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| REQUEST FOR TENDER PART B |
| DRAFT Contract in relation to the provision of services for NAPLAN 2026 Central analysis of data  **RFT 7-25** |
| 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 A – REQUEST FOR TENDER (INCLUDING TENDER RESPONSE SCHEDULES) which sets out the conditions of tender and tender response requirements. |

**CONTRACTOR AGREEMENT**

THIS AGREEMENT is made on the day of 2025

**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 xxxxxxx)

(“Contractor”)

BACKGROUND

1. ACARA is responsible for developing and administering a National Assessment Program (NAP) aligned to the national curriculum that measures students’ progress, and the provision of information, resources, support and guidance to the teaching profession.
2. The National Assessment Program – Literacy and Numeracy (NAPLAN) is the main assessment program conducted by ACARA. Under NAPLAN, Australian students in Years 3, 5, 7 and 9 are assessed annually in reading, writing, conventions of language and numeracy.
3. The purpose of NAPLAN 2026 Central Analysis of Data is to provide psychometric analysis and reporting on NAPLAN 2026.
4. ACARA wishes to engage the Contractor to undertake the Services set out in the Project Brief and the Contractor has agreed to perform the Project in accordance with the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

# 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;

“**ACARA Material**” means any material:

1. provided by ACARA to the Contractor for the purposes of this Agreement; or
2. derived at any time from the material referred to in paragraph (a);

“**Australian Privacy Principle**” has the same meaning as under the Privacy Act;

“**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:

1. was in the public domain at the date of this Agreement;
2. 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
3. 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:

1. commits an act of bankruptcy;
2. is the subject of an application for winding up;
3. calls a meeting of its creditors;
4. has a receiver appointed over all or a substantial part of its assets;
5. passes a resolution for its winding up;
6. has judgment entered against it for any cause; or
7. 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* (Cth);

“**Payment Schedule**” means the payment section set out in the Schedule;

“**Privacy Act**” means the *Privacy Act 1988* (Cth);

“**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 Project Brief;

“**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”; 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.

## **Interpretation**

## In this Agreement, unless the contrary intention appears:

1. words importing a gender include any other gender;
2. words in the singular include the plural and words in the plural include the singular;
3. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
4. words importing a person include a partnership and a body whether corporate or otherwise;
5. a reference to dollars is a reference to Australian dollars;
6. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
7. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
8. a reference to an Item is a reference to an Item in the Schedule;
9. the Schedule and any Attachments form part of this Agreement;
10. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
11. if any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails; and
12. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

## **Guidance on construction**

## This Agreement records the entire agreement between the parties in relation to its subject matter.

## As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.

## If anything in this Agreement is void or otherwise unenforceable then it will be severed, and the rest of the Agreement remains in force.

## A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

## **Commencement**

## The terms of this Agreement apply on and from the Commencement Date.

# engagement

## 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.

## The Contractor must ensure that:

## 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;

## the Project is performed in accordance with relevant best practice;

## the Contractor performs the Project in compliance with all Local Laws;

## 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;

## 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

## the Project is completed by the Completion Date.

## 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.

# nature of relationship

## The Contractor is engaged as an independent contractor. Nothing in this Agreement constitutes the Contractor being an employee, agent, partner or joint-venturer of ACARA.

## 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.

# non-solicitation

## The Contractor must not solicit or entice away (or attempt to do so) any employee of ACARA directly related to the Project with an offer of employment, or engage any such person as a contractor or in any other capacity within six (6) months of the Completion Date.

# RELATIONSHIP WITH PROJECT MANAGER

## The Contractor must perform the Project to the satisfaction of the Project Manager.

## 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.

# COMMUNICATIONS

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

# payment

## 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.

## Subject to clause 7.3, ACARA will pay the Contractor within 14 days of the last day of the month in which it receives an invoice from the Contractor provided the timing and amount of such invoice is in accordance with the payment details described in the Schedule.

## 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.

## The Contractor must pay all government-imposed taxes, charges, fees and other amounts due in respect of:

## this Agreement; or

## any payment to be made by ACARA to the Contractor under this Agreement.

## 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.

## 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 any amount required by law from an 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.

## This Agreement is entered into on the understanding that ACARA is not required to make any superannuation contributions in connection with this Agreement.

# property in materials and Contractor identifications

## All materials and information made available by ACARA to the Contractor remains the property of ACARA.

## The Contractor must not use ACARA’s trademarks or other identifications without ACARA’s prior written consent.

# confidential information

## The Contractor must not, unless ACARA has first agreed in writing:

## disclose to anyone else, or

## use for a purpose other than the performance of the Project,

## any of the Confidential Information.

## 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:

1. return to ACARA all Confidential Information (including any copies made by it); and
2. 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.

## 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.

## Clause 9.1 does not affect:

1. disclosure of information, documents and material available publicly otherwise than because the persons disclosing them contravened this clause 9; or
2. disclosures required by law.

## 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.

## 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.

# intellectual property, MORAL RIGHTS and Project Results

**Project Results**

## The Contractor must promptly disclose all Project Results to ACARA.

## The Contractor acknowledges and agrees that:

1. nothing in this Agreement grants the Contractor any Intellectual Property or other rights in the Project Results; and
2. 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.

## 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 Intellectual Property 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.

## 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.

**ACARA Material**

## ACARA agrees to ensure that the Contractor has access to the ACARA Material as specified in the Schedule.

## ACARA grants (or will procure) a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the ACARA Material solely for the purposes of this Agreement.

## The Contractor agrees to use the ACARA Material only for the purpose of providing Services under this Agreement.

**Moral rights**

## Where the Contractor is a natural person and the author of the Project Results, he or she consents to the performance of the Specified Acts by ACARA or any person claiming under or through ACARA (whether occurring before or after the consent is given).

## In clauses 10.8 and 10.10(b), 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.

## **Warranties** The Contractor warrants that:

1. 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 or Project Results so that the use of the Project Results 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.

## On or before the Completion Date, the Contractor must deliver to ACARA all material which comprises the Project Results.

