

PART A

DRAFT CONTRACT IN RELATION TO THE PROVISION OF SERVICES FOR RFT 10-22, INTERNAL AUDIT SERVICES

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

^Party 2 Name^

^Party 2 ABN^ ^Party 2 ACN^

Tenderers should refer to PART B – REQUEST FOR TENDER
(INCLUDING TENDER RESPONSE SCHEDULES) which sets
out the conditions of tender and tender response requirements.

CONTRACTOR AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2023

BETWEEN

AUSTRALIAN CURRICULUM, ASSESSMENT AND REPORTING AUTHORITY (ACARA)
ABN 54 735 928 084
of Level 13, Centennial Plaza, 280 Elizabeth Street, Sydney, NSW 2010

AND

INSERT NAME OF CONTRACTOR (ABN xxxxxxxx) ('Contractor')

BACKGROUND

A The Australian Curriculum, Assessment and Reporting Authority (ACARA) is responsible for the development of a rigorous, world-class national curriculum from Foundation to Year 12, beginning with the learning areas of English, Mathematics, Science and History; followed by Geography, Languages and the Arts; and then the other learning areas defined in the Melbourne Declaration. The Foundation to Year 10 Australian Curriculum for English, mathematics, science and history, and information about curriculum implementation are available online at: www.australiancurriculum.edu.au.

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

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

ACARA requires a suitably qualified and experienced contractor to provide internal audit services, detailed in the Project Brief, ('**Project**').

B ACARA wishes to engage the Contractor to perform the Project, and the Contractor has agreed to perform the Project in accordance with the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

In this Agreement, unless the context requires otherwise:

ACICA	means the Australian Centre for International Commercial Arbitration
Agreement	means this agreement, the Schedule, the attachments and any amendment to this agreement
Commencement Date	means the commencement date specified in the Schedule or any other date agreed by the parties
Completion Date	means the completion date specified in the Schedule or any other date agreed by the parties
Confidential Information	means all information and materials disclosed, provided or otherwise made available or becoming known to, or developed by, the Contractor in the course of performing the Project, whether before or after execution of this Agreement, but excludes information that the Contractor can prove: <ul style="list-style-type: none"> (a) was in the public domain at the date of this Agreement; (b) was subsequent to the date of this Agreement, became part of the public domain otherwise than as a result of disclosure by the Contractor directly or indirectly in breach of this Agreement; or (c) was in its possession at the time of disclosure by ACARA to the Contractor and was not otherwise acquired from ACARA directly or indirectly
Contractor Intellectual Property	means intellectual property created prior to, or otherwise than for the performance of, the Project, and specified in the Schedule
Fee	means the fee detailed in the Schedule
GST	means a tax on the supply of anything, a goods and services tax or a value added tax
Insolvency Event	in relation to the Contractor means that the Contractor: <ul style="list-style-type: none"> (a) commits an act of bankruptcy; (b) is the subject of an application for winding up; (c) calls a meeting of its creditors; (d) has a receiver appointed over all or a substantial part of its assets; (e) passes a resolution for its winding up;

	(f) has judgment entered against it for any cause; or (g) compromises with its creditors
Intellectual Property	means all industrial and intellectual property rights (including, without limitation, rights to patents, designs, copyright, trademarks, trade names and circuit layouts) conferred under statute or common law or equity in any country
Local Laws	means all statutory and regulatory requirements applying in the jurisdiction where the Services will be performed (and includes where applicable, all applicable Commonwealth legislative and regulatory requirements)
Moral Rights	means the right of attribution, the right against false attribution and the right of integrity of authorship as defined in the <i>Copyright Act 1968</i>
Payment Schedule	means the payment section set out in the Schedule
Project	means the project described in the Project Brief and any further work the Contractor agrees to perform for ACARA under this Agreement
Project Brief	means the project brief attached to this Agreement and includes all amendments made by ACARA to the project brief
Project Manager	means the project manager set out in the Schedule
Project Results	means all work, ideas, concepts and reports and intellectual property in such things developed or created by the Contractor, alone or with others, in the course of performing the Project or otherwise arising out of the use of any of ACARA's time, materials, resources, or facilities
Schedule	means the schedule to this Agreement, titled 'Schedule'
Services	means the services described in the Schedule
Specified Acts	means the specified acts referred to in the 'Intellectual Property, Moral Rights and Project Results' clause of this Agreement
Specified Personnel	means the personnel specified in the Schedule as required to perform all or part of the work constituting the Services
Special Conditions Schedule	means the schedule to this Agreement titled 'Special Conditions Schedule'
ACARA	has the meaning given to it in paragraph A of the Background
Third Party Intellectual Property	means intellectual property created prior to and/or otherwise than for the performance of the Project and owned by a third party.

