

**PART A – DRAFT CONTRACT**

**DRAFT CONTRACT**

DRAFT CONTRACT IN RELATION TO THE PROVISION OF SERVICES FOR RFT  
2017/02, NAPLAN ONLINE – ITEM TRIAL AUGUST 2017

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 B – REQUEST FOR TENDER  
(INCLUDING TENDER RESPONSE SCHEDULES)** which sets out the  
conditions of tender and tender response requirements.

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## DRAFT CONTRACT

DRAFT DRAFT CONTRACT IN RELATION TO THE PROVISION OF SERVICES FOR RFT 2017/02 NAPLAN ONLINE – ITEM TRIAL AUGUST 2017

### Date

This Contract is made on <sup>^</sup>day (numeric) month (name) year (numeric) in full<sup>^</sup>.

### Parties

This Contract is made between and binds the following parties:

1. **Australian Curriculum, Assessment and Reporting Authority (ACARA)** ABN 54 735 928 084  
Level 13, 280 Elizabeth Street, Sydney NSW 2000
2. <sup>^</sup>Party 2 Name<sup>^</sup> <sup>^</sup>Party 2 ABN and ACN/ARBN if applicable<sup>^</sup>  
<sup>^</sup>Party 2 Address<sup>^</sup> (the Contractor)

### Context

This Contract is made in the following context:

- A. ACARA requires the provision of certain consultancy services in support of its conduct of the National Assessment Program - Literacy and Numeracy (NAPLAN) Online Item Trial August 2017 (the Project). (the **Project**).
- B. The Contractor has fully informed itself about the requirement and has submitted the proposal referred to in Item 1 of the Schedule.
- C. The parties have agreed that the Contractor will perform the Services for ACARA on the terms and conditions set out in this contract.

### Operative Provisions

#### 1. Interpretation

##### 1.1. Definitions

1.1.1. In this contract, unless the context indicates otherwise:

- |                       |   |
|-----------------------|---|
| <b>ACARA</b>          | includes any successor entity to ACARA which is from time to time responsible for administering this contract;  |
| <b>ACARA Material</b> | means any Material: <ol style="list-style-type: none"><li>a. provided by ACARA to the Contractor for the purposes of this contract; or</li><li>b. derived at any time from the Material referred to in paragraph a;</li></ol> |
| <b>Attachment</b>     | means a document attached to the contract or incorporated by reference in the Schedule, and includes the Attachment as amended or replaced from time to time by agreement in writing between the parties;                     |

<b>Business Day (in a place)</b>	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item 25;
<b>Commencement Date</b>	means the date on which this contract is made, unless otherwise specified in Item 5;
<b>Confidential Information (of the Contractor)</b>	means information that is by its nature confidential and is described in Item 20.
<b>Contract Material</b>	means any Material (including Existing Material and Third Party Material): <ul style="list-style-type: none"> <li>a. created for the purposes of this contract;</li> <li>b. provided or required to be provided to ACARA as part of the Services; or</li> <li>c. derived at any time from the Material referred to in paragraphs a or b;</li> </ul>
<b>Education Council</b>	means the COAG Education Council comprised of State, Territory, and Australian Government Ministers with responsibility for the portfolios of school education and early childhood development and includes any successor or replacement body with the same or similar functions
<b>Existing Material</b>	means any Material in existence at the Commencement Date and specified in Item 15;
<b>GST</b>	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
<b>Instalment</b>	means the fee payable under clause 3.1.1.a and Item 10 in relation to a specified part or the whole of the Services;
<b>Intellectual Property</b>	includes: <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> but does not include: <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the non-proprietary rights of performers; or</li> <li>f. rights in relation to Confidential Information;</li> </ul>
<b>Material</b>	means anything in relation to which Intellectual Property rights arise;
<b>Moral Rights</b>	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;

**Official Information** means any information developed, received or collected by or on behalf of ACARA to which the Contractor gains access under or in connection with this contract, and includes the Contract Material and the terms of the contract;

**Personnel** means:

- a. in relation to the Contractor - any natural person who is an officer, employee, agent or professional advisor of the Contractor or of its subcontractors; and
- b. in relation to ACARA - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of ACARA.

**Project Manager** means the person specified (by name or position) in Item 7 or any substitute notified to the Contractor;

**Project Plan** means the plan developed by the parties setting out the timeframe for the delivery of the Services, as approved by ACARA;

**Schedule** means the schedule to this contract entitled 'Contract Details', and includes the Schedule as amended or replaced from time to time by agreement in writing between the parties;

**Services** means the services described in Item 2 and includes the provision to ACARA of the Material specified in Item 3; and

**Specified Personnel** means the Personnel specified in Item 9 as required to perform all or part of the work constituting the Services; and

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

## 1.2. Interpretation

1.2.1. In this contract, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;

- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in the Schedule;
- i. the Schedule and any Attachments form part of this contract;
- j. if any conflict arises between the terms and conditions contained in the clauses of this contract and any part of the Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
- k. if any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

### **1.3. Guidance on construction of contract**

- 1.3.1. This contract records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the contract remains in force.
- 1.3.4. A provision of this contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

### **1.4. Commencement**

- 1.4.1. The terms of this contract apply on and from the Commencement Date.

## **2. Provision of Services**

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### **2.1. Principal obligations of Contractor**

- 2.1.1. The Contractor agrees to:
  - a. perform the Services as specified in Item 2 as part of the Project and in accordance with the Project Plan;
  - b. provide to ACARA the Material specified in Item 3;
  - c. adopt relevant best practice, including any ACARA, Commonwealth or industry standards and guidelines including those specified in Item 4;
  - d. comply with the time frame for the performance of the Services specified in Item 5; and
  - e. submit invoices, and any required supporting documents, in the manner specified in Item 6.

2.1.2. The Contractor agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by ACARA under this contract to be determined.

## **2.2. Liaison with Project Manager**

2.2.1. The Contractor agrees:

- a. to liaise with the Project Manager and other officers of ACARA as reasonably required and necessary to facilitate the successful implementation and completion of the Project;
- b. to comply with directions of the Project Manager that are consistent with this contract; and
- c. to report to the Project Manager on the basis agreed between ACARA and the Contractor in the Project Plan.

## **2.3. Subcontractors**

2.3.1. The Contractor agrees not to subcontract the performance of any part of the Services without ACARA's prior written approval.

2.3.2. ACARA may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.

2.3.3. ACARA has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item 8.

2.3.4. The Contractor agrees to make available to ACARA (if requested), details of all subcontractors engaged in the performance of the Services.

2.3.5. The Contractor acknowledges, and must inform all subcontractors that, ACARA may publicly disclose the names of any subcontractors engaged in the performance of the Services.

## **2.4. Specified Personnel**

2.4.1. The Contractor agrees that the Specified Personnel will perform work in relation to the Services in accordance with this contract.

2.4.2. If Specified Personnel are unable to perform the work as required under clause 2.4.1, the Contractor agrees to notify ACARA immediately.

2.4.3. The Contractor agrees, at the request of ACARA acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Services.

2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Contractor will provide replacement Personnel acceptable to ACARA at no additional cost and at the earliest opportunity.

## **2.5. Responsibility of Contractor**

2.5.1. The Contractor is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:

- a. involvement by ACARA in the performance of the Services;
- b. subcontracting of the Services;



- c. acceptance by ACARA of Specified Personnel; or
- d. payment made to the Contractor on account of the Services.