# insurance

## Before commencing 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.

## 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 not less than $10,000,000 for public liability insurance.

## 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.

## 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.

# subcontractors

## The Contractor must not subcontract the performance of any part of the Project or this Agreement without ACARA’s prior written approval, which:

1. may or may not be given by ACARA acting in its absolute discretion; and
2. may be subject to any conditions ACARA considers appropriate acting in its absolute discretion.

## The Contractor agrees to ensure that:

1. 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);

1. 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.

## 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.

# indemnity

## 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:

1. any default, act or omission by the Contractor;
2. 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.

# EXPIRY, TERMINATION, BREACH

## If not terminated sooner, the engagement of the Contractor expires at the completion of the Project.

## ACARA may terminate the engagement of the Contractor by notice to the Contractor if:

1. 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:
2. is incapable of remedy; or
3. if capable of remedy, continues for 5 days after ACARA gives the Contractor a notice requiring the breach to be remedied; or
4. an Insolvency Event occurs in relation to the Contractor.

## 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.

## On receipt of a notice under clause 14.3,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 all ACARA Material and all Project Results to ACARA.

## 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.

## 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.

## 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.

## The rights and obligations contained in clauses 8 (Property in Materials and Company Identifications), 9 (Confidential Information), 10 (Intellectual Property, Moral Rights and Project Results), 11 (Insurance), 13 (Indemnity) and 14 (Expiry, Termination, Breach) bind the parties notwithstanding the termination or expiry of this Agreement.

# assignment

## This Agreement is personal to the Contractor. The Contractor must not assign or novate the benefit of this Agreement or any part of it.

## 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.

## 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.

# enforceability of agreement

## 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.

# CHANGES TO AGREEMENT

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

# notices

## 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.

## A Notice may be given by personal delivery, pre-paid mail or facsimile and is treated as having been given and received:

1. if delivered to a person’s address, on the day of delivery if a business day, otherwise on the next business day;
2. if sent by pre-paid mail, on the fifth business day after posting; or
3. if transmitted by email 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.

## 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, Tower B Centennial Plaza, 280 Elizabeth St, Sydney, New South Wales, 2000

Email: xxx

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.

# governing law

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

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

## 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.

# PARAMOUNTCY

## 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:

1. the terms and conditions contained in the Special Conditions Schedule (if any);
2. the terms and conditions contained in the clauses of the Agreement;
3. the Schedules, except for the Special Conditions Schedule; and
4. the Attachment.

# DISPUTE RESOLUTION

## 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.

## A party claiming a Dispute has arisen will notify the other party giving details of the Dispute (Notification).

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

## 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 Centre for International Commercial Arbitration Limited (**ACICA**) for resolution in accordance with the ACICA Mediation Rules, or such other mediation as is agreed by the parties. The costs of any mediation are to be borne equally between the parties. Each party will bear its own costs of complying with this clause 21.

## If the Dispute is not resolved under clause 21.4 within thirty days (or longer period agreed by the parties) of referral to ACICA, either party may initiate proceedings in a court.

## Despite the existence of a dispute, each party will (unless requested not to do so) continue to perform its obligations under this Agreement.

## 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.

## If the Contractor is not an Australian resident and the Dispute is not resolved under clause 21.4, unless otherwise agreed by both Parties:

1. 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;
2. the seat of arbitration shall be Sydney, Australia;
3. the number of Arbitrators shall be one;
4. the arbitration shall be conducted in English.

## 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.

# COSTS

## Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this Agreement.

## 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.

# CONFLICT OF INTEREST

## 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.

## 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.

# SPECIFIED PERSONNEL

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

## If Specified Personnel are unable to perform the work as required under clause 24.1, the Contractor agrees to notify the ACARA immediately.

## 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.

## 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.

# Access to documents

## In this clause, ‘document’ and ‘Commonwealth contract’ have the same meaning as in the Freedom of Information Act 1982 (Cth).

## The Contractor acknowledges that this Contract is a Commonwealth contract.

## 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.

## 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.

# Privacy

## 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 an Australian Privacy Principle.

## 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.

# Working with Children

## 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.

## 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.

# Work health and safety

## The Contractor agrees, in carrying out this Agreement, to comply with:

1. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
2. all applicable policies and procedures relating to work health and safety,

including those that apply to ACARA’s premises when using those premises.

## In the event of any inconsistency between any of the policies and procedures referred to in clause 28.1, the Contractor will comply with those policies and procedures that produce the highest level of health and safety.

# 

# Audit and access

## The Contractor agrees:

1. to give the Project Manager, or any persons authorised in writing by the Project Manager, access to premises where the Services are being performed or where relevant Material is located, including but not limited to any Contractor systems, accounts or other facilities;
2. to permit those persons to inspect and take copies of any Material relevant to the Services, and any other Material which may assist with verifying the Contractor’s compliance with the terms of this Agreement and compliance with applicable laws, regulations, policies, and industry standards (including but not limited to IT security standards); and
3. to permit those persons to specifically conduct or commission IT security audits or penetration testing, including vulnerability assessments, to assess the Contractor’s IT environment and data security practices related to this Agreement, and
4. for these purposes, to provide all reasonable and timely assistance and information.

## The rights referred to in clause 29.1 are subject to:

1. ACARA providing reasonable prior notice;
2. the reasonable security procedures in place at the premises where applicable; and
3. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

## Unless otherwise agreed, each party shall bear its own costs associated with any audit. However, where an audit identifies a material non-compliance with this Agreement, the Contractor shall bear the full costs of the audit.

## Persons authorised for the purposes of this clause include but are not limited to the Auditor-General and the Privacy Commissioner.

## This clause 29 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

# STUDENT BACKGROUND DATA

## ACARA will:

1. provide the Contractor with any student background data in password protected files compiled by the relevant jurisdiction; and
2. arrange for the password to the protected files to be provided directly by the relevant jurisdiction to the Contractor.

## The Contractor must adopt internal controls and take reasonable measures to ensure that ACARA does not either obtain access to the passwords or access to the content of these files.

