DRAFT CONTRACT

DRAFT CONTRACT IN RELATION TO THE NATIONAL ASSESSMENT AND SURVEYS ONLINE PROGRAM (NASOP): 2014 DEVELOPMENT STUDY TEST CREATION AND DELIVERY SYSTEM

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

DRAFT CONTRACT IN RELATION TO THE NATIONAL ASSESSMENT AND SURVEYS ONLINE PROGRAM (NASOP): 2014 DEVELOPMENT STUDY TEST CREATION AND DELIVERY SYSTEM

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 certain consultancy services to provide an online item and test creation, review and delivery system.

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 Contact Authority** means the person specified (by name or position) in Item Schedule 18 or any substitute notified by ACARA;
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;

ACARA Project Timetable means the Timeframe in Item Schedule 15 to this contract headed 'Time-Frame', setting out ACARA's timetable (without derogating from any obligation to complete earlier under this contract) for the expected and the mandatory completion dates of specified obligations of the Contractor in respect of key Milestones and other relevant matters;

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;

Australian Government means the Commonwealth of Australia;

Business Day (in a place) means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item 26;

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 21;

Contract Material means any Material (including Existing Material and Third Party Material):
   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 16;

Fair Work Principles means the principles, requirements, information and material as set out in the 'Fair Work Principles User Guide' published by the Australian Government (currently available at www.deewr.gov.au/fairworkprinciples), as amended from time to time;
GST has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Instalment means the fee payable under clause 4.1.1.a and Item 11 in relation to a specified part or the whole of the Services;

Installation Completion Certificate means, in respect of any Service that needs to be connected or installed by the Contractor, a certificate in a form reasonably specified by ACARA, issued by the Contractor to ACARA pursuant to clause 2.8.6;

Intellectual Property includes:

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:

d. Moral Rights;

e. the non-proprietary rights of performers; or

f. rights in relation to Confidential Information;

Key Project Document means any document or Material created, maintained or controlled by the Contractor relevant to this contract that is or may reasonably be expected to be subject to revision or successive versions, and to which ACARA will or may have access to under this contract, and without limitation includes each document (if any) specified in clause 3.1.1 and all Project Plans;

Material means any thing in relation to which Intellectual Property rights arise;

Minimum Performance Requirement means in respect of a Service or other obligation of the Contractor pursuant to this contract, the minimum standard of performance specified (no matter how named or referred to) in this contract (including a schedule to this contract) or otherwise agreed in writing between the parties;

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;

**Performance Objective** means in respect of a Service or other obligation of the Contractor pursuant to this contract, the expected standard of performance (in excess of the Minimum Performance Requirement) specified as such in this contract (including a schedule to this contract) or otherwise agreed in writing between the parties;

**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.

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

**Project Manager** means the person specified (by name or position) in Item 7 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;
SCSEEC means the Standing Council on School Education and Early Childhood (formerly the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) and then the Ministerial Council for Education, Early Childhood Development and Youth Affairs and (MCEECDYA) comprised of State, Territory, Australian Government and New Zealand Ministers with responsibility for the portfolios of school education and early childhood development and includes any successor or replacement body with the same or similar functions;

Services means the services described in Item 2 and includes the provision to ACARA of the Material specified in Item 3; and

Specified Personnel means the Personnel specified in Item 10 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 3;

c. adopt relevant best practice, including any ACARA, Commonwealth or industry standards and guidelines including those specified in Item 4;

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 6.

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. The Contractor’s Personnel

2.3.1. The Contractor must only employ or otherwise directly or indirectly engage persons or organisations to perform or support the Services who:

a. are properly qualified and adequately experienced to perform the duties allocated to them;

b. exhibit a degree of professional skill, care, diligence and timeliness which may reasonably be expected of a skilled professional person suitably qualified and experienced in the performance of services similar to the Services;

c. are of known reliability and integrity and may be reasonably relied upon not to breach the terms and conditions of this contract including, without limitation, those relating to confidentiality, privacy, security and safety;

d. comply with all lawful directions of ACARA relevant to this contract;

e. do not represent in any way that they are employees of ACARA or the Australian Government;

f. behave with integrity and in an ethical manner; and

g. while on ACARA or other Australian Government premises, carry and display at all times appropriate company and/or ACARA identification and be easily visually identifiable as the Contractor’s Personnel through the way in which that identification is displayed or through such other methods as may be agreed between the parties.

2.3.2. The Contractor must ensure that its Personnel are aware of all requirements under this contract that relate to their duties in respect of the provision of Services and the performance or support of this contract, and must take all reasonable action to ensure that its Personnel strictly comply with those requirements.

2.3.3. The Contractor must actively manage the performance of its Personnel at all times.

2.3.4. Notwithstanding any other right or remedy of ACARA pursuant to this contract or by law, the Contractor shall promptly remove and replace any of its Personnel, including Specified Personnel, from work in respect or support of this contract where reasonably requested by ACARA to do so.

2.3.5. The Contractor is responsible for all wages, salaries and other payments to its Personnel and must fully comply with all relevant laws or other Government requirements in relation to its Personnel including labour and industrial relations laws and those relating to working conditions, salary, wages, the payment of any relevant Tax, superannuation, levy, ‘pay as you go’ or other income tax remissions, and any other amounts, remissions allowances including those
under any industrial awards or agreements relevant to this contract. Upon request, the Contractor must provide such evidence as ACARA may require and otherwise demonstrate to ACARA that it has complied with these obligations.

2.3.6. If ACARA is at any time held at any time to be liable for payment of any amount within the scope of clause 2.3.5, the Contractor will, to the extent permitted by law, indemnify ACARA for such amounts and any related costs, expenses or liability of any kind (including interest).

