

## **APPENDIX 4**

### **GROCERYchoice Website Contract**





Australian Government Solicitor

**GROCERYCHOICE WEBSITE CONTRACT**

**Commonwealth of Australia** as represented by the **Department of the Treasury**  
ABN 92 802 414 793

**Australian Consumers' Association** trading as **Choice**  
ACN 000 281 925 ABN 72 000 281 925

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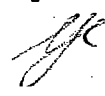
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**GROCERY CHOICE WEBSITE CONTRACT**

**PARTIES**

This contract is made between and binds the following parties:

1. **Commonwealth of Australia** as represented by the **Department of the Treasury** 92 802 414 793, Langton Crescent, Parkes ACT 2600, Australia (**Treasury**)
2. **Australian Consumers' Association, trading as Choice** ACN 000 281 925 ABN 72 000 281 925 (**Choice**)

**CONTEXT**

- A. As part of a package of measures to enhance competition and assist Australian consumers to be better informed about grocery prices, the Australian Government launched the Grocerychoice Website on 6 August 2008.
- B. Choice approached the Australian Government with a proposal to take over the Grocerychoice Website. Choice proposed to provide the public with a more useful website by enhancing and improving upon the current operation and information provided by the ACCC.
- C. This contract sets out the agreed basis on which the Grocerychoice Website and associated functions will be transferred to Choice and for the operation and enhancement of it by Choice during the term of this contract.

**OPERATIVE PROVISIONS**

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

**1. INTERPRETATION**

**1.1. Definitions**

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

**Activity** means the activity to be undertaken, the requirements to be met and the accountabilities to be discharged by Choice as described in the Grocerychoice Activity Details and as agreed in accordance with clause 3.3.2, and includes the provision of Activity Material;

**Activity Generated Income** means any income earned by Choice from its Grocerychoice activities including income generated from third party advertising or promotion but excluding income generated from Choice's advertising or promotion of its own activities,

publications and services;

**Activity Material**

means:

- a. any Material that is developed, created or generated by Choice (including by third parties directed by, or contracted to, Choice) in respect of, or contemplated by, this contract ('Foreground Material');
- b. any pre-existing tools, object libraries, data, methodologies or Material used by Choice in relation to the Foreground Material or the Grocerychoice Website ('Choice Background Material');

**Activity Period**

means the period specified as the 'Activity Period' in the Activity Schedule, during which the Activity must be completed;

**Adjustment Factor**

means the basis by which a Base Funding Amount is adjusted to calculate the Funding (in cash) payable, as specified in the Funding Schedule or as may be otherwise agreed in writing by the by the parties;

**Alternative Phase 3**

means the details of all activities necessary for Choice's performance of its obligations in respect to the alternative to Phase 3 including its scope, maximum Funding amount and payment schedule agreed in accordance with clause 3.3.2;

**Approved Auditor**

means a person who is:

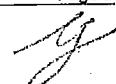
- a. registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;
- b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of Choice or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the *Corporations Act 2001* (Cth)); and
- c. not Choice's Qualified Accountant;

**Asset**

means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$500 exclusive of GST, but excludes any Intellectual Property Rights;



<b>Auditor-General</b>	means the office established under the <i>Auditor-General Act 1997 (Cth)</i> and includes any other entity that may, from time to time, perform the functions of that office;
<b>Australian Accounting Standards</b>	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001 (Cth)</i> ;
<b>Australian Auditing Standards</b>	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001 (Cth)</i> ;
<b>Australian Government</b>	means Commonwealth of Australia;
<b>Australian Government Grocerychoice Initiative</b>	means the Australian Government initiative to provide identified grocery price information to help consumers compare price and other relevant information in relation to supermarkets and groceries;
<b>Base Funding Amount</b>	means the base funding (in cash) amount specified in respect to a part of the Activity, specified as the 'Base Funding Amount' in the Funding Schedule or as otherwise specifically agreed in writing by Treasury, which is subject to adjustment by the Adjustment Factor to calculate the Funding (in cash) for that part of the Activity;
<b>Business Day</b>	means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place, or if no such place is specified or reasonably ascertainable, in Canberra;
<b>Business Hours</b>	means 9:00 to 17:00 on Business Days;
<b>Choice</b>	includes officers, employees, agents, volunteers and subcontractors, and successors of Choice;
<b>Completion Date</b>	means the day after Choice has done all that it is required to do under clauses 3 [Conduct of the Grocerychoice website and activities], 5 [Financial accountability] and 9 [Reporting] of this contract;
<b>Confidential Information</b>	means: <ul style="list-style-type: none"> <li>a. in respect of Treasury's confidential information, any information that is by its nature confidential that is provided by Treasury to Choice or which Choice otherwise accesses or becomes aware of as a result of this contract and which: <ul style="list-style-type: none"> <li>i. is listed as "Treasury's Confidential</li> </ul> </li> </ul>



