



PART A - CONTRACT AND SPECIFICATIONS

CONTRACT

CONTRACT IN RELATION TO NATIONAL ASSESSMENT PROGRAM -
LITERACY AND NUMERACY 2012 SPECIAL PRINT MATERIALS

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

^Party 2 Name^

^Party 2 ABN^^Party 2 ACN^

Tenderers should refer to **PART B – REQUEST FOR TENDER
(INCLUDING TENDER RESPONSE SCHEDULES)** which sets out the
conditions of tender and tender response requirements.

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CONTRACT

CONTRACT IN RELATION TO NATIONAL ASSESSMENT PROGRAM - LITERACY AND NUMERACY 2012 SPECIAL PRINT MATERIALS

Date

This Contract is made on ^day(numeric) month(name) year(numeric) in full^.

Parties

This Contract 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. ^Party 2 Name^^Party 2 ABN and ACN/ARBN if applicable^
^Party 2 Address^ (the Contractor)

Context

This Contract is made in the following context:

- A. ACARA requires the provision of alternative NAPLAN test formats for use by students with disability for the 2012 National Assessment Program - Literacy and Numeracy (NAPLAN) program (the **Project**).
- B. The Contractor has fully informed itself about the requirement and has submitted the proposal referred to in Item 1 of the Schedule.
- C. The parties have agreed that the Contractor will perform the Services for ACARA on the terms and conditions set out in this contract.

Operative Provisions

1. Interpretation

1.1. Definitions

1.1.1. In this contract, unless the context indicates otherwise:

ACARA includes any successor entity to ACARA which is from time to time responsible for administering this contract;

ACARA Material means any Material:
a. provided by ACARA to the Contractor for the purposes of this contract; or
b. derived at any time from the Material referred to in paragraph a;

Attachment means a document attached to the contract or incorporated by reference in the Schedule, and includes the Attachment as amended or replaced from time to time by agreement in writing between the parties;

Business Day means a weekday other than a public holiday in the place

(in a place)	specified or, if no place is specified, in the State or Territory specified in Item Error! Reference source not found. ;
Commencement Date	means the date on which this contract is made, unless otherwise specified in Item 5;
Confidential Information (of the Contractor)	means information that is by its nature confidential and is described in Item Error! Reference source not found.
Contract Material	means any Material (including Existing Material and Third Party Material): <ul style="list-style-type: none"> a. created for the purposes of this contract; b. provided or required to be provided to ACARA as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b;
Existing Material	means any Material in existence at the Commencement Date and specified in Item Error! Reference source not found. ;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
Instalment	means the fee payable under clause 3.1.1.a and Item Error! Reference source not found. in relation to a specified part or the whole of the Services;
Intellectual Property	includes: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, 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: <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information;
Material	means any thing in relation to which Intellectual Property rights arise;
MCEECDYA	means the Ministerial Council for Education, Early Childhood Development and Youth Affairs (formerly Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA)) comprised of State, Territory, Australian Government and New Zealand Ministers with responsibility for the portfolios of school

education, early childhood development and youth affairs and includes any successor or replacement body with the same or similar functions;

Moral Rights

means the following non-proprietary rights of authors of copyright Material:

- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

Official Information

means any information developed, received or collected by or on behalf of ACARA to which the Contractor gains access under or in connection with this contract, and includes the Contract Material and the terms of the contract;

Personnel

means:

- a. in relation to the Contractor - any natural person who is an officer, employee, agent or professional advisor of the Contractor or of its subcontractors; and
- b. in relation to ACARA - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of ACARA.

Project Manager

means the person specified (by name or position) in Item **Error! Reference source not found.** or any substitute notified to the Contractor;

Project Plan

means the plan developed by the parties setting out the timeframe for the delivery of the Services, as approved by ACARA;

Schedule

means the schedule to this contract entitled 'Contract Details', and includes the Schedule as amended or replaced from time to time by agreement in writing between the parties;

Services

means the services described in Item 2 and includes the provision to ACARA of the Material specified in Item **Error! Reference source not found.**; and

Specified Personnel

means the Personnel specified in Item **Error! Reference source not found.** as required to perform all or part of the work constituting the Services; and

Third Party Material

means any Material in which the Intellectual Property rights are owned by third parties.

1.2. Interpretation

1.2.1. In this contract, 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 an Item is a reference to an Item in the Schedule;
- i. the Schedule and any Attachments form part of this contract;
- j. if any conflict arises between the terms and conditions contained in the clauses of this contract and any part of the Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
- k. if any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails; and
- l. 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 contract

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

1.4. Commencement

- 1.4.1. The terms of this contract apply on and from the Commencement Date.

