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a Hyfforddiant yng Nghymru

Her Majesty's Inspectorate
for Education and Training in Wales

CONDITIONS OF CONTRACT FOR THE INSPECTION OF SCHOOLS IN WALES UNDER SECTION 28 OF THE EDUCATION ACT 2005



BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE



Version 10

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Estyn

CONDITIONS OF CONTRACT

FOR THE INSPECTION OF SCHOOLS IN WALES

The following Conditions may only be varied with the prior 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

1.	Conditions	1
2.	Definitions	1
3.	Duration of Contract	5
4.	Variation of the Services	6
5.	Nature of Services	6
6.	The Inspection Team	8
7.	Conflict of Interest	11
8.	Discrimination	11
9.	Contractor's Status	12
10.	Security and Health & Safety	12
11.	Transfer and Sub-letting	13
12.	Varying the Team	14
13.	Quality Assurance and Audit Arrangements	15
14.	Reports	16
15.	Complaints	21
16.	Payment	23
17.	Value Added Tax	24
18.	Publication Delays	24

19.	Corrupt Gifts and Payments of Commission	25
20.	Arbitration	26
21.	Ownership of Information	26
22.	Indemnity and Insurance	30
23.	Accident or Injury to Contractor and his Employees	30
24.	Termination	31
25.	Recovery of Sums Due	32
26.	Remedies	33
27.	Notices	33
28.	Severability	33
29.	Enforcement By Third Party	34
30.	Law and Regulations	34

1. **CONDITIONS**

1.1 Estyn's full requirement for a school inspection contract is contained in the documents listed below:

- (a) the Education Act 2005 ("the 2005 Act") and Regulations made under it;
- (b) Invitation to Tender, comprising:
 - Certificate of Non-Collusion;
 - Certificate of Tender
 - Specification: school details and inspection criteria;
 - Qualification Response; and
 - Commercial Response
- (c) the Conditions of Contract;
- (d) the Common Inspection Framework;
- (e) such editions of Estyn's handbooks "Guidance on the Inspection of Primary and Nursery Schools"; "Guidance on the Inspection of Secondary Schools"; and "Guidance on the Inspection of Special Schools and Pupil Referral Units" as are current at the time of the Inspection ("Guidance Handbooks");
- (f) supplementary guidance, inspection and other relevant policies and publications from Estyn, as may from time to time be amended or introduced;
- (g) the Welsh Language Scheme and the guidance on the provision of Welsh services;
- (h) the Financial Statement; and
- (i) the Quality Statement. This document will be required to be completed by Contractors on an annual basis. Estyn also reserves the right to change the format and basis of the statement requirements on an annual basis or more frequently as Estyn may determine.

2. **DEFINITIONS**

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

"Appropriate Authority"	has the meaning given within Section 43 of the 2005 Act
"Appropriate Appointing Authority"	has the meaning given within Section 43 of the 2005 Act
"Arbitration Act"	means the Arbitration Act 1996.

“Better Payment Practice Code”	means such edition of the document so titled adopted by the Better Payment Practice Group that can be found at www.payontime.co.uk , that is current at the time of the Inspection.
“Certificate of Non-Collusion”	means the electronic document so titled that forms part of the Invitation to Tender.
“Certificate of Tender”	means the electronic document so titled that forms part of the Invitation to Tender.
“Commercial Response”	means the electronic 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 Core Inspection relating to the provision of the Services (a copy of which is appended to the Contract) and which is located on the Website.
“Complaint”	means any criticism or adverse comment(s) raised in relation to the Inspection and/or the Inspection Team either before, during or after the Core Inspection.
“Complaints Procedure”	the most recent version of Estyn’s document entitled “Feedback and Complaints” published from time to time on the Website.
“Complaints Guidance”	the most recent version of Estyn’s document entitled “Guidance for school inspection contractors on handling complaints” issued from time to time by Estyn to the Contractor.
“Condition”	means any clause or paragraph referred to herein.
“Conditions of Contract”	means the terms and conditions set out herein as may be amended by Estyn 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”	has the meaning set out in Condition 3.3 below.
“Contractor”	means the legal entity named in the Contract to provide the Services and perform all the other obligations required by the Contract and shall include any other person to whom the requirements and benefits of the Contract may be assigned by the Contractor with the prior written consent of Estyn.
“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 his part of the Contract, in accordance with the Invitation to Tender. It is the “Contract Price” that is used in the tender evaluation and awarding process.
“Core Inspection”	means that part of the Inspection comprising the actual inspection of the Institution.
“Data”	means the data that fall within the definition of personal data in the DPA that are processed in the manner of processing as defined in the DPA in the course of the provision of the

	Services.
“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.
“Enrolled List”	means the list of Inspectors as described in paragraph 3(1) of Schedule 4 of the 2005 Act.
“Estyn”	is Her Majesty’s Inspectorate for Education and Training in Wales.
“Financial Statement”	means the document so titled submitted by the Contractor in connection with tendering for this Contract.
“FOI Act”	means the Freedom of Information Act, 2000.
“Guidance Handbooks”	has the meaning set out in Condition 1.1(e) above.
“Guidance”	means any related supplementary guidance that may be issued by Estyn from time to time.
“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.
the “Information Code”	has the meaning set out in Condition 21.13 below.
“Inspection”	means the inspection of an Institution as required by the Common Inspection Framework to be undertaken by the Contractor, incorporating also those core and associated activities before, during and after attendance at the Institution itself.
“Inspection Cost”	means the sum (inclusive of VAT) named in the Contract to provide the Services as required by the Contract.
“Inspection Document”	means any document to be produced or obtained in connection with any Inspection under this contract, whether submitted to Estyn or not.
“Inspection Start Date”	means the first day that the Inspection Team will attend the Institution for the purposes of the Core Inspection of the Institution.
“Inspection Team”	means the Registered Inspector and other Inspectors (Lay Inspector(s), Registered Inspector(s) and Team Inspector(s)) and Peer Assessor(s) (if available) forming part of this Contract and includes any approved additions or substitutions thereto.
“Inspection Term”	means the school term/term of the Institution in which the Contractor intends the Core Inspection to take place, as notified to Estyn.
“Inspector”	means Registered Inspector, Lay Inspector and Team Inspector.
“Institution”	means the relevant school or other establishment to be inspected pursuant to the Contract.
“Invitation to Tender”	means the invitation to tender relating to the Services issued by Estyn in respect of which the Contractor has successfully

	tendered and comprising the matters set out in Condition 1.1(b) above.
“Lay Inspector”	means a person on the Enrolled List and fulfilling the requirements of paragraph 3(2) of Schedule 4 to the 2005 Act.
“LEA”	means a local education authority.
“Legislation”	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the royal prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom.
“Nominee”	means the person fulfilling the role of a nominee as described in the Guidance Handbooks.
“Parents’ Meeting”	means the meeting as described in the Guidance Handbooks.
“Party”	means either Estyn or the Contractor, and “Parties” shall be construed accordingly.
“Peer Assessor”	means a person fulfilling the role of a peer assessor as described in the Guidance Handbooks.
Qualification Response	means the electronic document so titled that forms part of the Invitation to Tender
“Quality Statement”	means the document so titled submitted by the Contractor in connection with tendering for this Contract, as may be replaced from time to time by such subsequent document so titled as the Contractor may complete pursuant to Condition 1.1(i).
“Registered Inspector”	means a person registered on the register kept pursuant to Section 25 of the 2005 Act and appearing on the Enrolled List.
“Regulations”	means the Education (School Inspection) (Wales) Regulations 2006 Welsh Statutory Instrument No. 1714 (W. 176).
“Report”	means the document in draft or final form as described in Section 33 of the 2005 Act.
“School Day”	means any day that is part of a School Week.
“School Week”	means any week or part week in which teaching is undertaken at the Institution.
“Services”	means the Inspection and Reports set out in the 2005 Act and as identified in the Contract and, where the context so admits, includes any additional materials and deliverables to be supplied by the Contractor pursuant to the Contract in connection with the Inspection and/or Reports.
“Specification”	means the Specification for the Inspection of Institutions under the 2005 Act included with the Invitation to Tender.