## **2.6. ACARA Option**

- 2.6.1. At any time prior to completion of the Project, ACARA may, but is under no obligation to, issue to the Contractor a notice to extend the Contract for the provision of NAPLAN Online Item Trial 2017 Test Administration (Option Notice).
- 2.6.2. The Option Notice must contain:
  - i. a description of the Services required;
  - ii. a time frame for performance of the Services; and
  - iii. ACARA's proposed fees.
- 2.6.3. After receiving the Option Notice, the Contractor will notify ACARA if it accepts extension of the Contract.
- 2.6.4. If the Contractor accepts extension of the Contract, the Contract will be extended on the same terms and conditions as this Contract except:
  - a. the Services required in Item 2 will be amended to reflect the Option Notice (or as otherwise agreed between the parties);
  - b. the time frame for the performance of the Services specified in Item 5 will be amended to reflect the Option Notice (or as otherwise agreed between the parties);
  - c. the Fees specified in Item 10 will be amended to reflect the Option Notice (or as otherwise agreed between the parties); and
  - d. this clause 2.6 is deleted.
- 2.6.5. If the Contractor does not respond to the Option Notice within 14 days of receiving the notice, or such other period as ACARA in its absolute discretion allows for acceptance, then this will be treated as notification by the Contractor to ACARA that the Contract will not be extended.

## **3. Fees, allowances and assistance**

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### **3.1. Principal obligations of ACARA**

- 3.1.1. ACARA agrees to:
  - a. pay the fees in the Instalments specified in Item 10;
  - b. pay the allowances and meet the costs specified in Item 11;
  - c. make all payments as and when specified in Item 6 and
  - d. provide facilities and assistance as specified in Item 12.

### **3.2. ACARA's rights to defer payment**

- 3.2.1. ACARA will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long

as the Contractor has not completed, to the satisfaction of ACARA, that part of the Services to which the Instalment relates.

### **3.3. Taxes, duties and government charges**

- 3.3.1. Except as provided by this clause 3.3, the Contractor agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this contract.
- 3.3.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this contract is exclusive of any GST imposed on the supply.
- 3.3.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 3.3.4. No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

### **3.4. Superannuation**

- 3.4.1. This contract is entered into on the understanding that ACARA is not required to make any superannuation contributions in connection with the contract, unless stated to the contrary in Item 10.

## **4. Intellectual Property**

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### **4.1. Use of ACARA Material**

- 4.1.1. ACARA agrees to provide Material to the Contractor as specified in Item 13.
- 4.1.2. 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 this contract.
- 4.1.3. The Contractor agrees to use the ACARA Material strictly in accordance with any conditions or restrictions set out in Item 14, and any direction from ACARA.

### **4.2. Rights in Contract Material**

- 4.2.1. Intellectual Property in all Contract Material vests or will vest in ACARA.
- 4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:
  - a. any ACARA Material;
  - b. any Existing Material; or
  - c. any Third Party Material,that is incorporated into the Contract Material.
- 4.2.3. The Contractor grants to (or will procure for) ACARA a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, distribute, communicate and exploit any Existing Material in conjunction with the Contract Material for any purpose.
- 4.2.4. The Contractor grants to (or will procure for) ACARA a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to

use, reproduce, adapt, modify, distribute and communicate any Third Party Material in conjunction with the Contract Material for any non-commercial purpose.

4.2.5. The Contractor agrees, and will arrange for any third party, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2 on request by ACARA.

4.2.6. The Contractor represents and warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

4.2.7. In all publications produced by the Contractor for ACARA under this contract, the Contractor will include the copyright statement set out in Item 16 or such other statement as notified to the Contractor by ACARA from time to time.

### **4.3. Intellectual Property Register**

4.3.1. The Contractor will establish and maintain a register detailing each item of Contract Material in a form acceptable to ACARA (the IP Register). The IP Register must, at a minimum, include the following details:

- a. a description of the Contract Material (including a description of any Existing Material or Third Party Material incorporated in the Contract Material and details of where and how that the Material has been incorporated into the Contract Material);
- b. the authors of the Contract Material, and, in respect of any Existing Material or Third Party Material, the owners of that Material; and
- c. in respect of any Third Party Material incorporated in the Contract Material, the date and terms of any licence in respect of the Third Party Material.

4.3.2. The Contractor must ensure the IP Register is complete and up to date throughout the term of the contract and must provide ACARA with a copy of the IP Register upon request during the term of the contract and on termination or expiry of the contract.

### **4.4. Moral Rights**

4.4.1. In this clause 4.4:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
  - b. supplementing the Contract Material with any other Material;
  - c. using the Contract Material in a different context to that originally envisaged; and

- d. the acts or omissions, specifically set out in Item 17;  
but does not include false attribution of authorship.

4.4.2. Where the Contractor is a natural person and the author of the Contract Material, he or she:

- a. consents to the performance of the Permitted Acts by ACARA or any person claiming under or through ACARA (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to ACARA's general policies and practices regarding Moral Rights as described in Item 17.

4.4.3. Where clause 4.4.2 does not apply, the Contractor agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by ACARA or any person claiming under or through ACARA (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to ACARA; and
- b. to ensure that each author's attention is drawn to ACARA's general policies and practices regarding Moral Rights as described in Item 17.

4.4.4. This clause 4.4 does not apply to any ACARA Material incorporated in the Contract Material.

## **5. Confidentiality of Official Information and other security obligations**

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### **5.1. Interpretation**

5.1.1. In this clause 5:

**Official Resources**

includes:

- a. Official Information;
- b. people who work for or with ACARA; and
- c. assets belonging to (even if in the possession of contracted providers) or in the possession of ACARA;

**Security Classified Resources**

means Official Resources that, if compromised, could have adverse consequences for ACARA; and

**Security Incident**

means a security breach, violation, contact or approach from those seeking unauthorised access to or disclosure of Official Resources.

### **5.2. Confidentiality of Official Information**

5.2.1. The Contractor will not, without prior written authorisation of ACARA, disclose any Official Information to any person (unless required to do so by law).

5.2.2. The Contractor is authorised, subject to clause 5.3.1.a to 5.3.1.c, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.

- 5.2.3. The Contractor agrees, on request by ACARA at any time, to arrange for the Personnel and subcontractors referred to in clause 5.2.2 to give a written undertaking in a form acceptable to ACARA relating to the use and non-disclosure of Official Information.
- 5.2.4. The Contractor agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.
- 5.2.5. The obligations of the Contractor under this clause 5.2 is subject to any rights that the Contractor may have under the Public Interest Disclosure Act 2013.

### **5.3. Other security obligations of Contractor**

- 5.3.1. The Contractor agrees:
- a. to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
  - b. to make its Personnel available to attend any security training provided by ACARA;
  - c. to notify ACARA of any change in the personal circumstances of Personnel referred to in 5.3.1.a;
  - d. to notify ACARA immediately if it becomes aware that a Security Incident has occurred and otherwise implement ACARA's procedures for Security Incident reporting as advised by ACARA from time to time;
  - e. not to perform the Services outside Australia without ACARA's prior written approval; and
  - f. to comply with the additional security requirements specified in Item 18, if any, and any variations or additions to those requirements as notified by ACARA from time to time.
- 5.3.2. The Contractor agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to ACARA on request.

## **6. Privacy**

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### **6.1. Obligations of Contractor in relation to privacy**

- 6.1.1. 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 the ACARA, would be a breach of the requirements of Division 2 of Part III of the Privacy Act; and
  - b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 199, to the extent that they are consistent with the obligations referred to in subclause a above.
- 6.1.2. 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 6.1.

## **7. Dealing with Copies**

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### **7.1. Interpretation**

7.1.1. In clause 7.2:

**Copy** means any document, device, article or medium in which ACARA Material, Contract Material, or Official Information is embodied.

### **7.2. Actions at end of contract**

7.2.1. The Contractor agrees, on expiration or termination of this contract, to deal with all Copies as directed by ACARA, subject to any requirement of law binding on the Contractor.

## **8. Confidential Information of Contractor**

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### **8.1. Confidential Information not to be disclosed**

8.1.1. Subject to clause 8.2, ACARA will not, without the prior written authorisation of the Contractor, disclose any Confidential Information of the Contractor to a third party.

### **8.2. Exceptions to obligations**

8.2.1. The obligations of ACARA under this clause 8 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by ACARA to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this contract;
- b. is disclosed by ACARA to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- c. is disclosed by ACARA to the responsible Minister;
- d. is disclosed by ACARA in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by ACARA within ACARA's organisation, or with another agency including the Education Council, where this serves the ACARA's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 8.

