

PART B–PROPOSED CONTRACT

RFA 2018/01
Provision of a range of Information and
Communications Technology (ICT) services

PROPOSED DEED OF AGREEMENT

DRAFT CONTRACT IN RELATION TO THE PROVISION OF A RANGE OF
INFORMATION & COMMUNICATIONS TECHNOLOGY (ICT) SERVICES

Australian Curriculum, Assessment and Reporting Authority
ABN 54 735 928 084

^Party 2 Name^

^Party 2 ABN^ ^Party 2 ACN^

Tenderers should refer to **PART A – SPECIFICATIONS AND PART C – REQUEST FOR APPLICATION (INCLUDING APPLICATION RESPONSE SCHEDULES)** which sets out the conditions of application and application response requirements.

DEED OF AGREEMENT

THIS DEED OF AGREEMENT is made the day of 2015

BETWEEN

AUSTRALIAN CURRICULUM, ASSESSMENT AND REPORTING AUTHORITY
(ABN 54735928084) of Level 10, 255 Pitt Street, Sydney, New South Wales
("ACARA");

AND

^Party 2 Name^Party 2 ABN^Party 2 ACN^Party2 Address^ ("Contractor")

BACKGROUND

A The Australian Curriculum, Assessment and Reporting Authority (ACARA) is responsible for the development of rigorous, world class national curriculum from Foundation to Year 12 starting with the learning areas of English, mathematics, science and history, and followed by work in the areas of languages, geography and the arts and then other learning areas specified in the *Melbourne Declaration on Educational Goals for Young Australians*.

To complement the development of a national curriculum, ACARA is also responsible for developing and administering a national assessment program aligned to the national curriculum that measures students' progress, and the provision of information, resources, support and guidance to the teaching profession.

ACARA is also charged with the collection, management and analysis of data on a national scale that relates to broader achievements in student assessment, resource allocation, and accountability and reporting on school performance.

B ACARA has assembled, and the Contractor has agreed to join, a panel of contractors for development of NAPLAN Reading, Numeracy, Writing and Conventions of Language items from which the Contractor, if chosen and available to perform a project, will accept a purchase order for, and perform that project, in accordance with the terms and conditions of this Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

In this Deed unless the context requires otherwise:

“**ACARA Material**” means any Material:

- (a) provided by ACARA to the Contractor for the purposes of this Deed or any Purchase Order Agreement; or
- (b) derived at any time from the Material referred to in paragraph (a);

“**Application**” means the application for selection to the panel of Preferred Service Providers

“**Attachment**” means the attachment to this Deed;

“**Commencement Date**” means the commencement date specified in a Purchase Order or any other date agreed to by the parties;

“**Completion Date**” means the completion date specified in a Purchase Order or any other date agreed to by the parties;

“**Confidential Information**” means all information and materials disclosed, provided or otherwise made available or becoming known to, or developed by, the Contractor in the course of performing a Project, whether before or after execution of this Deed including, without limitation, the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, business connections and clients of ACARA but excludes information that the Contractor can prove:

- (a) was in the public domain at the date of this Deed;
- (b) subsequent to the date of this Deed, became part of the public domain otherwise than as a result of disclosure by the Contractor directly or indirectly in breach of this Deed;
- (c) was in its possession at the time of disclosure by ACARA to the Contractor and was not otherwise acquired from ACARA directly or indirectly; or
- (d) was required by law;

“**Contract Material**” means any Material (including Existing Material and Third Party Material):

- (a) created for the purposes of this Deed or any Purchase Order Agreement;
- (b) provided or required to be provided to ACARA as part of the Project; or
- (c) derived at any time from the Material referred to in paragraphs (a) or (b);

“**Contractor**” means ^Party 2 Name^;

“**Contractor Rates**” means the rate of pay specified in the Schedule or a Purchase Order and which will be used to calculate what ACARA will pay the Contractor for performance of a Project;

“**Deed**” means and includes this deed, the Schedule, the Attachment, any amendment to this deed and any Purchase Order Agreement;

“**Employee**” means the employee of the Contractor specified in the Schedule;

“**Existing Material**” means any Material in existence at the Commencement Date and specified in the relevant Purchase Order Agreement;

“**GST**” means a tax on the supply of anything, a goods and services tax or a value added tax;

“**Intellectual Property**” includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

- (d) Moral Rights;
- (e) the non-proprietary rights of performers; or
- (f) rights in relation to Confidential Information;

“**Local Laws**” means all statutory and regulatory requirements applying in the jurisdiction where the services or works in relation to the Project will be performed (including all applicable Commonwealth statutory and regulatory requirements);

“**Material**” means any thing in relation to which Intellectual Property rights arise;

“**Moral Rights**” means the following non-proprietary rights of authors of copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

"Panel" means the panel of Preferred Service Providers

"Project" means a project described in a Project Brief which a Contractor is required to perform in accordance with this Deed;

"Project Brief" means a description of a Project appearing in a Purchase Order;

"Project Fee" means a fee specified in a Purchase Order comprising the total amount payable to the Contractor for the performance of a Project under a Purchase Order;

"Project Manager" means the project manager set out in the Schedule or a Purchase Order;

"Purchase Order" means an offer to the Contractor in a form set out in the Attachment, to perform a Project which, if and when accepted by the Contractor, will become the agreement between ACARA and the Contractor to perform the Project specified in the Purchase Order, on the terms and conditions of this Deed of Agreement;

"Purchase Order Agreement" means the agreement which arises between the Contractor and ACARA when the Contractor accepts a Purchase Order to perform a Project on the terms and conditions of this Deed;

"Schedule" means the schedule to this Deed;

"Term" means the period of time specified in the Schedule;

"Third Party Material" means any Material in which the Intellectual Property rights are owned by third parties.

2. STANDING OFFER

2.1 During the Term, the Contractor makes a standing offer to perform the Project specified in each Purchase Order in accordance with the relevant Project Brief for the Project Fee, on the terms and conditions set out in this Deed.

2.2 The Contractor must ensure that:

- (a) each Project is performed, and all materials and data requested by ACARA pursuant to a Project Brief are prepared diligently, competently, with care and skill and in a proper and professional manner and in accordance with the terms of this Deed;
- (b) each Project is performed in accordance with relevant best practice;
- (c) it performs each Project in compliance with all Local Laws;
- (d) it maintains full and proper records of the performance of each Project including all hours worked, and must maintain such records for 6 years after the termination or expiry of this Deed and, if requested to do so,

immediately provides ACARA with copies of those records and correspondence or other material arising from or relating to each Project;

- (e) each Project is completed by the Completion Date;
- (f) only the Employee is used to perform the Project and the Employee performs their role in accordance with this Deed;
- (g) pricing of Projects will be undertaken in accordance with the Pricing Methodology outlined by the Contractor in its Application; and
- (h) the Project will be undertaken in accordance with the Quality Assurance Plan, Test Item Development, Planning Methodology, and Project Management Methodology outlined in the Contractor's Application.