“Summary Report”	means the summary of the Report as described in Section 33 of the 2005 Act.
“Team Inspector”	means any member of the Inspection Team defined in Schedule 4 of the 2005 Act and on the Enrolled List who is not the Registered Inspector, Lay Inspector or Peer Assessor.
“Team list”	means the list so titled (or similar information in such form as Estyn may require) submitted by the Contractor in relation to any Inspection.
“Tender”	means the electronic tender submission received by Estyn (through the e-tender website), from the Contractor regarding the provision of the Services.
“the 2005 Act”	has the meaning set out in Condition 1.1(a) above.
“Website”	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 Saturday, Sunday or Bank Holiday.

2.2 In the Contract:

- (a) words importing one gender only shall be construed as importing the other gender and references to persons shall include bodies corporate, partnerships, unincorporated associations, trusts and statutory, local government, quasi-public and non-governmental bodies;
- (b) the singular includes the plural and vice versa;
- (c) reference to any Act of Parliament or subordinate legislation shall be construed as importing reference to it as amended, supplemented, extended or replaced by any subsequent Act of Parliament or subordinate legislation or as contained in a subsequent re-enactment thereof, and to all statutory instruments, regulations, by-laws and plans made given or issued thereunder or deriving validity from it;
- (d) the words “include”, “includes”, “including” and “included” shall be construed without limitation unless inconsistent with the context.

2.3 Any notice given by Estyn under this Contract shall be valid only if issued by the Estyn Contracts Branch or such other duly authorised body or person that Estyn’s Lead Officer: Contracts may from time to time notify the Contractor of in writing.

3 DURATION OF THE CONTRACT

3.1 The provision by the Contractor of the Services defined in the Specification shall commence at the date of Estyn’s acceptance of the Tender and shall terminate on Estyn’s payment in full for the Services subject to the provisions of Condition 24, relating to provision for the termination of the Contract.

- 3.2 The Inspection Start Date shall, save as provided for below, be that agreed between the Contractor and the Appropriate Authority within 20 (twenty) Working Days of the Contractor being notified of the name of the Institution. Upon agreeing the Inspection Start Date with the Appropriate Authority the Contractor shall notify Estyn in writing of the same. In the event of the Contractor and the Appropriate Authority being unable to agree the Inspection Start Date, Estyn will invite evidence from both parties and then fix the Inspection Start Date.
- 3.3 The Contract shall be completed not later than 2 (two) Working Days after the appropriate period specified in Regulation 9(2) of the Regulations for the preparation in writing of the Report and Summary Report, where the period of Core Inspection concludes 2 (two) weeks after the Inspection Start Date (“the Contract Completion Date”).
- 3.4 The completion of the Contract pursuant to condition 3.3 shall not affect any obligations or rights contained in any condition in the Contract which is capable of continuing after completion, including but not limited to conditions 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 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 to the Contractor to modify the requirements of the Services or any other obligation of the Contractor pursuant to the Contract. Any alteration 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 Condition 20 below.

5 NATURE OF SERVICES

- 5.1 The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of the Contract Price that shall cover all his obligations under the Contract.
- 5.2 The Contractor shall ensure that the Inspection and the Report are carried out and completed in accordance with the relevant legislation and guidance in force at the time of the Inspection. In particular attention is drawn to the provisions of the 2005 Act which governs the reporting on institutions where the Registered Inspector forms the view that:
- (a) the institution requires special measures because it is failing or is likely to fail to give its pupils an acceptable standard of education;
 - (b) the institution is performing significantly less well than it might in all the circumstances reasonably expected to perform, and requires significant improvement;

(c) the institution requires significant improvement in relation to its sixth form.

- 5.3 The Contractor shall perform the Services and all other obligations of the Contractor 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 his behalf – the 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.
- 5.4 The Contractor shall ensure that the Registered Inspector and all members of the Inspection Team, including persons appointed and authorised by the Contractor providing administrative assistance, carry out the Inspection, Report and Summary Report as specified by Estyn and subject to legislation and regulations, guidance and codes of practice current at the time of the Inspection.
- 5.5 The Contractor shall ensure that the appropriate type of Inspection is carried out - short, standard or full - as allocated within the Invitation to Tender. If the Contractor carries out an incorrect type of Inspection, the contract for that Inspection shall be null and void and Estyn will not be charged by the Contractor for that inappropriate type of Inspection.
- 5.6 The Contractor shall be responsible for ensuring that in respect of Inspections undertaken at Welsh language and bilingual (Welsh and English language) Institutions:
- 5.6.1 all members of the Inspection Team are able to and shall undertake the Services, including providing feedback and discussing work seen, competently through the use of the Welsh language medium;
- 5.6.2 all presentations, interviews and all feedback to staff at such Institutions are provided through use of the Welsh language medium;
- 5.6.3 all written communications, including letters, pro-formas, initial and subsequent drafts of the Report are provided in both Welsh and English; and
- 5.6.4 all translations from the Welsh language medium to the English language medium or vice versa are accurate and that there is consistency between the English and Welsh versions of all documents, including but not limited to the reports issued, that are produced by the Contractor in accordance with its obligations in relation to the provision of the Services.
- 5.7 The Contractor must ensure that they provide translation facilities in accordance with the Welsh Language Scheme if required by the Contract. If Inspection Teams require translators and/or interpreters, these should be arranged in consultation with, and at no additional cost to, the Institution. Estyn will indicate in the

information provided as part of the Invitation to Tender whether the Institution has previously indicated that translation services are required and, where appropriate, such costs must be included in the Contract Price.

- 5.8 The Contractor shall, where the Inspection is required to be undertaken in respect of an Institution which provides sixth form education, ensure that the Inspection Team includes an Inspector, trained and approved by Estyn in respect of the inspection of sixth form facilities and that such an Inspector shall in respect of the provision of the Services co-ordinate the Inspection of the sixth form facilities.
- 5.9 The Contractor shall, where the Inspection is required to be undertaken in respect of an Institution that includes a separate unit for pupils with special educational needs, ensure that the Inspection Team includes an Inspector who has been approved by Estyn to inspect special schools or has had special educational needs specifically identified as a specialism in their relevant phase, and is accredited to inspect in the phase for which the unit caters. This Inspector will, in respect of the provision of Services, co-ordinate the Inspection of the facilities in the special unit.
- 5.10 The Contractor shall not and shall procure that no member of the Inspection Team shall:
- (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 and/or the performance of any of the Contractor's other obligations pursuant to the Contract, offer or market other services the Contractor and/or any director of the Contractor (where the Contractor is a body corporate) and/or any partner in such partnership (where the Contractor is a partnership) and/or any member of the Inspection team may provide from time to time; and/or
 - (c) advertise or publicise the fact of the Contractor's and/or any member of the Inspection Team's work for Estyn in any marketing or promotional literature relating to any business in which the Contractor and/or any member of the Inspection Team is engaged, directly or indirectly, without the prior written agreement of Estyn.

