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a Hyfforddiant yng Nghymru

Her Majesty's Inspectorate
for Education and Training in Wales

STANDARD CONDITIONS OF CONTRACT FOR SERVICES AS AN ADDITIONAL INSPECTOR IN ESTYN LED INSPECTIONS IN WALES



BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE



VERSION 2

Date: February 2008

Estyn

STANDARD CONDITIONS OF CONTRACT FOR SERVICES AS AN ADDITIONAL INSPECTOR IN ESTYN LED INSPECTIONS IN WALES

These Conditions may only be varied with the written agreement of Estyn. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

In the event of any conflict between the English and Welsh language version of this Contract, the English language version shall take precedence.

TABLE OF CONTENTS

	Section	Page
1	Conditions	1
2	Definitions	2
3	Duration of the Contract	4
4	Variation of the Services	5
5	The Services	5
6	Conflict of interest	6
7	Discrimination	7
8	Contractor's status	7
9	Security and health & safety	7
10	Transfer and sub-letting	8
11	Quality assurance	8
12	Reports	9
13	Complaints	9
14	Payment	10

15	Value Added Tax	11
16	Alternative Contractor	11
17	Corrupt gifts or payments of commission	11
18	Arbitration	12
19	Ownership of information	13
20	Indemnity and insurance	15
21	Accident or injury to the Contractor	15
22	Statutory obligations	16
23	Termination	16
24	Recovery of sums due	17
25	Remedies	17
26	Notices	18
27	No smoking policy	18
28	Severability	18
29	Enforcement by third party	19
30	Law and regulations	19

1 CONDITIONS

1.1 Estyn's full requirement for the Contract for Additional Inspector Services is contained in the documents listed below:

- (a) Invitation to Tender, comprising:
 - Specification – Inspection Schedule;
 - Certificate of Non-Collusion;
 - Pricing Schedule;
 - Certificate of Tender; and
 - Checklist;
- (b) The Common Inspection Framework and relevant Guidance Handbook;
- (c) supplementary guidance, inspection and other relevant policies and publications provided by Estyn, as may from time to time be amended or introduced;
- (d) Estyn's Welsh Language Scheme and the guidance on the provision of Welsh services; and
- (e) The Conditions of Contract.

2 DEFINITIONS

2.1 In this Contract, the following expressions shall have the following meanings:

“Arbitration Act”	means the Arbitration Act 1996.
“Certificate of Non-Collusion”	means the document so titled that forms part of the Invitation to Tender.
“Certificate of Tender”	means the document so titled that forms part of the Invitation to Tender.
“Checklist”	means the document so titled that forms part of the Invitation to Tender.
“Common Inspection Framework”	means such version of the document entitled “The Common Inspection Framework document for Education and Training in Wales” which is current at the date of the Inspection relating to the provision of the Services and which is located on the Website.
“Complaint”	means any criticism or adverse comment(s) raised in relation to the Inspection and / or the Contractor either before, during or after the Inspection.
“Complaints Procedure”	means the most recent version of Estyn’s document entitled “Feedback and Complaints” published from time to time on the Website.
“Condition”	means any clause or paragraph referred to herein.
“Conditions of Contract”	means the terms and conditions set out in this Contract as amended in writing from time to time.
“Contract”	means the Contract between Estyn and the Contractor consisting of these Conditions of Contract including all documentation listed in Condition 1.1 and any other documents referred to in the Certificate of Tender included with the Invitation to Tender.
“Contract Completion Date”	means the date on which the Services are completed to the satisfaction of Estyn or the date of termination of the Contract, if earlier.
“Contractor”	means the additional inspector to whom the Contract is awarded.
“Contract Price”	means the price (exclusive of VAT) payable to the Contractor by Estyn under the Contract for the full and proper performance by the Contractor of the Contract, in accordance with the Invitation to Tender.
“Data Controller”	means as the same is defined in the DPA.
“Data Processor”	means as the same is defined in the DPA.
“Document”	means any letter, form, report, dataset or other assembly of written or pictorial information in any medium used in connection with this Contract.
“DPA”	means the Data Protection Act 1998.

