

PART A

DRAFT CONTRACT IN RELATION TO THE DEVELOPMENT OF TEST ITEMS FOR NAPLAN - READING

RFT 8-22

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

^Party 2 Name^

^Party 2 ABN^ ^Party 2 ACN^

CONTRACTOR AGREEMENT

THIS AGREEMENT is made on the _____ day of _____ 2022

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 in the learning areas of English, Mathematics, Science, History, Geography, Languages and the Arts. Information for the Foundation to Year 10 Australian Curriculum is available online at: www.australiancurriculum.edu.au. ACARA is committed to promoting excellence and equity to enable all young Australians to become confident and creative individuals, successful lifelong learners and active and informed members of the community, as defined in the [Alice Springs \(Mparntwe\) Education Declaration](#).

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

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

ACARA requires a suitably qualified and experienced Contractor to provide NAPLAN item development 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:

“**Agreement**” means this agreement, the Schedule, the attachments and any amendment to this agreement;

“**ACICA**” means the Australian Centre for International Commercial Arbitration;

“**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:

- (a) was in the public domain at the date of this Agreement;
- (b) 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:

- (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, trade marks, 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 *Copyright Act 1968*;

“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 to the project brief by ACARA;

“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; and

“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, 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 is 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% 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 remains 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 Project,
- any 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 retrieval,
- upon 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 which 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

11.1.1 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.

11.2 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 years after the completion of the Project.

11.3 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 12.1(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 12.2(a), 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

If not terminated sooner, the engagement of the Contractor expires at the earlier of:

14.1 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 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 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 a 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, pre-paid mail or facsimile and is treated as having been given and received:
- (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;

- (b) if sent by pre-paid mail, on the fifth business day after posting; or
- (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day.

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 St, 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 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 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 PERSONNEL

- 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 which, 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 **XXXXXXXXX**
by its duly authorised officer:

Signature of authorised officer

Signature

Print name of authorised officer

Print name of authorised officer

Witness

Witness

Print name of witness

Print name of witness

Date

Date

SCHEDULE

Commencement Date XX

Completion Date XX

Contractor Intellectual Property
Nil

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

Email:

Project Manager:
Anna Cohen
Senior Manager – NAP Assessment
Phone: 08 9460 8231
Mobile: 0420222021
Email: Anna.Cohen@acara.edu.au

Specified Personnel
[Contractor name]

Payment

The total payment for the work described 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

PROJECT BACKGROUND

The National Assessment Program is run at the direction of the Education Ministers Meeting (previously known as the Education Council). It includes the National Assessment Program – Literacy and Numeracy (NAPLAN), the 3-yearly sample assessments in science literacy, civics and citizenship, and information and communication technology (ICT) literacy, and participation in international sample assessments.

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is the independent statutory authority responsible for the overall management of the Australian National Assessment Program, in collaboration with representatives from all states and territories and non-government school sectors.

NAPLAN

NAPLAN is an annual assessment for all students in Years 3, 5, 7 and 9. It tests the types of skills that are essential for every child to progress through school and life. The tests cover skills in reading, writing, spelling, grammar and punctuation, and numeracy. The assessments are undertaken every year in the second full week in May. From 2023, the NAPLAN testing window will move to mid-March.

ACARA has investigated many aspects of online assessment including autoscoring technology, and the use of technically enhanced items that are designed to assess particular aspects of literacy and numeracy, aligned with the Australian Curriculum.

NAPLAN online tailored test design

Online testing provides the opportunity to administer tests that are better targeted to students' achievement levels and response styles. The NAPLAN reading, numeracy and Conventions of language (CoL) online tests are based on a multi-stage computer-adaptive test design. This means that most of the items presented to students are within their approximate zone of achievement. The tests therefore provide more efficient and precise estimates of students' achievements, than do the single-stage paper-based tests in which all students attempt the same set of items.

