

PART A – DRAFT CONTRACT

RFT 2019/01

NAPLAN 2019 paper equating administration

DRAFT CONTRACT

DRAFT CONTRACT IN RELATION TO NATIONAL ASSESSMENT PROGRAM -
LITERACY AND NUMERACY (NAPLAN) 2019 PAPER EQUATING
ADMINISTRATION

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 NATIONAL ASSESSMENT PROGRAM -
LITERACY AND NUMERACY (NAPLAN) 2019 PAPER EQUATING ADMINISTRATION

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 13, 280 Elizabeth Street, Tower B, Centennial Plaza, 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 to in support of its conduct of the 2019 National Assessment Program - Literacy and Numeracy (NAPLAN) program (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, <p>but does not include:</p> <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 anything 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 2020 National Assessment Program - Literacy and Numeracy (NAPLAN) program (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 6.1.1.

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 in the jurisdiction where the Services will be provided.

- 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. Claims under this contract are 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.

13.14. Working with Children

13.14.1. If the provision of the Services requires the Contractor to come into contact with children or vulnerable people, the Contractor and its Personnel must comply with all Local Laws related to working with children or vulnerable people.

13.14.2. The Contractor must provide such evidence as ACARA reasonably requires confirming that its Personnel have the requisite approvals to work with children or vulnerable people.

DRAFT

THE SCHEDULE - CONTRACT DETAILS

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, overall management of the National Assessment Program (NAP) aligned to the Australian Curriculum, and conducting a national data collection and reporting program aimed at supporting school level performance reporting.

ACARA reports to and is directed by the Education Council. ACARA has overall responsibility for implementing the National Assessment Program (NAP). The National Assessment Program – Literacy and Numeracy (NAPLAN) commenced in 2008. Every year from 2008, all students in Years 3, 5, 7 and 9 have been assessed using national tests in Reading, Writing, Language Conventions (Spelling, and Grammar and Punctuation) and Numeracy. Test Administration Authorities (TAAs) in each state and territory are responsible for the implementation, administration and marking (where required) of the NAPLAN tests in their jurisdictions.

Performance of students in NAPLAN is reported on the NAPLAN scale for each domain, enabling comparison of results across Years 3, 5, 7 and 9. The NAPLAN scales also allow for the longitudinal tracking of performance by students, schools and systems.

Federal, state and territory education ministers have agreed that all schools will move online by 2020. State/territory education authorities will make decisions about the logistics and timing to move NAPLAN online for their state/territory, and during transition years some schools will sit NAPLAN tests online and some schools will sit NAPLAN tests on paper.

2.2. Background

NAPLAN measurement scales are calibrated annually in order for results to be comparable from year to year, and to allow for the longitudinal tracking of performance by students. NAPLAN uses the Rasch model with common persons in order to equate tests longitudinally. Using this method, selected samples of students in Years 3, 5, 7 and 9, will sit secure paper-based equating tests in April-May 2019. Results from the paper equating tests enable the central data analysis contractor to scale 2019 NAPLAN tests on to the existing NAPLAN assessment scales.

The Contractor will be responsible for all aspects of the administration of the equating tests, in each of the four domains of Reading, Language Conventions, Numeracy and Writing. On completion of the test administration, these materials will be securely despatched to the Contractor responsible for the data capture of all these materials. The Contractor will also be responsible for the marking of the Reading, Language Conventions, Numeracy and Writing tests (approximately 880 Writing scripts).

2.3 Purpose

The Contractor will undertake the printing, secure distribution, administration, secure invigilation and return of materials and data capture of all the highly secure paper equating tests. The Contractor is also required to undertake the marking of Reading, Language Conventions, Numeracy and Writing equating tests.

The Contractor is required to coordinate administration of the equating tests according to ACARA's nationally representative 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 names and postcodes of the sample schools to the contractor following project initiation.

Sampling information

Note to Tenderers: The sample size for the NAPLAN 2019 paper equating study may be extended to include a sample of NAPLAN 2019 online cohort schools. The sample size will be confirmed with the successful tenderer during contract negotiations, and the final sample will be provided to the Contractor.

