

## STANDARD DOCUMENT SCHEDULE

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### Part 2 - Third Party Deed of Confidentiality

#### date

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This Deed of Confidentiality is dated ^day (numeric) month (name) year (numeric) in full^.

#### parties

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This Deed of Confidentiality is made between the following parties:

3. 1. The Commonwealth of Australia as represented by the Australian Competition and Consumer Commission (ACCC)
4. 2. ^Insert name of third party gaining access to ACCC Confidential Information^ ^Insert ACN, or if no ACN, the ARBN or ABN^ of ^Insert address of confidant ^ (the Confidant)

#### context

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- A Getronics Australia Pty Limited A.C.N. 001 002 731 A.B.N. 69 001 002 731 (Getronics) has agreed to supply services and related deliverables to ACCC pursuant to a contract made on ^insert date of contract^ relating to ^System or Project Name^ (Contract).
  - B The Confidant may be engaged by Getronics directly or indirectly in connection with the performance of the Contract and may become privy to sensitive and commercially valuable information of ACCC.
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#### operative provisions

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The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired in connection with the Contract:

### 1 INTERPRETATION

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#### Meaning of 'Information'

- 1.1 'Information' means information, documents and data stored by any means and any information made available to me in the course of my dealings with ACCC and includes information relating to:
  - 1.1.1 any intellectual property rights of ACCC;
  - 1.1.2 to the financial position or reputation of ACCC;

- 1.1.3 the internal management and structure of ACCC;
- 1.1.4 the personnel, policies and strategies of ACCC;
- 1.1.5 ACCC's clients or suppliers;
- 1.1.6 information of ACCC that has any actual or potential commercial value to ACCC or to the person or corporation which supplied that information; or
- 1.1.7 information that may otherwise be by its nature confidential

## **2 NON-DISCLOSURE**

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- 2.1 The Confidant will treat as secret and confidential all Information to which the Confidant has access or which is otherwise disclosed to the Confidant.
- 2.2 If ACCC grants its consent for the Confidant to disclose information, it may impose conditions on that consent. In particular, ACCC may require that the Confidant obtains the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Information.
- 2.3 The Confidant's obligations under this Deed will not be taken to have been breached where the Confidant is legally required to disclose the Information.

## **3 RESTRICTION ON USE**

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- 3.1 The Confidant will use the Information only for the purpose of the Confidant's dealings with ACCC (whether directly or indirectly).
- 3.2 The Confidant will not copy or reproduce the Information without the approval of ACCC, will not allow any other person outside ACCC access to the Information and will take all necessary precautions to prevent unauthorised access to or copying of the Information in the Confidant's control.

## **4 SURVIVAL**

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- 4.1 This Deed will survive the termination or expiry of any contract between ACCC and Getronics and Getronics and [Confidant] providing for the performance of services or the provision of goods by the Confidant relevant to the Contract (whether directly or indirectly).

## **5 POWERS OF ACCC**

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- 5.1 Immediately upon request by ACCC, the Confidant must deliver to ACCC all documents in the Confidant's possession or control containing Information.
- 5.2 If at the time of such a request the Confidant is aware that documents containing Information are beyond the Confidant's possession or control, then the Confidant must provide full details

of where the documents containing the information are, and the identity of the person who has control of them.

**6 APPLICABLE LAW**

6.1 This Deed will be governed in accordance with the Law in the Australian Capital Territory.

**EXECUTED as a Deed:**

[if a corporation]

Signed, sealed and delivered by  
[Full Registered Name]  
A.C.N. [No.]  
in accordance with its Constitution  
and section 127 of the Corporation Act 2001 in the presence of:

\_\_\_\_\_  
*Signature of Director*

\_\_\_\_\_  
*Full name of Director*

\_\_\_\_\_  
*Signature of Director / Secretary\**

\_\_\_\_\_  
*Full name of Director / Secretary\**

\* Delete whichever is not applicable.

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

\_\_\_\_\_  
*Full name of witness*

[If an individual]

Signed, Sealed and Delivered by )  
by the Confidant in the presence of: )

\_\_\_\_\_  
Signature of confidant

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

\_\_\_\_\_  
Full name of witness

1.1.1



**STANDARD DOCUMENT SCHEDULE**

**Part 3 - Change Order**

**CHANGE ORDER**

<b>Work Order Name / Number</b>	
<b>Change order number</b>	^Complete table^
<b>Date of this Change Order</b>	
<b>Name of party instigating the change</b>	
<b>Implementation date of change</b>	
<b>Details of change</b>	[[Insert or refer to an attachment]]
<b>Effect of the change on Fees and Charges payable</b>	
<b>Effect on timeframe</b>	
<b>Effect of change on performance</b>	
<b>Effect on documentation</b>	
<b>Effect on training</b>	
<b>Effect on the users of the system</b>	
<b>Plan for implementing the change</b>	
<b>The responsibilities of the parties for implementing the change</b>	
<b>Any other matters which the parties consider are important, including transitional aspects of the change</b>	

**ACCC's representative**

Name (print) \_\_\_\_\_  
 Position \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**Getronics' representative**

Name (print) \_\_\_\_\_  
 Position \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_



Schedule 7

# **HOSTING ARRANGEMENT**

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Schedule 7

**Hosting Arrangement**

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# Terms and Conditions

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Contract, unless the contrary intention appears:

Acceptance	means sign off by the Customer in acknowledgment that agreed acceptance test criteria or alternative acceptance formalities have been satisfied in respect of a Service or Product;
Consultancy Services	means consultancy services to be supplied by the Contractor to the Customer, as specified in the Contract Details;
Contract	means this agreement (pursuant to and forming part of the Grocery Price Monitoring Website System Design, Implementation and Services Contract) between the Customer and the Contractor relating to the hosting services for the Grocery Price Monitoring Website System and Website;
Contract Authority	means the person or body so specified under the Head Agreement;
Contract Details	means Appendix 1 to this Contract, describing the specific requirements of the Customer in respect of Services and/or Products to be delivered by the Contractor and includes Attachments to Appendix 1;
Contractor	means the party so specified in the Contract Details and includes authorised employees, agents and subcontractors of the Contractor;
Customer	means the party so specified in the Contract Details and includes any successor body, whether created by machinery-of-government change, legislation or otherwise;
Developed Software	means software created by the Contractor for the Customer under the Contract, as specified in the Contract Details;
Grocery Price Monitoring Website System Design, Implementation and Services Contract	means the contract between the Customer and Contractor headed 'Grocery Price Monitoring Website System Design, Implementation and Services Contract' to which this document is included as Schedule 7 - Hosting Arrangement.

Hardware	means hardware to be supplied under this Contract by the Contractor to the Customer, as specified in the Contract Details;
Hardware Maintenance Services	means maintenance services to be supplied by the Contractor in respect of equipment, as specified in the Contract Details;
Head Agreement	means either: <ul style="list-style-type: none"> <li>(a) an agreement (if any) between the Contract Authority and the Contractor which relates to this Contract; or</li> <li>(b) where the Contractor is a licensed carrier or registered carriage service provider as defined in the <i>Telecommunications Act 1997</i> (Cwlth) and providing telecommunications Products, the deed of agreement administered by the National Office for the Information Economy and signed by the carrier or carriage service provider; or</li> <li>(c) any other agreement between the Contractor and either the Customer or a third party purchasing authority, as specified in the Contract Details, which governs the Contractor's right to supply Services and/or Products to the Customer;</li> </ul>

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**Intellectual Property Rights** means copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before, on or after the commencement date of this Contract;

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**Licensed Software** means software, to be supplied under this Contract by the Contractor to the Customer, in respect of which ownership does not pass to the Customer and in respect of which the Customer's rights of use are subject to the conditions specified in Clause 10;

**Managed Services** means services whereby the Contractor agrees to either manage all or part of the Customer's information technology or otherwise to manage the external delivery of services to the Customer, as specified in the Contract Details;

**Personnel** includes employees, agents and subcontractors;

**Product** means a deliverable under this Contract which may include but which is not limited to Software, Hardware (including telecommunications equipment), plans and/or any supporting documentation to be supplied to the Customer by the Contractor;

Service	means a service (which may include but which is not limited to Consultancy Services, Managed Services, Software Development Services, Hardware Maintenance Services, Software Support Services and Systems Integration Services) to be supplied under this Contract by the Contractor to the Customer;
Software	means Developed Software, Licensed Software or Third Party Software, as the context dictates;
Software Development Services	means services whereby the Contractor agrees to develop software in accordance with the Customer's requirements, as specified in the Contract Details;
Software Support Services	means services whereby the Contractor agrees to provide support, as specified in the Contract Details, in respect of either Developed Software, Licensed Software or Third Party Software;
Specifications	means technical or descriptive specifications of functional, operational, performance or other characteristics required of a Service or Product, as appended to the Contract Details;
Systems Integration Services	means services whereby the Contractor agrees to implement a System, as specified in Attachment 1 to the Contract Details;
Third Party Software	means software which is owned by a person other than the Customer or the Contractor and which is the subject of a Service.

## 1.2 Interpretation

In this Contract, unless the contrary intention appears:

- (a) *clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;*
- (b) *words in the singular number include the plural and vice versa;*
- (c) *where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;*
- (d) *monetary references are references to Australian currency; and*
- (e) *terms defined in the Grocery Price Monitoring Website System Design, Implementation and Services Contract, but not in this Contract, have the meaning as defined in the Grocery Price Monitoring Website System Design, Implementation and Services Contract.*

## **2 Non-Completion of Contract Details**

To the extent that the parties have not completed particulars relevant to an item in the Contract Details, that item will be deemed 'not applicable' unless the contrary intention is expressed.

## **3 Commencement Date and Period**

### **3.1 Commencement of Contract**

This Contract commences on the date specified in the Contract Details.

### **3.2 Duration of Contract**

This Contract will remain in force for the duration of the period stated in the Contract Details, subject to:

- (a) *earlier termination or expiry in accordance with the provisions of this Contract;*  
*or*
- (b) *extension in accordance with the procedure (if any) specified in the Contract Details.*

## **4 Priority of Documents**

### **4.1 Prioritisation of Contract Documents**

In the event and to the extent of any inconsistency between two or more documents which form part of this Contract, those documents will be interpreted in the following order of priority:

- (a) *the Head Agreement (if any);*
- (b) *the Contract Details and any attachments to the Contract Details;*
- (c) *these terms and conditions;*
- (d) *documents incorporated by reference in these terms and conditions; and*
- (e) *the remaining appendices to these terms and conditions.*

#### **4.2 Prioritisation of Contract Details and Attachments**

In the event and to the extent of any inconsistency between the Contract Details and any attachment to the Contract Details, the Contract Details will take priority.

#### **4.3 Prioritisation of Documents**

In the event that any of the following documents are incorporated into this Contract (whether by attachment to or by reference), they will be interpreted in the following order of priority, ranking after the documents described in clause 4.1:

- (a) *pre-contractual documentation which post-dates the tender;*
- (b) *the Contractor's tender;*
- (c) *the Customer's request for tender;*
- (d) *the Contractor's expression of interest;*

(e) *the Customer's request for expressions of interest;*  
and any further incorporated documents will be prioritised consistently with the foregoing.

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## **5 Consultancy Services**

### **5.1 NOT USED**

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## **6 Managed Services**

### **6.1 General Obligations of Contractor**

Where the Contract Details state that the Contractor is to provide Managed Services:

- (a) **the Contractor agrees to commence the Managed Services on the service commencement date specified in the Contract Details and to meet the Specifications and service levels for the Managed Services during the term of the Contract;**
- (b) **the Specifications will be deemed to include, and the Contractor will be deemed to have knowledge of, information that the Contractor could reasonably have obtained during due diligence which it had the opportunity to conduct prior to the date of the Contract, whether or not the Contractor in fact conducted such due diligence;**
- (c) **without limiting paragraph 6.1(b), the Contractor will be deemed to have made use of any reasonable opportunity provided by the Customer to conduct due diligence prior to the date of the Contract; and**
- (d) **unless agreed to the contrary, the Contractor must ensure that technology and work practices used in providing the Managed Services remain consistent with, and reflect, those used by the Contractor in delivering similar services to other government customers at the same time and in similar circumstances.**

## **6.2 NOT USED**

## **6.3 Service Delivery and Service Level Agreement**

- (a) **Unless the Customer agrees otherwise in writing, the Managed Services will be performed in Australia and, in addition:**

- (i) *the Contractor agrees to provide the Managed Services in accordance with the service level documentation and any other performance measures attached to or specified in the Contract Details;*
- (ii) *the Contractor agrees to report to the Customer at regular intervals (or at the intervals, if any, specified in the Contract Details) and in conformity with any agreed format, as to the effectiveness of service delivery, including the extent to which the Managed Services are being or have been adapted to meet the Customer's changing business needs; and*
- (iii) *the Contractor will advise the Customer if it considers the Specifications or service levels should be revised to take account of new functions performed by the Customer that are outside the scope of this Contract (such revisions to be implemented, if at all, in accordance with the change control procedure set out in this Contract).*

- (b) **If the Contractor fails to meet performance requirements for the Managed Services as specified in the service level documentation or fails to meet other performance measures specified in Attachment 4 to the Contract Details, the Contractor will promptly:**

- (i) *investigate the underlying causes of the problem and use all commercially reasonable efforts to preserve any data indicating the cause of the problem; and*

(ii) *advise the Customer of the status of remedial efforts being undertaken with respect to the underlying cause of the problem;*  
but such action will not deprive the Customer of a right to pursue any other remedy under this Contract arising from the failure to meet its obligations under the Contract.

#### **6.4 Transition Out**

On termination of the Managed Services for any reason, and subject to any qualification or provision to the contrary in the Contract Details, the Contractor will, if requested by the Customer, assist the Customer in transferring responsibility for providing the Managed Services either to an alternative service provider or to the Customer itself and this will include making arrangements for:

- (a) *the novation or assignment (to the extent practical) of software licences and any other relevant third party agreements from the Contractor to an alternative service provider or to the Customer itself, or if so stipulated by the Customer, the transfer of management responsibility in respect of such licences and/or agreements from the Contractor to an alternative service provider or to the Customer itself, with the cost of any new or increased charges to be borne by the Customer (subject to prior notification to and agreement from the Customer) unless agreed by the parties to the contrary;*
- (b) *an offer to sell to the alternative service provider or to the Customer itself at fair market value any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Managed Services;*
- (c) *the transfer of the Customer's data to an alternative service provider and/or to the Customer itself; and*
- (d) *the granting by the Contractor to an alternative service provider and/or to the Customer itself of access to all material held by the Contractor and produced in connection with and for the purposes of delivering the Managed Services, regardless of the manner of storage, save that:*
  - (i) *there is no requirement pursuant to this sub-clause 6.4(d) for the Contractor to assign any Intellectual Property Rights in such material; and*
  - (ii) *the Customer must agree to comply with any reasonable security and confidentiality requirements stipulated by the Contractor in respect of access to such material.*

This clause 6.4 survives termination or expiry of the Contract.



**7 Supply of Hardware**

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**7.1 NOT USED**

**8 Hardware Maintenance**

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**8.1 NOT USED**

**9 Software Development**

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**9.1 NOT USED**

**10 Licensing of Software**

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**10.1 NOT USED**

**11 Software Support**

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**11.1 NOT USED**

**12 Systems Integration**

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**12.1 NOT USED**

**13 General Responsibilities of the Contractor and Customer**

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Each party will:

- (a) *fully cooperate with each other to ensure timely progress and fulfillment of the Contract;*
- (b) *act reasonably and in good faith with respect to matters that relate to the Contract;*
- (c) *if, and to the extent, specified in the Contract Details, hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other on a regular basis in order to keep the other fully informed of the progress of work required under the Contract; and*
- (d) *perform its obligations and responsibilities by the dates specified in the Contract.*

**14 Specific Responsibilities of the Contractor**

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**14.1 Customer Requirements**

The Contractor will ensure the Services and Products comply with the Specifications, standards and service levels as specified in the Contract Details. The Contractor will comply with reasonable directions given by the Customer in discharging these obligations.

**14.2 Facilities and Assistance**

To enable timely progress and completion of this Contract, the Contractor will:

- (a) **subject to any stipulation in the Contract Details, establish and maintain all necessary facilities for the effective conduct and management of its responsibilities;**
- (b) **record any material changes in relevant facilities or procedures and make this record available to the Customer on request or as otherwise specified in the Contract Details; and**
- (c) **provide all reasonable assistance required by the Customer.**

#### **14.3 Sourcing from Government Contracts**

The Contractor may act as the Customer's agent to obtain Services and Products from a third party to the extent specified in the Contract Details. This may include, but is not limited to, sourcing Services and Products from other Commonwealth Government supply arrangements.

