

PART A – DRAFT CONTRACT

RFT2017-03:

NAP Science Literacy 2018 Pilot Study – Test Administration and Analysis

DRAFT CONTRACT

DRAFT CONTRACT IN RELATION TO NAP SCIENCE LITERACY 2018 PILOT
STUDY – TEST ADMINISTRATION AND ANALYSIS

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 CONTRACT IN RELATION TO NAP SCIENCE LITERACY 2018 PILOT STUDY
– TEST ADMINISTRATION AND ANALYSES

Date

This Contract is made on [^]day(numeric) month(name) year(numeric) in full[^].

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 10, 255 Pitt Street, Sydney NSW 2000
2. [^]Party 2 Name[^] [^]Party 2 ABN and ACN/ARBN if applicable[^]
[^]Party 2 Address[^] (the Contractor)

Context

This Contract is made in the following context:

- A. ACARA requires the provision of certain consultancy services in support of its NAPLAN Online research and development program that underpins the transition to online assessment (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:

ACARA includes any successor entity to ACARA which is from time to time responsible for administering this contract;

ACARA Material means any Material:
a. provided by ACARA to the Contractor for the purposes of this contract; or
b. derived at any time from the Material referred to in paragraph a;

Attachment 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;

Business Day (in a place)	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;
Commencement Date	means the date on which this contract is made, unless otherwise specified in Item 5;
Confidential Information (of the Contractor)	means information that is by its nature confidential and is described in Item 20.
Contract Material	means any Material (including Existing Material and Third Party Material): <ul style="list-style-type: none"> a. created for the purposes of this contract; b. provided or required to be provided to ACARA as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b;
Existing Material	means any Material in existence at the Commencement Date and specified in Item 15;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
Instalment	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;
Intellectual Property	includes: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information;
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: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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;
Education Council	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
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

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 NAP Science Literacy 2018 Pilot Study test administration and analysis (Option Notice).
- 2.6.2. The Option Notice must contain:
- a. a description of the Services required;
 - b. a time frame for performance of the Services; and
 - c. 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

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

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 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

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

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 19, 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.

7. Dealing with Copies

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

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 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

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

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

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

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

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

^To be completed following selection of the preferred Tenderer^

2. Services

(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 has overall responsibility for implementing the National Assessment Program (NAP), including the NAP Sample program. ACARA reports to, and is directed by the Education Council.

2.2. Background

Since 2003 NAP Science Literacy has assessed a sample of Year 6 students, with PISA used as the national measure of performance for science literacy among secondary students. On 21 July 2016 the Education Council made the decision to extend NAP Science Literacy to Year 10 students from 2018.

The purpose of this decision was to reinforce the need to assess the science literacy progress of Australian students using assessments that are closely aligned with the Australian Curriculum and with the outcomes of international assessments and surveys.

The NAP Science Literacy program is based on a new assessment framework, which is currently being developed to ensure alignment with the Australian Curriculum. In developing new Year 10 items, practical tasks and age-appropriate content will acknowledge the higher level of computer and digital technology literacy and competency of Year 10 students.

The NAP Science Literacy 2018 Pilot Study will be held in October 2017 in order to test a sample of items across a whole range of abilities for each of the targeted year levels, including targeting of year 8 students abilities in the link item data set. These items will have been informed by the assessment framework, so as to obtain empirical data to support the progression of skills and knowledge of Year 10 students in Science Literacy.

Study and Sample Design

A sample of around 40 secondary schools (20 Year 10 students in each school) will be required for this pilot, plus approximately 24 Year 6 schools.

Schools that provide Year 10 students will also be asked to volunteer a Year 8 class for the pilot, in order to gather more information about the vertical progression of skills and knowledge. Year 8 volunteer classes will do an omnibus test consisting of Year 6 and vertical link items.

The total sample size will be 800 students from Year 10 and 480 students from Year 6. It is anticipated that the sample of year 8 students will be up to 400 students

Nomination of schools / school sample

ACARA will ask all states and territories to nominate schools for the pilot study, from a range of geolocations and socio-educational advantage. All schools nominated must have computer readiness consistent with the requirements for NAPLAN Online. In addition, TAA's will be asked to consider travel and logistic requirements of external invigilation in line with the practice implemented in other similar NAPLAN and NAP research studies and trials.

