

## ***Data Access Program***

# **GUIDELINES 2013**

*The Guidelines include:*

*required steps for submitting a data request application;*

*the review and assessment process taken by ACARA;*

*formalisation of the data access agreement;*

*data preparation, delivery and utilisation of data;*

*Data Request Application; and*

*Draft Data Access Agreement Templates*

## Document History

Approved Date	Version
20/12/2013	First Edition

## Contact details

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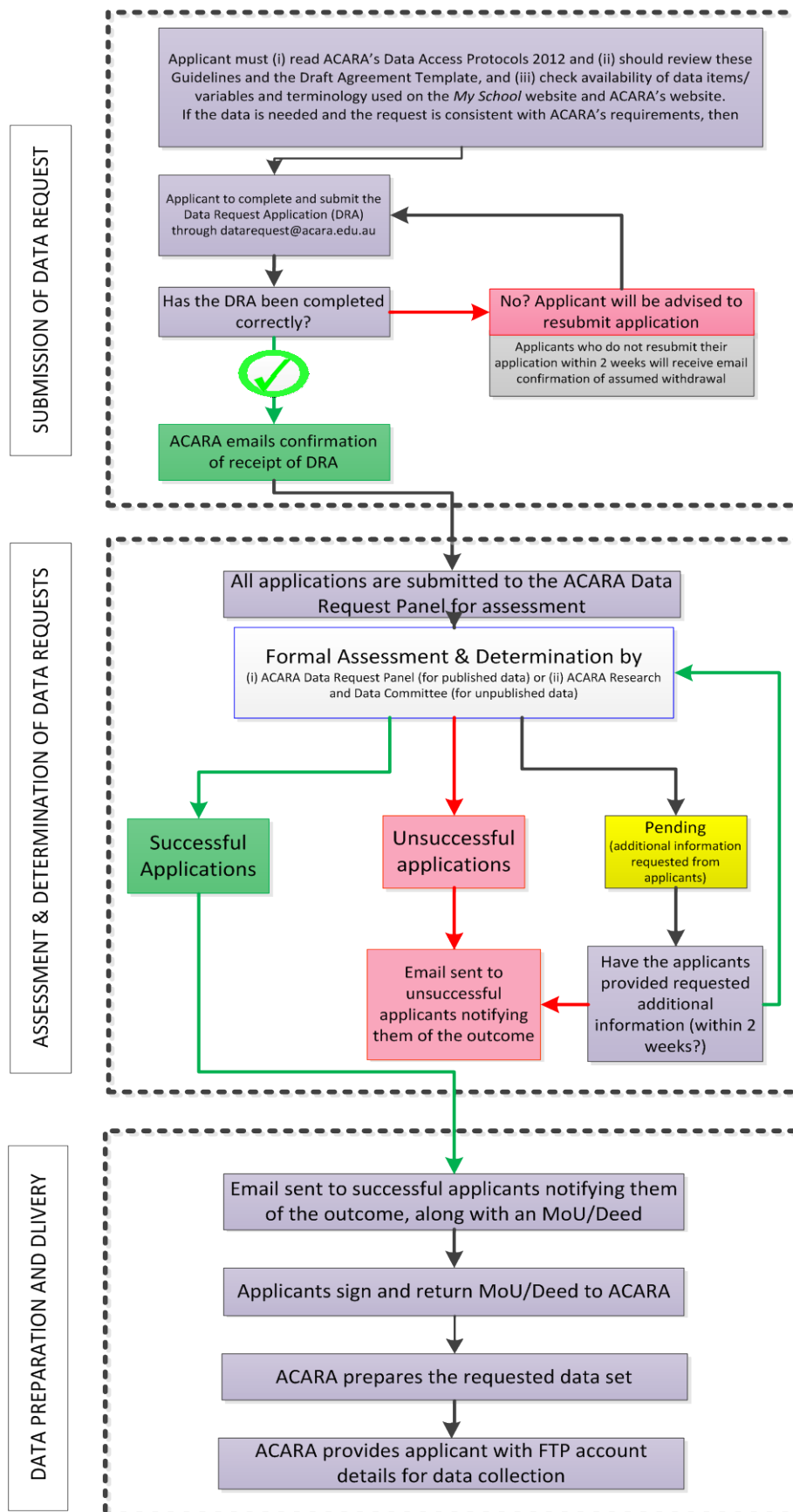
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# 1. Third party data request workflow



## 2. Before completing a data request application

- 2.1. All potential applicants must read the *Data Access Protocols 2012*.
- 2.2. If the applicants are not familiar with the availability of and names of data items/variables used by ACARA, Australian schools and education authorities, they should refer to the *My School* website and other sources such as the Student Reports, National Reports, NAPLAN Results published on the ACARA website <http://www.nap.edu.au/results-and-reports/test-results.html>
- 2.3. The assessment of data request applications and the preparation/release of the approved data request is subject to ACARA's available resources and the level of requests being dealt with.
- 2.4. All applications, regardless of scope, must be assessed by either the ACARA Data Request Panel or the ACARA Research and Data Committee. The Panel meets monthly and the Committee meets 3-4 times a year.
- 2.5. An approved data request will not be prepared until a formal Agreement has been signed by both ACARA and the organisation listed in the approved application.

## 3. Provision for data service

There are three levels of service:

### 3.1. Level 1

Applicants with whom ACARA already has an existing data exchange relationship via a standing MOU, and as specified under paragraphs 19 and 20 of the *Data Access Protocols 2012*. - no fee applies.

### 3.2. Level 2

Applicants (other than those covered under Level 1 above) who request data from pre-defined data sets (mainly published *My School* data) – no fee applies.

### 3.3. Level 3

Applicants (other than those covered under Level 1 above) who request data that will require ACARA staff to extract the data and undertake quality assurance. Fees will apply under these circumstances, as ACARA's resources will be required to prepare the customised product. The cost recovery, therefore, relates to the provision of service preparing the data, not the data itself.

3.3.1. From **1 January 2014** ACARA will charge for the time taken to prepare each data request. This means that any data request applications received by ACARA after **31 December 2013** will be subject to this fee structure.

3.3.2. ACARA will assess the applicant's data request and estimate likely time required to complete the request and provide an indication of cost to the applicant based on labour time.

- 3.3.3. The fee will depend on the size and complexity of the request and the data extraction tasks involved. For instance, for extraction, the cost will depend on the number of data sets, number of years and variables in the data extract. Other expenses will be charged where appropriate and justified. For example, a charge could be applied if specialised software or hardware had to be purchased to fulfil the request.
- 3.3.4. ACARA will commence work after the signed Memorandum of Understanding/Deed is returned to ACARA by the applicant and the payment is made.
  - 3.3.4.1. ACARA will issue a Tax Invoice to the applicants.
  - 3.3.4.2. ACARA will only prepare and provide the data as specified in the Agreement.
  - 3.3.4.3. ACARA will re-supply the data if the product does not meet the specifications outlined in the Agreement.
  - 3.3.4.4. If ACARA is unable to provide the data as specified in the Agreement, ACARA will refund the fee.
  - 3.3.4.5. ACARA will not refund the fee after the data has been fully or partly prepared.