2. Provision of Services

2.1. Principal obligations of Contractor

- 2.1.1. The Contractor agrees to:
 - a. perform the Services as specified in Item 2 as part of the Project and in accordance with the Project Plan;

- b. provide to ACARA the Material specified in Item **Error! Reference source not found.**;
 - c. adopt relevant best practice, including any ACARA, Commonwealth or industry standards and guidelines including those specified in Item **Error! Reference source not found.**;
 - d. comply with the time frame for the performance of the Services specified in Item 5; and
 - e. submit invoices, and any required supporting documents, in the manner specified in Item 0.
- 2.1.2. The Contractor agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by ACARA under this contract to be determined.

2.2. Liaison with Project Manager

- 2.2.1. The Contractor agrees:
- a. to liaise with the Project Manager and other officers of ACARA as reasonably required and necessary to facilitate the successful implementation and completion of the Project;
 - b. to comply with directions of the Project Manager that are consistent with this contract; and
 - c. to report to the Project Manager on the basis agreed between ACARA and the Contractor in the Project Plan.

2.3. Subcontractors

- 2.3.1. The Contractor agrees not to subcontract the performance of any part of the Services without ACARA's prior written approval.
- 2.3.2. ACARA may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.
- 2.3.3. ACARA has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item **Error! Reference source not found.**
- 2.3.4. The Contractor agrees to make available to ACARA (if requested), details of all subcontractors engaged in the performance of the Services.
- 2.3.5. The Contractor acknowledges, and must inform all subcontractors that, ACARA may publicly disclose the names of any subcontractors engaged in the performance of the Services.

2.4. Specified Personnel

- 2.4.1. The Contractor agrees that the Specified Personnel will perform work in relation to the Services in accordance with this contract.
- 2.4.2. If Specified Personnel are unable to perform the work as required under clause 2.4.1, the Contractor agrees to notify ACARA immediately.

- 2.4.3. The Contractor agrees, at the request of ACARA acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Services.
- 2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Contractor will provide replacement Personnel acceptable to ACARA at no additional cost and at the earliest opportunity.

2.5. Responsibility of Contractor

- 2.5.1. The Contractor is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:
- a. involvement by ACARA in the performance of the Services;
 - b. subcontracting of the Services;
 - c. acceptance by ACARA of Specified Personnel; or
 - d. payment made to the Contractor on account of the Services.

2.6. ACARA Option

- 2.6.1. At any time prior to completion of the Project, ACARA may, but is under no obligation to, issue to the Contractor a notice to extend the Contract for the provision of Special Print Materials consultancy service in support of its conduct of the 2013 National Assessment Program - Literacy and Numeracy (NAPLAN) program (Option Notice).
- 2.6.2. The Option Notice must contain:
- a. a description of the Services required;
 - b. a time frame for performance of the Services; and
 - c. ACARA's proposed fees.
- 2.6.3. After receiving the Option Notice, the Contractor will notify ACARA if it accepts extension of the Contract.
- 2.6.4. If the Contractor accepts extension of the Contract, the Contract will be extended on the same terms and conditions as this Contract except:
- a. the Services required in Item 2 will be amended to reflect the Option Notice (or as otherwise agreed between the parties);
 - b. the time frame for the performance of the Services specified in Item 5 will be amended to reflect the Option Notice (or as otherwise agreed between the parties);
 - c. the Fees specified in Item 10 will be amended to reflect the Option Notice (or as otherwise agreed between the parties); and
 - d. this clause 2.6 is deleted.
- 2.6.5. If the Contractor does not respond to the Option Notice within 14 days of receiving the notice, or such other period as ACARA in its absolute discretion allows for acceptance, then this will be treated as notification by the Contractor to ACARA that the Contract will not be extended.

3. Fees, allowances and assistance

3.1. Principal obligations of ACARA

3.1.1. ACARA agrees to:

- a. pay the fees in the Instalments specified in Item **Error! Reference source not found.**;
- b. pay the allowances and meet the costs specified in Item **Error! Reference source not found.**;
- c. make all payments as and when specified in Item 6; and
- d. provide facilities and assistance as specified in Item **Error! Reference source not found.**.

3.2. ACARA's rights to defer payment

3.2.1. ACARA will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long as the Contractor has not completed, to the satisfaction of ACARA, that part of the Services to which the Instalment relates.

3.3. Taxes, duties and government charges

3.3.1. Except as provided by this clause 3.3, the Contractor agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this contract.

3.3.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this contract is exclusive of any GST imposed on the supply.

3.3.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

3.3.4. No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

3.4. Superannuation

3.4.1. This contract is entered into on the understanding that ACARA is not required to make any superannuation contributions in connection with the contract, unless stated to the contrary in Item **Error! Reference source not found.**.

4. Intellectual Property

4.1. Use of ACARA Material

4.1.1. ACARA agrees to provide Material to the Contractor as specified in Item **Error! Reference source not found.**.

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

4.1.3. The Contractor agrees to use the ACARA Material strictly in accordance with any conditions or restrictions set out in Item **Error! Reference source not found.**, and any direction from ACARA.