2.3.7. Clauses 2.3.5 - 2.3.6 survive the expiry or earlier termination of the contract.

2.4. **Subcontractors**

2.4.1. The Contractor agrees not to subcontract the performance of any part of the Services without ACARA’s prior written approval.

2.4.2. ACARA may impose any conditions it considers appropriate when giving its approval under clause 2.4.1.

2.4.3. 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 8.

2.4.4. The Contractor agrees to make available to ACARA (if requested), details of all subcontractors engaged in the performance of the Services.

2.4.5. 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.

2.5. **Specified Personnel**

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

2.5.2. If Specified Personnel are unable to perform the work as required under clause 2.5.1, the Contractor agrees to notify ACARA immediately.

2.5.3. 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.

2.5.4. If clause 2.5.2 or clause 2.5.3 applies, the Contractor will provide replacement Personnel acceptable to ACARA at no additional cost and at the earliest opportunity.

2.6. **Responsibility of Contractor**

2.6.1. 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.

2.6.2. Except as otherwise specifically agreed in writing to the contrary by ACARA, all Services, and work and other activities relating to the provision of all Services and the performance of all other obligations of the Contractor under this contract (and all related matters) must be performed in Australia.

2.7. Standard of care

2.7.1. The Contractor must perform the Services:

a. in accordance with suitable and appropriate ‘best practice’ methods and practices; and

b. in a timely, safe, prudent and reasonable manner and with the degree of professional skill, care, diligence which may reasonably be expected of a skilled, professional person suitably qualified and experienced in the performance of services similar to the Services.

2.8. Service requirements

2.8.1. The Contractor must provide all Services in accordance with this contract.

2.8.2. The Contractor must ensure that all Services:

a. are effectively planned, managed and supervised so as to ensure they are performed as required by this contract;

b. are implemented, performed, supplied and disengaged in accordance with the requirements of this contract and in accordance with an adequate Project Plan; and

c. comply with all relevant Specifications.

2.8.3. Without limitation to any other provision of this contract, all Project Plans must be documented and maintained, and all relevant work and activities conducted and managed in accordance with an accepted project management methodology approved by ACARA in writing.

2.8.4. The Contractor must meet or exceed all Minimum Performance Requirements (if any) and use its best efforts to meet or exceed all Performance Objectives (if any) in respect of the Services.

2.8.5. Notwithstanding any other provision of this contract, the Contractor must comply with the ACARA Project Timetable.

2.8.6. Where the Services require connection or installation of any kind, the Contractor must promptly provide a written Installation Completion Certificate to ACARA certifying that the item has been installed, tested and commissioned as operational by the Contractor when such work has been completed.
2.9. Training

2.9.1. The Contractor must provide the training (if any):

a. specified in any relevant schedule to this contract as a specific Service; and

b. which is otherwise specified to be included as part of any relevant Product or Service.

2.9.2. The Contractor shall keep ACARA informed of all relevant educational or training courses conducted by the Contractor or its affiliates relating to any Services provided pursuant to this contract and associated matters or issues.

2.9.3. Except as specifically agreed to the contrary in writing by ACARA, all training provided or arranged by the Contractor in accordance with this contract shall include the provision to ACARA of a copy of all training materials relevant to the training provided (which for ‘train the trainer’ training will include, without limitation and except as may otherwise be agreed, trainer manuals, lesson plans, course outlines, training aids and trainee manuals) together with a licence for ACARA to reproduce and use such material to conduct its own training or otherwise use it in support of its business and operations.

2.10. Documentation

2.10.1. Except as otherwise provided in a relevant schedule to this contract (or otherwise specifically agreed in writing by ACARA), all Services must be provided with comprehensive documentation including, where relevant, in respect of their installation, configuration, use, operation, optimisation, support and maintenance.

2.10.2. In addition to any manuals or documentation normally included as part of an Service (and except as specifically agreed to the contrary by ACARA in writing) the Contractor shall if requested by ACARA provide ACARA at no cost with at least one copy of all manuals and other documentation (including updates) related to each Service that the Contractor publishes during the term of this contract. Such manuals and other documentation will, without limitation, include all user, training, technical and maintenance manuals.

2.10.3. Where generally available, the Contractor shall supply the documentation referred to in clauses 2.10.1 and 2.10.2 to ACARA in such electronic format and on such type of media as ACARA may reasonably require.

2.10.4. The Contractor licences ACARA to use and reproduce the whole or any part of the documentation referred to in clauses 2.10.1 and 2.10.2 (other than third party documentation that the Contractor advises cannot reasonably be so licensed) for reference, support, training and any purpose in support of ACARA’s business and operations.

2.10.5. Except as otherwise specifically agreed in writing by ACARA all documentation must be in English.
3. CERTIFICATION OF KEY PROJECT DOCUMENTS BY ACARA

3.1. Key Project Documents

3.1.1. Documents include (without limitation):

   a. Risk management and security plan;

   b. Data Extract Specification;

   c. Test Delivery Report pro forma; and

   d. ^To be completed following selection of the preferred Tenderer^.

3.1.2. The Contractor must submit each completed Key Project Document to ACARA to enable ACARA to thoroughly review it for certification and with sufficient time for the Contractor to make such further amendments as may be required to ensure its certification by the relevant date specified in the ACARA Project Timetable or any relevant Project Plan or, if no date is specified, by the date it will be reasonably required to be finalised for the purposes of this contract.

3.1.3. ACARA must, within a reasonable time of the receipt of all or part of a Key Project Document advise the Contractor Representative either that it:

   a. certifies; or

   b. does not certify;

   all or the relevant part of the Key Project Document.

3.1.4. ACARA must provide reasonable details of why it does not certify any part of a Key Project Document and the Contractor must promptly take all reasonable action to address those reasons and resubmit the Key Project Document (or the relevant part of it) in accordance with clause 3.1.2 for further consideration of certification.