ACARA requests that tenderers provide quotes on all three options, as per the costing tables in Section B of this tender. Tenderers should use the information provided as the basis for preparing their Tenders. ACARA reserves the right to alter the proposed sample.

In the NAPLAN 2019 paper equating study, a sample of schools across Australia will sit equating tests in Reading, Language Conventions, Numeracy and Writing. It is expected that all schools in the sample provided by ACARA will be included in the testing.

Reading, Language Conventions and Numeracy equating tests

For the Reading, Language Conventions and Numeracy equating tests, schools will be sampled from metropolitan, regional, provincial and remote areas from all sectors in all states and territories. For the Reading, Language Conventions and Numeracy equating tests, each student will complete one test each. It is expected that 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 one test each, and in a secondary school one class from Year 7 and one class from Year 9 will sit one test 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).

Writing equating test

For the Writing equating test, schools will be sampled from four jurisdictions only - NSW, VIC, QLD and WA. All Writing sampled schools will be in the metropolitan area of the capital city. Students sampled to sit the Writing equating test will complete one Writing test each. It is expected that one class from either Year 5 or Year 7 in each school will participate (i.e. in a primary school one class from Year 5 will sit one Writing test each, and in a secondary school one class from Year 7 will sit one Writing test each).

As only one Writing test (one genre) will be tested, the security of the writing test is of paramount importance. Schools/invigilators should be advised that they will be tested in either narrative or persuasive genres.

Option A – 246 Reading, Language Conventions and Numeracy schools; 42 Writing schools

In Option A, approximately 288 schools across Australia will sit paper equating tests in Reading, Language Conventions, Numeracy and Writing.

Reading, Language Conventions and Numeracy equating tests

For each of the domains of Reading, Language Conventions and Numeracy, a minimum of 800 students will be required to complete *each test at each year level* (that is, approximately 3200 completed tests per domain are required). The total sample size for Reading, Language Conventions and Numeracy will be approximately 2,460 students per year level – approximately 246 schools in total.

Writing equating test

For the Writing equating test, a minimum of 400 students at Year 5 and a minimum of 400 students at Year 7 will be required to complete one Writing test (i.e. 800 completed tests are required). The total sample size for Writing will be approximately 440 students per year level – approximately 42 schools.

Provisional distribution

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

Option A				
State	Reading/Language Conventions/Numeracy (2 classes per school*)		Writing (1 class per school*)	
	Primary	Secondary	Primary	Secondary
ACT	-	-	-	-
NSW	33	42	6	5
NT	6	2	-	-
QLD	19	28	6	5
SA	8	11	-	-
TAS	6	6	-	-
VIC	26	33	6	5
WA	11	15	5	4
Total number of schools	109	137	23	19

*based on an average of 20 students per class

Option B – 369 Reading, Language Conventions and Numeracy schools; 42 Writing schools

In Option B, approximately 411 schools across Australia will sit paper equating tests in Reading, Language Conventions, Numeracy and Writing.

Reading, Language Conventions and Numeracy equating tests

For each of the domains of Reading, Language Conventions and Numeracy, a minimum of 1200 students will be required to complete *each test* at *each year level* (that is, approximately 4800 completed tests per domain are required). The total sample size for Reading, Language Conventions and Numeracy will be approximately 3,690 students per year level – approximately 369 schools in total.

Writing equating test

For the Writing equating test, a minimum of 400 students at Year 5 and a minimum of 400 students at Year 7 will be required to complete one Writing test (i.e. 800 completed tests are required). The total sample size for Writing will be approximately 440 students per year level – approximately 42 schools.

Provisional distribution

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

State	Option B			
	Reading/Language Conventions/Numeracy (2 classes per school*)		Writing (1 class per school*)	
	Primary	Secondary	Primary	Secondary
ACT	9	9	-	-
NSW	46	60	6	5
NT	9	3	-	-
QLD	25	39	6	5
SA	12	18	-	-
TAS	9	9	-	-
VIC	36	45	6	5
WA	17	23	5	4
Total number of schools	163	206	23	19

*based on an average of 20 students per class

Option C – 492 Reading, Language Conventions and Numeracy schools; 42 Writing schools

In Option A, approximately 534 schools across Australia will sit paper equating tests in Reading, Language Conventions, Numeracy and Writing.