Information" in the Contract Details; or

ii. Choice knows or ought to know is confidential; and

b. in respect of Choice's confidential information, any information that is by its nature confidential and:

iii. is listed as "Choice's Confidential Information" in the Contract Details;

iv. is otherwise specifically agreed in writing by Treasury in respect of this contract to be confidential; or

v. Treasury knows or ought to know is confidential

**Conflict**

means any matter, circumstance, interest or activity involving or affecting Choice, its Personnel or subcontractors which may or may appear to impair the ability of Choice to perform the Activity fairly, objectively, diligently or independently;

**Constitution**

means (depending on the context):

a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or

b. in relation to any other kind of body:

i. the body's charter, rules or memorandum; or

ii. any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

**Contract Details**

means the schedule to this contract headed 'Contract Details';

**Deliverable**

means any Material (including Activity Material) that Choice is required to provide to Treasury pursuant to this contract;

**Depreciated**

means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;

**Director**

means any of the following:

a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the *Corporations Act 2001* (Cth) regardless of the

	name given to their position;
	b. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; or
	c. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
<b>Dispose</b>	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
<b>Financial Year</b>	means each period from 1 July to the following 30 June occurring during the Activity Period, or any part of such a period occurring at the beginning or end of the Activity Period;
<b>Funding</b>	means the amount or amounts (in cash or kind) payable by Treasury under this contract as specified in the Funding Schedule, and includes Activity Generated Income and In-Kind Contributions;
<b>Funding Schedule</b>	means the schedule to this contract headed 'Funding Schedule';
<b>Getronics</b>	means Getronics Australia Pty Ltd;
<b>GST</b>	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
<b>Grocerychoice Activity Details</b>	means the schedule to this contract headed 'Grocerychoice Activities Details';
<b>Grocerychoice Website</b>	means the 'Grocerychoice' website accessible at <a href="http://www.grocerychoice.gov.au">www.grocerychoice.gov.au</a> (and <a href="http://www.grocerychoice.net.au">www.grocerychoice.net.au</a> and <a href="http://www.grocerychoice.com.au">www.grocerychoice.com.au</a> ) and all associated ICT systems and associated facilities as at the date of this contract and as modified, supplemented or replaced by Choice at any time (including all associated domain names);
<b>Grocerychoice Website SOW</b>	means the Grocerychoice website statement of work (SOW) at Schedule 4 which sets out the work to be performed by Getronics pursuant to a work order issued under clause 12 of the Grocerychoice IT Contract;
<b>Grocerychoice IT</b>	means the contract titled 'Grocery Price Monitoring

<b>Contract</b>	Website System Design, Implementation and Services Contract' between Treasury and Getronics, a copy of which is at Schedule 5;
<b>Grocery Product Prices Survey Contract</b>	means the contract between Treasury and The Bailey Group Pty Ltd in relation to services for Grocery Product Prices Survey, dated 6 June 2008, a copy of which is at Schedule 6;
<b>Hosting Arrangement</b>	means the contract for hosting of the Grocerychoice Website between Treasury and Getronics Australia Pty Limited created pursuant to clause 4.4 of the Grocerychoice IT Contract;
<b>Identified Contingent In-Kind Contributions</b>	In-Kind Contributions that may arise during the Term if certain events occur and are identified in the Funding Schedule;
<b>In-Kind Contribution</b>	means the expenditure, liability and cost incurred by Treasury in relation to the Australian Government Grocerychoice Initiative, including without limitation fees under the Hosting Arrangement, Grocerychoice IT Contract or Grocery Products Price Survey Contract;
<b>Intellectual Property Rights</b>	includes: <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the rights of performers; or</li> <li>f. rights in relation to Confidential Information;</li> </ul>
<b>Interest</b>	means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the Taxation Administration Act 1953 (Cth), on a daily compounding basis;
<b>Key Performance Indicators</b>	means the minimum standards of performance specified (no matter how named or referred to) in Grocerychoice Activity Details or otherwise agreed in writing between the parties;

