|  |
| --- |
|  |
| REQUEST FOR TENDER PART B |
| DRAFT Contract in relation to the provision of SERVICES FOR NAPLAN ONLINE FUNCATIONAL TESTING**RFT 3-25** |
| 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 X day of MM 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. The Australian Curriculum, Assessment and Reporting Authority (ACARA) was established under the *Australian Curriculum, Assessment and Reporting Authority Act 2008* (**ACARA Act**) and is subject to the *Commonwealth Authorities and Companies Act 1997* (**CAC Act**).
2. ACARA is a cooperative enterprise between state and federal education jurisdictions and its activities are jointly funded by Commonwealth, state and territory governments. ACARA performs its functions in line with the charter set by the Education Ministers Meeting (formerly the Education Council). ACARA reports to the Education Ministers Meeting and to the federal Minister for Education.
3. ACARA is responsible for the development of a rigorous, world-class Australian curriculum from Foundation to Year 12. In April 2022 ACARA published the Version 9.0 F–10 Australian Curriculum.
4. ACARA requires a suitably qualified and experienced Contractor to provider services to provide a monitoring process for the Australian Curriculum.

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;

“**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);

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

“**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 Material”** any Material:

1. created for the purposes of the Project under the Agreement;
2. provided or required to be provide to ACARA as part of the Project;
3. derived at any time from the Material referred to in (a)and (b) above,

but does not include any of the Contractor’s internal working papers.

“**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 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 provide weekly updates to the Project Manager and comply with any reasonable request made by the Project Manager.

# COMMUNICATIONS

## The Contractor must address all written 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 calendar 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 upon the expiry or early termination of the Agreement, must immediately return to ACARA all Confidential Information in its possession or control.

## The Contract may retain one copy of written or computer-stored materials incorporating Confidential Information to the extent included in the Project Material for its professional record keeping obligations, for insurances purposes or as otherwise required by law.

## 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 Date of the Project.

## ACARA may terminate the engagement of the Contractor by providing ten business days written 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 five (5) business 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 ten business days 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 ten business days 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 by Notice to the other party.

18.4 The address for notices must at all times include a generic email address that is designated for the purposes of receiving notices under this Agreement.

# 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 provide written notice to 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 calendar 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 calendar 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; and
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; and
2. to permit those persons to inspect and take copies of any Material relevant to the Services.

## 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; and
3. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

## The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause.

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

# 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. . **Option**
	1. If ACARA elects to repeat the Project for a further year, the Contractor agrees to continue to provide the Services for the repeat of the Project.
	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.

**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. **Introduction**

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is an independent statutory authority and a corporate Commonwealth entity. It was established in 2009 with a mission to improve the learning of all young Australians through world-class school curriculum, assessment, and reporting.

ACARA is responsible for the development of rigorous, world class Australian curriculum from Foundation to Year 12. To complement the development of an Australian curriculum, ACARA is also responsible for developing and administering a national assessment program aligned to the national curriculum that measures students’ progress, and the provision of information, resources, support, and guidance to the teaching profession.

The National Assessment Program – Literacy and Numeracy (NAPLAN) commenced in 2008. Every year from 2008, all students in Years 3, 5, 7 and 9 have been assessed in May using national paper-based tests in Reading, Writing, Language Conventions (Spelling, and Grammar and Punctuation) and Numeracy. Test Administration Authorities (TAAs) in each state and territory are responsible for the implementation, administration and marking of the NAPLAN tests in their jurisdictions. Since 2016, ACARA and TAAs together with Education Services Australia (ESA) have worked towards an online delivery of NAPLAN tests and in 2023, all Australian schools participated in NAPLAN online. For more information on NAPLAN online - <https://www.nap.edu.au/online-assessment>

1. **Background –**

The move from a paper based national assessment, to an online cloud-hosted national assessment, required the implementation and deployment of an ICT platform. This platform is referred to as the Assessment Delivery System (ADS). More information on the Online National Assessment Platform can be found here: <https://www.assessform.edu.au/>

To continue the successful delivery of online NAPLAN tests in the ADS, delivery of platform functionality and continuous platform development is coordinated between ACARA and ESA together with various software providers work to ensure successful delivery of NAPLAN online.

An annual software release cycle is delivered every year for the National ADS by the software vendors. The ADS is the central system of which the national assessment is administered and delivered through to schools and students. Whilst the technical, unit and integration testing is performed by the relevant software vendor and ESA as the implementation partner, ACARA and each jurisdictional test administration authority is responsible for performing functional testing (quality assurance) of certain platform functions.