2.3 The Contractor acknowledges that ACARA has entered into this Deed relying on the skill, care, expertise, experience and ability of the Contractor to perform the Project.

2.4 To the extent that a Project has commenced or been completed prior to the date of execution of this Deed, such Project will be deemed to have been performed subject to the terms of this Deed.

3. ENTIRE AGREEMENT

3.1 To the extent permitted by law, in relation to the Project to which it applies, this Deed together with a relevant Purchase Order Agreement:

- a) embodies the entire understanding of the parties, and constitutes the entire terms agreed on between the parties; and
- b) supersedes any prior written or other agreement between the parties,

4. ESTABLISHMENT OF PANEL

4.1 The Panel shall continue until [TBC – anticipated to be July 2021].

4.2 The Contractor may withdraw from the Panel on 3 months written notice.

4.3 ACARA may extend the Panel for a further period of 12 months after the expiry date on 3 months written notice to the Contractor.

4.4 ACARA reserves the right to extend the Panel of Preferred Providers, to extend the test domains, or to appoint other Contractors to the Panel of Preferred Providers in its absolute discretion and to extend particular members of the panel at ACARA's absolute discretion.

5. FORMATION OF PURCHASE ORDER AGREEMENT

- 5.1 When ACARA requires the Contractor to perform a Project, it will provide the Contractor with a Purchase Order.
- 5.2 A Purchase Order will state the Project and include the Project Brief, the Commencement Date, the Completion Date and the Project Fee.
- 5.3 A Purchase Order Agreement will be formed when the Contractor accepts the Purchase Order.

6. DOCUMENTS COMPRISING PURCHASE ORDER AGREEMENT

- 6.1 A Purchase Order Agreement will consist of:
 - (a) this Deed containing the terms and conditions under which the Contractor will perform each Project; and
 - (b) a Purchase Order containing the details of each Project.

7. NO OBLIGATION TO PROVIDE A PURCHASE ORDER

The Contractor agrees and accepts that it is a condition of this Deed that:

- (a) ACARA is not obliged to offer the Contractor a Purchase Order or to otherwise engage the Contractor to perform any Project during the Term; and
- (b) ACARA may at any time in its sole and absolute discretion put out a request for tender, engage one or more third parties to perform a Project, or perform a Project using its own employees.

8. NATURE OF RELATIONSHIP

- 8.1 If the Contractor is engaged to perform a Project, it will be engaged as an independent contractor. Nothing in this Deed will constitute the Contractor as an employee, agent, partner or joint-venturer of ACARA.
- 8.2 The Contractor must not represent itself, and must use its best endeavours to ensure that its officers, employees and agents do not represent themselves, as being an officer, employee, partner or agent of ACARA, or as otherwise able to bind or represent ACARA.
- 8.3 The Contractor has no authority to incur, and must not incur, any obligation on behalf of ACARA except with the express written instruction of ACARA.
- 8.4 The Contractor must, if using ACARA's premises or facilities to perform a Project, comply with all reasonable directions and ACARA procedures relating to occupational health and safety, equal opportunity and harassment, information technology and security in effect at those premises or in regard to those facilities, as notified by ACARA.
- 8.5 The Contractor is responsible for:

- (a) remuneration and benefits, including without limitation superannuation contributions and statutory leave;
- (b) work care levies, taxes, superannuation guarantee charges and other imposts or levies imposed by law; and
- (c) any payment upon termination of service

payable to or in respect of the Employee.

8.6 The Employee is authorised to represent and bind the Contractor for the purposes of this Deed.

9. NON-SOLICITATION

9.1 The Contractor must not solicit or entice away (or attempt to do so) any employee of ACARA, or engage any such person as a contractor, employee or in any other capacity.

10. RELATIONSHIP WITH PROJECT MANAGER

10.1 The Contractor must perform each Project to the satisfaction of the Project Manager.

10.2 During the performance of each Project, the Contractor agrees to liaise with the Project Manager and comply with any reasonable request made by the Project Manager.

11. PAYMENT

11.1 In consideration of performing a Project and subject to clause 11.2, ACARA will pay the Contractor within 30 days of the end of the month it receives from the Contractor a tax invoice for payment provided the timing and amount of such invoice is in accordance with the payment details described in a Purchase Order Agreement.

11.2 ACARA will be entitled, without derogating from any other right it may have, to defer payment until the Contractor has completed the component of a Project relevant to the submitted invoice to the satisfaction of ACARA.

11.3 In relation to taxable supplies made under this Deed, the Contractor will issue ACARA with either:

- (i) a tax invoice in accordance with the GST Act; or
- (ii) a document satisfying the minimum Australian Taxation Office information requirements to entitle a recipient of a taxable supply to claim an input tax credit without being in possession of a tax invoice.

- 11.4 A tax invoice must comply with the requirements of all laws relating to GST and unless inconsistent with such law must specify:
- (a) the Contractor's Australian Business Number;
 - (b) the fee due to the Contractor and the basis for the calculation of such fee;
 - (c) the amount of any GST paid or payable by the Contractor with respect to the fee specified on the invoice;
 - (d) the Project or the part of the Project to which the invoice relates;
 - (e) the Purchase Order and batch number; and
 - (f) any other information specified by the Project Manager.
- 11.5 The Contractor must pay all taxes, charges, fees and other amounts due in respect of:
- (a) this Deed; or
 - (b) any payment to be made by ACARA to the Contractor under a Purchase Order Agreement.
- 11.6 Payment of an invoice is not evidence or an admission that the Project or any part of the Project has been performed in accordance with a Purchase Order to the satisfaction of the Project Manager or any other evidence or admission and is only ever to be understood as payment of an account rendered.

12. PROPERTY IN MATERIALS AND CONTRACTOR IDENTIFICATIONS

- 12.1 All materials and information made available by ACARA to the Contractor remain the property of ACARA.
- 12.2 The Contractor must not and must ensure that the Employee does not, use ACARA's trade-marks or other identifications without ACARA's prior written consent.