#### **14.4 Documentation**

The Contractor will ensure that the documentation, publications and aids relevant to any Service or Product are:

- (a) **of a reasonable standard in terms of presentation, accuracy and scope;**
- (b) **the most current, accurate and up-to-date versions available at the date of the Contract; and**
- (c) **published in English with all key terms, words and symbols adequately defined or explained.**

If any documentation is revised or replaced for any reason, the Contractor will supply the Customer with revisions or replacements at no additional cost to the Customer if the Customer is at that time in receipt of Software Support Services.

#### **14.5 Training**

The Contractor will provide the training specified in the Contract Details, at the price specified in the Contract Details.

## 14.6 Taxes

- (a) *All taxes, duties and government charges ("Taxes") imposed or levied in Australia or overseas in connection with this Contract will be the responsibility of the Contractor.*
- (b) *Without limiting clause 14.6(a), and unless specified to the contrary in the Contract Details, all prices are exclusive of Goods and Services Tax ("GST") on the Services and Products and other supplies made under this Contract ("the Supplies") to the extent that they are taxable supplies within the meaning of the A New Tax System (Goods and Services Tax Act) 1999 (Cwith) ("the GST Act").*
- (c) *In relation to any GST payable under clause 14.6(b), the Contractor will issue the Customer with a tax invoice in accordance with the GST Act.*
- (d) *If Attachment 7 to the Contract Details specifies that the Customer is responsible for payment of GST on specified Supplies, it will make such payment when the relevant charges are due or otherwise as required by the Contract Details.*
- (e) *If a payment to satisfy a claim or a right to claim under or in connection with this Contract (for example, a claim for damages for breach of contract) gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against, the amount of that GST.*
- (f) *If a party has a claim under or in connection with this Contract for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).*
- (g) *If a party has a claim under or in connection with this Contract and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).*
- (h) *In this clause 14.6, words have the same meaning as in the GST Act unless the context makes it clear that a different meaning is intended.*

## 14.7 Preparation of invoices

After Acceptance of a Service or Product, or as otherwise specified in Attachment 7 to the Contract Details, the Contractor will promptly and correctly prepare and deliver an invoice setting out the amounts then properly due to it from the Customer. To prepare the invoice correctly, the Contractor will ensure that:

**(a) the invoice contains detail such is sufficient to enable the Customer, acting reasonably, to identify:**

- (i) the Service or Product concerned;*
- (ii) when the Service or Product was supplied and (if relevant) accepted; and*
- (iii) the amount payable in respect of each Item;*

**(b) the invoice is addressed in accordance with the Customer's requirements as specified in Attachment 7 to the Contract Details, or as otherwise advised in writing;**

**(c) the invoice sets out the amount paid by the Customer as GST for supplies made under this Contract which are taxable supplies; and**

**(d) the invoice is a valid tax invoice for the purposes of the GST Act.**

#### **14.8 Site Specification**

To the extent specified in the Contract Details, the Contractor will provide the Customer with particulars of the implementation and environmental requirements of a Service and/or Product in order to permit the Customer to prepare the site accordingly.

#### **14.9 Insurance Requirements**

The Contractor will ensure that throughout the term of this Contract it is insured with, or is the beneficiary under a policy with, a reputable insurance company with respect to:

**(a) any insurance required under the Head Agreement; and**

**(b) any additional insurance as specified in the Contract Details.**

The Contractor will, on request, produce to the Customer satisfactory evidence that the Contractor has effected and/or renewed a particular insurance policy or that the Contractor continues to be a beneficiary under a particular insurance policy.

#### **14.10 Performance Guarantee and Financial Undertaking**

- (a) *The Contractor acknowledges that any performance guarantee, financial undertaking or other similar arrangement in place under the Head Agreement will apply to the Contract.***
- (b) *Except where the Customer wishes to secure a prepayment to the Contractor by way of a financial undertaking, the Customer will not require any further financial security from the Contractor or any entity associated with the Contractor if, in the opinion of the Customer, an adequate financial undertaking or performance guarantee is in place under the Head Agreement. Notwithstanding the foregoing, the Customer may request the Contract Authority to adjust any performance guarantee or financial undertaking in place under the Head Agreement if, as a result of the risk or cost associated with the Contract, the existing performance guarantee or financial undertaking will no longer be adequate. In these circumstances, the adjustment of the performance guarantee or financial undertaking in place under the Head Agreement will be a condition precedent to the commencement of this Contract.***
- (c) *Where there is no applicable Head Agreement, the Contractor will, to the extent specified in the Contract Details, provide or procure a performance guarantee (conditional or unconditional), financial undertaking or other similar arrangement substantially in the form specified in Appendices 6A, 6B and/or 7 as applicable.***
- (d) *The Customer will consent to the discharge of a performance guarantee, financial undertaking or similar arrangement made pursuant to clause 14.10(c) if, at any time following the termination or expiry of this Contract, the Contractor can demonstrate to the Customer's reasonable satisfaction that there is no basis for any claim to be made against the performance guarantee, financial undertaking or similar arrangement in the future.***

#### **14.11 Security**

The Contractor acknowledges that it must:

- (a) *as appropriate, inform its Personnel, of the provisions of any legislation relating to secrecy and security which is listed in the Contract Details. The Contractor further acknowledges that prior to being granted access to documents, materials or information pursuant to this Contract, any such Personnel may first be required to provide the Customer with an acknowledgment that he or she is aware of any applicable legislation or security instructions. Nothing in this clause 14.11(a) excuses compliance by the Contractor or its employees, agents or subcontractors, with any applicable legislation;***
- (b) *comply with such other Commonwealth, State or Territory legislation relating to matters of security as may be specified in the Contract Details; and***
- (c) *comply with any specific security requirements specified in the Contract Details.***

#### **14.12 Privacy**

- (a) **The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the Privacy Act 1988 (Cwlth) to the extent relevant to this Contract. The Contractor also agrees to comply with:**
- (i) *such other Commonwealth, State or Territory legislation related to privacy which is relevant to this Contract;*
  - (ii) *any directions made by a Privacy Commissioner relevant to this Contract;*
  - (iii) *any privacy procedures stated in the Contract Details; and*
  - (iv) *any other reasonable direction relating to privacy which is given by the Customer.*

#### **14.13 Anti-discrimination**

- (a) **The Contractor agrees to comply with its obligations, if any, under the Equal Opportunity for Women in the Workplace Act 1999 (Cwlth). The Contractor agrees not to enter into a subcontract with an entity named in a report tabled in Commonwealth Parliament by the Director of Equal Opportunity for Women in the Workplace as a supplier that has not complied with the Act.**
- (b) **The Contractor further agrees to comply with such other Commonwealth, State or Territory legislation relevant to anti-discrimination as may be relevant to this Contract.**
- (c) **The Contractor agrees to use its reasonable endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people where there are positions available and there are Aboriginal or Torres Strait Islander people available with suitable qualifications and expertise.**

#### **14.14 Occupational Health and Safety**

- (a) **The Contractor agrees, when using the Customer's premises, to comply with all reasonable directions of the Customer, including but not limited to documented procedures relating to occupational health, safety and security in effect at those premises. This obligation extends to all procedures which are notified to the Contractor by the Customer or which might reasonably be inferred by the Contractor in all the circumstances.**
- (b) **In addition to the requirements of clause 14.14(a), the Contractor agrees that when working on the Customer's premises, it will comply with all applicable Commonwealth, State and local government laws, regulations and procedures relating to occupational health and safety.**

#### **14.15 Archival Requirements**

The Contractor agrees to comply with, and to follow any reasonable directions by the Customer which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements.

#### **14.16 Maintenance of Records**

Unless specified to the contrary in the Contract Details, the Contractor must at all times maintain full, true, and up-to-date accounts and records relating to this Contract. Such accounts and records must:

- (a) *include appropriate audit trails for transactions performed;*
- (b) *record all receipts and expenses in relation to the Services performed for the Customer;*
- (c) *be kept in a manner that permits them to be conveniently and properly audited;*
- (d) *be drawn in accordance with any applicable Australian Accounting Standards;*
- (e) *in the case of any Service performed on a time and materials or cost plus basis, identify the time spent by the Contractor's Personnel in performing that Service; and*
- (f) *be made available to the Customer as required for the performance of the Contractor's obligations under the Contract.*

#### **14.17 Cooperation with other Service Providers**

The Contractor must cooperate with any third party service provider appointed by the Customer where this is necessary to ensure the integrated and efficient conduct of the Customer's operations. Without limiting the foregoing, the Contractor must provide such reasonable assistance to other service providers as the Customer may request from time to time, provided that the Contractor will be entitled by prior agreement with the Customer (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing such cooperation.

#### **14.18 Data Security**

The Contractor must:

- (a) *comply with all Customer data security requirements in respect of access to and use of data as specified in the Contract Details, in addition to any statutory obligation relevant to data security;*
- (b) *prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to data; and*
- (c) *notify the Customer immediately and comply with all directions of the Customer if the Contractor becomes aware of any contravention of the Customer's data security requirements.*

#### **14.19 Security Acknowledgment by Contractor**

The Contractor acknowledges and agrees that:

- (a) *the Customer holds and deals with highly sensitive information;*
- (b) *the Customer is concerned that such information is not improperly used or disclosed contrary to this Contract or any laws; and*

- (c) *use or disclosure of such information contrary to this Contract may constitute a breach to which clause 28 applies.*

## **15 Specific Responsibilities of Customer**

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### **15.1 Charges and Payment**

- (a) *The charges payable in respect of this Contract are as specified in the Pricing Schedule, where relevant as clarified by the Hosting Work Order.*
- (b) *The terms and conditions relating to payment are as per the Grocery Price Monitoring Website System Design, Implementation and Services Contract.*

### **15.2 Customer Resources**

The Customer will provide the resources so specified in the Contract Details. Such resources will, to the Customer's reasonable knowledge and belief, be fit for any purpose stated in this Contract.

### **15.3 Facilities**

The Customer warrants that:

- (a) *any facilities (including items of equipment and software) which it makes available to the Contractor will comply with the Specifications and any other standards set out in the Contract Details;*
  - (b) *facilities made available to the Contractor will be maintained in the manner specified (if at all) in the Contract Details; and*
  - (c) *should a facility which is provided by the Customer under this clause fail at any time to meet the requirements specified in the Contract Details, then without limiting any other rights of the Contractor, the Customer will promptly take reasonable steps to ensure that the facility meets those requirements as soon as practicable.*
- 

### **15.4 Site Preparation**

To the extent specified in the Contract Details, the Customer will be responsible for site preparation to enable delivery and implementation of a Product and/or the performance of a Service.

### **15.5 Access to Customer's Premises**

The Customer will provide the Contractor with access to the Customer's premises as specified in the Contract Details to enable the Contractor to fulfil its obligations under the Contract. Access may be temporarily denied or suspended by the Customer, at its sole discretion. Where access is temporarily denied or suspended by the Customer (except in circumstances where access is temporarily denied or suspended due to an investigation into the conduct of the Contractor's Personnel), the Contractor will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access. Without limiting the foregoing, the Customer will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.



**16 Acceptance**

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**16.1 NOT USED**

**17 Warranties – Contractor**

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**17.1 General**

The Contractor warrants that:

- (a) *during the warranty period, each Service and Product will conform with the Specifications or, where relevant and subject to clause 17.4, any third party warranties specified in the Contract Details;*
- (b) *if and to the extent ownership of a Product is to pass to the Customer, the Product will be free from any charge or encumbrance;*
- (c) *it has the right to grant all licences specified in the Contract Details; and*
- (d) *no virus will be introduced into the Customer's systems as a result of the supply by the Contractor of a Product which contains a virus or as a result of any negligent or willfully wrong act or omission by the Contractor in providing a Service.*

**17.2 Warranty Period**

Without limiting any other rights of the Customer, the Contractor will promptly rectify any defect in a Product at no charge if it becomes aware of the defect:

- (a) *during the warranty period specified in Contract Details; or*
- (b) *where no warranty period is specified in the Contract Details, during the first 90 days after Acceptance (or, where Acceptance is inapplicable, 90 days after the date of supply).*

**17.3 Compliance with Standards**

Subject to any contrary provision in the Contract Details, a Service or Product supplied by the Contractor must comply with the applicable Australian or New Zealand standards or, if there are no applicable Australian or New Zealand standards, any applicable international standards.

**17.4 Third Party Warranties**

Where the Contractor supplies Products that have been procured from a third party, the Contractor assigns to the Customer, to the extent practicable and to the extent permitted by law, the benefits of the warranties given by the third party. This assignment does not in any way relieve the Contractor of the obligation to comply with warranties offered directly by the Contractor under this Contract.

**17.5 Implied Terms**

If and to the extent specified in the Contract Details, implied terms are excluded from this Contract.

**17.6 Survival of Clause 17**

Clause 17 will survive the termination or expiry of this Contract.



## **18 Audit and Access Requirements**

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### **18.1 Scope of Audits**

*Audits may be conducted under clause 18.2 in respect of the Contractor's compliance with all its obligations under the Contract.*

### **18.2 Conduct of Audits**

- (a) *The Contractor must participate promptly and cooperatively in any audits conducted by the Customer or its nominee.*
- (b) *Except in those circumstances in which notice is not practicable or appropriate, the Customer must give the Contractor reasonable notice of an audit and, where reasonably practicable, an indication of which documents and/or class of documents the auditor may require.*
- (c) *Subject to any express provisions in this Contract to the contrary, each party must bear its own costs associated with any audits.*
- (d) *Subject to clauses 18.2(e) and 18.3(e), the requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.*
- (e) *The Customer must use reasonable endeavours to ensure that audits do not unreasonably delay or disrupt any material with respect to the Contractor's performance of its obligations under this Contract.*
- (f) *The Contractor must promptly take, at no additional cost to the Customer, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Contractor has under this Contract:*
  - (i) *supplied any Services or Products; or*
  - (ii) *calculated charges, or any other amounts or fees billed to the Customer.*

### **18.3 Access to the Contractor's Premises and Records**

- (a) *For the purposes of clause 18.2, the Contractor must grant, and where relevant must ensure that its subcontractors grant, the Customer and its nominees or the Auditor-General access as required by the Customer, to the Contractor's premises and data, records, accounts and other financial material or material relevant to the performance of this Contract providing that such access not:*
  - (i) *unduly compromise the integrity or security of Contractor or subcontractor operations;*
  - (ii) *place unreasonable constraints on the Contractor's operational resources; or*
  - (iii) *cause the Contractor or its subcontractors to breach any legal obligations.*

- (b) *In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request at no additional cost to the Customer such reasonable facilities as may be necessary to enable a legible reproduction to be created.*
- (c) *The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 18.3 and in clause 18.1 with respect to the subcontractor's premises, data, records, accounts, financial material and information of its Personnel.*
- (d) *This clause 18.3 applies for the term of this Contract and for a period of seven (7) years from the date of its expiry or termination.*
- (e) *In the exercise of the general rights granted by clause 18.3, the Customer must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under this Contract in any material respect.*
- (f) *Without limiting any of its other obligations under this Contract, the Contractor must, at its own cost, ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause.*
- (g) *Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Customer under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.*

## **18.5 Interpretation of this Clause**

In this clause:

- (a) *a reference to the 'Auditor-General' is a reference to the Auditor-General or equivalent office holder with jurisdiction over the Customer;*
- (b) *a reference to the 'Privacy Commissioner' is a reference to the Privacy Commissioner or equivalent office holder (if any) with jurisdiction over the Customer; and*
- (c) *the obligations of the Contractor are subject to any amendment as set out in the Contract Details.*

## **19 Personnel**

### **19.1 Provision of Personnel**

The parties will each utilise such Personnel as are necessary to enable them to fulfil their respective obligations under this Contract. Each party will ensure that the Personnel which it utilises pursuant to this clause have the requisite skills and experience.