6 THE INSPECTION TEAM

- 6.1 The Contractor shall only allocate Registered Inspectors, Lay Inspectors and Team Inspectors who appear on the Enrolled List to Inspection Teams. Any queries concerning deployment of an individual must be raised in writing in advance with Estyn's Contracts Branch. Contractors shall also ensure that every Inspector deployed has been registered/enrolled with Estyn for the relevant phase, aspects and, where appropriate, subject areas, curriculum areas and Welsh speaking requirements. Estyn will provide each Contractor with a template for the completion of its Inspection Team lists, which should be sent to Estyn's Contracts team within 20 (twenty) Working Days of the Contractor being notified of the name of the

Institution. Estyn will confirm the eligibility of the Inspection Teams to undertake each Inspection. If Estyn decides that an Inspection Team is not suitable, the Contractor shall be informed of the reasons and will be required to make the necessary revisions. The Contractor must then submit the revised Inspection Team list for approval. Once Estyn has approved an Inspection Team List, the Contractor will be informed.

6.2 Under Section 26(2) of the 2005 Act, Estyn may remove from the register kept pursuant to Section 25 of the 2005 Act any Registered Inspector where Estyn is satisfied that such Registered Inspector:

- (a) is no longer a fit and proper person for discharging the functions of a Registered Inspector;
- (b) is no longer capable of conducting Inspections competently and effectively;
- (c) has significantly failed to comply with any condition imposed on him by HMCI;
- (d) has without reasonable explanation produced a Report or Summary Report which is, in whole or in part, seriously misleading.

6.3 Under Schedule 4 of the 2005 Act, Estyn may also remove any Inspector from the Enrolled List where Estyn is satisfied that that such Inspector:

- (a) is no longer a fit and proper person to act as a member of an inspection team;
- (b) is no longer capable of assisting in an inspection competently and effectively;
or
- (c) has significantly failed to comply with any condition imposed on him/her by HMCI.

6.4 In the event that Estyn considers that any of the circumstances set out in Condition 6.2 (a)–(d) or Condition 6.3 (a)–(c) apply to any person forming part of the Inspection Team, Estyn may require the removal of such person and his/her replacement by an alternative acceptable to Estyn.

6.5 The Contractor shall, in relation to its Inspectors, at all times:

- a) maintain records of concerns relating to conduct and capability including performance, which must be surrendered to any authorised representative of Estyn within 5 (five) Working Days of the date of any request made by Estyn for the records;
- b) notify Estyn immediately and in writing of any such concerns relating to conduct or capability including performance;

- c) provide feedback to each individual Inspector of any concern relating to conduct and capability including performance in relation to that individual, complying at all times with Condition 13.1 as regards quality assurance procedures and surrender evidence to any authorised representative of Estyn of such feedback and any action taken within 5 (five) working days of the date of any request made by Estyn for such information; and
 - d) co-operate fully in any investigation required by Estyn.
- 6.6 Where the Inspector on an Inspection is also the Contractor, the Contractor shall be responsible for maintaining procedures that meet the requirements outlined in Condition 6.5 above and result in the impartial management of such information.
- 6.7 The Contractor shall ensure that in respect of each Core Inspection covered by the Contract, the number of inspector-days indicated in the Specification for such Core Inspection is fully utilised and that the total number of days that the Inspection Team is on the premises of the Institution during the period of such Core Inspection, commencing with the Inspection Start Date, does not exceed the maximum number of days indicated in the Specification for the duration of such Core Inspection (“Maximum Duration”). No change shall be made to the number of inspector-days and/or Maximum Duration indicated in the Specification in respect of any Inspection without Estyn’s prior written approval.
- 6.8 The Contractor shall ensure that all members of the Inspection Team are competent to inspect through the medium of Welsh where Welsh is the main language of the life and work of the Institution and in English medium Institutions with designated Welsh medium units. In primary level Institutions where Welsh is taught as a second language, a team member must be able to discuss issues in Welsh with relevant staff if asked to do so.
- 6.9 Estyn will allocate a **Peer Assessor** to the Inspection, subject to there being no conflict of interest in respect of such Peer Assessor and the Institution. The Contractor must make contact with the Peer Assessor in order to confirm arrangements for such Peer Assessor’s involvement, include the Peer Assessor where available as a full member of the Inspection Team, and ensure that the Registered Inspector carries out all necessary support as outlined by the Guidance Handbooks in order that the Peer Assessor can fulfil their role as described. At the end of the Inspection, the Registered Inspector must countersign the Peer Assessor’s claim form for travel and subsistence, verifying the Peer Assessor’s attendance and involvement on the Inspection. The Contractor shall, in relation to its Peer Assessors, notify Estyn in writing immediately of any concerns relating to conduct or capability, including performance, and co-operate fully with Estyn in any investigation.
- 6.10 The Contractor must ensure that the Registered Inspector offers the Institution the opportunity to have a **Nominee**. If the Institution chooses not to have a Nominee, it will not affect the outcome of the Inspection. Where the Institution chooses to have a Nominee, the Registered Inspector must manage and deploy them in a way that enables the Nominee to undertake the role agreed with the Institution. At all times

the Registered Inspector must make arrangements for the Nominee that are in accordance with the Guidance Handbooks.

7 CONFLICT OF INTEREST

7.1 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 by the Contractor or any member of the Inspection Team, which shall be deemed in particular to include:

- (a) public or private involvement in the affairs of the Institution to which the Services relate by the Contractor, and/or any director of the Contractor (where the Contractor is a corporate body), and/or any partner in the Contractor (where the Contractor is a partnership), and/or any member of the Inspection Team, and/or any spouse or family member or friend of any of the aforementioned Contractor, directors, partners or members of the Inspection Team;
- (b) any person employed by a LEA or by a company or other organisation which is controlled or funded by a LEA and who acts as an Inspector in relation to (1) the Institutions of that LEA or (2) an Institution where children from within that LEA are educated under arrangements with another LEA, unless in the case of such a person who is an employee of a company or organisation controlled or funded by a LEA, the Contractor establishes to the reasonable satisfaction of Estyn that there are appropriate measures in place to guarantee the independence of such a person fulfilling his or her function as an Inspector;
- (c) if any spouse or family member or friend of any of the Contractor, any director of the Contractor (where the Contractor is a corporate body), any partner in the Contractor (where the Contractor is a partnership) or any member of the Inspection Team has worked in the Institution to which the Inspection relates at any time.

7.2 If Estyn in its reasonable opinion believes that any event, circumstance or connection notified by the Contractor pursuant to Condition 7.1 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.

8 DISCRIMINATION

8.1 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 by all members of the Inspection Team and persons providing administrative assistance.

9 CONTRACTOR'S STATUS

- 9.1 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.
- 9.2 The Contractor shall not (and shall ensure that all members of the Inspection Team and any administrative support do 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.
- 9.3 Nothing in this Contract shall impose any liability on Estyn in respect of any liability incurred by the Contractor (including in respect of those employed by the Contractor to deliver the Services and/or perform any of the Contractor's other obligations under the Contract) 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.
- 9.4 The Contractor shall ensure that in the course of providing the Services and performing the Contractor's other obligations pursuant to the Contract 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.
- 9.5 The Contractor shall notify Estyn no later than 2 (two) months before any change of control in the Contractor, as defined by Section 416 of the Income and Corporation Taxes Act 1988, taking place, or, where this would conflict with UK financial regulatory issues (including in particular the rules in time to time in force of the London Stock Exchange or any body taking over its functions), as soon as possible and in any event no later than 2 (two) weeks after the change of control.