13. CONFIDENTIAL INFORMATION

- 13.1 The Contractor must not unless ACARA has first agreed in writing:
- (a) disclose to anyone else, or
 - (b) use for a purpose other than the performance of a Project,
- any of the Confidential Information.
- 13.2 The Contractor may make copies of written or computer stored materials incorporating Confidential Information only if those copies are necessary for the purpose of performing a Project and must:

- (a) return to ACARA all Confidential Information (including any copies made by it); and
- (b) permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval,

upon the expiration or earlier termination of this Deed, or a Purchase Order Agreement only, and provide written notification to ACARA that these obligations have been complied with.

- 13.3 The Contractor must maintain strict security in relation to the Confidential Information and must take such steps to safeguard it from unlawful or accidental disclosure as a prudent contractor would take to safeguard its own confidential information.
- 13.4 The Contractor must notify ACARA immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Deed and must take all steps reasonably required by ACARA to stop that unauthorised disclosure, use or copying.
- 13.5 The Contractor must restrict disclosure of the Confidential Information to its Employee and must ensure that the Employee executes a confidentiality agreement with the same effect as this clause 13 but excluding this clause 13.5.
- 13.6 The Contractor acknowledges and accepts that monetary damages would be an insufficient remedy for breach of this clause and that, in addition to any other remedy available, ACARA is entitled to injunctive relief to prevent a breach of this clause and to compel specific performance of this clause.
- 13.7 The obligations of the Contractor under this clause [13] are subject to any rights that the Contractor may have under the Public Interest Disclosure Act 2013.

13A ACARA Material

- 13A.1 ACARA agrees to provide Material to the Contractor as specified in the relevant Purchase Order Agreement.
- 13A.2 ACARA grants (or will procure) a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the ACARA Material for the purposes of the relevant Purchase Order Agreement.
- 13A.3 The Contractor agrees to use the ACARA Material strictly in accordance with any conditions or restrictions set out in the relevant Purchase Order Agreement, and any direction from ACARA.

14. INTELLECTUAL PROPERTY, MORAL RIGHTS AND CONTRACT MATERIAL

Contract Material:

14.1 The Contractor must ensure that all Intellectual Property in the Contract Material has been correctly licensed in accordance with this clause [14] and the *Copyright Act 1968 (Cth)*.

14.2 Subject to clause [14.6] below, the Contractor acknowledges and agrees that:

- (a) nothing in this Deed grants the Contractor any Intellectual Property or other rights in Contract Material; and
- (b) Intellectual Property in all Contract Material arising as a result of the performance of the Project or otherwise will vest exclusively in ACARA,

and the Contractor will execute all documents that are necessary or desirable to ensure all Contract Material and all Intellectual Property in them become and remain vested in ACARA.

ACARA Material:

14.3 ACARA agrees to ensure that the Contractor has access to the ACARA Material as specified in **Item 7** of the Schedule.

14.4 ACARA grants (or will procure) a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the ACARA Material for the purposes of this Deed.

14.5 The Contractor agrees to use the ACARA Material only for the purposes of providing services under this Deed.

Existing Material and Third-Party Material – licence terms:

14.6 Clause [14.2] does not affect the ownership of Existing Material or Third-Party Material included in the Contract Material. In relation to Existing Material and Third-Party Material included in the Contract Material, the Contractor grants (or will procure for) ACARA a non-commercial, perpetual, irrevocable, world-wide, non-exclusive, royalty-free, licence to:

- (a) adapt, edit or modify;
- (b) communicate to the public on any Platform, such as by uploading the Copyright Material to a public Platform or emailing the Copyright Material;
- (c) distribute;

- (d) perform, cause to be seen or heard in public;
- (e) make a cinematograph film of;
- (f) publish (making the Copyright Material public for the first time);
- (g) reproduce or copy (such as by making photocopies);
- (h) sub-license; and
- (i) otherwise use,

the Copyright Material in print and digital formats in connection with the National Assessment Program (**NAP**), including (without limitation):

- (j) in ACARA's research and development tests; and
- (k) for those NAP tests conducted online, use, reproduction and communication by Education Services Australia Limited (**ESA**) for the sole purpose of operating the online assessment platform that will contain the Copyright Material. ESA is a national, not-for-profit company owned by all Australian education ministers (www.esa.edu.au/),

and for post-test uses, including (without limitation):

- (l) conducting research relating to either or both of the NAP and the Australian Curriculum; and
- (m) supporting the advancement of student learning outcomes and teacher professional development by enabling Education Bodies to include the Copyright Material in student and teacher Support Materials.

14.7 For the purpose of this clause 14:

- (a) **Australian Curriculum** means all information published by ACARA on its website <https://www.australiancurriculum.edu.au/> as updated or revised from time to time or any later website used by ACARA to publish the approved national curriculum;
- (b) **Education Bodies** means education bodies including the Commonwealth, State and Territory Departments of Education, State and Territory education authorities, universities and other education bodies, including (without limitation) the Australian Institute for Teaching and School Leadership, Education Services Australia Limited, schools (government and non-government), and non-government school authorities;
- (c) **NAP** means the National Assessment Program - Literacy and Numeracy (NAPLAN), and the three-yearly sample assessments in science

literacy, civics and citizenship, and information and communication technology (ICT) literacy;

- (d) **Support Materials** means materials made available in different formats, including (without limitation) hard copy, on disk, and digital as downloaded from the Platforms of the Education Bodies; and
- (e) **Platforms** means any service or medium used for electronic communication including (without limitation) both password protected and publicly accessible websites, email, social media, mobile telephony, IPTV, multimedia programs and apps, now known or developed in the future. For the avoidance of doubt, ACARA will use reasonable endeavours to ensure that Copyright Material available on its websites cannot be downloaded separately from the NAP materials in which they are included.

Template Licensing Deed (no payment) and Licensing agreement (payment)

- 14.8 Unless otherwise agreed in writing between the parties, the Contractor must use either ACARA's template Licensing Deed (no payment) (**Annexure A**) or ACARA's template Licensing Agreement (**Annexure B**), to procure all licences for Third Party Material.
- 14.9 If any third-party copyright owner does not agree to the licence terms contained in ACARA's template deed or agreement, or insists on using their own licence agreement, the Contractor must liaise with the Project Manager to obtain instructions and, where agreed, negotiate with the third-party copyright owner using the suggested form of words provided by the Project Manager (if any is provided).
- 14.10 If the third-party copyright owner does not agree with the licence terms proposed by the Contractor in any negotiations, the Contractor must obtain written approval from the Project Manager prior to accepting the third-party copyright owner's licence terms.