## 4. Lodging a data request application

- 4.1. All applicants are required to complete ACARA's Data Request Application. The application is attached at **Appendix A** or can be accessed via the link below:  
[http://www.acara.edu.au/acara\\_data\\_access\\_application\\_process.html](http://www.acara.edu.au/acara_data_access_application_process.html)
- 4.2. Only complete applications that are submitted via [datarequest@acara.edu.au](mailto:datarequest@acara.edu.au) will be accepted. Data requests that do not use ACARA's Data Request Application will not be processed, nor will data requests that are sent to ACARA via fax or that are emailed directly to ACARA staff.
- 4.3. ACARA will confirm receipt of completed Data Request Applications within 3-5 working days.
- 4.4. It is essential that applicants fully complete all relevant questions/fields in the Data Request Application, as the information provided is used as the basis on which applications are approved or rejected.
- 4.5. All applications are required to provide a list of specific data items/variables being requested (see some examples below). This information is required not only for the assessment and determination process, but also for the preparation of data and the drafting of the Agreement (for approved applications).
- 4.6. If the Data Request Application does not have enough space to list all the data items being requested, applicants can provide additional documentation (such as an Excel spread sheet) as an attachment. This additional documentation needs to be submitted together with the completed application.

#### Example 1: School Profile

<b>Calendar year (year the data is sourced from)</b>	<b>2011</b>
<b>Year_range</b>	Year 1 to 10
<b>Data items/variables:</b>	
1. <b>School_ID</b>	
2. <b>School_name</b>	
3. <b>School_suburb</b>	
4. <b>School_postcode</b>	
5. <b>School_state</b>	NSW only
6. <b>Total_enrolment</b>	Number

#### Example 2: NAPLAN Results – school level

<b>Calendar year</b>	<b>2009 and 2011</b>
<b>Domains</b>	Reading, Writing and Numeracy
<b>Data items/variables:</b>	
1. <b>School_ID</b>	
2. <b>School_name</b>	
3. <b>Year level</b>	3,5,7 and 9
4. <b>Mean score</b>	

## 5. Submission closing dates

- 5.1. Applicants can submit data requests at any time. However, submission received less than five (5) working days before a Panel meeting will be considered at the subsequent Panel meeting. This cut-off is necessary to allow Panel members to review applications prior to the meeting.

## 6. Changes made to non-approved applications

- 6.1. Applicants can amend their original data requests by submitting an amended application at any time.
- 6.2. However, it should be noted that any amended application will be treated as a new application, regardless of the date of the original application submitted or received by ACARA.

## 7. Assessment and approval process

### *Assessment criteria*

- 7.1. All data request applications will be considered by ACARA in accordance with the *Data Access Protocols 2012*. In general requests for data will be considered by the ACARA Data Request Panel, with requests for unpublished data passed to the ACARA Research and Data Committee for decision. Some of the following common criteria could be used to determine whether the requested data will or will not be granted.

<b>Common Criteria</b>	<b>Explanatory Notes</b>
1. The content of the application	<p>1.1. The application must include a list of the requested data items/variables.</p> <p>1.2. The application must provide sufficient information about the intended use of the requested data.</p> <p>1.3. The application must sufficiently address how the proposed project/research will benefit students, schools and the wider Australian community.</p>
2. <b>Data availability</b>	<p>2.1. ACARA can only provide data it holds.</p> <p>2.2. ACARA cannot provide <i>My School</i> data to third parties, under the <i>Data Access Protocols 2012</i>, until six-months after the publication of <i>My School</i>.</p>
3. <b>Technical feasibility</b>	ACARA may not have the specialised skills or programs required to prepare the data requested.
4. <b>The resources needed to provide the data being requested</b>	<p>4.1. A complex request may require intensive resources to complete which would divert resources from other work priorities.</p> <p>4.2. ACARA may not have available resources to meet the applicant's required deadline.</p>
5. <b>Potential ethical implications</b>	<p>5.1. Approval for the research project has been granted by the relevant institutional ethics committee. This applies only to requests for unpublished data. It should be noted that while the Ethics Committee can determine the ethical acceptability of the applicants' research proposal, the authority to approve or not approve the data request lies with ACARA.</p> <p>5.2. A consideration of the possible outcomes of the research/project, resulting from the use of the requested data.</p> <p>5.3. With regard to unpublished data, consideration will be given to what proposed steps/methodologies will be taken by the applicant to ensure compliance with privacy legislation and the statutory guidelines in relation to the intended use of the requested data.</p>
6. <b>Form of publication</b>	A consideration of whether or not the requested data would be potentially published in an aggregated/de-identified form in the final product.
7. <b>The applicant's historical record (if available)</b>	ACARA will consider the adherence to any previous data Agreement.



### *Incomplete applications*

- 7.2. As part of the 1<sup>st</sup> common criterion, incomplete applications and/or any applications that do not provide a clear list of data items/variables being requested will not be processed or only approved with a condition that the applicants must provide additional information as requested by ACARA.
- 7.3. In this case, any applicants who do not respond to a request from ACARA for further information within two weeks will receive an email advising that ACARA assumes the application has been withdrawn.

### *Successful applications*

- 7.4. If the application has been approved, ACARA will inform the applicant (via email) of the outcome shortly after the final decision has been made.
- 7.5. Applicants will be advised of what data will or will not be provided; any variation (if any) to the applications; the total cost (if any); and (where possible) the proposed timing and mechanism for data transmission.
- 7.6. Successful applicants can withdraw their application if they do not accept the terms and conditions set by ACARA as outlined in the Agreement. In this case, if any payment has been partially or fully made to ACARA, applicants can request a refund (refer to 3.3.4 for more details).

### *Unsuccessful applications*

- 7.7. If an application is unsuccessful, ACARA will inform the applicant (via email) of the reason(s) shortly after the final decision made. While the decision of ACARA is final and no appeal will be entered into, an applicant can revise their application and re-submit it to ACARA at any time. These applications will be treated as new applications.

## **8. Timelines for assessment**

- 8.1. Once the complete applications have been received by ACARA, it will generally take between 4-8 weeks for the Panel/Committee to assess and advise applicants of the outcomes of their applications. In some circumstances (large volume of data requests; insufficient information provided by applicants, etc) this timeline may extend beyond 8 weeks.

## **9. Data access agreement**

- 9.1. All successful applicants, with the exception of some applicants who currently have special arrangements with ACARA, are required to enter into a formal agreement with ACARA to receive the data.
- 9.2. The Agreement will take the form of a Memorandum of Understanding (MoU) for Government agencies and a Deed for non-government agencies.