## For the avoidance of doubt, where the Contractor transfers student background data back to a relevant jurisdiction via ACARA the same process is to apply and all such data is to be transmitted via password protected files.

# Workplace Gender Equality

## The Contractor must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).

## If the Contractor becomes non-compliant with the WGE Act during the term of this Agreement, the Contractor must promptly notify ACARA.

## If the term of this Agreement exceeds 18 months, the Contractor must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Commencement Date and, following this, annually to ACARA.

## Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Agreement.

# National Anti-Corruption Commission Requirements

## The Contractor acknowledges that in providing the Services to ACARA under this Agreement, it is a contracted service provider for the purposes of the *National Anti‑Corruption Commission Act 2022* (Cth) (**NACC Act**).

## The Contractor must comply with any reasonable request, policy or direction issued by ACARA and otherwise cooperate with ACARA in relation to any action taken by ACARA required or authorised by the NACC Act.

# Notification of Significant Events

## For the purposes of this clause, ‘Significant Event’ means:

1. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
2. any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth’s reputation.

## The Contractor must immediately issue ACARA a notice on becoming aware of a Significant Event.

## The notice issued under clause 32.2 must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the Services were involved.

## ACARA may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Contractor must issue a notice under clause 32.2 in relation to the event within three (3) business days of being notified by ACARA.

## Where reasonably requested by ACARA, the Contractor must provide ACARA with any additional information regarding the Significant Event within three (3) business days of the request.

## If requested by ACARA, the Contractor must prepare a draft remediation plan and submit that draft plan to ACARA’s Project Manager for approval within ten (10) business days of the request.

## A draft remediation plan prepared by the Contractor under clause 32.6 must include the following information:

1. how the Contractor will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Services or compliance by the Contractor with its other obligations under the Agreement; and
2. how the Contractor will ensure events similar to the Significant Event do not occur again; and
3. any other matter reasonably requested by ACARA.

## ACARA will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by ACARA and resubmit the draft remediation plan to ACARA for approval within three (3) business days of the request unless a different timeframe is agreed in writing by ACARA. This clause 32.8 will apply to any resubmitted draft remediation plan.

## Without limiting its other obligations under this Agreement, the Contractor must comply with the remediation plan as approved by ACARA. The Contractor agrees to provide reports and other information about the Contractor’s progress in implementing the remediation plan as reasonably requested by ACARA.

## A failure by the Contractor to comply with its obligations under this clause 32 will be a material breach of the Agreement. ACARA’s rights under this clause 32 are in addition to and do not otherwise limit any other rights ACARA may have under the Agreement. The performance by the Contractor of its obligations under this clause 32 will be at no additional cost to ACARA.

1. **Compliance with the Commonwealth Supplier Code of Conduct**
   1. For the purposes of this clause, ‘Commonwealth Supplier Code of Conduct’ or ‘Code’ means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
   2. The Contractor must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Agreement.
   3. The Contractor must:
2. periodically monitor and assess its, and its officers’, employees’, and agents’ compliance with the Code; and
3. on request from ACARA, promptly provide information regarding:
4. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
5. the Contractor’s compliance with clause 34.2.
   1. The Contractor must immediately issue ACARA a Notice on becoming aware of any breach of clause 34.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
   2. Where ACARA identifies a possible breach of clause 34.2, it may issue the Contractor a Notice, and the Contractor must, within three (3) Business Days of receiving the Notice, either:
6. where the Contractor considers a breach has not occurred: advise ACARA that there has not been a breach and provide information supporting that determination; or
7. where the Contractor considers that a breach has occurred: issue a Notice under clause 34.4 and otherwise comply with its obligations under this clause 34.
   1. Notwithstanding clause 34.5, ACARA may notify the Contractor in writing that it considers that the Contractor has breached clause 34.2, in which case the Contractor must issue a Notice under clause 34.4 and otherwise comply with its obligations under this clause 34.
   2. A failure by the Contractor to comply with its obligations under any part of this clause will be a material breach of the Agreement.
   3. Nothing in this clause or the Code limits, reduces, or derogates from the Contractor’s other obligations under the Agreement. ACARA’s rights under this clause are in addition to and do not otherwise limit any other rights ACARA may have under the Agreement. The performance by the Contractor of its obligations under this clause will be at no additional cost to ACARA.
   4. The Contractor agrees that ACARA or any other Commonwealth agency may take into account the Contractor’s compliance with the Code in any future approach to market or procurement process.
8. . **OptionS**
   1. If ACARA elects to repeat the Project for further years, the Contractor agrees to continue to provide the Services for the repeats of the Project, subject to the exercise of two (2) one year options by ACARA.
   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:-
9. this option clause shall be deleted;
10. the schedule to this Agreement will be agreed for the repeat Project;
11. such other amendments to these terms and conditions as agreed by the parties for the purposes of the repeat Project.
    1. 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.
    2. 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:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of authorised officer    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print name of authorised officer  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Witness  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print name of witness  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date | SIGNED for and on behalf of **xxxxxxxx** by its duly authorised officer:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Print name of authorised officer  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Witness  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print name of witness  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |

schedule

**Commencement Date**

**Completion Date**

ACARA Material

[insert]

Contractor’s address for Notice

[Contractor name]

[Contractor Address]

**Email:**

**Project Manager:**

**xxx**

**Specified Personnel**

[Contractor name]

**Payment**

The total payment for the work described in this Agreement 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).

**Project Brief**

See Attachment.**ATTACHMENT**

**PROJECT BRIEF**

## **1.1 Introduction**

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

ACARA reports to, and is directed by, the Education Ministers meeting (EMM).

ACARA has overall responsibility for implementing the National Assessment Program (NAP).

The National Assessment Program – Literacy and Numeracy (NAPLAN) commenced in 2008. Every year from 2008, (with the exception of 2020 when NAPLAN was cancelled due to COVID) all students in Years 3, 5, 7 and 9 have been assessed using national tests in Reading, Writing, Language Conventions (Spelling, and Grammar and Punctuation) and Numeracy. Test Administration Authorities (TAAs) in each state and territory are responsible for the implementation and administration of NAPLAN tests and marking of writing scripts in their jurisdictions.