Images sourced from Alamy Australia Pty Limited

- 14.11 To assist the Contractor in sourcing images that are consistent with ACARA's licence requirements in clause [14.6], ACARA has negotiated an agreement with a stock image library, Alamy Australia Pty Limited (**Alamy**).
- 14.12 As part of initiating the Project, the Project Manager will brief the Contractor on the process of using Alamy.
- 14.13 It is the Contractor's responsibility to liaise directly with Alamy to arrange for access to the images that are part of ACARA's licence agreement. It is important to note that some images on the Alamy website may not be able to be licensed to ACARA, depending on whether geographical restrictions apply.

Moral Rights:

- 14.14 If the Licensor is an individual, ACARA acknowledges that the Licensor may have Moral Rights in the Existing Material or Third-Party Material included in the Contract Material. To the fullest extent permitted by law, the Licensor voluntarily, irrevocably and unconditionally consents to the performance of the Permitted Acts by ACARA, its licensees and successors which would otherwise infringe the Licensor's Moral Rights in respect of the Existing Material or Third-Party Material included in the Contract Material, and waives the Licensor's Moral Rights.
- 14.15 If the Licensor is an organisation or company, ACARA acknowledges that Moral Rights may subsist in the Existing Material or Third-Party Material included in the Contract Material. To the fullest extent permitted by law, the Licensor will (and will procure that the author of the Existing Material or Third-Party Material will) voluntarily, irrevocably and unconditionally consent to the performance of the Permitted Acts by ACARA, its licensees, and successors which would otherwise infringe the Moral Rights in respect of the Existing Material or Third-Party Material, and waive any Moral Rights in respect of the Existing Material or Third-Party Material included in the Contract Material.
- 14.16 Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the Copyright Act 1968 (Cth) as amended from time to time, and any similar rights capable of protection under the laws of any other jurisdiction.
- 14.17 Clauses [14.14] and [14.15] do not apply to any ACARA Material incorporated in the Contract Material.
- 14.18 In this clause, the Permitted Acts are any and all of the following classes or types of acts or omissions:
- (a) using, reproducing, publishing, communicating, adapting or exhibiting all or any part of the Contract Material;
 - (b) supplementing the Contract Material with any other Material;
 - (c) using the Contract Material in a different context to that originally envisaged;
 - (d) use of the Contract Material for advertising or promotional purposes of any kind;
 - (e) incorporating the Contract Material into Platforms, other assessments or as part of a professional development program;
 - (f) use of the Contract Material in tests and test items;

- (g) editing, contextualising, summarizing or truncating the Contract Material for use in tests and test items or reference to editing of the Contract Material;
- (h) associating an item of Contract Material with similar or different items of Contract Material;
- (i) use by Education Bodies including the Contract Material in workshop presentations, posters and other teacher development materials; and
- (j) publication of Contract Material in tests online on Platforms by ACARA and the States and Territories;

but does not include false attribution of authorship.

Copyright Collecting Society:

14.19 The Contractor agrees that it will not require any person or organisation to make any payment to any copyright collecting society or other similar organisation for any copying or any other uses of the Contract Material.

Contractor Warranty:

14.20 The Contractor warrants that:

- (a) it has (or will procure) all necessary right, title, permission, clearances or authority to grant the licence granted in clause [14.6] (including without limitation all necessary Intellectual Property rights);
- (b) it has obtained all valid consents from all authors of works or other material included in the Contract Material so that the use of the Contract Material by ACARA, or any party authorized by ACARA, for the Permitted Acts will not infringe the relevant author's Moral Rights under the Copyright Act 1968;
- (c) the grant of any rights conferred on ACARA under this Deed will not infringe the rights including, without limitation, the Intellectual Property rights of any person;
- (d) it has not entered into any agreement that conflicts with the rights granted to ACARA under this Deed; and
- (e) the rights in any Existing Material and Third Party Material are free and clear of all encumbrances and the Contractor has no knowledge of existing or threatened claims or litigation which may affect or impair any of the Contract Material licensed to ACARA during the Term.

Intellectual Property Register:

14.21 For each Project, the Contractor will submit an electronic Intellectual Property Register (the IP Register) on an ongoing basis by entering and uploading data directly into the IP database nominated by ACARA. The IP Register must be

finalised and submitted to ACARA by the date agreed by ACARA and the Contractor.

14.22 ACARA will provide the Contractor with access to the nominated IP database and initial training and support at ACARA's expense.

Intellectual Property Licences:

14.23 The Contractor must also provide ACARA with a copy of each of the Intellectual Property licences obtained in compliance with clause [14.6] by scanning and uploading them into the nominated IP database on an ongoing basis. All Intellectual Property licences must be approved by the copyright holder and submitted to ACARA by the date agreed by ACARA and the Contractor.

14.24 If ACARA determines that the IP licence does not comply with this clause [14.6], the Contractor must re-negotiate with the copyright owner to obtain a compliant licence for the stimulus material or submit replacement stimulus material with a compliant licence by the date agreed by ACARA and the Contractor.

14.25 The Contractor acknowledges that no new or replacement stimulus material can be submitted after the date agreed by ACARA and the Contractor.

Copyright Statement:

14.26 In all publications produced by the Contractor for ACARA under this Deed, the Contractor will include the copyright statement set out in **item 8** of the Schedule, or such other statement as notified to the Contractor by ACARA from time to time.

15. INSURANCE

15.1 The Contractor agrees:

a. to effect and maintain:

- i. workers' compensation insurance as required by law;
- ii. public liability insurance to a value of \$10,000,000;
- iii. professional insurance to a value of \$5,000,000 and

b. on request, to provide proof of insurance acceptable to ACARA.

This clause 15 continues in operation for so long as any obligations remain in connection with the contract. Any professional indemnity insurance coverage must be in effect from the commencement of the contract and maintained for a period of at least two (2) years after the expiry of the contract.

16. SUBCONTRACTORS

16.1 The Contractor may only engage subcontractors to assist in the performance of a Project if ACARA has given prior written approval to the use of a specific subcontractor (Subcontractor).

- 16.2 If the Contractor engages a Subcontractor, the Contractor:
- (a) must ensure the terms of this Deed, other than this clause 16, apply to the Subcontractor as if the Subcontractor were the Contractor;
 - (b) is liable to ACARA for the acts and defaults of that Subcontractor as if they were the acts and defaults of the Contractor; and
 - (c) must ensure that the Subcontractor agreement is immediately terminable if the relevant Purchase Order Agreement is terminated.
- 16.3 ACARA may, in its absolute discretion, request the Contractor to terminate the engagement of a Subcontractor.
- 16.4 Notwithstanding any consent granted by ACARA pursuant to clause 16.1, the Contractor remains liable for ensuring that the subcontractor complies with its obligations, and that any work undertaken by a subcontractor conforms with the requirements of this Deed.