- 9.3. The requested data will not be prepared until this Agreement has been signed by the applicants and returned to ACARA within a required timeframe.
- 9.4. All potential applicants are advised to read the draft Agreement templates before lodging a data request application. These documents are attached at **Appendix B**.
- 9.5. The Agreement describes (amongst other matters) the data to be delivered, the use of the data, the fees involved in data preparation (where applicable), the responsibilities of authorised users in working with the data, and the recourse available to ACARA should the Agreement be breached.
- 9.6. ACARA will send two copies of the final Agreement to a successful applicant for signature. The applicant will have 3-4 weeks from the date the Agreement is sent to respond. If the applicant does not respond within this time, the applicant will receive notice by email stating that their application has been closed.
- 9.7. Applicants are required to advise ACARA of any changes regarding their personal contact details, including contact details of personnel signing the Agreement, before the Agreement has been signed by ACARA. Any subsequent amendments to contact details will significantly delay the process.
- 9.8. Once the Agreement has been signed, the applicant should keep one copy of the Agreement and send the other signed copy to ACARA at the following address:

**Data Access Request Program  
Australian Curriculum, Assessment and Reporting Authority  
Level 10, 255 Pitt Street SYDNEY NSW 2000**

## **10. Conditions of changes made to the approved applications**

- 10.1. Before the Agreement is prepared and signed by ACARA, an applicant can request ACARA to reduce the number of data items or data sets as outlined in their approved applications. Such amendments will not require a submission of revised application.
- 10.2. A revised application will be required if an applicant requests a new data item or data set be added to the approved application.
- 10.3. Similarly, any change made to the intended use of the data and/or research questions or any other parts of the approved application will require a submission of a revised application.
- 10.4. A revised application will be treated as a new application and will be subject to the normal assessment and determination procedures, regardless of the date of the original application submitted or received by ACARA.

## **11. Preparation and delivery of the requested data**

- 11.1. When ACARA receives the executed Agreement from the applicant, and all requirements are satisfied, ACARA will begin to prepare the agreed data.

- 11.2. ACARA will release the requested data through a secure FTP (*File Transfer Protocol*) site. Authorised users will be provided with a password via phone/email, and some general instructions on how to access the data. Authorised users are those listed in the signed Agreement.
- 11.3. Should Authorised users have any queries regarding the data provided they should contact ACARA within 2-3 weeks from the date of the data being provided.
- 11.4. The period of data retention will be described in the Agreement. ACARA will maintain the provided data for this period of time on the FTP site. Authorised users will be able to access these data during that period as long as the privacy provisions are met.
- 11.5. Authorised users are responsible for ensuring the data are stored securely and used according to the Agreement signed with ACARA.

## 12. Timelines for release of the approved data

- 12.1. The timeframe for delivery of the approved data will be considered on case by case basis. This will be subject to a range of factors such as scope/nature of the requested data, the finalisation of the Agreement, availability of data, number of applicants awaiting data, available staff resources (Data Analysts), and other factors. A significant delay in preparing the approved data requests is also expected during ACARA's peak period (September-April) – around the launch of *My School*.

## 13. Appendices

- 13.1. **Appendix A:** Data Request Application
- 13.2. **Appendix B:** Draft Data Access Agreement Templates

# **Appendix A**

## Data Request Application

## IMPORTANT NOTES

- Applicants requesting data are required to refer to the **Data Access Protocols 2012** and are advised to review the **Guidelines 2013** and **draft Agreement Template** prior to submitting this form.

Tick box to confirm applicant has read the *Data Access Protocols 2012*

- All questions/fields must be completed (use n/a where not applicable). Incomplete applications will not be accepted.
- Send the completed application and any additional documents by email to [datarequest@acara.edu.au](mailto:datarequest@acara.edu.au).

## SECTION 1: ALL APPLICANTS TO COMPLETE

1.1. Organisation Name:		ABN:
	Applicant	Authorised Signatory ( <i>if differs from the applicant</i> )
1.2. Name: 1.3. Position: 1.4 Post address: 1.5. Phone: 1.6. Email:		
1.7. List name(s) and position(s) of all individuals and their organisations who will be given access to the data provided:		
1.8. Date of request: DD/MM/YYYY		
1.9. Date data required: DD/MM/YYYY		
<i>All applicants must refer to the notes regarding timeline for assessment and delivery in the Guidelines 2013</i>		
<b>1.10 Provide a list of specific data items/variables you are requesting:</b>		
<i>All applicants are advised to refer to the My School website and other sources such as NAPLAN Reports published on the ACARA website, if they are not familiar with the availability of data items/variables and the terminology used by ACARA/Australian schools/education authorities. An additional paper can be used as an attachment to list all specific data items/variables. Examples are provided in the Guidelines at Section 4.</i>		
Name of data items	Name of data items	Additional notes (if needed)
<b>1.11 Provide a list of other data sources that will be used in the proposed project/research:</b> <i>[If none please indicate n/a]</i>		
<b>1.12 Main reason for this data request:</b> <input type="checkbox"/> Research <input type="checkbox"/> Analysis <input type="checkbox"/> Other (please specify):		
a) <b>What is the intended use of the requested data?</b>		

b) How will this proposed research/project benefit students, schools and the Australian Community?

1.13 Anticipated timeframe for completion of this research/project: DD/MM/YYYY

1.14 List planned product(s) from the data provided (e.g. report):

1.15 Will the product(s) be published?  Yes  No

*If Yes, will the requested data be published in (a) an aggregated/de-identified form in the final report or (b) raw format or (c) a combination both?*

a  b  c

1.16 Anticipated key audience(s) of the product(s):

## SECTION 2: ONLY RESEARCHER/S TO COMPLETE

2.1. Research purpose: [100 words max]

2.2. Key research question/s: [100 words max]

2.3. Methodologies: [100 words max]

2.4. Evidence of relevant institutional ethics clearance attached to this application:  Yes  No

*If No, please state why not (e.g. no ethics process in place or ethics clearance not required by the institution in this circumstance):*

2.5. Research proposal attached to this application:  Yes  No

*If No, please state why not (e.g. no ethics process in place or ethics clearance not required by the institution in this circumstances):*

# **Appendix B**

## Draft Data Access Agreement Templates

**DEED**

DEED IN RELATION TO LICENCE OF ACARA DATA

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

and

[Please insert agency name here]  
ABN xxx



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## DEED

### DEED IN RELATION TO LICENCE OF ACARA DATA

#### Parties

This Deed is made between and binds the following parties:

1. **Australian Curriculum, Assessment and Reporting Authority** (ABN 54 735 928 084) of Level 10, 255 Pitt Street, Sydney, NSW 2000 (ACARA)
2. **Please insert, agency name, ABN number, and physical address (the Licensee)**

#### Context

This Deed is made in the following context:

- A. The Licensee wishes to use ACARA data (Data) for a specific research project that is to be conducted by the Licensee and is of interest to ACARA in meeting its strategic priorities.
- B. ACARA offers to provide the Data to the Licensee on the terms set out in this Deed and the Licensee accepts the terms.