4.2. Rights in Contract Material

4.2.1. Intellectual Property in all Contract Material vests or will vest in ACARA.

4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:

- a. any ACARA Material;
- b. any Existing Material; or
- c. any Third Party Material,

that is incorporated into the Contract Material.

4.2.3. The Contractor grants to (or will procure for) ACARA a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, distribute, communicate and exploit any Existing Material in conjunction with the Contract Material for any purpose.

4.2.4. The Contractor grants to (or will procure for) ACARA a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, distribute and communicate any Third Party Material in conjunction with the Contract Material for any purpose.

4.2.5. The Contractor agrees, and will arrange for any third party, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2 on request by ACARA.

4.2.6. The Contractor represents and warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

4.2.7. In all publications produced by the Contractor for ACARA under this contract, the Contractor will include the copyright statement set out in Item 16, or such other statement as notified to the Contractor by ACARA from time to time.

4.3. Intellectual Property Register

4.3.1. The Contractor will establish and maintain a register detailing each item of Contract Material in a form acceptable to ACARA (the IP Register). The IP Register must, at a minimum, include the following details:

- a. a description of the Contract Material (including a description of any Existing Material or Third Party Material incorporated in the Contract Material and details of where and how that the Material has been incorporated into the Contract Material);
- b. the authors of the Contract Material, and, in respect of any Existing Material or Third Party Material, the owners of that Material; and

- c. in respect of any Third Party Material incorporated in the Contract Material, the date and terms of any licence in respect of the Third Party Material.

4.3.2. The Contractor must ensure the IP Register is complete and up to date throughout the term of the contract and must provide ACARA with a copy of the IP Register upon request during the term of the contract and on termination or expiry of the contract.

4.4. Moral Rights

4.4.1. In this clause 4.4:

Permitted Acts means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
- b. supplementing the Contract Material with any other Material;
- c. using the Contract Material in a different context to that originally envisaged; and
- d. the acts or omissions, specifically set out in Item **Error! Reference source not found.;**

but does not include false attribution of authorship.

4.4.2. Where the Contractor is a natural person and the author of the Contract Material, he or she:

- a. consents to the performance of the Permitted Acts by ACARA or any person claiming under or through ACARA (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to ACARA's general policies and practices regarding Moral Rights as described in Item **Error! Reference source not found..**

4.4.3. Where clause 4.4.2 does not apply, the Contractor agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by ACARA or any person claiming under or through ACARA (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to ACARA; and
- b. to ensure that each author's attention is drawn to ACARA's general policies and practices regarding Moral Rights as described in Item **Error! Reference source not found..**

4.4.4. This clause 4.4 does not apply to any ACARA Material incorporated in the Contract Material.

5. Confidentiality of Official Information and other security obligations

5.1. Interpretation

5.1.1. In this clause 5:

Official Resources	includes: <ul style="list-style-type: none">a. Official Information;b. people who work for or with ACARA; andc. assets belonging to (even if in the possession of contracted providers) or in the possession of ACARA;
Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for ACARA; and
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to or disclosure of Official Resources.

5.2. Confidentiality of Official Information

- 5.2.1. The Contractor will not, without prior written authorisation of ACARA, disclose any Official Information to any person (unless required to do so by law).
- 5.2.2. The Contractor is authorised, subject to clause 5.3.1.a to 5.3.1.c, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.
- 5.2.3. The Contractor agrees, on request by ACARA at any time, to arrange for the Personnel and subcontractors referred to in clause 5.2.2 to give a written undertaking in a form acceptable to ACARA relating to the use and non-disclosure of Official Information.
- 5.2.4. The Contractor agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

5.3. Other security obligations of Contractor

- 5.3.1. The Contractor agrees:
- a. to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
 - b. to make its Personnel available to attend any security training provided by ACARA;
 - c. to notify ACARA of any change in the personal circumstances of Personnel referred to in 5.3.1.a;
 - d. to notify ACARA immediately if it becomes aware that a Security Incident has occurred and otherwise implement ACARA's procedures for Security Incident reporting as advised by ACARA from time to time;
 - e. not to perform the Services outside Australia without ACARA's prior written approval; and

- f. to comply with the additional security requirements specified in Item **Error! Reference source not found.**, if any, and any variations or additions to those requirements as notified by ACARA from time to time.

5.3.2. The Contractor agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to ACARA on request.

6. Privacy

6.1. Interpretation

6.1.1. In this clause 6:

Information Privacy Principle has the same meaning as it has in the *Privacy Act 1988 (Cth)*.

6.2. Obligations of Contractor in relation to privacy

6.2.1. The Contractor agrees, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by ACARA, would be a breach of an Information Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item **Error! Reference source not found.**, to the extent that they are consistent with the Information Privacy Principles.

6.2.2. The Contractor agrees to notify ACARA immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 6.

Note: For information about the *Privacy Act 1988 (Cth)* see the fact sheet referred to in Item **Error! Reference source not found.**

7. Dealing with Copies

7.1. Interpretation

7.1.1. In clause 7.2:

Copy means any document, device, article or medium in which ACARA Material, Contract Material, or Official Information is embodied.