17. INDEMNITY

- 17.1 The Contractor must indemnify ACARA and keep it indemnified against any losses (including liabilities of ACARA to third parties), costs and expenses (including legal fees) arising out of:
- (a) any default, fraudulent, reckless or negligent act or omission by the Contractor;
 - (b) any breach of any term of this Deed or a Purchase Order Agreement by the Contractor;
 - (c) Contract Material being in breach of any law, containing anything alleged or proven to be defamatory or statements purporting to be factual or true failing to be so;
 - (d) any misuse or disclosure of Confidential Information by the Contractor;
 - (e) any claim by any third party that its Intellectual Property or Moral Rights have been infringed by ACARA, the Australian Government's or any other party's use or exploitation of Contract Material; and
 - (f) any delay by the Contractor in performing its obligations pursuant to this Deed, unless due to the delay of ACARA.

18. EXPIRY, TERMINATION, BREACH

- 18.1 If not terminated sooner, this Deed expires at the earlier of:
- (a) the completion of the Term;

- (b) the termination or reduction of funding from the Australian Government.
- 18.2 ACARA may terminate this Deed or a Purchase Order Agreement by notice to the Contractor if:
- (a) the Contractor does not perform a Project within the time, or at the standard, required or acceptable to ACARA (as the case may be) or otherwise breaches a provision of this Deed or a Purchase Order Agreement and that failure or breach:
 - (i) is incapable of remedy; or
 - (ii) if capable of remedy, continues for 5 days after ACARA gives the Contractor a notice requiring the breach to be remedied; or
 - (b) the Contractor becomes the subject of an application for winding up, calls a meeting of its creditors, has a receiver appointed over all or a substantial part of its assets, passes a resolution for its winding up, has judgment entered against it for any cause, compromises with its creditors, or enters into a scheme of arrangement with its creditors.
- 18.3 Notwithstanding clauses 18.1 and 18.2 above, ACARA may terminate this Deed or a Purchase Order Agreement in whole or in part immediately without cause upon the provision of written notice at any time.
- 18.4 On termination of the Deed or a Purchase Order Agreement, the Contractor must:
- (a) stop work as specified in any notice;
 - (b) take all available steps to minimise loss resulting from that termination and to protect all Contract Material; and
 - (c) continue work on any part of the Project not affected by the notice; and further
- on termination or expiry of this Deed or a Purchase Order Agreement, the Contractor must:
- (d) deliver to ACARA all material and information made available by ACARA to the Contractor and all Contract Material.
- 18.5 In the event of partial termination, ACARA's liability to make payment will, in the absence of agreement to the contrary, abate proportionally to the reduction in a Project.
- 18.6 Notwithstanding any other provision of this Deed and unless otherwise notified in writing by ACARA, the termination of a Purchase Order Agreement will not operate to terminate this Deed or other Purchase Order Agreements and the termination or expiry of this Deed will not operate to terminate a Purchase Order Agreement prior to its Completion Date.

- 18.7 ACARA will not be liable to pay any compensation to the Contractor, including, without limitation, compensation for loss of prospective profits, in relation to termination of this Deed or a Purchase Order Agreement.
- 18.8 ACARA's rights under this clause 18 are without prejudice to any right of action or remedy which has accrued or may accrue in favour of the ACARA.
- 18.9 The rights and obligations contained in clauses 12 (Property in Materials and Contractor Identifications), 13 (Confidential Information), 14 (Intellectual Property, Moral Rights and Contract Material), 15 (Insurance), 17 (Indemnity) and 18.4 (Expiry, Termination, Breach) bind the parties notwithstanding the termination or expiry of this Deed.

19. ASSIGNMENT

- 19.1 This Deed is personal to the Contractor. The Contractor may not assign or novate the benefit of this Deed or any part of either of them.
- 19.2 ACARA may assign all or any part of its rights under this Deed, or novate this Deed in whole or in part, to a third party by giving the Contractor written notice of such assignment or novation.

20. ENFORCEABILITY OF DEED

- 20.1 The invalidity or unenforceability of any part or provision of this Deed does not affect the enforceability of any other part or provision of this Deed and the invalid or unenforceable part is severable.

21. CHANGES TO DEED

- 21.1 Modifications and amendments to this Deed must be in writing signed by each of the parties.

22. NOTICES

- 22.1 A notice, consent, approval or other communication (each a Notice) under this Deed must be in writing signed by or on behalf of the person giving it, addressed to the person to whom it is to be given.
- 22.2 A Notice may be given by personal delivery, pre-paid mail or facsimile and is treated as having been given and received:
- (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
 - (b) if sent by pre-paid mail, on the fifth business day after posting; or

- (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.

22.3 For the purpose of this clause the address of ACARA is:

Attention: Robert Randall, Chief Executive Officer, Australian Curriculum, Assessment and Reporting Authority

Address: Level 13, 280 Elizabeth Street, Sydney, NSW 2000

and the address of the Contractor is the address set out in the schedule or, in either case, another address of which a party has given Notice to the other party.

23. GOVERNING LAW

- 23.1 Any claims under this Deed are governed by the law in force in New South Wales.
- 23.2 The Contractor will comply with the Local Laws in the provision of the works or services for the Project.
- 23.3 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts, which may hear appeals from those courts in respect of any proceedings in connection with this Deed.

24. DISPUTE RESOLUTION

- 24.1 A party will not commence arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute, difference, question or claim arising out of this Deed (Dispute) unless it has complied with this clause.
- 24.2 A party claiming a Dispute has arisen will notify the other party giving details of the Dispute (Notification).
- 24.3 On receipt of a Notification each party agrees to negotiate with the other party in good faith to resolve such a Dispute.
- 24.4 If the Dispute is not resolved under clause 24.3 within 5 business days of the Notification, the parties will refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited (ACDC) for resolution in accordance with the Mediation Guidelines of the ACDC and will enter into ACDC's standard mediation agreement in force at the time this Deed is executed by the parties, or such other mediation as is agreed by the parties. The costs of any mediation are to be borne equally between the parties.
- 24.5 If the Dispute is not resolved under clause 24.4 within 10 days of referral to ACDC, either party may initiate proceedings in a court.

24.6 Despite the existence of a Dispute, each party will (unless requested not to do so) continue to perform its obligations under this Deed.

24.7 Termination of the Deed or a Purchase Order Agreement under Clause 18 is not considered a dispute between the parties within this clause 24 and does not give rise to a right of a party to seek resolution of the matter under this clause 24.