3.1.5. The Contractor must amend, revise or enhance the Key Project Document as reasonably directed by ACARA at any time either before or after certification and submit those amendments, revisions or enhancements as soon as reasonably possible to ACARA for certification in accordance with clause 3.1.2.

3.1.6. The Contractor may at any time propose its own amendments, revisions or enhancements to a Key Project Document and submit them to ACARA’s Project Manager for certification in accordance with clause 3.1.2, providing however that such proposals must be in accordance with any reasonable requirements specified by ACARA, for example in respect of the frequency of such requests or criteria that must be met before a proposed change will be considered warranted.

3.1.7. The Contractor acknowledges that ACARA is relying on ACARA’s expertise in preparing the Key Project Documents. ACARA’s certification does not in any way reduce the Contractor’s obligations or liabilities under this contract or at law or in any way waive, estop, diminish or otherwise affect the rights of ACARA under this contract or at law.
3.1.8. Without limitation to any other obligation of the Contractor under this contract or at law, and except as otherwise specifically agreed in writing by the ACARA Contract Authority, the Contractor must comply (and otherwise act in accordance) with all Key Project Documents as certified by ACARA.

3.2. **Version Control**

3.2.1. The Contractor must implement and observe systematic processes and procedures (Version Control) that will ensure that:

a. all Key Project Documents have a unique name and document number;

b. the current version of all Key Project Documents is known and available to all relevant Personnel of both the Contractor and ACARA, and is easily ascertainable;

c. that all copies of Key Project Documents in operational use within its organisation are updated or replaced as soon as they become obsolete;

d. that all copies of Key Project Documents prominently include a version number and complete version history, the document owner, the person making the change, the status of the change (for example “draft” or “approved”), the date of any ACARA certification and the details of the certifying officer and the date the change became effective;

e. a comprehensive archive is established and maintained and available to ACARA of all versions of Key Project Documents, clearly showing in respect of each Key Project Document all changes from each previous version, together with reasonable information concerning the reasons and context of the change;

f. the integrity of documents is maintained (for example by comprehensive page and clause numbering, by audit and quality control and by use of unalterable electronic reference versions); and

g. ACARA receives copies of all versions of Key Project Documents in an electronic format.

4. **Fees, allowances and assistance**

4.1. **Principal obligations of ACARA**

4.1.1. ACARA agrees to:

a. pay the fees in the Instalments specified in Item 11;

b. pay the allowances and meet the costs specified in Item 12;

c. make all payments as and when specified in Item 6; and

d. provide facilities and assistance as specified in Item 13.

4.2. **ACARA’s rights to defer payment**

4.2.1. 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.

4.3. **Taxes, duties and government charges**

4.3.1. Except as provided by this clause 4.3, 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.

4.3.2. 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.

4.3.3. 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.

4.3.4. 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.

4.4. **Superannuation**

4.4.1. 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 11.

5. **Intellectual Property**

5.1. **Use of ACARA Material**

5.1.1. ACARA agrees to provide Material to the Contractor as specified in Item 14.

5.1.2. 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.

5.1.3. The Contractor agrees to use the ACARA Material strictly in accordance with any conditions or restrictions set out in Item 15, and any direction from ACARA.

5.2. **Rights in Contract Material**

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

5.2.2. Clause 5.2.1 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.

5.2.3. 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.
5.2.4. 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.

5.2.5. 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 5.2 on request by ACARA.

5.2.6. 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 5.2.

5.2.7. In all publications produced by the Contractor for ACARA under this contract, the Contractor will include the copyright statement set out in Item 17, or such other statement as notified to the Contractor by ACARA from time to time.

5.3. **Intellectual Property Register**

5.3.1. 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.

5.3.2. 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.

5.4. **Moral Rights**

5.4.1. In this clause 5.4:

**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 18;

but does not include false attribution of authorship.

5.4.2. 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 18.

5.4.3. Where clause 5.4.2 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 18.

5.4.4. This clause 5.4 does not apply to any ACARA Material incorporated in the Contract Material.

6. Confidentiality of Official Information and other security obligations

6.1. Interpretation

6.1.1. In this clause 6:

<table>
<thead>
<tr>
<th>Official Resources</th>
<th>includes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Official Information;</td>
<td></td>
</tr>
<tr>
<td>b. people who work for or with ACARA; and</td>
<td></td>
</tr>
<tr>
<td>c. assets belonging to (even if in the possession of contracted providers) or in the possession of ACARA;</td>
<td></td>
</tr>
</tbody>
</table>

| 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. |
6.2. **Confidentiality of Official Information**

6.2.1. The Contractor will not, without prior written authorisation of ACARA, disclose any Official Information to any person (unless required to do so by law).

6.2.2. The Contractor is authorised, subject to clause 6.3.1.a to 6.3.1.c, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.

6.2.3. The Contractor agrees, on request by ACARA at any time, to arrange for the Personnel and subcontractors referred to in clause 6.2.2 to give a written undertaking in a form acceptable to ACARA relating to the use and non-disclosure of Official Information.

6.2.4. The Contractor agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

6.3. **Other security obligations of Contractor**

6.3.1. 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 6.3.1.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 19, if any, and any variations or additions to those requirements as notified by ACARA from time to time.

6.3.2. The Contractor agrees to implement security procedures to ensure that it meets its obligations under this clause 6 and will provide details of these procedures to ACARA on request.

7. **Privacy**

7.1. **Interpretation of this clause**

7.1.1. In this clause 7, the following terms have the same meaning as they have in the *Privacy Act 1988 (Cth)*:

   an agency;

   APC (approved privacy code);
contracted service provider;

IPPs (Information Privacy Principles); and
NPPs (National Privacy Principles).