#### Operative provisions

In consideration of the mutual promises contained in this document, the parties to this Deed agree as follows:

#### 1. Interpretation

##### 1.1. Definitions

- 1.1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

<b>ACARA</b>	means the Australian Curriculum, Assessment and Reporting Authority.
<b>Additional Requirements</b>	means any additional requirements set out in Item 7.
<b>Administration Fee</b>	means the fee set out in Item 5.
<b>Approved Research</b>	means the research project(s) set out in Item 4, in relation to which ACARA has approved the use of the Data under this Deed.
<b>Authorised User</b>	means the people set out in Item 8 or such other people approved by ACARA from time to time, being people person who has been given permission by ACARA to have access to and use the Data for the Approved

	Research.
<b>Business Day</b>	means any day on which all banks are open for business generally in Sydney, New South Wales
<b>Commencement Date</b>	means the date detailed in Item 1
<b>Confidential Information</b>	<p>means, in relation to ACARA, information that:</p> <ul style="list-style-type: none"> <li>a. is by its nature confidential</li> <li>b. is designated in writing by ACARA as confidential;</li> <li>c. is personal information under the Privacy Act 1988,</li> <li>d. the Licensee knows or ought to know is confidential, and includes:</li> <li>e. the Data, if in a form which discloses any of the information referred to in paragraphs (a)-(d) above;</li> <li>f. other information comprised in or relating to the Data or any Intellectual Property of ACARA or third parties (where that information is provided by the third party on behalf of ACARA) if in a form which discloses any of the information referred to in paragraphs (a) – (d) above; or</li> <li>g. information relating to the internal management and structure of ACARA,</li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>h. is or becomes public knowledge other than by breach of the Deed, other confidentiality obligations or the Privacy Act 1988; or</li> <li>i. the Licensee can establish by written evidence has been independently developed or acquired by the Licensee without breach of any obligation of confidence.</li> </ul>
<b>Data</b>	means the data referred to in Item 3 to the extent that it is owned by ACARA or ACARA has the right to licence the use of that data.
<b>Document</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>(a) any paper or other material on which there is writing;</li> <li>(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them; and</li> <li>(c) any article, material or media from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.</li> </ul>
<b>Intellectual Property</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties,</li> </ul>

trademarks (including service marks), designs and circuit layouts; and

c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

d. rights in relation to Confidential Information;

**Item**

refers to an item in the Reference Schedule

**Organisation**

means the organisation detailed in Item 6, being the organisation the Licensee is associated for the purposes of conducting the Approved Research. This may be as an employee, a contractor or as a student.

**Personal Information**

means information or opinion (including information or opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion.

**Research Material**

means any final research findings based on the analysis of the Data created by the Licensee

**Term**

means the period referred to in Item 2, unless terminated sooner

**Unauthorised Person**

means a person who is not authorised in writing by ACARA to use the Data

**1.2. Interpretation**

1.2.1. In this Deed, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- h. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

### **1.3. Guidance on construction of Deed**

- 1.3.1. This Deed records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Deed will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Deed is void or otherwise unenforceable then it will be severed and the rest of the Deed remains in force.
- 1.3.4. A provision of this Deed will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

### **1.4. Term of the Deed**

- 1.4.1. The Deed takes effect on and from the Commencement Date and, unless terminated in accordance with the Deed, will continue in force for the Term.

## **2. Licence**

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### **2.1. Licence**

- 2.1.1. ACARA grants to the Licensee a non-exclusive, non-transferable licence to use, reproduce, adapt and modify the Data for the sole purpose of undertaking Approved Research for the term of this Deed.
- 2.1.2. For the avoidance of doubt, the licence granted in clause [2.1.1] does not include a right of sub-licence.

### **2.2. Administration Fee**

- 2.2.1. Not used.

### **2.3. Restrictions on use of the Data**

- 2.3.1. The Data must only be used for the purpose of undertaking the Approved Research and for such other purposes approved in writing by ACARA. The Licensee must obtain approval from ACARA before using the Data for any other research or purpose other than specified in this clause.
- 2.3.2. The Deed is granted based on the Licensee's association with the Organisation. If the Licensee ceases association with that Organisation, the Licensee must inform ACARA and must obtain prior written approval from ACARA before using the Data while undertaking research for or with another organisation. If the Licensee fails to comply with this clause, ACARA may terminate this Licence on written notice.
- 2.3.3. Unless using the Data through a secure server, the Licensee may only use the Data on the Organisation's premises, unless they have prior written approval from ACARA.

- 2.3.4. The Licensee may modify the Data in order to undertake data analysis for the Approved Research (e.g. create new derived data items, aggregate and manipulate the data).
- 2.3.5. The Licensee may copy/reproduce the Data for the Approved Research, but may not copy/reproduce the Data for any other reason (e.g. give copies of the Data to Unauthorised Persons).
- 2.3.6. The Licensee must not:
- a. perform any analysis of the Data, or any matching, sharing, merging or linkage of any of Data with other information to:-
    - i. identify any student or class of students;
    - ii. identify any school;
    - iii. rank any school or class of schools;
    - iv. compare the results of any school to any other school or class of schools without accounting for contextual factors including the student population;without the prior written consent of ACARA (or unless explicitly authorised as part of the Approved Research); or
  - b. use the Data to undertake analyses which could generate Personal Information, except where the Licensee already holds the data containing that Personal Information; or
  - c. attempt to identify any individuals or schools in the Data; or
  - d. publish, in any form, any part of the Data
  - e. publish any resulting analysis of the Data without review and comment by ACARA before publication.
- 2.3.7. The Licensee must abide by any other Additional Requirements.

## **2.4. ACARA responsibility for the Data**

- 2.4.1. The Data is provided to the Licensee on an 'as is' basis and ACARA is not responsible for its accuracy, quality or fitness for purpose.

## **2.5. Provision of the Data**

- 2.5.1. Subject to clause [2.2.1] ACARA will use its best endeavours to arrange the provision of the Data to the Licensee in accordance with the schedule it agrees with the Licensee.
- 2.5.2. ACARA will notify the Licensee in writing of any significant delay in the arrangement of the provision of the Data. If there is delay the parties will agree on a revised delivery date and appropriate changes to other timing obligations included in the Deed.

## **2.6. Other information provided by ACARA**

- 2.6.1. If ACARA provides information to the Licensee in addition to the Data, this information is provided for information purposes only. ACARA does not have underlying rights to authorise the reproduction, distribution or use of this information. If the Licensee wishes to make use of this information, it must satisfy itself as to its right to do so and where relevant acquire the relevant rights.

