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| |  | | --- | |  | | **Contract in relation THE PROVISION OF SERVICES FOR THE NATIONAL ASSESSMENT PROGRAM OPT-IN 2025**  **rft 3-24** | |
| Australian Curriculum, Assessment and Reporting Authority  ABN 54 735 928 084  [insert Contractor name]  [insert ABN] |

**CONTRACTOR AGREEMENT**

THIS AGREEMENT is made on the 2024

**BETWEEN**

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

**AND**

**[insert contractor name and ACN and abn]**

(“**Contractor**”)

BACKGROUND

1. ACARA is responsible for developing and administering a National Assessment Program (NAP) aligned to the national curriculum that measures students’ progress, and the provision of information, resources, support and guidance to the teaching profession.
2. As part of this, ACARA implements NAP sample assessments to test students’ skills and understanding in the domains of Science Literacy; Civics and Citizenship; and Information and Communication Technology Literacy.
3. ACARA wishes to engage the Contractor to provide services for the National Assessment Program Opt-In 2025 as set out in the Project Brief and the Contractor has agreed to perform the Project in accordance with the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

# interpretation

## In this Agreement unless the context requires otherwise:

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

“**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 Results**” means all work, ideas, concepts and reports and Intellectual Property in such things developed or created by the Contractor, alone or with others, in the course of performing the Project or otherwise arising out of the use of any of ACARA’s time, materials, resources, or facilities;

“**Schedule**”means the schedule to this Agreement titled “Schedule”;

“**Services**” means the services described in the Schedule;

“**Specified Acts**” means the specified acts referred to in the “Intellectual Property, Moral Rights and Project Results” clause of this Agreement;

“**Specified Personnel**” means the personnel specified in the Schedule as required to perform all or part of the work constituting the Services;

“**Special Conditions Schedule**” means the schedule to this Agreement titled “Special Conditions Schedule”; and

**“Third Party Intellectual Property”** means Intellectual Property created prior to and/or otherwise than for the performance of the Project and owned by a third party.

## **Interpretation**

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

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

## **Guidance on construction**

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

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

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

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

## **Commencement**

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

# engagement

## The Contractor agrees to perform the Project for ACARA from the Commencement Date in accordance with the Project Brief, the terms of the Special Conditions Schedule (if any) and on the terms and conditions set out in this Agreement.

## The Contractor must ensure that:

## the Project is performed, and all materials and data requested by ACARA pursuant to this Agreement are prepared diligently, competently, with care and skill and in a proper and professional manner and in accordance with the terms of this Agreement;

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

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

## when using ACARA’s premises or facilities, the Contractor complies with all reasonable directions and ACARA’s procedures relating to occupational health and safety, equal opportunity and harassment, information technology and security in effect at those premises or in regard to those facilities, as notified by ACARA;

## the Contractor keeps adequate records of work performed under this Agreement and, if requested to do so, immediately provides ACARA with copies of those records and of all correspondence or other material arising from or relating to the performance of the Project; and

## the Project is completed by the Completion Date.

## The Contractor acknowledges that ACARA has entered into this Agreement relying on the skill, care, expertise, experience and ability of the Contractor to perform the Project.

# nature of relationship

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

## The Contractor has no authority to incur, and must not incur, any obligation on behalf of ACARA except with the express written instruction of ACARA.

# non-solicitation

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

# RELATIONSHIP WITH PROJECT MANAGER

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

## During the performance of the Project, the Contractor agrees to regularly liaise with the Project Manager and comply with any reasonable request made by the Project Manager.

# COMMUNICATIONS

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

# payment

## In consideration for the provision of the Services, ACARA will pay the Contractor the Fee in the instalments detailed in the Schedule. Subject to clause 7.5, the Fee is inclusive of all costs, taxes, levies and charges that will be incurred by the Contractor in the provision of the Services and is not subject to any adjustment for any reason (including currency fluctuations) unless expressly provided for in the Agreement or otherwise agreed by the parties.

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

## ACARA will be entitled, without derogating from any other right it may have, to defer payment until the Contractor has completed the component of the Project relevant to the submitted invoice to the satisfaction of ACARA.

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

## this Agreement; or

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

## If this Agreement or any consideration given under it is subject to GST in relation to any supply made under this Agreement, the parties agree that the amount payable for such supply by any party will be adjusted by the amount of the GST. Each party agrees to do all things, including providing all invoices or other documentation in such form and detail that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.

## The Contractor authorises ACARA to deduct from any payment made by ACARA to the Contractor any amount that ACARA is required or authorised by law to deduct (including without limitation, withholding any amount required by law from an amount claimed under an invoice that does not specify an Australian Business Number in respect of the Contractor). Any deduction made in accordance with this clause 7 will be deemed to be a payment to the Contractor for the purposes of calculating the discharge of ACARA’s obligations under this Agreement.

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

# property in materials and Contractor identifications

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

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

# confidential information

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

## disclose to anyone else, or

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

## any of the Confidential Information.

## The Contractor may make copies of written or computer-stored materials incorporating Confidential Information only if those copies are necessary for the purpose of performing the Project and must:

1. return to ACARA all Confidential Information (including any copies made by it); and
2. permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval,

upon the expiration or earlier termination of this Agreement and provide written notification to ACARA that these obligations have been complied with.

## The Contractor must notify ACARA immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Agreement and must take all steps reasonably required by ACARA to stop that unauthorised disclosure, use or copying.