The tailored test design is a multi-branching test consisting of interlocking item sets (testlets) covering Years 3, 5, 7 and 9 within each testing domain. For reading, numeracy, grammar and punctuation (G&P), and spelling, each student works through three testlets, allocated by the assessment platform at two branching points. The Writing test consists of a single task per student.

Each reading and numeracy testlet is comprised of approximately one-third of the items that make up a student's NAPLAN test. Each G&P testlet makes up one-third of the G&P section of the CoL test.

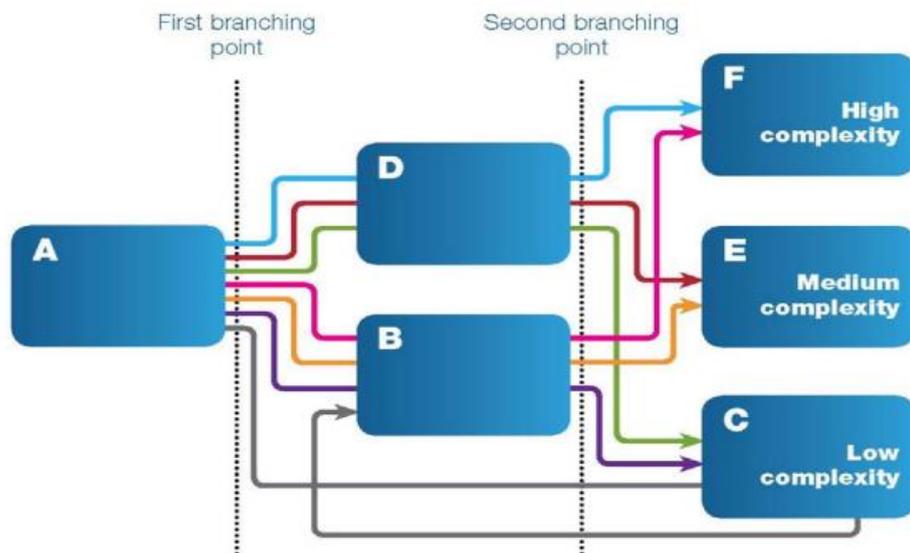


Figure 1: NAPLAN online multi-stage computer-adaptive test design – tailored test design for Reading, Numeracy, and Grammar and Punctuation

Changes to NAPLAN and the Australian Curriculum

NAPLAN is currently aligned to the Australian Curriculum v8.4. In February 2022, Education Ministers endorsed version 9.0 of this curriculum which, amongst other changes, included simplification of structure, reductions to and refinement of content, and the strengthening of links between Mathematics and Numeracy, and English and Literacy. Items developed under this contract will be aligned to v8.4 during the first stage of the project. At the start of the second stage, ACARA will work with contractors to identify in v9.0 where content has been removed or moved from particular year levels and where new content has been added that may require revised or new test items.

In 2023, NAPLAN is moving from a May test window to a March test window. This means students will be taking NAPLAN mid-term one instead of mid-term two so the proportion of items aligned to the previous year's curriculum will need to change accordingly. ACARA will provide specifications to contractors that address the need for additional items assessing curriculum content in years 2, 4, 6 and 8.

PROJECT SCOPE

Key Project Deliverables

After formal execution of a purchase order and initiation of a project the selected panel member (the Contractor) will provide the following key deliverables to ACARA for review and approval.

Deliverable 1 – Project Plan

Contractors will be required to provide a project plan after formal acceptance of a purchase order from ACARA. The level of detail required in the project plan will be determined in conjunction with

ACARA and it will be based on the magnitude of the work to be undertaken. The project plan will need to be approved by ACARA and include the following components:

