



# Department of Health & Social Care

## Terms and conditions for Covid-19 testing (Schools, Colleges and other Further Education Providers)

The Secretary of State for Health and Social Care of 39 Victoria Street, Westminster, London, SW1H 0EU, United Kingdom (“**DHSC**”) and schools, colleges and other further education colleges and 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, college or other further education college or provider to which the T&Cs have been provided.

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

The Testing has the following objectives:

- where specified in the applicable SOP (as defined in clause 2.2), to have an on-site capability at the Provider’s premises to test asymptomatic pupils/students and/or the Provider’s Staff (“**On-site Testing**”);
- to have the ability to distribute the relevant Test Kits (as defined in clause 4.1.5 below) to the Provider’s Staff to enable self-testing at home, and, subject to clause 3.2, self-testing of by pupils/students at home (“**Home Testing**”); and
- to identify asymptomatic but potentially infectious individuals, helping to break the chain of transmission of Covid-19 at the Provider.

DHSC and the Provider have agreed to proceed with the On-site Testing and Home Testing (together, the “**Testing**”) upon and subject to the following T&Cs.

### **1 Commencement and term**

- 1.1 By proceeding to participate in the Testing programme under these T&Cs, the Provider agrees to these T&Cs.
- 1.2 These T&Cs take effect on the earlier of the supply by DHSC of DHSC Supplies (defined below) pursuant to these T&Cs or Testing by the Provider under these T&Cs (“**Commencement Date**”).
- 1.3 The agreement continues from the Commencement Date up to and including 23 July 2021 (“**Term**”), at which point the agreement expires (subject to clause 1.4 below).
- 1.4 DHSC may choose to extend the agreement in accordance with clause 14.5.
- 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.

- 1.6 With effect from the Commencement Date, these T&Cs supersede and replace any previous T&Cs in place between DHSC and the Provider relating to mass-testing of the Provider's staff and pupils/students.

## **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 ("**How to Guide**").

- 2.2 Attached at:

2.2.1 Schedule 3 is the current version of the "Clinical Standard Operating Procedure (SOP) for Rapid Asymptomatic Testing of Education Workforce at Home with Lateral Flow Antigen Testing Devices for Self-Test" which applies to Home Testing to be facilitated in relation to the Provider's Staff ("**Workforce SOP**"). The Workforce SOP sets out a detailed description and plan of the relevant Testing and ancillary responsibilities that are to be carried out by the Provider specifically as they relate to the Staff under these T&Cs; and

2.2.2 Schedule 4 is the current version of the "Clinical Standard Operating Procedure (SOP) for Rapid Asymptomatic Testing PUPILS/STUDENTS in Secondary Schools and Further Education Colleges and Providers with Lateral Flow Antigen Testing Devices (March 2021)" which applies to both On-site Testing and (subject to clause 3.2) Home Testing to be facilitated in relation to the Provider's pupils and/or students ("**Student SOP**"). The Student SOP which sets out a detailed description and plan of the relevant Testing and ancillary responsibilities that are to be carried out by the Provider specifically as they relate to the pupils/students under these T&Cs, and

together, the Workforce SOP and the Student SOP shall be known as the "**SOP**".

- 2.3 Where any Home Testing is to be facilitated by the Provider pursuant to the relevant SOPs and these T&Cs, the relevant SOP identifies the relevant Test Kits for Home Testing and incorporates the instructions for use for such Test Kits which must be provided to Test Subjects by the Provider pursuant to this Agreement and the relevant SOP ("**Instructions for Use**"). The Instructions for Use form part of the relevant SOP and any updates required to the Instructions for Use shall be dealt with as a change to the relevant SOP in accordance with clauses 2.6 and 2.7.

- 2.4 Each Party agrees to perform the obligations that are allocated to it in each of the Workforce SOP and the Student SOP in accordance with these T&Cs and all applicable laws and regulations.