Reading, Language Conventions and Numeracy equating tests

For each of the domains of Reading, Language Conventions and Numeracy, a minimum of 1,600 students will be required to complete *each test at each year level* (that is, approximately 6,400 completed tests per domain are required). The total sample size for Reading, Language Conventions and Numeracy will be approximately 4,920 students per year level – approximately 492 schools in total.

Writing equating test

For the Writing equating test, a minimum of 400 students at Year 5 and a minimum of 400 students at Year 7 will be required to complete one Writing test (i.e. 800 completed tests are required). The total sample size for Writing will be approximately 440 students per year level – approximately 42 schools.

Provisional distribution

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

Option C				
State	Reading/Language Conventions/Numeracy (2 classes per school*)		Writing (1 class per school*)	
	Primary	Secondary	Primary	Secondary
ACT	12	12	-	-
NSW	62	80	6	5
NT	12	4	-	-
QLD	34	52	6	5
SA	16	24	-	-
TAS	12	12	-	-
VIC	48	60	6	5
WA	22	30	5	4
Total number of schools	218	274	23	19

*based on an average of 20 students per class

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.

2.4 Scope of project

The Contractor will be required to provide the following:

2.4.1. Deliverable 1 – Project 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
 - 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 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, informed by the requirements listed in section 2.5 Security Requirements.

2.4.2. Deliverable 2 – Project management and reporting

After execution of the contract 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 during development of equating administration material;
- provide risk alerts to ACARA immediately upon detection of issues considered high risk to the project;
- respond to feedback from ACARA following reviews of equating administration material;
- modify equating administration 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 paper equating administration project. These meetings will be organised by ACARA and held at a time and location (videoconference as default mode) agreed with the Contractor.

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 the data and image files to ACARA to discuss aspects of the project.

Progress 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. Written 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 report: The Contractor must also provide a project completion report outlining, as a minimum, the following:

- actual or agreed timelines negotiated within the scope of this contract;
- an outline of any obstacles, incidents or issues encountered that affected the delivery or reputation of the project in 2019, and any potential obstacles, incidents or issues that may affect the project in subsequent years;
- an outline of any areas where a variation may improve any future work.

2.4.3. Deliverable 3 – Coordination with schools

Participation by schools in the equating study 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 equating study 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 equating study. 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 confirm the test window. The test window for the 2019 equating study is Monday 29 April 2019 – Friday 10 May 2019). The Contractor will, in conjunction with ACARA and the states and territories, contact and liaise with the selected schools, through emails, phone calls or other appropriate methods, in order to schedule testing days. All schools listed in the sample are expected to participate in the study. 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.

2.4.4. Deliverable 4 – Printing

The Contractor is required to print all copies of the Reading, Language Conventions, Numeracy and Writing equating test booklets and stimulus materials and the associated administration instructions. The Contractor is required to ensure that sufficient test materials are printed so that the minimum number of completed tests is met – i.e. print a buffer of 20% more tests than the minimum number of required completed tests. E.g. if the minimum number of completed tests required for Numeracy is 800 per year level, then a minimum of 1000 test booklets should be printed.

Print masters of the 2019 secure equating tests for Reading, Language Conventions, Numeracy and Writing, and the associated administration instructions will be provided to the Contractor by ACARA on execution of the contract.

The table below shows the number of pages in each test booklet:

Domain	Year level	Booklet type	Number of pages
Reading	Year 3	Test	12
		Magazine	8
	Year 5	Test	12
		Magazine	8
	Year 7	Test	16
		Magazine	12
	Year 9	Test	16
		Magazine	12
Language	Year 3	Test	12

Conventions	Year 7	Test	12
	Year 7	Test	12
	Year 9	Test	12
Numeracy	Year 3	Test	16
	Year 7	Test	16
	Year 7 (calc allowed)*	Test	13
	Year 7 (non-calc)*	Test	11
	Year 9 (calc allowed)*	Test	13
	Year 9 (non-calc)*	Test	11
Writing	Year 5	Test	4
		Prompt	1
	Year 7	Test	4
		Prompt	1

*Note: For Year 7 and Year 9, each test book is comprised of the calculator-allowed and non-calculator tests, combined in a flip-book format.