25. COSTS

25.1 Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this Deed or any Purchase Order Agreement.

25.2 A party in default under this Deed must pay the costs of the non-defaulting party in respect of the enforcement of its rights under this Deed.

26. CONFLICT OF INTEREST

26.1 The Contractor warrants that it has no, and for the Term will not have any, duties or interests that create, or might reasonably be anticipated to create, a conflict with its duties and obligations under this Deed when performing a Project.

26.2 If a conflict of interest arises, or appears likely to arise during the term of this Deed, the Contractor must

- (a) notify ACARA immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict of interest; and
- (c) take such steps as ACARA may reasonably require to resolve or otherwise deal with the conflict.

27. WAIVER

27.1 No right or obligation under this Deed will be deemed to be waived except upon written acknowledgement signed by each party.

27.2 A waiver by ACARA will not prejudice any of its rights with respect to any subsequent breach of this Deed by the Contractor.

27.3 Subject to clause 27.1, any failure by ACARA to enforce any right or obligation under this Deed, or any forbearance, delay or indulgence granted by ACARA to the Contractor, will not be construed as a waiver of ACARA's rights under this Deed.

28. WORKING WITH CHILDREN

- 28.1 If the provision of the works or services for the purposes of the Project requires the Contractor or its Employees to come into contact with children or vulnerable people, the Contractor must comply with all Local Laws related to working with children or vulnerable people and ensure that it's Employees also comply.
- 28.2 The Contractor must provide such evidence as ACARA reasonably requires confirming that it and it's employees have the requisite approval to work with children or vulnerable people.

29. PARAMOUNTCY

- 29.1 If any part of this Deed conflicts with another part, or if any inconsistency arises between aspects of this Deed, that part of the Deed higher in the following list will take precedence:
- a) the terms and conditions contained in the clauses of this Deed;
 - b) a Purchase Order;
 - c) the Schedule; and
 - d) the Attachment.

30. ACCESS TO DOCUMENTS

- 30.1 In this clause 30, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 30.2 The Contractor acknowledges that this agreement is a Commonwealth contract.
- 30.3 Where ACARA has received a request for access to a document created by, or in the possession of the Contractor or any subcontractor that relates to the performance of this contract (and not to the entry into the contract), ACARA may at any time by written notice require the Contractor to provide the document to ACARA and the Contractor must, at no additional cost to ACARA, promptly comply with the notice.
- 30.4 The Contractor must include in any subcontract relating to the performance of this contract provisions that will enable the Contractor to comply with its obligations under this clause 29.

31. PRIVACY

31.1 Interpretation

- 31.1.1 In this clause 30:

Australian Privacy Principle

Has the same meaning as it has in the *Privacy Act 1988 (Cth)*.

31.2 Obligations of Contractor in relation to privacy

31.2.1 The Contractor agrees, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by ACARA, would be a breach of an Australian Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations referred to, or relating to the matters set out, by ACARA, to the extent that they are consistent with the Australian Privacy Principles.

31.2.2 The Contractor agrees to notify ACARA immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 30.

EXECUTED BY THE PARTIES AS A DEED:

SIGNED for and on behalf of the
**AUSTRALIAN CURRICULUM, ASSESSMENT
AND REPORTING AUTHORITY** by its duly
authorised officer:

SIGNED for and on behalf of the
^Party 2 Name^ by its duly authorised
officer:

Signature of authorised officer

Signature of authorised officer

Name and title of authorised officer

Name and title of authorised officer

Witness

Witness

Print name of witness

Print name of witness

Date

Date

SCHEDULE

1. Term

Three (3) years

2. Commencement Date

(TBC)

3. Completion Date

(TBC)

4. Contractor

^Party 2 Name^

5. Project Manager

The Project Manager is the person for the time-being holding, occupying or performing the duties of Chief Information Officer (CIO).

6. Contractor's address for Notice

^Party 2 Address^

Tel: ^Party 2 telephone^

Email: ^Party 2 email^

7. ACARA Material (see clause 14.3)

Not applicable.

8. Copyright statement (see clause 14.24)

This section to be tailored, depending on what the product or service that is being created/provided, and whether the product/service is being published on one of our websites.

Attachment

SAMPLE PURCHASE ORDER

This Purchase Order is provided to you in accordance with and incorporates the terms and conditions of the Deed of Agreement between the Australian Curriculum, Assessment and Reporting Authority and ^Party 2 Name^ dated [] (Deed).

If you agree to perform the Project described in the Project Brief on the terms and conditions of the Deed please sign where indicated on the last page of this Purchase Order. Your acceptance of this Purchase Order, incorporating the Deed, will become the agreement according to which you perform the Project.

Commencement Date

Completion Date

Project Fee

Project Brief

Employee

Existing Material

Milestones and Deliverables

Liquidated Damages (if applicable)

Special Conditions (if applicable)

ANNEXURE A – PERMISSION REQUEST

(see clause 14.8)

Notes:

1. This deed is **not** to be used for ACARA staff that provide materials (covered under employment contract) or for employees of ACARA's contractors (covered by terms of agreement between ACARA and the contractor).
2. This deed is **only** to be used where there is **no licence fee** required by the third-party copyright owner.

[Insert Date]

[Insert Name & Address]

By email: [insert email address]

Dear [insert name],

Re: Copyright permission request

Copyright Material: [insert detailed description of material]

[Insert name of external contractor], on behalf of the Australian Curriculum, Assessment and Reporting Authority (**ACARA**), seeks permission to licence the Copyright Material above in connection with ACARA's National Assessment Program (**NAP**) and for various post-test uses (see below).

ACARA supports the advancement of student learning outcomes and teacher professional development. If the Copyright Material is selected for inclusion in the NAP, ACARA may provide the Copyright Material to educational organisations for post-test uses. You can find further details in the attached licensing deed (**Deed**).

To grant your permission, please sign, scan and return the attached Deed by email (to the email address listed at the top of the Deed) prior to our deadline of [insert deadline date]. Please note:

Signing the Deed:

- 1) For companies incorporated under the Corporations Act 2001 (Cth), please arrange for the Deed to be signed by:
 - a. Two (2) directors of the company;
 - b. A director and a company secretary of the company; or
 - c. For a proprietary company that has a sole director who is also the sole company secretary, that director. In this case, please ensure that the director states next to their signature that they are the sole director and sole company secretary of the company.
- 2) For individuals: please arrange for the Deed to be signed in front of a witness, who must be eighteen years of age or older and not a party to the Deed. Where there are two individuals noted as parties to this Deed, both individuals must sign the Deed.