<b>Material</b>	includes any thing in relation to which Intellectual Property Rights arise;
<b>Milestone</b>	means a stage of completion of the Activity as set out in the Funding Schedule;
<b>Milestone Date</b>	means the date for mandatory completion of all specified obligations of Choice in respect of a Milestone;
<b>Moral Rights</b>	includes the following rights of an author of copyright Material: <ul style="list-style-type: none"> <li>a. the right of attribution of authorship;</li> <li>b. the right of integrity of authorship; and</li> <li>c. the right not to have authorship falsely attributed;</li> </ul>
<b>Objectives</b>	means the objectives described in Grocerychoice Activity Details;
<b>Official Information</b>	means any information developed, received or collected by or on behalf of the Australian Government, through its agencies and contracted providers.
<b>Official Resources</b>	includes Official Information, people who work for or with the Australian Government, assets in the possession of the Australian Government and assets belonging to the Australian Government, whether in the Australian Government's possession or in the possession of its contractors or agents or any other person;
<b>Personal Information</b>	means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
<b>Personnel</b>	means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance or management of this contract;
<b>Phase</b>	means, as the context requires, either Phase 1, Phase 2, Phase 3 or Alternative Phase 3;
<b>Phase 1</b>	means all activities necessary for Choice's performance of its obligations in respect to phase 1 of the Activity in accordance with this contract;
<b>Phase 2</b>	means all activities necessary for Choice's performance of its obligations in respect to phase 2 of

	the Activity in accordance with this contract;
<b>Phase 3</b>	means all activities necessary for Choice's performance of its obligations in respect to phase 3 of the Activity in accordance with this contract;
<b>Phase 3 Commencement Date</b>	means 1 July 2009;
<b>Privacy Act</b>	refers to the <i>Privacy Act 1998</i> (Cth);
<b>Privacy Commissioner</b>	means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;
<b>Protocol</b>	means the document at the schedule to this contract headed 'Protocol';
<b>Qualified Accountant</b>	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;
<b>Records</b>	includes documents, information and data stored by any means and all copies and extracts of the same;
<b>Related Party</b>	means: <ul style="list-style-type: none"> <li>a. a related party within the meaning given to that term in Section 9 of the <i>Corporations Act 2001</i> (Cth); and</li> <li>b. any entity or person with whom any dealing, association, or relationship with in the relevant context might involve a Conflict;</li> </ul>
<b>Report</b>	means Activity Material that is provided to Treasury for reporting purposes as stipulated in clause 9;
<b>Security Classified Information</b>	means Official Resources that, if compromised, could have adverse consequences for the Australian Government;
<b>Schedule</b>	refers to the schedule to this contract and may include annexures and incorporate other documents by reference;
<b>Source Code</b>	means the source code to any computer software (including any relevant, module, function, procedure or object) and includes any software tools, software objects or object libraries embedded in that software or otherwise forming part of it and all Materials relating to that software and/or its design, development, modification, operation, support or maintenance (which except as otherwise specifically

	agreed in writing by Treasury must be in English);
<b>Specified Acts</b>	means any of the following classes or types of acts or omissions by or on behalf of Treasury: <ul style="list-style-type: none"> <li>a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution of authorship;</li> <li>b. supplementing the Activity Material with any other Material; or</li> <li>c. using the Activity Material in a different context to that originally envisaged,</li> </ul> but does not include false attribution of authorship;
<b>Third Party</b>	means a person who is not a party to this contract or a Related Party to a party to this contract;
<b>Third Party Interest</b>	means any legal or equitable right, interest, power or remedy in favour of any person other than Treasury or Choice in connection with the contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
<b>Treasury</b>	includes officers, delegates, employees and agents, and successors of Treasury;
<b>Treasury Background Material</b>	means any Material used by Choice as part of Grocerychoice Website that is provided by Treasury and/ or the ACCC to Choice for the purposes of this contract – but only to the extent that the Intellectual Property Rights are owned by Treasury;
<b>Undepreciated</b>	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
<b>Unpaid Cash Funding</b>	means the amount of Funding (in cash) that has not been paid by Treasury and is not due and payable by Treasury.