“Enhanced Disclosure”	means a process by which a prescribed level of checks on an individual's antecedent history are undertaken by the Criminal Records Bureau to assist Estyn in identifying such individuals who may, by reasons of their antecedent history, be deemed unsuitable to be engaged for the provision of the Services.
“Establishment”	means the education establishment to be inspected as specified in the Tender.
“Estyn”	means Her Majesty’s Inspectorate for Education and Training in Wales.
“FOI Act”	means the Freedom of Information Act, 2000.
“Guidance”	has the meaning set out in Condition 1.1 (c) above.
“HMCI”	means Her Majesty’s Chief Inspector of Education and Training in Wales.
“HMI”	means Her Majesty’s Inspectors of Education and Training in Wales.
“Information Code”	has the meaning set out in 19.9 below.
“Inspection”	means the inspection of an Establishment as required by the Common Inspection Framework to be undertaken by Estyn, incorporating also those core and associated activities before, during and after attendance at the Establishment itself.
“Inspection Documents”	means any document, including but not limited to the Documents and draft versions of the Report created, produced or obtained in connection with the Inspection under this Contract, whether submitted to Estyn or not.
“Inspection Date”	means the date that the Inspection Team will attend the Establishment for the purposes of inspecting the learning provided there as stated in the Invitation to Tender.
“Inspection Team”	means the HMIs, additional inspectors and Peer Assessors carrying out the Inspection as described above.
“Inspection Term”	means the academic term in which the Inspection takes place.
“Invitation to Tender”	has the meaning set out in Condition 1.1(a) above.
“Legislation”	means any UK or European Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 or statutory instrument.
“Party”	means either Estyn or the Contractor, and “Parties” shall be construed accordingly.
“Peer Assessor”	means a person fulfilling the role as described in the Guidance Handbooks.
“Personal Data”	means personal data as defined in the DPA which is supplied to the Contractor by Estyn or obtained by the Contractor in the course of performing the Services.
“Pricing Schedule”	means the document so titled that forms part of the Invitation to Tender.
“Report”	means the electronic document completed by the Contractor following the Inspection, setting out the Inspection findings, and forwarded by Estyn to the Establishment.
“Reporting Inspector”	means the HMI leading the Inspection.

“Services”	mean the services to be provided as specified in the Contract.
“Specification”	means the specification for the Services as set out in the Invitation to Tender as amended in writing by Estyn from time to time, if required.
“Tender”	means the tender documents received by Estyn from the Contractor regarding the provision of the Services.
“Website”	means Estyn’s website located at www.estyn.gov.uk .
“Welsh Language Scheme”	means the current version at the time of the Inspection of the document so titled, that can be found on the Website.
“Working Day”	means any day other than a Saturday, Sunday or Bank Holiday.

- 2.2 Words importing one gender only shall be construed as importing the other gender and references to persons shall include companies.
- 2.3 The singular includes the plural and vice versa.
- 2.4 The headings to these Conditions shall not affect their interpretation.
- 2.5 Any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).
- 2.6 Any reference to Legislation, statutory provision or subordinate legislation shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation.
- 2.7 In the case of any conflict between any provision in these Conditions, the Invitation to Tender or the Tender the order of prevalence shall be (i) these Conditions; (ii) the Invitation to Tender; (iii) the Tender.

3 DURATION OF THE CONTRACT

- 3.1 The provision by the Contractor of the Services shall commence on the date Estyn awards the Contract and shall terminate on the Contract Completion Date, subject to Condition 23 (Termination).
- 3.2 The Inspection Date and the length of the Inspection shall be as set out in the Invitation to Tender.
- 3.3 Termination of the Contract for whatever reason shall not affect any obligations or rights contained in any condition in the Contract which is capable of continuing after the Contract Completion Date, including but not limited to Conditions 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 and 30, which shall continue in full force and effect.

4 VARIATION OF THE SERVICES

- 4.1 Estyn reserves the right by notice in writing to the Contractor to vary or modify the requirements of the Services. Any variation to the Contract Price or the Contract Completion Date arising by reason of such modification shall be agreed between the Parties. Failing agreement, the matter shall be determined by arbitration in accordance with the provisions of Condition 18 below.