- an overall project plan;
- a description of item development methodology and how it will be applied;
 - including an outline of quality assurance processes for each stage of the development cycle and a description of auditing resources and processes which outline how compliance with all specifications and delivery of high-quality, error-free test materials will be ensured.
- communication plan;
- risk management plan;
- outlining how risks identified in the 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 outline how all aspects of security are addressed.
- ACARA requires the opportunity to audit risk management procedures during the project, including where appropriate, attendance at the Contractor's place of work and/or receiving briefings on the management of risk.
- compliance and contingency plans in the event of COVID-19 outbreaks which may impact upon, but are not limited to, schools, invigilators, markers, project in person meetings, and Contractor project team resources.
- quality assurance plan detailing how the quality assurance and quality control processes outlined in the original response to tender will be implemented and monitored by the Contractor throughout the project.
- This 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 detailed security plan for managing all stages of the project, including incident management procedures and response plans, and detailing how system access, security and unscheduled downtime will be managed;
- a high-level timeline with critical deadlines (an initial detailed timeline will not be required until the plan is accepted and will be negotiated at agreed key stages of the project)

Deliverable 2 – Project Management and Reporting

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

- provide regular status reports to ACARA;
- be available for regular dialogue with ACARA personnel during each stage of item development;
- provide agreed milestone reports to ACARA by the specified dates;
- provide risk alerts to ACARA immediately upon detection of issues considered a risk to the project;
- respond to feedback from ACARA following stakeholder reviews;
- modify or replace items in response to feedback from ACARA;
- attend nominated review meetings;
- meet the project deadlines.

The frequency and detail of the above-mentioned aspects will need to be agreed with ACARA at the project initiation meeting.

Communication

The Contractor will be required to communicate with the ACARA Project Managers and the ACARA assessment team at key juncture points of the item development process.

It is expected the Contractor will:

- maintain open and collegial communication with the ACARA project team;
- communicate with the ACARA project team regarding the status and details of the project;
- lead the development of an agreed, shared and detailed timeline;
- endeavour to meet agreed timelines and discuss with the ACARA Project Manager any expected delays before the fall of the due date;
- maintain a level of flexibility and show a willingness to meet reasonable requests made by ACARA as they arise, including requests for a project status update, either in a formal format or otherwise (e.g. verbal); and
- attend project meetings at mutually agreed times as scheduled by ACARA;
- attend a project closeout meeting after the delivery of the final test materials and closeout report.

Status Reports

Throughout the project, Contractor/s will regularly consult with the ACARA assessment team in relation to the day-to-day management of the project. Written status 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.

The Contractor must also provide a project closeout report outlining, as a minimum, the following:

- an outline of successful components of the project delivery;
- an outline of any obstacles, incidents or issues encountered that affected the delivery or reputation of the project, and any potential obstacles, incidents or issues that may affect the project in subsequent years;
- an outline of any areas requiring improvement where a variation may improve any future work.

Resources

It is expected that resources for successful respondent's staff such as travel, office facilities, equipment, training and staff required for the completion of the contract will be provided by the Contractor and included as part of the price.

Deliverable 3 – Item Development

ACARA requests that quotes are provided for each individual parcel. Where more than one parcel is quoted on, costs must be provided per parcel. The total numbers of items procured for each parcel is the number delivered at the end of the project. Contractors will develop a small number of excess items for each parcel to allow for rejection of items by ACARA at review.

ACARA will not accept test materials that have been used by the Contractor in other test programs or that have been submitted to ACARA and rejected in a previous contract.

Contractors are required to meet ACARA's Accessibility Guidelines which are based on WCAG 2.0 AA. Basic item formats authored directly in the platform are compliant. Stimulus texts, images, diagrams and tables, which are either created outside the platform and uploaded as resources or created inside by writing/modifying HTML source code, must meet ACARA's accessibility requirements.

Contractors are able to purchase third-party images for inclusion in stimulus texts and items. These purchases can be made through ACARA's preferred stock image collection provider using ACARA's existing contract. The cost for the images is incurred by the contractor, not ACARA.