2. ENGAGEMENT

- 2.1. The Contractor agrees to perform the Project for ACARA from the Commencement Date in accordance with the Project Brief, the terms of the Special Conditions Schedule (if any) and on the terms and conditions set out in this Agreement.
- 2.2. The Contractor must ensure that:
 - a. the Project is performed, and all materials and data requested by ACARA pursuant to this Agreement are prepared diligently, competently, with care and skill and in a proper and professional manner and in accordance with the terms of this Agreement;
 - b. the Project is performed in accordance with relevant best practice;
 - c. the Contractor performs the Project in compliance with all Local Laws;
 - d. when using ACARA's premises or facilities, the Contractor complies with all reasonable directions and ACARA's procedures relating to occupational health and safety, equal opportunity and harassment, information technology and security in effect at those premises or in regard to those facilities, as notified by ACARA;
 - e. the Contractor keeps adequate records of work performed under this Agreement and, if requested to do so, immediately provides ACARA with copies of those records and of all correspondence or other material arising from or relating to the performance of the Project; and
 - f. the Project is completed by the Completion Date.
- 2.3. The Contractor acknowledges that ACARA has entered into this Agreement relying on the skill, care, expertise, experience and ability of the Contractor to perform the Project.
- 2.4. To the extent that the Project has commenced or been completed prior to the date of execution of this Agreement, the Project will be deemed to have been performed subject to the terms of this Agreement.

3. NATURE OF RELATIONSHIP

- 3.1. The Contractor is engaged as an independent contractor. Nothing in this Agreement constitutes the Contractor as an employee, agent, partner or joint-venturer of ACARA.
- 3.2. The Contractor has no authority to incur, and must not incur any obligation on behalf of ACARA except with the express written instruction of ACARA.

4. NON-SOLICITATION

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

5. RELATIONSHIP WITH PROJECT MANAGER

- 5.1. The Contractor must perform the Project to the satisfaction of the Project Manager.
- 5.2. During the performance of the Project, the Contractor agrees to regularly liaise with the Project Manager and comply with any reasonable request made by the Project Manager.

6. COMMUNICATIONS

- 6.1. The Contractor must address all correspondence and communications to the Project Manager.

7. PAYMENT

- 7.1. In consideration for the provision of the Services, ACARA will pay the Contractor the Fee in the instalments detailed in the Schedule. Subject to clause 7.5, the Fee is inclusive of all costs, taxes, levies and charges that will be incurred by the Contractor in the provision of the Services and is not subject to any adjustment for any reason (including currency fluctuations) unless expressly provided for in the Agreement or otherwise agreed by the parties.
- 7.2. Subject to clause 7.3, ACARA will pay the Contractor within 14 days of the end of the month it receives from the Contractor an invoice for payment, provided the timing and amount of such invoice are in accordance with the payment details described in the Schedule.
- 7.3. ACARA will be entitled, without derogating from any other right it may have, to defer payment until the Contractor has completed the component of the Project relevant to the submitted invoice to the satisfaction of ACARA.
- 7.4. The Contractor must pay all government-imposed taxes, charges, fees and other amounts due in respect of:
 - a. this Agreement; or
 - b. any payment to be made by ACARA to the Contractor under this Agreement.
- 7.5. If this Agreement or any consideration given under it is subject to GST in relation to any supply made under this Agreement, the parties agree that the amount payable for such supply by any party will be adjusted by the amount of the GST. Each party agrees to do all things, including providing all invoices or other documentation in such form and detail that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.
- 7.6. The Contractor authorises ACARA to deduct from any payment made by ACARA to the Contractor any amount that ACARA is required or authorised by law to deduct (including without limitation, withholding 46.5 per cent of the amount claimed under an invoice that

does not specify an Australian Business Number in respect of the Contractor). Any deduction made in accordance with this clause 7 will be deemed to be a payment to the Contractor for the purposes of calculating the discharge of ACARA's obligations under this Agreement.

8. PROPERTY IN MATERIALS AND CONTRACTOR IDENTIFICATIONS

- 8.1. All materials and information made available by ACARA to the Contractor remain the property of ACARA.
- 8.2. The Contractor must not use ACARA's trademarks or other identifications without ACARA's prior written consent.

9. CONFIDENTIAL INFORMATION

- 9.1. The Contractor must not, unless ACARA has first agreed in writing:
 - a. disclose to anyone else; or
 - b. use for a purpose other than the performance of the Projectany of the Confidential Information.
- 9.2. The Contractor may make copies of written or computer-stored materials incorporating Confidential Information only if those copies are necessary for the purpose of performing the Project and must:
 - a. return to ACARA all Confidential Information (including any copies made by it); and
 - b. permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrievalupon the expiration or earlier termination of this Agreement and provide written notification to ACARA that these obligations have been complied with.
- 9.3. The Contractor must notify ACARA immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Agreement and must take all steps reasonably required by ACARA to stop that unauthorised disclosure, use or copying.
- 9.4. Clause 9.1 does not affect:
 - a. disclosure of information, documents and material available publicly otherwise than because the persons disclosing them contravened this clause 9; or
 - b. disclosures required by law.
- 9.5. The Contractor acknowledges and accepts that monetary damages would be an insufficient remedy for breach of this clause and that in addition to any other remedy available, ACARA

is entitled to injunctive relief to prevent a breach of this clause and to compel specific performance of this clause.