10 SECURITY AND HEALTH & SAFETY

- 10.1 The Contractor shall take all steps reasonably required by Estyn to prevent persons not authorised by Estyn or by this Contract being admitted to the Institution. If Estyn gives the Contractor notice that any person is not to be admitted to or is to be removed from the Institution or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice. If required by Estyn, the Contractor shall replace any person removed under this Condition with another eligible person subject to that person being approved under Condition 12.2 below and ensure that any entry pass issued to the person removed is surrendered to the person or

representative of the person who issued the pass.

- 10.2 Contractor's personnel authorised to enter the Institution shall be restricted to those listed by the Contractor and persons appointed and authorised by the Contractor providing administrative assistance. The Contractor must provide all members of the Inspection Team and all persons providing administrative assistance with formal identification, or such other technology or other form of identification as Estyn may from time to time notify the Contractor, which must be displayed by them at all times whilst within the Institution premises.
- 10.3 The decision of Estyn as to whether any person is to be admitted to or is to be removed from the Institution or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information and has taken steps required of him by this Condition shall be final and conclusive and binding on the Contractor.
- 10.4 The Contractor will ensure that any authorised person including administrative assistance personnel used by the Inspection Team in the provision of the Services and/or performance of any of the Contractor's other obligations pursuant to the Contract will not at any time be left unsupervised by members of the Inspection Team whilst with pupils within the Institution.
- 10.5 The Contractor shall:
- (a) ensure / procure that each and every individual who visits an Institution in the performance of the Services or any other obligation of the Contractor is in possession of an enhanced check with the Criminal Records Bureau, carried out not more than three (3) years prior to such visit; and
 - (b) in respect of any individual who is not a member of the Inspection Team and/or on Estyn's Enrolled List, forward the original of such enhanced check to Estyn prior to the first such visit by the relevant individual.
- 10.6 The Contractor shall be responsible for the observance by his employees, agents and sub-contractors of all health and safety precautions necessary for the protection of his employees, agents and sub-contractors and any other persons including all precautions required to be taken by any Act of Parliament or any regulation or bye-law or any local or other authority from time to time in force. The Contractor shall co-operate fully with the Appropriate Authority to ensure the proper discharge of these obligations.

11 TRANSFER AND SUB-LETTING

- 11.1 The Contractor shall not give, bargain, assign or novate or otherwise dispose of the Contract or any part thereof without the prior written consent of Estyn.
- 11.2 The Contractor shall not sub-let the Contract or subcontract any of the Contractor's obligations under the Contract without the prior written consent of Estyn, provided

always that the Contractor may, without the prior consent of Estyn, enter into a subcontract with a Registered Inspector (if different from the Contractor) or any other Inspector in the Inspection Team as part of his arrangements for engaging the Inspection Team.

- 11.3 Where the Contractor enters into a subcontract pursuant to Condition 11.2 with any Inspector or any other person for the performance of any of the Contractor's obligations under the Contract, the Contractor shall procure that such subcontract contains:
- (a) obligations on such subcontractor which mirror the Contractor's obligations under the Contract, including the provisions relating to conflict of interest, corrupt gifts and ownership of information set out in Conditions 7, 19 and 21; and
 - (b) an obligation on the Contractor to pay such subcontractor within a specified period not exceeding thirty (30) days from receipt by the Contractor of a valid invoice in respect of the same.
- 11.4 If the Contractor does subcontract any part of the Services and/or the Contractor's other obligations pursuant to the Contract, the Contractor shall not be relieved from any liability or obligation under the Contract and shall continue to be liable for all acts, omissions and/or defaults of any such subcontractor as if they were the acts, omissions and/or defaults of the Contractor, its officers, employees or agents.

12 VARYING THE INSPECTION TEAM

- 12.1 Estyn will require the Contractor to replace any member of the Inspection Team where that person does not, or ceases to, fulfil any of the requirements relevant to such person under legislation in force at the time. Estyn's decision as to whether any person should be allowed to participate in an Inspection shall be final and conclusive.
- 12.2 The Contractor may not change any member of the Inspection Team without the prior written consent of Estyn. The Contractor must ensure that any replacement Inspector has been authorised by Estyn to inspect the relevant phase, aspect and where appropriate subject areas, curriculum areas and Welsh speaking requirements as listed in the Enrolled List. Notwithstanding the fulfilment of this requirement by the Contractor, Estyn shall at all times retain full discretion as to whether or not to approve any proposed change. If, for whatever reason, the total number of changes to the Inspection Team exceed 25% (twenty-five percent) of the total number of inspector-days from that agreed at Estyn's initial approval of the Inspection Team to be spent in the Institution (except in the case of 3 (three) person Inspection Teams where a change of 1 (one) Inspector would exceed this limit), then at Estyn's discretion the Contract may be forthwith terminated without incurring any liability whatsoever.
- 12.3 In the event of a proven disability occurring to any member of the Inspection Team,

other than the Registered Inspector, which precludes his further participation in the provision of the Services, the Contractor will furnish a suitable replacement such that the Contract Completion Date and the Inspection quality are not impaired. The Contractor shall submit details of the replacement to Estyn for Estyn's prior written approval. Any such change shall count toward the percentage quoted in Condition 12.2 above. In the event of a proven disability occurring to the Registered Inspector in the Inspection Team, the Contract may be terminated or such other appropriate action taken as Estyn may decide.

- 12.4 In addition to the above, where a Registered Inspector cannot continue with an Inspection once it is underway (which for the purposes of this Condition, shall mean after the Parents' Meeting has taken place), the following conditions apply to their replacement:
- (a) the Contractor must seek Estyn's approval in writing, giving reasons for the proposed change; and
 - (b) the Contractor must inform the Appropriate Authority.

13 QUALITY ASSURANCE AND AUDIT ARRANGEMENTS

- 13.1 It is the responsibility of the Contractor to control quality in accordance with the requirements of the Guidance Handbooks and any further guidance or instructions issued by Estyn from time to time. Contractors should also take account of and co-operate with Estyn in the operation of Estyn's quality assurance procedures as set out in the latest version of "Estyn's Arrangements for Assuring the Quality of Contracted Out Work in Relation to School Inspections". Estyn shall have the right to monitor and assess the quality of the Services provided by the Contractor and the performance of other obligations of the Contractor pursuant to the Contract, which shall include (but not be limited to) undertaking visits to the Institution during the provision of the Services in order to monitor the provision of the Services and carrying out a monitoring exercise on a sample of Reports.
- 13.2 The Contractor shall and shall ensure that all members of the Inspection Team 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 13.1 above, including ensuring that prompt responses are given to all requests for information. The assistance shall extend to the provision to Estyn 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 Institution or elsewhere, by members of the Inspection Team.
- 13.3 In the event that a monitoring visit is undertaken in accordance with Condition 13.1 above, Estyn shall notify the Contractor in writing as to how the provision of the Services and/or other obligations by the Contractor meets with Estyn's requirements as set out in the Common Inspection Framework, together with other handbooks and supplementary guidance issued by Estyn. In addition, at a later date the

Contractor shall receive a formal written evaluation of the quality of the Contractor's Report regarding the subject Institution. The evaluation of the provision of the Services and/or other obligations pursuant to the Contract by the Contractor shall include the awarding of grades in relation to the quality of the provision of the Services and/or such other obligations, details of which will be provided in writing to the Contractor (at present developmental feedback), the written permission for such disclosure of information having been received by Estyn from the relevant Inspector(s).

