



Arolygiaeth Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru
Her Majesty's Inspectorate for Education and Training in Wales

**STANDARD CONDITIONS OF CONTRACT FOR THE
PROVISION OF INSPECTION SERVICES UNDER
SCHEDULE 26 TO THE SCHOOL STANDARDS AND
FRAMEWORK ACT 1998 AS AMENDED BY THE EDUCATION
ACT 2005**

**AS AN:
ESTYN REGISTERED NURSERY INSPECTOR (RgNI)**

IN THE ROLE OF: LEAD INSPECTOR

**IN ESTYN/CIW JOINT INSPECTIONS OF NON MAINTAINED
SETTINGS IN WALES**

Version 1.1

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**STANDARD CONDITIONS OF CONTRACT FOR THE PROVISION OF INSPECTION SERVICES
UNDER SCHEDULE 26 TO THE SCHOOL STANDARDS AND FRAMEWORK ACT 1998 AS
AMENDED BY THE EDUCATION ACT 2005**

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 versions of this Contract the English language version shall take precedence.

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1. CONDITIONS

1.1 Estyn's full requirement for the contract for the inspection of non-maintained institution settings is contained in the documents listed below:

- (a) Invitation to Tender, comprising:
 - i Letter of invitation
 - ii Certificate of Non-Collusion;
 - iii Certificate of Tender
 - iv Specification – inspection roles;
 - v Qualification Response; and
 - vi Commercial Response
- (b) the Conditions of Contract;
- (c) The Common Inspection Framework and relevant guidance handbook
- (d) The guidance handbook for inspecting care and education in regulated non-school settings eligible for part-time education (Estyn CIW Joint Inspections);
- (e) Inspector's toolkit for joint inspections between Estyn and CIW;
- (f) supplementary guidance, inspection and other relevant policies and publications from Estyn, as may from time to time be amended; and
- (g) Estyn's Welsh Language Policy and the guidance on the provision of Welsh services.

2. DEFINITIONS

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

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| "Act" | means the School Standards and Framework Act 1998 as amended by the Education Act 2005. |
| "Arbitration Act" | means the Arbitration Act 1996. |
| Care Inspectorate Wales (CIW) | means Care Inspectorate Wales |
| "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. |
| Commercial Response | 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 |

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| | provision of the Services and which is located on the Website. |
| “Complaint” | means any criticism or adverse comment(s) raised by the Institution or relevant partnership or authority in relation to the Inspection and/or the Inspector either before, during or after the Inspection. |
| “Complaints Procedure” | means the most recent version of Estyn’s document entitled “Complaints handling procedure” 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, the contract award letter and any other document 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 Contracted Additional Inspector (CAI) to whom the Contract is awarded. |
| “Contract Price” | means the price (which includes VAT where applicable) 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” | means the data that falls within the definition of Personal Data in the General Data Protection Regulation (GDPR) that is processed in the manner of processing as defined in the GDPR in the course of the provision of the Services. |
| “Data Controller” | means as the same is defined in the GDPR. |
| “Data Processor” | means as the same is defined in the GDPR. |
| “Document” | means any letter, form, report, dataset or other assembly of written or pictorial information in any medium used in connection with this Contract. |
| “Enhanced Disclosure” | means a process by which a prescribed level of checks on an individual's antecedent history are undertaken by the Disclosure and Barring Service (DBS) 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. |
| “Enrolled List” | HMCI keeps a list of enrolled persons who may act as a member of the inspection team. |
| “Establishment” | means the education establishment to be inspected as specified in the Virtual Inspection Room. |
| “Estyn” | means Her Majesty’s Inspectorate for Education and Training in Wales. |
| “EYDP Nursery Inspection” | means the Inspection which is taken into account by the LA in formulating proposals under section 120 of the Act. |