## Clause 9.1 does not affect:

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

## The Contractor acknowledges and accepts that monetary damages would be an insufficient remedy for breach of this clause and that in addition to any other remedy available, ACARA is entitled to injunctive relief to prevent a breach of this clause and to compel specific performance of this clause.

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

# intellectual property, MORAL RIGHTS and Project Results

**Project Results**

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

## The Contractor acknowledges and agrees that:

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

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

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

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

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

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

**ACARA Material**

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

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

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

**Moral rights**

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

## In clauses 10.8 and 10.10(b), the Specified Acts are:

(a) failure to identify the authorship of any Project Results, or any content of the Project Results;

(b) materially altering the content, format, colours, layout or style of the whole, or any part of, the Project Results;

(c) reproducing, communicating, adapting, publishing or exhibiting the whole or any part of, the Project Results without attributing authorship; and

(d) adding any additional content or information to the whole, or any part of, the Project Results.

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

1. it has all necessary right, title, permission or authority to grant the licence granted in clause 10.3.1 (including without limitation all necessary Intellectual Property Rights);

(b) it has obtained all valid consents from all creators of works or other material included in the Contractor Intellectual Property or Project Results so that the use of the Project Results by ACARA, or any party authorised by ACARA, for the Specified Acts will not infringe the creator’s Moral Rights under the *Copyright Act 1968*;

(c) the grant of any rights conferred on ACARA under this Agreement will not infringe the rights, including, without limitation, the Intellectual Property Rights of any person; and

(d) it has not entered into any agreement that conflicts with the rights granted to ACARA under this Agreement.

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

# insurance

## Before commencing the Project, the Contractor must take out professional indemnity insurance and ensure that such insurance is sufficient to cover any loss or damage, (including, without limitation, consequential loss) that ACARA may suffer as a result of act or omission of the Contractor in the provision of the Services.

## The policies must be for an amount sufficient to cover the Contractor’s obligations under this Agreement but not less than $5,000,000 for professional indemnity insurance and not less than $10,000,000 for public liability insurance.

## The policies must be maintained until completion of the Project and, in relation to the professional indemnity insurance policy, for a period of at least 6 years after the completion of the Project.

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

# subcontractors

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

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

## The Contractor agrees to ensure that:

1. any subcontract entered into with a subcontractor imposes:

(i) any conditions prescribed by ACARA under clause 12.1(b); and

(ii) all relevant obligations, conditions, restrictions or prohibitions binding on the Contractor under this Agreement, including, without limitation, the terms of the Special Conditions Schedule (if any);

1. its subcontractors comply with that subcontract and, with respect to the terms and conditions referred to in clause 12.2(a), to exercise any rights or remedies it may have against its subcontractors in accordance with any direction by ACARA.

## The Contractor is responsible for the performance of the Project and this Agreement notwithstanding that the Contractor has subcontracted any part of the performance of the Project or this Agreement in accordance with this clause 12.

# indemnity

## The Contractor must indemnify ACARA and keep it indemnified against any losses (including liabilities of ACARA to third parties), costs and expenses (including reasonable costs and expenses on a solicitor and own client basis) arising out of:

1. any default, act or omission by the Contractor;
2. any breach of any term of this Agreement by the Contractor;

(c) the Project Results being in breach of any law, containing anything alleged or proven to be defamatory or statements purporting to be factual or true failing to be so;

(d) any misuse or disclosure of Confidential Information by the Contractor; and

(e) any claim by any third party that it has Intellectual Property or Moral Rights which will be infringed by ACARA, or any third party’s use or exploitation of the Project Results.

# EXPIRY, TERMINATION, BREACH

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

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

1. the Contractor does not perform the Project by the Completion Date, or at the standard, required or acceptable to ACARA (as the case may be) or otherwise breaches a provision of this Agreement and that failure or breach:
2. is incapable of remedy; or
3. if capable of remedy, continues for 5 days after ACARA gives the Contractor a notice requiring the breach to be remedied; or
4. an Insolvency Event occurs in relation to the Contractor.

## Notwithstanding clauses 14.1 and 14.2 above, ACARA may terminate this Agreement in whole or in part immediately upon the provision of written notice at any time.

## On receipt of a notice under clause 14.3,the Contractor must:

(a) stop work as specified in any notice;

(b) take all available steps to minimise loss resulting from that termination and to protect all Project Results; and

(c) continue work on any part of the Project not affected by the notice; and further

## on termination or expiry of the Agreement, the Contractor must:

## (d) deliver all ACARA Material and all Project Results to ACARA.

## In the event of partial termination, ACARA’s liability to make payment will, in the absence of agreement to the contrary, abate proportionally to the reduction in the Project.

## Where this Agreement is terminated other than for Contractor breach, ACARA will not be liable to pay any compensation to the Contractor, including, without limitation, compensation for loss of prospective profits, in relation to termination of this Agreement.

## ACARA’s rights under this clause 14 are without prejudice to any right of action or remedy which has accrued or may accrue in favour of ACARA.

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

# assignment

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

## ACARA may assign all or any part of its rights under this Agreement, or novate this Agreement in whole or in part, to a third party by giving the Contractor written notice of such assignment or novation.

## If the administrative arrangements regarding ACARA are altered such that the program the object of this Agreement is transferred to another government entity, ACARA may assign its rights under this Agreement to that entity subject to that entity assuming ACARA’s obligations under this Agreement. The Contractor shall have no objection to any such assignment or assumption.

# enforceability of agreement

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

# CHANGES TO AGREEMENT

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

# notices

## A notice, consent, approval or other communication (each a Notice) under this Agreement must be in writing signed by or on behalf of the person giving it, addressed to the person to whom it is to be given.