- 9.6. The obligations of the Contractor under this clause 9 are subject to any rights that the Contractor may have under the *Public Interest Disclosure Act 2013*.

10. INTELLECTUAL PROPERTY, MORAL RIGHTS AND PROJECT RESULTS

- 10.1. The Contractor must promptly disclose all Project Results to ACARA.

- 10.2. The Contractor acknowledges and agrees that:

- a. nothing in this Agreement grants the Contractor any Intellectual Property or other rights in the Project Results; and
- b. Intellectual Property in all Project Results arising as a result of the performance of the Project or otherwise will vest exclusively in ACARA

and the Contractor will execute all documents that are necessary or desirable to ensure all Project Results and all Intellectual Property subsisting in the Project Results become and remain vested in ACARA.

- 10.3. Clause 10.2 does not affect the ownership of Contractor Intellectual Property or Third Party Intellectual Property included in the Project Results.

- 10.3.1. In relation to Contractor Intellectual Property included in the Project Results, the Contractor grants ACARA a permanent, irrevocable, free, worldwide, non-exclusive licence (including a right to sub-license) to use, reproduce, adapt and exploit such Contractor Intellectual Property for any purpose.

- 10.3.2. In relation to Third Party Intellectual Property included in the Project Results, prior to including such Third Party Intellectual Property in the Project Results, the Contractor must seek written permission from ACARA to include the Third Party Material in the Project Results and where that permission is granted obtain from the owner of the Third Party Intellectual Property the right for ACARA to use such property in the same way that it can use Contractor Intellectual Property.

- 10.4. The Contractor warrants that it is entitled, will be entitled or will procure that it is entitled at the relevant time to deal with the Intellectual Property in the Project Results (including, without limitation, Contractor Intellectual Property and Third Party Intellectual Property) in the manner provided for in this clause 10.

- 10.5. To the extent permitted by applicable laws and for the benefit of ACARA, the Contractor consents to the use by ACARA and any other party authorised by ACARA of the Project Results for the Specified Acts even if the use would be an infringement of the Contractor's Moral Rights.

- 10.6. In clause 10.5, the Specified Acts are:

- a. failure to identify the authorship of any Project Results, or any content of the Project Results;
 - b. materially altering the content, format, colours, layout or style of the whole, or any part of, the Project Results;
 - c. reproducing, communicating, adapting, publishing or exhibiting the whole or any part of, the Project Results without attributing authorship; and
 - d. adding any additional content or information to the whole, or any part of, the Project Results.
- 10.7. The Contractor agrees that it will not require any person or organisation under clause 10.3.1 of this Agreement to make any payment to any copyright-collecting society or other similar organisation for any copying or any other uses of the Contractor Intellectual Property that are permitted under clause 10.3.1.
- 10.8. The Contractor warrants that:
- a. it has all necessary right, title, permission or authority to grant the licence granted in clause 10.3.1 (including without limitation all necessary Intellectual Property Rights);
 - b. it has obtained all valid consents from all creators of works or other material included in the Contractor Intellectual Property so that the use of the Contractor Intellectual Property by ACARA, or any party authorised by ACARA, for the Specified Acts will not infringe the creator's Moral Rights under the *Copyright Act 1968*;
 - c. the grant of any rights conferred on ACARA under this Agreement will not infringe the rights, including, without limitation, the Intellectual Property Rights of any person; and
 - d. it has not entered into any agreement that conflicts with the rights granted to ACARA under this Agreement.
- 10.9. On or before the Completion Date, the Contractor must deliver to ACARA all material that comprises the Project Results.

11. INSURANCE

- 11.1. Before performing the Project, the Contractor must take out professional indemnity insurance and ensure that such insurance is sufficient to cover any loss or damage, (including, without limitation, consequential loss) that ACARA may suffer as a result of act or omission of the Contractor in the provision of the Services.
- 11.2. The policies must be for an amount sufficient to cover the Contractor's obligations under this Agreement, but not less than \$5,000,000 for professional indemnity insurance and \$10,000,000 public liability insurance.
- 11.3. The policies must be maintained until completion of the Project and, in relation to the professional indemnity insurance policy, for a period of at least 6 (six) years after the completion of the Project.

- 11.4. If requested by ACARA, the Contractor must provide ACARA with a certificate of currency for the insurance policies taken out in accordance with this clause 11.