## **3. Security requirements**

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### **3.1. Security**

- 3.1.1. The Licensee acknowledges that the Data has been prepared by or on behalf of ACARA to enable ACARA to perform its statutory functions and contains information that is confidential or that may be in the nature of Personal Information. The Licensee must protect the Data and related information so that Unauthorised Persons do not have access to it.
- 3.1.2. Without limiting the generality of the previous clause, the Licensee must comply at all times with any security requirements notified by ACARA and with the following security requirements in relation to the Data:
- a. only provide details of any access password to Authorised Users;
  - b. only allow the Data to be viewed by Authorised Users;
  - c. store the Data or any part of the Data, either on a password protected stand alone computer (not networked) or on a password protected drive on a computer network;
  - d. the password should be at least seven characters long, and contain a mix of upper and lower case characters, and numerics or symbols;
  - e. access to the password protected drive is only by Authorised Users of the Data and the password must only be known to Authorised Users;
  - f. where the Authorised User does not have access to the Data via a password protected server, the Authorised User will be provided with the Data via CD ROM/DVD that is to be kept and used only on the Organisation's premises (clauses [3.1.2 (h) and (i)] apply only where this clause applies);
  - g. there must be an effective means of limiting entry during both operational and non-operational hours to room(s) or building(s) where the Data is used or stored (e.g. room is locked when an Authorised User is not there);
  - h. the hard drives, CD/DVDs or other formats containing the Data must be stored in a locked commercial grade filing cabinet when not in use;
  - i. the keys or combinations to lockable containers in which the Data is kept must be kept secure and not be given to any Unauthorised Person;



- j. a record must be kept of all people who have been issued with keys and/or combinations;
  - k. any output from the Data must not be left unsecured for more than 15 minutes, and must be stored in a locked container and disposed of using a crosscut shredder when no longer required, and
  - l. any computers on which the Data is used must have a password protected screen saver set to be activated after no more than 15 minutes.
- 3.1.3. The Licensee is responsible for the Data until all of the following conditions have been complied with:
- a. destruction of all CD/DVDs containing the Data by breaking each disc into four pieces;
  - b. cancellation of access to the password protected drive on a computer network;
  - c. destruction of all paper copies of Data in accordance with clause [3.1.1(j)] and
  - d. provision of written confirmation to ACARA that clauses [3.1.3 (a), (b) and (c)] have been complied with.
- 3.1.4. If the Licensee fails to comply with any of the requirements of clause [3.1.1 or 3.1.2], ACARA may terminate this Deed immediately.

## **3.2. User support**

- 3.2.1. ACARA will provide Authorised Users with technical assistance to the Licensee in use of the Data in accordance with this Deed.

## **4. Confidentiality and Conflict of Interest**

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### **4.1. Non-disclosure**

- 4.1.1. In consideration of ACARA disclosing certain Confidential Information to the Licensee, the Licensee acknowledges and agrees with ACARA:
- a. that all Confidential Information is confidential, is under the management of ACARA, and is of value to ACARA, and that any Confidential Information disclosed to the Licensee is only disclosed pursuant to the terms of this Deed;
  - b. to keep Confidential Information confidential at all times;
  - c. that it must not, other than with the prior written approval of ACARA (which may be granted or withheld in ACARA's absolute discretion), use, disclose, divulge, make a digital or any other copy of, transmit electronically (including via email) or deal with any Confidential Information, nor allow any act, matter or thing to be done or occur whereby any Confidential Information may be Unauthorised Person, other person, except in accordance with the terms of this Deed; and

d. that it must observe and be bound by the provisions of this Deed.

4.1.2. The Licensee must:

- a. take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by ACARA to keep the Confidential Information, including all Documents, and all other things recording, containing, setting out or referring to any Confidential Information, under effective control of the Licensee and protected from any unauthorised use or access;
- b. immediately notify ACARA if the Licensee becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- c. ensure that Confidential Information is not given to a person who is not an Authorised User;
- d. if required at any time by ACARA to do so, deliver to ACARA, or at the option of ACARA destroy, without limitation, all Documents containing any Unit Record Data in the possession, custody or control of the Licensee; and
- e. if required by ACARA:
  - i. permit ACARA or any nominees of ACARA, upon at least three Business Days notice and during normal business hours and subject to the security measures of the Licensee's Organisation, reasonable access to those premises where the Data are stored or being used, and records of the Licensee, (including without limitation, access to any of the Licensee's computer hard drives and computer disks containing Confidential Information belonging to ACARA) to ensure or check compliance with this Deed; and/or
  - ii. provide to ACARA a statutory declaration signed by the Licensee stating that they have complied with clause [4.1.2(d)].

4.1.3. The Licensee may retain a copy of the Confidential Information if, and only to the extent to which and for the purpose for which, the Licensee is required by law to do so but subject to compliance with clause [4.2.1.]

4.1.4. This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

4.1.5. This clause [4.1] will survive the expiration or termination of this Deed.

## **4.2. Disclosure as required by law**

4.2.1. The Licensee may disclose any Confidential Information which the Licensee is required by law to disclose, but only if the extent and the manner of the disclosure is strictly limited to what is required by law.

4.2.2. The Licensee undertakes to provide ACARA with sufficient notice to enable ACARA to seek a protective order or other relief from disclosure and to provide all assistance and co-operation which ACARA reasonably considers necessary for that purpose.

**4.3. Conflict of interest**

4.3.1. The Licensee warrants that no conflict of interest exists or is likely to arise while in receipt of Confidential Information.

4.3.2. The Licensee warrants that it will not permit any situation to arise or engage in any activity that may result in a conflict of interest with the Licensee's receipt of Confidential Information.

**5. Intellectual property**

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**5.1. Intellectual Property**

5.1.1. Except where specified under a separate agreement, ACARA will not own the Intellectual Property rights in any Research Material created using the Data. (The parties acknowledge that the Data remains the property of ACARA.)

5.1.2. The Licensee must provide ACARA with details of any final Research Material produced by the Licensee using the Data within 30 days of completion.

5.1.3. The Licensee is exempt from the requirements in clause [5.1.2] if the Research Material is for internal administration of federal, State or Territory government agencies or for confidential business purposes for the federal, State, or Territory governments.

5.1.4. Where the Licensee has ownership of the Intellectual Property in the Research Material, the Licensee grants a perpetual licence to ACARA to use, reproduce, adapt and modify the Research Material for any of ACARA's Internal Purposes.

5.1.5. For the purposes of this clause [5.1], ACARA's Internal Purposes means:

- a. use of the Research Material by ACARA to understand the extent to which the Data are being used;
- b. use of Research Material by ACARA for the performance of its statutory functions; and
- c. ready access by ACARA to information and research to support internal policy development and evaluation, and to support the development of advice to senior education officials and the Ministerial Council for Education, Early Childhood and Youth Affairs (or, once established, the Standing Council on School Education and Early Childhood).

5.1.6. Where the Licensee is not the owner of the Intellectual Property of the Research Material, the Licensee warrants that he or she will be able to provide a sub-licence from a third party for the Research Material on the same terms as the Licensee grants to ACARA under clause [5.1.4].

5.1.7. If ACARA wishes to make any part of the Research Material publicly available, ACARA will first obtain the written consent of the owner of the Intellectual Property.

5.1.8. This clause [5.1] will survive the expiration or termination of the Deed.

## **5.2. Acknowledgement and Disclaimer**

5.2.1. The Licensee agrees to acknowledge ACARA for the use of the Data and assistance provided in using the Data in any reports and publications that use the Data.