The table below shows the school sample nomination requirements:

	Year 6	Year 10
ACT	2	0
NSW	4	10
NT	2	0
Qld	4	10
Vic	4	10
SA	2	0
Tas	2	0
WA	4	10
Total required for sample	24	40

Test Design

The pilot study will consist of two types of assessment to be presented to students. All students will sit a standard objective test delivered on the platform, and a practical task. After students have sat the test, structured interviews will be conducted with each class to obtain qualitative data on students' experience of the items.

Random allocation will be used to allocate test pathways to classes. All students within one class will sit the same test.

2.3 Purpose

The purpose of this Contract is to engage a qualified and experienced Contractor to:

- provide test administration and invigilation of the Pilot Study in a sample of schools across Australia;
- conduct systematic observations and structured interviews in the sample of schools
- conduct qualitative analysis of the observation and interview data and provide a report.

2.4 Work to be undertaken by other contractors

To support the delivery of the NAP Science Literacy 2018 Pilot Study, ACARA will release multiple tenders for specific components related to the study. The development of the assessment framework and item development for the pilot will be managed under separate contracts.

2.5 Scope of project

The successful contractor will be required to undertake the following activities.

2.5.1 Test Administration

The test administration contractor will be responsible for the activities and documentation required for delivering tests in schools. This will include:

- Providing risk management, test security and test implementation and student data matching plans
- Preparing and distributing communications to schools
- Liaising with schools to finalise classes and test session scheduling
- Obtaining relevant consent for student participation if required
- Collecting school enrolment and TRT data
- Preparing systematic observation protocols and structured interview questions
- Providing a test schedule to ACARA
- Hiring and training invigilators / test administrators

The test administration contractor will be responsible for hiring and training suitably qualified and experienced invigilators who will administer tests at each school and conduct systematic observations and structured interviews with classes. Testing is to be conducted under test conditions for all students in the sample.

Invigilators will be responsible for administering the tests on the online platform and all invigilators are expected to be proficient in using computer and tablet devices. Invigilators will conduct systematic observations during tests and structured interviews with a class after tests have been completed. The invigilator will be responsible for recording and collecting data from these observations and interviews.

The Contractor will be responsible for ensuring that all invigilators meet the requisite security requirements and check 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).

- Preparing the Test Administrator Handbook
- Providing a helpdesk during the TRT and for the duration of the test window
- Administering the online tests in schools

Tests will be taken in two stages: Students will sit the standard test on the platform in the first stage, following by a break. The second stage will involve completing the practical task and interview. Both stages are expected to be completed within one day.

- Conducting systematic observations and structured interviews post-test

- Delivering quality assured data from the observations and interviews
- Collecting and analysing observation and interview data
- Providing a qualitative research report on observations and interviews
- Providing progress reports and consulting regularly with ACARA

2.5.2 Conduct systematic observations

The test administration contractor will collect qualitative data on students' engagement with the content and target level of the delivered items. To this end the contractor will be required to develop and implement a protocol for the systematic observation for all administered test sessions. It is expected that the observation protocol will contain a comprehensive and well defined list of targeted behaviours and interactions that students might exhibit while responding to items. It is expected that this list will be developed in consultation with and approved by ACARA.

The protocol should also outline the methodology for collection of the qualitative observations and data.

2.5.3 Conduct structured interviews

In addition, the contractor will be required to conduct structured interviews with students immediately after the practical task has been delivered. The interviews will be conducted with the whole class of students and will last approximately 20 min for year 6 students and 30 minutes for year 8 and 10 students.

These structured interviews will focus on students' interaction with the practical tasks and will have all characteristics of a retrospective cognitive interview but will be done at the class level. To that end the contractor will be required to develop, along with the protocol, a list of questions for each of the examined items to assist the delivery of structured interviews and analyses of their outcomes.

The contractor will be required to present ACARA with the draft of the interview protocols for consultation and approval.

The contractor will be required to employ staff suitably qualified to lead such interviews and engage with students in a productive and efficient way.

If electronically recording the interview, the contractor will be required to obtain consent from the school. ACARA will provide a pro forma consent agreement to be used by the contractor.