8.2.2. Where ACARA discloses Confidential Information to another person pursuant to clauses 8.2.1.a – 8.2.1.e ACARA will notify the receiving person that the information is confidential.

8.2.3. In the circumstances referred to in clauses 8.2.1.a, 8.2.1.b and 8.2.1.e, ACARA agrees not to provide the information unless the receiving person agrees to keep the information confidential.

### **8.3. Period of confidentiality**

- 8.3.1. The obligations under this clause 8 in relation to an item of information described in Item 20 continue for the period set out there in respect of that item.

## **9. Liability**

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### **9.1. Proportionate liability regimes excluded**

- 9.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this contract.

### **9.2. Indemnity**

- 9.2.1. The Contractor indemnifies ACARA from and against any:
- a. cost or liability incurred by ACARA;
  - b. loss of or damage to property of ACARA; or
  - c. loss or expense incurred by ACARA in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by ACARA, arising from either:
    - d. a breach by the Contractor of this contract;
    - e. an infringement or alleged infringement of a person's Intellectual Property or Moral Rights as a result of any use by ACARA or a third party of the Contract Material in accordance with this contract; or
    - f. an act or omission involving fault on the part of the Contractor or its Personnel in connection with this contract.
- 9.2.2. The Contractor's liability to indemnify ACARA under clause 9.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of ACARA or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 9.2.3. The right of ACARA to be indemnified under this clause 9.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but ACARA is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## **10. Dispute resolution**

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### **10.1. Procedure for dispute resolution**

- 10.1.1. A party will not commence arbitration or court proceedings about a dispute, difference, question or claim arising out of this contract (Dispute) unless it has complied with this clause 10.
- 10.1.2. A party claiming a Dispute has arisen will notify the other party giving details of the Dispute (Notification).
- 10.1.3. On receipt of a Notification each party agrees to negotiate with the other party in good faith to resolve such a Dispute.

10.1.4. If the Dispute is not resolved under clause 10.1.3 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 contract 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. Each party will bear its own costs of complying with this clause 10.

10.1.5. If the Dispute is not resolved under clause 10.1.4. within 10 days of referral to ACDC, either party may initiate proceedings in a court.

## **10.2. Continued performance**

10.2.1. Despite the existence of a Dispute, the Contractor will (unless requested in writing by ACARA not to do so) continue to perform the Services.

## **10.3. Exemption**

10.3.1. This clause 10 does not apply to:

- a. action by ACARA under or purportedly under clause 11.1
- b. action by either party under or purportedly under clause 11.2; or
- c. legal proceedings by either party seeking urgent interlocutory relief.

## **11. Termination or reduction in scope of Services**

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### **11.1. Termination or reduction in scope for convenience**

11.1.1. ACARA may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the Services immediately.

11.1.2. The Contractor agrees, on receipt of a notice of termination or reduction:

- a. to stop or reduce work as specified in the notice;
- b. to take all available steps to minimise loss resulting from that termination or reduction; and
- c. to continue work on any part of the Services not affected by the notice.

11.1.3. In the event of termination under clause 11.1.1, ACARA will be liable only:

- a. to pay any Instalment relating to Services completed before the effective date of termination;
- b. to reimburse any expenses the Contractor unavoidably incurs relating entirely to Services not covered under clause 11.1.3.a;
- c. to pay any allowance and meet any costs unavoidably incurred under Item 11 before the effective date of termination; and
- d. to provide the facilities and assistance necessarily required under Item 12 before the effective date of termination.

11.1.4. ACARA will not be liable to pay amounts under clause 11.1.3.a and 11.1.3.b which would, added to any fees already paid to the Contractor under this contract, together exceed the fees set out in Item 10.



11.1.5. In the event of a reduction in the scope of the Services under clause 11.1.1, ACARA's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

11.1.6. The Contractor will not be entitled to compensation for loss of prospective profits.

## **11.2. Termination or reduction in scope for fault**

11.2.1. If a party fails to satisfy any of its obligations under this contract, then the other party - *if it considers that the failure is:*

- a. *not capable of remedy* - may, by notice, terminate the contract immediately; or
- b. *capable of remedy* - may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the contract immediately by giving a second notice.

11.2.2. ACARA may also by notice terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Contractor:

- a. *being a corporation* - comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*, or has an order made against it for the purpose of placing it under external administration; or
- b. *being an individual* - becomes bankrupt or enters into a scheme of arrangement with creditors.

## **12. Notices**

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### **12.1. Format, addressing and delivery**

12.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Contractor to ACARA* - addressed to the Project Manager at the address specified in Item 21 or as otherwise notified by ACARA; or
- b. *if given by ACARA to the Contractor* - given by the Project Manager (or any superior officer to the Project Manager) and addressed (and marked for attention) as specified in Item 22 or as otherwise notified by the Contractor.

12.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

### **12.2. When effective**

12.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address;

c. *if transmitted electronically* - upon actual receipt by the addressee.

12.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

### **13. General provisions**

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#### **13.1. Occupational health and safety**

13.1.1. The Contractor agrees, in carrying out this contract, to comply with:

- a. all relevant legislation, codes of practice and national standards relating to occupational health and safety; and
- b. all applicable policies and procedures relating to occupational health and safety including those that apply to ACARA's premises when using those premises.

13.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 13.1.1, the Contractor will comply with those policies and procedures that produce the highest level of health and safety.

#### **13.2. Audit and access**

13.2.1. The Contractor agrees:

- a. to give the Project Manager, or any persons authorised in writing by the Project Manager, access to premises where the Services are being performed or where Official Resources are located; and
- b. to permit those persons to inspect and take copies of any Material relevant to the Services.

13.2.2. The rights referred to in clause 13.2.1. are subject to:

- a. ACARA providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

13.2.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause 13.2

13.2.4. This clause 13.2 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

**Note:** For information about the *Auditor-General Act 1997 (Cth)* see the fact sheet referred to in Item 24.

#### **13.3. Insurance**

13.3.1. The Contractor agrees:

- a. to effect and maintain the insurance specified in Item 23; and
- b. on request, to provide proof of insurance acceptable to ACARA.

13.3.2. This clause 13.3. 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 the period two (2) years after the expiry of the contract.

#### **13.4. Extension of provisions to subcontractors and Personnel**

13.4.1. In this clause 13.4:

**Requirement** means an obligation, condition, restriction or prohibition binding on the Contractor under this contract.

13.4.2. The Contractor agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this contract imposes all relevant Requirements on the other party.

13.4.3. The Contractor agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by ACARA.

#### **13.5. Conflict of interest**

13.5.1. In this clause 13.5:

**Conflict** means any matter, circumstance, interest, or activity affecting the Contractor, its Personnel or subcontractors which may or may appear to impair the ability of the Contractor to provide the Services to ACARA diligently and independently.

13.5.2. The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

13.5.3. If, during the period of this contract a Conflict arises, or appears likely to arise, the Contractor agrees:

- a. to notify ACARA immediately;
- b. to make full disclosure of all relevant information relating to the Conflict; and
- c. to take any steps ACARA reasonably requires to resolve or otherwise deal with the Conflict.

#### **13.6. Relationship of parties**

13.6.1. The Contractor is not by virtue of this contract an officer, employee, partner or agent of ACARA, nor does the Contractor have any power or authority to bind or represent ACARA.

13.6.2. The Contractor agrees:

- a. not to misrepresent its relationship with ACARA; and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

**13.7. Waiver**

- 13.7.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.
- 13.7.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

**13.8. Variation**

- 13.8.1. A variation of this contract is binding only if agreed in writing and signed by the parties.

**13.9. Assignment**

- 13.9.1. The Contractor cannot assign its obligations, and agrees not to assign its rights, under this contract without ACARA's prior written approval.
- 13.9.2. If the administrative arrangements regarding ACARA are altered such that the program the object of this contract is transferred to another government entity, ACARA may assign its rights under this contract to that entity subject to that entity assuming ACARA's obligations under this contract. The Contractor shall have no objection to any such assignment or assumption.