12. SUBCONTRACTORS

- 12.1. The Contractor must not subcontract the performance of any part of the Project or this Agreement without ACARA's prior written approval, which:
- a. may or may not be given by ACARA acting in its absolute discretion; and
 - b. may be subject to any conditions ACARA considers appropriate acting in its absolute discretion.
- 12.2. The Contractor agrees to ensure that:
- a. any subcontract entered into with a subcontractor imposes:
 - i. any conditions prescribed by ACARA under clause 12.112.1.b; and
 - ii. all relevant obligations, conditions, restrictions or prohibitions binding on the Contractor under this Agreement, including, without limitation, the terms of the Special Conditions Schedule (if any);
 - b. its subcontractors comply with that subcontract and, with respect to the terms and conditions referred to in clause 12.2a, to exercise any rights or remedies it may have against its subcontractors in accordance with any direction by ACARA.
- 12.3. The Contractor is responsible for the performance of the Project and this Agreement notwithstanding that the Contractor has subcontracted any part of the performance of the Project or this Agreement in accordance with this clause 12.

13. INDEMNITY

- 13.1. The Contractor must indemnify ACARA and keep it indemnified against any losses (including liabilities of ACARA to third parties), costs and expenses (including reasonable costs and expenses on a solicitor and own client basis) arising out of:
- a. any default, act or omission by the Contractor;
 - b. any breach of any term of this Agreement by the Contractor;
 - c. the Project Results being in breach of any law, containing anything alleged or proven to be defamatory or statements purporting to be factual or true failing to be so;
 - d. any misuse or disclosure of Confidential Information by the Contractor; and
 - e. any claim by any third party that it has Intellectual Property or Moral Rights which will be infringed by ACARA, or any third party's use or exploitation of the Project Results.

14. EXPIRY, TERMINATION, BREACH

- 14.1. If not terminated sooner, the engagement of the Contractor expires at the earliest of the completion of the Project.
- 14.2. ACARA may terminate the engagement of the Contractor by notice to the Contractor if:
- a. the Contractor does not perform the Project by the Completion Date, or at the standard, required by, or acceptable to, ACARA (as the case may be), or otherwise breaches a provision of this Agreement and that failure or breach:
 - i. is incapable of remedy; or
 - ii. if capable of remedy, continues for 5 (five) days after ACARA gives the Contractor a notice requiring the breach to be remedied; or
 - b. an Insolvency Event occurs in relation to the Contractor.
- 14.3. Notwithstanding clauses 14.1 and 14.2 above, ACARA may terminate this Agreement in whole or in part immediately upon the provision of written notice at any time.
- 14.4. On termination of the Agreement, the Contractor must:
- a. stop work as specified in any notice;
 - b. take all available steps to minimise loss resulting from that termination and to protect all Project Results; and
 - c. continue work on any part of the Project not affected by the notice; and further on termination or expiry of the Agreement, the Contractor must:
 - d. deliver to ACARA all material and information made available by ACARA to the Contractor and all Project Results.
- 14.5. In the event of partial termination, ACARA's liability to make payment will, in the absence of agreement to the contrary, abate proportionally to the reduction in the Project.
- 14.6. Where this Agreement is terminated other than for Contractor breach, ACARA will not be liable to pay any compensation to the Contractor, including, without limitation, compensation for loss of prospective profits, in relation to termination of this Agreement.
- 14.7. ACARA's rights under this clause 14 are without prejudice to any right of action or remedy which has accrued or may accrue in favour of ACARA.
- 14.8. The rights and obligations contained in clauses 8 ('Property in Materials and Company Identifications'), 9 ('Confidential Information'), 10 ('Intellectual Property and Project Results'), 13 ('Indemnity') and 14 ('Expiry, Termination, Breach') bind the parties notwithstanding the termination or expiry of this Agreement.

15. ASSIGNMENT

- 15.1. This Agreement is personal to the Contractor. The Contractor must not assign or novate the benefit of this Agreement or any part of it.
- 15.2. ACARA may assign all or any part of its rights under this Agreement, or novate this Agreement in whole or in part to a third party by giving the Contractor written notice of such assignment or novation.
- 15.3. If the administrative arrangements regarding ACARA are altered such that the program the object of this Agreement is transferred to another government entity, ACARA may assign its rights under this Agreement to that entity subject to that entity assuming ACARA's obligations under this Agreement. The Contractor shall have no objection to any such assignment or assumption.

16. ENFORCEABILITY OF AGREEMENT

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

17. CHANGES TO AGREEMENT

- 17.1. Modifications and amendments to this Agreement must be in writing, signed by each of the parties.

18. NOTICES

- 18.1. A notice, consent, approval or other communication (each – '**Notice**') under this Agreement must be in writing, signed by, or on behalf of, the person giving it, addressed to the person to whom it is to be given.
- 18.2. A Notice may be given by personal delivery, prepaid mail or facsimile and is treated as having been given and received:
 - a. if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
 - b. if sent by prepaid mail, on the fifth business day after posting; or
 - c. if transmitted by facsimile to a person's address, and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.