2.5.4 Analysis and reporting

The test administration contractor is required to collect and analyse information and response data from the systematic observations and structured interviews and provide a report (as specified) to ACARA.

2.5.5 Communication and evaluation

The contractor must communicate regularly with ACARA regarding the status and details of the project and provide written status reports on request.

3. Required Contract Material

(see clause 2.1.1.b)

The Contractor will be required to:

3.1 Provide a risk management and security plan

The Contractor is required to submit a risk management and security plan, including incident management procedures and response plans, detailing how system access, security and unscheduled downtime will be managed.

3.2 Provide a test implementation plan

3.3 Provide a test schedule

3.4 Provide the test administrator handbook

3.5 Provide protocols for systematic observation and structured interviews

The Contractor is required to work with ACARA to develop a set of protocols for conducting the systematic observation and structured interviews.

3.6 Provide a research report

The Contractor is required to provide summaries and an analytical report resulting from the systematic observation and structured interviews on completion of test delivery in schools or at an alternative delivery schedule agreed to between ACARA and the Contractor.

3.7 The following list of Materials is to be developed by the Contractor under the Contract in which ACARA would retain intellectual property:

- Protocols for conducting observation and interviews
- Research summaries and reports.

3.8 Secure deletion of data

The contractor is required to delete data on completion of the project as specified by ACARA. ACARA will require confirmation that data has been deleted as specified.

4. Policies, Standards and Guidelines

(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)

5. Commencement and Time-frame

(see clause 2.1.1.d)

Commencement Date: [to be inserted following selection of preferred tenderer]

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.

Timeframe:

Task Name	Start	End
Project initiation meeting	21 July 2017 (TBA)	21 July 2017
Provide progress reports and consult regularly with ACARA	July 2017	December 2017
School sample list provided to contractor	1 August 2017	1 August 2017
Provide risk management and test security and test implementation plans to ACARA	4 August 2017	4 August 2017
Communications sent to schools	14 August 2017	14 August 2017
School liaison and test session scheduling	14 August 2017	11 October 2017
Contractor provides Student lists for enrolment	12 September 2017	12 September 2017
TRT completed by schools	11 September 2017	20 October 2017
TA handbook finalised and provided to ACARA	15 September 2017	28 September 2017
Tests, observations and interviews delivered in schools, helpdesk available	16 October 2017	3 November 2017
Qualitative analysis completed	9 November 2017	29 November 2017
Draft report provided to ACARA	30 November 2017	30 November 2017
Project close-out meeting	December 2015	December 2015

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

(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

(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:

^Complete table^

Milestone	Description	Date	Total Payment %	Payment \$AUD
1	ACARA sign off on project management documentation, and completion of pre-test administration activities	13 October 2017	30%	
2	ACARA sign-off on administration and invigilation of the pilot study tests, observations and interviews in schools	3 November 2017	40%	
3	ACARA sign-off on completion of analysis, provision of final data files and delivery of the final research report	15 December 2017	30%	

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:

© 2014 [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 10, 255 Pitt Street

Sydney

17. Moral Rights

(see clause 4.4)

Permitted Acts

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

- 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)

^insert relevant items^

19. Privacy Directions, Guidelines, Determinations or Recommendations

(see clause 6)

^insert relevant items^

20. Contractor's Confidential Information

(see clause 8)

- (a) Information contained in contract:

Item	Period of Confidentiality
-------------	----------------------------------

^insert relevant items^

(b) Information obtained or generated in performing contract:

Item	Period of Confidentiality
-------------	----------------------------------

^insert relevant items^

21. ACARA's Address for Notices

(see clause 12.1.1.a)

Physical address	Level 13, Centennial Plaza, 280 Elizabeth Street, Sydney, NSW 2000
Postal address	Level 13, Centennial Plaza, 280 Elizabeth Street, Sydney, NSW 2000
Email	info@acara.edu.au
Facsimile	1300 995 468

22. Contractor's Address for Notices

(see clause 12.1.1.a)

Physical address

Postal address

Email

Facsimile

23. Insurance

(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
(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
(see clause 13.12)

New South Wales

Signatures

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