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| “FOI Act” | means the Freedom of Information Act 2000. |
| “GDPR” | means General Data Protection Regulation (GDPR) which came into force on 25 th May 2018. |
| “Guidance” | means any related guidance that may be issued 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. |
| “Information Assurance policy” | means the document so titled available on Estyn’s website. |
| “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, Input JF, Collated and Reporting JF 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 Contractor will attend the Establishment for the purposes of inspecting the education provided there as stated in the Contract. |
| “Inspection Term” | means the academic term in which the inspection to take place. |
| “Invitation to Tender” | has the meaning set out in Condition 1.1(a) above. |
| “Judgments Form” | means the electronic document completed by the Reporting Inspector during the Inspection, setting out the Inspection findings, and collated by the Reporting Inspector as prescribed. |
| “LA” | means a local authority. |
| “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. |
| “Managers” | mean the registered person/ responsible individual, management committee, proprietor, charity or other organisation responsible for the Establishment. |
| “Nursery Education” | means part-time education provided for children who have not attained compulsory school age in non-maintained settings. |
| “Party” | means either Estyn or the Contractor, and “Parties” shall be construed accordingly. |
| “Personal Data” | means personal data as defined in the GDPR which is supplied to the Contractor by Estyn or obtained by the Contractor in the course of performing the Services. |
| “Regulations” | means the Regulations made by the Secretary of State under Schedule 26 to the Act. |
| “Report” | means the document in its final form as described in the Act, Condition 13 of these Conditions of Contract and described in the Guidance Handbook. |
| Reporting Inspector | Means the HMI, CIW Inspector or Contracted Additional Inspector |

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| | leading the inspection. |
| “Services” | mean the Inspection and production of the Report referred to in Schedule 26 to the Act and identified in the Contract and, where the context so admits, includes any articles to be supplied thereunder. |
| “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. |
| “VIR” | means Virtual Inspection Room, which is Estyn’s website for managing inspections. This area provides an Establishment, Contractor, Inspection Team and Estyn access to information relating to the inspection. |
| “Website” | means Estyn’s website located at www.estyn.gov.wales . |
| “Welsh Language Policy” | means the version at the time of the Inspection 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 Reference to any Act of Parliament or subordinate legislation shall be construed as importing reference to the re-enactment, modification or extension to it for the time being in force and to all statutory instruments, regulations, by-laws and plans made given or issued thereunder or deriving validity from it.
- 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 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 Condition 26 (Termination).
- 3.2 The Inspection Start Date shall be that notified in writing by Estyn’s Inspection Coordinator. The Inspection Coordinator will notify the Establishment of its inspection 10 (ten) Working Days in advance of the identified Inspection Start Date.

- 3.3 The completion of the Contract (Contract Completion Date pursuant to Condition 3.1) shall not offset any obligations or rights contained in any Condition in the Contract which is capable of continuing after completion, which shall continue in full force and effect.

4 CONFIDENTIAL INFORMATION

- 4.1 Without prejudice to the generality of the provisions of conditions 6.5 (d) and (e), and condition 21, the Contractor acknowledges that the fact that the Establishment is to be inspected and the Inspection Start Date (together the "Confidential Information") is secret and confidential until the Inspection Coordinator notifies the Institution ten (10) Working Days prior to the Inspection Start Date (the "Authorised Disclosure Date") that such Establishment is to be inspected and the Inspection Start Date
- 4.2 Prior to the Authorised Disclosure Date the Contractor shall keep the Confidential Information secret and confidential and in particular shall not disclose the Confidential Information in whole or in part to any person other than in confidence and on a need to know basis or any permitted persons in accordance with the provisions of condition 4.3 ("Authorised Persons").
- 4.3 The Contractor shall procure that such Authorised Persons shall keep the Confidential Information secret and confidential and not disclose the Confidential Information in whole or in part to any person other than another Authorised Person prior to the Authorised Disclosure Date.
- 4.4 The Contractor shall be liable for any disclosure of all or part of the Confidential Information by any Authorised Person prior to the Authorised Disclosure Date to any person other than another Authorised Person as if such disclosure was a disclosure by the Contractor.

5. VARIATION OF THE SERVICES

- 5.1 Estyn reserves the right by notice in writing to the Contractor to 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 Condition 20 below.

6. NATURE OF SERVICES

- 6.1 Estyn appoints the Contractor to provide the Services:
- 6.1.1 promptly and in a professional and courteous manner so as to reflect and promote the image of Estyn;

- 6.1.2 strictly in accordance with the provisions of the Contract; and
- 6.1.3 in accordance with all relevant Legislation, Guidance Handbooks and general Guidance.
- 6.2 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.
- 6.3 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 6.1 no additional costs, charges or expenses will be paid for the provision of the Services.
- 6.4 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 relevant Assistant Director, the Inspection Coordinator or such other duly authorised person(s) that Estyn may from time to time notify the Contractor of in writing.
- 6.5 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 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
 - (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.
 - (d) make any public statement, whether verbal or in writing, which is critical of Estyn and its inspection system; and/or
 - (e) make any public statement, whether verbal or in writing, or do any act which , in the reasonable opinion of Estyn, may be construed as a criticism of or may otherwise be detrimental to or bring into disrepute the inspection system and/or the reputation of Estyn.