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

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

## For the purpose of this clause the address of ACARA is:

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

Address: Level 13, Tower B Centennial Plaza, 280 Elizabeth St, Sydney, New South Wales, 2000

Email: xxx

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

# governing law

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

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

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

# PARAMOUNTCY

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

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

# DISPUTE RESOLUTION

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

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

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

## If the Dispute is not resolved under clause 21.3 within thirty days (or longer period as agreed between the parties) of the Notification, the parties will refer the Dispute for mediation by the Australian Centre for International Commercial Arbitration Limited (**ACICA**) for resolution in accordance with the ACICA Mediation Rules, or such other mediation as is agreed by the parties. The costs of any mediation are to be borne equally between the parties. Each party will bear its own costs of complying with this clause 21.

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

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

## Termination of the Agreement under clause 14 is not considered a dispute between the parties within this clause 21 and does not give rise to a right of a party to seek resolution of the matter under this clause 21.

# 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.

**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 [insert Contractor name, ACN and ABN] :    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Print name of authorised officer  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Witness  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print name of witness  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |

schedule

**ACARA Material**

**[insert]**

**ACARA policy on Moral Rights**

**[insert]**

**Commencement Date**

**[insert]**

**Completion Date**

**[insert]**

**Contractor Existing Material**

**[insert]**

**Contractor Intellectual Property**

**[insert]**

Contractor’s address for Notice

[insert]

Copyright Statement

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ACARA

Level 13, 280 Elizabeth Street

Sydney

**Specified Personnel**

**[insert]**

**Payment**

The total payment for the work described in this Agreement will not exceed xxx (GST exclusive).

**Payment Schedule**

Payment will be made in instalments linked to the completion of deliverables to the reasonable 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.

**Project Manager**

**[insert]**

**Services**

See Attachment.

**ATTACHMENT – PROJECT BRIEF**

1. **Introduction**

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is responsible for the development of a 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 mapped to the national curriculum that measures students’ progress, and the provision of information, resources, support and guidance to the teaching profession.

ACARA reports to, and is directed by, the Education Ministers Meeting, formerly known as the Education Council. ACARA has overall responsibility for implementing the National Assessment Program (NAP) approved by ministers in the Measurement Framework for Schooling in Australia 2020.

ACARA develops and maintains key performance measures to monitor and report on progress towards the achievement of the Educational Goals for Young Australians as specified in the Alice Springs (Mparntwe) Education Declaration (the Declaration). The Declaration promotes world-class curriculum and assessment across a suite of learning areas including ICT literacy. The Declaration was agreed by Education Ministers in December 2019 with the aim of improving educational outcomes for all young Australians. The Declaration has two goals:

Goal 1: The Australian education system promotes excellence and equity

Goal 2: All young Australians become confident and creative individuals, successful lifelong learners, and active and informed members of the community.

The Declaration outlines the strategies and initiatives that Australian governments will undertake to achieve the Educational Goals for Young Australians. A world-class curriculum and an assessment program comprising national tests in literacy and numeracy, and sample assessments in science literacy, civics and citizenship, and ICT literacy, are integral components of the plan.

1. **Background**

* **Opt-in Assessment in NAP Sample Domain**

One of the major improvements to the National Assessment Program that was announced by the education minister in March 2022, was the introduction of Opt-in assessments. In addition to the triennial program of sample assessments in science, civics and citizenship, and ICT literacy, new assessments in these domains for Year 6 and Year 10 students will be available in Term 2 as opt-in assessments for all schools, starting with science literacy in 2024, civics and citizenship added in 2025 and ICT literacy in 2026.

Schools will be able to access the online assessments via a self-service portal. The NAP Opt-in assessment begins with untimed introductory practice questions designed to familiarise students with the format of the test questions and navigation of the test platform, followed by a series of timed test questions. These online assessments aim to provide schools with an understanding of where the school and students in Years 6 and 10 sit in relation to national means and proficiency standards for science literacy, civics and citizenship, and ICT literacy. Results will be provided to the participating schools only. The assessments are designed to inform the development of teaching and learning programs at the school level.

The first NAP Opt-in Assessment in science literacy was conducted in May 2024.

This is the second round NAP Opt-in Assessments in 2025, covering science literacy and civics and citizenship.

1. **Purpose**

The purpose of this request for tender (RFT) is to engage a qualified and experienced contractor to assist with the delivery of NAP Opt-in Assessment 2025 in Science Literacy and Civics and Citizenship.

1. **Scope of project**

For NAP Opt-in Assessment 2025 in Science Literacy and Civics and Citizenship, schools with year 6 and/or year 10 students can express their interest to register for the test online and enrol their students via a self-service portal provided by ESA.

The Contractor will provide helpline support to participating schools and principals throughout the project cycle including the initial registration, student enrolment, test administration and reporting.

The results of these Opt-in assessments will be available only to participating schools to support their teaching and learning programs and will not be reported publicly by ACARA.

* **Project deliverables**

ACARA requires the Contractor to:

|  |  |
| --- | --- |
| Helpline Support Services | * provide a toll-free ‘1800’ telephone and email helpline support to schools during the project cycle from registration to final school level reporting. * Monitor and maintain the online project administration system through different phases of the project, including manually validate principal details if it couldn't be verified by system data. * review and revise previous guideline materials and training materials for schools in consultation with ACARA to self-administer the test. * Communicate key messages to participating schools. |
| Marking | provide an assessment marking/scoring system.  human-mark student extended response items. |
| Data Analysis | * conduct data cleaning. * provide the analysis report for schools as per below:   + item performance spreadsheets   + student performance spreadsheets   + school performance spreadsheets. |

* **Out-of-scope:**

1. item development, authoring, item/module review and management
2. student and school registration

test administration

publication and reporting of results to external stakeholders outside the school.