Authoring review process

The Contractor will be required to author all stimuli, items and metadata in ACARA's online Assessment Delivery System (the platform). The platform contains fields for the electronic entry of items and the related metadata. Metadata can also be uploaded in bulk by spreadsheet. All metadata fields are stipulated by ACARA and must be accurately completed by the Contractor to comply with the item specifications. It is the Contractor's responsibility to author all items and stimuli directly into the platform.

All items are autoscored.

All item reviews take place within the platform.

The item development phase will include opportunities for ACARA assessment teams and other stakeholders to review the items using pre-determined criteria defined in the item development guidelines and to provide feedback and instructions for item refinement. The Contractor may be required to amend and/or replace test material in accordance with ACARA's specifications and any instructions provided by ACARA during the review process.

On submission of each Batch of stimuli or items, an updated compliance table must be supplied to ACARA showing the progress of item development against the specifications.

Submitted stimulus text and items will be reviewed, and assessed in one of the following categories:

- accepted without modification
- requires modification
- requires replacement.

Modified and replaced stimuli and items will be resubmitted and continue in the review cycle until all specifications are met and accepted by ACARA. Feedback is specific to individual stimuli and items and is recorded in the platform. Where a generalised comment needs to be made, it will be by email and at the scheduled project meetings.

Stimulus texts and items that do not pass the review stages (including for content or IP compliance issues) may need to be replaced to ensure the number and balance of stimulus texts and items is met.

All work completed by Contractors must be kept highly secure during all phases of the work. All personnel involved in the work must be fully aware of the security requirements. This includes the electronic transmission of materials.

Required Contract Materials

The following (non-exhaustive) materials will be delivered by the Contractor:

- an iterative stimulus matrix showing scope of topics, text types and text complexity for each testlet (in Excel)
- stimulus texts with associated metadata (in the Authoring platform)
- items with associated metadata (in the Authoring platform) including Australian Curriculum references for each item
- final compliance tables and testlet design (if applicable) in Excel
- all stimulus texts authored in HTML (in the Authoring platform)
- stimuli and items that are compliant with the ACARA Accessibility Guidelines
- source files for all components of images, stimulus texts or items (where applicable) developed outside the platform. These should be in Adobe Illustrator (.ai) format and SVG unless otherwise negotiated.
- high-resolution files for all images used in the stimuli and items
- Intellectual Property (IP) register and IP licenses (both in Ipendo) for all third-party material. Also included in Ipendo are all third-party materials that are now out of copyright.
- appropriate cultural permissions in relation to Aboriginal and Torres Strait Islander works (where applicable) and, where applicable, maintenance of a register in Ipendo.

3 READING STIMULUS AND ITEM DEVELOPMENT

The NAPLAN Reading stimulus and item development procurement is divided into two parcels. Quotes are requested for one or both of the following parcels.

Parcel 1a Reading: 36 Reading units (36 stimulus texts and 288 items) targeting the full range of the performance scale for Year 3, with an emphasis on the lower and upper end of the performance scale. Stimulus texts will include imaginative, informative and persuasive stimulus texts (see *Item Development Guidelines: Reading* for information regarding unit targeting and stimulus text specifications).

The parcel will be broken into three parts:

Stage	Timeline	Deliverables	
1	November 2022 – February 2023	20% of parcel	8 units
2	March 2023 – August 2023	40% of parcel	14 units
3	June 2023 – June 2024	40% of parcel	14 units

Please see the Reading timeline for a detailed breakdown of the parcel timelines. A breakdown of specifications (year level, testlet and genre targeting) will be shared at the beginning of each stage of the parcel.

Parcel 1b Reading: 28 Reading units (28 stimulus texts and 224 items) targeting the full range of the performance scale for Year 5, with an emphasis on the lower and upper end of the performance scale. Stimulus texts will include imaginative, informative and persuasive stimulus texts (see *Item Development Guidelines: Reading* for information regarding unit targeting and stimulus text specifications).