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, 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 Condition 7, an individual will not be deployed to inspect a provider if any of the following is applicable:

a).Employed by an education consortia

If the **inspector** is currently employed or has previously worked for the provider (including working in a consultancy/advisory role, for example under a contract for services) within the previous **two** years, the inspector will be precluded from inspecting the provider and the associated local authorities.

b). Employed by the provider

If the **inspector** is currently employed or has previously worked for the provider (including working in a consultancy/advisory role, for example under a contract for services) within the previous **three** years, the preclusion will be against the provider and its associated local authority.

c).Family member employed or involved with a provider

If a **family member*** is currently employed or has previously worked for the provider (including working in a consultancy/advisory role, for example under a contract for services), a direct social or professional involvement in the affairs of the provider, for example is or has been a pupil/student, governor, adviser or contractor within the previous **two** years, the preclusion will be against the provider.

d). Social or professional involvement with a provider

If the **inspector** has a direct social or professional involvement in the affairs of the provider, for example is or has been a pupil/student, governor, adviser or contractor within the previous **three** years, the preclusion will be against the provider.

Notes:

* Family members' is defined as parent, sibling, spouse/partner, and/or child. With the exception of relatives who undertake periods of short-term, casual supply work in a school or have very occasional links with a school, for example acting as a member of a theatre in education group or providing an afternoon coaching in a sport or creative activity.

For further guidance on how Estyn will manage conflicts of interest and minimise the risk of the perception of partiality in relation to inspection work, please refer to Estyn's policy on [managing conflicts of interest in relation to inspection work](#) on our website.

- 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.
- 7.3 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.

8. DISCRIMINATION

- 8.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 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.

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. The Contractor must inform HMRC that they are self-employed and are responsible for paying their own National Insurance and tax.
- 9.2 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.
- 9.3 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.
- 9.4 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.

10. SECURITY AND HEALTH & SAFETY

- 10.1 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 HMCI and that he will comply with all relevant Guidelines and Inspection Guidance.
- 10.2 The Contractor must fully comply with any security arrangements deemed necessary by Estyn. The Contractor shall also comply with Estyn's Health and Safety Policy and Arrangements, which are available on Estyn's website, in as far as they apply to the contract.
- 10.3 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.
- 10.4 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.
- 10.5 The Contractor shall be in possession of an "Enhanced Disclosure with Child Barring List" check with the DBS carried out not more than three (3) years prior to the Inspection Start Date. In the event that the Contractor fails to meet the requirements of this Condition 10.5 to Estyn's satisfaction then Estyn shall be entitled to terminate the Contract forthwith without incurring any liability whatsoever.

11. TRANSFER AND SUB-LETTING

- 11.1 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.

12. QUALITY ASSURANCE

- 12.1 Estyn shall monitor and evaluate 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.
- 12.2 It is the responsibility of the Contractor to control quality in accordance with the requirements of any Guidance Handbooks and 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 inspections". Estyn shall have the right to monitor and assess the quality of the

Services provided by the Contractor, which shall include undertaking visits to the Setting and carrying out a monitoring exercise on all Reports.

- 12.3 The Contractor shall fully co-operate with 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 12.1 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.
- 12.4 In the event that a monitoring visit is undertaken in accordance with Condition 12.1 above, Estyn shall notify the Contractor in writing as to how the provision of the Services by the Contractor meets with Estyn's requirements as set out in the Guidance 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 Report regarding the subject Establishment. The evaluation of the provision of the Services by the Contractor shall include the awarding of grades in relation to the quality of the provision of the Services, details of which will be provided in writing to the Contractor (at present referred to as developmental feedback).
- 12.5 Estyn will quality assure all reports and will continue to collate all quality assurance information for each Contractor on a regular basis. This enables us to identify any unsatisfactory performance. Different levels of unsatisfactory performance will elicit different actions on our part. If Estyn has concerns about the quality of the work of any Contractor, this will be dealt with in accordance with the policy 'Estyn's arrangements for assuring the quality of Estyn-led inspections'.