5 THE SERVICES

- 5.1 Estyn appoints the Contractor to provide the Services:
- 5.1.1 promptly and in a professional and courteous manner so as to reflect and promote the image of Estyn;
 - 5.1.2 strictly in accordance with the provisions of the Contract; and
 - 5.1.3 in accordance with all relevant Legislation, Guidance Handbooks and general Guidance.
- 5.2 The Contractor confirms that he has understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and the Establishment. The Contractor shall indemnify Estyn for any costs or expenses incurred as a result of the Contractor's failure to be familiar with the Establishment in accordance with this Condition.
- 5.3 The Contractor confirms that he has satisfied himself before tendering as to the correctness and sufficiency of the Contract Price which shall cover all of his obligations under the Contract and agrees that subject to Condition 4.1 no additional costs, charges or expenses will be paid for the provision of the Services.
- 5.4 The Contractor shall perform the Services in strict accordance with the Contract and shall comply with and adhere strictly to any instructions or directions of Estyn on any matters connected with or relating to the Contract. The Contractor shall take instructions and directions only from HMCI and those authorised to provide instructions and directions on her behalf ("Authorised Person"). For the purposes of this clause, Authorised Person shall mean the Estyn branch head or business services manager of corporate services, the lead officer (contracts) and the contracts team leader, or such other duly authorised person(s) that Estyn may from time to time notify the Contractor of in writing.
- 5.5 The Contractor shall not:
- (a) make any announcement or create any publicity relating to Estyn or the Services without the prior written agreement of Estyn;
 - (b) in the course of or in connection with the provision of the Services, offer or

market other services to any persons; and/or

- (c) advertise or publicise the fact of the Contractor's work for Estyn in any marketing or promotional literature relating to any business in which the Contractor is engaged, directly or indirectly, without the prior written agreement of Estyn.

5.6 Time for performance of the Services shall be of the essence.

6 CONFLICT OF INTEREST

6.1 The Contractor shall as soon as is practicably possible in the circumstance(s) notify Estyn in writing forthwith of any conflict of interest or potential conflict of interest or any circumstance which may reasonably be perceived as giving rise to a conflict of interest or potential conflict of interest ("perceived conflict of interest") in respect of the provision of the Services, which shall include but not be limited to:

- (a) public or private involvement in the affairs of the Establishment to which the Services relate by the Contractor, and/or any spouse or family member or friend of any of the aforementioned Contractor; and
- (b) public or private involvement by the Contractor in the affairs of any organisation deemed by Estyn to be in competition with the Establishment to which the Services relate.

For the purpose of this clause 6, there will be a conflict of interest if:

- (a) the Contractor being a person who is employed by a LEA or by a company or other organisation which is controlled or funded by a LEA is asked to conduct an Inspection at (1) an Establishment of that LEA or (2) an Establishment where children from within that LEA are educated under arrangements with another LEA, unless the Contractor establishes to the reasonable satisfaction of Estyn that there are appropriate measures in place to guarantee the independence of the Contractor fulfilling his or her function as an Inspector; and
- (b) if any spouse or family member or friend of the Contractor has worked at any time for the Establishment.

6.2 If Estyn in its reasonable opinion believes that any event, circumstance or connection notified by the Contractor pursuant to Condition 6.1 above or any other event, circumstance or connection of which Estyn becomes aware does or may give rise to an actual, potential or perceived conflict of interest, Estyn shall be entitled to forthwith terminate the Contract without incurring any liability whatsoever.

6.3 The Contractor warrants that there is no express term in any contract or arrangement with any third party that prevents or is intended to prevent him from

entering into this Contract and that by entering into this Contract he is not in breach of any implied duty of good faith or fidelity. The Contractor undertakes to inform Estyn if he is aware of any reason, why he should not undertake the Inspection.

7 DISCRIMINATION

- 7.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1986, the Disability Discrimination Act 1995 and 2005 and the Employment Equality (Age) Regulations 2006 or any statutory modifications, re-enactment or amendment thereto from time to time. The Contractor shall take all reasonable steps to secure the observance of the provisions of this Condition.