18.3. For the purpose of this clause, the address of ACARA is:

Attention: [insert name and title of Executive], Australian Curriculum,
Assessment and Reporting Authority

Address: Level 13, Centennial Plaza, 280 Elizabeth Street,
Sydney, New South Wales, 2000

Facsimile: 1300 995 468

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

19. GOVERNING LAW

19.1. Any claims under this Agreement are governed by the law in force in New South Wales.

19.2. The Contractor will comply with the Local Laws in the provision of the Services.

19.3. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts, which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

20. PARAMOUNTCY

20.1. If any part of this Agreement conflicts with another part, or if any inconsistency arises between aspects of this Agreement, that part of the Agreement higher in the following list will take precedence:

- a. the terms and conditions contained in the Special Conditions Schedule (if any);
- b. the terms and conditions contained in the clauses of the Agreement;
- c. the Schedule; and
- d. the attachment.

21. DISPUTE RESOLUTION

21.1. A party will not commence arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute, difference, question or claim arising out of this Agreement (**'Dispute'**) unless it has complied with this clause.

21.2. A party claiming a Dispute has arisen will notify the other party, giving details of the Dispute (**'Notification'**).

21.3. On receipt of a Notification, each party will refer the Dispute for resolution by a person with authority to resolve such a dispute.

- 21.4. If the Dispute is not resolved under clause 21.3 within 30 (thirty) days (or longer period as agreed between the parties) 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 Agreement is executed by the parties, or such other mediation as is agreed by the parties.
- 21.5. Subject to clause 21.8, if the Dispute is not resolved under clause 21.4 within 30 (thirty) days (or longer period agreed by the parties) of referral to ACDC, either party may initiate proceedings in a court.
- 21.6. Despite the existence of a dispute, each party will (unless requested not to do so) continue to perform its obligations under this Agreement.
- 21.7. Termination of the Agreement under clause 14 is not considered a dispute between the parties within this clause 21 and does not give rise to a right of a party to seek resolution of the matter under this clause 21.
- 21.8. If the Contractor is not an Australian resident and the Dispute is not resolved under clause 21.4, unless otherwise agreed by both parties:
- a. any dispute, controversy or claim arising out relating to, or in connection with, this Agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules;
 - b. the seat of arbitration shall be Sydney, Australia;
 - c. the number of arbitrators shall be one;
 - d. the arbitration shall be conducted in English.
- 21.9. The parties acknowledge that any award rendered by an arbitrator pursuant to this Agreement shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

22. COSTS

- 22.1. Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this Agreement.
- 22.2. A party in default under this Agreement must pay the costs of the non-defaulting party in respect of the enforcement of its rights under this Agreement.

23. CONFLICT OF INTEREST

- 23.1. The Contractor warrants that it has no, and for the term of the Agreement, will not have any, duties or interests that create, or might reasonably be anticipated to create a conflict with its duties and obligations under this Agreement.

- 23.2. If a conflict of interest arises, or appears likely to arise during the term of this Agreement, the Contractor must
- a. notify ACARA immediately in writing;
 - b. make full disclosure of all relevant information relating to the conflict of interest; and
 - c. take such steps as ACARA may responsibly require to resolve or otherwise deal with the conflict.

24. SPECIFIED PERSONEL

- 24.1. The Contractor agrees that the Specified Personnel will perform work in relation to the Services in accordance with this Agreement.
- 24.2. If Specified Personnel are unable to perform the work as required under clause 24.1, the Contractor agrees to notify the ACARA immediately.
- 24.3. 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.
- 24.4. If clause 24.2 or clause 24.3 applies, the Contractor will provide replacement personnel acceptable to ACARA at no additional cost and at the earliest opportunity.

25. ACCESS TO DOCUMENTS

- 25.1. In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 25.2. The Contractor acknowledges that this Contract is a Commonwealth contract.
- 25.3. Where ACARA has received a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of this Agreement (and not to the entry into the Agreement), 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.
- 25.4. The Contractor must include in any subcontract relating to the performance of this contract provisions that will enable the Contractor to comply with its obligations under this clause 25.

26. PRIVACY

- 26.1. The Contractor agrees, in providing the Services, not to do any act or engage in any practice that, if done or engaged in by ACARA, would be a breach of the requirements of Division 2 of Part III of the Privacy Act.
- 26.2. 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 26.

27. WORKING WITH CHILDREN

- 27.1. If the provision of the Services requires the Contractor or its personnel to come into contact with children or vulnerable people, the Contractor must comply with all Local Laws related to working with children or vulnerable people, and must ensure that its personnel also comply.
- 27.2. The Contractor must provide such evidence as ACARA reasonably requires confirming that it and its relevant personnel have the requisite approvals to work with children or vulnerable people.

28. OPTION

- 28.1. If ACARA elects to repeat the Project for a further two years, the Contractor agrees to continue to provide the Services for the repeat of the Project.
- 28.2. The terms and conditions of the contract for the repeat of the Project will be on the same terms and conditions as this Agreement with the following amendments:-
 - (a) this option clause shall be deleted;
 - (b) the schedule to this Agreement will be agreed for the repeat Project;
 - (c) such other amendments to these terms and conditions as agreed by the parties for the purposes of the repeat Project.
- 28.3. If the parties are unable to agree a new schedule or necessary amendments to these terms and conditions for the repeat Project, those matters shall be determined by ACARA, ACARA to act reasonably.
- 28.4. In determining a new contract price, ACARA must take into account any change in cost advised and verified by the Contractor.