5.2.2. The Licensee agrees that any of the material produced by the Licensee and made publicly available will include an acknowledgment of ACARA's assistance in a form approved by ACARA.

5.2.3. The Licensee agrees that it will insert the following notice in all research publications which report on analyses of the Data:

*Notice: The data [or parts of the data] used in this publication are sourced from the Australian Curriculum, Assessment and Reporting Authority (ACARA) and are available from ACARA in accordance with its Data Access Protocols.*

## **6. Privacy**

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### **6.1. Privacy**

6.1.1. The Licensee agrees with respect to all Confidential Information made available or provided by ACARA or any other person at any time which comprises Personal Information as defined in the Australian Privacy Act 1988 (the Act):

- a. to comply as if they were an agency bound by the Act with those provisions of the Act concerning the security, use and disclosure of information;
- b. to co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
- c. to ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which ACARA has obligations under the Act is made aware of, and undertakes in writing, to observe the provisions referred to in clause [6.1.1(a)] above;
- d. to take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only Authorised Users have access to it;
- e. not to transfer such information outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of ACARA;
- f. to immediately notify ACARA when the Licensee becomes aware of a breach of security by any Individual; and

- g. to notify ACARA of, and co-operate with ACARA in the resolution of, any complaint alleging an interference with privacy.
- 6.1.2. The Licensee's obligations in this clause [6.1] are in addition to, and do not restrict, any obligations it may have under:
  - a. the Act; or
  - b. any privacy codes; or
  - c. privacy principles contained in, authorised by or registered under any law, including any such privacy codes or principles that would apply to the Licensee but for the application of the other provisions of this clause [6.1].
- 6.1.3. This clause [6.1] will survive the expiration or termination of this Deed.

## **7. Indemnity**

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### **7.1. Indemnity**

- 7.1.1. The Licensee agrees to indemnify ACARA from and against any:
  - a. cost or liability incurred by ACARA;
  - b. loss of or damage to property of ACARA; or
  - c. loss or expense incurred by ACARA in dealing with any claim against it including reasonable legal costs and expenses on a solicitor/own client basis;
    - arising from:
  - d. any negligent act or omission by the Licensee in connection with the use of the Data;
  - e. any breach by the Licensee of its obligations or warranties under this Deed;
  - f. any use or disclosure by the Licensee of Confidential or Personal Information held or controlled in connection with this Deed; or
  - g. the use by ACARA of the Research Material as intended under this Deed but only to the extent that the Research Material has not been misquoted or taken out of context.
- 7.1.2. The Licensee's liability to indemnify ACARA under clause [7.1.1] will be reduced proportionately to the extent that any negligent act or omission of ACARA contributed to the relevant liability, loss or damage, or loss or expense.
- 7.1.3. The right of ACARA to be indemnified under this clause [7.1] is in addition to, and not exclusive of, any other right, power or remedy provided by law, but ACARA is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 7.1.4. This clause [7.1] will survive the expiration or termination of this Deed.

## **8. Dispute resolution and termination**

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### **8.1. Dispute resolution**

8.1.1. ACARA and the Licensee will attempt in good faith to resolve through negotiation any disputes, claims or controversy arising out of or relating to the Deed.

### **8.2. Termination of Deed**

8.2.1. This Deed may be terminated by either Party providing at least 14 day's prior notice in writing unless terminated by ACARA in accordance with clause [3.1.3].

8.2.2. Subject to clause [3.1.3], ACARA may terminate this Deed by notice in writing, with effect from the date in the notice, if the Licensee fails to remedy a breach of the Deed within 30 days of being given notice by ACARA requiring the breach to be remedied.

## **9. Notices**

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### **9.1. Format, addressing and delivery**

9.1.1. A notice under this Deed is only effective if:-

- a. *If given to ACARA, it is in writing, addressed to ACARA and sent to the address detailed at Item 19.*
- b. *if given by ACARA to the Licensee - addressed (and marked for attention) as detailed in Item 10.*

9.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by email or facsimile transmission.

### **9.2. When effective**

9.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address;
- c. *if transmitted electronically* - upon actual receipt by the addressee.

9.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

## **10. General provisions**

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### **10.1. Applicable law and legal requirements**

- 10.1.1. This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of New South Wales.
- 10.1.2. The parties submit to the jurisdiction of the courts of New South Wales.
- 10.1.3. Each party acknowledges and agrees to comply with the law in force in the State of New South Wales, including but not limited to:
  - a. Privacy Act 1988 (Cth);
  - b. Criminal Code Act 1995 (Cth)

### **10.2. No exclusion**

- 10.2.1. The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law.

### **10.3. Relationship of parties**

- 10.3.1. No party is an officer, employee, partner or agent of the other party by virtue of this Deed, and neither party has any power or authority to bind or represent the other party except as specifically provided in the Deed.
- 10.3.2. The Licensee agrees:
  - a. not to misrepresent its relationship with ACARA; and
  - b. not to engage in any misleading or deceptive conduct in relation to the Data.

### **10.4. Waiver**

- 10.4.1. A failure or delay by a party to exercise any right or remedy it holds under this Deed or at law does not operate as a waiver of that right.
- 10.4.2. A single or partial exercise by a party of any right or remedy it holds under this Deed or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

### **10.5. Variation**

- 10.5.1. A variation of this Deed is binding only if agreed in writing and signed by the parties.

### **10.6. Assignment**

- 10.6.1. Except as expressly permitted by the Deed, the Licensee must not assign any of its rights or obligations under this Deed without ACARA's prior written consent. That consent may be given or withheld at ACARA's absolute discretion.

**10.7. Costs**

10.7.1. Each party will bear its own costs in relation to this Deed, including the exercise of rights and performance of obligations specified in the Deed.

**10.8. Time for action**

10.8.1. If the day on or by which something is required to be done or may be done is not a Business Day, that thing must be done on or by the next Business Day.

**11. Reference Schedule**

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Item	Subject	Clause	Requirement
1	Commencement Date	1.4	Upon execution of agreement
2	Term	1.4	From the commencement date until data has been used for intended purpose (Item 4)
3	Data	2.1	<i>Please clearly <b>list</b> name of all data items/variables you have requested. If not enough space please use an excel document as an attachment. This information will be used to prepare your requested data. All applicants are advised to refer to the My School website and other sources such as NAPLAN Reports published on ACARA website if they are not familiar with the availability and names of data items/variables used by ACARA/Australian schools/education authorities.</i>



4	Approved Research	2.1& 2.3	[Succinctly summary the intended use of the data]
5	Administration Fee	2.2	[To be advised]
6	Organisation	2.3	[Insert name of organisation]
7	Additional Requirements	2.3.7	<p>Authorised users are advised to refer to the data description and comments included in the accompanying data dictionary for the use of the provided data items.</p> <p>Further caveats and explanations of the provided data items can also be found on the <i>My School</i> website at <a href="http://www.myschool.edu.au">www.myschool.edu.au</a></p>
8	Authorised User(s)	3.1.2	[Insert Names/Positions/Organisations]
9	Address for service of notices on ACARA	9.1.1	<p><b>Name:</b></p> <p><b>Position:</b></p> <p><b>Postal address:</b></p> <p><b>Email:</b></p>
10	Address for service of notices on Licensee	9.1.1	<p><b>Name:</b></p> <p><b>Position:</b></p> <p><b>Postal address:</b></p> <p><b>Email:</b></p>