- 13.4 It shall be the responsibility of the Contractor to notify each individual member of the Inspection Team of the results of any evaluation undertaken by Estyn in relation to the performance of that individual. The Contractor warrants to Estyn that it will not release information relating to the evaluation of any individual member of the Inspection Team to any person other than that individual.
- 13.5 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 the whole or such parts of the inspection evidence as Estyn may request. Such material should be sent free of charge to Estyn, in original form, and may be retained permanently or temporarily by Estyn.
- 13.6 Estyn further reserves the right to audit the Contractors' procedures to ensure compliance with Conditions 6.5 and 6.6.
- 13.7 The Contractor shall allow such members of Estyn's staff as Estyn may nominate from time to time such access to the Contractor's premises, the Contractor's personnel and all records and documentation in the power, custody or control of the Contractor relating to the Services and/or the matters set out in the Quality Statement and/or any other obligations of the Contractor pursuant to the Contract as Estyn may require and at such times as Estyn may require for the purposes of monitoring the Contractor's compliance with the Quality Statement and its obligations pursuant to the Contract and the Contractor shall procure that its personnel fully co-operate with Estyn in connection with the same.

14 REPORTS

- 14.1 The Contractor shall procure that:
 - (a) the front cover of the Report complies with that provided by the appropriate Estyn template;
 - (b) where the Contractor is not the Registered Inspector, neither the Contractor's name nor any crest, logo or mark relating to the Contractor appear on the cover of the Report; and
 - (c) the Contractor's name and address and team deployment appear in the Report itself, on the last page.

- 14.2 The Contractor shall procure that both the Report and the Summary Report will be offered in respect of the matters inspected under the Contract and shall exclude any report made under Section 50 of the 2005 Act and any other matters inspected or reviewed under any contract with the Appropriate Authority. Both the Report and the Summary Report shall be structured in accordance with the Guidance Handbooks and latest templates provided.
- 14.3 The Contractor shall procure that both the Report and the Summary Report shall be issued:
- (a) bilingually when the LEA has requested this option;
 - (b) bilingually in respect of Institutions which are designated bilingual, or where Welsh is used as a teaching medium;
 - (c) in all other cases, in English only.
- 14.4 The Contractor shall procure that both the Report and the Summary Report shall be printed on A4 white recycled stationery, using an Arial 12 (twelve) point black typeface with left justified text. Cover sheets may be in colours other than white.
- 14.5 The Contractor shall procure that, in respect of Institutions that provide sixth form education, the Report and Summary Report are completed in accordance with the Guidance Handbooks.
- 14.6 The Contractor acknowledges that copyright in all Reports and Summary Reports will vest in Estyn on behalf of the Crown pursuant to Condition 21.5 and the Contractor shall procure that:
- (a) all Reports and Summary Reports bear the copyright statement provided by Estyn;
 - (b) the frontispiece/cover of each and every **Report** and **Summary Report** shall include the statements:

“© Queen’s Printer and Controller of HMSO 200X (year date). This Report may be re-used free of charge in any format or medium provided that it is re-used accurately and not used in a misleading context. The copyright in the material must be acknowledged as aforementioned and the title of the Report specified. Copies of this report are available from the school. Under the Education Act 2005, the school must provide copies of the report free of charge to certain categories of people. A charge not exceeding the cost of reproduction may be made to others requesting a copy of the report”;
 - (c) the first page of each and every **Summary Report** shall include the statements:

“(Name of school) was inspected as part of a national programme of

*school inspection. The purpose is to identify good features and shortcomings in schools in order that they may improve the quality of education offered and raise the standards achieved by their pupils. The inspection of all schools within a six-year cycle is also designed to give parents more information about their child's school. A copy of this summary is sent to every family with a child at the school. **The full report can be obtained from the school.***

The inspection of (name of school) took place between (specify dates). An independent team of inspectors, led by (name of Rgl) undertook the inspection. Estyn, a statutory body independent of, but funded by, the National Assembly for Wales, commissioned the inspection.

The team was required to report on the standards achieved by pupils, the quality of education provided by the school, the quality of leadership and management and the contribution made by the school to its pupils' spiritual, moral, social and cultural development.

The five-point scale used to represent all inspection judgements in this report is as follows:

Grade 1	<i>good with outstanding features</i>
Grade 2	<i>good features and no important shortcomings</i>
Grade 3	<i>good features outweigh shortcomings</i>
Grade 4	<i>some good features, but shortcomings in important areas</i>
Grade 5	<i>many important shortcomings";</i>

- (d) the last page of each and every **Summary Report** shall include the statement:

"The governing body is responsible for amending its current development plan to incorporate action in response to the recommendations within 45 working days of receiving the report, showing what the school is going to do about the recommendations. This plan, or a summary of it, will be circulated to all parents at the school."

- 14.7 The Contractor shall ensure that following an Inspection but before issue of the Report, the Appropriate Authority of the Institution shall be given at least 5 (five) Working Days in which to consider the factual accuracy of a copy of the draft version of the Report.
- 14.8 The Contractor shall ensure that each Institution is invited to submit a response to the findings of the Inspection for inclusion in the Report in accordance with the Guidance Handbooks. The Registered Inspector must ensure that the response complies with the Guidance Handbooks before including it in the Report. The Registered Inspector shall give the Institution a deadline of 5 (five) Working Days following its receipt of a copy of the draft version of the Report for the completion of the response, to allow enough time for the response to be included in the Report. The response should only be included with the agreement of the Registered

Inspector, such agreement not to be unreasonably withheld or delayed.

- 14.9 Where the Registered Inspector is of the opinion that special measures are required to be taken in relation to the Institution or that the Institution has a sixth form requiring significant improvement, the Registered Inspector shall submit, or the Contractor, if different from the Registered Inspector, will ensure that the Registered Inspector submits, a draft version of the Report to Estyn. If Estyn so requests, the Registered Inspector shall provide, or the Contractor, if different from the Registered Inspector, will ensure that the Registered Inspector provides, Estyn with such further information as Estyn may specify.
- 14.10 Where additional work is required in relation to an Institution requiring special measures or to an Institution with a sixth form requiring significant improvement, the Registered Inspector shall submit, or the Contractor, if different from the Registered Inspector, will ensure that the Registered Inspector submits, a schedule for any additional costs for agreement by Estyn. No additional work should be undertaken until the schedule has been agreed in writing by Estyn.
- 14.11 Where the Registered Inspector is of the opinion that the Institution requires significant improvement, he shall follow, or the Contractor, if different from the Registered Inspector, will ensure that the Registered Inspector follows Estyn's guidance current at the time of the Inspection.
- 14.12 Within the appropriate period specified in Regulation 7.2 of the Regulations for the preparation in writing of the Report and Summary Report (which as at April 2008 is 45 (forty-five) Working Days from the Inspection Start Date), the Contractor will provide electronically to Estyn copies of:
- (a) the Report (saved in Microsoft Word 2000);
 - (b) the Institution profile (which for the purpose of these Conditions of Contract means the document template named school profile as provided within Estyn's Athene application) and
 - (c) relevant subject profiles (which for the purpose of these Conditions of Contract means the document templates so named provided within Estyn's Athene application).

using the templates provided on Estyn's Athene database, via a Web front end.

- 14.13 The Contractor shall procure that the Contractor has:
- (a) access to the internet;
 - (b) a Windows operating system;
 - (c) Internet Explorer 5.1 or above, plus the Athene application (downloaded from the internet, and / or supplied by Estyn on CD)

to enable the Contractor to perform its obligations pursuant to Condition 14.12.