7.2. Actions at end of contract

7.2.1. The Contractor agrees, on expiration or termination of this contract, to deal with all Copies as directed by ACARA, subject to any requirement of law binding on the Contractor.

8. Confidential Information of Contractor

8.1. Confidential Information not to be disclosed

8.1.1. Subject to clause 8.2, ACARA will not, without the prior written authorisation of the Contractor, disclose any Confidential Information of the Contractor to a third party.

8.2. Exceptions to obligations

- 8.2.1. The obligations of ACARA under this clause 8 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by ACARA to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this contract;
 - b. is disclosed by ACARA to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
 - c. is disclosed by ACARA to the responsible Minister;
 - d. is disclosed by ACARA in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by ACARA within ACARA's organisation, or with federal, state, or territory education departments, test authorities, or ministers (including MCEECDYA), where this serves the ACARA's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 8.
- 8.2.2. Where ACARA discloses Confidential Information to another person pursuant to clauses 8.2.1.a - 8.2.1.e, ACARA will notify the receiving person that the information is confidential.
- 8.2.3. In the circumstances referred to in clauses 8.2.1.a, 8.2.1.b and 8.2.1.e, ACARA agrees not to provide the information unless the receiving person agrees to keep the information confidential.

8.3. Period of confidentiality

- 8.3.1. The obligations under this clause 8 in relation to an item of information described in Item **Error! Reference source not found.** continue for the period set out there in respect of that item.

9. Liability

9.1. Proportionate liability regimes excluded

- 9.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this contract.

9.2. Indemnity

- 9.2.1. The Contractor indemnifies 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 legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by ACARA, arising from either:
 - d. a breach by the Contractor of this contract;

- e. an infringement or alleged infringement of a person's Intellectual Property or Moral Rights as a result of any use by ACARA or a third party of the Contract Material in accordance with this contract; or
 - f. an act or omission involving fault on the part of the Contractor or its Personnel in connection with this contract.
- 9.2.2. The Contractor's liability to indemnify ACARA under clause 9.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of ACARA or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 9.2.3. The right of ACARA to be indemnified under this clause 9.2 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 cost, liability, loss, damage or expense.

10. Dispute resolution

10.1. Procedure for dispute resolution

- 10.1.1. A party will not commence arbitration or court proceedings about a dispute, difference, question or claim arising out of this contract (Dispute) unless it has complied with this clause 10.
- 10.1.2. A party claiming a Dispute has arisen will notify the other party giving details of the Dispute (Notification).
- 10.1.3. On receipt of a Notification each party agrees to negotiate with the other party in good faith to resolve such a Dispute.
- 10.1.4. If the Dispute is not resolved under clause 10.1.3 within 5 business days of the Notification, the parties will refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited (ACDC) for resolution in accordance with the Mediation Guidelines of the ACDC and will enter into ACDC's standard mediation agreement in force at the time this contract is executed by the parties, 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 10.
- 10.1.5. If the Dispute is not resolved under clause 10.1.4 within 10 days of referral to ACDC, either party may initiate proceedings in a court.

10.2. Continued performance

- 10.2.1. Despite the existence of a Dispute, the Contractor will (unless requested in writing by ACARA not to do so) continue to perform the Services.

10.3. Exemption

- 10.3.1. This clause 10 does not apply to:
- a. action by ACARA under or purportedly under clause 11.1;
 - b. action by either party under or purportedly under clause 11.2; or
 - c. legal proceedings by either party seeking urgent interlocutory relief.

11. Termination or reduction in scope of Services

11.1. Termination for convenience

- 11.1.1. ACARA may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the Services immediately.
- 11.1.2. The Contractor agrees, on receipt of a notice of termination or reduction:
- to stop or reduce work as specified in the notice;
 - to take all available steps to minimise loss resulting from that termination or reduction; and
 - to continue work on any part of the Services not affected by the notice.
- 11.1.3. In the event of termination under clause 11.1.1, ACARA will be liable only:
- to pay any Instalment relating to Services completed before the effective date of termination;
 - to reimburse any expenses the Contractor unavoidably incurs relating entirely to Services not covered under clause 11.1.3.a;
 - to pay any allowance and meet any costs unavoidably incurred under Item **Error! Reference source not found.** before the effective date of termination; and
 - to provide the facilities and assistance necessarily required under Item **Error! Reference source not found.** before the effective date of termination.
- 11.1.4. ACARA will not be liable to pay amounts under clause 11.1.3.a and 11.1.3.b which would, added to any fees already paid to the Contractor under this contract, together exceed the fees set out in Item **Error! Reference source not found.**
- 11.1.5. In the event of a reduction in the scope of the Services under clause 11.1.1, ACARA's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.
- 11.1.6. The Contractor will not be entitled to compensation for loss of prospective profits.