8 CONTRACTOR'S STATUS

- 8.1 Estyn and the Contractor agree that nothing in this Contract creates (or is intended to create) a relationship of employment between them. The Contractor is engaged as a self employed contractor performing a contract for services.
- 8.2 The Contractor shall not represent himself in a way, or say or do anything that might lead persons to believe that the Contractor is the agent of Estyn or that Estyn is responsible for the actions of or liability by the Contractor.
- 8.3 Nothing in this Contract shall impose any liability on Estyn in respect of any liability incurred by the Contractor to any other person or entity but this shall not be taken to exclude or limit any liability of Estyn that may arise by virtue of either a breach of this Contract or any negligence on the part of Estyn.
- 8.4 The Contractor shall ensure that in the course of providing the Services and in corresponding with Estyn that at all times it does so in the name of the legal entity in which name it submitted its tender for the provision of the Services.

9 SECURITY AND HEALTH & SAFETY

- 9.1 The Contractor agrees that he personally will provide the Services with reasonable care and skill and to the best of his ability, that he will at all times co-operate with the planning and instructions of HMI and that he will comply with all relevant Guidelines and Inspection Guidance.
- 9.2 The Contractor will provide, at his own expense, such facilities and equipment that he may require in order to properly carry out the Services. This will include (without limit) a laptop computer, email address and mobile telephone. It is the Contractor's responsibility to provide, at his own expense, all safety equipment that he requires to carry out the Services safely and in compliance with current health and safety legislation.

- 9.3 The Contractor shall be responsible for the observance of all safety precautions necessary for his protection including all precautions required to be taken by any relevant Legislation. The Contractor shall co-operate fully with the Establishment to ensure the proper discharge of these obligations.
- 9.4 The Contractor shall be in possession of an “Enhanced Disclosure” check with the Criminal Records Bureau carried out not more than three (3) years prior to the Inspection Date. In the event that the Contractor fails to meet the requirements of this Condition 9.4 to Estyn’s satisfaction then Estyn shall be entitled to terminate the Contract forthwith without incurring any liability whatsoever.

10 TRANSFER AND SUB-LETTING

- 10.1 The Contractor shall provide the Services in person and shall not give, bargain, assign, novate or sub-let or otherwise dispose of the Contract or any part thereof.

11 QUALITY ASSURANCE

- 11.1 Estyn shall monitor and assess the quality of the Services provided by the Contractor, which shall include (but not be limited to) undertaking visits to the Establishment during the Inspection to monitor the provision of the Services.
- 11.2 The Contractor shall fully co-operate with any of HMI or any statutory auditors of Estyn, their properly appointed agents and nominated members of staff from Estyn who have been appointed to undertake monitoring visits in accordance with Condition 11.1 above, including ensuring that prompt responses are given to all requests for information. The assistance shall extend to the provision upon request of all relevant documentation (in Estyn’s opinion) for scrutiny and attendance at any and all meetings relating to the Inspection whether at the Establishment or elsewhere.
- 11.3 Following such monitoring and assessment in accordance with Condition 11.1 above, Estyn shall notify the Contractor as to how the provision of the Services by the Contractor meets with Estyn’s requirements as set out in the Guidance.
- 11.4 Where Estyn decides to undertake an evidence review, the Contractor shall upon request send, or arrange to be sent by hand or by first class recorded delivery, for scrutiny such Inspection Documents or other evidence as Estyn may request. Such Inspection Documents or other evidence should be sent free of charge to Estyn, in original form, and may be retained permanently or temporarily by Estyn at its sole discretion.

12 REPORTS

- 12.1 The Contractor will (at its own expense) provide to Estyn:
- (a) an electronic copy of the Report in respect of the matters subject to his part of the inspection in Microsoft word format; and
 - (b) all other associated documentation and evidence gathered by the Contractor before, during and after the Inspection.
- 12.2 The structure and content of the Report must be to a standard that requires minimal additional work by Estyn and complies with that provided by the appropriate Estyn template and the style must be in line with the Estyn writing guide, as published on the Website from time to time.
- 12.3 The files/CD roms containing the Report will, on receipt, become the property of Estyn. The Contractor shall, as directed by the Reporting Inspector forward the electronic copy of the report and all other associated documentation and evidence to Estyn.
- 12.4 The Contractor shall be responsible for ensuring that the information supplied pursuant to Condition 12.1 above is complete, accurate and free from error (including where applicable software viruses).
- 12.5 The Contractor shall ensure that any material belonging to an Establishment is returned to the Establishment as soon as possible after the Inspection but in any event, within 8 (eight) weeks from the Inspection.