The parcel will be broken into two parts:

Stage	Timeline	Deliverables	
1			
2	March 2023 – August 2023	50% of parcel	14 units
3	June 2023 – June 2024	50% of parcel	14 units

Please see the Reading timeline for a detailed breakdown of the parcel timelines. A breakdown of specifications (year level, testlet and genre targeting) will be shared at the beginning of each stage of the parcel.

For **both Parcels**, prior to the development of the stimulus material, a matrix of intended stimulus texts, identifying topics and targeting, will need to be submitted to ACARA for approval. Throughout the stimulus text development stage of the project, the matrix is to be updated and resubmitted in response to feedback.

Stimulus texts may be:

- original stimulus texts OR
- pre-published stimulus texts (with intellectual property permission obtained).

Each unit will need to have a range of item types (see *Item Development Guidelines: Reading* for accepted item types) with at least 5 items being Multiple-choice items.

Units may be used as link units (at the year level above or below the targeted year level) at the discretion of ACARA.

Reading Timeline

This work will commence November 2022. Final delivery of all contract material will be completed by 30 June 2024. ACARA will support contractors in the development of timelines where needed.

Items developed during Stage 1 will be used in the NAPLAN 2023 Item Trial, which in 2023 will be held in May-June. Detailed timelines have been provided for this stage.

Items developed during Stages 2 and 3 will go in the item pool for use in future trials. High level timelines have been provided for these stages, with the finer details to be negotiated towards the end of Stage 1.

- Note: A high-level timeline Should be included in the tender, with a more detailed timeline confirmed during project initiation and at key stages of the project. Contractors should use the following information as the basis for preparing their quotes and timelines. Although ACARA is prepared to discuss changes, it reserves the right to maintain or alter the proposed timeline according to ACARA's needs.

Please note, the fields referring to Stage 1 (highlighted in yellow) pertain to Parcel 1a only.

Project stage	Project phase	Task	Planned start date	Planned finish date
Stage1-3	Administration	Project initiation meeting and contract negotiations (including demonstrations of online resources)	1-Nov-22	15-Nov-22
Stage 1-2	Batch 1 & 2 Stimulus – Matrix	Deliver matrix of topics and targeting	1-Nov-22	15-Nov-22
Stage 1	Batch 1 stimulus texts	Deliver Batch 1 stimulus texts and IP register	09-Dec-22	09-Dec-22
Stage 1-3	Administration	Deliver project planning documents	02-Dec-22	02-Dec-22
Stage 1	Batch 1 stimulus texts	Sign-off Batch 1 stimulus texts	01-Feb-23	01-Feb-23
Stage 1	Batch 1 items	Deliver Batch 1 items	10-Feb-23	10-Feb-23
Stage 1	Batch 1 item review	Sign-off Batch 1 items	10-Mar-23	10-Mar-23
Stage 1	Intellectual property	Deliver Batch 1 stimulus text third-party material (IPENDO)	17-Mar-23	17-Mar-23
Stage 1	Batch 1 Final delivery	Deliver compliance tables, source files for all units and final IP register	17-Mar-23	17-Mar-23