1. **Project management**

The NAP Opt-in assessment project is an initiative that has been designed to inform the development of teaching and learning programs at the school level. ACARA has primary responsibility for the management of the project including all aspects of financial and contract management and policy-related decisions.

* **Role of the Project Manager**

ACARA’s Project Manager will monitor the implementation of the project on a day-to-day basis. The Contractor will liaise with the Project Manager, and other officers of ACARA, as necessary to facilitate the successful implementation and completion of the project.

On behalf of ACARA, the Project Manager will:

* provide the communication link between ESA and the Contractor on aspects of the assessment related to platform
* work to resolve any contractual, financial or project management issues that may arise throughout the life cycle of the project
* negotiate and approve any additional work or variation to the agreed schedule
* resolve policy-related issues that arise through the course of the project.
* **Role of the Contractor**

The Contractor will be responsible for implementing the ***Project deliverables***under section 2.4.

The Contractor is expected to work in close collaboration with ACARA’s Project Manager where required, at all stages of the project to ensure that the project deliverables and timelines are met with high quality and standard. The Contractor’s Project Director will report to ACARA’s Project Manager on the basis agreed between ACARA and the Contractor in the Project Plan and at any other times when clarification is required.

The Contractor will be required to provide a Project Plan after formal acceptance of a purchase order from ACARA for approval. The Project Plan must include the following components:

* communication plan.
* risk management plan:
  + outlining how risks identified in the tender, as well as any further risks that are identified, will be managed in relation to the project, detailing strategies to ensure project needs are met within the required timeframe and to the highest standard. This plan must outline how all aspects of security are addressed.
  + ACARA requires the opportunity to audit risk management procedures during the project, including where appropriate, attendance at the Contractor’s place of work and/or receiving briefings on the management of risk.
* Quality assurance plan detailing how the quality assurance and quality control processes proposed by the Contractor will be implemented and monitored by the Contractor throughout the project.
  + The quality assurance plan must specify in detail all and any perceived risks that may impact on the quality of the contract deliverables and must provide detailed advice on the strategies for risk management for each identified risk. It is not sufficient to provide information only about generic quality assurance systems and quality manuals.
* detailed security plan for managing all stages of the project, including incident management procedures and response plans, and detailing how system access, security and unscheduled downtime will be managed.
* high-level timeline with critical deadlines (a detailed timeline will not be required until plan is accepted).
* **Project management communications and reporting**

The Contractor will be required to:

* be available for regular dialogue with ACARA personnel across the entire project lifecycle

provide risk alerts to ACARA immediately upon detection of issues considered high risk to the project

* respond to feedback from ACARA following reviews of documentation including those developed for administration, training and marking purposes
* attend nominated meetings.
* meet the project deadlines.
* Meetings

The Contractor will be required to communicate with ACARA’s NAP Opt-in team at key project junctures. Regular meetings will be organised by ACARA via videoconference (as default mode) as follows:

* regular meetings as required during the assessment windows

weekly meetings at the outset of the and in the lead up to the assessment window

* fortnightly meetings to report on progress at all other times.

The Contractor will also attend a project close-out meeting via videoconference with key members of ACARA’s project team at an agreed time after the delivery of all required files to ACARA to discuss aspects of the project.

* Project progress reports
* Progress reports must be provided to ACARA as required.
* Exception reports are required in the event of unforeseen circumstances.
* Project completion report

The Contractor must provide a project completion/evaluation report outlining, as a minimum, the following:

* a detailed outline of each component of the project delivery
* an outline of any obstacles, incidents or issues encountered that affected the delivery or reputation of the project, and any potential obstacles, incidents or issues that may affect the project in subsequent years
* an outline of any areas requiring improvement where a variation may improve any future work.
* Resources

It is expected that the Contractor will use and provide its own resources such as travel, office facilities, equipment and staff required for the completion of the project. For which no fees will be payable to ACARA in addition to the costs prescribed under this Contract.

* Communication and Evaluation

It is expected the Contractor will:

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

1. **School Participation**

The NAP Opt-in assessment is optional, and schools across all sectors are invited to participate on a voluntary basis. Schools have the flexibility to choose which domain and at which year level they will participate in the assessment, as well as the option to enrol the entire cohort or a specific group of students.

Based on the participation record from the 2024 cycle, it is anticipated approximately 200 schools may potentially participate in NAP Opt-in assessments.

For the purposes of the quote, the Contractor should provide pricing in increments of 50 schools from 200 and above schools (in addition to the standard pricing for 200 schools) for all the associated project deliverables.

1. **Helpdesk and training materials**

The Contractor will be required to maintain a toll-free helpline and a designated email, have it sufficiently staffed to handle demand, and the helpline team should be knowledgeable in all aspects of NAP Opt-in registration and assessment procedures. The help line will be open from 8 am AEST to 5pm AWST from when the registration window opens prior to the testing window and throughout the testing period and until the end of reporting window. There will be general inquiries relating to NAP Opt-in during the registration window.

The Contractor is required to keep daily logs informed by helpdesk enquiries. The final format of the logs will be agreed to between ACARA and the Contract and provided to ACARA upon request.

The school registration system has built in verification process using existing database. However, if the system is unable to verify any principal details, the Contractor is required to manually verify the principal’s details.