Overprinting student details on test booklets

Results from the equating tests enable the central data analysis contractor to locate the 2019 NAPLAN tests on the same scale as those in previous years. Therefore, it is important that individual students' equating data is identifiable and able to be matched to their NAPLAN data. ACARA suggests that, where possible, this is achieved through overprinting individual student details on test booklets (so that the results from each student's test can be linked to their name, ID, year level, state/territory, sector and ACARA school ID).

2.4.5. Deliverable 5 – Secure packing

Equating tests for all domains (Reading, Language Conventions, Numeracy and Writing) are to be securely packed into class sets in tamper-proof bags, clearly labelled with the school and class, as per the domain and class/school sample provided by ACARA. Packing must allow for accurate counting of test materials without opening the package.

2.4.6. Deliverable 6 – Test administrator's handbook

The Contractor will be responsible for the production of a test administrator's handbook, which will outline the responsibilities and duties of the invigilators. ACARA will provide test administration instructions for inclusion in the handbook and can provide an existing equating study test administration handbook for reference.

2.4.7. Deliverable 7 – Highly secure delivery

After the packaging of all required materials, the Contractor must arrange secure delivery of all materials to invigilators (who will be responsible for the administration of the tests in

schools) at an agreed time prior to the test administration. 'Secure' is specified in the section 2.5 Security Requirements.

It will be critical that the security of the Writing equating test genre is managed with invigilators. The Contractor will work with ACARA 's NAPLAN team to determine the information to be provided to Writing invigilators, including what invigilators may tell school personnel.

2.4.8. Deliverable 8 – Appoint and train invigilators

The Contractor will be responsible for employing and training invigilators who are required to administer the equating tests at each school. The invigilators will be required to administer the tests under 'test conditions' (the same conditions required for NAPLAN 2019) including actively monitoring students during the test (i.e. walking around the classroom to ensure that students are not copying from other students' work) and ensuring that all student details are completed and legible on test books. Invigilators must also ensure that the full name of the school has been legibly printed on each test book prior to test administration.

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 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.

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 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 test books and associated materials given to and returned from invigilators in order to ensure that every book is accounted for and that all associated 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). Note that some schools may require invigilators to show their approval/clearance to enter/work in schools, along with photo identification, before allowing invigilators to enter school grounds.

2.4.9. Deliverable 9 – Administer and invigilate the tests

Testing is expected to be conducted under test conditions for all students in the equating sample.

The invigilation of the equating study must be conducted in the two weeks prior to the NAPLAN tests for all jurisdictions (between 29 April to 10 May 2019), unless otherwise agreed by 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 equating study. 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 equating study samples 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 test period.

2.4.10. Deliverable 10 – Secure receipt and scanning of completed test books, and provision of image files

After the completion of the administration of the tests, the Contractor will be responsible for ensuring that the invigilators securely return the test materials for marking, in a timely manner and in the mode specified by the Contractor. 'Secure' is specified in the section 2.5 Security Requirements. The Contractor will also be responsible for auditing all equating tests (including those not completed by students) and associated materials.

After receipt of the completed Reading, Language Conventions, Numeracy and Writing tests, the Contractor will be responsible for scanning the test answer booklets for the purpose of capturing the student details. Completed Reading, Language Conventions, Numeracy and Writing booklets will require scanning and the images must be provided to ACARA as Jpeg and Pdf files.

2.4.11. Deliverable 11 – Marking of Reading, Language Conventions and Numeracy tests

The Contractor will be responsible for the marking of the Reading, Language Conventions and Numeracy tests. Constructed response items must be marked by trained staff in accordance with specifications and criteria provided by ACARA.