Now that all schools are online and the tests are being held in March instead of May, the NAPLAN scales were reset and 2023 marks the start of a new time series with 2023 as the base year. Consequently, results from 2023 onwards will be directly compared with results from 2023.

Resetting the measurement scale and discontinuing the time series once all schools are online was a recommendation of the 2020 Independent Review of NAPLAN.

In addition to resetting the NAPLAN scales and discontinuing the time series, student achievement is now compared against a new set of four proficiency levels (Exceeding, Strong, Developing and Needs additional Support) developed for each year level and each domain. The use of the 10 NAPLAN bands that were developed for the historical scale of 2008 were discontinued.

**1.2. Project**

The performance of students in NAPLAN is reported on a set of NAPLAN scales that enable comparison of results across Years 3, 5, 7 and 9 in the same domain (e.g., reading). The reset NAPLAN scales were established during the 2023 central analysis of data (CAD).

Student performance in NAPLAN will be released to the public via the NAPLAN national results website. Student and School Summary Reports (SSSR) are generated by the assessment platform and released to schools by TAAs. TAAs also publish Individual Student Reports (ISR) for parents.

More detailed information about NAPLAN designs and methodologies can be found in the technical reports available on <https://www.nap.edu.au/naplan/results-and-reports>

**1.3. Purpose**

The purpose of this Contract is to conduct psychometric analysis on the NAPLAN 2026 central analysis of data, and the analyses for the national results.

**1.4. Role of Contractor**

The contractor is required to calibrate test items and equate them to the NAPLAN measurement scales established in 2023, and produce tables for the preliminary and final SSSRs, the ISRs and the national results.

The Contractor must also contribute to the development of the NAPLAN 2026 Technical Report. The content of the technical report, along with the data and analysis files supplied as part of the project, should be of such a scope and level of detail that independent replication of all analyses could be successfully conducted.

**1.5. Scope of project (Note: All analysis is conducted using de-identified data)**

* Item calibration (non-writing domains)
* Differential item functioning (DIF) analyses
* Calibration of writing criteria
* Equating (vertical and horizontal)
* Preparing tables for the preliminary school and student summary reports
* Equating of writing
* Drawing 4D plausible values and calculating the relevant statistics at both the national and state levels (non-writing domains only)
* Drawing 5D plausible values, using the final data sets, and if required, updating tables for the final school and student summary reports
* Performing subgroup analyses and generating tables for the national results
* Contributing to the NAPLAN 2026 Technical Report as instructed by ACARA

High level requirements for each analysis stage in the central analysis are provided in Item 2. More details will be provided to the Contractor in the analysis plan. These requirements apply to numeracy, reading, conventions of language (spelling; grammar and punctuation) and writing, except where different provisions are explicitly stated in Item 2.

A further important requirement is that the Contractor must conduct the central analysis of data in a transparent manner. This means that a full record of all scripts and commands used for psychometric and/or statistical software programs and environments needs to be kept and provided to ACARA at key stages of analyses as directed by ACARA. In addition, the Contractor must maintain the record of all the source and derived data fields used in all analyses. Finally, the Contractor must complete all the work according to the agreed timeline.

**1.7. Communication and Evaluation**

The Contractor must provide ACARA with a weekly progress report.

The Contractor must meet regularly with ACARA regarding the status and details of the project and provide further written status reports on request.

The Contractor selected to deliver any items above will be required to 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 throughout the project coordination, development/production, implementation and delivery phase, ACARA may make a request for a project status update, either in a formal format or otherwise (e.g., verbal). ACARA will provide a template for the project evaluation/summary report.

**2. REQUIRED CONTRACT MATERIAL**

**2.1 Item calibration and differential item functioning**

Reponses to the NAPLAN 2026 test items are calibrated separately for each year level and domain (except for writing) using the Rasch measurement model. Psychometric properties of tests, items, writing prompts and online pathways are summarised and, together with ACARA’s psychometricians and domain experts, evaluated.

Writing is calibrated concurrently across Years 3 to 9, using the partial credit model, treating each of the 10 scoring criteria as polytomous items.

Separate differential item functioning (DIF) analyses are required for each year level. An analysis of DIF by gender, device, jurisdiction, language background other than English and Indigeneity is provided to ACARA. Identification of items exhibiting DIF is undertaken along with the provision of a summary of results.

**2.2 Equating**

Prior to equating, the quality of both horizontally and vertically linked items will be assessed and those items that either display significant DIF between administrations or do not function as link items will be dropped from the link set.

The common item equating procedure is used to place the 2026 results onto the 2023 scales. For each domain and year level, an equating shift will be calculated. The equating shifts are applied to the NAPLAN 2026 results to place those results on the historical scale. An HVR (horizontal-vertical regression) analysis will be carried out to verify the equating shift. The intent of the HVR analysis is to determine if the shifts between year levels are the same when equated horizontally back to the 2023 scale as if they had been calculated directly from vertical equating in the assessment year.

**2.3 Production of tables for school and student reports**

The first NAPLAN reports are the preliminary and final Student and School Summary Reports, which are released by TAAs to their schools. The main difference between the preliminary and final SSSRs is that the former does not include writing domain. The second report is a printed ISR that compares student performance on each domain to some national and sometimes jurisdictional statistics. These reports are prepared and sent out to parents via schools by the TAAs.

The production of these reports depends on three types of tables: item performance data tables, score equivalence tables and test performance data tables. These tables include information about items and their locations on the NAPLAN reporting scale, conversions from student raw scores to achievement scores (WLEs) on the NAPLAN reporting scale and some basic national statistics. ACARA provides the Contractor with templates for these three types of tables.

**2.4 Drawing 4D plausible values (PVs)**

Drawing 4D PVs (reading, numeracy, spelling, and grammar and punctuation) from the available data in the platform. The primary purposes of this analysis are: (1) to calculate national statistics promptly, providing an early indication of trends over time. This allows unexpected patterns to be examined further to confirm whether they reflect genuine changes or are artefacts of other factors such as data anomalies or the equating process; and (2) to supply early national statistics needed for the production of preliminary SSSR.