14.14 The Contractor shall be responsible for ensuring that the information supplied pursuant to Condition 14.12 above using Athene has been checked, and is complete, accurate and free from error, and that the Report is submitted in the format specified by Athene.

14.15 The Contractor shall provide or procure the provision of a typed copy of the Report and Summary Report:

- (a) to the headteacher of the Institution;
- (b) (in the case of an Institution which is a community, foundation or voluntary or community or foundation special school) to whichever of the LEA and the governing body are not the Appropriate Authority;
- (c) in the case of an Institution which is a school having foundation governors, to the person who appoints them and (if different) to the Appropriate Appointing Authority;
- (d) to the Appropriate Authority, together with such number of additional copies of the Report and Summary Report specified in the Invitation to Tender; and
- (e) to any other person as may be prescribed from time to time;

and the Contractor shall confirm in writing to Estyn that all the above copies have been so provided.

14.16 In addition to the above the Contractor will provide Estyn with 28 (twenty-eight) copies of the Report and (twenty-eight) copies of the Summary Report for distribution to Copyright Libraries, constituency and regional Assembly Members and the constituency Member of Parliament. Delivery shall be deemed to have been made on receipt of the Reports, and other documents or materials which may be required under this Contract, to the satisfaction of Estyn.

14.17 The Contractor shall ensure that the following documents are retained for 6 (six) months from the date of the publication of the Report or such other period as is specified in writing by the Lead Officer: Contracts:

- (a) school information form;
- (b) lesson evaluation forms (LEF);
- (c) general evaluation forms (GEF);
- (d) all pre-inspection commentaries;
- (e) records of meetings with parents and the Appropriate Authority;

- (f) responses to parents' questionnaires;
- (g) the school self-evaluation report; and
- (h) any other evidence relating to the Inspection.

14.18 The Contractor shall ensure that any material belonging to an Institution is returned to the Institution as soon as possible after the Inspection but in any event, within 8 (eight) weeks from the start of the Inspection.

14.19 There is an expectation that the Report and the Summary Report will be factually correct, and provide an accurate representation of the Institution at the time of its Inspection. Where it is discovered that factual errors are contained in the Report and Estyn is of the opinion that an "errata slip" needs to be produced in relation to an Inspection, the Contractor shall be responsible of producing at its own expense the said errata sheet and circulate it as per requirements for the Report.

15 COMPLAINTS

15.1 The Contractor shall put in place and deal with all complaints in accordance with a complaints procedure which mirrors stages one and two of the Complaints Procedure, the Complaints Guidance and the principles set out under the heading "Making a complaint" in the Complaints Procedure, including without limitation any timescales set out in such Complaints Procedure and Complaints Guidance, and:

- (a) if any complainant expresses dissatisfaction with the Contractor's response on completion of stage two of such procedure, the Contractor shall immediately refer such complaint to Estyn;
- (b) if stage two of such procedure has not been completed by the Contractor in respect of any complaint within the timescale therefor, the Contractor shall immediately notify Estyn giving details of the reason for the same, and Estyn may in its absolute discretion either grant the Contractor an extension of time for completion of stage two in respect of such complaint (in which case the provisions of this paragraph (b) shall apply upon expiry of such extension of time) or require the Contractor to and the Contractor shall immediately refer such complaint to Estyn.

At the same time as any complaint is referred to Estyn pursuant to paragraphs (a) or (b) above, the Contractor shall provide to Estyn full details of the complainant, the nature of such complaint and a copy of the Contractor's file relating to such complaint. The Contractor acknowledges and agrees that Estyn shall be solely responsible for managing any complaint so referred to Estyn following such referral.

15.2 If the Contractor is in breach of its obligations pursuant to condition 15.1 above to refer any complaint to Estyn and/or to notify Estyn of a failure to complete stage two in respect of any complaint within the timescale therefore and/or to provide Estyn with a copy of the Contractor's file relating to any complaint to be referred to Estyn

pursuant to condition 15.1 above, Estyn shall be entitled to take over the management of such complaint from the Contractor in which event, without prejudice to the generality of the provisions of condition 15.5, the Contractor shall (at its own expense) provide such assistance and documentation in connection with such complaint as Estyn may require.

- 15.3 Estyn takes the view that in order to deal with complaints effectively and to ensure that all those involved are able to express their views freely, complaints should be handled confidentially and information obtained should remain confidential. Estyn will limit the people with whom details of the complaint are shared on an “as required” basis and will only routinely publish general details of complaints which do not reveal the identity of those involved. However, Estyn is subject to the Freedom of Information Act 2000 and other legal obligations which may mean that Estyn is not always able to comply with the general confidentiality obligations contained in its own complaints procedures or information obtained on such a basis by the Contractor via its own procedures. The Contractor should take account of this in its own procedure and when conducting the first and second stages of the procedure. Estyn will always try to inform and consult any individuals who have provided information before Estyn releases such information.
- 15.4 Where the Registered Inspector or a Team Inspector for an Inspection is also the Contractor, or where there is an actual or perceived connection between the 2 (two), the Contractor should make additional or alternative arrangements to handle complaints. The Contractor shall be responsible for having procedures in place that ensure the impartial investigation of complaints. When the Contractor uses an independent third party to investigate complaints, the Contractor shall inform the complainant and Estyn of this person’s name and correspondence address so the complainant may make contact directly. This should be done if the Contractor knows the connection, or once it is recognised, whether or not the complainant knows it.
- 15.5 The Contractor shall (at its own expense) co-operate fully with Estyn in any investigation carried out by Estyn into any complaints concerning the performance of the Services and/or any other obligation of the Contractor pursuant to the Contract and shall without limit (at its own expense) secure the co-operation of the Inspection Team with any such investigation and the provision by them of any such information requested by Estyn and in such form as requested that may either be or have been in their possession. 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 its possession or in the possession of the Registered Inspector within 5 (five) Working Days of receiving Estyn’s request.
- 15.6 The Contractor shall (at its own expense) provide details of complaints dealt with in accordance with the latest provided Estyn template. The Contractor will supply this information in quarterly reports to Estyn during the financial year. The Contractor shall be responsible for ensuring that the validity and accuracy of the information contained in the template has been sufficiently checked, and is correct.
- 15.7 Following the completion of the investigation of the relevant complaint by the

Contractor, the Contractor shall retain all evidence relating to the complaint for twelve months or such other period as Estyn may specify from time to time.

16 PAYMENT

16.1 The Contractor shall submit to Estyn an invoice within 30 (thirty) days following the provision of copies of the Report and Summary Report and inspection data. Invoices shall cover individual Institution inspections. The price invoiced must be the Contract Price or as subsequently amended with the prior written agreement of Estyn. Each invoice shall clearly show the following details:

- (a) Contractor name, address and code number;
- (b) Institution name and number;
- (c) Inspection number;
- (d) date of Core Inspection;
- (e) invoice number and invoice date;
- (f) Contract Price;
- (g) name and cost of any agreed additional items/charges;
- (h) VAT where applicable and VAT Registration Number;
- (i) special instructions for payment; and
- (j) contact name and telephone number for queries.

16.2 All Estyn payments are made through BACSTEL, which allows payment to be made directly into the Contractor's bank account or building society. The Contractor shall be responsible for providing bank details (and any changes to the details) to the Client for this purpose. Value Added Tax, where applicable, should be shown separately on all invoices as a strictly net charge.

16.3 Subject to the provisions of Condition 16.4 below, payment of the amount specified in the Pricing Schedule will be made by Estyn to the Contractor within 30 (thirty) days of an invoice being submitted by the Contractor.