**13.10. Survival**

- 13.10.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:
- a. licensing of Intellectual Property;
  - b. confidentiality;
  - c. security;
  - d. privacy;
  - e. dealing with copies;
  - f. books and records;
  - g. audit and access;
  - h. an indemnity;
- or any other provision which expressly or by implication from its nature is intended to continue.

**13.11. Compliance with Legislation**

- 13.11.1. In this clause 13.11:

**Legislation** means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

- 13.11.2. The Contractor agrees to comply with any Legislation applicable to its performance of this contract.

13.11.3. The Contractor acknowledges that its attention has been drawn to the fact sheet referred to in Item 24 which provides details of some Legislation that may be applicable to the performance of the contract.

**13.12. Applicable law**

13.12.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item 25.

13.12.2. The parties submit to the jurisdiction of the courts of that State or Territory.

**13.13. Access to documents**

In this clause 13.13, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

13.13.1. The Contractor acknowledges that this agreement is a Commonwealth contract.

13.13.2. 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.

13.13.3. 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 13.13.

### 1. Proposal

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^To be completed following selection of the preferred Tenderer^

### 2. Services

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(see clause 2.1.1.a)

#### 2.1. Introduction

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is responsible for the development of rigorous, world-class Australian curriculum from Foundation to Year 12.

To complement the development of an Australian 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 reports to, and is directed by the Education Council. ACARA has overall responsibility for implementing the National Assessment Program (NAP).

#### 2.2. Background

##### **National Assessment Program – Literacy and Numeracy**

The National Assessment Program — Literacy and Numeracy (NAPLAN) is the main assessment program conducted by ACARA. Every year all Australian students in Years 3, 5, 7 and 9 are assessed in Reading, Writing, Language Conventions and Numeracy. The tests are equated longitudinally each year in order to ensure comparability of results from year to year, and to enable tracking of students' results.

NAPLAN will be delivered online by ACARA in partnership with Educational Services Australia (ESA) with each responsible for interrelated aspects. ACARA is responsible for delivering the assessment and reporting services, including research into the online delivery of assessment programs.

ESA is responsible for the delivery of the technical services for the Online National Assessment Platform ('the platform').

##### **NAPLAN Online Item Trial August 2017**

During NAPLAN's item-development and trialling phase, single items and suites of items (testlets) are developed by item writers. The main purpose of the NAPLAN Online Item Trial August 2017 (Item Trial) is to trial the online items procured in numeracy, reading, writing, spelling and grammar and punctuation domains to support the development of the NAPLAN 2018 program. Data from the trial will be used in psychometric analysis of the items to determine their suitability or otherwise for inclusion in the final 2018 NAPLAN tests and/or future NAPLAN tests.

##### Sampling information

In the Item Trial, ACARA will trial numeracy, reading, writing, spelling and grammar and punctuation items in approximately 440 schools across Australia. Schools will be sampled from metropolitan, regional, provincial and remote areas from all sectors in all states and territories. It is expected that ALL schools in the sample provided by ACARA are included in the testing.

Each student will complete **two tests** each. Tests can be scheduled over one or two days, depending on the IT available in schools.

It is expected that at least one class at each NAPLAN year level in each school will participate (i.e. in a primary school one class from Year 3 and one class from Year 5 will sit two tests each, and in a secondary school one class from Year 7 and one class from Year 9 will sit two tests each. However, in South Australia, the primary school will contribute classes from Years 3, 5 and 7 and secondary schools will contribute only from Year 9). The total sample size will be approximately 5500 students per year level. In some instances, the sample may include two classes per year level.

The Contractor is required to coordinate administration of the trial tests according to ACARA's sampling design. This design will include which tests are to be administered at each school, including the year level and number of students to be tested.

ACARA will provide the postcodes of sample schools to assist in costing. Names of the sample schools will be provided on confirmation of the awarding of this contract.

The provisional distribution of the sample by state and territory is as follows:

<b>Number of schools</b>		
<b>State</b>	<b>Reading / Language Conventions / Numeracy/ Writing (2-4 classes per school)</b>	
	<b>Primary</b>	<b>Secondary</b>
ACT	5	5
NSW	73	72
NT	5	5
QLD	39	44
SA	15	15
TAS	5	5
VIC	56	53
WA	22	21
<b>Total number of schools</b>	<b>220</b>	<b>220</b>

\*based on an average of 25 students per class. For the purposes of these calculations, a school is defined as either primary or secondary. For K-12 schools included in the sample, class numbers will be doubled.

Example breakdown of student numbers

- 220 schools with Year 3 students:  $25 \times 220 = 5500$
- Three Year 3 test combinations: Reading + Numeracy; Reading + Language Conventions; Writing + Writing.

**Note to Tenderers:** The samples will be confirmed during project initiation, and the final sample will be provided to the Contractor. Tenderers should use the information provided as the basis for preparing their Tenders. ACARA reserves the right to alter the proposed sample.

### **2.3 Purpose**

The purpose of this project is to engage a qualified and experienced Contractor to provide test administration and invigilation of the Item Trial in a sample of schools across Australia; and to conduct the marking operation for the marking of writing scripts.

### **2.4 Scope of project**

#### **Test Administration Authorities (TAAs)**

Test Administration Authorities (TAAs) in each state and territory will approve the sampled schools and provide assistance with ensuring that all schools participate in the Item Trial. ACARA will liaise directly with TAAs on behalf of the Contractor.

#### **Role of Education Services Australia (ESA)**

Education Services Australia (ESA) will provide the Online National Assessment Platform (the platform) that the Item Trial will be delivered on. ESA will also provide the marking and scoring system (M&SS) component of the platform, on which the human marking of the Item Trial writing scripts will take place.

Key points of contact in relation to the platform will include:

- creating test administrator 'invigilation' user accounts
- creating school technical support officer accounts
- creating school and student profiles
- enrolling students in the Item Trial tests and creating student user accounts
- assigning Item Trial tests as per the sample plan to schools and students
- provision of 'second level' technical support during administration of the tests and marking of writing scripts
- provision of test completion reports
- creating writing marker IDs and writing marker user accounts in the M&SS in advance of marking writing scripts
- setting user roles within the M&SS
- assigning scripts to markers as required (implementation of marking design) in the M&SS
- provision of access to marker and marking progress reports from the M&SS.

ACARA will advise arrangements for liaising with ESA during project initiation.

#### **Role of the Contractor**

The Contractor is expected to work in close collaboration with ACARA's Project Manager at all stages of the project to ensure that the procedures and methodologies



are consistent with the technical standards for the Education Council's national assessments and ACARA's assessment protocols, and that the project deliverables and timelines are met. The Contractor's Project Director will report to ACARA's Project Manager on the basis agreed between ACARA and the Contractor in the project plan and at any other times when clarification is required.

The Contractor will be responsible for implementing the project objectives.

The Contractor will be required to provide the following:

#### **2.4.1 Deliverable 1 – Project management plan**

The Contractor will be required to provide a project plan after formal acceptance of a purchase order from ACARA. The project plan will need to be approved by ACARA and include the following:

- An overall project management plan which includes:
  - a timeline for deliverables and critical deadlines
  - a communication plan for communicating with schools, which sets out key consultation and approval/decision points
  - a training plan for training invigilators how to administer the tests online
  - the names of all persons involved in the project and their respective roles.
- A quality assurance plan detailing how the quality assurance and quality control processes outlined in the original tender will be implemented and monitored by the Contractor throughout the project.
- The quality assurance plan must specify in detail all and any perceived risks that may impact on the quality of the contract deliverables, and must provide detailed advice on the strategies for risk management for each identified risk. It is not sufficient to provide information only about generic quality assurance systems and quality manuals.
- A risk management plan outlining how risks identified in the original tender, as well as any further risks that are been identified, will be managed in relation to the project, detailing strategies to ensure project needs are met within the required timeframe and to the highest standard. This plan must include how all aspects of security are addressed.
- ACARA requires the opportunity to audit risk management during the project, including where appropriate, attendance at the Contractor's place of work and or receiving briefings on the management of risk.
- A detailed security plan for managing all stages of the project, including incident management procedures and response plans, detailing how system access, security and unscheduled downtime will be managed. The security plan should be informed by the requirements listed in section 2.6 Security Requirements.