13. REPORTS AND REPORTING JUDGEMENTS FORM

- 13.1 Estyn will provide to the bodies prescribed under paragraph 13(2) of Schedule 26 to the Act the complete written Report for the Setting.
- 13.2 Within the appropriate period specified in the Regulations for the preparation in writing of the Report, which is 45 (forty five) Working Days from the start of the inspection and to enable Estyn to meet current statutory publication deadlines, the Contractor, using templates provided on Estyn's Extranet system will:
- (i) (at his/her own expense) provide electronically to Estyn within the VIR system the Reporting Judgements Form (correctly formatted in Microsoft Word 2010 or later) within **five (5) working** days of the end of the inspection;
 - (ii) inform the designated Inspection Coordinator that the Report is ready for Quality Assurance by emailing ic@estyn.gov.wales;

- (iii) respond to the edits within fifteen (15) working days of the end of the inspection and notifies the first and second editors, the team inspector and designated IC that this has been done

*Note that, Estyn will organise the translation of reports. Where the report is translated from Welsh to English, the IC will ask the Contractor to confirm that the translation reflects their original report.

- (iv) respond to any subsequent edits promptly and inform the designated IC when this has been done;
- (v) respond to any issues identified post proof reading stage including factual accuracy checks

13.3 The Contractor shall procure that the Contractor has:

- (a) access to the internet;
- (b) a Windows operating system (Windows 7 or above) which includes MS Word; and
- (c) access to a supported internet browser
i.e Edge, Internet Explorer 11 & 10, Chrome (latest version), Firefox (latest and previous versions), Safari (latest version)

to enable the Contractor to perform its obligations pursuant to Condition 13.2

- 13.4 The structure and content of the Reporting Judgement Form must be to a standard that requires minimal additional work by Estyn and complies with Estyn's writing guide, as published on the Website from time to time.
- 13.5 The Contractor must ensure that all evidence recorded on either paper or electronically are captured within the Input Judgement Form by the end of the onsite inspection. The electronic files containing the Input Judgement Form and Reporting Judgement form will require uploading into Estyn's VIR. On receipt, these become the property of Estyn.
- 13.6 The contractor shall be responsible for ensuring that the information supplied pursuant to condition 13.1 and 13.2 above has been checked, and is complete, accurate and free from error (including where applicable, software viruses), and that data in the Report is consistent with the data in the Reporting Judgement Form and that both documents are submitted in the format specified.
- 13.7 The Report must be factually correct, provide an accurate representation of the Setting at the time of its Inspection, and follow the requirements as set out in the relevant phase Guidance Handbook, as well as the "Estyn writing guide" (available on Estyn's website).
- 13.8 Estyn will in accordance with its internal quality assurance procedures, edit the report before forwarding to the Establishment for checking factual accuracy. Any recommendation to amend the report will be discussed with the Contractor before

publication.

- 13.9 The Contractor acknowledges that Estyn will review, assess and grade the Report for compliance with the provisions of this Condition 13. Estyn shall award one of the following grades:
- (a) Grade A where Estyn considers that the Report meets requirements, but may contain one or two minor shortcomings;
 - (b) Grade B where Estyn considers that the Report meets requirements, but has a number of minor shortcomings;
 - (c) Grade C where Estyn considers that the Report meets requirements, but has a number of shortcomings;
 - (d) Grade D where Estyn considers that the Report does not meet requirements.

14. COMPLAINTS

- 14.1 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 is given a fair opportunity to raise issues concerning the Inspection while at the Establishment.
- 14.2 When a Complaint is received by the Contractor, the Contractor will attempt to resolve the Complaint immediately.
- 14.3 If the Contractor is unable to resolve the complaint immediately the Contractor shall inform the Inspection Co-ordinator of the Complaint and the measures taken to attempt to resolve it.
- 14.4 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.
- 14.5 The Contractor shall ensure that he keeps all details of and information concerning the Complaints confidential.
- 14.6 The Contractor acknowledges Estyn's legal obligations detailed in Condition 20 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.