- 2.5 DHSC may update either SOP (including any Instructions for Use) during the Term from time to time and following such update will provide the Provider with a copy of the relevant updated SOP as soon as reasonably practicable.

- 2.6 If DHSC makes a change to either 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 relevant updated SOP. The Provider may request that DHSC makes further changes to the relevant SOP to avoid or mitigate any adverse impact. If DHSC does not make such further changes to the relevant SOP within the SOP

Update Period or the Provider notifies DHSC that it is not able to comply with the relevant updated SOP before expiry of the SOP Update Period, either party may immediately on written notice terminate this agreement.

- 2.7 In the event of conflict between the SOPs and these T&Cs, the provisions of the T&Cs shall prevail over the SOP.

### **3 Provider Responsibilities**

- 3.1 The provisions in this clause 3 are in addition to the obligations on the Provider under clauses 2.3 and 2.4.
- 3.2 The Provider acknowledges and agrees that it shall not facilitate or otherwise permit Home Testing by pupils and/or students except as permitted by the Student SOP.
- 3.3 The Provider agrees to facilitate the relevant Testing on Test Subjects in accordance with the Workforce SOP in respect of Testing on Staff and the Student SOP in respect of Testing on pupils/students.
- 3.4 Where applicable in accordance with the relevant SOP, 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 On-site Testing facilities for the Test Subjects (each a "**Facility**") and/or to facilitate any required Home Testing, save for those to be provided by DHSC as set out in the bill of materials at Schedule 2 ("**Bill of Materials**").
- 3.5 The Provider shall also:

#### Communication

- 3.5.1 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;
- 3.5.2 cooperate with DHSC in liaising with the applicable local authority bodies as required in connection with the Testing;
- 3.5.3 undertake and deliver all communications in accordance with DHSC and/or Department for Education guidance and the relevant SOPs (where applicable), including the communication of the Testing to potential Test Subjects;

#### Consent to Testing

- 3.5.4 be responsible for obtaining any necessary consents from Test Subjects, or from parents or legal guardians in respect of the relevant Testing in accordance with the applicable SOP;

#### Inspection and storage of DHSC Supplies (including Test Kits)

- 3.5.5 inspect the DHSC Supplies after delivery in accordance with clause 5.3.3;
- 3.5.6 use the DHSC Supplies (including the Test Kits) provided by DHSC solely for the purpose of the Testing to be conducted in accordance with these T&Cs and promptly on request return any unused or surplus DHSC Supplies to DHSC;

- 3.5.7 store any Test Kits identified in the applicable SOP as relevant for Home Testing separately from any Test Kits held by the Provider for On-site Testing;
- 3.5.8 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

#### Procurement of personnel – On-site Testing

(The following provisions apply where the Provider facilitates On-site Testing of pupils/students at its Facility in accordance with the applicable SOP)

- 3.5.9 in accordance with the applicable 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 On-site Testing at the Facility;
- 3.5.10 ensure that personnel who are to be involved in carrying out the On-site Testing of pupils/students at the Provider: (a) attend any training as required by the applicable SOP or DHSC in advance of being involved in such Testing, and (b) perform their role in relation to the Testing in accordance with any such training and in accordance with the applicable SOP;

#### Set-up of Facility and carrying out of On-site Testing

(The following provisions apply where the Provider facilitates On-site Testing of pupils/students at its Facility in accordance with the applicable SOP)

- 3.5.11 be responsible for the set-up and configuration of the Facility and ensuring the configuration is in accordance with the applicable SOP and applicable laws and guidance;
- 3.5.12 permit DHSC and its employees, contractors and such other third parties as are necessary to access the Provider’s premises (including the Facility) in order for DHSC to exercise and carry out its rights and obligations under these T&Cs;
- 3.5.13 make available to DHSC and its employees, contractors and such other third parties accessing the Provider’s premises with details of any relevant policies which they must comply with whilst at the Provider’s premises;
- 3.5.14 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 Provider’s premises (including the Facility);
- 3.5.15 where applicable, 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”);

