes notified to the School by DHSC;
- 4.6.5 liaise with the appointed representative(s) of any stakeholders (for example relevant union representatives) at or connected to the School as required in connection with the Testing; and
- 4.6.6 undertake and deliver all communications in accordance with the SOP and other DHSC guidance, including the communication of the Testing to potential Test Subjects.

5 Data protection

- 5.1 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:
 - 5.1.1 subject to clause 5.1.2, the School shall be the data controller in respect of the personal data it collects from or relating to Test Subjects (including in completing the Test Kit Log); and
 - 5.1.2 DHSC shall be the data controller in respect of any personal data it receives from the School in the completed Test Kit Log and in respect of any personal data processed through the NHS Test and Trace digital system.
- 5.2 To the extent that the parties each process personal data relating to the Test Subjects under or in connection with these T&Cs, each will do so as a separate controller.
- 5.3 In carrying out its obligations under these T&Cs, each party shall comply with its obligations under the Data Protection Act 2018 and the retained EU law version of the General Data Protection Regulation (EU) 2016/679 as applicable in the UK, 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).
- 5.4 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.

6 Confidential information

- 6.1 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.

- 6.2 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.
- 6.3 Notwithstanding clause 6.2:
- 6.3.1 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
- 6.3.2 DHSC shall be entitled to use and disclose the Confidential Information for the purpose of improving the process and operations involved in the Testing.
- 6.4 Upon termination of these T&Cs and save as provided for in clause 6.5, each party shall return to the other party or destroy any written data (without retaining copies) provided for the purposes of these T&Cs.
- 6.5 In relation to the Test Kit Log, the School shall retain a copy of the Test Kit Log for a period of twelve (12) months from the date of the last entry to be made by the School in the Test Kit Log.
- 6.6 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.

7 Freedom of Information Act

- 7.1 The parties acknowledge that DHSC has and the School may have obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 7.2 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).
- 7.3 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.
- 7.4 The Notifying Party may consult the Collaborating Party to help it decide whether to publish information under this clause 7. However, the extent, content and format of the disclosure is the Notifying Party's decision, which does not need to be reasonable.

8 Liability

- 8.1 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.

- 8.2 Nothing in these T&Cs shall limit or exclude either party's liability for:
- 8.2.1 death or personal injury or damage to property caused by negligence on the part of that party or its employees, contractors or agents; or
 - 8.2.2 any matter in respect of which it would be unlawful for that party to exclude or restrict liability.
- 8.3 Subject to clauses 8.1 and 8.2, the total liability of the School 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 £10,000 and the value of any applicable insurance held by the School.

9 Costs

- 9.1 Each party shall bear its own costs in relation to the Testing and carrying out its responsibilities under these T&Cs.

10 Termination

- 10.1 DHSC may immediately terminate this agreement (or suspend supply of Testing Kits) by issuing a notice in writing to the School if the School is not complying with this agreement.
- 10.2 Either party may terminate this agreement at any time by giving seven days' prior written notice to the other party.
- 10.3 On termination or expiry of this agreement, the School shall on request return to DHSC any unused Testing Kits.
- 10.4 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.

11 Publicity

- 11.1 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.

12 General

- 12.1 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.
- 12.2 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.
- 12.3 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.

- 12.4 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.
- 12.5 DHSC may amend these T&Cs at any time by issuing a notification to the School of the relevant amendments to these T&Cs. Such amendments shall be effective seven (7) days following the date of receipt by the School of such notification in the absence of receipt by DHSC within such seven (7) days of notice from the School to terminate this agreement.
- 12.6 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 1 How to
Guide - Primary schc

Schedule 2

Template Test Kit Log



Template COVID-19
Test Kit Log.XLSX

Schedule 3

Clinical Standard Operating Procedure (SOP) for Mass Testing with Lateral Flow Antigen Testing Devices in Primary Schools, Maintained and Onsite Nurseries (Self-Test)



Schedule 3 CLEAN
Primary Schools Staf