7.2. Obligations of Service Provider in relation to Personal Information

7.2.1. The Contractor acknowledges that to the extent that it provides Services under this contract that it is a contracted service provider.

7.2.2. The Contractor agrees to the extent that the Contractor has access to or deals with Personal Information in connection with this contract:

a. to use or disclose such Personal Information only for the purposes of this contract;

b. to carry out and discharge the obligations contained in the IPPs as if it were an agency;

c. not to do any act or engage in any practice that, if done or engaged in by an agency, would be a breach of an IPP;

d. not to use or disclose such Personal Information in breach of section 16F [Direct marketing] of the Privacy Act (where applied to the Contractor), unless that use or disclosure is explicitly required under this contract;

e. not to engage in an act or practice that would breach an NPP (particularly NPPs 7 to 10) or an APC (where applied to the Contractor), unless that act or practice is explicitly required under this contract;

f. to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this contract that are inconsistent with an NPP or an APC binding on a party to this contract);

g. to notify ACARA immediately if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 7, whether by the Contractor or its Personnel;

h. to comply with any directions, guidelines, determinations or recommendations of the Australian Information Commissioner, the Privacy Commissioner or ACARA, to the extent that they are consistent with the requirements of this clause 7; and

i. to ensure that all Personnel required to deal with Personal Information for the purposes of this contract are made aware of the obligations of the Contractor set out in this clause 7.

7.2.3. The Contractor agrees to ensure that any Subcontract entered into by the Contractor for the purpose of fulfilling its obligations under this contract imposes on the Subcontractor the same obligations that the Contractor has under this clause (including this requirement in relation to Subcontracts).
8. **Dealing with Copies**

8.1. **Interpretation**

8.1.1. In clause 8.2:

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

8.2. **Actions at end of contract**

8.2.1. 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.

9. **Confidential Information of Contractor**

9.1. **Confidential Information not to be disclosed**

9.1.1. Subject to clause 9.2, ACARA will not, without the prior written authorisation of the Contractor, disclose any Confidential Information of the Contractor to a third party.

9.2. **Exceptions to obligations**

9.2.1. The obligations of ACARA under this clause 9 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 another agency including SCSEEC, 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 9.

9.2.2. Where ACARA discloses Confidential Information to another person pursuant to clauses 9.2.1.a - 9.2.1.e, ACARA will notify the receiving person that the information is confidential.

9.2.3. In the circumstances referred to in clauses 9.2.1.a, 9.2.1.b and 9.2.1.e, ACARA agrees not to provide the information unless the receiving person agrees to keep the information confidential.
9.3. Period of confidentiality
9.3.1. The obligations under this clause 9 in relation to an item of information described in Item 21 continue for the period set out there in respect of that item.

10. Liability

10.1. Proportionate liability regimes excluded
10.1.1. 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.

10.2. Indemnity
10.2.1. 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.

10.2.2. The Contractor’s liability to indemnify ACARA under clause 10.2.1 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.

10.2.3. The right of ACARA to be indemnified under this clause 10.2 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.

11. Dispute resolution

11.1. Procedure for dispute resolution
11.1.1. 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 11.

11.1.2. A party claiming a Dispute has arisen will notify the other party giving details of the Dispute (Notification).
11.1.3. On receipt of a Notification each party agrees to negotiate with the other party in good faith to resolve such a Dispute.

11.1.4. If the Dispute is not resolved under clause 11.1.3 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 11.

11.1.5. If the Dispute is not resolved under clause 11.1.4 within 10 days of referral to ACDC, either party may initiate proceedings in a court.

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

11.3. Exemption
11.3.1. This clause 11 does not apply to:
   a. action by ACARA under or purportedly under clause 12.1;
   b. action by either party under or purportedly under clause 12.2; or
   c. legal proceedings by either party seeking urgent interlocutory relief.

12. Termination or reduction in scope of Services

12.1. Termination or reduction in scope for convenience
12.1.1. ACARA may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the Services immediately.

12.1.2. The Contractor agrees, on receipt of a notice of termination or reduction:
   a. to stop or reduce work as specified in the notice;
   b. to take all available steps to minimise loss resulting from that termination or reduction; and
   c. to continue work on any part of the Services not affected by the notice.

12.1.3. In the event of termination under clause 12.1.1, ACARA will be liable only:
   a. to pay any Instalment relating to Services completed before the effective date of termination;
   b. to reimburse any expenses the Contractor unavoidably incurs relating entirely to Services not covered under clause 12.1.3.a;
   c. to pay any allowance and meet any costs unavoidably incurred under Item 12 before the effective date of termination; and
d. to provide the facilities and assistance necessarily required under Item 13 before the effective date of termination.

12.1.4. ACARA will not be liable to pay amounts under clause 12.1.3.a and 12.1.3.b which would, added to any fees already paid to the Contractor under this contract, together exceed the fees set out in Item 11.

12.1.5. In the event of a reduction in the scope of the Services under clause 12.1.1, 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.

12.1.6. The Contractor will not be entitled to compensation for loss of prospective profits.

12.2. Termination or reduction in scope for fault
12.2.1. If a party fails to satisfy any of its obligations under this contract, then the other party - if it considers that the failure is:

a. not capable of remedy - may, by notice, terminate the contract immediately; or

b. 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.

12.2.2. 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.

13. Notices

13.1. Format, addressing and delivery
13.1.1. 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 22 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 23 or as otherwise notified by the Contractor.

13.1.2. 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.

13.2. When effective

13.2.1. 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.

13.2.2. 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.

14. General provisions

14.1. Work health and safety

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

a. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
b. all applicable policies and procedures relating to work health and safety, including those that apply to the ACARA’s premises when using those premises.