To support the quality assurance testing activities, an annual platform readiness testing (PRT) event is in September each year. The PRT event allows ACARA and test administration authorities to execute functional test cases against defect fixes, new functionality introduced as part of system enhancements (UAT) and perform role-based testing to test end-to-end processes.

The coordination, planning and to some extent execution of ACARA quality assurance testing activities are performed out of the ACARA Assessment and Reporting, Field Operations NAP IT & QA team. During PRT additional resources are required to assist with the execution of test cases on various devices (e.g., MacBook, Chromebook, PC, and iPads) and to record and report on findings against expected outcomes.

1. **Purpose**

The purpose is for the Contractor to provide test analyst services to ACARA during the required testing periods The Services will support the execution of test cases and recording and reporting on findings against expected outcomes (acceptance criteria).

1. **Scope of Services**

* 1. **Overview**

ACARA requires services of external Test Analyst resources to assist in the execution of functional and user interface test cases in the NAPLAN online ADS and recording and reporting of results under a time and materials engagement.

The Test Analysts will be operating under the supervision of the ACARA NAP IT&QA team and report directly to the Senior Project Officer.

It is preferred that the Test Analysts operate out of Sydney, NSW or Perth, WA for ease of coordination and delivery of ICT equipment.

ACARA will provide the appropriate ICT devices, access to relevant systems and collaboration tools to the Test Analysts so that they can be successful in their delivery.

In addition, the ACARA project team will deliver training to the Test Analysts prior to commencing the execution of test cases.

Note that the nature of test cases involves functional manual quality assurance testing and does not include requirements for any automation testing or any testing of the underlying code. Testing may involve some form of data-based testing (i.e., confirming reporting and database outputs against inputs into the ADS).

* 1. **Functional Testing**

The Contractor will provide functional testing services, including but not limited to –

* Execution of manual functional and user interface test cases along with the ACARA IT / QA Project Team
* Record and report on findings, issues and defects discovered as part of testing against relevant acceptance criteria
* Assist in the articulation of issues and defects and re-test and close issues and defects (if applicable)
* Record and report on defects discovered during the test phase in relevant tracking tools and documentation provisioned by ACARA
* Provide updates to the Senior Project Officer on progress
* Providing highly effective communication and in particular an ability to explain technical issues and concepts
* Working collaboratively as part of a small, focused testing team.

ACARA will provide the test cases, along with any relevant access required, and record and monitor the outcomes. Regular status updates and catch ups will be scheduled for progress checks and to monitor risks.

Each Test Analyst will be allocated a particular device and a set of test cases to execute.

Examples of functional test cases can be seen in Appendix A.

* 1. **Resources required and duration**

The Services will be on a Time and Materials basis. ACARA estimates that 8 Test Analysts are required to meet requirements for test execution.

ACARA has **estimated** the number of days that the test analyst Services are required as per below table.

Additional ad hoc requests beyond the activities and dates outlined below may be required by ACARA.

| **Activity** | **Indicative start date** | **Indicative finish date** | **Estimated days** | **FTE** |
| --- | --- | --- | --- | --- |
| PRT 2025 | 19 August 2025 | 12 September 2025 | 12 days | 8 staff |
| NAPLAN 2026 QA part 1 | 1 December 2025 | 12 December 2025 | 10 days | 3 staff |
| NAPLAN 2026 QA part 2 | 2 February 2026 | 16 February 2026 | 11 days | 8 staff |
| NAPLAN 2026 data entry | 24 March 2026 | 25 Mach 2026 | 3 days | 4 staff |
| TBC - In-test item trial data entry | 4 May 2026 | 15 May 2026 | 10 days | 8 staff |
| TBC – PRT 2026 | 31 August 2026 | 14 September 2026 | 11 days | 8 staff |
| NAPLAN 2027 QA part 1 | 30 November 2026 | 11 December 2026 | 10 days | 3 staff |
| NAPLAN 2027 QA part 2 | 29 January 2027 | 12 February 2026 | 11 days | 8 staff |
| NAPLAN 2027 data entry | 23 March 2027 | 25 March 2027 | 3 days | 4 staff |
| TBC – PRT 2027 | 27 August 2027 | 11 September 2027 | 11 days | 8 staff |
| TBC – NAPLAN 2028 QA part 1 | 29 November 2027 | 10 December 2027 | 10 days | 3 staff |
| TBC – NAPLAN 2028 QA part 2 | 28 January 2028 | 11 February 2028 | 11 days | 8 staff |
| TBC – NAPLAN 2028 data entry | 28 March 2028 | 30 March 2028 | 3 days | 4 staff |

* 1. **Capability and suitability of key personnel**

ACARA expects that the proposed Test Analysts have the capability and previous experience to conduct manual functional testing on ICT systems. ACARA expects the proposed analysts to have a broad knowledge of general ICT system functionality and can conduct exploratory, targeted and risk-based testing to confirm that functionality is working as expected against expected outcomes and acceptance criteria.