13 COMPLAINTS

- 13.1 The Contractor shall ensure that he or she is familiar with Estyn's Complaints Procedure on the Website. The Contractor shall ensure that any person involved or affected by the Inspection are given a fair opportunity to raise issues concerning the Inspection while at the Establishment.
- 13.2 When a Complaint is received by the Contractor, the Contractor will attempt to resolve the Complaint immediately.
- 13.3 If the Contractor is unable to resolve the complaint immediately the Contractor shall inform the Reporting Inspector of the Complaint and the measures taken to attempt to resolve it.
- 13.4 The Contractor shall (at its own expense) co-operate fully with Estyn in any investigation carried out by Estyn into any Complaint, and shall without limit (at its own expense) provide such assistance as Estyn may require, including attending interviews. The Contractor shall use its best endeavours to respond in full to any correspondence and provide Estyn with any such information as requested by Estyn

or that may be in his or her possession within 5 (five) working days of receiving Estyn's request.

- 13.5 The Contractor shall ensure that he keeps all details of and information concerning the Complaints confidential.
- 13.6 The Contractor acknowledges Estyn's legal obligations detailed in Condition 19 and accepts that Estyn may not always be able to comply with the general confidentiality obligations contained in Estyn's Complaints Procedures. Estyn shall, when it considers it practicable to do so, inform and consult with all individuals who have provided information before disclosing such information.

14 PAYMENT

- 14.1 Unless otherwise stated in the Invitation to Tender payment will be due within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of Estyn. The invoice must be for the Contract Price unless otherwise agreed by Estyn. Each invoice shall clearly show the following details:
- (a) Contractor name, address and code number;
 - (b) the name of the Establishment/area inspected;
 - (c) date of Inspection;
 - (d) invoice number and invoice date;
 - (e) Contract Price;
 - (f) name and cost of any agreed additional items/charges, if any;
 - (g) VAT where applicable and VAT Registration Number;
 - (h) special instructions for payment; and
 - (i) contact name and telephone number for queries.
- 14.2 All Estyn payments are made through BACSTEL, which allows payment to be made directly into the Contractor's bank account or building society account. The Contractor shall be responsible for providing bank details (and any changes to the details) to Estyn for this purpose. Value Added Tax, where applicable, should be shown separately on all invoices as a strictly net charge.
- 14.3 Payment shall be conditional upon the Services delivered including the Report and additional information provided by the Contractor pursuant to Condition 12.2 above

being complete, accurate and free from error, and having met Estyn's quality standards for the Services.

- 14.4 Except where there is prior written approval from Estyn, no payment shall be made for any work performed by the Contractor which is beyond the scope of the Services or post the Contract Completion Date or the date of termination of the Contract (if earlier).
- 14.5 The Contractor shall be responsible for accounting to Her Majesty's Customs and Excise and the Inland Revenue for all applicable taxes and duties whether on income or expenditure.

15 VALUE ADDED TAX

- 15.1 Estyn shall pay to the Contractor, in addition to the Contract Price if lawfully demanded, in the normal course of business, a sum equal to any Value Added Tax chargeable on the value of supply of the Services provided in accordance with the Contract.
- 15.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if the Contractor is a taxable entity, be in the same form and contain the same information as if the same were a tax invoice for the purpose of Regulations made under the Finance Act 1972.

16 ALTERNATIVE CONTRACTOR

- 16.1 Estyn reserves the right without incurring liability to the Contractor to use an alternative Contractor at any time during the currency of the Contract due to the Contractor's inability to provide the Services or any part of them for any reason outside the control of Estyn.