#### **2.4.2 Deliverable 2 – Project management reporting**

After execution of a purchase order and initiation of the project the Contractor will be required to:

- provide regular status reports to ACARA
- be available for regular dialogue with ACARA personnel across the entire project lifecycle

- provide risk alerts to ACARA immediately upon detection of issues considered high risk to the project
- respond to feedback from ACARA following reviews of Item Trial material including those developed for administration, training and marking purposes
- modify Item Trial material in response to feedback from ACARA
- attend nominated meetings
- provide agreed milestone reports to ACARA by the specified dates
- meet the project deadlines.

### Meetings

The Contractor will be required to communicate with ACARA's Project Manager and project team at key juncture points of the NAPLAN Online Item Trial August 2017 project. Regular meetings will be organised by ACARA and held at a time and location (videoconference as default mode) agreed with the Contractor (for example, a regular weekly meeting, with daily meetings during the test window, and ad-hoc meetings as required).

The Contractor may be asked to attend a project close-out meeting with key members of ACARA's project team at an agreed time after the delivery of all required files to ACARA to discuss aspects of the project.

### Project status reports

Throughout the project, the Contractor will regularly consult with the ACARA NAPLAN team in relation to the day-to-day management of the project – at a minimum of once a week. Written project status (progress) reports are to be submitted at nominated times to ACARA outlining progress on the key deliverables and issues that have arisen. Exception reports are required in the event of unforeseen circumstances.

### Project completion/evaluation report

The Contractor must also provide a project completion/evaluation report outlining, as a minimum, the following:

- actual or agreed timelines negotiated within the scope of this contract
- an outline of successful components of the project delivery
- an outline of any obstacles, incidents or issues encountered that affected the delivery or reputation of the project in 2017, and any potential obstacles, incidents or issues that may affect the project in subsequent years
- an outline of any areas requiring improvement where a variation may improve any future work.

### **2.4.3 Deliverable 3 – Coordination with schools**

Participation by schools in the Item Trial is a requirement of the Schools Assistance Act to which all schools are accountable and their compliance to which is a condition of their registration and government funding. Participation is not optional and schools cannot choose to withdraw from the Item Trial without exceptional circumstances. Participation in a previous study is not considered to be an exceptional circumstance.

The Contractor is responsible for contacting all schools, arranging and confirming their participation in the Item Trial. The contractor is also responsible for ensuring that schools and invigilators are given all necessary information in a timely manner.

States and territories will contact the schools in their jurisdiction prior to the Contractor making contact with the schools to advise the test window. The Contractor will, in conjunction with ACARA and the states and territories, contact and liaise with the selected schools, through letters, emails or other appropriate methods, in order to schedule testing days. The Contractor is required to contact ACARA in the first instance if schools refuse to allow testing, or raise other objections that would impact on the number of students tested or the testing dates. The Contractor will coordinate with ACARA any changes necessary to the sampling owing to incidents such as school refusals, high absentee rates, illnesses etc.

The Contractor is required to provide a testing schedule which reflects the dates and times agreed with schools for testing in each domain. A final test schedule is required once all test sessions have been confirmed with schools. Any changes to the final schedule should be noted as part of the weekly/daily reports showing how the sample test numbers are being met.

#### **2.4.4 Deliverable 4 – Prepare for the delivery of computer based assessments in schools**

Each student will complete two tests. The contractor will work with schools to sort out logistics of how this will occur.

All tests that will be used in the Item Trial will be specified by ACARA's test managers. Tests will be available in the Assessment Delivery System component of the platform.

The Contractor will coordinate communication to schools (as approved by ACARA) and inform schools of the testing that will be conducted at their school.

The Contractor will be required to confirm that sampled schools have IT infrastructure that meets the specifications provided by ESA. The Contractor will need to liaise with all sampled schools to ensure that all schools download the locked-down browser (LDB) on their devices, and to administer the Device Check (previously known as the technical readiness test) through the LDB. Information and support materials regarding the LDB and the Device Check will be coordinated by the Contractor in collaboration with ACARA and ESA. The LDB (which includes the Device Check) is available from the Assessform website hosted by ESA.

The Contractor may be required to liaise with ESA throughout this process. Key points of contact will include:

- creation of student identities (ID numbers), as student data will be de-identified
- creation of school, school technical support officer, student and invigilation user accounts by ESA
- enrolment of students in assessment events as per sample by ESA
- providing first level support during the period of the Item Trial
- provision of technical support by ESA during administration of the tests.

ACARA will provide user guides and training on the platform for the Contractor. The Contractor will then be responsible for training invigilators.

#### **2.4.5 Deliverable 5 – Preparation of test administrator’s handbook**

ACARA will provide existing NAPLAN Online test administration handbooks for reference. The Contractor will be responsible for the production of the test administration handbook for the Item Trial tests. The handbook will be developed by the Contractor to ensure all invigilators are fully aware of their responsibilities. Test administration handbooks will be required to be provided to invigilators. Printed materials are not required.

#### **2.4.6 Deliverable 6 – Appoint and train invigilators**

The Contractor will be responsible for employing and training invigilators who are required to administer the Item Trial tests at each school. The invigilators will be required to administer the tests under ‘test conditions’ (the same conditions required for NAPLAN Online) including actively monitoring students during the test (e.g. walking around the classroom to ensure that students are not copying from other students’ work).

##### Requirements for invigilators

- The invigilators employed by the Contractor must be familiar with the purpose and content of NAPLAN, and specifically with the prescribed NAPLAN and online testing context and procedures, including domain specific requirements.
- Invigilators must also be familiar with schools and school routines and suitably experienced in managing students in a classroom. Where the contractor intends to employ invigilators who are not current or previous teachers, contractors should provide information about what relevant qualifications invigilators hold.
- In addition it is expected that invigilators should be sufficiently proficient in using computer devices.

The Contractor will need to organise training for their invigilators so that they are fully aware of their responsibilities with regard to test administration, the security of test materials, and administering tests on the platform; and provide evidence that all invigilators have successfully completed such training.

The Contractor will be responsible for all costs associated with the hiring and training of invigilators, and for all transport and other costs for in-school invigilation. The Contractor will be required to audit any materials given to and returned from invigilators in order to ensure that all materials are accounted for and not left at schools or lost in transit.

The Contractor will also be responsible for ensuring that all invigilators meet the requisite security requirements and checks for the jurisdictions in which they will administer the tests e.g. invigilators must have approval to enter and work in schools (note that invigilators from South Australia must have attended RAN-EC training).

#### **2.4.7 Deliverable 7 – Administer and invigilate the tests**

Testing is expected to be conducted under specified uniform test conditions for all students in the Item Trial sample.

The invigilation of the Item Trial must be conducted between Monday 31 July to Friday 18 August 2017, unless otherwise agreed with ACARA.

Throughout the test period, the Contractor is required to:

- ensure that invigilators administer each test in a consistent manner. This consistency of administration is vital to the integrity of the Item Trial. It is essential that all students are focused on the tests and are encouraged to participate fully

- ensure that security is maintained by both the Contractor and invigilators, according to the security plan submitted by the Contractor
- provide a communication plan for establishing and maintaining contact with schools selected in the Item Trial sample in accordance with the project timeline, factoring in school holidays as a period where schools are not expected to respond to communication
- maintain a communication log detailing all communication between the Contractor and schools, which must be delivered to ACARA in the form of periodic reports
- ensure that all invigilators observe the test administration, then complete a log of the test administration for each of the test sessions they attend
- monitor test completion on a daily basis during the test period.