- 3.5.16 in accordance with relevant guidance, perform all necessary pre-appointment checks, including checking the identity of all contractors, volunteers and staff on their arrival at the Provider;
- 3.5.17 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;
- 3.5.18 facilitate the On-site Testing required under these T&Cs and the applicable SOP with all reasonable skill and care;
- 3.5.19 not store or use test samples for any purpose other than for the Testing pursuant to these T&Cs;

### Home Testing

(The following provisions apply where the Provider is to facilitate Home Testing by its staff and (subject to clause 3.2) its pupils/students):

- 3.5.20 comply with the requirements of the applicable SOP in relation to Home Testing and use all reasonable skill and care in facilitating the Home Testing;
- 3.5.21 only distribute the Test Kits identified in the applicable SOP as relevant for Home Testing to the applicable Test Subjects for the purpose only of the Home Testing in accordance with these T&Cs, and not make any other use of such Test Kits or distribute such Test Kits to anyone other than the Test Subjects (or their immediate family or legal guardians collecting a Test Kit on behalf of a Test Subject for Home Testing);
- 3.5.22 establish and maintain one test kit log of the Test Kits distributed to both Staff and pupils/students specifically for Home Testing using the template set out in Schedule 5 and in accordance with the requirements of these T&Cs and the applicable SOP ("**Test Kit Log**") (which may be comprised of a number of locally held documents where applicable);
- 3.5.23 following receipt of each delivery of Test Kits for Home Testing from DHSC under these T&Cs, the Provider shall:
  - (i) record in the Test Kit Log the lot number and date of receipt of the relevant Test Kits;
  - (ii) distribute the Test Kits with the current Instructions for Use to Test Subjects in accordance with the applicable SOP;
- 3.5.24 not do anything to modify, obscure or contradict the Instructions for Use;
- 3.5.25 advise the Test Subjects carrying out Home Testing to promptly report their test results from the Tests Kits (whether positive, negative or void) via the NHS Test and Trace digital solution and to promptly inform the Provider of the test results (whether positive, negative or void);
- 3.5.26 promptly after the Provider provides each Test Kit and Instructions for Use to a Test Subject for Home Testing, update the Test Kit Log to confirm:

- (i) the name or ID number and contact details of the Test Subject to whom it has provided a Test Kit;
  - (ii) the number of Test Kits issued to that Test Subject;
  - (iii) that the Instructions for Use were provided to the relevant Test Subject with the Test Kit;
  - (iv) the date that the Test Kit and Instructions for Use were distributed to the Test Subject; and
  - (v) the lot number(s) of the relevant Test Kit;
- 3.5.27 in the event of any product recall in relation to Test Kits, provide any assistance reasonably requested by DHSC in identifying the location of the impacted Test Kits, returning or destroying impacted Test Kits, and/or contacting the affected Test Subject(s);
- 3.5.28 on request by DHSC at any time, submit the data from its Test Kit Log to DHSC (in the format as notified to the Provider by DHSC);
- 3.5.29 keep the data contained in the Test Kit Log until the earlier of: (a) the Provider is instructed by DHSC to delete it from its system; or (b) the date 12 months from the date on which the data is collected. The Provider shall ensure that it deletes all data contained in the Test Kit Log from the Provider's system as soon as instructed to do so by DHSC and in any event, the Provider shall not keep the data contained in the Test Kit Log for longer than 12 months from the date on which it is collected;