**Executed** as a Deed

**Date:**.....

**Signatures**

---

SIGNED, SEALED and DELIVERED )  
for and on behalf of **Australian** )  
**Curriculum, Assessment and** )  
**Reporting Authority** by:

[Insert Name]  
[Position Title]

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
*Signature of witness*

SIGNED, SEALED and DELIVERED )  
for and on behalf of [insert name of  
the agency] by: )

\_\_\_\_\_  
^Name of signatory^

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
*Signature of witness*



MEMORANDUM OF UNDERSTANDING REGARDING ACCESS TO ACARA DATA

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

and

Insert Name of Department  
ABN xxx

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MEMORANDUM OF UNDERSTANDING REGARDING ACCESS TO ACARA DATA

**Parties**

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This MOU is made between and binds the following parties:

1. **Australian Curriculum, Assessment and Reporting Authority** ABN 54 735 928 084 Level 10, 255 Pitt Street, Sydney, NSW 2000 (ACARA)
2. **Insert Department Name ABN xxx, physical address**

**Context**

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This MOU is made in the following context:

- A. ACARA's functions under its establishing legislation include the facilitation of information sharing arrangements between Australian government bodies in relation to the collection, management and analysis of school data. The Agency wishes to utilise ACARA's data (Data) for one or more of the following purposes:
  - (1) To support the commitment of Australian governments to the goals of promoting equity and excellence through schooling, and that all young Australians become successful learners, confident and creative individuals, and active and informed citizens.
  - (2) To assist with resource allocation.
- B. ACARA offers to provide the Data to the Agency on the terms set out in this MOU and the Agency accepts the terms.

**Operative provisions**

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In consideration of the mutual promises contained in this document, the parties to this MOU agree as follows:

**1. Interpretation**

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**1.1. Definitions**

- 1.1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

**ACARA** means the **Australian Curriculum, Assessment and Reporting Authority**

**Agency** means the **[insert Dept Name]**

**Additional Requirements** means any additional requirements set out in Item 5

**Approved** means any purpose that has as its objective improving

<b>Purposes</b>	<p>student outcomes and ensuring excellence and equality for all students, or assisting with government resource allocation. Specific approved purposes include:-</p> <ul style="list-style-type: none"> <li>- analysis of school performance</li> <li>- identification of schools with particular needs</li> <li>- determining where education resources are most needed to lift educational attainment</li> <li>- identification of best practice and innovation in high performing schools to support improvements in schools with poorer performance</li> <li>- conduct national and international comparisons of approaches and performance in the provision of education</li> <li>- develop a substantive evidence base on what works in the provision of education</li> </ul>
<b>Authorised User</b>	<p>means the people or class of people set out in Item 4 or such other people approved by ACARA from time to time, being people who have been given permission by ACARA to have access to and use the Data for the Approved Purpose.</p>
<b>Business Day</b>	<p>means any day on which all banks are open for business generally in Sydney, New South Wales</p>
<b>Commencement Date</b>	<p>means the date detailed in Item 1</p>
<b>Confidential Information</b>	<p>means, in relation to ACARA, information that:</p> <ul style="list-style-type: none"> <li>a. is by its nature confidential</li> <li>b. is designated in writing by ACARA as confidential;</li> <li>c. is personal information under the Privacy Act 1988,</li> <li>d. the Agency knows or ought to know is confidential, and includes:</li> <li>e. the Data, if in a form which discloses any of the information referred to in paragraphs (a)-(d) above;</li> <li>f. other information comprised in or relating to the Data or any Intellectual Property of ACARA or third parties (where that information is provided by the third party on behalf of ACARA) if in a form which discloses any of the information referred to in paragraphs (a) – (d) above; or</li> <li>g. information relating to the internal management and structure of ACARA,</li> </ul> <p>but does not include information which:</p>

	<ul style="list-style-type: none"> <li>h. is or becomes public knowledge other than by breach of the MOU, other confidentiality obligations or the Privacy Act 1988; or</li> <li>i. the Agency can establish by written evidence has been independently developed or acquired by the Agency without breach of any obligation of confidence.</li> </ul>
<b>Data</b>	means the data referred to in Item 3 to the extent that it is owned by ACARA or ACARA has the right to licence the use of that data.
<b>Document</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>a. any paper or other material on which there is writing;</li> <li>b. any paper or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them; and</li> <li>c. any article, material or media from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.</li> </ul>
<b>Intellectual Property</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include:</li> <li>d. rights in relation to Confidential Information;</li> </ul>
<b>Item</b>	refers to an item in the Reference Schedule
<b>Personal Information</b>	means information or opinion (including information or opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion.
<b>Principles and protocols for reporting on schooling in Australia</b>	means the principles and protocols for reporting on schooling in Australia agreed at the meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs on 12 June 2009, as revised from time to time.
<b>Term</b>	means the period referred to in Item 2, unless terminated sooner
<b>Unauthorised Person</b>	means a person who is not authorised in writing by ACARA to use the Data

## **1.2. Term of the MOU**

1.2.1. This MOU takes effect on and from the Commencement Date and, unless terminated in accordance with this MOU, will continue in force for the Term.

## **2. Licence**

---

### **2.1. Licence**

2.1.1. ACARA grants to the Agency a non-exclusive, non-transferable licence to use, reproduce, adapt and modify the Data for the Approved Purposes for the term of this MOU.

2.1.2. For the avoidance of doubt, the licence granted in clause [2.1.1] does not include a right of sub-licence.

### **2.2. Restrictions on use of the Data**

2.2.1. The Agency must not:-

- a. use Data in any manner that is inconsistent with the Principles and Protocols for reporting on schooling in Australia; or
- b. use the Data to undertake analyses which could generate Personal Information, except where the Agency already holds the data containing that Personal Information.

2.2.2. The Agency must ensure that only Authorised Users have access to the Data.

2.2.3. The Agency must abide by any other Additional Requirements.

2.2.4. Any publicly available document incorporating the Data (or any part of the Data) shall be provided to ACARA at or before time of publication for ACARA reference.

### **2.3. ACARA responsibility for the Data**

2.3.1. The Data is provided to the Agency on an 'as is' basis and ACARA is not responsible for its accuracy, quality or fitness for purpose.

### **2.4. Provision of the Data**

2.4.1. ACARA will use its best endeavours to arrange the provision of the Data to the Agency in accordance with the schedule it agrees with the Agency.

2.4.2. ACARA will notify the Agency in writing of any delay in the arrangement of the provision of the Data. If there is delay the parties will agree on a revised delivery date and appropriate changes to other timing obligations included in the MOU.