Plausible values are drawn for each state and territory and year level separately: 32 sets in all. These are drawn under heavy time constraints, so that several sets of plausible values will need to be drawn concurrently, and full convergence of the models achieved within the allotted time.

**2.5 Drawing 5D plausible values and analysis for NAPLAN national results**

Statistics computed for the national results are based on final plausible values. Final plausible values are drawn for each jurisdiction and year level separately from a 5-dimensional model (reading, numeracy, writing, spelling, and grammar and punctuation). The conditioning model includes all available school and student background information. Similar to the 4D PVs, 5D plausible values are generated separately for each state and territory and year levels, resulting in 32 sets in total.

Plausible values are equated to the historical scale using the official equating parameter estimates. A fully documented database is built with one student per row, including identification variables, participation data, student background variables (where available), and achievement data.

The primary purpose of the national results is to inform ministers, other policy makers, and the Australian educational community of performance in numeracy and literacy, nationally and by jurisdiction and by certain background variables for 2026. These results are accessed via an online set of interactive tables and charts on the ACARA website and supported by a spreadsheet where data can be downloaded. More detailed information about NAPLAN national results is available on: <https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/naplan-national-results>

ACARA provides the contractor with predefined table formats. The contractor populates the shells and provides results in Excel, and SAS/ SPSS format, for compatibility with ACARA’s analysis tools. Alternative formats can be negotiated if required. Standard errors are estimated for the statistics. Trends, comparisons between jurisdictions and subgroups, and cohort gains, are tested for significance. They include an equating error, and effect sizes are computed for significant differences.

The cost for this deliverable should make allowance for reasonable flexibility to accommodate changes or additions to the national results which may flow from decisions leading up to the release of results.

**2.6 Contributions to the Technical Report**

Item calibration, equating methodologies and outcomes are described in the technical report. The contractor contributes to these relevant chapters.

**2.7 Analysis Software**

The Contractor is required to use appropriate software to conduct each component of the CAD analysis. The software needs to be suitable to enable continuity of NAPLAN reporting, consistent with all processes set out in this document and detailed further in the NAPLAN 2025 technical report.

ACARA may require that the Contractor trial their psychometric software for selected analyses. A price for this would be negotiated separately. Following this exercise, ACARA will work with the Contractor to help produce analysis that allows reporting to be comparable to previous cycles. ACARA’s assistance will include the provision of data files and direction on psychometric methods.

**3.SECURE** **DELETION OF DATA**

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

**4.POLICIES, STANDARDS AND GUIDELINES**

* Australian Government Style Manual – Accessible and inclusive content (latest edition)
* Australian Standards for Record Management (AS ISO 15489)
* Commonwealth Fraud Control Framework 2024.
* Data Standards Manual Student Background Characteristics (ACARA, 2019)
* Technical Data Standards – 2021 (see Attachment A)

<https://www.nap.edu.au/results-and-reports/>

**Commencement and time frame**

Commencement Date: Upon execution of this Notice.

The Contractor will be required to meet the following project estimated timeline:

|  |  |
| --- | --- |
| **Activity** | **Timeline** |
| Testing window + Security window | Mid to End-March |
| Item calibration & DIF analyses (N, R, S, G) | Mid-March |
| Test equating (N, R, S, G) | Mid to End-March |
| Tables for preliminary SSSR | Early-April |
| Draw 4D PVs (N, R, S, G) | Mid-March to Early April |
| Item calibration and Equating (W) | Mid-May |
| Draw 5D PVs | End- May |
| Tables for final SSSR | End- May |
| Files for national results | Mid to End-June |
| Contributions for technical report | Mid-September |

**Special Conditions Schedule**

1. **Definitions**
   1. In this Special Conditions Schedule, unless the contrary intention appears, a term in bold type has the meaning shown opposite it:

|  |  |
| --- | --- |
| **ACARA Act** | means the *Australian Curriculum, Assessment and Reporting Authority Act 2008 (Cth);* |
| **Anonymised Data** | means data that has been anonymised by removing the name of the student or otherwise de-identified, so that the identity of an individual is not apparent or reasonably ascertainable from that data, whether on its own or in combination with other available information, noting that such data is to be treated as if it includes Personal Information following such anonymisation; |
| **Contractor’s ICT system** | includes any electronic or other system, or any related process, equipment, tool, device, infrastructure, network, data, information, transmission, communication, software or facility, whether ‘stand alone’ or connected with the system; |
| **Data Breach** | means any actual or suspected unauthorised dealing with, leak, spill or loss of any data, including (without limitation):   * 1. unauthorised access to, or unauthorised disclosure or unauthorised modification of, any data;   2. loss of information in circumstances where there is a risk of unauthorised access to, or unauthorised disclosure of, Jurisdiction Data; and   3. an Eligible Data Breach in relation to any data; |
| **Eligible Data Breach** | has the same meaning as it has in the Privacy Act or as otherwise defined in any of the Privacy Provisions to the extent applicable; |
| **Information Security Manual** | means the Australian Signals Directorate *Information Security Manual available* at <https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism> as amended from time to time; |
| **Jurisdiction** | means an Australian State or Territory participating in NAPLAN; |
| **Jurisdiction Data** | in respect of a particular Jurisdiction, means all data that has been supplied to ACARA for the purposes of administering and reporting on the NAP, including information and material processed, produced or derived using that information and material, including Anonymised Data, aggregated data and metadata; |
| **NAP**  **NAPLAN** | means the national assessment program developed and administered by ACARA under the ACARA Act;  means the National Assessment Program – Literacy and Numeracy 2026 |
| **NAP Privacy and Data Management Policies** | means the privacy and data management policy and procedure framework documents that are applicable to ACARA and ACARA’s management of a NAP as provided to the Contractor by ACARA from time to time; |
| **Non-Government Sector** | means the independent school sector and the catholic school sector in a Jurisdiction; |
| **Non-Jurisdiction Data** | means data that is not Jurisdiction Data that is collected for the purposes of NAPLAN as specified by ACARA; |
| **Personal Information** | means:   * 1. personal information as defined in the Privacy Act; and   2. in respect of data exchanged by a particular Jurisdiction Entity, Jurisdiction Data or any data derived from Jurisdiction Data that is ‘personal information’ subject to the Privacy Provisions governing the relevant Jurisdiction Entity; |
| **Platform Student Identifiers** | means the unique identifier assigned to each student in a school that enables that student to participate in NAPLAN; |
| **Privacy Act** | means the *Privacy Act 1988* (Cth) as updated or replaced from time to time; |
| **Privacy Provisions** | means the privacy laws specified in the Attachment to this Special Conditions Schedule; |
| **Protective Security Policy Framework** | means the *Australian Government Protective Security Policy Framework* available at <https://www.protectivesecurity.gov.au/> as amended from time to time; |
| **Re-identification** | means, in relation to data about an individual that has been de-identified, use or disclosure in a manner that could lead to the identity of an individual to whom the data relates becoming apparent or reasonably ascertainable, and includes use or disclosure in a manner that may allow that data to be combined with other data in a way that could lead to the identity of that individual to whom the data relates becoming apparent or reasonably ascertainable; |
| **Security Incident** | means any actual or suspected breach of security (whether relating to information, logical, physical or system security or otherwise), or any contact, request or approach from any person seeking unauthorised access to data, or circumstance that highlights any actual or potential security vulnerability or which identifies a potential threat to security, including for example (without limitation): an attack, penetration, denial of service, disclosure of proprietary information, misuse of system access, unauthorised access or intrusion (hacking), virus intrusion, scan of the systems, networks, technology, content or websites of the Contractor or any other activity that could adversely affect any data; and |
| **Sensitive Personal Information** | has the same meaning as “sensitive information” in the Privacy Act. |