17 CORRUPT GIFTS OR PAYMENTS OF COMMISSION

- 17.1 The Contractor will not, without the prior written consent of Estyn, accept any gift, commission or other financial benefit or inducement, nor will he accept any hospitality above hospitality of a modest and conventional level, from the Establishment or any other person when providing the Services. The Contractor will immediately give Estyn details of any gift or disproportionate hospitality that he is offered. The Contractor will, in addition, offer to pay for any refreshments provided by Establishments during the Inspection.
- 17.2 The Contractor shall not:
- (a) offer or give or agree to give to any person in Estyn or the Establishment's employment or otherwise employed at the Establishment, any gift or

consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or any other contract for Estyn or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with Estyn or any similar client; and/or

- (b) enter into this Contract or any other contract with Estyn in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to Estyn.

17.3 Any breach of this Condition by the Contractor or the commission of any offence by the Contractor:

17.3.1 under the Prevention of Corruption Act, 1906 to 1916, or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract, any other agreement with the Authority or any other Contract for Her Majesty's Service; or

17.3.2 that defrauds, attempts to defraud or conspires to defraud Estyn, HMCI or HMI,

shall entitle Estyn to terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination and/or recover from the Contractor the amount or value of any such gift, consideration or commission.

18 ARBITRATION

18.1 Save for Condition 13 (Complaints) above, differences or questions between the Parties with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of Estyn is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of a sole arbitrator to be appointed in accordance with Section 16(3) of the Arbitration Act, the seat of such arbitration being hereby designated as Cardiff, Wales, and the Parties agree that, subject to the provisions of Section 58(2) of the Arbitration Act 1996, the decision of such arbitrator shall be final and binding on the Parties.

18.2 In the event of failure of the Parties to make the appointment pursuant to Section 16(3) of the Arbitration Act the appointment shall be made by the President (or if the President is unwilling, unable or unavailable the Vice-President) for the time being of the Law Society.

- 18.3 The arbitration will be regarded as commenced for the purposes set out in Section 14(1) of the Arbitration Act when one Party sends to the other Party a written notice stating the matter should be referred to arbitration.
- 18.4 The arbitrator shall decide the dispute in accordance with the substantive laws of England and Wales.
- 18.5 Any costs arising from such arbitration shall be borne as directed by the arbitrator. For the avoidance of doubt, costs relating to the arbitration includes the reasonable administrative cost of the time incurred investigating the matter and all time and costs relating to preparation for and the conduct of the arbitration.

19 OWNERSHIP OF INFORMATION

- 19.1 The Contractor in providing the Services and other obligations pursuant to the Contract will not infringe copyright or other proprietary rights of any third party and the Contractor shall indemnify Estyn against all actions, demands, costs and expenses (including legal costs) which Estyn or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 19.2 The Contractor assigns to Estyn the entire copyright, rights in the nature of copyright, design right, rights of confidence and other intellectual property rights throughout the world (vested, future and contingent, and including any renewals, extensions, reversions, and accrued rights of action) ("the Rights") in and to any Documents or the Inspection Documents ("the Material"). Any copies of the Material which the Contractor may retain must be securely destroyed 90 (ninety) days after receipt of final payment under this Contract. The Contractor shall retain no other copies of the Material.
- 19.3 At no time will the Contractor (or any other person involved in the performance of this Contract) make contact with or respond to contact from any area of the media about the Services or the Contractor's other obligations provided under the Contract.
- 19.4 At no time will the Contractor (or any other person involved in the performance of this Contract) reproduce or disseminate any Material or information acquired during the Contract to any person or other body without prior consultation with Estyn and the written permission of Estyn. Nor shall the Contractor (or any other person involved in the performance of this Contract) use such Material or information for the purpose of developing any further materials or for any other purpose whatsoever without prior consultation with and the written permission of Estyn.
- 19.5 The Contractor warrants not to disclose or use any information about staff or learners at the Establishment nor about tenders nor contractors to the Establishment to any person or other body other than is necessary under the Conditions of Contract or otherwise prescribed by Legislation.