EXECUTED AS AN AGREEMENT

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

SIGNED for and on behalf of the
XXXXXXX by its duly authorised officer

Signature of authorised officer

Signature of authorised officer

Print name of authorised officer

Print name of authorised officer

Signature of witness

Signature of witness

Print name of witness

Print name of witness

Date

Date

SCHEDULE

Commencement Date XX Month Year

Completion Date XX Month Year

Contractor Intellectual Property Nil

Contractor's address for Notice [Contractor's name]
[Contractor's address]

Email:

Project Manager [Project manager's name]

[Title]

Australian Curriculum, Assessment and Reporting Authority
Phone: XXXXX
Mobile: XXXXX
Email: XXX@acara.edu.au

Specified Personnel [Contractor's name]

Fee

Payment

The total payment for the work set out in this contract will not exceed \$**XXX (GST exclusive)**.

Payment will be made in instalments linked to the completion of deliverables to the satisfaction of the Australian Curriculum, Assessment and Reporting Authority and upon submission of a suitable tax invoice and associated progress report.

Tax invoices are to include: the Contractor's name and ABN; ACARA's name and address; the date of issue of the invoice; the title of the invoice/project and the associated contract number; details of fees including the items/deliverables/milestones to which they relate; the total amount payable including GST (where applicable); the GST amount shown separately (where applicable).

OR

Payment will be made on completion of the Project to the satisfaction of the Project Manager and upon submission of a tax invoice.

Tax invoices are to include: the words 'tax invoice' stated prominently; the Contractor's name and ABN; ACARA's name and address; the date of issue of the invoice; the title of the invoice/project and the associated contract number; details of fees including the items/deliverables/milestones to which they relate; the total amount payable including GST (where applicable); the GST amount shown separately (where applicable).

Project Brief

See attachment.

ATTACHMENT.

PROJECT BRIEF

1. Services

1.1. Introduction

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is established by the [Australian Curriculum, Assessment and Reporting Authority Act 2008](#).

ACARA is a corporate Commonwealth entity responsible for delivering:

- an [Australian Curriculum](#) from Foundation to Year 12, in specified learning areas
- a [national assessment program](#) (NAP) aligned to the national curriculum that measures students' progress (i.e., the annual National Assessment Program — Literacy and Numeracy (NAPLAN) and triennial NAP sample assessments in science literacy, civics and citizenship, and ICT literacy)
- a national data collection and [reporting](#) program that supports:
 - analysis, evaluation, research, and resource allocation
 - accountability and reporting on schools and broader national achievement (i.e., the annual [National Report on Schooling in Australia](#) (and associated data portal), the [My School](#) website, and national reports on the National Assessment Program (NAP) and NAPLAN).

ACARA is an inter-jurisdictional entity in nature, requiring collaboration and consultation with other national educational authorities as well as the Australian Government, state and territory departments of education, and test administration authorities (TAAs). ACARA has established a range of reference, advisory, specialist, and information-sharing groups to facilitate consultation with its stakeholders.

1.2. Agency Overview

ACARA is a small entity with an average staffing level (ASL) of 101. ACARA's workforce is geographically dispersed with staff working from the head office in Sydney, a Perth office, leased office spaces in Adelaide and Melbourne, as well as remote work arrangements.

The entity is comprised of the following five business units (in descending order of size):

- Assessment and Reporting
- Corporate Services
 - Corporate Services is responsible for the following enabling services: people and culture; ICT; finance and payroll; procurement, contracts, and facilities; and information management.
- Curriculum
- Communications and Strategic Relations
 - Communications and Strategic Relations is responsible for supporting key data and publication releases; strategic relations engagement; internal communications; and organisation-wide support services.
- the Office of the Chief Executive Officer
 - The Office of the Chief Executive Officer is responsible for executive support; change management; corporate governance; risk management and legislative compliance frameworks; internal audit; legal advice; and secretariat support.

1.3 Governance Framework

ACARA's strategic directions are set by all education ministers in the form of a [charter](#). ACARA's quadrennial work plan is also determined by all education ministers. The quadrennial work plan forms the basis of ACARA's [Corporate Plan](#). ACARA's budget is determined by all education ministers and funding is provided in accordance with an agreed national funding formula.

The Chief Executive Officer (CEO) is responsible for the day-to-day administration of ACARA and is required to act in accordance with any policies determined, and any directions given, by the ACARA Board.

The ACARA Board is responsible for ensuring the proper and efficient performance of ACARA's functions and constitutes the accountable authority for the purpose of the [Public Governance, Performance and Accountability Act 2013](#) (the PGPA Act). The ACARA Board comprises 13 members:

- a Chair
- a Deputy Chair
- one member nominated by the Australian Government minister for education
- one member nominated by the National Catholic Education Commission (NCEC)
- one member nominated by Independent Schools Australia (ISA)
- eight members, each of whom is nominated by a different state/territory education minister.