Please outline detailed information on proposed personnel for Test Analyst services in the response to Attachment 5.

* 1. **Training**

ACARA will provide Test Analysts with the relevant training required to navigate the ADS and execute the test cases. A 2-day training session prior to commencing test execution facilitated by ACARA has been included in the estimated number of days.

In the training sessions, ACARA will run through examples of expected outcomes and the key functions of the Assessment Delivery Platform.

* 1. **Devices and Applications**

ACARA will provide the appropriate devices, specifications, and relevant applications to undertake the functional testing scope. These devices include:

* MacBooks
* iPads
* PCs (Dell laptops)
* Chromebooks
* Androids
	1. **Collaboration Tools and Access of Information**

ACARA will ensure Test Analysts have the appropriate devices for regular communication and access to our cloud-based productivity tools (JIRA) and that user accounts set up to access productivity applications and collaboration tools as required.

This includes:

* Microsoft Office suite (Word, Excel, PowerPoint)
* JIRA
	1. **Unexpected event or natural disaster**

In the event of a natural disaster such as a pandemic outbreak or an event that means ACARA offices are unavailable, Test Analysts need to have an appropriate space and facilities (including internet access) to work from home and ensure that security requirements can be maintained.

In order to ensure that testers have an appropriate workspace available at home a Workplace Health and Safety Assessment will need to be undertaken by the Contractor.

**Special Conditions Schedule**

**Not used.**

**Vendor Performance Evaluation**

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



**Appendix A – Example Functional Test Cases**

| Test case #  | Test Case Detail  | Pass  | Fail  | Test not conducted  | Defect form completed  |
| --- | --- | --- | --- | --- | --- |
| SE1  | Student can login successfully and is presented: * Session code entry
* Student code entry
* Name confirmation
* Survey and practice selection page
* Wait to begin screen
 |   |   |   |   |
| SE2  | Student can perform audio check and hear audio prompts in test as expected  |   |   |   |   |
| SE3  | Student can view images and text and they display as expected  |   |   |   |   |
| SE4  | Student can view images and they render in an acceptable timeframe  |   |   |   |   |
| SE5  | Student can navigate the pages: * Next
* Back
* Finish
* Magnification
* Timer
 |   |   |   |   |
| SE6  | Student can navigate the pages: * Question to progress summary page
* Progress summary page to question
 |   |   |   |   |
| SE7  | Student can navigate the pages: * Locked testlet
* Unlocked testlet
 |   |   |   |   |

| Test case #  | Test Case Detail  | Pass  | Fail  | Test not conducted  | Defect form completed  |
| --- | --- | --- | --- | --- | --- |
| SE8A  | Student can input responses and make changes to the following question types: * Drag and drop
* Gap match
* Associate items
* Multiple choice
* Text and number entry
* Hot spot
* Hot text
* Text and number entry with audio
* Extended text
* Selection point
* Slider interaction
* Position object
 |   |   |   |   |
| SE8B  | Student can input responses and make changes without a mouse and instead using: * arrows to move between items
* spacebar to select answer
* number pad to input answer
* keyboard to input answer

 to the following question types: * Drag and drop
* Gap match
* Associate items
* Multiple choice
* Text and number entry
* Hot spot
* Hot text
* Text and number entry with audio
* Extended text
* Selection point
* Slider interaction
* Position object
 |   |   |   |   |
| SE9  | Student responses are saved  |   |   |   |   |
| SE10  | Student is presented with Pre and Post Test Survey (if configured in test authoring)  |   |   |   |   |
| SE11  | Student is displayed correct message if connection to the test is disrupted and can then continue the test when reconnected  |   |   |   |   |

| Test case #  | Test Case Detail  | Pass  | Fail  | Test not conducted  | Defect form completed  |
| --- | --- | --- | --- | --- | --- |
| SE12  | Student can view: * Test summary page
* Alert and checkpoint notifications
* Test exit page
* Re-open buttons on Exit page
 |   |   |   |   |