16.4 Payment shall be conditional upon:

- (a) the information provided by the Contractor pursuant to Condition 14.12 above being complete and free from error; and
- (b) the Contractor having performed its obligations pursuant to Conditions 14.4, 14.15 and 14.16 above.

- 16.5 In the case of Institutions requiring special measures or deemed to have a sixth form requiring significant improvement, the Registered Inspector will submit a draft version of the Report. The Inspection Team will not do any further work on the Report until a corroboration visit has taken place, or such other further steps as Estyn may from time to time notify the Contractor. As this delays the final version of the Report and Summary Report, the Contractor may invoice Estyn for 80% (eighty percent) of the Contract Price upon submitting the typed draft version of the Report. The balance of 20% (twenty percent) of the Contract Price will be paid by Estyn to the Contractor when Estyn is invoiced in arrears after conclusion of any review and discussion when the final version of the Report is submitted, subject always to the provisions of Condition 16.4 above. The Contractor may either submit a separate invoice covering only those extra costs, or a single, replacement invoice covering the new full cost of the Inspection. The invoices shall show the same details as described in Condition 16.1 above.
- 16.6 Except where there is prior written approval from Estyn no payment shall be made for work performed which is outside the Service or the period of the Contract.

17 VALUE ADDED TAX

- 17.1 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 the supply of the Services provided in accordance with the Contract.
- 17.2 Any invoice or other request for payment of moneys 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 purposes of Regulations made under the Finance Act 1972.

18 PUBLICATION DELAYS

- 18.1 Should the Contractor become aware that extreme circumstances may mean that the Report or Summary Report will be completed later than the Contract Completion Date, they must as soon as is practicably possible in the circumstance(s) contact Estyn's Contracts Branch with the details and request an extension of time. The Contractor must note that:
- (a) requests and supporting details must be confirmed in writing as soon as is practicably possible in the circumstance(s);
 - (b) it must not be assumed that an extension of time will be granted;
 - (c) the Contractor must also request an extension when an Institution is deemed to require special measures or has a sixth form requiring significant improvement;

- (d) no extension of time will be given where the request is made retrospectively; and
- (e) Estyn will consider requests from the Institutions themselves for a limited extension of time.

18.2 Should the conditions outlined in Condition 18.1 above not be met, or should Estyn not be satisfied with the explanation provided by the Contractor, Estyn reserves the right, where it considers the delays are the fault of the Contractor, to deduct from the Contract Price, as liquidated damages and not in the way of a penalty, a sum not exceeding the equivalent of 1% (one percent) of the Contract Price for the Institution per day of over-run. There shall be no right of review to the sum deducted once notification as to the deduction has been made by Estyn.

19 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

19.1 The Contractor (including any member of the Inspection Team or administrative support) shall not:

- (a) offer or give or agree to give to any person in Estyn or the Appropriate Authority's employment or otherwise employed at the Institution any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for have done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for Estyn or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Contract with Estyn or any similar client; and
- (b) enter into this 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.

19.2 Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf:

- 19.2.1 under the Prevention of Corruption Act, 1889 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
- 19.2.2 that defrauds, attempts to defraud or conspires to defraud Estyn, HMCI or HMI,

shall entitle Estyn to terminate the Contract 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.

20 ARBITRATION

- 20.1 Save for Condition 15 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.
- 20.2 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.
- 20.3 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.
- 20.4 The arbitrator shall decide the dispute in accordance with the substantive laws of England and Wales.
- 20.5 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.

21 OWNERSHIP OF INFORMATION

- 21.1 It shall be a condition of this Contract that the Contractor (including any member of the Inspection Team) in the performance of the Services and the Contractor's 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.
- 21.2 Copyright in any document or material prepared by the Registered Inspector for the purposes of this Contract shall be the property of the Crown by virtue of the provisions of Condition 21.5 and the Contractor shall secure that the Registered Inspector acknowledges this by using the copyright notice as set out in the Specification.
- 21.3 The forms of report specified under Section 38 of the 2005 Act and prepared under

this Contract shall become public access material 5 (five) Working Days after being sent by the Contractor or the Registered Inspector, if different from the Contractor, to the Appropriate Authority for the Institution. The original material supplied under Conditions 14.12, 14.15 and 14.16 above shall become the property of Estyn but reasonable access shall be given to the Contractor for any legal process. Any copies of this material which the Contractor may retain must be securely destroyed not later than 90 (ninety) days after receipt of final payment under this Contract. The Contractor shall retain no other copies.

- 21.4 The original material referred to in Conditions 14.17 and 15.5 above shall become the property of Estyn. The Contractor shall retain and shall procure that the Registered Inspector shall retain the original material on Estyn's behalf, for a period of 6 (six) months from the date of publication of the Report or such other period as may be specified by Estyn pursuant to Condition 14.17 (the "Retention Period"). The Contractor shall and shall procure that the Registered Inspector shall provide the original material, in whole or in part as may be required, to any authorised representative of Estyn within 5 (five) Working Days of the date of any request made by Estyn for the material at any time during the Retention Period.

This material and all copies of it must be securely destroyed after that period, unless otherwise requested by Estyn.

- 21.5 The Contractor:

- (a) hereby assigns to Estyn on behalf of the Crown absolutely with full title guarantee all worldwide right title and interest in and to any future copyrights and rights in the nature of copyright in and to all Reports, Summary Reports, documentation referred to in Conditions 14.12, 14.15, 14.16 and 14.17 above, and all other reports, records, documents, data and information developed and created by or on behalf of the Contractor or the Registered Inspector (if different from the Contractor) or any other member of the Inspection Team in the course of or in connection with or for use, or intended use, in relation to the performance of the Contract (including all data recorded to form the basis of such Reports, records and information) (the "Materials") with the intent and with the effect that all such rights shall vest in Estyn on behalf of the Crown automatically on the date such rights are developed or created for the full term thereof including all renewals thereof and extensions thereto, together with all rights, benefits or powers arising or accrued therefrom;
- (b) transfers to Estyn on behalf of the Crown with full title guarantee all right, title and interests in and to the Materials

and the Contractor shall not (except to the extent necessary for the implementation of this Contract) use or disclose any part of the Materials without the written permission of the Controller of Her Majesty's Stationery Office.

- 21.6 The Contractor shall procure that the contract for services between the Contractor and any member of the Inspection Team who is not an employee of the Contractor provides that all right title and interest in and to any copyrights and rights in the

nature of copyright in and to all Materials (as defined in Condition 21.5 above) developed and/or created by or on behalf of such member shall belong to the Contractor and contains an assignment of such rights by such member to the Contractor with effect from the date such rights are developed or created.

21.7 The Contractor shall and shall procure that each member of the Inspection Team who is not an employee of the Contractor shall do such acts and execute all such documents as Estyn may require to secure or properly to vest the rights assigned pursuant to Condition 21.5 in Estyn on behalf of the Crown for the full term thereof.

21.8 At no time will the Contractor (including any member of the Inspection Team) make contact with or respond to contact from any area of the media about the Services other than to disclose this Contract or the Reports issued thereunder as required by the Contract. Where, in the case of an Institution which is community school (other than a foundation school), the Contractor is the LEA this paragraph shall not preclude such a Contractor from making any statement it would have made had the Contract never been entered into.