- 19.6 In relation to all Personal Data, Estyn shall be the Data Controller and the Contractor shall be the Data Processor. The Contractor warrants and undertakes in respect of the Personal Data that:
- (a) the Personal Data shall be processed only as required by this Contract, or any written instructions of Estyn in relation to such Personal Data as issued by Estyn from time to time;
 - (b) the Contractor shall comply in all respects with the requirements of Personal Data Protection Principle Seven, as laid down in Schedule 1 of the DPA, as if it were the Data Controller; and
 - (c) the Contractor shall inform the individuals who are the subject of the Personal Data that Estyn is the Data Controller, and of the purposes for which the Personal Data that concerns them shall be processed.
- 19.7 The Contractor acknowledges Estyn's obligation to comply with the Welsh Assembly Government's Code of Practice on Public Access to Information ("the Information Code") and its commitment to openness and public access to information.
- 19.8 The Contractor further acknowledges that Estyn is subject to statutory obligations under the FOI Act and that Estyn is required to respond to requests for information made under the FOI Act.
- 19.9 The Contractor shall, through its delivery of the Contract, actively support Estyn's commitment to the Information Code and the FOI Act as reasonably requested by Estyn.
- 19.10 Where Estyn is managing a request for information under the FOI Act and it is necessary and appropriate for Estyn to consult with the Contractor in accordance with the *Code of Practice On The Discharge Of Functions Of Public Authorities Under Part 1 Of The Freedom Of Information Act 2000* made under Section 45 of the FOI Act, the Contractor will respond to Estyn promptly and within 5 (five) Working Days. It will be entirely within Estyn's discretion as to what information Estyn decided to disclose in response to any request.
- 19.11 In the event that a request for information is made directly to the Contractor, the Contractor will immediately liaise with Estyn for Estyn to determine what the appropriate response should be.
- 19.12 The provision of Condition 19 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 19.13 The Contractor (or any other person involved in the performance of this Contract) shall not refer to HMCI, HMI, Estyn or the Contract in any advertisement without Estyn's prior written consent.

20 INDEMNITY AND INSURANCE

- 20.1 The Contractor shall indemnify and keep indemnified Estyn, the Crown, and/or its Ministers, its servants or agents against all actions, claims, proceedings, damages, demands, costs (including but not limited to legal costs), expenses and any other liabilities whatsoever arising out of or in connection with the Contract and the Contractor's performance or non-performance thereof and in respect of any death or personal injury, or loss or damage to property which is caused directly or indirectly by any act or omission of the Contractor.
- 20.2 The Contractor shall indemnify and keep indemnified Estyn against all losses claims damages liabilities costs and expense (including without limitation reasonable legal costs) incurred by it in respect of any breach by the Contractor of Condition 19.
- 20.3 Throughout the duration of the Contract, the Contractor shall have in force public liability insurance. Such insurance shall be effected with a reputable insurer for such sum of cover as the Contractor deems appropriate. The Contractor shall whenever required produce to Estyn the policy or policies of insurance and the receipts for payment of the current premiums.
- 20.4 Where relevant to this Condition the Contractor shall notify Estyn immediately on becoming aware of any fact or matter which could render Estyn liable to prosecution.

21 ACCIDENT OR INJURY TO CONTRACTOR

- 21.1 Subject to clause 21.3 Estyn shall not be liable for or in respect of any damages or compensation payable in respect or in consequence of any accident or injury to the Contractor and the Contractor shall indemnify and keep indemnified Estyn against all such damages and compensation (save and except as aforesaid) and against all claims, demands, proceedings, costs, including legal costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 21.2 Subject to clause 21.3, Estyn's total aggregate liability in respect of claims howsoever arising under or in connection with the Contract (whether arising out of breach of the Contract, breach of statutory duty, tort (including negligence) or otherwise) ("Claim") shall not in any circumstances exceed that part of the Contract Price paid by Estyn to the Contractor pursuant to the Contract at the date that such Claim arose.
- 21.3 Estyn shall be liable for death or personal injury as a result of the negligence of Estyn, its employees, servants or agents (but excluding the Contractor) which occurs as a result of this Contract.

22 STATUTORY OBLIGATIONS

22.1 The Contractor shall comply with all relevant Legislation in force from time to time in performing the Services and other obligations pursuant to the Contract including without limit, those relating to health, safety and hygiene and those under legislation in respect of employment, race relations and sexual discrimination. The Contractor shall indemnify Estyn and the Crown against all actions, claims, losses, demands, costs and expenses which Estyn may suffer or incur as a result of or in connection with any breach of these Conditions.