### **2.5. Other information provided by ACARA**

2.5.1. If ACARA provides information to the Agency in addition to the Data, this information is provided for information purposes only. ACARA does not have underlying rights to authorise the reproduction, distribution or use of this



information. If the Agency wishes to make use of this information, it must satisfy itself as to its right to do so and where relevant, acquire the respective rights.

### **3. Security requirements**

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#### **3.1. Security**

- 3.1.1. The Agency acknowledges that the Data has been prepared by or on behalf of ACARA to enable ACARA to perform its statutory functions and contains information that is confidential or that may be in the nature of Personal Information. The Agency must protect the Data and related information so that it is only used for the Approved Purposes and to ensure Unauthorised Persons do not have access to it.
- 3.1.2. Without limiting the generality of the previous clause, the Agency must:-
- a. when requested by ACARA provide such information ACARA reasonably requires on the security process and procedures the Agency has in place to protect the Data;
  - b. comply at all times with any security requirements notified by ACARA from time to time regarding the access, handling and storage of the Data.
- 3.1.3. The Agency is responsible for the Data until it is returned to ACARA or is destroyed in accordance with ACARA's reasonable directions. This clause [3] will survive the expiration or termination of this MOU.
- 3.1.4. If the Agency is in breach of the requirements of clause [3.1.2], ACARA may terminate this MOU immediately.

#### **3.2. User support**

- 3.2.1. ACARA will provide Authorised Users with technical assistance to permit use of the Data in accordance with this MOU.

### **4. Confidentiality and Conflict of Interest**

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#### **4.1. Non-disclosure**

- 4.1.1. In consideration of ACARA disclosing certain Confidential Information to the Agency, the Agency acknowledges and agrees with ACARA:
- a. that all Confidential Information is confidential, is under the management of ACARA, and is of value to ACARA, and that any Confidential Information disclosed to the Agency is only disclosed pursuant to the terms of this MOU;
  - b. to keep Confidential Information confidential at all times;
  - c. that it must not, other than with the prior written approval of ACARA (which may be granted or withheld in ACARA's absolute discretion), use, disclose, divulge, make a digital or any other copy of, transmit electronically (including via email) or deal with any Confidential Information, nor allow any

act, matter or thing to be done or occur whereby any Confidential Information may be made available to an Unauthorised Person, other person, except in accordance with the terms of this MOU; and

d. that it must observe and be bound by the provisions of this MOU.

4.1.2. The Agency must:

a. take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by ACARA to keep the Confidential Information, including all Documents, and all other things recording, containing, setting out or referring to any Confidential Information, under effective control of the Agency and protected from any unauthorised use or access;

b. immediately notify ACARA if the Agency becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;

c. ensure that Confidential Information is not given to a person who is not an Authorised User; and

d. if required at any time by ACARA to do so, deliver to ACARA, or at the option of ACARA destroy, without limitation, all Documents containing any Data in the possession, custody or control of the Agency.

4.1.3. The Agency may retain a copy of the Confidential Information if, and only to the extent to which and for the purpose for which, the Agency is required by law to do so but subject to compliance with clause [4.2.1.]

4.1.4. This MOU does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

4.1.5. This clause [4.1] will survive the expiration or termination of this MOU.

## **4.2. Disclosure as required by law**

4.2.1. The Agency may disclose any Confidential Information which the Agency is required by law to disclose, but only if the extent and the manner of the disclosure is strictly limited to what is required by law.

4.2.2. The Agency undertakes to provide ACARA with sufficient notice to enable ACARA to seek a protective order or other relief from disclosure and to provide all assistance and co-operation which ACARA reasonably considers necessary for that purpose.

## **5. Privacy**

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### **5.1. Privacy**

- 5.1.1. The Agency agrees with respect to all Confidential Information made available or provided by ACARA or any other person at any time which comprises Personal Information as defined in the Australian Privacy Act 1988 (the Act):
- a. to comply as if they were an agency bound by the Act with those provisions of the Act concerning the security, use and disclosure of information;
  - b. to co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
  - c. to ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which ACARA has obligations under the Act is made aware of, and undertakes in writing, to observe the provisions referred to in clause [5.1.1(a)] above;
  - d. to take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only Authorised Users have access to it;
  - e. not to transfer such information outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of ACARA;
  - f. to immediately notify ACARA when the Agency becomes aware of a breach of security by any Individual; and
  - g. to notify ACARA of, and co-operate with ACARA in the resolution of, any complaint alleging an interference with privacy.
- 5.1.2. The Agency's obligations in this clause [5.1] are in addition to, and do not restrict, any obligations it may have under:
- a. the Act; or
  - b. any privacy codes; or
  - c. privacy principles contained in, authorised by or registered under any law, including any such privacy codes or principles that would apply to the Agency but for the application of the other provisions of this clause [5.1].
- 5.1.3. This clause [5.1] will survive the expiration or termination of this MOU.

## **6. Termination**

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### **6.1. Termination of MOU**

- 6.1.1. This MOU may be terminated by either Party providing at least 14 day's prior notice in writing unless terminated by ACARA in accordance with clause [3.1.4].

6.1.2. Subject to clause [3.1.4], ACARA may terminate this MOU by notice in writing, with effect from the date in the notice, if the Agency fails to remedy a breach of the MOU within 30 days of being given notice by ACARA requiring the breach to be remedied.

## Reference Schedule

Item	Subject	Clause	Requirement
1	Commencement Date	1.2	Date of Execution of the MoU
2	Term	1.2	[Ongoing or from date/month/year to date/month/year?]
3	Data	2.1	[Please clearly and LIST all the data items being sought in line with the approved data request. Data will be prepared and provided based on this list].
4	Approved Purpose		[insert intended use of the requested data/purpose of the research/project]
5	Authorised User(s)	2.2.2	[Names/positions/organisations]
6	Additional Requirements	2.2.3	<p>Authorised users are advised to refer to the data description and comments included in the accompanying data dictionary for the use of the provided data items.</p> <p>Further caveats and explanations of the provided data items can also be found on the <i>My School</i> website at <a href="http://www.myschool.edu.au">www.myschool.edu.au</a></p>
7	Address for service of notices on ACARA		<p><b>Name:</b></p> <p><b>Position:</b></p> <p><b>Postal address:</b></p> <p><b>Email:</b></p>

7	Address for service of notices on Agency		<b>Name:</b> <b>Position:</b> <b>Postal address:</b> <b>Email:</b>
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**Executed** by the parties

**Date:**.....

**Signatures**

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SIGNED, SEALED and DELIVERED )  
for and on behalf of **Australian** )  
**Curriculum, Assessment and** )  
**Reporting Authority** by:

[Insert Name]  
[Position Title]

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
*Signature of witness*

SIGNED, SEALED and DELIVERED for )  
and on behalf of the [insert dept name] )  
by: )

\_\_\_\_\_  
^Name of signatory^

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
^Name of witness^

\_\_\_\_\_  
*Signature of witness*