2.4.12. Deliverable 12 – Marking of Writing tests, appointment and training of writing markers

The Contractor will be responsible for the marking of Writing tests, which must be marked by trained, experienced NAPLAN markers in accordance with the marking rubrics and specifications provided by ACARA. The Contractor will also be required to conduct a minimum of 10% check-marking of each marker, for marking quality assurance.

The Contractor will be responsible for the employment of a Lead Marker and for employing and refresher-training of experienced and qualified markers, who will mark the tasks using the national marking rubric.

Requirements for markers

The markers employed by the Contractor must:

- have proven experience in the marking of NAPLAN writing scripts, be familiar with the purpose and text types assessed in NAPLAN writing;
- have demonstrated high levels of accuracy and consistency in main NAPLAN marking operations;
- be sufficiently skilled in using computer devices in order to mark scripts on the contractor's marking platform.

Marking must be preceded by a 2- to 3-hour training session facilitated by the Lead Marker, using materials provided by ACARA. Training may be attended by ACARA's Writing Test Manager. All markers must attend the training to refresh their knowledge of the marking rubrics and equating test-specific scripts. Training will also ensure that markers are fully aware of their responsibilities with regards to the security of test materials.

The Contractor will be responsible for all costs associated with the hiring and training of markers, including refresher training of all markers with equating test topic specific scripts.

2.4.13. Deliverable 13 – Establish secure marking centre

The Contractor will be required to establish a secure, central marking centre and provide technical support required for marking. The marking centre should be held at highly secure premises (situated in any major capital city). Home based marking will not be considered.

2.4.14. Deliverable 14 – 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 (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 remaining test window (for each domain within each class, year level, school, sector and state). ACARA will provide an example template for the daily report.

The Contractor is also required to adjust the allocation of tests to students as the equating study progresses (in collaboration with ACARA) to ensure that the sample requirements for tests are met.

2.4.15. Deliverable 15 – 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 during business hours for a period of three weeks (or as agreed) prior to the testing (excluding school holidays), and during the equating study testing period.

2.4.16. Deliverable 16 – Provide weekly logs of invigilators' 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:

- 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.

2.4.17. Deliverable 17 – Provide data files and staff support

Upon completion of the data capture, the data files must be securely delivered to ACARA in the fixed-width text (ASCII) file format specified by ACARA. The detailed data matrix specifications will be provided to the successful contractor. The Contractor will be required to deliver the data in a single combined file and as separate files for each year level,

domain and jurisdiction. Quality assurance processes must be in place to ensure the accuracy and consistency of these data.

The Contractor is required to nominate one person with experience in the production of data files to be able to be contacted for a period of four weeks after the data files have been provided to ACARA to resolve any issues that might arise during the subsequent analysis of the equating results. The person should be readily available during that period.

2.4.18. Deliverable 18 – Secure storage and disposal of test materials

All test materials in both paper and electronic files must be stored in appropriately secure locations for a period of time to be determined by ACARA and, following the expiry of this time period, disposed of in a highly secure manner as approved by ACARA. 'Secure' is specified in the section 2.5 Security Requirements.

2.5 Security Requirements

All aspects of administration, invigilation, printing, distribution and collection of the equating tests, 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 the printing of materials, distribution of materials to schools/invigilators, the test administration, and return of materials for marking.
- All test booklets, administration instructions, data files and associated materials, in both printed 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 is required to account for every test book and associated stimulus material and set of administration instructions used in the study. All test books, stimulus material and 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.
- 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 or teachers present in the room while testing) must sign confidentiality agreements in which they agree not to disclose information about the test and the test questions, including the Writing genre. Invigilators

and markers may not disclose information about or discuss the genres of the equating Writing tests with any other party, including other invigilators.

All electronic equipment including telecommunications apparatus, servers, disks, tape libraries etc. is 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.

2.5 Materials to ACARA

At each completion phase of the deliverables outlined above, 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 (see clause 2.1.1.b)

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

- All equating test booklets and associated administration instructions (e.g. invigilators handbook);
- Reports provided to ACARA under this Contract;
- All data files.