## **19.2 Entry onto Customer's Premises**

The Contractor will:

- (a) *provide or procure the provision of such information as can be lawfully provided and which is reasonably requested by the Customer concerning the Personnel it proposes to bring onto the Customer's premises for the purposes of the Contract;*
- (b) *provide suitable replacement Personnel should the Customer, on reasonable grounds, deny access to or request removal of any Personnel; and*
- (c) *ensure its Personnel, when on the Customer's premises or when accessing the Customer's facilities and information, comply as necessary with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security (including submitting to security checks as required and complying with any obligation imposed on the Customer by law).*

## **19.3 Key Personnel**

Where Personnel are specified in the Contract Details as being responsible for the performance of key roles or tasks under this Contract, the Contractor will provide those individuals to fulfil those tasks. If, notwithstanding this obligation, a specified individual is unavailable at any time, the Contractor will promptly advise the Customer and propose a substitute. Any substitute Personnel must be approved by the Customer. The Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under this Contract.

## **20 Non-disclosure and Use of Information**

### **20.1 Extent of Obligation**

- (a) **Except to the extent necessary to comply with any government policy relating to the public disclosure of confidential information (which policy is in place at the commencement of this Contract and stipulated in the Contract Details), neither the Contractor nor the Customer will make public, disclose or use for purposes other than for the purposes of this Contract the confidential information of the other, unless the other gives its written approval. Confidential information includes:**
- (i) information marked as confidential, unless such information is of the nature described in clause 20.1(b); and
  - (ii) information which by its nature is confidential.
- (b) **A party is not obliged by this clause to keep information confidential if that information:**
- (i) is trivial or obvious;
  - (ii) was already in the receiving party's possession at the time of receipt from the other party;
  - (iii) has become public knowledge (other than through a breach of an obligation of confidence imposed under this Contract);
  - (iv) was published or otherwise becomes part of the public domain other than through a breach of this Contract by the disclosing party;
  - (v) has been held by the receiving party for a period in excess of the time limit (if any) specified in the Contract Details for the retention of confidential information;
  - (vi) was independently developed by the receiving party without reference to the confidential information of the furnishing party; or
  - (vii) was disclosed as a result of a legal obligation or by order of a stock exchange or government agency, provided that the receiving party must to the extent practicable give the disclosing party prompt notice of the existence of such an obligation and must, at the disclosing party's cost, make a reasonable effort to otherwise protect the confidentiality of such information.
- (c) **Nothing contained in this Contract will restrict a party from the use of any ideas, concepts, know how or techniques which it independently develops or acquires under this Contract, except to the extent such use infringes the other party's Intellectual Property Rights.**

### **20.2 Obligations of Personnel**

- (a) ***Each party will take all reasonable steps to ensure its Personnel engaged to perform work under this Contract do not disclose confidential information of the other party obtained during the course of performing such work.***
- (b) ***Unless the Contractor can demonstrate that it has internal procedures in place to ensure employees will adequately protect confidential information, the Customer may at any time require the Contractor to arrange for its employees engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified in Appendix 4.***
- (c) ***The Customer may at any time require the Contractor to arrange for its agents or subcontractors engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified in Appendix 4.***

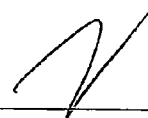
**20.3 Disclosure to Media and Others**

Neither party will disclose to the media any information regarding this Contract or work performed under this Contract without the written consent of the other party. Unless expressly prohibited in the Contract Details, however, the Contractor may include the Customer's name and a factual description of the work performed under this Contract:

- (a) ***in a list of references;***
- (b) ***in proposals to third parties; and***
- (c) ***in its annual report.***

**20.4 Survival of Clause 20**

Clause 20 will survive the termination or expiry of this Contract.



## **21 Intellectual Property**

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### **21.1 Materials Created under the Contract**

- (a) *Subject to subclauses 21.1(b), (c), (d) and (e), all Intellectual Property Rights in Developed Software or other items that have been developed for the Customer under this Contract are assigned to the Customer (known as 'partitioned ownership'). Nothing in this sub-clause will affect the ownership of any pre-existing Intellectual Property Rights in any tools, object libraries, methodologies and materials used to produce the Developed Software or other items.*
- (b) *Only if and to the extent specified in the Contract Details, Intellectual Property Rights in the Developed Software or other items which have been developed under this Contract will remain the property of the Contractor (known as 'consolidated ownership').*
- (c) *Only if and to the extent specified in the Contract Details, the parties will co-own the Intellectual Property Rights in the Developed Software or other items that have been developed under this Contract in such proportions and on such terms as are specified in the Contract Details (known as 'joint ownership'). For the removal of doubt, the permission of both parties is required for the subsequent use or exploitation of jointly owned materials.*
- (d) *Only if and to the extent specified in the Contract Details, the parties will co-own the Intellectual Property Rights in the Developed Software or other items that have been developed under this Contract and each party will have the right to use or exploit these materials independently of the other (known as 'severable ownership').*
- (e) *Only if and to the extent specified in the Contract Details, the parties will co-own the Intellectual Property Rights in the Developed Software or other items that have been developed under this Contract and each party will be entitled to use or exploit these materials in the manner specified in the Contract Details (known as 'concurrent ownership').*

### **21.2 Licensing of Developed Software**

To the extent the Contractor retains ownership of the Developed Software, the Contractor will license the Customer to use the Developed Software in accordance with clause 10 and the Software will be treated as Licensed Software for the purposes of this Contract.

### **21.3 Licensing of Contractor's Pre-existing Materials**

Except where expressly stated to the contrary, this Contract does not affect the Intellectual Property Rights in items that existed prior to the date of the Contract but the Contractor grants and will ensure that relevant third parties grant to the Customer, at no additional cost, a non-exclusive, non-transferable licence:



- (a) *to use, reproduce and adapt such items for its own use; and*
- (b) *where and to the extent specified in the Contract Details, to perform any other act with respect to copyright or to manufacture, sell, hire or otherwise exploit the items or to license any third party to do any of those things in respect of the items;*

but only as part of the Developed Software.

#### **21.4 Licensing of Customer's Pre-Existing Materials**

To the extent that the provision of Services by the Contractor necessitates access by the Contractor to the Customer's materials, the Customer grants the Contractor a non-exclusive, non-transferable licence to use such materials for purposes solely related to the Services, subject to any additional stipulations in the Contract Details.

#### **21.5 Licence Back to Contractor**

Where ownership of Developed Software vests in the Customer, the Customer will, to the extent specified in the Contract Details, grant a licence back to the Contractor to use and exploit the Developed Software.

#### **21.6 Survival of Clause 21**

Clause 21 will survive the termination or expiry of this Contract.

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### **22 Third Party Indemnity**

#### **22.1 Indemnity by Contractor**

Unless specified to the contrary in the Contract Details, the Contractor will indemnify the Customer (including its Personnel) against a loss or liability that has been reasonably incurred by the Customer as the result of a claim made by a third party:

- (a) *where that loss or liability was caused or contributed to by an unlawful, negligent or wilfully wrong act or omission by the Contractor or its Personnel; or*
- (b) *where and to the extent that loss or liability relates to personal injury, death or property damage and was caused or contributed to by an unlawful, negligent or wilfully wrong act or omission by the Contractor or its Personnel; or*
- (c) *where that loss or liability arises from a claim made or threatened against the Customer in which it is alleged that a Service or Product (including the Customer's use of a Service or Product) infringes the Intellectual Property Rights of a third party. For the purposes of this paragraph (c), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the Patents Act 1990 (Cw/ith) s.163, the Designs Act 1906 (Cw/ith) s.40A, the Copyright Act 1968 (Cw/ith) s.183 and the Circuits Layout Act 1989 (Cw/ith) s.25, constitute an infringement.*

#### **22.2 Customer's Obligations to Contractor**

Where the Customer wishes to enforce an indemnity described in sub-clause 22.1, it must:

- (a) *give written notice to the Contractor as soon as practicable;*
- (b) *subject to the Contractor agreeing to comply at all times with government policy relevant to the conduct of the litigation, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and*
- (c) *in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer, provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.*

### **22.3 Continued Use or Replacement of Infringing Material**

If a claim of infringement of Intellectual Property Rights is made or threatened by a third party, the Customer will allow the Contractor, at the Contractor's expense, to either:

- (a) *obtain for the Customer the right to continued use of the Product; or*
- (b) *replace or modify the Product so that the alleged infringement ceases so long as the Product continues to provide the Customer with equivalent functionality and performance as required in the Specifications.*

### **22.4 Indemnity by the Customer**

Where the Contract Details stipulate that this clause applies, the Customer will indemnify the Contractor including its Personnel against a loss or liability that has been reasonably incurred by the Contractor as the result of a claim made by a third party:

- (a) *where that loss or liability was caused by a wilful, unlawful or negligent act or omission by the Customer or its Personnel; or*
- (b) *where and to the extent that loss or liability relates to personal injury, death or property damage.*

### **22.5 Contractor's Obligations to Customer**

Where the Contractor wishes to rely on the indemnity set out in clause 22.4, it must:

- (a) *give written notice to the Customer as soon as practicable;*
- (b) *permit the Customer, at the Customer's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and*
- (c) *provide all reasonable assistance to the Customer in the handling of negotiations and litigation.*

### **22.6 Restricted Application of Indemnity**

Unless specified to the contrary in the Contract Details, this clause does not address any obligation of the Contractor to indemnify the Customer against loss or liability that has been incurred by the Customer other than as a result of a claim made by a third party. The obligations of the Contractor in circumstances not addressed by this clause will be determined by reference to clause 24 only.

## **22.7 Survival of Clause 22**

Clause 22 will survive the termination and expiry of this Contract.

## **23 Problem Resolution**

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### **23.1 Objective**

The parties agree to use reasonable commercial efforts to resolve by negotiation any problem that arises between them under this Contract. Neither party will resort to legal proceedings, or terminate this Contract, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

### **23.2 Notification**

If a problem arises (including a breach or an alleged breach) under this Contract which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a party concerned about the problem may notify the other. Management representatives of each of the parties will then endeavour in good faith to agree upon a resolution.

### **23.3 Mediation**

Should the management representatives fail to reach a solution in accordance with clause 23.2 within 5 (five) working days (or such other time frame agreed between the parties), the parties may agree to mediation. The mediator will be selected in the manner specified in the Contract Details.

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### **23.4 Expert Determination**

If mediation pursuant to clause 23.3 fails, or either party states it does not wish to attempt settlement through a mediator within 10 (ten) working days (or such other time frame agreed between the parties), the parties may agree to expert determination. The expert will be selected in the manner specified in the Contract Details. Where the parties agree to proceed by expert determination, the determination will be conducted pursuant to any relevant legislation.

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### **23.5 Proceedings**

If mediation and/or expert determination fails, or if either party states that it does not wish to proceed with either mediation or expert determination, then either party may commence legal proceedings against the other.

### **23.6 Continued Performance**

Unless prevented by the nature of the dispute, the parties will continue to perform this Contract while attempts are made to resolve the dispute. In circumstances where the dispute relates to payment and the Contractor is required to continue to perform its obligations under this Contract pursuant to this clause, the Customer will continue to pay the Contractor any undisputed amounts.

## **24 Liability**

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### **24.1 Liability**

The liability of either party for breach of this Contract or for any other common law or

statutory cause of action arising out of the operation of this Contract will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

#### **24.2 Limitation**

If so specified in the Contract Details, liability arising under this clause 24 will be limited. Unless expressly stated otherwise in the Contract Details, the limit on liability specified in the Contract Details will apply for the benefit of both parties in respect of each single occurrence or a series of related occurrences arising from a single cause. Except as otherwise provided in the Contract Details, this limitation does not apply to liability for:

- (a) *personal injury, including sickness and death;*
- (b) *loss of, or damage to, tangible property;*
- (c) *an indemnity in respect of third party claims under clause 22; or*
- (d) *infringement of Intellectual Property Rights.*

#### **24.3 Contributory Negligence**

The liability of a party ('the party at fault') for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under this Contract and/or to the extent that the negligence of the other party has contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or for negligence.

#### **24.4 Consequences of Provision of Faulty Data by Customer**

The Contractor will not be held accountable for a failure to meet its contractual obligations to the extent that the failure is attributable to the provision by the Customer of inaccurate or incomplete information which is required by the Contractor for the purposes of the Contract. The Contractor must notify the Customer as soon as practicable if it becomes aware that the provision by the Customer of incomplete or inaccurate information in any instance might prevent the Contractor from complying with its obligations under this Contract.

#### **24.5 Survival of Clause 24**

Clause 24 will survive the termination or expiry of this Contract.

## **25 Approval, Consent or Agreement**

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- (a) **Where the Contractor has fulfilled its obligations under this Contract and the Customer unreasonably refuses to grant any approval (including but not limited to the issuing of a certificate of Acceptance) specified in the Contract Details:**
- (i) the Contractor may terminate the Contract;
  - (ii) the Customer will pay for work performed up to the point where the approval should reasonably have been granted and will further be liable in respect of all costs reasonably incurred by the Contractor in seeking that approval; and
  - (iii) ownership of any Intellectual Property Rights will be determined in accordance with the provisions of this Contract.
- (b) **This clause states the Contractor's sole remedy in the event of termination of this Contract under clause 25.**

## **26 Communication**

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### **26.1 Electronic Commerce**

To the extent specified in the Contract Details, the parties will cooperate in performing their respective obligations under the Contract in an electronic environment. The foregoing does not, however, relieve either party of its specified obligations as set out in the Contract.

### **26.2 Notices**

A notice or other communication is properly given or served by a party if that party:

- (a) **delivers it by hand;**
  - (b) **posts it;**
  - (c) **delivers it by facsimile;**
  - (d) **transmits it by electronic mail; or**
  - (e) **transmits it by any other electronic means;**
- to the address of the relevant officer specified in the Contract Details, marked to that person's attention.

### **26.3 Change of Address**

Each party will advise the other of any change in the address or identity of the relevant person to whom notices are to be addressed.

### **26.4 Deemed Receipt**

Unless specified to the contrary in the Contract Details, a notice or other communication is deemed to be received if:

- (a) *delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;*
- (b) *sent by post from and to an address within Australia, after three (3) working days;*
- (c) *sent by post from or to an address outside Australia, after ten (10) working days;*
- (d) *sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);*
- (e) *sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or*
- (f) *sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.*

## **27 General**

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### **27.1 Subcontracting**

- (a) *Subject to the approval of the Customer, which will not be unreasonably withheld, the Contractor may subcontract the work to be performed under the Contract. Subcontractors specified in the Contract Details will be deemed approved. The Contractor is responsible for ensuring that any obligations which it subcontracts are performed by the subcontractor concerned. The Contractor will ensure that each subcontractor is aware of the provisions of this Contract relevant to that part of the work which the subcontractor is to perform.*
- (b) *The Customer may on reasonable grounds request withdrawal and/or replacement of any subcontractor.*

### **27.2 Entire Agreement**

This Contract constitutes the entire agreement of the parties about its subject matter, and no written or oral agreement, arrangement or understanding made or entered into prior to the execution of this Contract may in any way be read or incorporated into the Contract, except as expressly stated to the contrary.

### **27.3 Assignment and Novation**

Neither party will assign the whole or part of this Contract without the prior written consent of the other party.

The Customer will not be obliged to consent to any proposed novation of the Contract.

#### **27.4 Unforeseen Events**

- (a) *A party (the 'affected party') is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.*
- (b) *When the circumstances described in clause 27.4(a) arise or are reasonably perceived by the affected party as an imminent possibility, the affected party will give notice of those circumstances to the other as soon as possible, identifying the effect they will have on its performance. An affected party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.*
- (c) *If non-performance or diminished performance by the affected party due to the circumstances described in clause 27.4(a) continues for a period of 30 (thirty) consecutive days or such other period as may be specified in the Contract Details, the other party may terminate the Contract. If this Contract is terminated in these circumstances, each party will bear its own costs and neither party will incur further liability to the other. If the Contractor is the affected party, it will be entitled to payment for work performed prior to the date of intervention of the circumstances described in clause 27.4(a).*

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#### **27.5 Waiver**

A waiver by a party of a breach will not be regarded as a waiver of any other breach. A failure by a party to enforce a provision will not be interpreted as a waiver (unless the waiving party confirms in writing that a waiver was intended).

#### **27.6 Applicable Law**

This Contract will be governed by, and construed in accordance with, the laws of the jurisdiction specified in the Contract Details.

#### **27.7 Conflict of Interest**

Each party warrants that at the date of execution of this Contract it is not, to the best of its knowledge, aware of any business or personal relationship which may compromise its ability to discharge its obligations under this Contract in good faith and objectively. Each party will promptly notify the other in writing if a situation arises during the course of this Contract whereby a business or personal relationship may compromise it in this manner.