**1.2. Interpretation**

- 1.2.1. In this contract, unless the contrary intention appears:
- a. words importing a gender include any other gender;
  - b. words in the singular include the plural and words in the plural include the singular;
  - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;

- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. an schedule and any attachments to this document form part of the contract;
- i. if any conflict arises between the terms and conditions contained in the clauses of this contract and any part of any schedule to this contract (and attachments if any), the terms and conditions of the clauses prevail;
- j. if any conflict arises between any part of a schedule and any part of an attachment, the schedule prevails;
- k. a reference to a schedule (or an attachment), is a reference to a schedule (or an attachment) to this contract, including as amended or replaced from time to time by agreement in writing between the parties; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

**1.3. Guidance on construction of contract**

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

**2. COMMENCEMENT AND TERM**

- 2.1.1. The term of this contract commences on the date of execution and, unless terminated earlier, it expires on the Completion Date.



### **3. CONDUCT OF THE GROCERYCHOICE WEBSITE AND ACTIVITIES**

#### **3.1. Summary of Choice accountabilities**

- 3.1.1. From the date of this contract, Choice will have full responsibility and accountability for the Grocerychoice Website.
- 3.1.2. Choice will use its best efforts to perform the Activities in a manner that is consistent with and will achieve Australian Government's Grocerychoice objectives.
- 3.1.3. Choice will not be liable to Treasury for any breach of its accountabilities under clauses 3.1.1 and 3.1.2 to the extent that the breach was due to any failure to provide, delay or defect in the In-Kind Contributions and the circumstances were that reasonable action by Choice could not enable the failure, delay or defect to be overcome or the accountabilities met by other actions or means reasonable in the circumstances.
- 3.1.4. Choice must:
- a. undertake:
    - i. Phase 1;
    - ii. Phase 2; and
    - iii. subject to clause 3.3, Phase 3; and
  - b. otherwise fully comply with all of its obligations under this contract.

#### **3.2. Phase 3 Commencement**

- 3.2.1. Choice must undertake and perform Phase 3 as and from the Phase 3 Commencement Date in accordance with this contract.

#### **3.3. Phase 3 Review and Alternative Phase 3**

- 3.3.1. If Choice does not commence Phase 3 on or before the Phase 3 Commencement Date, Treasury will initiate a structural review of Phase 3 during which Treasury and Choice must meet to discuss:
- a. the continuation of the Activity, including, but not limited to, the conditions for contingency if the Phase 3 Commencement Date is not met, as specified in Option 1 and Option 2 described in the Activities Details Schedule; and
  - b. if applicable, the proposed new commencement date for Phase 3.
- 3.3.2. If the parties agree that Choice will continue the Activity with an alternative to Phase 3, the parties will agree an Alternative Phase 3.

- 3.3.3. Choice must continue to perform Phase 2 obligations until the earlier of:
- a. the date the parties agree an Alternative Phase 3; or
  - b. the end of the Term.

**3.4. Choice Responsibility and Availability of Treasury Services**

3.4.1. Unless otherwise agreed in writing by the parties, Treasury will make available to Choice the use of services in respect to the Grocerychoice Website under the following contracts as In-Kind Contributions:

- a. hosting via the Hosting Arrangement;
- b. modifications in accordance with the Grocerychoice Website SOW to the Grocerychoice Website as it exists at the date of this contract, to be performed by the Grocerychoice IT Contract contractor;
- c. support and maintenance via the Grocerychoice IT Contract; and
- d. collection of grocery product price data and provision of monthly basket prices in the required .xml format via the Grocery Product Prices Survey Contract,

until the commencement of Phase 3, on condition that:

- e. the availability of these services does not in any way limit or diminish Choice's obligations in any other respect to this contract;
- f. to the extent that legal participation of Treasury is required, including for example to issue work orders under the Grocerychoice IT Contract, the availability of these services is subject to Treasury's internal sign-off process.