11.2. Termination for fault

- 11.2.1. If a party fails to satisfy any of its obligations under this contract, then the other party - *if it considers that the failure is:*
- not capable of remedy* - may, by notice, terminate the contract immediately; or
 - capable of remedy* - may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the contract immediately by giving a second notice.
- 11.2.2. ACARA may also by notice terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Contractor:

- a. *being a corporation* - comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*, or has an order made against it for the purpose of placing it under external administration; or
- b. *being an individual* - becomes bankrupt or enters into a scheme of arrangement with creditors.

12. Notices

12.1. Format, addressing and delivery

12.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Contractor to ACARA* - addressed to the Project Manager at the address specified in Item **Error! Reference source not found.** or as otherwise notified by ACARA; or
- b. *if given by ACARA to the Contractor* - given by the Project Manager (or any superior officer to the Project Manager) and addressed (and marked for attention) as specified in Item **Error! Reference source not found.** or as otherwise notified by the Contractor.

12.1.2. 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 electronic mail or facsimile transmission.

12.2. When effective

12.2.1. 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.

12.2.2. 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.

13. General provisions

13.1. Occupational health and safety

13.1.1. The Contractor agrees, in carrying out this contract, to comply with:

- a. all relevant legislation, codes of practice and national standards relating to occupational health and safety; and

all applicable policies and procedures relating to occupational health and safety including those that apply to ACARA's premises when using those premises.

13.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 13.1.1, the Contractor will comply with those policies and procedures that produce the highest level of health and safety.

13.2. Audit and access

13.2.1. The Contractor agrees:

- a. 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 Official Resources are located; and
- b. to permit those persons to inspect and take copies of any Material relevant to the Services.

13.2.2. The rights referred to in clause 13.2.1. are subject to:

- a. ACARA providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

13.2.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause 13.2.

13.2.4. This clause 13.2 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

Note: For information about the *Auditor-General Act 1997 (Cth)* see the fact sheet referred to in Item **Error! Reference source not found.**

13.3. Insurance

13.3.1. The Contractor agrees:

- a. to effect and maintain the insurance specified in Item **Error! Reference source not found.**; and
- b. on request, to provide proof of insurance acceptable to ACARA.

13.3.2. This clause 13.3 continues in operation for so long as any obligations remain in connection with the contract. Any professional indemnity insurance coverage must be in effect from the commencement of the contract and maintained for the period two (2) years after the expiry of the contract.

13.4. Extension of provisions to subcontractors and Personnel

13.4.1. In this clause 13.4:

Requirement means an obligation, condition, restriction or prohibition binding on the Contractor under this contract.

13.4.2. The Contractor agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this contract imposes all relevant Requirements on the other party.

13.4.3. The Contractor agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by ACARA.

13.5. Conflict of interest

13.5.1. In this clause 13.5:

Conflict means any matter, circumstance, interest, or activity affecting the Contractor, its Personnel or subcontractors which may or may appear to impair the ability of the Contractor to provide the Services to ACARA diligently and independently.

13.5.2. The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

13.5.3. If, during the period of this contract a Conflict arises, or appears likely to arise, the Contractor agrees:

- a. to notify ACARA immediately;
- b. to make full disclosure of all relevant information relating to the Conflict; and
- c. to take any steps ACARA reasonably requires to resolve or otherwise deal with the Conflict.

13.6. Relationship of parties

13.6.1. The Contractor is not by virtue of this contract an officer, employee, partner or agent of ACARA, nor does the Contractor have any power or authority to bind or represent ACARA.

13.6.2. The Contractor agrees:

- a. not to misrepresent its relationship with ACARA; and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

13.7. Waiver

13.7.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.

13.7.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

13.8. Variation

13.8.1. A variation of this contract is binding only if agreed in writing and signed by the parties.

13.9. Assignment

13.9.1. The Contractor cannot assign its obligations, and agrees not to assign its rights, under this contract without ACARA's prior written approval.

13.10. Survival

13.10.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:

- a. licensing of Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;

or any other provision which expressly or by implication from its nature is intended to continue.

13.11. Compliance with Legislation

13.11.1. In this clause 13.11:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

13.11.2. The Contractor agrees to comply with any Legislation applicable to its performance of this contract.

13.11.3. The Contractor acknowledges that its attention has been drawn to the fact sheet referred to in Item **Error! Reference source not found.** which provides details of some Legislation that may be applicable to the performance of the contract.

13.12. Applicable law

13.12.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item **Error! Reference source not found.**

13.12.2. The parties submit to the jurisdiction of the courts of that State or Territory.

THE SCHEDULE - CONTRACT DETAILS

1. Proposal

[To be completed following selection of the preferred Tenderer]

2. Services

(see clause 2.1.1.a)

2.1. Introduction

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is the independent authority responsible for supporting 21st century learning for all Australian students through the development of the Australian Curriculum, managing significant elements of the National Assessment Program (NAP) and conducting a national data collection and reporting program aimed at supporting school level performance reporting.