#### **27.8 Variation**

The parties agree that this Contract may only be varied in writing and with the agreement of both parties. If proposed changes will have the effect of varying the Specifications, the Contract Details or any other technical requirements of the Customer, the parties must first complete and sign a change order in the form specified in Appendix 3.

#### **27.9 Time**

Unless specified to the contrary in the Contract Details, time will be of the essence in

complying with all stated dates and times.

#### **27.10 Parties' Responsibilities**

Neither party will be liable to the other for failing to comply with any obligations under this Contract to the extent that such failure results from the other party not performing its obligations as stated in the Contract.

#### **27.11 Severability**

Each provision of this Contract shall be read as separate and severable so that if any provision is void or unenforceable for any reason, that provision will be severed and the remainder will be construed as if the severed provision had never existed.

### **28 Termination**

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#### **28.1 Default**

Subject to clause 23, either party may terminate this Contract immediately on written notice to the other, while preserving to itself any rights which may have accrued to it, where the other party:

- (a) *commits a material breach of this Contract which is not capable of being remedied;*
- (b) *fails to remedy a breach capable of being remedied within a period stated by notice in writing (which period must be reasonable in the circumstances); or*
- (c) *commits an act of insolvency, comes under any form of insolvency administration, or assigns or purports to novate its rights otherwise than in accordance with the Contract.*

For the purposes of clause 28.1(a), the parties acknowledge that a series of minor breaches may constitute a 'material breach'.

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#### **28.2 Convenience**

- (a) *Unless stated to the contrary in the Contract Details, the Customer may terminate this Contract in whole or in part at any time by 30 days prior written notice. No fees or charges are payable other than the hosting fees up to the date of termination (pro rated as necessary for part months).*
- (b) *The Contractor will, in each subcontract valued at \$50,000 or more, reserve a right of termination in circumstances where this Contract is terminated pursuant to clause 28.2(a)*

### **29 Counterparts**

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Unless stated to the contrary in the Contract Details, this Contract may be executed in counterparts, meaning that execution will be complete when each party holds a copy of this Contract signed by the other party, even though the signatures of both parties do not appear on the same copy.



## Appendix 1 - Contract Details

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### Title of Contract

Description of Contract	The provision of hosting services for the Grocery Price Monitoring System and Website
Contract number	To be advised by ACCC

### Head Agreement (Clause 1.1)

Details of the Head Agreement for this Contract	Not Applicable
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### Contractor (Clause 1.1)

Name of Contractor	Getronics Australia Pty Ltd
ACN/ABN of Contractor	ACN 001 002 731
Name of Contractor's Representative	As set out in the Hosting Work Order (or if no details are specified, the Getronics' Representative)

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### Customer (Clause 1.1)

Name of Customer	Commonwealth of Australia represented by Australian Competition and Consumer Commission
Name of Customer's Representative	As set out in the Hosting Work Order (or if no details are specified, the ACCC Project Manager)

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### Commencement Date and Period of Contract (Clause 3)

Commencement date (Clause 3.1)	As set out in the Hosting Work Order
Duration of Contract (Clause 3.2)	As set out in the Hosting Work Order
Extension procedure (Clause 3.2)	As set out in the Hosting Work Order (or if no details are specified, as per the options in the Pricing Schedule and any subsequent offer made by the Contractor)

### Consultancy Services (Clause 5)

Not Applicable

**Managed Services (Clause 6)**

*See also Attachment 1 to this Appendix 1 for Specifications/Statement of Work and Attachment 4 for Service Levels*

Details of the Managed Services (Clause 6.1)	The Contractor will provide Managed Services as set out in Attachment 1 to Appendix 1 (Statement of Work).
Service commencement date (Clause 6.1)	As set out in the Hosting Work Order
Assets to be acquired (Clause 6.2)	Not applicable.
Content of procedures manual (Clause 6.2)	Not applicable.
Service delivery requirements (Clause 6.3)	As detailed in the Service Level Agreement at Attachment 4 to Appendix 1 or as otherwise as set out in the Hosting Work Order.
Reporting intervals (Clause 6.3)	As detailed in the Service Level Agreement at Attachment 4 to Appendix 1 or as otherwise set out as set out in the Hosting Work Order.

**Supply of Hardware (Clause 7)**

Not Applicable

**Hardware Maintenance Services (Clause 8)**

Not Applicable

**Software Development (Clause 1.1 and 9)**

Not Applicable

**Licensing of Software (Clause 10)**

Not Applicable

**Software Support Services (Clause 11)**

Not Applicable

**Systems Integration (Clause 12)**

Not Applicable

**Joint Responsibilities (Clause 13)**

Meeting and reporting arrangements	Meeting and reporting arrangements are specified in Attachment 1 (Statement of Work) and Attachment 4 (Service Level Agreement) to this
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(Clause 13)

Appendix 1 or as otherwise as set out in the Hosting Work Order.

**Specific responsibilities of the Contractor (Clause 14)**

IP rights to Software developed in the course of providing the services related to this Contract

No Developed Software will be created under this Contract. Also see clause 21.

Contractor's obligations to establish and maintain facilities (Clause 14.2)

As detailed in the Service Level Agreement at Attachment 4 to this Appendix 1.

Requirement to make available the Contractor's records (Clause 14.2)

As detailed in the Service Level Agreement at Attachment 4 to this Appendix 1.

Extent that the Contractor is to act as the Customer's agent (Clause 14.3)

Not applicable.

Requirement to provide training (Clause 14.5)

Not applicable.

Extent to which the Contractor has to provide details for site preparation (Clause 14.8)

Not applicable.

Insurance affected under Head Agreement (Clause 14.9(a))

Not applicable

Additional Insurance requirements (Clause 14.9(b))

Public Liability - \$10,000,000 per claim and is limited to \$10 million in aggregate for the 12 months.

Professional Indemnity - \$5,000,000 per claim and is limited to \$10 million in aggregate for the 12 months.

Workers Compensation - complies with legislation.

Performance guarantee or similar requirements

Not applicable.

(Clause 14.10)	
Financial Undertaking or similar requirements (Clause 14.10)	Not applicable.
Applicable security legislation (Clause 14.11)	Not applicable.
Specific security requirements (Clause 14.11)	Not applicable.
Assumptions (Clause 14.11.1)	Not applicable.
Specific privacy procedures (Clause 14.12)	Not Applicable
Whether Contractor is to maintain records (Clause 14.16)	No.

Data security arrangements in respect of data access and use (Clause 14.18)	The Contractor must comply with any data security requirements specified in Attachment 1 (Statement of Work) to this Appendix 1 only.
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**Specific Responsibilities of Customer (Clause 15)**

*See the Price Schedule details of all Charges and invoicing and payment provisions as per the Grocery Price Monitoring Website System Design, Implementation and Services Contract.*

Resources to be provided by Customer (Clause 15.2)	The Customer must provide the resources if any described at Attachment 1 (Statement of Work) to this Appendix 1.
Customer's obligations to maintain facilities (Clause 15.3)	The Customer must provide and maintain the facilities so as to allow the Contractor to provide the Managed Services in accordance with Attachment 1 (Statement of Work) to this Appendix 1.
Site preparation requirements (Clause 15.4)	The Customer is responsible for all necessary site preparation so as to allow the Contractor to provide the Managed Services in accordance with Attachment 1 (Statement of Work) to this Appendix

1.

Details of the Contractor's access rights to the Customer's premises (Clause 15.5)

The Customer must provide the Contractor with access to the Customer's premises as reasonably necessary to allow the Contractor to provide the Managed Services in accordance with Attachment 1 (Statement of Work) to this Appendix 1.

**Acceptance Testing Requirements (Clause 16)**

Not Applicable

**Warranties (Clause 17)**

Applicable third party warranties (Clause 17.1)

Not Applicable

Licences to be granted by the Customer (Clause 17.1)

Not applicable.

Warranty period (Clause 17.2)

The parties acknowledge clauses 17.1(b) and (c) have no application to this Contract. The warranties provided under clauses 17.1(a) and (d) will be valid for a period of one year from the date of this Contract.

Alternative standards for the Service or Product (Clause 17.3)

Not applicable.

Whether (and extent to which) implied terms are excluded (Clause 17.5)

See Clause 24 of these Contract Details.

**Audit (Clause 18)**

Amended audit obligations (Clause 18.4)

Clause 18.4 applies no amendments.

**Personnel (Clause 19)**

Names of key personnel required (Clause 19.3)

Not Applicable as is a Managed Service.

**Non-disclosure and Use of information (Clause 20)**

Non-disclosure of information (clause

Nothing in clause 20 prevents the Contractor from disclosing confidential information of the Customer

20) to its legal or other advisors under an appropriate confidentiality agreement.

Prevailing government policies relating to confidentiality (Clause 20.1) Not Applicable.

Time limit on retention of confidence (Clause 20.1) Contractor information - Five Years.

Prohibitions on certain factual disclosures (Clause 20.3) Not Applicable

**Intellectual Property Rights (Clause 21)**

Ownership of Intellectual Property Rights (Clause 21.1) Intellectual Property Rights in any material (including without limitation any software) remain the property of the Customer except that developed by the Contractor for the Customer for the delivery of the contracted services.

Specific licence rights in relation to Contractor's pre-existing material (Clause 21.3) Not applicable.

Conditions for licensing back of Customer's pre-existing materials to the Contractor (Clause 21.4) Not Applicable

Conditions for licensing back of Developed Software to the Contractor (Clause 21.5) Not applicable.

**Indemnities (Clause 22)**

Variation to Contractor's indemnity obligations (Clause 22.1) No Variation.



Whether the Customer will indemnify the Contractor against third party claims (Clause 22.4)

Not applicable.

Whether specific indemnities are offered by Contractor (Clause 22.6)

Not applicable.

**Problem Resolution (Clause 23)**

Selection of a mediator (Clause 23.3)

If applicable, the parties will select a mediator by agreement.

Selection of an expert for determination (Clause 23.4)

If applicable, the parties will select an expert by agreement.

**Liability (Clause 24)**

Whether liability will be limited and if so, the amount to which it is limited (Clause 24.2)

The Contractor's liability will be limited to \$1,250,000 professional negligence and \$1,250,000 in respect of any other claim.

Certain legislation, including the *Trade Practices Act 1974* (Cth) may imply warranties or conditions or impose obligations which cannot be excluded, restricted or modified except to a limited extent. This Contract must be read subject to those statutory provisions. If those statutory provisions apply, notwithstanding any other provision of this Contract, to the extent to which the Contractor is entitled to do so, the Contractor limits its liability in respect of any claim under those provisions to:

- (i) in the case of goods, at the Contractor's option:
  - (A) the replacement of the goods or the supply of equivalent goods;
  - (B) the repair of the goods;
  - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (D) the payment of the cost of having the goods

- repaired, and
- (ii) in the case of services, at the Contractor's option:
  - (A) the supply of the services again; or
  - (B) the payment of the cost of having the services supplied again.

Whether any limitation on liability is for each single occurrence or for a series of related occurrences (Clause 24.2)

Series of related occurrences.

**Communication (Clause 26)**

Extent to which the contracting process can be conducted electronically (Clause 26.1)

Any obligations under the Contract which can properly be performed electronically may be so performed unless the Customer otherwise notifies the Contractor in writing.

**Address for service of notices to Contractor (Clause 26.2)**

Street address  
Postal address  
Phone number  
Fax number  
Email address

As per the Grocery Price Monitoring Website System Design, Implementation and Services Contract

**Address for service of notices to Customer (Clause 26.2)**

Street address  
Postal address  
Phone number  
Fax number  
Email address

As per the Grocery Price Monitoring Website System Design, Implementation and Services Contract

Deemed service of notices (Clause 26.4)

As clause 26.4.

Any special provisions regarding deemed service of notices (Clause 26.4).

Paragraphs (d) and (e) require acknowledgement of receipt by at least partly human generated (not solely machine generated) means.



**Subcontracting (Clause 27.1)**

Subcontractors  
deemed approved  
(Clause 27.1)

Cybertrust Australia Pty Limited ACN 073 665 175  
ABN 74 073 665 175

**Unforeseen Events (Clause 27.4)**

Permissible period  
for non-performance  
(Clause 27.4)

As indicated in Clause 27.4.

**Applicable Law (Clause 27.6)**

Law which governs  
the Contract (Clause  
27.8)

The laws of the Australian Capital Territory apply to  
this contract.

**Time of the Essence (Clause 27.9)**

Whether time is of  
the essence (Clause  
27.9)

Not applicable.

**Termination for Convenience (Clause 28.2)**

Whether Customer  
has right of  
termination for  
convenience (Clause  
28.2)

Yes

Whether  
compensation is  
payable in the event  
of termination for  
convenience (Clause  
28.2)

The only amounts payable by the Customer for  
termination are those set out in the Hosting Work  
Order which must not exceed those set out in the  
Pricing Schedule.

**Counterparts (Clause 29)**

Whether the  
Contract can be  
executed in  
counterparts (Clause  
29)

Yes.

## Attachment 1 to Appendix 1 (Contract Details)

### Specifications/Statement of Work

(Clauses 1.1, 5, 6, 7, 9, 10, 12)

### Introduction

The Customer has engaged the Contractor to host and support the Customer internet site. This document should be read with reference to the Service Level Agreement at Attachment 2 to Appendix 1.

### Background

Cybertrust Australia Pty Limited ACN 073 665 175 ABN 74 073 665 175 (Cybertrust) is the Contractor's subcontractor under the Grocery Price Monitoring Website System Design, Implementation and Services Contract for the provision of managed secure hosting services to the Customer.

Cybertrust maintains agreements with several Internet Service providers (ISP's) that provide telecommunications trunks from the internet. The ISP connections come into the Cybertrust gateway at multiple points across their Barton, Bruce and Lyneham facilities, ensuring no single point of failure for internet communications services. The Cybertrust CAGE gateway then provides load balancing and high availability across all of their sites for customer hosted equipment. These are secure facilities accredited to Australian Government standards.

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### Overview of Managed Services

The Contractor will provide the managed secure hosting services:

- redundant internet connections
- multiple sites with redundant communication paths between sites.
- secure hosting facilities accredited to Australian Government standards for Customer supplied equipment
- load balancing of internet traffic across both physical sites.
- firewall services and configuration.
- configuration of routers
- tape changing services for backups
- backup and restore services as described in this Attachment.

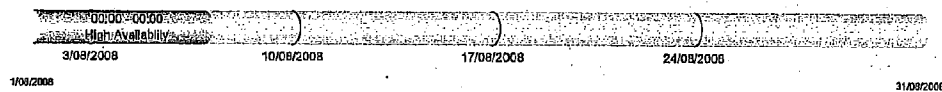
## Grocery Price Monitoring Web Site Operations

### General

The Grocery Price monitoring web site's availability is described in Attachment 2 to Appendix 1 A – Service Level Agreement (SLA).

The Contractor shall meet the Grocery Price monitoring web site availability requirements for each of the System's components.

The indicative availability models for the Grocery Price monitoring web site components are shown in Figure 7 below.



**Figure 7.** Diagram showing the Grocery Price monitoring web site availability models for the major components of the system

The Contractor's solution shall provide two active sites.

*There needs to be at least two sites so if one has a power outage or communications failure the second site can continue operation.*

The Grocery Price monitoring web site shall provide the ability to change Grocery Price monitoring web site's public access capacity with short notice.

The system shall be able to increase capacity at short notice when demand is seen to be rapidly increasing.

The unused capacity shall be released or reallocated as needed.

That is, adding/removing web servers to the web site.

The Contractor shall have experience with highly available web systems.

A highly available site shall have staff who are experienced with running highly available environments.

The Contractor shall submit an SOP as part of its delivery.

The SOP unless otherwise agreed by the ACCC, shall include:

- **document introduction:** to include a description of the SOP, its scope, constraints, definitions and abbreviations, references or reference documents.

- **system hosting requirements:** to include hardware, software and networking operations requirements.
- **roles and responsibilities:** to include the roles and responsibilities for the operation of Grocery Price monitoring web site.
- **monitoring:** to include a monitoring plan showing what is to be monitored, how it's to be monitored and the alert parameters.
- **disaster recovery and business continuity:** to include disaster recovery and practice plan.
- **change and patch management process.**
- **scheduled outages:** this includes the defined scheduled outages and process for agreeing outages.
- **implementation and change verification testing.**

### **System Hosting**

The Contractor shall host the Grocery Price monitoring web site.