1. **Acknowledgement and undertaking**
   1. The Contractor acknowledges that Jurisdiction Data that it may receive from ACARA under this Agreement includes Sensitive Personal Information.
   2. The Contractor undertakes to comply fully with the terms of this Special Conditions Schedule.
   3. The Contractor:
      * 1. acknowledges that ACARA will be required to execute an agreement with the States and Territories that will impose obligations on ACARA regarding the handling of data for online activities associated with NAPLAN (the Data Exchange Agreement) and the Services provided by the Contractor under this Agreement are subject to the Data Exchange Agreement;
        2. acknowledges that the Data Exchange Agreement is likely to be executed by these parties in late 2025 or early 2026;
        3. acknowledges that this Special Conditions Schedule contains terms and conditions that ACARA expects that it will need to impose on the Contractor under the Data Exchange Agreement;
        4. acknowledges that the executed Data Exchange Agreement may contain different or additional terms and conditions to those set out in this Special Conditions Schedule; and
        5. if ACARA reasonably considers that the executed Data Exchange Agreement contains different or additional terms and conditions, the Contractor will not unreasonably refuse a request by ACARA to vary this Special Conditions Schedule to reflect these different or additional terms and conditions.
2. **Collection Notice**
   1. To the extent that the Contractor collects Personal Information under the Privacy Act in connection with the Services it must:
      * 1. take all reasonable steps to ensure that before it collects Personal Information from an individual (or as soon as practicable after they have collected the information), the subject of that Personal Information is made aware:
           1. of the purpose for which the information is being collected;
           2. if the collection is authorised or required by law, that the collection is so authorised or required under the relevant law; and
           3. of the way in which the information may be used or disclosed (including any further disclosure that may be made by the entity to whom the Personal Information is initially disclosed); and
        2. otherwise comply with the Privacy Act in relation to the provision of notice to such individuals; and
        3. comply with any directions of ACARA regarding the Contractor’s compliance with clauses 3.1.a and 3.1.b of this Special Conditions Schedule.
3. **Data security**
   1. The Contractor must comply with the Protective Security Policy Framework and Information Security Manual to ensure that Jurisdiction Data is at all times protected against:
      * 1. unauthorised access;
        2. unauthorised copying;
        3. unauthorised disclosure;
        4. complete or partial loss;
        5. complete or partial corruption;
        6. malicious deletion; and
        7. accidental deletion.
   2. The Contractor must take all reasonable steps, including by ensuring that any security and access controls comply with the Information Security Manual, to prevent any Security Incident or Data Breach occurring and, in particular, to ensure that no unauthorised party is allowed physical or electronic access to Jurisdiction Data, to the extent it is stored on the Contractor’s ICT system.
4. **Use, storage and disclosure of Jurisdiction Data and Non-Jurisdiction Data**
   1. If directed by ACARA, the Contractor must delete Jurisdiction Data relating to one or more Jurisdictions.
   2. The Contractor must only access Jurisdiction Data as required to enable the relevant Jurisdiction to participate in the NAP and must not disclose Jurisdiction Data except as expressly permitted in this Special Conditions Schedule.
   3. The Contractor must ensure that Jurisdiction Data and Non-Jurisdiction Data that is Anonymised data is only disclosed to:
      * 1. ACARA; or
        2. the Jurisdiction to which it relates, except in the context of the State of Queensland where such Jurisdiction Data and Non-Jurisdiction Data must not be disclosed to the Queensland Department of Education where it relates to a school within a Non-Government Sector.
   4. Unless ACARA provides specific prior written approval, the Contractor must ensure that Jurisdiction Data and Non-Jurisdiction Data is not disclosed to any third party that is not an approved subcontractor under this Agreement (whether or not that Jurisdiction Data or Non-Jurisdiction Data is Anonymised Data).
   5. The Contractor may disclose Jurisdiction Data and Non-Jurisdiction Data to a subcontractor that has been approved by ACARA in accordance with clause 12 of this Agreement where this is required to perform the Services, and unless ACARA provides specific prior written approval, this must be limited to Jurisdiction Data and Non-Jurisdiction Data that is Anonymised Data.
   6. Any approval given by ACARA under clause 5.4 or 5.5:
      * 1. may or may not be given by ACARA acting in its absolute discretion; and
        2. may be subject to any conditions ACARA considers appropriate acting in its absolute discretion.
   7. The Contractor must ensure that Jurisdiction Data and Non-Jurisdiction Data that is not Anonymised Data:
      * 1. remains confidential;
        2. is securely stored and all reasonable steps are taken to prevent unauthorised physical or electronic access;
        3. is not transferred, or accessed from, outside of Australia without the prior written consent of ACARA;
        4. is only used in a manner permitted by section 40 of the ACARA Act and the Privacy Act, and this Agreement; and