Please do not hesitate to contact me by phone or email should you have any questions or wish to discuss this request further.

ACARA appreciates your support in helping to improve the educational outcomes for all young Australians.

Yours sincerely,

[Insert Signature including phone number and email address]

Licensing Deed

ATTENTION: [Insert name of Permission/Licensing Manager]

EMAIL: [Insert email address for return of completed forms]

This Deed is made between and binds the following parties:

1. Australian Curriculum, Assessment and Reporting Authority (ABN 54 735 928 084) of Level 13, 280 Elizabeth Street, Sydney, NSW (**ACARA**); and
2. [insert name of person or company] (**Licensor**).

In consideration of the mutual promises contained in this document, the parties to this Deed agree as follows:

1. Copyright Material:

Detailed description of copyright material, noting whether it has been adapted

2. Grant of Licence:

The Licensor hereby grants to ACARA a non-commercial, perpetual, irrevocable, world-wide, non-exclusive, royalty-free, licence to:

- a. adapt, edit or modify;
- b. communicate to the public on any Platform, such as by uploading the Copyright Material to a public Platform or emailing the Copyright Material;
- c. distribute;
- d. perform, cause to be seen or heard in public;
- e. make a cinematograph film of;
- f. publish (making the Copyright Material public for the first time);
- g. reproduce or copy (such as by making photocopies);
- h. sub-license; and
- i. otherwise use,

the Copyright Material in print and digital formats in connection with the National Assessment Program (**NAP**), including (without limitation):

- j. in ACARA's research and development tests; and
- k. for those NAP tests conducted online, use, reproduction and communication by Education Services Australia Limited (**ESA**) for the sole purpose of operating the online assessment platform that will contain the Copyright Material. ESA is a national, not-for-profit company owned by all Australian education ministers (www.esa.edu.au/),

and for post-test uses, including (without limitation):

- l. conducting research relating to either or both of the NAP and the Australian Curriculum; and
- m. supporting the advancement of student learning outcomes and teacher professional development by enabling Education Bodies to include the Copyright Material in student and teacher Support Materials.

3. For the purpose of this Deed:

- a. **Australian Curriculum** means all information published by ACARA on its website <http://www.australiancurriculum.edu.au> as updated or revised from time to time or any later website used by ACARA to publish the approved national curriculum;
- b. **Education Bodies** means education bodies including the Commonwealth, State and Territory Departments of Education, State and Territory education authorities, universities and other education bodies, including (without limitation) the Australian Institute for Teaching and School Leadership, Education Services Australia Limited, schools (government and non-government), and non-government school authorities;
- c. **NAP** means the National Assessment Program - Literacy and Numeracy (NAPLAN), and the three-yearly sample assessments in science literacy, civics and citizenship, and information and communication technology (ICT) literacy;
- d. **Support Materials** means materials made available in different formats, including (without limitation) hard copy, on disk, and digital as downloaded from the Platforms of the Education Bodies; and
- e. **Platforms** means any service or medium used for electronic communication including (without limitation) both password protected and publicly accessible websites, email, social media, mobile telephony, IPTV, multimedia programs and apps, now known or developed in the future. For the avoidance of doubt, ACARA will use reasonable endeavours to ensure that Copyright Material available on its websites cannot be downloaded separately from the NAP materials in which they are included.

4. Licence Fee: Nil

5. Acknowledgement:

ACARA agrees to provide the following acknowledgement:

Please insert the exact wording you require for acknowledging the source

6. Moral Rights Consent:

- a. If the Licensor is an individual, ACARA acknowledges that the Licensor may have Moral Rights in the Copyright Material. To the fullest extent permitted by law, the Licensor voluntarily, irrevocably and unconditionally consents to the performance of the Permitted Acts by ACARA, its licensees and successors which would otherwise infringe the Licensor's Moral Rights in respect of the Copyright Material, and waives the Licensor's Moral Rights.
- b. If the Licensor is an organisation or company, ACARA acknowledges that Moral Rights may subsist in the Copyright Material. To the fullest extent permitted by law, the Licensor will (and will procure that the author of the Copyright Material will) voluntarily, irrevocably and unconditionally consent to the performance of the Permitted Acts by ACARA, its licensees, and successors which would otherwise infringe the Moral Rights in respect of the Copyright Material, and waive any Moral Rights in respect of the Copyright Material.
- c. Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the Copyright Act 1968 (Cth) as amended from time to time, and any similar rights capable of protection under the laws of any other jurisdiction.
- d. The Permitted Acts are any and all of the acts referred to in clause 2(a) – (m), including (without limitation) the following classes or types of acts or omissions:
 - i. using, reproducing, publishing, communicating, adapting, exhibiting all or any part of the Copyright Material;

- ii. supplementing the Copyright Material with any other material;
- iii. using the Copyright Material in a different context to that originally envisaged;
- iv. use of the Copyright Material for advertising or promotional purposes of any kind;
- v. incorporating the Copyright Material into a Platform, other assessments, or as part of a professional development program;
- vi. use of the Copyright Material in tests and test items;
- vii. editing, contextualising, summarizing or truncating the Copyright Material for use in tests and test items or reference to editing of the Copyright Material;
- viii. associating an item of Copyright Material with similar or different items of Copyright Material;
- ix. use by Education Bodies such as including the Copyright Material in workshop presentations, posters and other teacher development materials; and
- x. publication of Copyright Material in tests online on Platforms by ACARA and the Education Bodies,

but does not include false attribution of authorship.

EXECUTED AS A DEED:

Date: (insert date)

SIGNED, SEALED and DELIVERED for)
and on behalf of the Australian)
Curriculum, Assessment and Reporting)
Authority by:

Dr. Stanley Rabinowitz

General Manager, Assessment and
Reporting

Signature

In the presence of:

Name of witness

Signature of witness

If Licensor is a company:

SIGNED, SEALED and DELIVERED for)
and on behalf of the **Licensor** by:)
)

Name of signatory

Signature

Director/Secretary

In the presence of:

Name of witness

Signature of witness

SIGNED, SEALED and DELIVERED for)
and on behalf of the **Licensor** by:)
)

Name of signatory

Signature

ANNEXURE B – PERMISSION REQUEST

(see clause 14.8)

Notes:

3. This letter is **not** to be used for ACARA staff that provide materials (covered under employment contract) or for employees of ACARA’s contractors (covered by terms of agreement between ACARA and the contractor).
4. This letter is **only** to be used where the contractor pays the third-party copyright owner a fee.