The Contractor shall host the Grocery Price monitoring web site for 3 months.

The Contractor shall provide optional extensions for hosting the Grocery Price monitoring web site for up to a maximum of two years.

The Contractor's hosting arrangements shall include the provision of the host environment including:

- hardware,
- software,
- power supplies, and
- air conditioning;
- scalable capacity;
- required communications links;
- backup and redundancy;
- system restore including proof of restore; and
- audit and QR access.

The Grocery Price monitoring web site's server rooms shall be fitted with both dual power supplies and Uninterruptible Power Supply (UPS).

The Grocery Price monitoring web site shall use dual Internet providers using separate networks and physically distinct tails / paths.

Dual internet suppliers allows for a loss of a network.

The Grocery Price monitoring web site shall provide disk storage redundancy.

Examples of disk storage redundancy include RAID and SAN. RAID/SAN systems protect against localised disk failure.

The Contractor shall provide backup and restore functions to recover both the database and all server configurations.

The backup facilities shall be able to back up the database without outage.

The backup system shall be able to backup the server configurations.

The Contractor shall provide an environment, utilising the anti-virus solution provided by the Customer.

The Contractor shall utilise the anti-virus solution provided by the Customer to perform virus checking of the Grocery Price monitoring web site.

The Contractor shall ensure that virus checking of the system does not impact System performance.

The Contractor shall be responsible for any remediation work required in the event of a virus problem.

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The Contactor shall be responsible for providing a protected internet connection.

The Contractor shall be responsible for providing the firewall protection for Grocery Price monitoring web site.

### **Infrastructure Solution**

The Contractor shall provide an infrastructure solution to support the Grocery Price Monitoring Website. The infrastructure must:

- have the ability to change capacity within a few hours of notification from the ACCC
- be highly available site
- have a server room with dual power supplies as well as UPS
- have dual internet providers

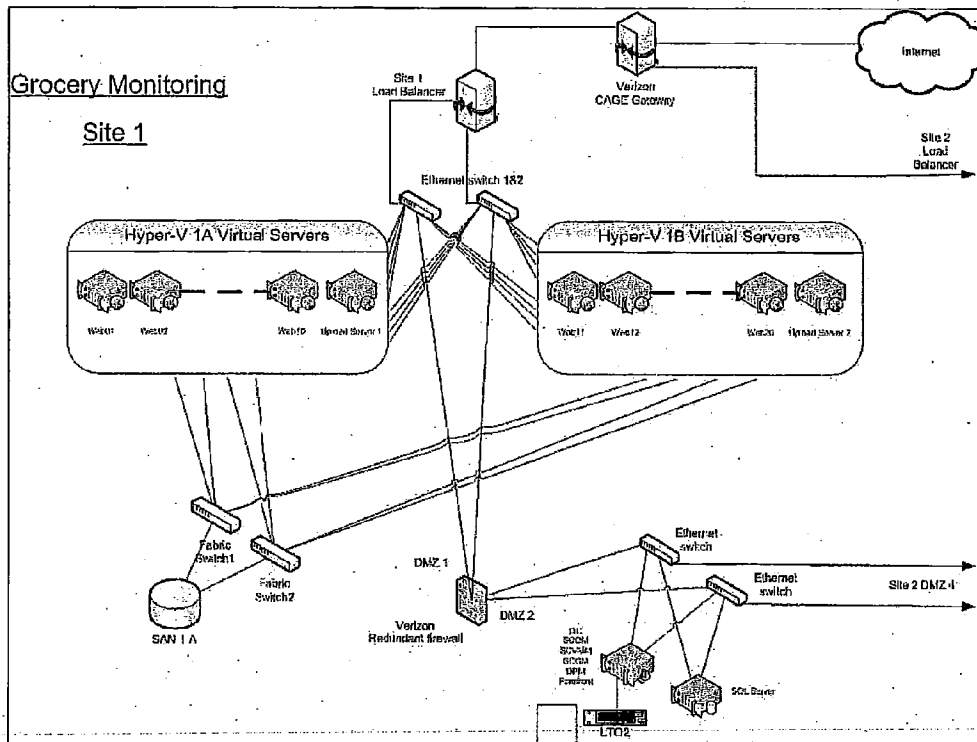
- have a network monitoring and 24/7 alert process
- have RAID or SAN Storage

The Contractor has designed an infrastructure solution in partnership with its subcontractor, Cybertrust, that will deliver:

- High availability
- High redundancy of systems
- High performance
- Load balanced across multiple sites
- Highly scalable that will scale both up and down to meet the peaks and troughs of demand for the system.

The complete infrastructure solution comprises the use of virtualisation technology for public facing web servers, Storage Area Networks to support advanced functions of operating systems and clustering of the supporting database systems (although not implemented immediately), and load balancing of request across all forward facing web servers. The infrastructure will be mirrored across two physical locations in Canberra that support high speed ICON interconnects between sites. Both sites will be active and the load dynamically spread across all servers. The following diagram represents the high level design intended for one of the two sites.

Figure 1 - Infrastructure Diagram NOTE: All infrastructure represented in the diagram above is duplicated at Site 2.



## Backup and Restore

The technical details of the backup and restore required by the Customer are outlined in this document.

### Purpose

The purpose of this section of this document is to define the service requirements of the Customer for the successful capture and restore of all data and systems contained on the internet server described. System down time and loss of data due to system failure must be managed and kept to a minimum.

### What is to be backed up

Internet Web Server.

The type of data and the frequency of backup is given in the following table and applies to the computers listed.

Type of Data	Frequency of Backup
Incremental Data comprising , database files and web server logs	Daily
Virtual Machine snapshot images and associated files	Weekly
Packaged software and configuration including Microsoft SQL server databases and Hyper-v Windows 2008 configuration files	Weekly
Operating System and configuration for the following servers, Hyper-V hosts, Database servers and Domain controller servers	Weekly

Virtual servers do not need to be backed up, the server image exists on the SAN and the snapshot files are held on the host Hyper-v servers. The snapshots need to be backed up weekly, the SAN images only need to be backed up when changes occur. Snapshots should be merged prior to any patches or application changes. Snapshots should be created prior to any patches and any application changes.

### Restoration of Functionality

To ensure protection of the Customer's information in the event of the internet server failure resulting in loss of data and function, there is a need to backup both data and the many software applications that enable functionality of the web. The following requirements outline the level of backup, the frequency of backup and therefore the maximum amount of data lost measured in hours, and the times stated by the Contractor to achieve the restore, and thus the return to service of the Customer's web site. A bare metal restore describes an event where all information is lost including all software such as a hard disk failure.

#### Bare Metal Restore (HyperV host, database and Domain controller server)

- **Event:** Complete loss of OS, Packaged, Third Party and Data on the server.
- **Resolution:** Establish latest restore point (monthly or on-demand restore point). Apply restore point. Apply latest daily backup.
- **Outcome:** Should not have lost more than 24hrs of data.



- **Time to implement:** Complete restoration of OS, packaged software and data to be achieved in less than 4 hours.

**Daily Restore(HyperV host, database and Domain controller server)**

- **Event:** Loss of all Third Party and/or Data on the server.
- **Resolution:** Establish latest daily backup.
- **Outcome:** Should not have lost more than 24hrs of data.
- **Time to implement:** Complete restoration of packaged software and or data to be achieved in less than 4 hours.

**Virtual machines**

**The virtual machines will be restored from the SAN and the Snapshot backups.**

**Contacts**

In the event of a server failure resulting in loss of function and data, the following staff are the central contacts.

Organisation	Name	Telephone
ACCC	Rudi Irgang	(02) 6243 1008
ACCC	Steve Dowton	(02) 6243 1335
the Contractor	Service Desk	1300 761 101
Synop	support@synop.com	Support ph: 02 9411 8744

## **System backup/restore – Full Backup**

The following items are necessary parts of the Customer's internet system, and are not replicated elsewhere. Large amounts of the Customer's data and customisation work would be lost if any of these items became unavailable. They must be backed up in full.

### **Virtual servers**

- (a) *Backup the virtual machine files (VHD, configuration files) from the SAN*

### **Domain controller**

- (b) *Backup OS files and Active directory database*

### **Host Hyper-V servers**

- (a) *Backup event log*
- (b) *Hyper-V configuration files*

### **Database servers**

- (a) *Full backup of all SQL server databases to backup files (\*.BAK) using SQL server schedule.*
- (b) *Tape backup of the \*.BAK files*

## **Daily backup/restore – Daily Diff.**

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These items cover the basic requirements for restoring the system in a reasonably efficient fashion. They should be backed up each day.

### **Virtual web servers**

- (a) *No daily backup required*

### **Host Hyper-V servers**

- (a) *Snapshot the virtual disks to the SAN*
- (b) *Backup the snapshot files to the SAN*

### **Domain controllers**

- (a) *Backup the Active directory database*

### **Database**

- (a) *Backup the all SQL server database files using SQL server schedule to local disk \*.BAK files*
- (b) *Tape backup of the \*.BAK files*

### **SAN**

- (a) *Tape backup of the daily SAN backup files*

To efficiently restore the system in a way that meets SLA requirements, the Contractor will perform disk level backups of the Host-Hyper-V servers and the Database server after each software deployment.

From this basis we believe the Contractor should be able to restore the system to a functioning state in minimal time.

# Attachment 4 to Appendix 1 (Contract Details)

## Service Level Agreement

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### Service Levels

- 1.1 This Attachment sets out the Contractor's standard service levels for all services it offers. For clarity, the only service levels which apply as at the Commencement Date are those specific to the Managed Services specified in Attachment 1 to Appendix 1. Specifically, they are:

Table 4 – Certified Internet Gateway Service Levels

Table 5 – ISP Access Service Levels

Table 6 – DMZ Availability Service Levels

Table 8 – Dedicated Server (Non –Redundant Service Levels).

- 1.2 For the purposes of this Attachment, “**Availability**” is to be determined using the following formula:

**Availability (%) = (Total Time – Contractor Unscheduled Outages) x 100/Total Time**

Where the Contractor Unscheduled Outages are defined as:

**Contractor Unscheduled Outages = Total Outages – Contractor Scheduled Outages – Outages Not Attributable to Contractor**

Where,

**Total Outages = All outages reported in the service desk MIS**

**Contractor Scheduled Outages = Those agreed and programmed outages attributable to normal Contractor operations (e.g. routine maintenance or Customer initiated requests for change)**

**Outages Not Attributable to Contractor = Those outages attributable to other elements of the total system (e.g. failure of transmission links provided by Telecommunications Carriers or ICON)**

- 1.3 The Customer will provide its own internal service desk and technical support as the first point of contact for problem resolution for its users. The service desk and technicians are to assess each fault or problem and only those identified as belonging

- to Contractor as a result of the provision of the Managed Services should be referred to Contractor's service desk.
- 1.4 Faults will be prioritised by Contractor's service desk in consultation with the Customer using the levels of assessment shown in Tables 1A and 1B.
- 1.5 Severity definitions, Service Levels and measurement systems are set out in the following tables:

**Table 1A**

Activity	Severity 1	Severity 2	Severity 3	Severity 4
<b>Definition</b>	Affecting Multiple, critical client services	Affecting a critical client service	No major impact to critical client services	No impact to critical client services
<b>Incident Logged (Report)</b>	On receipt of call	On Receipt of call	Within 30 minutes	Within 4 hours
<b>Action Initiated (Response)</b>	Immediate	2 hours	8 hours	24 hours
<b>Progress Updates</b>	Every 15-30 Minutes	Every 30-60 minutes	Daily	Daily
<b>Incident Fixed (Resolved/Completed)</b>	2 hours	4 hours	5 days	10 days
<b>Service Level</b>	95% resolved within 2 hours of Incident Logged	95% resolved within 4 hours of Incident Logged	95% resolved within 2 days of Incident Logged	95% resolved within 4 days of Incident Logged

NB These SLA's may be reviewed by the Customer and apply only to Business Hours after the first month.

**Table 1B**

Service	Performance Measure	Performance Objective	Minimum Performance Standard
Public web site	External monitoring of the web site, covering availability, response time	All web pages complete in 5	All web pages complete in 15

Service	Performance Measure	Performance Objective	Minimum Performance Standard
	by function	seconds or less.	seconds or less
Upload facility	IIS logs and user reporting	All uploads to complete within 5 minutes.	All uploads to complete within 15 minutes

**Table 2 Security Monitoring Service Levels**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL5</b></p> <p>Monitoring of use of the certified internet gateway in accordance with relevant Government guidelines, legislative requirements and procedures approved by DSD</p>	<p>The Contractor will meet this service level if it checks all traffic for suspected intrusion attempts and results recorded (including false positives) monitors and reports:</p> <ul style="list-style-type: none"> <li>on the viruses transiting the Contractor via e-mail; and</li> <li>on attempted intrusions against the certified internet gateway.</li> </ul>	<p>Virus Checker and Intrusion Detection System statistics compiled by the Contractor will be used.</p>
<p><b>Contractor SL6</b></p> <p>Ensuring that the intrusion detection system is updated from the manufacturer's web site at least daily.</p>	<p>The Contractor will meet this service level by ensuring that its intrusion detection system automatically interrogates the web site of the manufacturer of the intrusion detection system to ensure that all known vulnerabilities of the intrusion detection system are being catered for. Vulnerabilities of significance are to be programmed into the intrusion detection system as necessary.</p>	<p>Intrusion detection device logs will be reviewed at least fortnightly.</p>

**Table 3**

**Security Reporting Service Levels**

<b>Service Level</b>	<b>Compliance and Applicability</b>	<b>Method of Measurement</b>
<p><b>Contractor SL7</b></p> <p>Beginning an investigation of any ISIDRAS Category 3 or greater incidents within 1 hour of categorisation.</p> <p>Provide an incident report within 10 working days or as otherwise agreed by the parties.</p>	<p>All traffic is checked for suspected intrusion attempts and results recorded (including false positives) in accordance with relevant DSD approved Contractor procedure in the first instance and ISIDRAS specification in the second instance.</p> <p>The Contractor will meet this service level by:</p> <ul style="list-style-type: none"><li>beginning an investigation into any ISIDRAS Category 3 or greater incident in accordance with relevant ISIDRAS specification within one hour of the categorisation of the incident; and</li><li>providing a security incident report to the Customer within 10 working days or as otherwise agreed by the parties.</li></ul>	<p>Security incident reports to be logged in the service desk MIS.</p>

**Table 4**

**Certified Internet Gateway Service Levels**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL8</b></p> <p>Time to download standard web page of 10 kilobytes (http) not to exceed 15 sec and average over the month not to exceed 5 seconds.</p>	<p>This service level only applies:</p> <p>to downloads where the outgoing http request comes from standard user terminal located on Contractor internal LAN;</p> <p>in relation to downloads of standard web pages hosted on a suitable web server at the external boundary of the Contractor provided infrastructure; and</p> <p>where the Contractor and Customer have not agreed to a fixed monthly bandwidth service.</p>	<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>
<p><b>Contractor SL9</b></p> <p>DNS Query - maximum 5 Second response for each DNS query, monthly daily average not to exceed 2 seconds.</p>	<p>This service level only applies:</p> <p>to DNS Queries that come from a standard user terminal located on the Contractor internal LAN;</p> <p>to DNS Queries that the Contractor is the authority or serving cache; and</p>	<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p>
	<p>where the Contractor and Customer have not agreed to a fixed monthly bandwidth service</p>	<p>Statistics from the testing will be generated monthly showing performance.</p>



<p><b>Contractor SL10</b></p> <p>FTP/SCP Transfer rate of data through Contractor - minimum 25Kb/sec, monthly daily average 100Kb/sec.</p>	<p>This service level only applies:</p> <p>to FTP/SCP requests made to an agreed website address located at the external boundary of the Contractor provided infrastructure;</p> <p>to FTP/SCP requests made from a standard user terminal located on Contractor internal LAN; and</p> <p>where the Contractor and Customer have not agreed to a fixed monthly bandwidth service</p> <p>The measurements will be undertaken using a single 1Mb binary file, in both upload and download modes.</p>	<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>
<p><b>Contractor SL11</b></p> <p>At least one successful NTP request and resolution to occur each day.</p>	<p>This service level only applies if:</p> <p>the NTP request came from a standard user terminal located on Contractor internal LAN; and</p> <p>an NTP request was actually attempted.</p>	<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>
		<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>