ACARA's work is carried out in collaboration with a wide range of stakeholders, including teachers, principals, governments, state and territory education authorities, professional education associations, community groups and the general public.

2.2. Background

ACARA manages the development and delivery of a major component of the National Assessment Program – the NAPLAN tests.

The National Assessment Program – Literacy and Numeracy (NAPLAN) commenced in 2008 in all Australian schools. Every year in May, all students in Years 3, 5, 7 and 9 are assessed on the same days using national tests in Reading, Writing, Language Conventions and Numeracy. In total, 19 different materials are developed annually as follows:

	Year 3	Year 5	Year 7	Year 9
Reading	2	2	2	2
Language Conventions	1	1	1	1
Numeracy	1	1	2	2
Writing	1			

The Reading test materials comprise a reading magazine, and a test booklet. In Years 7 and 9, students undertake two numeracy tests. The one Writing test is common across all year levels. Examples of the tests from previous years are available at http://www.nap.edu.au/NAPLAN/The_tests/index.html.

Test Administration Authorities (TAAs) in each state and territory are responsible for the implementation, administration and marking of the NAPLAN tests in their jurisdictions. All students are encouraged to participate in NAPLAN testing.

Information about student performance in the NAPLAN tests is released annually to the public in Summary and National Reports and on the *My School* website, which provides, among other information, school level NAPLAN results.

2.3. Purpose

The purpose of this project is to provide alternative NAPLAN test formats to students with disability to enable maximum participation in the National Assessment Program, and to ensure that the National Assessment Program meets its obligations under the *Disability Discrimination Act 1992* (Cth) and the *Disability Standards for Education 2005* (Cth). This includes the development of materials, coordination of orders, and dissemination of materials. Three types of alternative formats are required, each of which is available for separate or combined tender:

- Braille (and associated materials/models)
 - Braille test-books and associated models are available for students who normally use Braille in their classroom activities.
- Large Print and Black & White Print materials
 - Large print test-books are available for students who generally have a vision impairment. Black and White print test-books are available for students who have vision impairment or are colour blind. Black and white print test-books are also provided to schools who provide coloured overlays (eg for students with Irlen Syndrome).
- Electronic format
 - The electronic format test is intended for students who, due to disability, regularly access the curriculum in the classroom through assistive technology. Such students might have severe vision problems but are not Braille proficient and require a font size significantly larger than N36, or have severe physical disabilities which restrict movement. In 2011 an electronic PDF format was trialled with 56 eligible students.

The project also requires the Contractor to review the tests provided by ACARA and advise on items that may not translate effectively to alternative formats, and work with ACARA to develop replacement items and/or to remove items from the test.

ACARA must approve all final alternative test forms prior to production.

ACARA acknowledges the *Disability Discrimination Act (1992)* (DDA) (Cth)¹, and the *Disability Standards for Education (2005)* and its obligation as an education and training service provider to articulate the rights of students with disability to access, engage and achieve in high quality schooling on the same basis as students without disability.

Currently, ACARA defines students with disability in accordance with the DDA. Contractors must familiarise themselves with these key pieces of legislation.

¹ http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/

Role of the Contractor

The Contractor is expected to work in close collaboration with ACARA's Project Manager at all stages of the project to ensure that ACARA's assessment specifications, protocols, project deliverables and timelines are met. 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.

The Contractor is required to ensure the highest level of security is maintained throughout the entire project. This applies to the Contractor's internal processes (storage, development, production, despatch, delivery etc) and staff, and to any sub-contractors hired in connection with the project, including couriers and printers.

The Contractor must engage with ACARA prior to and throughout the development phase of the special print materials. This is to allow ACARA to feedback and provide input, ensuring alignment between the special print materials produced and the format and content of the regular NAPLAN tests. The final version of the materials must be agreed by ACARA before final master copies are produced. The Contractor is also responsible for coordinating the ordering process for jurisdictions, in liaison with ACARA, and for securely despatching test materials to interstate locations.

The Contractor will receive standard (InDesign CS5) files of all the test materials from ACARA via secure ftp, and all subsequent file transfers of secure test materials between ACARA and the Contractor will occur via ACARA's secure ftp site. All relevant specifications pertaining to the standard NAPLAN tests must be adhered to and the final alternative forms must align with the standard tests for marking purposes.

The Contractor should be aware of and comply with the *National Protocols for Test Administration*, which establishes minimum security requirements (available at http://www.nap.edu.au/NAPLAN/School_support/), and the *NAPLAN Style Guide* for test specifications which will be provided to prospective tenderers when registering their interest in submitting a Tender.