14.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 14.1.1, the Contractor will comply with those policies and procedures that produce the highest level of health and safety.

14.2. Audit and access

14.2.1. 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.

14.2.2. The rights referred to in clause 14.2.1. 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.

14.2.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause 14.2.

14.2.4. This clause 14.2 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 25.

14.3. Insurance

14.3.1. The Contractor agrees:

a. to effect and maintain the insurance specified in Item 24; and

b. on request, to provide proof of insurance acceptable to ACARA.

14.3.2. This clause 14.3 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.

14.4. Extension of provisions to subcontractors and Personnel

14.4.1. In this clause 14.4:

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

14.4.2. 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.

14.4.3. 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.

14.5. Conflict of interest

14.5.1. In this clause 14.5:

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.
14.5.2. 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.

14.5.3. 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.

14.6. Relationship of parties
14.6.1. 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.

14.6.2. 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.

14.7. Waiver
14.7.1. 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.

14.7.2. 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.

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

14.9. Assignment
14.9.1. The Contractor cannot assign its obligations, and agrees not to assign its rights, under this contract without ACARA’s prior written approval.

14.10. Survival
14.10.1. 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.

14.11. **Compliance with Legislation**

14.11.1. In this clause 14.11:

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

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

14.11.3. The Contractor acknowledges that its attention has been drawn to the fact sheet referred to in Item 25 which provides details of some Legislation that may be applicable to the performance of the contract.

14.12. **Applicable law**

14.12.1. 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 26.

14.12.2. The parties submit to the jurisdiction of the courts of that State or Territory.
2.1. Introduction

The Australian Curriculum, Assessment and Reporting Authority (ACARA) is responsible for the development of rigorous, world-class Australian curriculum from Foundation to Year 12.

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

ACARA reports to, and is directed by, the Standing Council on School Education and Early Childhood (SCSEEC).

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

2.2. Background

2.2.1 National Assessment Program – Literacy and Numeracy

The National Assessment Program — Literacy and Numeracy (NAPLAN) is the main assessment program conducted by ACARA. Every year all Australian students in Years 3, 5, 7 and 9 are assessed in Reading, Writing, Language Conventions and Numeracy. The tests are equated longitudinally each year in order to ensure comparability of results from year to year, and to enable tracking of students’ results.

2.2.2 National Assessment and Surveys Online Program

The National Assessment and Surveys Online Program, under the Online Diagnostic Tools election commitment, is intended to develop capacity to deliver national assessments and surveys through an online environment.

This Program comprises three elements:

a. development, testing and delivery of a national online School Opinion Survey for deployment in 2013 at jurisdictional discretion (Element 1),

b. development, testing and delivery online of the 2013 National Assessment Program – Civics and Citizenship sample assessment (NAP-CC) (Element 2), and

c. development, testing and delivery of a National Online Assessment Delivery System for diagnostic, formative and summative testing (supporting delivery of the ACARA National Assessment Program including NAPLAN, should SCSEEC agree) (Element 3).
The program will be delivered in partnership by ACARA and Education Services Australia (ESA), with each responsible for delivering different aspects of the program. ACARA is responsible for delivering ‘Assessment and Reporting Services’, and ESA is responsible for delivering ‘Technical Delivery Services’ across all three projects.

A key aspect of the program is ACARA’s expanded assessment and reporting research agenda, incorporating a comprehensive investigation into assessment instruments and programs using online technology. The result of this research will provide Ministers with a broad range of options regarding the future of NAPLAN and NAP programs.

2.2.3 Tailored test design development study: August-September 2014

ACARA has developed a comprehensive research agenda that will provide findings on a range of issues and provide evidence that will allow decisions to be made regarding the transition of NAPLAN from a pen-and-paper test to a computer-based assessment. The main purpose of the 2014 development study is to finalise the targeting and measurement aspects of the tailored test design and its branching mechanism and commence the trialling of items for NAPLAN online tests.

2.3 Purpose

The purpose of this Contract is to engage a qualified and experienced Contractor to assist with the development study, that is, the study that focuses on the finalisation of the targeting and measurement aspects of the tailored test design. The Contractor will provide a system for test/testlet construction and review, and test delivery to support the overall delivery of the trialling study.

ACARA’s technology partner, Education Services Australia (ESA), will be providing an online item authoring tool where items for the development study will be developed and from which items will be ingested into the Contractor’s test/testlet construction and review, and test delivery system.

The tailored test design is a multi-branching test consisting of interlocking item sets (testlets) covering Years 3 to 9 within each testing domain. In this design each student will work through three testlets, allocated by the system at two branching points. It will be possible for each student to take one of five different test forms.

The main benefit of the tailored test design is that it provides better targeting of students relative to their ability. This is particularly important for assessing underperforming students who currently do not have access to appropriate items. The test design contains a testlet specifically designed to cater for needs of these students at each year level. The intention is not only to increase the measurement precision of assessments but also to increase the amount of information, based on response patterns, relating to potential sources of insufficiencies and/or problems that prevent these students in performing at expected levels.

The administration, invigilation, marking and data analyses of the August - September 2014 development study in a sample of schools will be managed under separate contracts subject to a tender process in 2014 (Test Administrator Contractor and Data Analysis Contractor).
2.4 Key contact points

To support the delivery of the NASOP 2014 Development Study ACARA will engage separate contractors to deliver specific components related to the development study. The Contractor will be required to liaise with the below key contractors/partners:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Role</th>
<th>Key Liaison Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education Services Australia</td>
<td>Provision of online item authoring tool from which items will be ingested into the Contractor’s system</td>
<td>Ensuring compatibility between systems to enable smooth ingestion of items, testlets and metadata</td>
</tr>
<tr>
<td>Test Administrator Contractor</td>
<td>Administration and invigilation of 2014 Development Study.</td>
<td>Assisting with the creation of school, student and invigilation user accounts in advance of the study. Assisting with assigning of correct tests to schools and students. Providing 2nd level support during administration of the testing period. Ensuring access to data for marking purposes is provided and in an appropriate format</td>
</tr>
<tr>
<td>Data Analysis Contractor</td>
<td>Psychometric and statistical analysis of the data from the development study</td>
<td>Ensuring access to data is provided and in an appropriate format</td>
</tr>
</tbody>
</table>

2.5 Scope of project

This project includes the provision of an online test construction and delivery system as per the business requirements outlined in Appendix A.