3.4.2. Choice acknowledges and agrees that all In-Kind Contributions by Treasury, including the Grocerychoice Website, Treasury Background Material and any services or Material including those under the Hosting Arrangement, the Grocerychoice IT Contract and the Grocery Product Prices Survey Contract, are, to the extent permitted by law, provided to Choice 'as is' and without any represent or warranty (whether express or implied) or liability of any kind.

3.4.3. Where Choice incurs liability to a Third Party in respect to data provided under the Grocery Product Prices Survey Contract that is required to be published by Choice as part of the Activity, clause 3.4.2 shall not prevent Choice from joining Treasury as a party to any proceeding or taking legal action against Treasury in respect to liability Treasury may have to Choice in respect to such matters, providing however that any liability Treasury may have to Choice in respect to such matters is, to the extent permitted by Law, limited to the amount that Treasury recovers from the Grocery Product Prices Survey Contract contractor in respect to the same underlying issues as any action between Choice and Treasury.



**3.5. Performance standards**

3.5.1. Choice must carry out the Activity:

- a. to achieve the Objectives;
- b. throughout the Activity Period;
- c. in accordance with the Activity Timetable;
- d. to Treasury's reasonable satisfaction; and
- e. otherwise in accordance with this contract.

3.5.2. Choice must undertake and perform the Activity:

- a. diligently, effectively and to a high standard;
- b. in accordance with suitable and appropriate methods and practices;
- c. in a timely, safe, prudent and reasonable manner and with the degree of professional skill, care and diligence which may reasonably be expected of a skilled and professional person suitably qualified and experienced in the conduct of activities similar to the Activity.

3.5.3. Choice must meet or exceed all Key Performance Indicators.

3.5.4. Subject to clause 3.5.5, Choice must ensure that the Grocerychoice Website:

- a. complies with:
  - i. the priority 1 and priority 2 checkpoints of the WC3 Web Content Accessibility Guidelines;
  - ii. the Human Rights and Equal Opportunity Commission's (HREOC) World Wide Web Access: Disability Discrimination Act Advisory Notes;
  - iii. the Australian Government Information Management Office's (AGIMO) Australian Government Web Publishing Guide;
  - iv. the Office of the Federal Privacy Commissioner's Guidelines for Federal and ACT Websites; and
  - v. the *Disability Discrimination Act 1992 (Cth)*;
- b. contains and adequately displays a disclaimer in the manner and in the form specified in the Contract Details or as otherwise advised by Treasury; and
- c. complies with all other requirements of this contract.

3.5.5. Choice will not be in breach of clause 3.5.4.a during either Phase 1 or Phase 2 except to the extent that the breach arises as a result of any change to the Grocerychoice Website made by Choice (for the purposes of clarity, any change to the Grocerychoice Website made pursuant to the Grocerychoice Website

SOW will not be considered a change to Grocerychoice Website by Choice for the purposes of this clause 3.5.5 or as a result of any specific action taken by Choice.

**3.6. Subcontractors**

- 3.6.1. Choice agrees not to subcontract the performance of any obligations under this contract without Treasury's prior written approval. Any subcontractors approved by Treasury at the date of this contract, and any terms and conditions relating to their use, are identified in the Contract Details. If Choice proposes to replace an approved subcontractor, Choice must also obtain Treasury's approval for the proposed change under this clause 3.6.
- 3.6.2. Choice is fully responsible for the performance of Choice's obligations under this contract regardless of whether Choice has subcontracted any of its obligations.
- 3.6.3. Choice agrees, in any subcontract placed with a subcontractor, to reserve a right of termination to take account of Treasury's rights of termination under clause 17 [Termination, or reduction in scope of contract], and Choice agrees, where appropriate, to make use of that right in the event of a termination or revocation by Treasury.