The verification could be done by searching school information online or contacting the school by phone. School contact details can be found on the school website or any other related sites including *My School* website (<https://myschool.edu.au/> that is maintained by ACARA). Verification should only include the professional details associated with the principal.

Any suspicious activity including multiple requests to register must be reported to ACARA.

The Contractor is responsible for following set steps to manage registered schools to complete their registration and enrolment activities related to the NAP Opt-in Assessment.

The Contractor is required to refine existing Principal and NAP Coordinator handbook, test administration manuals for school-based users to ensure that procedures are clear and concise. All final versions of the materials including guideline instructions and training packages should be provided to ACARA for approval and sign off.

Copies of handbooks and manuals used in previous cycles will be provided to the contractor at project initiation meeting.

During the testing windows, the Contractor is required to provide regular reports listing the number of students that completed each test each day and any issues experienced.

Helpdesk reports should be provided in a clear and consistent format, e.g., consider use of pivot tables and brief summary analysis for each report.

Depending on school participation and the progress of the assessment, it may be necessary for the contractor to send follow-up emails to schools at various stages of the program.

1. **Marking operations**

The Contractor is expected to provide and use their own secure, online marking system and make provision for experienced personnel to mark short and extended constructed response questions for both the science literacy and civic and citizenship domain. Marker training materials will be provided from the previous NAP-sample main studies assessment.

The Contractor will be required to establish a secure, central marking centre, including the provision of computers for marking, and the training of markers. The Contractor will be required to provide:

* up-to-date computer hardware (large high-resolution screen, keyboard, mouse) and internet connection for each marker.
* up-to-date computer software, browsers and operating systems with the latest updates.
* printer and scanner;
* chairs and tables that adhere to good ergonomic design to facilitate occupational health and safety.
* meal storage and heating facilities and some basic kitchen facilities (e.g., refrigerators, microwaves, plates, cups, forks);
* tea and coffee making facilities;
* break out training rooms;
* secure off-street parking; and
* any other resources that would reasonably be required for the Project.

The marking centre should be held at a highly secure premises and should accommodate sufficient markers to complete the marking operation.

The location of the marking centre should be in one central location in a capital city with team leaders, markers and a minimum of one lead marker.

Remote marking operations should be outlined as a contingency option. It should allow ACARA's personnel to have complete visibility of ongoing marker accuracy. Functionality and arrangements that ensure clarity of monitoring and security of operation must be outlined in the tender response, including home marking requirements and support procedures.

The Contractor will need to be prepared to conduct the marking operation remotely in the event of pandemics disruptions as described above.

The marking centre should operate Monday to Friday from 8:30 am to 3:30 pm, with a one-hour break. The first day of this marking period will be a one-day training day.

The Contractor will develop and carry out procedures and related aspects of quality control, including the development of scoring/marking manuals and the training of markers in those procedures.

The Contractor is required to conduct single marking of all scripts with a minimum of 10% check marking conducted for each marker on each day.

It is estimated that for Science Literacy in total approximately 100,000 scripts (5,0000 for year 6 and 50,000 for year 10) will require marking; for Civics and Citizenship in total approximately 30000 scripts will require marking. For the purpose of the quote, the Contractor should provide pricing for marking the scripts in increments of 1000 scripts from 100,000 and 30000 scripts respectively above estimated number of scripts.

The Contractor is required to provide and use their own secure, online marking system which must be:

* able to accept electronic extracts of student responses, from ADS platform. Contractor can get electronic extracts of student responses from the platform for import into the Contractor’s marking system
* configured for implementing criteria specified in the marking guide
* configured for quality control features, including consistency, reliability, and productivity reports.

The Contractor’s marking system must be able to accept (quality) control scripts, ensuring that they render in a way that they are indistinguishable from live scripts. The Contractor will also need to provide technical support (i.e., a helpdesk) for, and training in, their own online marking system for the duration of the marking operation.

The marking system is expected to enable the Contractor’s suitably qualified markers to mark short and extended response items online and allow markers to record marks and comments and to have access to any necessary information to mark responses including rubrics.

The Contractor is expected to provide regular reports to ACARA demonstrating marker consistency, reliability, and productivity. The Contractor will also supply discrepancy reports for control scripts and check marking as well as frequency distribution reports to assist in the early identification of anomalous marking patterns at team and/or marker level.

The Contractor will develop procedures to ensure that a high degree of accuracy and reliability is achieved during the marking and coding of student responses.

* Requirements for Team leaders and Lead Marker

The Team leaders and Lead Marker employed by the Contractor are expected to:

* have proven experience in the marking of national assessments and preferably, the NAP-SL and NAP-CC assessments
* have experience as a team leader in a system-level large scale marking operation.
* have proven strong communication skills with markers
* have demonstrated high levels of accuracy and consistency in previous marking operations
* be sufficiently skilled in using computer devices in order to learn how to mark scripts on an online marking platform
* have a mobile phone
* Requirements for markers

The Contractor is expected to preference markers that:

have proven experience in the marking of national assessments and preferably the NAP-SL and NAP-CC assessments

have demonstrated high levels of accuracy and consistency in previous marking operations

* be sufficiently skilled in using computer devices in order to learn how to mark scripts on an online marking platform
* have a mobile phone

The Contractor is responsible for all costs associated with the hiring and training of markers, for the period from the commencement of training to the completion of marking.

The Contractor is responsible for the secure storage of any complete raw data sets and/or reports held outside of the marking and scoring system.

Throughout the project, marking progress reports, including marking completion, marker quality and adjudication reports, should be made available to ACARA. Marking progress should be monitored and progress reports exported and supplied to ACARA.