**Note to Tenderers:** The business requirements will be confirmed during contract negotiations and project initiation, and the final business requirements will be signed off by ACARA. Tenderers should use the business requirements at Appendix A as the basis for preparing their Tenders. Although ACARA is prepared to discuss changes to the proposed business requirements, it reserves the right not to alter the proposed business requirements.

The successful Contractor will be required to:
1. provide the use of an online testlet and test construction, review and delivery system as per the business requirements outlined in Appendix A
2. work collaboratively with ACARA to customise the test delivery system, as per the business requirements, including the interface design
3. provide a risk management and test security plan, including incident management procedures and response plans;
4. provide a user manual which covers all components of the system
5. provide training on the use of the system to ACARA staff
6. provide training on the use of the system to representatives of the Test Administration Contractor prior to delivery of the August - September 2014 trial
7. provide technical support to ACARA staff throughout the course of the project
8. provide second level support through a helpdesk (email and phone) to the Test Administrator Contractor during the testing period
9. provide student results data, as per a data extract specification provided by ACARA, on completion of the testing period and/or at an alternative data delivery schedule agreed to between ACARA and the Contractor
10. provide the evidence of the quality assurance and audit of process in relation to preparation and delivery of accurate and up-to-date source data files
11. provide a Test Delivery Report which details information on test session times, time to answer each question, browser and operating systems used to access the test, bandwidth in schools, etc. Final format of the report will be agreed to between ACARA and the Contractor
12. work collaboratively with the Test Administrator Contractor as the provider of the test administration, invigilation and marking services.
13. outline a plan to provide feedback regarding contractual, financial and day-to-day-management aspects of the project and measurement issues, including a project close-out meeting;
14. provide progress reports and consult regularly with ACARA.

**Role of the Contractor**

The Contractor will be responsible for implementing the project objectives.

The Contractor is expected to work in close collaboration with ACARA’s Project Manager at all stages of the project to ensure that the procedures and methodologies are consistent with the technical standards for SCSEEC’s national assessments, ACARA’s assessment protocols and that the 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 will be required to provide a system which supports the following components:
2.5.1 School registration

The Contractor will provide an online solution for schools to register their interest in participating in the development study. The online solution will capture details such as:

- School name
- Principal name and / or IT contact name
- Contact details
- State
- Sector
- Address
- Year levels to be tested
- No of students per year level that will participate
- No of computers at the school / student-computer ratio
- Preferred dates for testing (within testing window)

2.5.2 Readiness for test at local level

The Contractor will provide an online solution that enables each school to check their readiness for the development study by providing:

1. an opportunity for school staff to familiarise themselves with basic operations in the weeks prior to the NASOP 2014 Development Study testing beginning,
2. a means for checking and confirming connectivity, including bandwidth and minimum technical requirements,
3. a means for schools to access the pre-test administration information, i.e., URLs to websites and information packs.

2.5.3 Test construction, review and delivery system

The Contractor will be required to provide a system which supports the business requirements outlined in Appendix A. The key components of the system are outlined below:

Test construction and review

Test items are ingested to the system and allocated to Testlets/Tests (testlet/test construction) within the system in preparation for the development study. Testlets/Tests will be put through a review process whereby users with appropriate access will move testlets or complete tests through the review cycle. The branching rules will be applied to the tests within the system. The Contractor is required to provide evidence that the branching rules are accurately applied as per the branching rules specifications that will be provided by ACARA.
Test delivery

The table below illustrates the sampling design for the tailored test design development study for Numeracy and Reading in August – September 2014. The final number of schools may vary once schools are selected and their participation is confirmed.

The table reflects the estimated sample size for:

- Reading and Numeracy: each student is expected to complete tests from two different domains and the assumption is that each school will contribute students from two year levels (Years 3 and 5, Years 7 and 9)

<table>
<thead>
<tr>
<th></th>
<th>School</th>
<th>Total number of students</th>
<th>Schools (providing one class per year level of 25 students)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading and Numeracy</td>
<td>Primary</td>
<td>5,600</td>
<td>140</td>
</tr>
<tr>
<td></td>
<td>Secondary</td>
<td>5,600</td>
<td>140</td>
</tr>
</tbody>
</table>

Language Conventions requirements to be determined

Test delivery will occur over a four week period. An indicative testing window is provided in the Timeframe at Item 5. This testing window will be finalised following selection of the school sample and appointment of the Test Administrator Contractor.

The Contractor will be responsible for the secure storage of complete raw data sets; and must ensure that these are made available to ACARA and the Test Administrator Contractor on completion of the project.

Test Marking

Assessment of student responses to multiple choice and closed constructed response questions will be automated, open constructed response questions will be manually assessed by the Test Administrator Contractor in accordance with the assessment Codeframes. The Contractor will be responsible for the provision of results data to ACARA and the Test Administrator Contractor on completion of the trial. Results data will be provided as per a Data Extract Specification agreed to by ACARA and the Contractor.