<p><b>Contractor SL12</b></p> <p>Transit time for a standard e-mail message of 50 kilobytes (smtp) - not to exceed 10 min and average transit time over month not to exceed 5 minutes through the Contractor infrastructure.</p>	<p>This service level only applies:</p> <ul style="list-style-type: none"> <li>to emails generated from standard user terminal located on Contractor's internal LAN;</li> <li>to emails whose destination is to a mail relay in the Contractor provided mail infrastructure; and</li> <li>where the Contractor and Customer have not agreed to a fixed monthly bandwidth service</li> </ul> <p>Transit time will include all processing including virus checking.</p>	<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>
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**Table 5**

**ISP Access Service Levels**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL13</b></p> <p>HTTP, HTTPS and SMTP Available at least 99.7% of month.</p>	<p>The Contractors compliance with this service level will be determined by use of the formula for Availability set out in clause 1 of this Attachment. Service desk will log all outages.</p>	<p>Service Desk MIS.</p>

**Table 6**

**DMZ Availability Service Level**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL14</b></p> <p>DMZ port to be Available at least 99.5% of month.</p>	<p>The Contractors compliance with this service level will be determined by use of the formula for Availability set out in clause 1 of this Attachment. Service desk will log all outages.</p>	<p>Service Desk MIS</p>

**Table 7**

**Telecommunication Service Level**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL15</b></p> <p>Contractor will ensure that when the ISP transmission links between the Contractor Service providers reach 80% utilization overall, Contractor will increase the size of the transmission links to ensure capacity is no more than 80%</p>	<p>The occupancy of the transmission links will be measured over a month by using 2 hour averages. If the at the end of the month the 2 hour average is above 80% occupancy then to comply with this service level the Contractor will increase the size of the transmission links to ensure capacity is no more than 80%.</p> <p>This service level does not apply where the Customer and Contractor have agreed to a fixed monthly bandwidth service.</p>	<p>MRTG to provide monthly statistics using 2 hour averages (inwards and outwards traffic) for appropriate transmission links.</p>

**Table 8**

**Dedicated Server (non-redundant) Service Levels**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL16</b></p> <p>Time to download standard web page of 10 kilobytes (http) not to exceed 15 sec and average over the month not to exceed 5 seconds.</p>	<p>This service level only applies:</p> <p>to downloads where the outgoing http request comes from a terminal located at the external boundary of the Contractor provided infrastructure to an agreed website address located in a Contractor provisioned DMZ;</p> <p>to downloads of standard web pages hosted from agreed website addresses located in a Contractor provisioned DMZ;</p> <p>where the Contractor and Customer have not agreed to a fixed monthly bandwidth service.</p>	<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>
<p><b>Contractor SL17</b></p> <p>Server to be Available at least 99.0% of month.</p>	<p>The Contractors compliance with this service level will be determined by use of the formula for Availability set out in clause 1 of this Attachment.</p>	<p>Service Desk MIS.</p>

	Service desk will log all outages.	
--	------------------------------------	--

**Table 9**

**Dedicated Server (redundant) Service Levels**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL18</b></p> <p>Time to download standard web page of 10 kilobytes (http) not to exceed 15 sec and average over the month not to exceed 5 seconds.</p>	<p>This service level only applies:</p> <p>to downloads where the outgoing http request comes from a terminal located at the external boundary of the contractor provided infrastructure to an agreed website address located in a Contractor provisioned DMZ;</p> <p>to downloads of standard web pages hosted from agreed website addresses located in a Contractor provisioned DMZ; and</p> <p>where the Contractor and Customer have not agreed to a fixed monthly bandwidth service.</p>	<p>Contractor developed script that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>
<p><b>Contractor SL19</b></p> <p>Server to be Available at least 99.5% of month.</p>	<p>The Contractors compliance with this service level will be determined by use of the formula for Availability set out in clause 1 of this Attachment. Service desk will log all outages.</p>	<p>Service Desk MIS.</p>

**Table 10**

**Shared Server Hosting Service Levels**

Service Level	Compliance and Applicability	Method of Measurement
<p><b>Contractor SL20</b></p>	<p>This service level only applies:</p>	<p>Contractor developed script</p>

<p>Time to download standard web page of 10 kilobytes (http) not to exceed 45 sec and average over the month not to exceed 20 seconds.</p>	<p>to downloads where the outgoing http request comes from a terminal located at the external boundary of the Contractor provided infrastructure to an agreed website address located in a Contractor provisioned DMZ;</p> <p>to downloads of standard web pages hosted from agreed website addresses located in a Contractor provisioned DMZ;</p> <p>where the Contractor and Customer have not agreed to a fixed monthly bandwidth service.</p>	<p>that automatically conducts measurement several times a day during business hours.</p> <p>Statistics from the testing will be generated monthly showing performance.</p>
<p><b>Contractor SL21</b></p> <p>Shared Server Hosting services to be Available at least 99.0% of month.</p>	<p>The Contractors compliance with this service level will be determined by use of the formula for Availability set out in clause 1 of this Attachment. Service desk will log all outages.</p>	<p>Service Desk MIS.</p>

**Table 11**

**Remote Access Service Levels**

<b>Service Level</b>	<b>Compliance and Applicability</b>	<b>Method of Measurement</b>
<b>Contractor SL22</b>  Remote access to be Available at least 99.5 % of month.	The Contractors compliance with this service level will be determined by use of the formula for Availability set out in clause 1 of this Attachment. Service desk will log all outages.  The Contractor is not responsible for any failure to meet this service level where that failure was due to the telecommunications provider.	Service Desk MIS.

**1.6 Priority Levels For Restoration Of Services**

After an outage that involves a number of Customers and different parts of the Managed Services, the Contractor will restore the Managed Services in the following order, unless otherwise agreed between the parties from time to time:

- (a) certified internet gateway services (as defined in Attachment 1 to Appendix 1) to the Highly Protected and Protected levels;
- (b) telecommunications services (including ISP access); then
- (c) optional Secure Services (DMZ's, dedicated hosting etc).
- **Service Credits**  
Not Applicable.



## Attachment 7 to Appendix 1 (Contract Details)

### **Charges**

**(Clauses 11.2, 14.6, 14.7, 15.1)**

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As per the Hosting Work Order - charges not to exceed those stated or implicit in the Pricing Schedule.

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## Appendix 2 - Acceptance Testing

**NOT USED**





## Appendix 3

### Change Order

(Clause 27.8)

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*[If the proposed changes will vary the Specifications, the Contract Details or any other technical requirements of the Customer, the following form must be completed]*

**The Contract is changed in accordance with the terms of this Change Order and its attachments**

Change order number

Date proposed

Name of party instigating the change

Implementation date of change

Details of change proposal

Clauses affected by the proposal are as follows

---

New charges payable to the Contractor or Customer affected by this change proposal

Plan for implementing the change

The responsibilities of the parties for implementing the change

---

The new date for the acceptance testing of the system .

Effect of change on performance

Effect on documentation

Effect on training

Effect on the users of the system

Any other matters which the parties consider are important

**Execution – Signed for and on behalf of the**

**Customer's representative**

Name (print)

Position

Signature and date \_\_\_\_\_ /

**Contractor's representative**

Name (print)

Position

Signature and date \_\_\_\_\_ /

## Appendix 4

### Deed of Confidentiality

(Clause 20.2)

---

Deed of Agreement dated ..... 20

#### Between

.....  
[insert name of the beneficiary]

#### And

The party specified in the Schedule ('the Confidant')

The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with [insert name of the Contract and its date].

### 1 INTERPRETATION

#### 1.1 Definition

---

'Information' means information, documents and data stored by any means and any information made available to me in the course of my dealings with the Customer and includes information relating to:

- (a) any intellectual property rights of the Customer;
- (b) to the financial position or reputation of the Customer;
- (c) the internal management and structure of the Customer;
- (d) the personnel, policies and strategies of the Customer;
- (e) the Customer's clients or suppliers;

and information of the Customer that has any actual or potential commercial value to the Customer or to the person or corporation which supplied that information.

### 2 NON-DISCLOSURE

- 2.1 I will treat as secret and confidential all Information to which I have access or which is disclosed to me.
- 2.2 If the Customer grants its consent for me to disclose information, it may impose conditions on that consent. In particular, the Customer may require that I obtain the execution of a Deed in these terms by the person to whom I propose to disclose the Information.
- 2.3 My obligations under this Deed will not be taken to have been breached where I am legally required to disclose the Information.

**3 RESTRICTION ON USE**

- 3.1 I will use the Information only for the purpose of my dealings with the Customer (whether directly or indirectly).
- 3.2 I will not copy or reproduce the Information without the approval of the Customer, will not allow any other person outside the Customer access to the Information and will take all necessary precautions to prevent unauthorised access to or copying of the Information in my control.

**4 SURVIVAL**

This Deed will survive the termination or expiry of any contract between the Customer and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).

**5 POWERS OF THE CUSTOMER**

Immediately upon request by the Customer, I must deliver to the Customer all documents in my possession or control containing Information.

If at the time of such a request I am aware that documents containing Information are beyond my possession or control, then I must provide full details of where the documents containing the Information are, and the identity of the person who has control of them.

**6 APPLICABLE LAW**

This Deed will be governed in accordance with the law in [*specify jurisdiction*].

**Execution – Signed for and on behalf of the**

**Customer's representative**

Name (print)

Position

Signature and date

\_\_\_\_\_ /

**Confidant**

Name (print)

Position

Signature and date

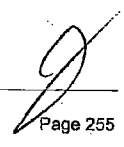
\_\_\_\_\_ /

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\_\_\_\_\_

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\_\_\_\_\_

  
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# Appendix 4 – Attachment 1

## Schedule of Confidant details

(Clause 20.2)

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Name of the  
Confidant

Residential  
address of the  
Confidant

---

## Appendix 5

**Escrow Agreement**

**(Clauses 9.7 and 10.9)**

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**NOT APPLICABLE.**

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## Appendix 6A

### Unconditional Performance Guarantee

(Clause 14.10)

---

**NOT APPLICABLE.**



## Appendix 6B

### Conditional Performance Guarantee

(Clause 14.10)

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**NOT APPLICABLE.**

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## Appendix 7

### Unconditional Financial Undertaking

(Clause 14.10)

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**NOT APPLICABLE.**

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## Appendix 8

**Additional documents**

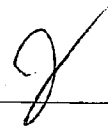
**(Clause 4.3)**

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**NOT APPLICABLE.**

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STANDARD FORM CONTRACT

BETWEEN

THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

AND

The Bailey Group Pty Ltd

---

in relation to services for

Grocery Product Prices Survey



## CONTRACT FOR SERVICES

THIS CONTRACT is made on the            day of June 2008

### BETWEEN

**The Australian Competition and Consumer Commission**, a body corporate established under section 6A of the Trade Practices Act 1974 ('the ACCC')

AND The Bailey Group

ABN: 43 006 398 143                      ("the contractor")

### BACKGROUND:

- A. The ACCC requires the provision of certain services as specified in Schedule 1.
- B. The contractor has fully informed itself of all aspects of the services required to be performed and agrees to undertake these services in accordance with the terms and conditions of this contract and in consideration of the fees specified in Schedule 1.
- C. The ACCC has agreed to accept the contractor's offer to provide the services on the terms and conditions contained in this contract.

### INTERPRETATION:

In this contract, unless the contrary intention appears:

- (a) 'the ACCC' means the Australian Competition and Consumer Commission, and includes any department or agency of the Commonwealth which is from time to time responsible for the administration of this contract;
- (b) 'ACCC material' means any material:
  - (i) provided by the ACCC to the contractor for the purposes of this contract; or
  - (ii) copied or derived from material so provided.
- (c) 'confidential information' means information that:
  - (i) is by its nature confidential;
  - (ii) is marked as confidential;
  - (iii) is known to be confidential, or which a party ought to have known was confidential; or

(iv) is specified in Schedule 1 as confidential information;

but does not include information which:

(v) is or becomes public knowledge other than by breach of this contract or by any other unlawful means; or

(vi) is in the possession of a party prior to disclosure by the other party, without any breach of an obligation of confidence; or

(vii) has been independently developed or acquired by a party.

(d) 'contract material' means all material brought or required to be brought into existence as part of, or for the purpose of performing the services.

(e) 'material' means any information and subject matter of any category of intellectual property rights, including, but not limited to, documents, equipment, information and data stored by any means.

(f) 'specified personnel' means the personnel specified in Schedule 1 as personnel required to undertake the services or part of the work constituting the services.

(g) words importing a gender include any other gender.

(h) words in the singular number include the plural and words in the plural number include the singular.

**IT IS AGREED AS FOLLOWS:**

---

**1. Operation of Contract**

- 1.1 This contract records the entire agreement between the parties in relation to its subject matter.
- 1.2 Any reading down or severance of a particular provision does not affect the other provisions of this contract.

**2. Services**

- 2.1 The contractor agrees to perform the services specified in Schedule 1 in a professional and ethical manner, with a high level of care, skill and competence expected of a contractor experienced in work of the same type as the services, and in accordance with relevant ACCC and industry standards and guidelines.

**3. Invoice Procedures for Payment**

- 3.1 Subject to clause 1, the ACCC shall pay the contractor the fees specified in this Agreement at the times specified.

- 3.2 The contractor shall submit tax invoices for amounts payable and the ACCC undertakes to pay such amounts within 30 days of delivery of a correctly rendered tax invoice.
- 3.3 Where this contract provides that the contractor is to be paid by progressive payments the ACCC shall be entitled, without derogating from any other right it may have, to defer payment of a progressive payment until the contractor has completed to the satisfaction of the ACCC that part of the services to which the progressive payment relates.
- 3.4 The contractor will not be entitled to any payment under this clause 3 unless the contractor has an ABN.

3.5 Tax Invoices must be addressed to:

The Finance Unit

Australian Competition and Consumer Commission

GPO Box 3131

Canberra, ACT 2601

Attention: Adam Jarvis

and shall include the following information:

- (a) title of the services and purchase order number;
- (b) name of the project officer;
- (c) details of the services performed (including hours worked);
- (d) the amount payable to the contractor for the services performed and the basis for calculation, separately identifying the amount of GST payable in respect of the invoice; and
- (e) the contractor's A.B.N and details for payment (Bank, BSB, Account No. and Account Name).

**4. ACCC Assistance – Not Applicable**

**5. ACCC and Contract Material**

- 5.1 The title to and ownership of all ACCC material and all copies made of such material provided by the ACCC to the contractor for the purposes of this contract remains vested at all times in the ACCC.
- 5.2 The title to and ownership of intellectual property (including copyright) in all contract material and all copies made of such material shall vest upon its creation in the ACCC.
- 5.3 On the expiration or earlier termination of the contract, the contractor shall deliver to the ACCC all contract material and all ACCC material.
- 5.4 The contractor shall ensure that the contract material and all ACCC material is used, copied, supplied or reproduced only for the purposes of the contract.
- 5.5 The ACCC reserves all publication rights in all contract material.

**6. Disclosure of Information**

- 6.1 The contractor, its officers, employees, agents or subcontractors shall not disclose, publish or communicate to any other person, or otherwise make public, that the contractor has entered into this contract with the ACCC without the prior written consent of the ACCC, such consent to be granted at the ACCC's sole discretion.
- 6.2 The contractor, its officers, employees, agents or subcontractors, shall not disclose, publish or communicate to any other person, or otherwise make public, any confidential information acquired or produced in connection with or by the performance of the services without prior approval in writing of the ACCC. In giving written approval the ACCC may impose such terms and conditions as it sees fit.
- 
- 6.3 Where any officer, employee, agent or subcontractor of the contractor is to have access to Confidential Information, the contractor will, before providing an officer, employee, agent or subcontractor with access to confidential information, obtain from each such person a written Confidentiality Undertaking in the form at Annex A, relating to non-disclosure of confidential information.
- 6.4 The contractor will provide the ACCC with the original of each executed undertaking in accordance with clause 6.3 within 7 business days of the date that the undertaking was executed.
- 6.5 The obligations under this clause shall not be taken to have been breached where the information referred to is required by law to be disclosed.
- 6.6 The contractor shall not object to the disclosure of any confidential information as required by the ACCC for any administrative or statutory review, audit or inquiry (whether within or external to the ACCC), and any request for information directed to



the ACCC by Parliament or a committee of Parliament of the Commonwealth of Australia.

6.7 The contractor must comply with the Information Privacy Principles contained in section 14 of the *Privacy Act 1988* to the extent that the content of those principles apply to the types of activities the contractor is undertaking under this contract, as if the contractor were an agency as defined in the Act.