**3.7. Personnel**

- 3.7.1. Choice must ensure that it has sufficiently qualified personal and an appropriate allocation of roles and responsibilities within its staff to undertake the activities required for the successful operation of the Grocerychoice Website.
- 3.7.2. Choice must, at the earliest opportunity, provide full details to Treasury of the responsible personnel for each appropriate area of this contract, including, but not limited to, the primary Treasury contact point, the contract manager, IT manager and media liaison.
- 3.7.3. Choice must at all times have in place contingency plans, succession plans, and other relevant plans, processes and procedures to minimise any potential adverse impact for the operation of the Grocerychoice Website if any member of the personal delegated to undertake activities relating the Grocerychoice Website is, for any reason, not available.
- 3.7.4. Choice must provide full details of any replacement personnel to Treasury in writing.

#### **4. PAYMENT**

##### **4.1. Making of payment**

4.1.1. Treasury agrees to provide Choice with the Funding at the times and in the manner specified in Schedule 2 subject to:

- a. receipt of a correctly rendered invoice issued on or after the relevant part of the Funding falls due for billing;
- b. the due and proper provision of the Activity (including achievement of Milestones) and compliance by Choice with all other requirements of this contract;
- c. adjustment in accordance with clause 4.2 [Calculation of Funding] and 4.3 [Adjustment of Unpaid Cash Funding]; and
- d. sufficient funds being available for the Australian Government Grocerychoice Initiative for the Funding.

4.1.2. Without limiting Treasury's rights, Treasury may suspend any payment in whole or in part until Choice has performed its obligations under this contract that relates to the payment concerned.

##### **4.2. Calculation of Funding**

4.2.1. Except to the extent specifically provided to the contrary in this contract or otherwise specifically agreed in writing by the parties, the Funding payable for the Activity, and each part of the Activity, under this contract will be calculated by way of the following formula:

Funding = Base Funding Amount - Adjustment Factor.

##### **4.3. Adjustment of Unpaid Cash Funding**

4.3.1. The Unpaid Cash Funding will be reduced by the value of any In-Kind Contributions, not identified in Schedule 2 in the Table of In-Kind Contributions to be paid by Treasury.

##### **4.4. Sanctions for inadequate management or performance**

4.4.1. Where Treasury is not satisfied that Choice is adequately:

- a. managing the Funding; or
- b. performing or otherwise undertaking the Activity in accordance with this contract,

or is otherwise not satisfied that Choice will do so, or has the capacity to do so, Treasury may by written notice:

- c. suspend, reduce or cease the release of Funding to Choice; and/or

- d. require Choice to refund some or all of the Funding to Treasury, subject to Treasury providing written advice to Choice and allowing Choice the opportunity to rectify the cause of Treasury's concerns.

#### **4.5. Debt and Interest**

- 4.5.1. Choice agrees to pay any amount owed or payable to Treasury or which Treasury is entitled to recover from Choice, under this contract, including any Interest, without prejudice to any other rights available to Treasury under the contract, under statute, at law or in equity, at the discretion of Treasury, as a debt due to Treasury by Choice without further proof of the debt by Treasury being necessary.
- 4.5.2. If Treasury notifies Choice that an amount is to be refunded or repaid to Treasury and the amount is not refunded or repaid within 20 Business Days, or as otherwise notified by Treasury, Choice agrees to pay Interest, unless Treasury notifies Choice otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 4.5.3. In respect to any obligation Choice may have under this contract to pay Treasury any Interest, Choice agrees that the Interest represents a reasonable pre-estimate of the loss incurred by Treasury.

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### **5. FINANCIAL ACCOUNTABILITY**

#### **5.1. Use of Funding**

- 5.1.1. Choice agrees to spend the Funding only for the Activity in accordance with this contract.
- 5.1.2. Choice agrees to do all things necessary to ensure that all payments from the Funding that Choice makes to third parties (including subcontractors) are correctly made and properly authorised and that Choice maintains proper and diligent control over the incurring of all liabilities.