2.4 Scope of project

Deliverable 1 – Project Plan

The Contractor/s must provide a detailed Project Plan after formal acceptance of an offer for this work. This project plan must be approved by ACARA and include the following:

- An overall project management plan which includes a methodology for item review / redevelopment for transcription suitability.
- A detailed description of the quality control processes that will be employed to ensure compliance with test specifications and monitor item review and translation at each key stage, including the names of all people involved in the process and their respective roles.
- An assessment of the project risk factors related to project management, including highest level security maintenance, and strategies to ensure

project needs are met within the required timeframe and to the highest standard.

ACARA requires the opportunity to audit risk management during the project, including where appropriate, attendance at Contractor/s place of work and or receiving briefings on the management of risk.

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

- A detailed breakdown of preliminary and final orders by jurisdictions
- Actual or agreed timelines with jurisdictions negotiated within the scope of this contract
- An outline of any incidents or issues encountered that may affect the delivery or reputation of the project in 2012 or subsequent years.

Deliverable 2 – Disability Accessibility Assessment Report

The Contractor will:

- Review all test forms for the suitability of items for direct (ie unaltered) transcription to each alternative format by relevant disability experts.
- Work with ACARA test managers to develop alternative or modified items for any items considered unsuitable for direct transcription to the required alternative format (it is not anticipated that any alterations to test items will be required for the Electronic Format tests)
- Ensure that the answer keys for any alternative or modified items align with the answer keys for the standard tests, and that short answer responses (Numeracy tests) result in the same answer as the standard tests.
- Provide a report to ACARA confirming the suitability of items for transcription or proposing alternative / modified items for approval by ACARA.

ACARA will make the final decision on the inclusion of alternative or modified items in the tests, giving consideration to the expert disability advice provided by the Contractor and the overall requirements of the testing program.

Deliverable 3 – Alternative test form master copies

The final version of the materials must be agreed by ACARA before final master copies are produced.

The Contractor will ensure that all master copies are reviewed by the appropriate disability expert/s to ensure they meet relevant disability standards and guidelines as determined by ACARA, including guidelines produced by *The Round Table on Information Access for People with Print Disabilities*.

The Contractor will provide master copies of all materials produced, and unused test books and materials to ACARA at the conclusion of the project.

Braille

For special print materials in Braille (including graphics), the Contractor will:

- Based on ACARA's approval of the disability assessment report, create master copies of the NAPLAN tests provided by ACARA, as required by

jurisdictions to meet individual students' needs. The following formats will be offered to jurisdictions:

- Standard UEB Grade 2 single line spaced
 - Standard UEB Grade 2 double line spaced
 - Standard UEB Grade 1 double line spaced
 - Other formats may be agreed by negotiation with ACARA and jurisdictions.
- Develop models for Braille items as agreed with ACARA.
 - Create desktop-published master transcripts for the Braille tests.
 - The total Braille Master production requirement for 2012 will be confirmed by jurisdictions within the agreed timeline. It is anticipated that approximately 33 masters may be required:

Master set description	Yr 3	Yr 5	Yr 7	Yr 9	Writing
UEB2 (single spaced)		4	5	5	1
UEB2 (double spaced)	4	4			1
UEB1 (double spaced)	4	4			1

Large Print and Black and White

For Large Print and Black and White Print, the Contractor will:

- Based on ACARA's approval of the disability assessment report, create fully desk-top published, edited and proofed Large Print and Black and White masters of all test materials, in the following formats:
 - Black and White
 - A4, N18 font
 - A4, N24 font
 - A3, N18 font
 - A3, N24 font
 - A3, N36 font
- The total Large Print and Black and White Master production requirement for 2012 will be confirmed by jurisdictions within the agreed timeline. It is anticipated that approximately 114 masters will be required as follows:

Master set description	Yr 3	Yr 5	Yr 7	Yr 9	Writing
Black & White	4	4	5	5	1
Large Print: A4, N18 font	4	4	5	5	1
Large Print: A4, N24 font	4	4	5	5	1
Large Print: A3, N18 font	4	4	5	5	1

Large Print: A3, N24 font	4	4	5	5	1
Large Print: A3, N36 font	4	4	5	5	1

Electronic Format

The Contractor will provide the NAPLAN tests in an alternate electronic format that will enable computer access to the tests for students not otherwise able to access the tests.

- The Contractor will propose and, following agreement from ACARA, develop an appropriate basic format for the tests (eg PDF) that meets the following requirements:
 - Compatibility with general classroom standard operating environments, and deliverable to schools in CD format.
 - Compatibility with common screen readers for only those parts (responses/ test materials etc) that students are allowed to have read to them (see 2012 *National Protocols for Test Administration*).
 - Test materials must be password protected (separate password for each domain).
 - Any inherent grammar or spell checking facility must be completely disabled and locked.
 - Enable responses to be selected using radio-type buttons (multiple choice questions) or entered in text boxes (short answer responses).
 - Provide ease of access when moving (eg scrolling, paging) through content.
 - Enable users to zoom in to maximise text size, with responses resizing accordingly.
 - Enable standard shortcuts for moving through content to be used.
 - Provide regular automatic saving to an output file.
- The Contractor will provide training support to jurisdiction personnel in the use of the interactive electronic format and instruction sheets for test administrators to accompany the tests in schools.
- The total Electronic Format Master production requirement for 2012 will be confirmed by jurisdictions within the agreed timeline. It is anticipated that approximately 20 masters will be required as follows:

Master set description	Yr 3	Yr 5	Yr 7	Yr 9	Writing
Electronic format	4	4	5	5	2

- If a format other than PDF is proposed, and agreed to by ACARA, additional sample materials for student familiarisation purposes may be required.