23 TERMINATION

23.1 The Contractor shall notify Estyn in writing as soon as practicably possible if a petition is presented for the Contractor's bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs.

23.2 Estyn shall be entitled to terminate the Contract (without being liable to pay any compensation to the Contractor) with immediate effect if:

- (a) the Contractor notifies Estyn of the occurrence of any event listed in 23.1 above; or
- (b) the Contractor shall have committed a breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 5 (five) days of being required by Estyn in writing to do so; or
- (c) the Contractor shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (d) the Contractor suffers any mental or physical impairment or disability which in the reasonable opinion of Estyn prevents him from being able to perform the Services; or
- (e) the Contractor fails to inform the Reporting Inspector as soon as is practicably possible in accordance with Condition 13.3, where a complainant remains dissatisfied.

Upon any of the events listed in (a) to (d) above occurring, without prejudice to any other of its rights, Estyn may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Contractor) all the materials and equipment at the Establishment belonging to the Contractor or his estate until the Services have been completed in accordance with the Requirements, and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by Estyn (including Estyn's own costs). If the total cost to Estyn exceeds the amount (if any)

due to the Contractor, the difference shall be recoverable by Estyn from the Contractor or his estate.

- 23.3 In addition to its rights of termination under Condition 23.2, Estyn shall be entitled to terminate this Contract at will by giving to the Contractor not less than 15 (fifteen) Working Days' written notice to that effect.
- 23.4 Termination under Conditions 23.2 or 23.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to Estyn and shall not affect the continued operation of Condition 19.
- 23.5 Should the Services not be required at the time of the Inspection due to circumstances beyond the control of Estyn, then the Contract will be terminated and Estyn will not be liable for any payment to the Contractor.

24 RECOVERY OF SUMS DUE

- 24.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other contract with Estyn, or with any department, agency or authority of the Crown.

25 REMEDIES

- 25.1 No failure or delay in exercising any right, power or privilege under the Contract shall operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise of any right power or privilege under the Contract or otherwise.
- 25.2 The Parties acknowledge that damages may not be an adequate remedy in the event of breach of the Contract, and accordingly each of the Parties, (in addition to any other remedy or remedies they may have), shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the Contract by the other Party, and no proof of special damages shall be necessary for the enforcement of the Contract.

26 NOTICES

- 26.1 Any notice or communication given or made in accordance with this Contract shall be in writing and shall be served by sending the same by first class recorded delivery post, facsimile or by hand, if to Estyn, to:

Team Leader: Contracts,
Estyn
Anchor Court
Keen Road
Cardiff CF24 5JW
Fax: (029) 2044 6448

or if to the Contractor, to the address stipulated in the Certificate of Tender

or to such other address as may be notified from time to time.

- 26.2 Notices given by post shall be effective upon the earlier of actual receipt and 2 (two) Working Days after mailing unless returned by the post office undelivered. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received the Working Day following a proper transmission evidenced by a confirmatory transmission sheet not indicating any transmission error and always provided that a copy of the notice is sent by first class recorded delivery post to the receiving Party on the day of its transmission.
- 26.3 Either Party to the Contract may change its address, telephone number, facsimile number and nominated contact for notification purposes by giving the other Party reasonable prior written notice of the new information and its effective date.

27 NO SMOKING POLICY

- 27.1 The Contractor shall ensure that he complies with any no smoking policy which any Establishment has in operation.

28 SEVERABILITY

- 28.1 If any term, Condition, provision or any part of this Contract is held to be illegal, invalid or unenforceable to any extent such term, Condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract which shall remain in full force and effect.

29 ENFORCEMENT BY THIRD PARTY

29.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract and none of its terms shall be enforceable by any third party.

30 LAW AND REGULATIONS

30.1 This Contract shall be governed by the laws of England and Wales (as applied in Wales).

30.2 In respect of matters arising under Condition 13 (Complaints) above, the Parties shall submit to the exclusive jurisdiction of the courts of England and Wales.

30.3 The Contractor shall in all matters arising in the performance of the Contract conform with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by the Welsh Assembly Government or by local or other Authorities in force from time to time that shall be applicable to the Contract.