The ACARA Board has established an Audit, Risk and Finance Committee (the Committee) to provide independent advice, assurance, and assistance to the Board on ACARA's risk, control and compliance framework, financial performance and reporting, and its external financial statement responsibilities. Under its [charter](#), the

Committee must have at least four and up to six members, comprising both board and non-board members.

2. Purpose

The purpose of this contract is to provide internal audit services to ACARA. The provision of such services will help ensure that ACARA is governed in a way that promotes the:

- proper use and management of public resources
- achievement of the purposes of the entity
- financial sustainability of the entity.

2.1 Role of the Contractor

The Contractor will provide internal audit services for ACARA under an ‘out-sourced’ service delivery model. To assist respondents to prepare their submission, the delineation of responsibility for audit-related tasks is detailed in Table 1.

The Contractor is expected to participate as an observer at ordinary meetings of the Audit, Risk and Finance Committee. Ordinary meetings are scheduled four times a year (generally in February, May/June, August, and November) and are typically conducted using a web-based video-conferencing platform. Attendance at special Committee meetings may also be required.

The Contractor will have a direct reporting relationship to the Committee.

Table 1 — Internal Audit Tasks

Task	In-house	Service Provider
Audit Committee		
Prepare Audit, Risk and Finance Committee agendas and papers	✓	
Prepare internal audit reports for Audit, Risk and Finance Committee meetings		✓
Submit final internal audit reports to the Audit, Risk, and Finance Committee		✓
Attend each Audit, Risk and Finance Committee meeting ¹	✓	✓

¹ Ordinary meetings of the Committee are scheduled for three hours.

Task	In-house	Service Provider
Internal Audit Manual		
Maintain up-to-date internal audit procedures	✓	
Internal Audit Planning		
Provide input to the annual Internal Audit Plan, including ongoing monitoring of risks and their application to the Internal Audit Plan	✓	
Develop an assurance map		✓
Prepare the 3-year Internal Audit Program		✓
Coordinate internal audits across the entity to resolve conflict schedules and reduce duplication	✓	
Internal Audit Engagements		
Scope, plan, and arrange meetings for internal audit engagements		✓
Conduct internal audit engagements		✓
Draft internal audit reports		✓
Review draft internal audit reports	✓	
Obtain management responses for internal audit findings/recommendations		✓
Finalise internal audit reports		✓
Review final internal audit reports	✓	
Issue final internal audit reports		✓
Induct new service provider internal auditors as required	✓	
If difficulties arise, liaise between service providers and those being audited	✓	

Task	In-house	Service Provider
Monitoring and Follow-up		
Maintain an audit findings/recommendations database		✓
Monitor and follow-up audit findings/recommendations	✓	✓
Prepare reports for the Audit, Risk and Finance Committee on the implementation of internal audit findings/recommendations and the status of the annual internal audit plan		✓
Annual Reporting		
Prepare the annual report to the ACARA Board on the Audit, Risk and Finance Committee's operations and activities each financial year	✓	

3. Scope of the Project

ACARA is seeking independent, objective assurance and consulting services that provide management with information on the effectiveness of ACARA's risk management, control, and governance processes. The services will enable ACARA's continuous improvement in risk management, control, and governance in the achievement of its legislative functions, strategic directions, and key priorities.

ACARA is seeking the following objectives from its internal audit program:

- review the achievement of organisational objectives
- assess if decisions are properly authorised
- assess the reliability and integrity of information
- review the safeguarding of assets
- assess compliance with laws, regulations, policies, and contracts
- assess the efficiency, effectiveness, economy, and ethical conduct of business activities
- identify business improvement opportunities and better ways of working
- advise on high-risk programs and projects, and
- deliver in-house consultancy services (as requested).

The services rendered under this contract will assist the Committee in providing independent advice and assurance to the ACARA Board, thereby assisting the Board to meet its broader duties and responsibilities under the PGPA Act.

ACARA requires an internal audit service provider to provide risk-based reviews of the effectiveness of its governance, risk management, and control processes. This will be achieved through the provision of an independent and unbiased assessment of the organisation's operations.

The types of internal audit services required by ACARA includes:

- *assurance services* — that provide an objective examination of evidence for the purpose of providing an independent assessment of governance, risk management and control processes
- *consulting (advisory) services* — that are intended to add value and improve business operations, and
- *value-adding services* — that focus on efficiency and effectiveness to improve processes, the economical use of finances and resources, and examination of ethical conduct.

ACARA requires at least three internal audit engagements to be undertaken each financial year. The Contractor will utilise its own internal audit methodology consistent with clause 4.5 (Policies, Standards and Guidelines).

The contractor will be required to perform the internal audit tasks in accordance with Table 1. Further, the contractor will be required to provide the deliverables specified in clause 5.1.