6.8 This clause will survive the expiration or termination of this contract.

## **7. Conflict of Interest**

7.1 The contractor warrants that, at the date of entering into the contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the contract that has not already been disclosed to, and accepted by, the ACCC. If, during the term of the contract, a conflict, or risk of conflict, of interest arises, the contractor undertakes to notify the ACCC immediately in writing of that conflict or risk.

7.2 Where the contractor discloses a conflict or risk of conflict to the ACCC prior to entering into the contract or in accordance with clause 7.1, the contractor must manage those conflicts in accordance with:

(a) any undertakings or representations made by the contractor to the ACCC; and

(b) any conditions or requirements specified by the ACCC.

7.3 For the avoidance of doubt, the obligations of the contractor set out in clauses 7.1 and 7.2 extend to any conflict or risk of conflict arising from the officers, employees, agents and subcontractors of the contractor.

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## **8. Conduct at ACCC Premises**

8.1 The contractor shall, when using the ACCC's premises or facilities for the purposes of the services, comply with all reasonable directions and ACCC procedures relating to security, occupational health and safety (OH&S), (including the Commonwealth's smoke-free work place policy) in effect at those premises or in regard to those facilities, as notified by the ACCC or as might be reasonably inferred from the circumstances.

## **9. Negation of Employment, Partnership and Agency**

9.1 The contractor shall not represent itself, and shall ensure that its officers, employees, agents and sub-contractors do not represent themselves, as being an officer, employee, partner or agent of the ACCC, or as otherwise able to bind or represent the ACCC.

9.2 The contractor shall not by virtue of this contract be or for any purpose be deemed to be an employee, partner or agent of the ACCC, nor does the contractor have any power or authority to bind or represent the ACCC.

**10. Subcontracting and Assignment**

10.1 The contractor shall not:

- (a) subcontract the performance of any part of the services, or
- (b) assign its obligations or rights under this contract

without, in either case, prior approval in writing from the ACCC.

**11. Indemnities**

11.1 The contractor agrees to indemnify the ACCC from and against any:

- (a) liability incurred by the ACCC;
- (b) loss of, or damage to, property of the ACCC;
- (c) liability of the ACCC for the death of, or injury to, any person provided by the contractor as specified personnel identified in Schedule 1 to the ACCC pursuant to this contract; or
- (d) loss or expense incurred by the ACCC 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 the ACCC,

arising from:

- (e) any wrongful, unlawful or negligent act or omission by the contractor in connection with this contract;
- (f) any breach by the contractor of its obligations or warranties under this contract;
- (g) any misuse or unauthorised disclosure by the contractor, of confidential information held or controlled by the contractor in connection with this contract; or
- (h) a breach of clause 6.1;

irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

11.2 The contractor's liability to indemnify the ACCC under clause 11.1 shall be reduced proportionally to the extent that any act or omission of the ACCC or its

officers, employees or agents contributed to the loss or liability.

11.3 In clause 11.1 and 11.2, a reference to:

- (a) 'ACCC' includes the officers, employees and agents of the ACCC; and
- (b) 'contractor' includes the officers, employees, agents and subcontractors of the contractor.

11.4 The indemnities referred to in this clause 11 shall survive the expiration or termination of the contract.

## **12. Insurance**

12.1 The contractor shall effect and maintain the insurances as follows:

- (a) Public and Products Liability Insurance - \$10,000,000
- (b) Professional Indemnity Insurance - \$10,000,000

12.2 If and when required by the ACCC, the contractor shall provide the ACCC with a certificate of currency in respect of the insurances.

12.3 The contractor warrants that it has a certificate of currency, evidencing cover for workers' compensation insurance, prior to commencement of this contract.

## **13. Variation or Termination of Contract**

13.1 No variation to this contract shall be legally binding upon either party unless in writing and agreed to by both parties

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13.2 The ACCC may at any time, by written notice, terminate or suspend the contract, or reduce the scope of the services required under the contract, and upon such notice being given the contractor shall:

- (a) cease or reduce work according to the tenor of the notice;
- (b) take all reasonable steps to minimise any loss resulting from that termination and to protect the contract material; and
- (c) continue work on any part of the services not affected by the notice.

13.3 In the event that the contract is terminated pursuant to clause 13.2, the ACCC shall be liable only for:

- (a) payments under the payment provisions of the contract for services rendered before the effective date of termination; and

(b) subject to clauses 13.2 and 13.4, any reasonable costs incurred by the contractor and directly attributable to the termination of this contract.

13.4 The contractor shall not be entitled to compensation for loss of prospective profits, and the ACCC shall not be liable to pay any sum which, in addition to any amounts paid or due or becoming due to the contractor under the contract, would together exceed the full price of the services otherwise payable under the contract.

13.5 Subject to clause 13.6, in the event of a reduction in the scope of the services the ACCC's liability to pay the fees, in the absence of any agreement to the contrary, shall abate proportionately to the reduction in the services.

13.6 In recognition that a reduction in the scope of the services may not result in a decrease of the fixed costs payable by the contractor in connection with the provision of the services, the ACCC acknowledges that the reduction in the ACCC's liability to pay for the fixed costs associated with the services may not abate proportionally to the reduction of the services. In such a case, the ACCC will be liable to pay the reasonable fixed costs of the contractor, as agreed between the ACCC and the contractor. If the ACCC and the contractor are unable to agree to on the reasonable fixed costs of the contractor, both parties agree to be bound by the amount determined by an appropriate independent arbitrator nominated by the Institute of Arbitrators and Mediators Australia.

#### **14. Default**

14.1 Subject to clause 14.2, if the contractor fails, within 14 days after receipt of written notice, to remedy any default in the performance of the following obligations, namely:

(a) ~~to commence or to proceed at the rate of progress strictly in accordance with the contract; or~~

(b) to perform or observe the terms and conditions of the contract,

the ACCC may, by written notice, terminate the contract, without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party, and recover from the contractor any loss or damage suffered by the ACCC.

14.2 If the contractor fails to perform or observe any of the terms and conditions of clause 6 of the contract, the ACCC may, in its discretion, terminate the contract immediately without giving the contractor an opportunity to remedy the default, without prejudice to any right of action or remedy that has accrued or which may accrue in favour of either party, and recover from the contractor any loss or damage suffered by the ACCC.

14.2 The contractor must advise the ACCC in writing 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, or an order has been made for the purpose of placing the corporation under external administration; or
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

**15. Applicable Law**

- 15.1 The contract shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of that Territory.
- 15.2 The contractor agrees in carrying out this contract to comply with all relevant legislation of the Commonwealth and the State or Territory in which the services, or any part thereof, are to be performed.

**16. Waiver**

- 16.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 16.2 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- 16.3 In this clause, 'rights' means rights or remedies provided by this contract or at law.

**EXECUTED AS A CONTRACT**

**SIGNED** for and on behalf of )

**THE AUSTRALIAN COMPETITION**

**AND CONSUMER COMMISSION )**

.....

Signature

Brian Cassidy

Chief Executive Officer

in the presence of: )

.....

Witness' Signature

.....

Print Name

Date:.....

**SIGNED** for and on behalf of )

---

the **CONTRACTOR:** .....

Signature

.....

Print Name

in the presence of:)

.....

Witness' Signature

.....

Print Name

Date:.....

## SCHEDULE 1

### SERVICES

#### SERVICES REQUIRED

*The principal role of Retail Facts, a division of the Bailey Group Pty Ltd will be to provide the ACCC with monthly surveyed data of retail grocery product prices across Australia. Retail Facts will undertake price data collection of approximately 500 products from 580 to 600 supermarkets across Australia.*

*The Consultant will be expected to:*

- *[REDACTED]*
- *management, data quality assurance and analysis;*
- *Undertake a pilot survey in mid June 2008 to be delivered to the ACCC by 25 June 2008, collecting the prices of approximately 500 items from 28 supermarkets across Victoria and Queensland*
- *Work with the ACCC to develop and evaluate the pilot study and resolve any issues with the collection of data and the calculation of basket prices; and*
- *Undertake the full survey of approximately 500 products from 580 to 600 supermarkets across Australia by 17 July and manage the price data collected, including completion of all necessary calculations to determine the price of product baskets.*

Retail Facts will then undertake a monthly survey of grocery prices as per the processes established during the pilot and initial full survey and agreed to by the ACCC. Each survey will be undertaken over 2 days on a date/s nominated by the ACCC. The survey will be undertaken in accordance with the agreed project plan outlined below and further detailed at Attachment A and Attachment D.

The ACCC will provide Retail Facts with the necessary information to guide and manage the project, including basket product information, the supermarkets to be surveyed, and the methodology to calculate basket prices.

#### Pilot Survey

Retail Facts will undertake a pilot survey in mid June 2008, collecting the prices of approximately 500 items from 28 supermarkets across Victoria and Queensland.

The development and rollout of the pilot survey will follow standard project management components such as Design, Build, Test, Deploy and Evaluate. The post evaluation phase will lead in to a period of re-development, based on key learning's prior to the final testing and rollout of the to-be model for the monthly survey.

Attachment B provides more details on the pilot study.

**Monthly Survey**

Following the pilot survey, Retail Facts will undertake monthly survey of grocery prices. This will require the collection of approximately 500 product prices from 580-600 supermarket locations across Australia. Each survey will be undertaken over 2 days on a date/s nominated by the ACCC.

The ACCC will inform Retail Facts of the timing of the monthly survey no shorter than two weeks prior to the survey.

**Supermarkets**

For the pilot and monthly surveys Retail Facts will collect grocery price product data from approximately 580-600 supermarket locations across Australia.

The survey may require collection of price data from the following supermarkets; Coles, Woolworths/Safeway, IGA, Franklins and ALDI. This list is not exhaustive and other independent supermarkets may be included in the ACCC's list of supermarkets to be surveyed.

The ACCC will inform Retail Facts of the supermarkets to be surveyed within a timeframe no shorter than 1 week.

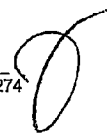
**Collection of Grocery Product Price Data**

Retail Facts will collect price data of approximately 500 products from each supermarket for each survey. The ACCC will inform Retail Facts of any product changes to the survey list at least 1 week prior to the survey date. Attachment C details the collection of grocery product price data.

The ACCC will inform Retail Facts of the products data to be collected within a timeframe no shorter than 1 week.

**Survey Equipment**

[REDACTED]





### **Data Management**

Using methodology provided by the ACCC, Retail Facts will undertake all necessary calculations to determine the prices of each basket of goods.


Retail Facts will manage the data in accordance with protocols determined by the ACCC.

Retail Facts will deliver the survey data in a format agreed to by the ACCC.

### **Confidentiality and Management of Conflict of Interest**

Retail Facts will utilise a number of systems and processes to ensure client and data confidentiality:

- All IT reporting systems would be security based, password protected and fire walled.
- ~~All Retail Facts employees as part of their standard contract with Retail Facts will sign confidentiality agreement.~~
- All Retail Facts employees engaged on the grocery survey project, including data collectors will sign confidentiality agreements with the ACCC.
- Further privacy measures will ensure information is only accessible on a 'need to know' basis. Involved personnel will be aware of and understand the obligations concerning Confidential Information.

  
Consultant representative will operate in a secure environment with;

- Segregation of locations
- Physical security measures
- Secure paper and data flows
- Lock down of materials and files

All internal control procedures, processes and practices would be open to Case Manager or a nominated representative of the ACCC to an agreed audit test.

## **DELIVERABLES**

Retail Facts will deliver to the ACCC on 25 June 2008 all necessary grocery price monitoring data from the project's pilot study.

Retail Facts will ensure its field force is trained and engaged by 15 July 2008

Retail Facts will undertake the first full monthly survey from 15-18 July 2008

Retail Facts will deliver to the ACCC on 22 July 2008, and then on a monthly basis on a date determined by the ACCC until 10 June 2010, all necessary calculated grocery price monitoring data in an agreed format.

Retail Facts will provide the ACCC with the collected survey data, post validation, within a timeframe no longer than five working days upon completion of the survey. This would also ensure the ACCC receives the data a minimum of five days prior to upload onto their website before the beginning of the following month.

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*Retail Facts will provide the first survey data in a format agreed to by the ACCC.*

A project plan outlining the project deliverables is included in Attachment A.

Due to the ongoing nature of the contract, an initial payment will be made in recognition of start-up costs, followed by ongoing monthly invoicing. Payment will be made as per the terms outlined in the contract.

## **SPECIFIED PERSONNEL**

Retail Facts will provide the following personnel for the performance of the services:

- Stewart Bailey, the Bailey Group, Chief Executive Officer
- James Kelly, Retail Facts, Customer Business Manager
- Adrian Marr, Retail Facts, General Manager - Field Operations
- Tony Marshall, Retail Facts, Divisional Managing Director.

[REDACTED]

[REDACTED]

Retail Facts supervisors' will be spread amongst metropolitan and regional areas providing additional resources where required to ensure each store is completed.

**CONTRACT DATES**

Start Date: 10 June 2008

End Date: 10 June 2010

**FEE**

The total amount of this contract is \$5.14 million (GST Inc).

	<b>Cost \$A</b> <b>(GST excl.)</b>	<b>Cost \$A</b> <b>(GST component)</b>	<b>Cost \$A</b> <b>(GST incl.)</b>
<b>Monthly Survey Costs</b>	\$4,538,586	\$453,859	\$4,992,445
<b>Initial setup and Pilot program</b>	\$130,186	\$13,019	\$143,205
<b>Total Costs of the Project</b>	<b>\$4,668,772</b>	<b>\$466,878</b>	<b>\$5,135,650</b>

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A detailed budget is at Attachment E

**TRAVEL AND ACCOMMODATION**

Travel and accommodation costs are detailed within the project budget at Attachment E.

**PROJECT OFFICER**

The person holding, occupying or performing the duties of Director, will be the project officer responsible for supervising the performance of the contract on behalf of the ACCC and has authority to issue and receive any written notification under the contract.

At present, the person holding the above position is:

Name: Adam Jarvis

The contractor agrees to liaise with the project officer, provide any information the project officer may reasonably require and comply with any reasonable request or direction made by the project officer.

**ACCC Representative and Address for Notices**

**ACCC's Representative:** Adam Jarvis

**Address for Notices:** C/- Grocery Price Monitoring  
PO Box 3131  
Canberra ACT 2601

**Consultant's Representative and Address for Notices**

**Consultant's Representative:** Tony Marshall, Retail Facts, Divisional Managing Director

**Address for Notices:** Retail Facts  
25 Ellingsworth Parade, Box Hill  
Victoria, 3128

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## Attachment A

### Project Work plan for the Pilot Study and First Full Survey

Week Commencing	Tasks From Pilot Development through to the first full survey in July 2008	Completion Date  OR  Due to the ACCC
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#### INDICATIVE WORK PLAN FOR THE DEVELOPMENT AND FIRST FULL SURVEY

10 June 2008	ACCC inform successful vendor and contract finalised	10 June 2008
10 June 2008	ACCC and Retail Facts "Kick off" meeting	10 June 2008
10 June 2008	ACCC and Retail Facts agree on pilot coverage	10 June 2008
10 June 2008	ACCC sends Retail Facts the data for pilot	12 June 2008
10 June 2008	Retail Facts design the pilot in detail	13 June 2008
10 June 2008	ACCC and Retail Facts progress meeting	16 June 2008
10 June 2008	Retail Facts build the pilot program	16 <sup>th</sup> June 2008
16 <sup>th</sup> June 2008	Retail Facts tests the pilot program	16 <sup>th</sup> June 2008
16 <sup>th</sup> June 2008	ACCC and Retail Facts progress meeting	18 <sup>th</sup> June 2008
16 <sup>th</sup> June 2008	Retail Facts conduct pilot program	20 <sup>th</sup> June 2008
16 <sup>th</sup> June 2008	ACCC and Retail Facts progress meeting	20 <sup>th</sup> June 2008
23 <sup>rd</sup> June 2008	Retail Facts analyse data from pilot program	25 <sup>th</sup> June 2008
23 <sup>rd</sup> June 2008	Retail Facts and ACCC meet to discuss pilot program	27 <sup>th</sup> June 2008
23 <sup>rd</sup> June 2008	Retail Facts conduct re-work from pilot evaluation	16 <sup>th</sup> July 2008
23 <sup>rd</sup> June 2008	Retail Facts raises the monthly invoice for payment	23 <sup>rd</sup> June 2008
21 <sup>st</sup> July 2008	ACCC pays Retail Facts invoice	22 <sup>nd</sup> July 2008

### JULY 2008 SURVEY – FIRST FULL NATIONAL SURVEY

30 <sup>th</sup> June 2008	ACCC sends data to Retail Facts	30 <sup>th</sup> June 2008
30 <sup>th</sup> June 2008	Retail Facts plans the resource requirements for survey	14 July 2008
15 July 2008	Retail Facts conducts the survey in field	17 July 2008
15 July 2008	Retail Facts analyses data from the survey	18 July 2008
22 July 2008	Retail Facts send the captured data to the ACCC	22 July 2008
1 Aug 2008	ACCC updates their website with reported data	1 <sup>st</sup> Aug 2008
28 <sup>th</sup> July 2008	Retail Facts raises the monthly invoice for payment	28 <sup>th</sup> July 2008
4 <sup>th</sup> Aug 2008	Retail Facts and ACCC meet to discuss first full survey	6 <sup>th</sup> Aug 2008
25 <sup>th</sup> Aug 2008	ACCC pays Retail Facts invoice	27 <sup>th</sup> Aug 2008

**Dates variable on agreement between the ACCC and Retail Facts**



## **Overview of Pilot Study**

During each of the phases the following pieces of work (but not limited to) would be considered in detail and agreed upon between the ACCC and Retail Facts.