#### **2.4.8 Deliverable 8 – Provide weekly/daily reports showing how the sample test numbers are being met**

Prior to the test window, the Contractor is required to submit weekly reports confirming the number of schools and the number of estimated students scheduled to sit each test/assessment event (for each domain within each class, year level, school, sector and state).

During the testing window, the Contractor is required to submit daily reports listing the number of students that completed each test each day against the number of expected students (for each domain within each class, year level, school, sector and state); any issues experienced by invigilators; and the expected number of students scheduled for the following day (for each domain within each class, year level, school, sector and state). ESA will provide data extracts from the platform on the completed assessment events to assist with these reports.

The Contractor is also required to adjust the allocation of tests to students as the Item Trial progresses (in collaboration with ACARA and ESA) to ensure that the sample requirements for tests/testlets are met.

#### **2.4.9 Deliverable 9 – Provide weekly logs of invigilators' test administration experiences**

The Contractor is required to submit weekly logs of responses from all invigilators outlining their test administration experiences.

Test session reports should capture feedback from invigilators regarding their observations during each test session. Feedback may include topics such as:

- school set-up and preparation required by the invigilator
- logging on process
- reaction of students to the testing environment
- reception of schools to the trial tests
- comments that students make about test content
- timing issues, e.g. did students complete the tests with time to spare; was there sufficient time to complete the tests?
- test incidents (i.e. any incident which may affect the school's performance e.g. IT / technical issues, disruptions, test being abandoned)
- test security.

The format and proposed content of the logs will be agreed between ACARA and the Contractor.

#### **2.4.10 Deliverable 10 – Test administration help line**

The Contractor will be required to maintain a toll-free 'help' line, sufficiently staffed to handle demand by one person (or more), knowledgeable in test administration procedures to assist schools with the administering of the tests. The help line will be open from 9am AEDT to 5pm WST hours for a period of three weeks (or as agreed) prior to the testing, and during the Item Trial testing period i.e. from 10 July to 18 August 2017.

#### **2.4.11 Deliverable 11 – Secure, central marking centre**

The Contractor will be required to establish a secure, central marking centre including the provision of devices for marking, development of marking materials and the training of markers including:

- computer hardware (large screen, keyboard, mouse) and internet connection for each marker
- printers
- copiers
- chairs and tables that adhere to good ergonomic design to facilitate occupational health and safety
- technical support required for marking
- meal storage and heating facilities and some basic kitchen facilities (e.g. refrigerators, microwaves, plates, cups, forks)
- tea and coffee making facilities
- break out training rooms

The marking centre should be held at highly secure premises and should accommodate sufficient markers to complete the marking operation.

The location of the marking centre should be in one central location in a capital city with team leaders, markers and a minimum of one lead marker. Home based marking will not be considered.

#### **2.4.12 Deliverable 12 – Development of writing marking training materials: selection of scripts and writing of commentaries**

The Contractor is responsible for assisting with the selection of scripts to be used by ACARA for the training of markers, and employing a suitably qualified and experienced expert marker to write commentaries (annotations) for the scripts to be used as training materials to train markers. Determination of scores for the training scripts will be made through common marking and discussion, by an expert group, which will include at least 2 Marking Quality Team members, ACARA's Writing Test Manager and the Contractor's Lead Marker or an expert marker (preferably Perth-based) as agreed to by ACARA. Commentaries will be needed for a set of 6-8 training scripts per task.

Score determination and writing of commentaries will be held at an agreed location – preferably in ACARA's or the Contractor's offices in Perth. There is an expectation that the trial marking contractor will meet travel costs, meal allowances and accommodation expenses for the Lead Marker (if they choose not to use a Perth-based expert marker) and for MQT members. ACARA will cover all costs for ACARA staff.

As noted in section 2.4.11 above, the marking centre may be situated in any major Australian capital city. Therefore, the Contractor may choose to separate the tasks and personnel associated with the development of marking materials from the marking centre, according to location.

The Contractor will also be responsible for selecting and seeding common scripts during the marking operation that will be used as part of the marker quality control process.

The Contractor is expected to consult and work closely with ACARA's Writing Test Manager during the development of the marker-training materials and the selection of the common scripts. This involvement is crucial to ensuring that the quality assurance processes required to monitor marker accuracy and consistency are as close as possible to the marking of NAPLAN test scripts.

#### **2.4.13 Deliverable 13 – Appoint and train writing markers**

The Contractor will be responsible for the employment of Lead Marker, team leaders and markers who will mark the tasks online, in the M&SS component of the platform, using the national marking rubrics.

The Lead Marker will be responsible for assisting ACARA's Writing Test Manager to train team leaders and markers and monitor the marking centre.

The Contractor will be required to source and secure a Lead Marker and sufficient team leaders and markers to meet the timelines.

##### Requirements for markers

The markers employed by the Contractor are expected to:

- have proven experience in the marking of NAPLAN writing scripts and in the use of the NAPLAN marking guides
- have demonstrated high levels of accuracy and consistency in main NAPLAN marking operations
- be sufficiently skilled in using computer devices in order to learn how to mark scripts on a new online marking platform
- have a mobile phone.

##### Requirements for team leaders and Lead Marker

The team leaders and Lead Marker employed by the Contractor are expected to:

- have proven experience in the marking of NAPLAN writing scripts and in the use of the NAPLAN marking guides
- have experience as a team leader in a system-level large scale marking operation
- have proven strong communication skills with markers
- have demonstrated high levels of accuracy and consistency in main NAPLAN marking operations
- be sufficiently skilled in using computer devices in order to learn how to mark scripts on a new online marking platform
- have a mobile phone to access the platform.

Marking will be preceded by a half-day of training facilitated by ACARA's Writing Test Manager, who will be assisted by the Contractor's Lead Marker. The training must be attended by all markers to refresh their knowledge of the marking rubrics and will utilise existing exemplars as well as test-specific scripts. Training in marking typed scripts will also be given. Training will also ensure that markers are fully aware of their responsibilities with regard to the security of test materials and the use of the system.

Markers will be asked to complete a short survey/feedback form about each writing task (e.g. suitability for year level, range of writing both quality and quantity, range of ideas etc.) at the end of the marking operation.

The Contractor will be responsible for all costs associated with the hiring and training of markers, for the period from the commencement of training to the completion of marking. ACARA will provide user guides and training in the platform for markers appointed by the Contractor. ACARA will also provide technical support in the platform. The Contractor may be required to create marker profiles within the platform and assign the scripts (as determined by ACARA) to each marker.

#### 2.4.14 Deliverable 14 – Human marking of writing scripts

Eight writing tasks (prompts), some narrative and some persuasive, will be administered during the NAPLAN Online Item Trial August 2017. The design of the Item Trial is such that at least 1000 student responses (scripts) per task – 8000 scripts in total – will need to be single blind marked.

		Expected number of scripts				
		Year 3	Year 5	Year 7	Year 9	Total
Task	1	250	250	250	250	1000
	2	250	250	250	250	1000
	3	250	250	250	250	1000
	4	250	250	250	250	1000
	5	250	250	250	250	1000
	6	250	250	250	250	1000
	7	250	250	250	250	1000
	8	250	250	250	250	1000
Total		2000	2000	2000	2000	<b>8000</b>

The Contractor is responsible for the highly secure marking of writing scripts, to be conducted on the M&SS.

The scripts must be marked in a secure marking centre by trained, expert NAPLAN markers in accordance with the marking rubrics and specifications provided by ACARA. The marking design will be determined in conjunction with ACARA's Writing Test Manager.

The Contractor is required to conduct:

- single blind marking of all scripts - markers will be required to provide one set of criteria scores for each script
- a minimum of 10% check marking of each marker on each day.

The Contractor's Lead Marker will follow procedures and protocols applied to NAPLAN marking to ensure that a high degree of accuracy and reliability is maintained. The Contractor must provide appropriate quality control statistics.

The Contractor will be responsible for the secure storage of any complete raw data sets and/or reports held outside of the platform; and must ensure that these are made available to ACARA on completion of the project.