[Insert Date]

[Insert Name & Address]

By email: [insert email address]

Dear [insert name],

Re: Copyright permission request

Copyright Material: [insert detailed description of material]

[Insert name of external contractor], on behalf of the Australian Curriculum, Assessment and Reporting Authority (**ACARA**), seeks permission to licence the Copyright Material above in connection with ACARA’s National Assessment Program (**NAP**) and for various post-test uses (see below).

ACARA supports the advancement of student learning outcomes and teacher professional development. If the Copyright Material is selected for inclusion in the NAP, ACARA may provide the Copyright Material to educational organisations for post-test uses. You can find further details in the attached copyright permission form (**Permission Form**).

To grant your permission, please sign, scan and return the attached permission form by email (to the email address listed at the top of the Permission Form) prior to our deadline of [insert deadline date].

In the Permission Form, please nominate the amount of the licence fee, noting the educational context of the use and the fact that ACARA does not allow the Copyright Agency Limited to collect fees on its behalf.

Please do not hesitate to contact me by phone or email should you have any questions or wish to discuss this request further.

ACARA appreciates your support in helping to improve the educational outcomes for all young Australians.

Yours sincerely,

[Insert Signature including phone number and email address]

COPYRIGHT PERMISSION FORM

ATTENTION: [Insert name of Permission/Licensing Manager]

EMAIL: [Insert email address for return of completed forms]

7. Copyright Material:

Detailed description of copyright material, noting whether it has been adapted

8. Grant of Licence:

_____, (Licensor)

(Name of Organisation / Company / Individual – Copyright Owner)

hereby grants to ACARA a non-commercial, perpetual, irrevocable, world-wide, non-exclusive, royalty-free, licence to:

- n. adapt, edit or modify;
- o. communicate to the public on any Platform, such as by uploading the Copyright Material to a public Platform or emailing the Copyright Material;
- p. distribute;
- q. perform, cause to be seen or heard in public;
- r. make a cinematograph film of;
- s. publish (making the Copyright Material public for the first time);
- t. reproduce or copy (such as by making photocopies);
- u. sub-license; and
- v. otherwise use,

the Copyright Material in print and digital formats in connection with the National Assessment Program (**NAP**), including (without limitation):

- w. in ACARA's research and development tests; and
- x. for those NAP tests conducted online, use, reproduction and communication by Education Services Australia Limited (**ESA**) for the sole purpose of operating the online assessment platform that will contain the Copyright Material. ESA is a national, not-for-profit company owned by all Australian education ministers (www.esa.edu.au/),

and for post-test uses, including (without limitation):

- y. conducting research relating to either or both of the NAP and the Australian Curriculum; and
- z. supporting the advancement of student learning outcomes and teacher professional development by enabling Education Bodies to include the Copyright Material in student and teacher Support Materials.

9. For the purpose of this Permission Form:

- f. **Australian Curriculum** means all information published by ACARA on its website <http://www.australiancurriculum.edu.au> as updated or revised from time to time or any later website used by ACARA to publish the approved national curriculum;
- g. **Education Bodies** means education bodies including the Commonwealth, State and Territory Departments of Education, State and Territory education authorities, universities and other education bodies, including (without limitation) the Australian Institute for Teaching and School Leadership, Education Services Australia Limited, schools (government and non-government), and non-government school authorities;

- h. **NAP** means the National Assessment Program - Literacy and Numeracy (NAPLAN), and the three-yearly sample assessments in science literacy, civics and citizenship, and information and communication technology (ICT) literacy;
- i. **Support Materials** means materials made available in different formats, including (without limitation) hard copy, on disk, and digital as downloaded from the Platforms of the Education Bodies; and
- j. **Platforms** means any service or medium used for electronic communication including (without limitation) both password protected and publicly accessible websites, email, social media, mobile telephony, IPTV, multimedia programs and apps, now known or developed in the future. For the avoidance of doubt, ACARA will use reasonable endeavours to ensure that Copyright Material available on its websites cannot be downloaded separately from the NAP materials in which they are included.

10. Licence Fee: *(please note that the use of the items will be for educational purposes)*

AUD \$[50] *

* All amounts require a valid tax invoice and relevant GST information.

11. Acknowledgement:

ACARA agrees to provide the following acknowledgement:

Please insert the exact wording you require for acknowledging the source

12. Moral Rights Consent:

- e. If the Licensor is an individual, ACARA acknowledges that the Licensor may have Moral Rights in the Copyright Material. To the fullest extent permitted by law, the Licensor voluntarily, irrevocably and unconditionally consents to the performance of the Permitted Acts by ACARA, its licensees and successors which would otherwise infringe the Licensor's Moral Rights in respect of the Copyright Material, and waives the Licensor's Moral Rights.
- f. If the Licensor is an organisation or company, ACARA acknowledges that Moral Rights may subsist in the Copyright Material. To the fullest extent permitted by law, the Licensor will (and will procure that the author of the Copyright Material will) voluntarily, irrevocably and unconditionally consent to the performance of the Permitted Acts by ACARA, its licensees, and successors which would otherwise infringe the Moral Rights in respect of the Copyright Material, and waive any Moral Rights in respect of the Copyright Material.
- g. Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the Copyright Act 1968 (Cth) as amended from time to time, and any similar rights capable of protection under the laws of any other jurisdiction.
- h. The Permitted Acts are any and all of the acts referred to in clause 2(a) – (m), including (without limitation) the following classes or types of acts or omissions:
 - xi. using, reproducing, publishing, communicating, adapting, exhibiting all or any part of the Copyright Material;
 - xii. supplementing the Copyright Material with any other material;
 - xiii. using the Copyright Material in a different context to that originally envisaged;
 - xiv. use of the Copyright Material for advertising or promotional purposes of any kind;

- xv. incorporating the Copyright Material into a Platform, other assessments, or as part of a professional development program;
- xvi. use of the Copyright Material in tests and test items;
- xvii. editing, contextualising, summarizing or truncating the Copyright Material for use in tests and test items or reference to editing of the Copyright Material;
- xviii. associating an item of Copyright Material with similar or different items of Copyright Material;
- xix. use by Education Bodies such as including the Copyright Material in workshop presentations, posters and other teacher development materials; and
- xx. publication of Copyright Material in tests online on Platforms by ACARA and the Education Bodies,

but does not include false attribution of authorship.

Signed on behalf of _____ (*company/organisation name*)

by _____ (*name of person authorised to sign*)

_____ (*signature*) on _____ (*date*)

who warrants that he/she/they own(s) or control(s) all copyright in the Copyright Material and holds full authority to grant the licence set out above.