15. PAYMENT

- 15.1 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 inspector profile identification number;
 - (b) the name of the Establishment 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.
- 15.2 All Estyn payments are made through BACS, 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
- 15.3 Payment shall be conditional upon the Services delivered including the Report and Reporting Judgements Form and additional information provided by the Contractor pursuant to Condition 13.above being complete, accurate and free from error, and having met Estyn's quality standards for the Services.
- 15.4 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).
- 15.5 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.

16. VALUE ADDED TAX

- 16.1 Estyn shall pay to the Contractor, the Contract Price which correctly accounts for any Value Added Tax applicable, if lawfully demanded, in the normal course of business, for the value of supply of the Services provided in accordance with the Contract.
- 16.2 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.

17. PUBLICATION DELAYS

- 17.1 Should the Contractor become aware that extreme circumstances may mean that the 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 dedicated Inspection Coordinator 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 Establishment is deemed to require focused improvement, which may delay the publication of the report;;
 - (d) no extension of time will be given where the request is made retrospectively; and
 - (e) Estyn will consider requests from the Establishments themselves for a limited extension of time.
- 17.2 Should the conditions outlined in Condition 17.1 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 25% (twenty five percent) of the Contract Price for the Institution per working 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.

18 ALTERNATIVE CONTRACTOR

- 18.1 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.

19. CORRUPT GIFTS OR PAYMENTS OF COMMISSION

- 19.1 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.

19.2 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.

19.3 Any breach of this Condition by the Contractor (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor:

19.3.1 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

19.3.2 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.

20. ARBITRATION

20.1 Save for Condition 14 (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.

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 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.
- 21.2 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 (including electronic) of the Material which the Contractor may retain must be securely destroyed 6 (six) months from the publication date of the inspection report in line with Estyn's records retention policy. The Contractor shall retain no other copies of the Material.
- 21.3 The Contractor shall adhere to Estyn's records retention policy available on the website.
- 21.4 At no time will the Contractor (or any other person involved in the performance of this Contract) make contact with or respond to contacts from any area of the media about the Services or the Contractor's other obligations provided under the Contract.
- 21.5 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.

- 21.6 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.
- 21.7 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 the Data Protection Principles, as laid down in the GDPR, 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.
- 21.8 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.
- 21.09 The Contractor shall, through its delivery of the Contract, actively support Estyn's commitment to the GDPR and the FOI Act as reasonably requested by Estyn.
- 21.10 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.
- 21.11 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.
- 21.12 The provision of Condition 21 shall apply during the continuance of this Contract and after its termination howsoever arising.
- 21.13 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.
- 21.14 The Contractor (including any member of the inspection team) shall adhere to all

guidance provided by Estyn in relation to data compliance and security, in particular (but not limited to) Estyn's "Information assurance policy" (available on Estyn's website).

22. INDEMNITY AND INSURANCE

- 22.1 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.
- 22.2 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 21.
- 22.3 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.
- 22.4 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.

23. ACCIDENT OR INJURY TO CONTRACTOR

- 23.1 Subject to clause 23.3 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.
- 23.2 Subject to clause 23.3, 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.
- 23.3 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.

24. STATUTORY OBLIGATIONS

- 24.1 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.

25. REMOVAL FROM THE ENROLLED LIST

- 25.1 Under Schedule 26, Paragraph 9 of the School Standards and Framework Act 1998, Estyn may remove from the register kept pursuant to Section 25 of the 2005 Act, any Registered Nursery Inspector where Estyn is satisfied that such Registered Nursery Inspector:
- (a) is no longer a fit and proper person for discharging the functions of a Registered Nursery 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 which is, in whole or in part, seriously misleading.
- 25.2 The circumstances in which Estyn shall be entitled to decide that the Inspector is no longer a fit and proper person for discharging the functions of a Registered Nursery Inspector, shall include, without limitation, any breach by the Contractor of Conditions 6.5 and 25.3 below.
- 25.3 The Contractor shall immediately notify Estyn in writing if the Contractor has been appointed to carry out an inspection during a time when:
- (a) the provider in which the Contractor is employed has been put into a Category following a recent inspection; or
 - (b) the Contractor is under investigation for any reason; or
 - (c) the Contractor is suspended from his/her post by the educational establishment by which the Contractor is employed.

26. TERMINATION

- 26.1 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.