3.1 Materials to ACARA

At the completion of each of the deliverables outlined in clause 5.1, the Contractor must provide ACARA with quality assured written artefacts/reports in accordance with the standards and format outlined in the Tender submission provided to ACARA by the Contractor.

3.2 Communication and Evaluation

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

Upon request, the Contractor will provide ACARA with a project evaluation/summary report detailing successful components of the project delivery, any obstacles encountered throughout the development and delivery phase of the project, and any areas requiring improvement in the future. At any time, ACARA may request a project status update, in either written format or orally. ACARA will provide a template for the project evaluation/summary report.

3.3 Required Contract Material

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

- a. internal audit charter
- b. assurance map
- c. risk appetite statement
- d. three-year internal audit program

- e. annual internal audit plans, for each year of the contract
- f. an internal audit scope, for each audit engagement
- g. an internal audit report, for each audit engagement
- h. a report on the implementation of internal audit findings/recommendations and the status of the annual internal audit plan, for each Committee meeting.

3.4 Secure Deletion of Data

The contractor is required to securely delete all ACARA data following completion of the services.

3.5 Policies, Standards and Guidelines

The Supplies must comply with all applicable Australian standards and relevant Australian Government policies.

Internal audits must be undertaken in accordance with:

- a. the International Professional Practices Framework (IPPF), and
- b. any applicable Australian Accounting Standards Board (AASB) Standards.

4. Commencement and Timeframe

The contract will commence in January/February 2023 for an initial period of three and half years.

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.

4.1 Deliverables and Timeframes

Task	Start	End
<p><i>Develop an Internal Audit Charter</i></p> <p>The Internal Audit Charter must be prepared in accordance with the International Standards for the Professional Practice of Internal Auditing.</p>	February 2023	February 2023
<p><i>Develop an Assurance Map</i></p> <p>The assurance map should detail the assurance activities ACARA has in place and assess their effectiveness to enable internal audit resources to be targeted.</p>	February 2023	April 2023

Task	Start	End
<p><i>Review and refine ACARA's Risk Appetite Statement</i></p> <p>This task will require consultation with key internal stakeholders, followed by a workshop with the Audit, Risk and Finance Committee and ACARA board to review the statement and secure board approval.</p> <p>The workshop will be convened in April 2023.</p>	February 2023	April 2023
<p><i>Develop a Three-year Internal Audit Program for 2023-24 to 2025-26</i></p> <p>The internal audit program should be risk-based, informed by the assurance mapping exercise, and developed in consultation with key stakeholders.</p>	April 2023	May 2023
<p><i>Develop an Annual Internal Audit Plan for 2023-24</i></p>	April 2023	May 2023
<p>Deliver the final internal audit engagement for the 2022-23 financial year</p>	May 2023	July 2023
<p><i>Provision of Internal Audit Engagements for the 2023-24 Financial Year</i></p> <p>At least three internal audit engagements², in accordance with the annual internal audit plan. Each engagement comprises planning, fieldwork, and reporting (including monitoring and follow-up).</p>	July 2023	June 2024
<p><i>Develop an Annual Internal Audit Plan for 2024-25</i></p>	March 2024	April 2024
<p><i>Provision of Internal Audit Engagements for the 2024-25 Financial Year</i></p>	July 2024	June 2025

² For the purposes of pricing, assume delivery of three internal audit engagements each financial year.

Task	Start	End
At least three internal audit engagements, in accordance with the annual internal audit plan. Each engagement comprises planning, fieldwork, and reporting (including monitoring and follow-up).		
<i>Develop an Annual Internal Audit Plan for 2025-26</i>	March 2025	April 2025
<i>Provision of Internal Audit Engagements for the 2025-26 Financial Year</i> At least three internal audit engagements, in accordance with the annual internal audit plan. Each engagement comprises planning, fieldwork, and reporting (including monitoring and follow-up).	July 2025	June 2026

Performance

The Services will be evaluated by the Project Manager using the following table.

As the client who paid for this service, how well did the Vendor meet your expectations?	N/A	Unsatisfactory	Marginal	Acceptable	Good	Excellent
Time Management e.g. meeting milestones, resourcing, planning, reporting						
Management & suitability of personnel e.g. skills, experience, sufficient number, appropriate seniority used						
Standard of Service e.g. meeting brief, budget, value for money, no rework, supervision, no over servicing or under servicing						
Quality Outcomes e.g. accuracy, usability and effectiveness of results						
Cost actual cost did not exceed cost estimate without prior agreement						
Communications appropriate level of reporting						
Information Technology IT used where appropriate to increase efficiency and reduce costs						
Cooperative Relationships e.g. Cooperative approach, commitment, resolving issues						
Value for Money Upfront and after-purchase costs and benefits, as well as considering fitness for purpose						
Recommendation for Future Work Would you recommend the Vendor for similar type of work?		Yes ▶			No ▶	

SPECIAL CONDITIONS SCHEDULE

(NOT USED)