3.1. Secure deletion of data

The Contractor is required to provide evidence that all information on NAPLAN equating tests and information on item performance including but not limited to any data used in preparation for the delivered files have been securely erased from all media including but not limited to networks servers, computer hard drives in the Contractor's possession. The timeline for this activity will be negotiated with the Contractor at a later date.

4. Policies, Standards and Guidelines

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: TBC February 2019

Note to Tenderers: The project timeline will be confirmed during contract negotiations, and the final timeline 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 timeline, it reserves the right not to alter the proposed timeline.

Time-frame:

The Contractor will be required to meet the following timeline:

Project Timeline

Activity /Stage	Deliverables	Notes	Date	
1	Provide project management and reporting plans	Provide project management and reporting plans	Including detailed timelines, quality plan, risk management plan and security plan	7 February 2019
2	Print Reading, Language Conventions, Numeracy and Writing equating tests from files supplied via ACARA's secure FTP site.	Printed equating tests and administration instructions. (The Contractor must ensure that the sample allows for the required number of completed test books.)	Contractor must ensure sufficient test materials are printed to ensure the minimum number of completed tests booklets is met	12 April 2019

Activity /Stage	Deliverables	Notes	Date	
3	Collate and pack equating tests into nominated school and class groups.	Securely packaged tests –packed according to the nominated sample provided by ACARA.	Contractor must provide a detailed security plan for the management of the collating and packing.	19 April 2019
4	Secure delivery and receipt of packed materials to equating test invigilators.	Securely packaged tests delivered to equating test invigilators.	Contractor must provide a detailed security plan for the management of the secure delivery.	26 April 2019
5	Secure administration and invigilation of equating tests.	<ul style="list-style-type: none"> • Management of security • Liaison with TAAs and schools • Employment and payment of invigilators • Production of handbooks for invigilators • Training of invigilators • Distribution of tests to invigilators • Conduct invigilated tests in schools • Compilation of invigilator reports • Secure return of test materials to printing/marketing contractor • Check that all test materials have been accounted for. 	Contractor must provide a detailed security plan for the management of the materials during administration, including distribution, invigilation and return of test materials. This includes the tracking of all materials in transit. This should include clearance for invigilators to work in schools according to the requirements of each jurisdiction.	29 April – 10 May 2019
6	Receive completed Reading, Language Conventions and Numeracy test papers; undertake data capture of student details; undertake marking according to ACARA's specifications (including marking of constructed response where applicable). Transfer of data to ACARA, according to ACARA's specifications.	Data files from the marked tests to be delivered to ACARA. Secure storage of all materials for the determined period, followed by secure disposal of materials including electronic files.	Contractor must provide a detailed security plan for the management of the receipt of returned materials and the marking and data capture process. Ongoing monitoring of completed tests will be required- including status of the number of papers received back from the Administration contractor and marking progress. ACARA will provide the Contractor with the School Administration Schedule to allow monitoring.	24 May 2019

Activity /Stage	Deliverables	Notes	Date	
7	Receive completed Writing test papers; undertake data capture of student details; and mark the scripts according to ACARA's specifications. Transfer of data to ACARA, according to ACARA's specifications.	Data files (typically CSV files) from the marked tests to be delivered to ACARA. Secure storage of all materials for the determined period, followed by secure disposal of materials including electronic files.	Contractor must provide a detailed security plan for the management of the receipt of returned materials and the marking and data capture process. Ongoing monitoring of completed tests will be required- including status of the number of papers received back from the Administration contractor and marking progress. ACARA will provide the Contractor with the School Administration Schedule to allow monitoring.	29 May 2019
	Provide scanned test booklets (all domains) in Pdf and Jpeg format.	Image files of test booklets (Reading, Numeracy, Language Conventions and Writing) to be delivered to ACARA.		29 May 2019
8	Secure deletion of electronic test files from servers and secure destruction of printed	Written confirmation that all files have been securely deleted and destroyed		28 June 2019

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.

^To be completed following selection of the preferred Tenderer^

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:

© 2019 [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

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 6.2.1.b)

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