#### Reporting & registers

- 3.5.30 provide regular written reports to DHSC as provided for in the SOP 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 any issues or lessons learned in connection with the Testing;
- 3.5.31 in addition to the Test Kit Logs referred to in clause 3.5.22, keep and maintain registers in relation to the Testing as specified in the applicable SOP.
- 3.6 For the avoidance of doubt, the Provider has the right to deny On-site Testing to a Test Subject who is displaying symptoms of Covid-19 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 facilitation 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 applicable 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 and the applicable SOP, provide LFD antigen testing kits (as more fully described in the applicable SOPs) to the Facility for On-site Testing and/or Home Testing (“**Test Kits**”), together with appropriate kit peripherals and other items that are listed as to be provided by DHSC to a particular Provider in the applicable SOP and as set out in the Bill of Materials (“**DHSC Supplies**”), in such quantities as are agreed between the parties.
- 4.2 DHSC shall be responsible for ensuring that:
- 4.2.1 both the Workforce SOP and the Student SOP (including the Instructions for Use in each) are appropriate for Testing (including any Home Testing where required) in accordance with these T&Cs and applicable law and regulation (provided that the Provider acknowledges that the implementation of the applicable SOP by the Provider needs to take account of the particular circumstances of the Provider and accordingly the applicable 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 facilitate the Testing in accordance with the applicable SOP and these T&Cs;
  - 4.2.3 the Test Kits are appropriate for use by Test Subjects for Testing (including Home Testing) in accordance with the applicable SOP and these T&Cs; and
  - 4.2.4 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 5.3.1, if the Provider notifies DHSC that any DHSC Supplies (including the Test Kits) 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. The Provider shall only be entitled to place orders for such DHSC Supplies as are applicable to it as set out in the relevant SOP. 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 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.

- 5.3 Unless otherwise agreed by the parties in writing, any DHSC Supplies provided by DHSC for use by the Provider:
- 5.3.1 shall be provided for use by the Provider specifically in connection with these T&Cs;
  - 5.3.2 shall be provided at DHSC's sole discretion (save that DHSC will use reasonable endeavours to meet any volumes agreed with the Provider);
  - 5.3.3 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; and
  - 5.3.4 must be returned to DHSC within any agreed timescales for such return or otherwise upon DHSC's request.

## **6 Data protection**

- 6.1 Each party will process personal data under or in connection with these T&Cs. Save for where the Provider is acting as a data processor in accordance with Schedule 6, 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: (a) it collects from the Provider and/or testing personnel for the purposes of procuring the provision of training under clause 4.1.3; (b) DHSC receives from the Provider in any completed Test Kit Logs; and (c) 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 as a controller 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 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).
- 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.
- 6.5 Where applicable, each party agrees to comply with the obligations placed on it in Schedule 6.

## **7 Confidential information**

- 7.1 For the purposes of these T&Cs, “**Confidential Information**” shall mean information, data and material of any nature (including personal data), 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 Subject to clause 10.3, DHSC will provide funding to the Department for Education, who will allocate and distribute such funding to eligible Providers retrospectively to support reasonable costs incurred by eligible Providers 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 Where clause 10.1 applies, DHSC may revise the funding arrangement 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 The provisions of clauses 10.1 and 10.2 shall not apply to Providers who are:
- 10.3.1 Independent Training Providers or Adult Community Learning Providers; or
  - 10.3.2 independent schools (but excluding independent special schools and/or non-maintained special schools who are entitled to receive funding pursuant to the provisions of clause 10.1);

in each case, those Providers shall not be eligible to receive any funding under these T&Cs from DHSC and the provisions of clause 10.4 apply.

- 10.4 Save as set out in clause 10.1, 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 these T&Cs 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 these T&Cs 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 these T&Cs, 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 this 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 DHSC may amend these T&Cs at any time (including to extend the term of the agreement) by issuing an updated version of these T&Cs to the Provider. Such amendments shall be effective seven (7) days following the date of receipt by the Provider of such notification in the absence of receipt by DHSC within such seven (7) days of notice from the Provider to terminate this agreement.
- 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**



Schools Colleges  
How To Guide.pdf



Why, who, what  
and when to test.pc



How to self test at  
home.pdf

Specific guidance for Independent Training Providers/Adult Community Learning Providers:



Why Who What  
When - ITPs and AC

## **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

**Schedule 3**

**WORKFORCE SOP**



Schedule 3  
Workforce SOP RP6!