User and Cohort Management

The Test Administrator Contractor will be required to create student identities and register students on the system before administering the tests. This will require that the Contractor liaises with the Test Administrator Contractor to ensure appropriate access is provided to relevant invigilators and that school accounts have been created.
3. **Required Contract Material**  
(see clause 2.1.1.b)

The Contractor will be required to:

3.1 **Provide a risk management and security plan**

The Contractor is required to submit a risk management and security plan, including incident management procedures and response plans, detailing how system access, security and unscheduled downtime will be managed.

3.2 **Provide a user manual**

The Contractor is required to provide a user manual which covers all components of the system.

3.3 **Provide student results data**

The Contractor is required to provide student results data, as per the data extract specification, on completion of test delivery in a sample of school or at an alternative data delivery schedule agreed to between ACARA and the Contractor.

3.4 **Provide a Test Delivery Report**

The Contractor is required to provide a Test Delivery Report which details information on test session times, time to answer each question, browser and operating systems used to access the test, bandwidth in schools, etc. Final format of the report will be agreed to between ACARA and the Contractor.

4. **Policies, Standards and Guidelines**  
(see clause 2.1.1.c)

The Commonwealth Style Manual, AGPS, Canberra (latest edition); Australian Standards for Document Management (AS ISO 15489); Commonwealth Fraud Control Guidelines - April 2011; Data Standards Manual Student Background Characteristics (ACARA, 2012)

5. **Commencement and Time-frame**  
(see clause 2.1.1.d)

Commencement Date: 3 February 2014

**Note to Tenderers:** The timeframe 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 Tenders. Although ACARA is prepared to discuss changes to the proposed timeframe, it reserves the right not to alter the proposed timeframe.
### Time-frame:

<table>
<thead>
<tr>
<th>Task Name</th>
<th>Start</th>
<th>End</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finalisation of business requirements and technical specifications</td>
<td>3 February 2014</td>
<td>14 February 2014</td>
</tr>
<tr>
<td>Provide progress reports and consult regularly with ACARA</td>
<td>28 January 2014</td>
<td>30 September 2014</td>
</tr>
<tr>
<td>Provide a risk management and test security plan to ACARA</td>
<td>14 February 2014</td>
<td>14 February 2014</td>
</tr>
<tr>
<td>School registration for the Development Study</td>
<td>April 2014</td>
<td>July 2014</td>
</tr>
<tr>
<td>Provide training to ACARA staff on item ingestion</td>
<td>28 April 2014</td>
<td>2 May 2014</td>
</tr>
<tr>
<td>Item ingestion by ACARA</td>
<td>1 May 2014</td>
<td>1 August 2014</td>
</tr>
<tr>
<td>ACARA provides Data Extract Specifications to Contractor</td>
<td>30 May 2014</td>
<td>30 May 2014</td>
</tr>
<tr>
<td>Provide training to ACARA staff on test/testlet construction</td>
<td>2 June 2014</td>
<td>6 June 2014</td>
</tr>
<tr>
<td>Test/testlet construction and review by ACARA</td>
<td>9 June 2014</td>
<td>1 August 2014</td>
</tr>
<tr>
<td>Readiness for test at local level</td>
<td>July 2014</td>
<td>August 2014</td>
</tr>
<tr>
<td>Provide training to Test Administrator Contractor</td>
<td>July 2014</td>
<td>July 2014</td>
</tr>
<tr>
<td>ACARA UAT of Test Delivery system</td>
<td>14 July 2014</td>
<td>8 August 2014</td>
</tr>
<tr>
<td>Test delivery in sample of schools</td>
<td>18 August 2014</td>
<td>12 September 2014</td>
</tr>
<tr>
<td>Provide Test Delivery Report to ACARA</td>
<td>31 October 2014</td>
<td>31 October 2014</td>
</tr>
</tbody>
</table>
6. **Invoicing and Payment**

(see clauses 2.1.1.e & 4.1.1.c)

**Invoices:**

Invoices will be issued by the Contractor on delivery of each milestone identified in Item 11.

To be correctly rendered, invoices must include the following information:

a. the words “tax invoice” stated prominently;

b. the Contractor’s name;

c. the Contractor’s ABN;

d. ACARA’s name and address;

e. the date of issue of the tax invoice;

f. the title of this contract and the contract number or purchase order number (if any);

g. details of fees, allowances and costs including the items to which they relate;

h. the total amount payable (including GST);

i. the GST amount shown separately; and

j. written certification in a form acceptable to ACARA that the Contractor has paid all remuneration, fees or other amounts payable to its Personnel and/or subcontractors involved in performance of the contract.

All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Contractor’s entitlement to those allowances or costs.

An invoice is not correctly rendered where:

a. it includes amounts that are not properly payable under this contract or are incorrectly calculated; or

b. it relates to a payment in relation to which ACARA has exercised its rights under clause 4.2 of the contract.

All invoices must be addressed to the Project Manager.

**Payment**

Payment will be made within 30 calendar days after delivery of a correctly rendered invoice. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.

Payment will be effected by electronic funds transfer (EFT) to the following bank account of the Contractor: ^insert details^
No payment shall be made against any claim for payment which varies from the agreed scope of work as set out in Item 2 of this Schedule without ACARA’s prior consent and written agreement.

7. **Project Manager**
   (see clause 2.2)

   The Project Manager is the person for the time-being holding, occupying or performing the duties of "insert position", currently "insert name", available on telephone number "insert number" or via the address and facsimile number set out in Item 22.