After the completion of marking activity, the Contractor is required to provide the marking reliability report to ACARA and provide the finalised marked scores back to ACARA in specified format.

1. **Data Cleaning and Analysis**

Data cleaning is the Contractor’s responsibility. The Contractor be required to clean and verify the data to reconcile any anomalies such as test non-response, duplicate records, or incomplete data sets.

The Contractor will check data according to the following requirements:

* for completeness
* for correct and unique values of identification variables.
* for valid ranges of all variables, including background variables and responses to the test items; and
* for inconsistencies between variables

Empty or blank cells are not accepted in the cleaned data files.

Once data cleaning and processing have been finalised, the responses should be scored, and result tables grouped by school to produce the school summary reports. The results tables must be separated in different spreadsheets:

* Item performance spreadsheets
* Student performance spreadsheets
* School performance spreadsheets

These reports should align with the details and schema set out in the initial parameters’ spreadsheet and main study stats spreadsheet that will be provided to the Contractor by ACARA.

The result tables must include the following data to produce the school result:

Item performance details:

* + Percent correct for the school, by year level.

Colour code for each item, based on a comparison between the percent correct in the school versus nationally in the main study, by year level.

* Student performance details:
  + Achievement score

Proficiency level

School performance details, by year level, by class group and for the year level overall:

* + mean achievement scores

percentage of students within each proficiency level, with an annotation as to which proficiency level denotes attainment of the proficient standard

Scaling and equating of performance data are not part of the services. Score equivalence tables (SETs) will be provided to the Contractor to derive student achievement scores (weighted likelihood estimates) and the associated transformations to the NAP-SL and NAP-CC scale.

The national mean achievement score, percentiles, and proficiency levels for Year 6 and Year 10 were established as part of the NAP-SL 2023 and NAP-CC 2024 assessments. It is expected that these will be used to report the results of the NAP Opt-in 2025 assessment.

ACARA’s Measurement and Evaluation team will quality assure all statistical analyses and findings and provide approval to proceed. ACARA reserves the right to request additional analyses or a re-run of analyses if any issues or concerns are flagged.

1. **Copyright and intellectual property**

Any materials developed by the Contractor under the Contract; ACARA would retain intellectual property.

1. **Secure deletion of data**

The Contractor is required to delete data on completion of the project as specified by ACARA. ACARA will require confirmation that data has been deleted as specified.

1. **Timeframe**

Indicative timeframe follows. May be revised by agreement between the parties.

|  |  |  |
| --- | --- | --- |
| Task Name | Start | End |
| Project Initiation | Nov/Dec 2024 | Nov/Dec 2024 |
| The Project Plan will be finalised during this period and will include project management plan and other project related artefacts such as Communication Plan, Risk Management Plan, Security Plan, Quality Assurance Plan | Dec 2024 | Dec 2024 |
| Meet with ACARA's technology provider (ESA) | Jan -2025 | Jan -2025 |
| Finalise test administration materials | Jan -2025 | Feb -2025 |
| **Opt-in registration** | **March-2025** | **01-May-2025** |
| Student Enrolment | March-2025 | 01-May-2025 |
| Helpdesk support | March-2025 | May-2025 |
| **NAP Opt-in 2025 Test Window** | **05-May-2025** | **30-May-2025** |
| Marking operation | June -2025 | June-2025 |
| Data cleansing and analyses | Late June -2024 | Mid July-2024 |
| Reporting to Schools | End July-25 | End July 25 |
| Close-out report | Aug-25 | Sept-25 |

**Vendor Performance Evaluation**

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

A survey form with many words

Description automatically generated with medium confidence

**Special Conditions Schedule**

The terms of the Special Conditions Schedule are:

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

|  |  |
| --- | --- |
| **ACARA Act** | means the *Australian Curriculum, Assessment and Reporting Authority Act 2008 (Cth);* |
| **AESOC** | means the Australian Education Senior Officials Committee; |
| **Anonymised Data** | means data that has been anonymised by removing the name of the student or otherwise de-identified, so that the identity of an individual is not apparent or reasonably ascertainable from that data, whether on its own or in combination with other available information and not capable of Re-identification, noting that such data is to be treated as if it includes Personal Information following such anonymisation; |
| **Contractor’s ICT System** | includes any electronic or other system, or any related process, equipment, tool, device, infrastructure, network, data, information, transmission, communication, software or facility, whether ‘stand alone’ or connected with the system; |
| **Data Breach** | means any actual or suspected unauthorised dealing with, leak, spill or loss of any data, including (without limitation):   * 1. unauthorised access to, or unauthorised disclosure or unauthorised modification of, any data;   2. loss of information in circumstances where there is a risk of unauthorised access to, or unauthorised disclosure of, any data; and   3. an Eligible Data Breach in relation to any data; |
| **Education Ministers Meeting** | means the forum for collaboration and decision making on early childhood education & care, school education, higher education, and international education. Australian, State and Territory government ministers responsible for education attend the meeting. The Commonwealth Minister for Education is the Chair; |
| **Eligible Data Breach** | has the same meaning as it has in the Privacy Act or as otherwise defined in any of the Privacy Provisions to the extent applicable; |
| **Information Security Manual** | means the Australian Government *Information Security Manual available* at <https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism> as amended from time to time; |
|  |  |
| **NAP** | means the national assessment program developed and administered by ACARA under the ACARA Act; |
| **NAP Opt-In 2025** | means the optional national assessment program available for schools and/or students to participate in for 2025 in the domains of science literacy and civics and citizenship; |
| **NAP Opt-In 2025 Data** | means all data that is provided to, collected by, or otherwise held by the Contractor for the purposes of performing the Services, including information and material processed, produced or derived using that information and material, including Anonymised Data, aggregated data and metadata; |
| **NAP Sample Privacy and Data Management Policies** | means the privacy and data management policy and procedure framework documents that are applicable to ACARA and ACARA’s management of a NAP as provided to the Contractor by ACARA from time to time; |
| **Personal Information** | means personal information as defined in the Privacy Act; |
| **Platform Student Identifiers** | means the unique identifier assigned to a student in a school that enables that student to participate in a NAP; |
| **Privacy Act** | means the *Privacy Act 1988* (Cth); |
|  |  |
| **Protective Security Policy Framework** | means the *Australian Government Protective Security Policy Framework* available at <https://www.protectivesecurity.gov.au/> as amended from time to time; |
| **Re-identification** | means, in relation to data about an individual that has been de-identified, use or disclosure in a manner that could lead to the identity of an individual to whom the data relates becoming apparent or reasonably ascertainable, and includes use or disclosure in a manner that may allow that data to be combined with other data in a way that could lead to the identity of that individual to whom the data relates becoming apparent or reasonably ascertainable; |
| **Security Incident** | means any actual or suspected breach of security (whether relating to information, logical, physical or system security or otherwise), or any contact, request or approach from any person seeking unauthorised access to any data, or circumstance that highlights any actual or potential security vulnerability or which identifies a potential threat to security, including for example (without limitation): an attack, penetration, denial of service, disclosure of proprietary information, misuse of system access, unauthorised access or intrusion (hacking), virus intrusion, scan of the systems, networks, technology, content, websites or applications that compromise the Contractor’s ICT System, or any other activity that could adversely affect any data; and |
| **Sensitive Personal Information** | has the same meaning as “sensitive information” in the Privacy Act. |