        5. is held in compliance with the Privacy Act.
   8. The Contractor must:
      * 1. ensure that any other party to whom Jurisdiction Data or Non-Jurisdiction Data is disclosed in accordance with clauses 5.4 or 5.55.4 of this Special Conditions Schedule:
           1. is bound by any conditions prescribed by ACARA under clause 5.6.b of this Special Conditions Schedule and by obligations substantially similar to the obligations set out in this Special Conditions Schedule; and
           2. complies with any conditions and obligations referred to in clause 5.8.a.i of this Special Conditions Schedule (except that clause 5.5 expressly does not permit disclosure to subcontractors of approved subcontractors); and
        2. exercise any rights it may have against any other party to whom Jurisdiction Data or Non-Jurisdiction Data is disclosed in accordance with clause 5.4 of this Special Conditions Schedule in connection with that Jurisdiction Data or Non-Jurisdiction Data in accordance with any direction by ACARA.
   9. If requested by ACARA, the Contractor must immediately deliver up to ACARA or destroy all copies (electronic and hard copy) of the Jurisdiction Data and Non-Jurisdiction Data that has not been effectively de-identified.
   10. If the Contractor is provided with any Non-identifying Jurisdiction Data they must ensure that the Non‑identifying Jurisdiction Data is not used or disclosed in a manner that may allow that data to be combined with other data in a way that could lead to an individual to whom the data relates becoming apparent or reasonably ascertainable.
5. **Data Breach notification**
   1. The Contractor must immediately notify ACARA’s Project Manager in writing of any Security Incident or Data Breach in relation to any Personal Information held by the Contractor as a result of this Agreement or its provision of the Services.
   2. In the circumstances outlined in clause 6.1 of the Special Conditions Schedule, or where ACARA notifies the Contractor that there has been a Security Incident or Data Breach in relation to any Personal Information held by the Contractor as a result of this Agreement or its provision of the Services, the Contractor must:
      * 1. take all reasonable action to mitigate the risk of the Security Incident or Data Breach causing harm to any of the individuals to whom the Personal Information relates;
        2. if directed by ACARA, carry out an assessment (in consultation with ACARA and the relevant Jurisdiction) in accordance with the requirements of the Privacy Act if there are reasonable grounds to suspect that there may have been an Eligible Data Breach;
        3. unless otherwise directed by ACARA and the relevant Jurisdiction, take all other action necessary (in consultation with ACARA and the relevant Jurisdiction, including in relation to the communication of any notification for the purposes of section 26WL of the Privacy Act) to comply with the requirements of the Privacy Act; and
        4. take any other action as reasonably directed by ACARA.
   3. The Contractor agrees to provide a monthly report to ACARA detailing all information security issues (including all Security Incidents, Data Breaches and matters related to such issues) relating to the Services in the reporting period, and where Jurisdiction Data is affected, the report must specifically address any issues relating to that data.
   4. The Contractor agrees to notify ACARA immediately if it becomes aware of a breach or possible breach of its obligations under this clause 6 of the Special Conditions Schedule.
   5. Unless required by law, the Contractor agrees not to make or issue any public statement or disclosure (including public statements or disclosures to media outlets, conferences, press conferences or any other public or media event) about any suspected Eligible Data Breach, Data Breach, Security Breach or breach of this Agreement without the prior written consent of ACARA and the relevant Jurisdiction.
6. **Use of Platform Student Identifiers**
   1. The Contractor:
      * 1. must not adopt the Platform Student Identifiers as their own identifiers; and
        2. must only use or disclose the Platform Student Identifiers in the performance of the Services in relation to the Project.
7. **Assistance**
   1. The Contractor agrees that in performing its obligations under this Agreement, the Contractor will act in a manner that allows ACARA to comply with its obligations under the Privacy Act, the *Freedom of Information Act 1982* (Cth) and the *Archives Act 1983* (Cth).
   2. The Contractor must provide all reasonable and timely assistance and information to ACARA in respect of addressing:
      * 1. any Data Breach;
        2. any Security Incident, including a Security Incident affecting Jurisdiction Data;
        3. any application made under the access and amendment provisions of the Privacy Act, or any privacy complaint made to the Contractor, ACARA, or to the Office of the Australian Information Commissioner;
        4. any application made to ACARA under the *Freedom of Information Act 1982* (Cth) for access to information, including any Jurisdiction Data; and
        5. any compliance audit of systems or facilities holding Jurisdiction Data required to be conducted under the Privacy Act, the *Freedom of Information Act 1982* (Cth), the *Archives Act 1983* (Cth) or other related legislation or policy.
8. **Policies**
   1. The Contractor must comply with the NAPLAN Privacy and Data Management Policies as amended from time to time by ACARA.