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**Schedule 4**

**STUDENT SOP**



Schedule 4 Student  
SOP RP64-01 Second

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**Schedule 5**

**Template Test Kit Log**



RP02 - COVID-19  
Test Kit Log - Second

## Schedule 6

### Data Processing

#### **1**     Definitions

1.1     In this Schedule:

1.1.1     “**Data Protection Legislation**” shall mean (i) the retained EU law version of the General Data Protection Regulation (EU) 2016/679 as enacted into English law (UK GDPR) and as revised and superseded from time to time; (ii) the Data Protection Act 2018 (DPA 2018) and as revised and superseded from time to time; (iii) Privacy and Electronic Communications Regulations 2003 and as revised and superseded from time to time; and (iv) any other laws and regulations relating to the Processing of Personal Data and privacy which apply to a Party and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority and expressly includes the common law duty of confidentiality.

1.1.2     “**Data Subject**”, “**Controller**”, “**International Organisation**”, “**Personal Data Breach**”, “**Processor**” and “**Processing**” have the same meaning as in the Data Protection Legislation;

1.1.3     “**Personal Data**” has the meaning set out in the Data Protection Legislation in relation to data Processed under this Agreement;

1.1.4     “**Regulator**” means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK; and

1.1.5     “**Third Country**” means any country other than the UK at the time of transfer of Personal Data.

1.2     For the purposes of the Data Protection Legislation, the Provider is a Processor acting on behalf of DHSC as the Controller, in the circumstances identified in the Annex to this Schedule.

#### **2**     Obligations

2.1     The Provider agrees that it will comply with its obligations under the Data Protection Legislation and shall, in relation to any Personal Data Processed in connection with its obligations under the Agreement:

2.1.1     process the Personal Data only to the extent necessary for the purpose set out in the Annex to this Schedule and in accordance with DHSC's written instructions (including with respect to transfers of Personal Data to a Third Country or to an International Organisation);

2.1.2     Process that Personal Data only in accordance with the Annex unless the Provider is required to do otherwise by applicable law. If it is so required, the Provider shall notify DHSC before Processing the Personal Data unless prohibited by applicable law from doing so; and

2.1.3     ensure that the Data Subjects whose Personal Data are Processed by the Provider under the Agreement are provided with a privacy notice in the form

provided by DHSC and in accordance with any processes notified by DHSC.

- 2.2 The Provider will ensure that:
- 2.2.1 its personnel do not Process the Personal Data except in accordance with the Agreement (and in particular the Annex);
  - 2.2.2 it takes all reasonable steps to ensure the reliability and integrity of any Provider personnel who have access to the Personal Data including (but not limited to) ensuring such personnel:
    - (i) are aware of and comply with the Provider's duties under this Agreement;
    - (ii) are subject to appropriate confidentiality undertakings with the Provider or any subprocessor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by DHSC or as otherwise permitted by the Agreement;
    - (iv) take responsibility for the use, care, protection and handling of the Personal Data; and
    - (v) have undertaken the Provider's data protection training.
- 2.3 The Provider shall notify DHSC, as soon as reasonably practicable, about any request or complaint received from a Data Subject (without responding to that request, unless authorised to do so by DHSC) and assist DHSC by technical and organisational measures, insofar as possible for the fulfilment of DHSC's obligations in respect of such requests and complaints.
- 2.4 The Provider shall notify DHSC immediately if in relation to it Processing Personal Data under or in connection with the Agreement it:
- 2.4.1 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 2.4.2 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Agreement;
  - 2.4.3 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
  - 2.4.4 becomes aware of a Personal Data Breach.
- 2.5 The Provider shall keep and maintain accurate records and information to demonstrate its compliance with this Schedule.
- 2.6 The Provider shall on request by DHSC:

- 2.6.1 taking into account the nature of the Processing and the information available to the Provider, assist DHSC in ensuring compliance with its obligations under Articles 32 to 36 of the UK GDPR (where applicable) in respect of the Personal Data; and
  - 2.6.2 make available its records and information maintained under paragraph 2.5 and to demonstrate the Provider's compliance with this Schedule and on reasonable advance notice in writing otherwise permit, and contribute to, audits carried out by DHSC (or its authorised representative) with respect to the Personal Data and its Personal Data Processing activity.
- 2.7 The Provider shall:
- 2.7.1 only allow subprocessors to Process Personal Data under the Agreement where such subprocessors are engaged by the Provider for the purpose set out in the Annex and where the Processing by such subprocessors is required for that purpose; and
  - 2.7.2 enter into a written agreement with the subprocessor which give effect to the terms set out in this Schedule such that they apply to the subprocessor.
- 2.8 The Provider shall promptly on request from DHSC provide to DHSC details of all subprocessors it has allowed to Process Personal Data under the Agreement and such information regarding the subprocessors as DHSC may reasonably require.
- 2.9 The Provider shall remain fully liable for all acts or omissions of any of its subprocessors.
- 2.10 On termination or expiry of the Agreement and from time to time in accordance with any data retention, deletion or destruction requirements notified by DHSC, the Provider shall destroy, delete or return (as DHSC directs) all Personal Data and delete all existing copies of such data unless required by law to keep or store such Personal Data.
- 2.11 DHSC may, at any time revise or amend this Schedule in accordance with clause 14.5 of the Agreement either:
- 2.11.1 by replacing this Schedule with any applicable controller to processor standard clauses or similar terms adopted in accordance with Article 28 of the UK GDPR; or
  - 2.11.2 by amending this Schedule to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### Annex

<b>Description</b>	<b>Details</b>
Circumstances where Provider is acting as a Processor on behalf of DHSC	The Provider acts as a Processor in respect of processing of Personal Data in a Test Kit Log it compiles on behalf of DHSC pursuant to the T&Cs and for the purposes as set out in this Annex.
Duration of Processing	The Provider will gather and share this data for the duration of the T&Cs pursuant to which it is required to facilitate Home Testing which involves the collection of end-user data in line with the purposes specified in this Annex (MHRA traceability requirement) and thereafter for the retention period of the Test Kit Log as set out in this Annex.
Categories of Data Subjects	<p>Test Subjects who have participated in Home Testing.</p> <p>Individuals appointed by the Provider to assist with the distribution of Test Kits to the Test Subjects.</p>
Type of Personal Data	<p>First name, last name, telephone number and email address of Test Subject, details of lot/batch number for the test kits they receive, location where they received the test kits, date on which they received the test kits and other categories of information set out in the Test Kit Log.</p> <p>First name, last name of the operator distributing the Home Test Kits.</p>
Nature and purposes of Processing	To be able to fulfil DHSC's regulatory responsibility to the Medicines and Healthcare products Regulatory Authority (MHRA). As the legal manufacturer or some test kit types, DHSC needs to be able to trace the end user in the event of a batch recall or field safety notice.
How Personal Data is stored	Test Kit Log (whether maintained in an excel file, paper test kit log or other means as required by DHSC) populated by the Provider (or its operators distributing the Test Kits) with the Personal Data detailed in this Annex.
Retention period	The data collected by the Provider shall be submitted to DHSC on request. The data will be kept for no longer than 12 months from the day of collection by the Provider and will be deleted from all the Provider's systems as soon as instructed to do so by DHSC. DHSC will keep the data for no more than eight years.
Third Countries to which Personal Data will be transferred to	None.
Subprocessors	Subject to paragraphs 2.7 to 2.9 above, the Provider may appoint third parties to carry out data entry into the test kit log where such third parties form part of the staff operating the self-test collect site for the Provider