8. **ACARA Contract Authority**

<table>
<thead>
<tr>
<th>ACARA Contract Authority</th>
<th>Title:</th>
<th>[Insert Details]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Currently:</td>
<td>[Insert Name])</td>
</tr>
<tr>
<td></td>
<td>Physical Address:</td>
<td>[Insert Details]</td>
</tr>
<tr>
<td></td>
<td>Postal Address:</td>
<td>[Insert Details]</td>
</tr>
<tr>
<td></td>
<td>Fax number:</td>
<td>[Insert Details]</td>
</tr>
<tr>
<td></td>
<td>Email:</td>
<td>[Insert Details]</td>
</tr>
</tbody>
</table>

9. **Subcontractors**
   (see clause 2.3)

   "To be completed following selection of the preferred Tenderer"

   The Contractor may subcontract the performance of parts of the Services as follows:

<table>
<thead>
<tr>
<th>Part of the Services being subcontracted</th>
<th>Subcontractor</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;insert&quot;</td>
<td>&quot;insert company details&quot;</td>
<td>&quot;insert conditions&quot;</td>
</tr>
</tbody>
</table>

10. **Specified Personnel**
    (see clause 2.5)

    "To be completed following selection of the preferred Tenderer"

    The Contractor agrees that the following work, "insert details" will be undertaken by "insert name".
11. Fees

(see clauses 4.1.1.a, 12.1.3.a & 12.1.3.b)

**Note to Tenderers:** A payment schedule, linked to project milestones and deliverables, will be negotiated with the successful Tenderer. It is anticipated that the payment schedule will cover the following:

^To be completed following selection of the preferred Tenderer^.

**Instalments:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Description</th>
<th>Date</th>
<th>Payment $AUD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Acceptance by ACARA of finalised business requirements and technical specifications</td>
<td>7 February 2014</td>
<td>25%</td>
</tr>
<tr>
<td>2</td>
<td>Item ingestion functionality available to ACARA's satisfaction</td>
<td>5 May 2014</td>
<td>25%</td>
</tr>
<tr>
<td>3</td>
<td>Test/testlet construction functionality available to ACARA's satisfaction</td>
<td>4 July 2014</td>
<td>25%</td>
</tr>
<tr>
<td>4</td>
<td>Provision of Test Delivery Report to ACARA's satisfaction</td>
<td>31 October 2014</td>
<td>25%</td>
</tr>
</tbody>
</table>

12. Allowances and Costs

(see clauses 4.1.1.b & 12.1.3.c)

^To be completed following selection of the preferred Tenderer^.

13. Facilities and Assistance

(see clauses 4.1.1.d & 12.1.3.d)

^To be completed following selection of the preferred Tenderer^.

14. Required ACARA Material

(see clause 5.1)

^To be completed following selection of the preferred Tenderer^.

15. Use of ACARA Material

(see clause 5.1.3)

ACARA Material may only be used for the purposes of providing the Services.
16. **Existing Material**  
(see clause 5.2.2)  
^To be completed following selection of the preferred Tenderer^  

17. **Copyright notice**  
(see clause 5.2.7)  
The copyright notice is set out below:  

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ACARA  
Level 10, 255 Pitt Street  
Sydney  

18. **Moral Rights**  
(see clause 5.4)  

**Permitted Acts**  
In addition to those set out in clause 5.4.1, the following are ‘Permitted Acts’ for the purposes of clause 5.4.1.d:  

a. use of the Contract Material for advertising or promotional purposes of any kind;  
b. incorporating the Contract Material into a website, other assessments or as part of a professional development program;  
c. use of the Contract Material in tests and test items including without attribution of the authors of that Material;  
d. editing, contextualising, summarising or truncating the Contract Material for use in tests and test items including without attribution of the authors of that Material or reference to editing of the Material;  
e. associating an item of Contract Material with similar or different items of Contract Material;
f. use by State and Territory education authorities including the Contract Material in workshop presentations, posters, and other teacher professional development materials; and

g. publication of tests online on public websites by ACARA and the States and Territories including without attribution of the authors of that Contract Material.

ACARA policy on Moral Rights

None specified.

19. Security Requirements
(see clause 6)

No additional security requirements specified.

20. Privacy Directions, Guidelines, Determinations or Recommendations
(see clause Error! Reference source not found.)

None specified.

21. Contractor’s Confidential Information
(see clause 9)

(a) Information contained in contract:

<table>
<thead>
<tr>
<th>Item</th>
<th>Period of Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>^insert relevant items^</td>
<td></td>
</tr>
</tbody>
</table>

(b) Information obtained or generated in performing contract:

<table>
<thead>
<tr>
<th>Item</th>
<th>Period of Confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td>^insert relevant items^</td>
<td></td>
</tr>
</tbody>
</table>

22. ACARA’s Address for Notices
(see clause 13.1.1.a)

<table>
<thead>
<tr>
<th>Physical address</th>
<th>Level 10, 255 Pitt Street, Sydney, NSW 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Postal address</td>
<td>Level 10, 255 Pitt Street, Sydney, NSW 2000</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:info@acara.edu.au">info@acara.edu.au</a></td>
</tr>
<tr>
<td>Facsimile</td>
<td>1300 995 468</td>
</tr>
</tbody>
</table>
23. Contractor's Address for Notices
   (see clause 13.1.1.a)

   Physical address

   Postal address

   Email

   Facsimile

24. Insurance
   (see clause 14.3)

   Required insurance:
   a. workers’ compensation as required by law;
   b. public liability insurance to a value of $10 million; and
   c. professional indemnity insurance to a value of $5 million.

25. Applicable Legislation
   (see clause 14.11.3)

   See AGS Fact Sheet: Commonwealth legislation that may apply to Australian Government contractors, available at:

26. Applicable Law
   (see clause 14.12)

   New South Wales
Signatures

SIGNED for and on behalf of Australian Curriculum, Assessment and Reporting Authority by: 

^Name of signatory^ 
Signature 

In the presence of: 

^Name of witness^ 
Signature of witness 

SIGNED for and on behalf of [insert] by: 

^Name of signatory^ 
Signature 

In the presence of: 

^Name of witness^ 
Signature of witness