A detailed description and timeline of the writing marking process is provided in Appendix A.

#### 2.4.15 Deliverable 15 – Marking progress reports

Throughout the project, marking progress reports, including marking completion, marker quality and adjudication reports, will be available through the system (or by export from the system) and should be monitored by the contractor, in conjunction with ACARA.



Marking progress should be monitored and progress reports exported and supplied to ACARA at least once every marking session.

#### **2.4.16 Deliverable 16 – Secure storage and disposal of materials**

After the completion of the administration of the tests, the Contractor will be responsible for ensuring that the invigilators collect up any scrap paper used during the tests and securely destroy these e.g. by shredding.

The Contractor will be responsible for ensuring that any materials that can compromise the security of the test are securely provided to ACARA or destroyed. 'Secure' is specified in the section 2.6 Security Requirements.

**Note to Tenderers:** ACARA has yet to determine whether the Year 3 Writing prompts will be trialled in the platform or on paper. ACARA requests that the Contractor provide a quote to print, package and distribute the Year 3 writing test booklets and prompts; and provide and use their own secure marking system on which to conduct the marking operation of the Year 3 scripts, in the event that the Year 3 writing scripts must be conducted in a paper-based form instead of online on the platform. The Contractor's marking system must be able to accept paper-based writing scripts; be configured for implementing marking as detailed in Deliverable 14 on all criteria of the NAPLAN writing marking guide; and for quality control (score review procedures). The Contractor would also need to provide technical support (a helpdesk) for, and training in, their online marking system for the duration of the marking operation. The Contractor would also need to provide quality assured data capture and delivery of the Year 3 writing data to ACARA in the agreed fixed width text file format. The final project scope will be confirmed with the successful tenderer during contract negotiations. Tenderers should use the information provided in Appendix B as the basis for preparing their Tenders.

#### **2.5 Security requirements**

All aspects of test administration; invigilation; writing marking and training must be carried out under strict security. The Contractor is required to provide a detailed security plan for managing all stages of the project, informed by the requirements below:

- The Contractor must maintain a high level of security throughout this contract. The security plan must outline how security will be maintained during all stages of the process.
- All tests, scripts, administration instructions, marking and training materials, data files and associated materials, in both printed (if any) and electronic forms, must be secured at all times so that unauthorised personnel (as specified by ACARA) do not have access to them.
- The Contractor must have in place an approval process for employing qualified and suitable invigilators and markers.
- The Contractor must develop protocols for invigilators during the test administration period.
- Incident management procedures and response plans, detailing how system access, security and unscheduled downtime will be managed.
- The Contractor is required to account for any printed material or paperwork used during the Item Trial that could potentially compromise the security of the tests. All

administration instructions and student working sheets must be collected by the invigilator before students are allowed to leave a test room. The Contractor must check that all materials are accounted for when returned by invigilators. All markers notes must be collected by the Contractor before markers are allowed to leave the marking centre. The Contractor must check that all materials are accounted for when returned by markers.

- The Contractor is required to securely destroy all paperwork and all electronic artefacts and data files generated outside the platform for the duration of the project when instructed by ACARA. The Contractor is required to provide written assurance and confirmation of secure destruction of aforementioned material.
- If sub-contractors are engaged by the Contractor, the prescribed security measures must apply to them also. It is the responsibility of the Contractor to ensure that this occurs. All personnel including sub-contractors must have no conflict of interest.

All personnel employed by the Contractor (or any sub-contractors) must sign confidentiality agreements in which they agree not to disclose information about the tests and the test questions, including the Writing genres. Invigilators may not disclose information about or discuss the genres of the Writing tests with any other party, including other invigilators, to any other party. Markers may not disclose information about or discuss the genres of the Writing tests with any other party outside the marking centre.

The invigilators must ensure that security of online tests is not breached during their implementation, that no recording devices of any type are used by students, that only necessary teaching and support staff are present during any online testing in schools. The invigilators must maintain the security of all online test log-in information and all other information in relation to the online test delivery platform.

All electronic equipment including telecommunications apparatus, servers, disks, tape libraries etc. are to be kept in a secure location and access limited to authorised personnel. At a minimum the following requirements must be met:

- All locations where production of related materials occurs (including the locations for suppliers and subcontractors) are in a secure environment;
- All personnel including subcontractors must declare any potential, actual or perceived conflict of interest to ACARA and accept the outcome of any determination by ACARA to manage this conflict/s. All personnel including subcontractors must also sign confidentiality and non-disclosure agreements;
- All applications must have appropriate user authentication through passwords and access limitations; and
- All data to be transferred must have encryption (secure socket layer SSL) and be transferred via the Contractor's File Transfer Protocol (FTP) site.

In addition, the Contractor is required to notify ACARA immediately of any breaches of security. If a breach of security occurs, the Contractor must follow ACARA's instructions for dealing with the breach. The Contractor is required to keep ACARA fully briefed on progress and any issues that may arise, and to provide periodic progress reports at specified dates.

## **2.6 Materials to ACARA**

At each completion phase of the deliverables outlined in this document, the Contractor must provide ACARA with a report and/or an agreed sample of each of the materials produced, as appropriate. Where materials are developed electronically, ACARA will receive a copy of the electronic file/s for each of the materials developed. The Contractor must also provide ACARA opportunities to review and provide feedback on the development of the materials prior to and during the development phase.

### **3. Required Contract Material**

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(see clause 2.1.1.b)

**3.1. The following list of Materials is to be developed by the Contractor under the Contract in which ACARA would retain intellectual property (inclusive of all items listed under 2.7):**

- Project management plan and associated plans such as risk management, security management, communications plan.
- Administration instructions (e.g. invigilators handbook)
- Test administration handbook
- Writing marking and training materials
- Test session reports
- Student results data/reports (if relevant)
- Reports provided to ACARA under this Contract
- All data files (if relevant).

### **3.2. Secure deletion of data**

The Contractor is required to provide evidence that all data not contained within the platform have been securely erased from all media including but not limited to networks servers, computer hard drives in the Contractor's possession, as specified by ACARA. This will include information on Item Trial tests and marking and information on item/task performance including but not limited to any data used in preparation for the delivered files. The timeline for this activity will be negotiated with the Contractor at a later date.

### **4. Policies, Standards and Guidelines**

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(see clause 2.1.1.c)

The Commonwealth Style Manual, AGPS, Canberra (latest edition);

Australian Standards for Document Management (AS ISO 15489);

Commonwealth Fraud Control Guidelines - April 2011

Data Standards Manual Student Background Characteristics (ACARA, 2012)

Web accessibility standard WCAG 2.0 AA as per the Australian Government mandate available at: <http://www.w3.org/WAI/GL/WCAG-PDF-TECHS-20010913/>. Further information can be found at: <http://www.finance.gov.au/publications/wcag-2-implementation/introduction.html>

ACARA's landmark and style guidelines

ACARA's language style guide.

### **5. Commencement and Time-frame**

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(see clause 2.1.1.d)

**Commencement Date:** : **TBC** 2017

**Note to Tenderers:** The timeframe will be confirmed during contract negotiations, and the final timeframe will be included in the Contract. Tenderers should use the following information as the basis for preparing their Tenders. Although ACARA is prepared to discuss changes to the proposed timeframe, it reserves the right not to alter the proposed timeframe.

**Time-frame:**

<b>Task Name</b>	<b>Start</b>	<b>End</b>
Project initiation meeting	May 2017	May 2017
Provide progress reports and consult regularly with ACARA	May 2017	November 2017
Provision of project management documentation (including risk management and test security plans) to ACARA	May 2017	May 2017
Provision of sample school details to Contractor	May 2017	June 2017
Recruitment of invigilators	June 2017	June 2017
Enrolment of students in tests on platform	June 2017	July 2017
UAT of tests/allocations	June 2017	July 2017
Readiness for test at local level	July 2017	July 2017
Training of invigilators	July 2017	July 2017
Administration of Item Trial tests in schools	31 July 2017	18 August 2017
Development of marking materials in conjunction with chief writing assessor	2 August 2017	15 August 2017
Writing marking and data capture in conjunction with chief writing assessor	16 August 2017	September 2017
Provide data to ACARA (if relevant)	August 2017	September 2017
Project close-out meeting	November 2017	November 2017

**6. Invoicing and Payment**

(see clauses 2.1.1.e & 3.1.1.c)

***Invoices:***

Invoices will be issued by the Contractor on delivery of each milestone identified in Item 10.