Deliverable 4 – Alternative test form student copies

- Print / emboss and bind Braille/ Large Print/ Black and White format test materials, and produce sets of (Braille) associated models from masters in the number required by jurisdictions.
- Produce and package electronic format test materials on CDs and provide accompanying instruction sheets from masters in the number required by jurisdictions.
- Produce and provide sample electronic format test materials (if required) to ACARA.
- Package materials and arrange delivery to interstate and intrastate destinations in accordance with security requirements outlined in the national protocols.

Deliverable 5 – transcription of completed Braille test responses (Braille tender only)

The successful Contractor may be required to transcribe student responses from Braille to print following the NAPLAN test, if required by jurisdictions.

Deliverable 6 – Ordering, production and despatch and marking coordination

The successful Contractor will:

- Work with ACARA to ensure appropriate timelines are developed for despatch of materials to jurisdictions, to meet jurisdiction requirements.
- Develop a process for jurisdictions to advise of anticipated and confirmed student requirements for materials.
- Provide clear instructions and timelines for jurisdictions and ACARA on the process for ordering special print materials.
- Determine timelines to ensure delivery of special print materials to all states and territories in line with the guidelines provided here.
- Liaise with all states and territories in ordering and dispatch of special print material.
- Receive and coordinate orders for special print materials from jurisdictions.
- Monitor the production of special print materials (including production by any sub-contractors) to ensure timelines and security requirements are met.
- Ensure special print materials are appropriately bound, bundled and shrink-wrapped for secure delivery.
- Communicate as required with ACARA and provide regular updates to ACARA on the progress of special print materials production.

2.5 Materials to ACARA

At each completion phase of the deliverables outlined above, the Contractor must provide ACARA with a report or an agreed sample of each of the materials produced, as appropriate. The Contractor must also provide ACARA opportunities

to review and feedback on the development of the materials prior to and during the development phase.

2.6 Communication and Evaluation

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

The Contractor selected to deliver any items above will be required to provide ACARA with a project evaluation/summary report detailing successful components of the project delivery, any obstacles encountered throughout the development and delivery phase of the project and any areas requiring improvement in the future. At any time throughout the project coordination, development/production, implementation and delivery phase, ACARA may make a request for a project status update, either in a formal format or otherwise (eg verbal). ACARA will provide a template for the project evaluation/summary report.

3. Commencement and Time-frame

(see clause 2.1.1.d)

Commencement Date: 02 December 2011

Note to Providers: All timeframes will be confirmed during contract negotiations, and the final timeframe will be included in the Contract. Tenderers should use the following information as the basis for preparing their Application. Although ACARA is prepared to discuss changes to the proposed timeframe, it reserves the right not to alter the proposed timeframe.

Time-frame

TIMELINE FOR THE PRODUCTION OF SPECIAL PRINT MATERIALS	
December	<ul style="list-style-type: none"> • Project initiation and planning • Confidentiality forms completed by all officers and sub-Contractors of Contractor who are involved in production • ACARA provides final test forms in electronic InDesign format to Contractor via secure ftp site • Disability Assessment undertaken • Advice provided via ACARA to all jurisdictions regarding coordination and production timelines and requirements
January	<ul style="list-style-type: none"> • Confidentiality forms completed by all officers and sub-Contractors of Contractor who are involved in printing, handling and dispatch • Disability assessment conducted, including expert review of original test forms
February	<ul style="list-style-type: none"> • Liaison with ACARA regarding suitability of test items for transcription and alternative proposals • Provision of Disability Assessment Report and approval of alternative/modified items • Anticipated special print requirements and orders provided by all jurisdictions
March	<ul style="list-style-type: none"> • Production of special print masters and materials • Jurisdictions confirm special print requirements and orders, including delivery details for receipt of materials • Review of masters by appropriate disability experts to ensure materials are in accordance

	with relevant standards and guidelines
April	<ul style="list-style-type: none"> • Printing and binding of special print materials • Dispatch by secure person-to-person courier of all special print materials interstate to a central location nominated by each jurisdiction
May	<ul style="list-style-type: none"> • Test week • Following test week and on receipt of test materials at the processing centre, commence transcription of Braille responses
June/July	<ul style="list-style-type: none"> • Project completion report delivered • Invoice forwarded from Contractor to Project Manager