1. **Jurisdiction Legislative / policy requirements**
   1. To the extent that the Contractor is required to deal with Jurisdiction Data subject to Privacy Provisions, the Contractor agrees to comply with the requirements in the Attachment to this Special Conditions Schedule.
   2. The Contractor must comply with the following requirements:
      * 1. personnel, including personnel of subcontractors (**Contractor Personnel**) that have access to student Personal Information in accordance with this Agreement must undergo a national police history pre-employment check and meet the clearance requirements.
        2. if Contractor Personnel do not undergo or do not meet the clearance requirements, the Contractor must not permit those persons to have access to student Personal Information.
        3. If the Contractor is or becomes aware that:
           1. any Contractor Personnel is a Prohibited Person for the purposes of this clause 10.2; or
           2. any Contractor Personnel fail to meet the clearance requirements in this clause 10.2,

the Contractor must immediately notify ACARA.

* 1. If ACARA gives the Contractor notice in writing that any one or more Contractor Personnel is a Prohibited Person, the Contractor must immediately withdraw the Prohibited Person’s access to student Personal Information.
  2. In this clause 10, ‘Prohibited Person’ means a person who, under a law of the Commonwealth, or of a State or Territory, is prohibited from working with children.
  3. The Contractor must comply with any additional requirements specified in the Attachment to this Special Conditions Schedule.
  4. The Contractor agrees to notify ACARA and the relevant Jurisdiction immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 10 (including additional obligations specified in the Attachment to this Special Conditions Schedule).

Attachment to the Special Conditions Schedule   
Jurisdiction Privacy and other requirements

|  |  |  |
| --- | --- | --- |
| **Issue** | **Jurisdiction** | **Requirement** |
| Privacy Provisions (cl 1.1) | ACT | the *Information Privacy Act 2014* (ACT) and the *Health Records (Privacy and Access) Act 1997* (ACT) |
|  | NSW | the:   * 1. *Privacy and Personal Information Protection Act 1998* (NSW);   2. *Privacy and Personal Information Protection Regulation 2014* (NSW);   3. *Health Records and Information Privacy Act 2002* (NSW);   4. *Health Records and Information Privacy Regulation 2012* (NSW);   5. *Health Records and Information Privacy Code of Practice 2005* (NSW); and   6. Privacy Code of Practice (NSW Department of Education) |
|  | NT | the *Information Act 2002* (NT) |
|  | QLD | the *Information Privacy Act 2009* (Qld) and  section 426 of the *Education (General Provisions) Act 2006* (Qld) |
|  | SA | the *Information Privacy Principles (IPPs) Instruction* (PC012) (SA IPPs) |
|  | WA | the:   * 1. *School Curriculum and Standards Authority Act 1997* (WA);   2. *School Education Act 1999* (WA);   3. *Criminal Code Act Compilation Act 1913* (WA);   4. *Freedom of Information Act 1992* (WA); and   5. Administrative Instruction 711 issued by the Public Sector Commissioner |
|  | TAS | the *Personal Information Protection Act 2004* (Tas) |
|  | VIC | the *Privacy and Data Protection Act 2014* (Vic) |
| Personal Information obligations (cl 10.1) | NSW | The Contractor agrees that it must deal with all “personal information” and “health information” collected or obtained pursuant to this Agreement in accordance with:  a. the *Privacy and Personal Information Protection Act 1998* (NSW) and the Information Protection Principles contained in that Act (in the case of personal information); and  b. the *Health Records and Information Privacy Act 2002* (NSW) and the Health Privacy Principles contained in Schedule 1 to that Act (in the case of health information. |
|  | NT | The Contractor agrees that it must deal with all Personal Information collected or obtained pursuant to this Agreement in a manner which is consistent with the *Information Act 2002* (NT) (the Information Act) and the Information Privacy Principles contained in that Act, as if the Contractor were a public sector organisation pursuant to section 5(7) of the Information Act. |
|  | QLD | The Contractor agrees that it must deal with all Personal Information collected or obtained pursuant to this Agreement in a manner which is consistent with Chapter 2 of the *Information Privacy Act 2009* (Qld), as if the Contractor were QDoE, or section 426 of the *Education (General Provisions) Act 2006* (Qld) as applicable. |
|  | SA | The Contractor agrees not do any act, or engage in a practice, that breaches the provisions of the *State Records Act 1997* (SA) applicable to SADfE. The Contractor must promptly notify SADfE if it fails to comply with the *Privacy Act 1988* (Cth). |
| Prohibited Persons  (cl 10.5) | QLD | Prohibited Person includes a person who is a 'disqualified person' or 'restricted person' within the meaning of the *Working with Children (Risk Management and Screening) Act 2000* (Qld). |
|  | SA | For the purposes of this Schedule and clause 10.5, the following definitions apply:   1. Prescribed Offence has the meaning given in the Prohibited Persons Act; 2. Prescribed Position has the meaning given in the Prohibited Persons Act; 3. Presumptive Disqualification Offence has the meaning given in the Prohibited Persons Act; 4. Prohibited Person has the meaning given in the Prohibited Persons Act; 5. Prohibited Persons Act means the *Child Safety (Prohibited Persons) Act 2016* (SA); 6. Prohibition Notice has the meaning given in the Prohibited Persons Act.   If the Contractor has access to South Australian student Personal Information it must:   1. comply with the obligations of employers under Division 2 Part 4 of the Prohibited Persons Act in relation to their personnel that are employed in Prescribed Positions; 2. immediately procure the ongoing exclusion of any personnel that are employed in Prescribed Positions from involvement in carrying out obligations under this Agreement, if they are found to be a Prohibited Person.   Unless such notification causes the Contractor to be in breach of the Prohibited Persons Act, ACARA must promptly notify SADfE if it becomes aware that any of its personnel who are involved in the carrying out of obligations under this Agreement:  (a) is a Prohibited Person; or  (b) is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence or a Presumptive Disqualification Offence (whilst not being the subject of a Prohibition Notice). |
|  | VIC | If the Contractor has access to Victorian Jurisdiction Data that includes student Personal Information:   * + - 1. ACARA must notify VCAA in writing if the Contractor has engaged in any conduct:          * within Victoria which constitutes reportable conduct within the meaning of the *Child Wellbeing and Safety Act 2005* (Vic); or          * outside Victoria which, had it been engaged in by the person within Victoria, would constitute reportable conduct within the meaning of the *Child Wellbeing and Safety Act 2005* (Vic), and       2. if item 1.1.1.a. applies or VCAA notifies ACARA that the Contractor has engaged in conduct referred to in item 1.1.1.a., ACARA must immediately withdraw access to student Personal Information for the Contractor. |