1. **Acknowledgement and undertaking**
   1. The Contractor acknowledges that NAP Opt-In 2025 Data that it may receive on behalf of ACARA under this Agreement includes Sensitive Personal Information.
   2. The Contractor undertakes to comply fully with the terms of this Special Conditions Schedule.
2. **Collection Notice**
   1. To the extent that the Contractor collects Personal Information under the Privacy Act in connection with the Services it must:
      * 1. take all reasonable steps to ensure that before it collects Personal Information from an individual (or as soon as practicable after they have collected the information), the subject of that Personal Information is made aware:
           1. of the purpose for which the information is being collected;
           2. if the collection is authorised or required by law, that the collection is so authorised or required under the relevant law; and
           3. of the way in which the information may be used or disclosed (including any further disclosure that may be made by the entity to whom the Personal Information is initially disclosed); and
        2. otherwise comply with the Privacy Act in relation to the provision of notice to such individuals; and
        3. comply with any directions of ACARA regarding the Contractor’s compliance with clauses 3.1.a and 3.1.b of this Special Conditions Schedule.
3. **Data security**
   1. The Contractor must comply with the Protective Security Policy Framework and Information Security Manual to ensure that NAP Opt-In 2025 Data is at all times protected against:
      * 1. unauthorised access;
        2. unauthorised copying;
        3. unauthorised disclosure;
        4. complete or partial loss;
        5. complete or partial corruption;
        6. malicious deletion; and
        7. accidental deletion.
   2. The Contractor must take all reasonable steps, including by ensuring that any security and access controls comply with the Information Security Manual, to prevent any Security Incident or Data Breach occurring and ensure compliance with the Privacy Act, in particular, to ensure that no unauthorised party is allowed physical or electronic access to NAP Opt-In 2025 Data, to the extent it is stored on the Contractor’s ICT System.
4. **Use, storage and disclosure of NAP Opt-In 2025 Data** 
   1. If directed by ACARA, the Contractor must delete NAP Opt-In 2025 Data.
   2. The Contractor must only use NAP Opt-In 2025 Data as required to perform the Services and must not disclose NAP Opt-In 2025 Data except as expressly permitted in this Special Conditions Schedule, unless required by law to do so, in which case the Contractor must notify ACARA.
   3. The Contractor must ensure that NAP Opt-In 2025 Data that is Anonymised Data is only disclosed to ACARA.
   4. Unless ACARA provides specific prior written approval, the Contractor must ensure that NAP Opt-In 2025 Data is not disclosed to any third party that is not an approved subcontractor under this Agreement (whether or not that NAP Opt-In 2025 Data is Anonymised Data or not).
   5. The Contractor may disclose NAP Opt-In 2025 Data to a subcontractor that has been approved by ACARA in accordance with clause 12 of this Agreement where this is required to perform the Services, and unless ACARA provides specific prior written approval, this must be limited to NAP Opt-In 2025 Data that is Anonymised Data.
   6. Where ACARA provides its approval under clause 5.5, the Contractor may disclose the NAP Opt-In 2025 Data to an approved subcontractor if:
      * 1. the disclosure complies with the Privacy Act;
        2. the disclosure complies with the data access protocols agreed by the Education Ministers Meeting or the AESOC;
        3. the approved subcontractor’s use of the NAP Opt-In 2025 Data will be in a manner permitted by section 40 of the ACARA Act and/or the Privacy Act; and
        4. the Contractor has entered into a written agreement with the approved subcontractor, which requires the approved subcontractor to:
           1. not disclose the NAP Opt-In 2025 Data to another party without the Contractor’s prior written approval and the approved subcontractor entering into a written agreement with the other party in the same terms as required by clause 5.6;
           2. keep the NAP Opt-In 2025 Data confidential and securely stored; and
           3. if requested by the Contractor, deliver up to the Contractor or destroy all copies of the NAP Opt-In 2025 Data.
   7. Any approval given by ACARA under clause 5.4 or 5.5:
      * 1. may or may not be given by ACARA acting in its absolute discretion; and
        2. may be subject to any conditions ACARA considers appropriate acting in its absolute discretion.
   8. The Contractor must ensure that NAP Opt-In 2025 Data that is not Anonymised Data:
      * 1. remains confidential;
        2. is securely stored and all reasonable steps are taken to prevent unauthorised physical or electronic access;
        3. is not transferred, or accessed from, outside of Australia without the prior written consent of ACARA;
        4. is only used in a manner permitted by section 40 of the ACARA Act and the Privacy Act, and this Agreement; and
        5. is held in compliance with the Privacy Act.
   9. The Contractor must:
      * 1. ensure that any other party to whom NAP Opt-In 2025 Data is disclosed in accordance with clauses 5.4 to 5.6 of this Special Conditions Schedule:
           1. is bound by any conditions prescribed by ACARA under clause 5.7.b of this Special Conditions Schedule and by obligations substantially similar to the obligations set out in this Special Conditions Schedule; and
           2. complies with any conditions and obligations referred to in clause 5.9.a of this Special Conditions Schedule (except that clause 5.5 does not permit disclosure to subcontractors of approved subcontractors); and
        2. exercise any rights it may have against any other party to whom NAP Opt-In 2025 Data is disclosed in accordance with clause 5.4 of this Special Conditions Schedule in connection with that NAP Opt-In 2025 Data in accordance with any direction by ACARA.
   10. If requested by ACARA, the Contractor must immediately deliver up to ACARA or destroy all copies (electronic and hard copy) of the NAP Opt-In 2025 Data.
   11. If the Contractor is provided with any non-identifying NAP Opt-In 2025 Data they must ensure that the non‑identifying NAP Opt-In 2025 Data is not used or disclosed in a manner that may allow that data to be combined with other data in a way that could lead to an individual to whom the data relates becoming apparent or reasonably ascertainable.
5. **Data Breach notification**
   1. The Contractor must immediately notify ACARA’s Project Manager in writing of any Security Incident or Data Breach in relation to any Personal Information held by the Contractor as a result of this Agreement or its provision of the Services.
   2. In the circumstances outlined in clause 6.1 of the Special Conditions Schedule, or where ACARA notifies the Contractor that there has been a Security Incident or Data Breach in relation to any Personal Information held by the Contractor as a result of this Agreement or its provision of the Services, the Contractor must:
      * 1. take all reasonable action to contain and mitigate the risk of the Security Incident or Data Breach causing harm to any of the individuals to whom the Personal Information relates;
        2. if directed by ACARA, carry out an assessment (in consultation with ACARA) in accordance with the requirements of the Privacy Act if there are reasonable grounds to suspect that there may have been an Eligible Data Breach;
        3. unless otherwise directed by ACARA, take all other action necessary (in consultation with ACARA, including in relation to the communication of any notification for the purposes of section 26WL of the Privacy Act) to comply with the requirements of the Privacy Act; and
        4. take any other action as reasonably directed by ACARA.
   3. The Contractor agrees to provide a monthly report to ACARA detailing all information security issues (including all Security Incidents, Data Breaches and matters related to such issues) relating to the Services in the reporting period, and where NAP Opt-In 2025 Data is affected, the report must specifically address any issues relating to that data.
   4. The Contractor agrees to notify ACARA immediately if it becomes aware of a breach or possible breach of its obligations under this clause 6 of the Special Conditions Schedule.
   5. Unless required by law, the Contractor agrees not to make or issue any public statement or disclosure (including public statements or disclosures to media outlets, conferences, press conferences or any other public or media event) about any suspected Eligible Data Breach, Data Breach, Security Breach or breach of this Agreement without the prior written consent of ACARA.
6. **Use of Platform Student Identifiers**
   1. The Contractor:
      * 1. must not adopt the Platform Student Identifiers as their own identifiers; and
        2. must only use or disclose the Platform Student Identifiers in the performance of the Services in relation to the Project.
7. **Assistance**
   1. The Contractor agrees that in performing its obligations under this Agreement, the Contractor will act in a manner that allows ACARA to comply with its obligations under the Privacy Act, the *Freedom of Information Act 1982* (Cth) and the *Archives Act 1983* (Cth).
   2. The Contractor must provide all reasonable and timely assistance and information to ACARA in respect of addressing:
      * 1. any Data Breach;
        2. any Security Incident, including a Security Incident affecting NAP Opt-In 2025 Data;
        3. any application made under the access and amendment provisions of the Privacy Act, or any privacy complaint made to the Contractor, ACARA, or to the Office of the Australian Information Commissioner;
        4. any application made to ACARA under the *Freedom of Information Act 1982* (Cth) for access to information, including any NAP Opt-In 2025 Data; and
        5. any compliance audit of systems or facilities holding NAP Opt-In 2025 Data required to be conducted under the Privacy Act, the *Freedom of Information Act 1982* (Cth), the *Archives Act 1983* (Cth) or other related legislation or policy.
   3. The Contractor must permit ACARA to audit and verify compliance with its obligations under this Special Conditions Schedule.
8. **Policies**
   1. The Contractor must comply with the NAP Sample Privacy and Data Management Policies as amended from time to time by ACARA.