To be correctly rendered, invoices must include the following information:

- a. the words “tax invoice” stated prominently;
- b. the Contractor’s name;
- c. the Contractor’s ABN;
- d. ACARA’s name and address;

- e. the date of issue of the tax invoice;
- f. the title of this contract and the contract number or purchase order number (if any);
- g. details of fees, allowances and costs including the items to which they relate;
- h. the total amount payable (including GST);
- i. the GST amount shown separately; and
- j. written certification in a form acceptable to ACARA that the Contractor has paid all remuneration, fees or other amounts payable to its Personnel and/or subcontractors involved in performance of the contract.

All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Contractor's entitlement to those allowances or costs.

An invoice is not correctly rendered where:

- a. it includes amounts that are not properly payable under this contract or are incorrectly calculated; or
- b. it relates to a payment in relation to which ACARA has exercised its rights under clause 3.2 of the contract.

All invoices must be addressed to the Project Manager.

### ***Payment***

Payment will be made within 30 calendar days after delivery of a correctly rendered invoice. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.

Payment will be effected by electronic funds transfer (EFT) to the following bank account of the Contractor: **^insert details^**

No payment shall be made against any claim for payment which varies from the agreed scope of work as set out in Item 2 of this Schedule without ACARA's prior consent and written agreement.

## **7. Project Manager**

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**(see clause 2.2)**

**^To be completed following selection of the preferred Tenderer^**

The Project Manager is the person for the time-being holding, occupying or performing the duties of **^insert position^**, currently **^insert name^**, available on telephone number **^insert number^** or via the address and facsimile number set out in Item 21.

## **8. Subcontractors**

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**(see clause 2.3)**

**^To be completed following selection of the preferred Tenderer^**

The Contractor may subcontract the performance of parts of the Services as follows:

Part of the Services being subcontracted	Subcontractor	Additional conditions
^insert^	^insert company details^	^insert conditions^
^insert^	^insert company details^	^insert conditions^

## 9. Specified Personnel

(see clause 2.4)

^To be completed following selection of the preferred Tenderer^

The Contractor agrees that the following work, ^insert details^ will be undertaken by ^insert name^.

## 10. Fees

(see clauses 3.1.1.a, 11.1.3.a & 11.1.3.b)

**Note to Tenderers:** A payment schedule, linked to project milestones and deliverables, will be negotiated with the successful Tenderer. It is anticipated that the payment schedule will cover the following:

^To be completed following selection of the preferred Tenderer^

### Instalments:

Milestone	Date	Description	Total Payment %	Price \$AUD (ex GST)
1	30 June 2017	ACARA sign-off on project management documentation and finalisation of test administration materials	30%	
2	25 August 2017	ACARA sign-off on secure invigilation and administration of Item Trial; and provision of writing marking training materials, selection of scripts and writing of commentaries	30%	
3	15 September 2017	ACARA sign-off on writing marking (including employment, training and monitoring of markers)	30%	
4	30 November 2017	ACARA sign off on final invigilation and marking logs/reports provided; final data files; project close-out report; secure storage and disposal of all data and material held outside the platform	10%	

Milestone	Date	Description	Total Payment %	Price \$AUD (ex GST)
<b>TOTAL</b>			<b>100%</b>	

**11. Allowances and Costs**

(see clauses 3.1.1.b & 11.1.3.c)

^To be completed following selection of the preferred Tenderer^

**12. Facilities and Assistance**

(see clauses 3.1.1.d & 11.1.3.d)

^To be completed following selection of the preferred Tenderer^

**13. Required ACARA Material**

(see clause 4.1)

^To be completed following selection of the preferred Tenderer^

**14. Use of ACARA Material**

(see clause 4.1.3)

ACARA Material may only be used for the purposes of providing the Services.

**15. Existing Material**

(see clause 4.2.2)

^To be completed following selection of the preferred Tenderer^

**16. Copyright notice**

(see clause 4.2.7)

The copyright notice is set out below:

© 2017 [or appropriate year] Australian Curriculum, Assessment and Reporting Authority (ACARA).

ACARA owns the copyright in this publication. This publication or any part of it may be used freely only for non-profit education purposes provided the source is clearly acknowledged. The publication may not be sold or used for any other commercial purpose.

Other than as permitted above or by the Copyright Act 1968 (Commonwealth), no part of this publication may be reproduced, stored, published, performed, communicated or adapted, regardless of the form or means (electronic, photocopying or otherwise), without the prior written permission of the copyright owner. Address inquiries regarding copyright to:

ACARA

Level 13, 280 Elizabeth Street

Sydney NSW 2000

**17. Moral Rights**  
(see clause 4.4)

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**Permitted Acts**

In addition to those set out in clause 4.4.1, the following are 'Permitted Acts' for the purposes of clause 4.4.1d:

- a. use of the Contract Material for advertising or promotional purposes of any kind;
- b. incorporating the Contract Material into a website, other assessments or as part of a professional development program;
- c. use of the Contract Material in tests and test items including without attribution of the authors of that Material;
- d. editing, contextualising, summarising or truncating the Contract Material for use in tests and test items including without attribution of the authors of that Material or reference to editing of the Material;
- e. associating an item of Contract Material with similar or different items of Contract Material;
- f. use by State and Territory education authorities including the Contract Material in workshop presentations, posters, and other teacher professional development materials; and
- g. publication of tests online on public websites by ACARA and the States and Territories including without attribution of the authors of that Contract Material.

**ACARA policy on Moral Rights**

None specified.

**18. Security Requirements**  
(see clause 5)

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**^insert relevant items^**

**19. Privacy Directions, Guidelines, Determinations or Recommendations**  
(see clause 6.2.1.b)

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**^insert relevant items^**

**20. Contractor's Confidential Information**  
(see clause 8)

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- (a) Information contained in contract:

**Item**

**Period of Confidentiality**

**^insert relevant items^**



(b) Information obtained or generated in performing contract:

<b>Item</b>	<b>Period of Confidentiality</b>
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^insert relevant items^

**21. ACARA's Address for Notices**

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(see clause 12.1.1.a)

<b>Physical address</b>	Level 13, 280 Elizabeth Street, Sydney, NSW 2000
<b>Postal address</b>	Level 13, 280 Elizabeth Street, Sydney, NSW 2000
<b>Email</b>	<a href="mailto:procurement@acara.edu.au">procurement@acara.edu.au</a>
<b>Facsimile</b>	1800 982 118

**22. Contractor's Address for Notices**

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(see clause 12.1.1.a)

**Physical address**  
**Postal address**  
**Email**  
**Facsimile**

**23. Insurance**

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(see clause 13.3)

Required insurance:

- a. workers' compensation as required by law;
- b. public liability insurance to a value of \$10 million; and
- c. professional indemnity insurance to a value of \$5 million.

**24. Applicable Legislation**

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(see clause 13.11.3)

See AGS Fact Sheet: *Commonwealth legislation that may apply to Australian Government contractors*, available at:

<http://www.ags.gov.au/publications/agspubs/factsheets/index.htm>

**25. Applicable Law**

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(see clause 13.12)

New South Wales

## Signatures

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

---

^Name of signatory^

---

*Signature*

In the presence of:

---

^Name of witness^

---

*Signature of witness*

SIGNED for and on behalf of [insert] )  
by: )  
)

---

^Name of signatory^

---

*Signature*

In the presence of:

---

^Name of witness^

---

*Signature of witness*