26.2 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 25.1 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;
- e) the Contractor fails to inform the Inspection Coordinator as soon as is practicably possible in accordance with Condition 14.3, where a complainant remains dissatisfied; or
- f) Estyn is satisfied that any of the circumstances set out in Condition 6.5 exist; or
- g) The Contractor is employed by a provider who has been put into a Category following a recent inspection; or
- h) The Contractor is under investigation for any reason; or
- i) The Contractor is suspended from his/her post by the provider with whom the Contractor is employed.

Upon any of the events listed in (a) to (i) 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.

26.3 In addition to its rights of termination under Condition 25.2, Estyn shall be entitled to terminate this Contract at will by giving to the Contractor not less than 11 (eleven) working days written notice to that effect.

26.4 Where Estyn decides to terminate an inspection contract closer to the Inspection Start Date (ie less than 10 working days' notice), the Contractor may be eligible for a cancellation fee in the following circumstances:

- a) 5% (five per cent) of the Contract Price where termination occurs at least 10 (ten) working days prior to the Inspection Start Date;
- b) 10% (ten per cent) of the Contract Price where such terminations occur less than 10 (ten) working days prior to the Inspection Start Date, but at least 5 (five) working days prior to the Inspection Start Date;
- c) 15% (fifteen per cent) of the Contract Price where such termination occurs less than 5 (five) working days prior to the Inspection Start Date; and
- d) 25% (twenty five per cent) of the Contract Price where such termination occurs during the Inspection.

For the avoidance of doubt, the Contractor shall not be entitled to any other payment for the performance by the Contractor of the Services or any part thereof prior to such termination and Estyn shall have no further liability to the Contractor howsoever arising as a result of or in connection with such termination (e.g. non-refundable accommodation booked by the Contractor at the time of award).

- 26.5 Termination under Conditions 25.2, 25.3 or 25.4 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 20.

27. RECOVERY OF SUMS DUE

- 2.1 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.

28. REMEDIES

- 28.1 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.
- 28.2 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.

29. NOTICES

- 29.1 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, e-mail or by hand, if to Estyn, to:

The Procurement Manager
Estyn
Anchor Court
Keen Road
Cardiff CF24 5JW

- 29.2 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 email to contracts@estyn.gov.wales and by hand shall be effective upon delivery.
- 29.3 Either Party to the Contract may change its address, telephone number, facsimile number, email address and nominated contact for notification purposes by giving the other Party reasonable prior written notice of the new information and its effective date.

30 NO SMOKING POLICY

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

31. SEVERABILITY

- 31.1 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.

32. ENFORCEMENT BY THIRD PARTY

- 32.1 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.

33. COOPERATION AND ASSISTANCE

- 33.1 Without prejudice to the provisions of Conditions 14 and 21.8-21.12, the Contractor shall at no additional cost provide Estyn during the term of the Contract and after termination howsoever arising with such cooperation and assistance as Estyn may

require in connection with any matters, including without limitation judicial reviews or other legal proceedings, arising from or connected with the Inspection, the Report, the Services and/or the Contract ("Relevant Matters"), and shall provide such cooperation and assistance within such timeframes as Estyn may reasonably require.

- 33.2 The cooperation and assistance to be provided by the Contractor pursuant to Condition 33.1 shall include without limitation such cooperation and assistance as Estyn may require in the preparation or presentation of any defence in respect of any Relevant Matter.

34. LAW AND REGULATIONS

- 33.1 This Contract shall be governed by the laws of England and Wales (as applied in Wales).
- 33.2 In respect of matters arising under Condition 14 (Complaints) above, the Parties shall submit to the exclusive jurisdiction of the courts of England and Wales.
- 33.3 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 Government or by local or other Authorities that shall be applicable to the Contract.

Reply slip: to be returned to Contracts@estyn.gov.wales

This is to confirm that I am in receipt of **Version 1.1 (August 2019)** of the Conditions of Contract for the provision of Inspection services under Schedule 26 to the School Standards and Framework Act 1998. I have read and understand the document, and I agree to abide by these Conditions in respect of any Inspection Contract(s) awarded to me.

I request that any notice or communication given or made in accordance with this Contract shall be given or made to the undersigned, unless notification of any change be provided to Estyn by the Contractor.

| | |
|--|----------------------------------|
| Signed: | |
| Date: | |
| Name: | |
| Business Title: | |
| For and on behalf of (organisation name): | |
| Address | |
| Email address: | |