Project stage	Project phase	Task	Planned start date	Planned finish date
Stage 2	Batch 2 stimulus texts	Deliver Batch 2 stimulus texts and IP register	10-Feb-23	10-Feb-23
Stage 2	Batch 2 stimulus texts	Sign-off Batch 2 stimulus texts	10-Mar-23	10-Mar-23
Stage 1-2	Intellectual property	Deliver Batch 2 stimulus text third-party material (IPENDO)	24-Mar-23	24-Mar-23
Stage 2	Batch 2 items	Deliver Batch 2 items (50% of Stage 2 Units)	12-May-23	12-May-23
Stage 2	Batch 2 item review	Sign-off Batch 2 items	9-Jun-23	9-Jun-23
Stage 3	Batch 3 & 4 Stimulus – Matrix	Deliver matrix of topics and targeting	19-Jun-23	19-Jun-23
Stage 2	Batch 3 items	Deliver Batch 3 items (50% of Stage 2 Units)	3-Jul-23	3-Jul-23
Stage 2	Batch 3 item review	Sign-off Batch 3 items	31-Jul-23	31-Jul-23
Stage 2	Final delivery	Deliver compliance tables, source files for all units and final IP register	11-Aug-23	11-Aug-23
Stage 3	Batch 3 stimulus texts	Deliver Batch 3 stimulus texts (50% of Stage 3 stimulus texts) and IP register	18-Aug-23	18-Aug-23
Stage 3	Administration	Deliver updated project planning documents	3-Sep-23	3-Sep-23
Stage 3	Batch 3 stimulus texts	Sign-off Batch 3 stimulus texts	15-Sep-23	15-Sep-23
Stage 3	Batch 4 stimulus texts	Deliver Batch 4 stimulus texts (50% of Stage 3 stimulus texts) and IP register	13-Oct-23	13-Oct-23
Stage 3	Batch 4 stimulus texts	Sign-off Batch 4 stimulus texts	17-Nov-23	17-Nov-23
Stage 3	Intellectual property	Deliver Batch 3 & 4 stimulus text third-party material (IPENDO)	15-Dec-23	15-Dec-23
Stage 3	Batch 4 items	Deliver Batch 4 items (40% of Stage 3 Units)	15-Jan-24	15-Jan-24
Stage 3	Batch 4 item review	Sign-off Batch 4 items	16-Feb-24	16-Feb-24
Stage 3	Batch 5 items	Deliver Batch 5 items (30% of Stage 3 Units)	8-Mar-24	8-Mar-24
Stage 3	Batch 5 item review	Sign-off Batch 5 items	5-Apr-24	5-Apr-24
Stage 3	Batch 6 items	Deliver Batch 6 items (30% of Stage 3 Units)	3-May-24	3-May-24
Stage 3	Batch 6 item review	Sign-off Batch 6 items	31-May-24	31-May-24
Stage 1-3	Final delivery	Deliver compliance tables, source files for all units and IP register	10-Jun-24	10-Jun-24
Stage 1-3	Administration	Deliver project report	14-Jun-24	14-Jun-24

Deliverable 4 – General

Secure deletion of data

The Contractor will be required to provide evidence that all information on item development including, but not limited to, any data used in preparation for the delivered materials has been securely erased from all media including, but not limited to, networks, servers and computer hard drives. The timeline for this activity will be negotiated with the Contractor.

Policies, Standards and Guidelines

All Deliverables and work completed by the Contractor must meet the following standards:

- Macquarie dictionary (latest edition)
- The Commonwealth Style manual, AGPS, Canberra (latest edition)
- Australian Standards for Document Management (AS ISO 15489)
- Commonwealth Fraud Control Guidelines – 2011
- Data Standards Manual Student Background Characteristics (ACARA, 2012), as updated from time to time
- ACARA Accessibility Guidelines
- Web Content Accessibility Guidelines (WCAG) 2.0 AA
- Peters, P. (2007). Cambridge guide to English usage. Macquarie University

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
1. Time Management e.g. meeting milestones, resourcing, planning, reporting						
2 Management & suitability of personnel e.g. skills, experience, sufficient number, appropriate seniority used						
3 Standard of Service e.g. meeting brief, budget, no rework, supervision, no over servicing or under servicing						
4 Quality Outcomes e.g. accuracy, usability and effectiveness of results						
5 Cost actual cost did not exceed cost estimate without prior agreement						
6 Communications appropriate level of reporting						
7 Information Technology IT used where appropriate to increase efficiency and reduce costs						
8 Cooperative Relationships e.g. Cooperative approach, commitment, resolving issues						
9 Value for Money Upfront and after-purchase costs and benefits, as well as considering fitness for purpose						
10 Recommendation for Future Work 0 Would you recommend the Vendor for similar type of work?	Yes ▶			No ▶		

SPECIAL CONDITIONS SCHEDULE

Not used