### Design

Throughout the design process Retail Facts will develop a project brief to outline the scope, key responsibilities, objectives, stakeholders, timelines, etc. This will involve a number of workshops to discuss the approach to the rollout and the evaluation measures.

The design process would also include the formulation of a communication plan, agreement on trial/pilot areas to be covered, issue resolution process, training requirements and basket reporting requirements.

Retail Facts will undertake the pilot study across 28 sites through metropolitan and regional, Victoria and Queensland

<b>State</b>	<b>Region Type</b>	<b>Stores per Coles/Woolworths/Independent</b>	<b>Stores per Aldi</b>
Victoria	Metropolitan	2	1
Victoria	Regional	2	1
Queensland	Metropolitan	2	1
Queensland	Regional	2	1

### Build

Upon confirmation of design elements Retail Facts would commence development of database, reporting, and internal process requirements.

- Database requirements
- Reporting requirements

- Hand held technology requirements
- Communication plan
- Change Management strategy
- Issue resolution process
- Training documentation
- 'Basket' reporting requirements

#### Test

Retail Facts will provide the following services throughout the pilot study and the ongoing monthly surveys.

- Data accuracy and useability
- PDA transfers and data capture
- Communication process
- I.T. stability and robustness
- Training documentation

- 
- Data transfer to/from ACCC and Retail Facts
  - 'Basket' reports

#### Deploy Pilot

Following the process outlined above and on 25 June 2008 as agreed upon between Retail Facts and the ACCC, Retail Facts will deliver the pilot study; which includes the following activities.

- Conduct communication
- Launch training



- Load stores and products
- Transfer PDA's
- Capture data in store
- Review data in real time
- Transfer files to ACCC

Attachment C

**Collection of Grocery Product Price Data**





**Attachment D**

**Project Plan for Ongoing Monthly Survey, from August 2008**

<b>Week Commencing</b>	<b>Tasks</b> <b>Indicative of the first three months after the July survey and would represent the full universe</b>	<b>Completion Date</b> <b>OR</b> <b>Due to the ACCC</b>
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**WORK PLAN FOR EACH MONTHS SURVEY**

**AUGUST 2008 SURVEY**

4 <sup>th</sup> Aug 2008	ACCC sends data to Retail Facts	4 <sup>th</sup> Aug 2008
4 <sup>th</sup> Aug 2008	Retail Facts plans the resource requirements for survey	15 <sup>th</sup> Aug 2008
18 <sup>th</sup> Aug 2008	Retail Facts conducts the survey in field	22 <sup>nd</sup> Aug 2008
18 <sup>th</sup> Aug 2008	Retail Facts analyses data from the survey	22 <sup>nd</sup> Aug 2008
25 <sup>th</sup> Aug 2008	Retail Facts send the captured data to the ACCC	25 <sup>th</sup> Aug 2008
25 <sup>th</sup> Aug 2008	ACCC updates their website with reported data	1 <sup>st</sup> Sept 2008
25 <sup>th</sup> Aug 2008	Retail Facts raises the monthly invoice for payment	25 <sup>th</sup> Aug 2008
1 <sup>st</sup> Sept 2008	Retail Facts and ACCC have monthly meeting	5 <sup>th</sup> Sept 2008
22 <sup>nd</sup> Sept 2008	ACCC pays Retail Facts invoice	24 <sup>th</sup> Sept 2008

**SEPTEMBER 2008 SURVEY**

1 <sup>st</sup> Sept 2008	ACCC sends data to Retail Facts	1 <sup>st</sup> Sept
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		2008
1 <sup>st</sup> Sept 2008	Retail Facts plans the resource requirements for survey	12 <sup>th</sup> Sept 2008
15 <sup>th</sup> Sept 2008	Retail Facts conducts the survey in field	19 <sup>th</sup> Sept 2008
15 <sup>th</sup> Sept 2008	Retail Facts analyses data from the survey	19 <sup>th</sup> Sept 2008
22 <sup>nd</sup> Sept 2008	Retail Facts send the captured data to the ACCC	22 <sup>th</sup> Sept 2008
22 <sup>nd</sup> Sept 2008	ACCC updates their website with reported data	1 <sup>st</sup> Oct 2008
22 <sup>nd</sup> Sept 2008	Retail Facts raises the monthly invoice for payment	22 <sup>nd</sup> Sept 2008
29 <sup>th</sup> Sept 2008	Retail Facts and ACCC have monthly meeting	3 <sup>rd</sup> Oct 2008
20 <sup>th</sup> Oct 2008	ACCC pays Retail Facts invoice	21 <sup>st</sup> Oct 2008

#### OCTOBER 2008 SURVEY

6 <sup>th</sup> Oct 2008	ACCC sends data to Retail Facts	6 <sup>th</sup> Oct 2008
6 <sup>th</sup> Oct 2008	Retail Facts plans the resource requirements for survey	17 <sup>th</sup> Oct 2008
20 <sup>th</sup> Oct 2008	Retail Facts conducts the survey in field	24 <sup>th</sup> Oct 2008
20 <sup>th</sup> Oct 2008	Retail Facts analyses data from the survey	24 <sup>th</sup> Oct 2008
27 <sup>th</sup> Oct 2008	Retail Facts send the captured data to the ACCC	27 <sup>th</sup> Oct 2008
27 <sup>th</sup> Oct 2008	ACCC updates their website with reported data	1 <sup>st</sup> Nov 2008
27 <sup>th</sup> Oct 2008	Retail Facts raises the monthly invoice for payment	27 <sup>th</sup> Oct 2008
3 <sup>rd</sup> Nov 2008	Retail Facts and ACCC have monthly meeting	7 <sup>th</sup> Nov 2008

24<sup>th</sup> Nov 2008 ACCC pays Retail Facts invoice

26<sup>th</sup> Nov  
2008

**Quarterly review between Retail Facts and the ACCC at the end of each 3 surveys**

**Dates variable on agreement between the ACCC and Retail Facts**

**Attachment E**



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**DEED POLL - CONFIDENTIALITY UNDERTAKING**

I (name).....of

[COMPANY NAME]

[COMPANY ADDRESS]

(a) acknowledge that all information and material provided by the Australian Competition and Consumer Commission ("the ACCC") for the purposes of the provision of services by The Bailey Group Pty Ltd pursuant to Grocery Product Prices Survey was provided by the ACCC in confidence;

(b) undertake to the ACCC :

- (i) to use such information only for the purposes of the services; and
- (ii) not to disclose, publish or communicate to any other person or otherwise make public:
  - (1) any such information or material provided by the ACCC; and
  - (2) any information produced in connection with or by the performance of the services;

except as permitted by the terms of the contract or otherwise with the prior approval in writing of the ACCC.

Executed as a Deed Poll:

Signed, Sealed and Delivered by:

Name.....

Signature.....

Date.....

## **SCHEDULE 7 PROTOCOL**

### ***Protocol for the publication of monthly survey results under Phase 2 of the Grocerychoice website contract***

Under the Grocerychoice Website Contract between the Department of Treasury and Choice, Choice is required to continue to publish the monthly basket prices from the existing grocery price survey until the implementation of the new website on 1 July 2009. The ACCC will provide services to the Department of the Treasury to assist with this requirement. The ACCC will invoice the Department of the Treasury for costs incurred in providing these services.

This protocol outlines the roles and responsibilities of the ACCC and Choice associated with the continued publication of monthly basket prices from the existing grocery price survey.

These roles and responsibilities will remain in place until the implementation of the Phase 3, the new Grocerychoice website on 1 July 2009.

The monthly roles and responsibilities associated with publication of monthly basket prices are separated into the following five categories:

- 1. Data Collection, sample review and maintenance**
- 2. Quality Assurance**
- 3. Data Release**

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- 4. Communication**
- 5. Website Content Management**

In addition, financial costs are detailed under:

- 6. Financial costs incurred by the ACCC**

The roles and responsibilities under each are assigned as below. A timetable for the February 2009 data release is included in **Attachment A**. A new timetable will be created at the beginning of each new data cycle.

## **1. Data Collection, Sample Review and Maintenance**

1.1 Each month, to assist Choice in completing the survey, the ACCC will provide services for the on-going management of the survey program including:

- i) Review and update the list of products included in the survey. This includes a review of the data from the previous monthly survey including consideration of the ranging of products (the percentage of surveyed products that were located in each supermarket), the introduction of new products to the survey to improve ranging and data quality, and the introduction/replacement of products which are seasonal e.g. stone fruit;
- ii) Review and update the list of supermarkets in the survey. This includes the identification and replacement of supermarkets where store access has been denied, where the products included in the survey have ranged poorly; and supermarket rotation, where possible, to prevent manipulation of the survey results;
- iii) Update of the product expenditure weights as a result of product rotation and following the release of the quarterly Consumer Price Index;
- iv) On-going communication with Retail Facts including monthly meetings to review the most recent collection and discuss changes for the up coming collection; and
- v) Advice and assistance with the actual price survey as required.

1.2 The ACCC will provide to Choice a summary of any changes made to the survey as a result of the on-going management of this process.

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1.3 Following the signing of the Grocerychoice Website Contract, Retail Facts price collectors will carry a Letter of Authority stating that the data is being collected on behalf of Choice, with results published on Choice's Grocerychoice website. The Letter of Authority will have the contact details for a Choice staff member so that supermarket owners/managers are able to raise any queries about the survey directly with Choice. The ACCC will be available to provide assistance to Choice where Choice is unable to adequately address any of the issues that are raised.

## **2. Quality Assurance**

2.1 Each month, to assist CHOICE in completing the survey, the ACCC will provide services covering all tasks associated with the quality assurance of the data collected during the monthly survey including:

- i) A check of all individual prices that are outside two standard deviations of the average price for the product and making an appropriate decisions about whether these prices are accurate or require adjustment.
  - ii) Confirming that data has been reported for all supermarkets in each region;
  - iii) Confirming that the average prices calculated for each supermarket group and Australia are accurate;
  - iv) Confirming that the final basket prices have been calculated accurately;
  - v) Analysis of variations in prices to determine the reasons for movements in basket prices across regions and across banners;
  - vi) Feedback to Retail Facts about the quality of the data and required amendments.
  - vii) Confirmation that all requested changes have been made accurately by Retail Facts; and
  - viii) Final checking of basket prices and the accuracy of the XML file provided by Retail Facts.
- 2.2 Once all of the above quality assurance tasks have been completed the ACCC will provide the final basket prices to CHOICE for its review and approval. The ACCC will also provide to CHOICE the 'highlights' identified in the monthly results.

### **3. Data Release**

- 3.1 Once the ACCC has received approval of the final data from CHOICE, the ACCC will forward the XML file to Getronics to be loaded to the pre-production website.
- 3.2 Once the data has been loaded to the pre-production website, CHOICE is to confirm that the data has loaded correctly.
- 3.3 CHOICE will then give Getronics approval to load the data to the production website (off-line servers) in preparation for release. CHOICE is again to confirm that the data has loaded correctly.
- 3.4 On the morning of release (the first business day of the month), CHOICE is to give approval to Getronics to release the new survey data (i.e. bring the off-line servers on-line)
- 3.5 Once this has occurred successfully, CHOICE is to give Getronics approval to load the new survey data to the remaining servers. CHOICE is to confirm that the data has been loaded accurately before giving approval to bring the remaining servers on-line.

**4. Communication**

- 4.1 On the day of release, CHOICE is to send out a subscription notice, informing subscribers that new survey data has been loaded to the website. CHOICE is responsible for the management of the subscription email list, including the addition of new subscribers and the deletion of subscribers requesting removal from the list.
- 4.2 CHOICE has responsibility for responding to all user inquiries about the website. If an inquiry relates to the existing survey or data, and CHOICE is unable to provide an appropriate response, the ACCC will prepare a suggested response for CHOICE to send.
- 4.3 All other forms of communication regarding the website (e.g. media releases) are the responsibility of CHOICE.

**5. Website Content Management**

- 5.1. CHOICE has responsibility for the management of all website content.

**6. Financial costs incurred by the ACCC**

- 6.1. The time required to complete the tasks detailed under this Protocol is estimated on the number of business days per month required. The result is staffing costs equal to slightly less than two equivalent staff. Staff time has been estimated at cost only (i.e. salary/ super/ workers comp).

**Table 1. Monthly staffing costs incurred by the ACCC**

<b>Title</b>	<b>Name</b>	<b>Business days per month</b>	<b>Cost (\$)</b>
Director	Adam Jarvis	10	\$4,877
Assistant Director	Rod Middleton	15	\$6,311
Analyst	Lauren Das	15	\$4,723
<b>Total</b>			<b>\$15,911</b>



### Attachment A – Timetable for February Data Release

The following timetable includes the key dates for the February release of data. A new timetable will be created at the beginning of each new cycle.

Note: The latest survey data is to be loaded to the website on the first business day of the month following the survey.

Task	Start Date	End Date
<b>1. Data Collection, sample review and maintenance</b>		
- sample review and maintenance	29 <sup>th</sup> Dec	9 <sup>th</sup> Jan
- Price survey*	12 <sup>th</sup> Jan	14 <sup>th</sup> Jan
<b>2. Quality Assurance</b>		
- Data received from Retail Facts	21 <sup>st</sup> Jan	23 <sup>rd</sup> Jan
- ACCC quality assurance	21 <sup>st</sup> Jan	28 <sup>th</sup> Jan
<b>3. Data Release</b>		
- ACCC forward data to CHOICE for approval	28 <sup>th</sup> Jan	28 <sup>th</sup> Jan
- Approval provided by CHOICE	29 <sup>th</sup> Jan	29 <sup>th</sup> Jan
- ACCC forward XML to Getronics	29 <sup>th</sup> Jan	29 <sup>th</sup> Jan
- CHOICE confirms accuracy of load to pre and production websites	29 <sup>th</sup> Jan	30 <sup>th</sup> Jan
- CHOICE approval for release of data	2 <sup>nd</sup> Feb	2 <sup>nd</sup> Feb
- CHOICE approval for load/release of remaining servers	2 <sup>nd</sup> Feb	2 <sup>nd</sup> Feb
<b>4. Communication</b>		
- CHOICE send subscription notice	2 <sup>nd</sup> Feb	2 <sup>nd</sup> Feb

\* the price survey is usually conducted over two days (Tuesday and Wednesday). It is being conducted over three days in January as a result of price collector availability over the Christmas period.

Executed as a deed

19th DECEMBER 2008

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

SIGNED SEALED AND DELIVERED )  
for and on behalf of **Commonwealth** )  
**of Australia** as represented by the )  
**Department of the Treasury** by: )

DAVID MARTINE

^Name of signatory^

[Handwritten Signature]

Signature

In the presence of:

MATTHEW JOHN BOWD

^Name of witness^

[Handwritten Signature]

Signature of witness

SIGNED SEALED AND DELIVERED )  
for and on behalf of **Australian** )  
**Consumers Association** ACN 000 )  
281 925 trading as Choice by: )

NORM CROTHERS

^Name of signatory^

[Handwritten Signature]

Signature

In the presence of:

VIVIAN POWER

^Name of witness^

[Handwritten Signature]

Signature of witness