21.9 Estyn shall be consulted before any:

- (a) verbal statement is given; or
- (b) written statement, paper or press notice is published; or
- (c) press or any other type of conference held,

in connection with the Inspection or any information acquired during the Contract. A draft of any intended statement, paper or press notice shall be sent to Estyn in sufficient time to allow a reasonable opportunity to comment on it before the proposed date of issue, and any such issue shall be subject to Estyn's prior written approval.

21.10 At no time will the Contractor (including any member of the Inspection Team) reproduce or disseminate any material or information acquired during the Contract to any person or other body in the United Kingdom or elsewhere without prior consultation with Estyn and the written permission of Estyn and the Controller of Her Majesty's Stationery Office in whom all copyrights belonging to the Crown are vested. Nor shall the Contractor (including any member of the Inspection Team) 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 Estyn and the Controller of Her Majesty's Stationery Office. For the purposes of this Condition, the reference to any person or other body includes the Contractor where he is not a member of the Inspection Team.

21.11 The Contractor warrants for himself and for the Inspection Team and any administrative support both at the Institution and at any other place not to disclose or use any information about staff or pupils at the Institution nor about tenders nor contractors to the Institution to any person or other body other than is necessary under the Conditions of Contract or otherwise prescribed by legislation. For the purposes of this Condition, the reference to any person or other body includes the Contractor where he is not a member of the Inspection Team.

- 21.12 In respect of the Data, Estyn shall be the Data Controller and the Contractor shall be the Data Processor. The Contractor warrants and undertakes in respect of the Data that:
- (a) the Data shall be processed only as required by this Contract, or any written instructions of Estyn in relation to such Data as issued by Estyn from time to time;
 - (b) the Contractor shall comply in all respects with the requirements of 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 Data that Estyn is the Data Controller, and of the purposes for which the Data that concerns them shall be processed.
- 21.13 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. This includes the development and maintenance of a publication scheme. Estyn operates under a presumption of openness.
- 21.14 The Contractor further acknowledges that Estyn is subject to statutory obligations under the FOI Act and that with effect from 1st January 2005 Estyn is required to respond to requests for information made under the FOI Act.
- 21.15 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.
- 21.16 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, and will send, or arrange to be sent by hand or by first class recorded delivery, any inspection evidence requested, free of charge to Estyn, in its original form. This material may be retained permanently or temporarily by Estyn, and it will be entirely within Estyn's discretion as to what information Estyn decides to disclose in response to any request.
- 21.17 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.
- 21.18 The Contractor shall indemnify Estyn against any losses or damages (for avoidance of doubt to include legal costs) which Estyn may sustain or incur as a result of any breach by the Contractor of the provisions of this Condition.

- 21.19 The provision of Condition 21 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 21.20 The Contractor (including any member of the Inspection Team) shall not refer to HMCI, HMI, Estyn or the Contract in any advertisement without Estyn's prior written consent.

22 INDEMNITY AND INSURANCE

- 22.1 The Contractor shall indemnify Estyn, the Crown and/or its Ministers, its servants and agents against all actions, claims, demands, costs and expenses (including legal expenses) incurred by or made against Estyn, the Crown and/or its Ministers, its servants or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract.
- 22.2 The indemnity contained in Condition 22.1 above shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of Estyn, the Crown, its Ministers, its servants or agents.
- 22.3 (a) Throughout the duration of the Contract the Contractor shall insure against any damage loss or injury which may occur to any property or to any person arising out of or in the carrying out of the Contract otherwise than due to the matters referred to in Condition 22.2 above.
- (b) Such insurance shall be effected with an insurer and in terms approved by Estyn and for at least £1 million (one million pounds) per claim. The terms shall include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against Estyn, the insurer will indemnify Estyn against such claims and any costs charges and expenses in respect thereof. The Contractor shall whenever required, produce to Estyn the policy or policies of insurance and the receipts for payment of the current premiums.

23 ACCIDENT OR INJURY TO CONTRACTOR AND HIS EMPLOYEES

- 23.1 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 or any person in the employment of the Contractor or any sub-contractor save and except to the extent that such accident or injury results from or is contributed to by the negligence of Estyn, its employees, agents or servants (but excluding 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 claim demands, proceedings, costs (including legal costs), charges and expenses whatsoever in respect thereof or in relation thereto.
- 23.2 Save for liability for death or personal injury as a result of the negligence of Estyn,

its employees, servants or agents (but excluding the Contractor), Estyn's total aggregate liability in respect of each claim or series of connected 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, less the total aggregate sums paid or payable by Estyn to the Contractor in respect of any prior Claims.

24 TERMINATION

24.1 The Contractor shall notify Estyn in writing as soon as is practicably possible in the circumstance(s) upon the occurrence of any of the following events:

- (a) where the Contractor is an individual, if a petition is presented for the Contractor's bankruptcy or if a criminal bankruptcy order is made against the Contractor, 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; or
- (b) where the Contractor is not an individual but is a firm or number of persons acting together in any capacity, if any event in Condition 24.1 (a) or (c) occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company;
- (c) where the Contractor is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by a solvent amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or
- (d) where the Contractor is unable to meet the requirements outlined in Condition 16.6 above and act in accordance with Better Payment Practice Code.

24.2 On the occurrence of any of the events described in Condition 24.1 above or if the Contractor shall have committed a breach of the Contract and (if such breach is capable of remedy) shall have failed to remedy such breach to Estyn's reasonable satisfaction within 5 (five) Working Days of being required by Estyn in writing to do so, or if the Registered Inspector in the Inspection Team shall die or be adjudged incapable or managing his affairs within the meaning of Part VII of the Mental Health Act 1983, Estyn shall be entitled to terminate this Contract by notice to the Contractor with immediate effect. Thereupon, without prejudice to any of his rights, Estyn may complete the Services and any other obligations of the Contractor pursuant to the Contract 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 on the premises belonging to the Contractor or his estate until the Services have been completed in accordance with the requirements of the Contract, 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.

- 24.3 In addition to Estyn's rights of termination under Condition 24.2 above, Estyn shall be entitled to terminate this Contract by giving to the Contractor not less than 15 (fifteen) Working Days' written notice to that effect and in the event of such termination shall pay all reasonable costs incurred up to the date of termination.
- 24.4 Termination under Condition 24.2 or 24.3 above 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 21 above.
- 24.5 In the event of industrial action, a major fire, flood or other event outside the control of Estyn or the Contractor causing the Institution to be closed or if in the opinion of Estyn circumstances arise which could not have been foreseen and which in Estyn's opinion would be likely to render the Services not capable of being completed satisfactorily (an "Event"), Estyn may in its absolute discretion either:
- (a) terminate the Contract; or
 - (b) suspend performance of the Contractor's obligations affected by such Event until such Event has ceased, provided always that if such Event persists for longer than two (2) months, Estyn may at any time thereafter opt to terminate the Contract.

Where Estyn determines that the Contract will be terminated, if the Contractor has executed some work in performing the Services the maximum liability of Estyn shall be calculated by reference to the sum of £150 (one hundred and fifty pounds) per day in which the Services were provided at the Institution subject to it not exceeding 5% (five percent) of the Contract Price.

25 RECOVERY OF SUMS DUE

- 25.1 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.

26 REMEDIES

- 26.1 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.
- 26.2 The Parties hereto acknowledge that damages may not be an adequate remedy in the event of breach of the Contract, and accordingly each of the parties hereto, (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.

27 NOTICES

- 27.1 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:

Lead Officer: Contracts
Estyn
Anchor Court
Keen Road
Cardiff CF24 5JW

Fax: (029) 2044 6448

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

- 27.2 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.
- 27.3 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.

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 15 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 that shall be applicable to the Contract.