#### **5.2. Keeping of Funding**

- 5.2.1. Choice agrees to:
  - a. ensure that the Funding is held in an account in Choice's name and which Choice solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
  - b. notify Treasury, prior to the receipt of any Funding, of details sufficient to identify the account;
  - c. if requested by Treasury, provide written notification to the authorised deposit-taking institution at which the account is established that the

Funding is held for the purposes of the Activity, and provide a copy of that notification to Treasury;

- d. on notification from Treasury, provide Treasury and the authorised deposit-taking institution with a written authority for Treasury to obtain any details relating to any use of the account;
- e. if the account changes, notify Treasury within 10 Business Days of the change occurring, provide Treasury with details of the new account;
- f. ensure that as a minimum, two signatories, who have Choice's authority to do so, are required to operate the account; and
- g. identify the receipt and expenditure of the Funding separately within Choice's accounts and Records so that at all times the Funding is identifiable.

### **5.3. Financial Records**

5.3.1. Choice agrees to keep financial accounts and Records relating to the Activity so as to enable:

- a. all receipts and payments related to the Activity to be identified and reported in accordance with this contract;
- b. unless otherwise notified by Treasury, the preparation of financial statements in accordance with Australian Accounting Standards including:
  - i. an income and expenditure statement for the Financial Year to date; and
  - ii. a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date;
- c. the audit of those accounts and Records in accordance with Australian Auditing Standards; and
- d. the identification of all Choice's taxation liabilities and payments.

### **5.4. Use as security**

5.4.1. Except with the prior written approval of Treasury, Choice agrees not to use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:

- a. the Funding;
- b. this contract or any of Treasury's obligations under the contract; or
- c. any Assets or Intellectual Property Rights in Activity Material.

**5.5. Refunds**

- 5.5.1. If, at the completion of any Phase or as at the Completion Date or earlier termination of this contract Treasury determines that:
- a. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the contract; or
  - b. Funding has not been spent in accordance with the contract,
- then at the discretion of Treasury and subject to clause 5.5.2, Choice agrees to refund this amount to Treasury within 20 Business Days of a notice from Treasury or deal with this amount as notified by Treasury, or Treasury may reduce further payments of Funding to Choice by up to this amount.
- 5.5.2. If paragraph 5.5.1a applies and Choice wishes to retain that Funding and use it to further the Government's objectives, Choice agrees to seek Treasury's written consent to retain the Funding and use it for purposes agreed by Treasury. Treasury acknowledges that Choice has discretion as to how the Funding is spent as long as it is to further the agreed objectives of this project.

**5.6. No additional Funding**

- 5.6.1. Treasury is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

**5.7. Other funding**

- 5.7.1. Unless otherwise agreed by Treasury in writing, no Funding will be paid for the conduct of an Activity where Choice receives funding for the same or a similar activity from Treasury or another Commonwealth, State, Territory or local government.
- 5.7.2. Choice agrees to inform Treasury in writing within 20 Business Days of entering into any arrangement (whether contractual or statutory) under which Choice is entitled to receive funding from the Commonwealth or a State, Territory or local government.
- 5.7.3. Any payments under this contract may be suspended by Treasury:
- a. if Choice has amounts to be repaid or unacquitted moneys under any arrangement (whether contractual or statutory) with Treasury; or
  - b. if a Report provided by Choice is not accurate or complete or indicates that Choice currently has unspent Funding.
- 5.7.4. Notwithstanding such suspension of any payments, Choice agrees to continue to perform any obligations under this contract, unless Treasury agrees otherwise in writing.



## **6. TAXES, DUTIES AND GOVERNMENT CHARGES**

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- 6.1.1. Unless otherwise indicated, Choice agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this contract.
- 6.1.2. Unless otherwise indicated, any consideration for a supply made under this contract is exclusive of any GST imposed on the supply.
- 6.1.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 6.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

## **7. ASSETS**

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### **7.1. Acquisition of Asset**

- 7.1.1. Choice agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Contract Details, without obtaining Treasury's prior written approval. Approval may be given subject to any conditions Treasury may impose.

### **7.2. Ownership of Asset**

- 7.2.1. Unless it is specified in Contract Details that Treasury or a third party own the Asset or Treasury provides written consent to a third party owning the Asset, then Choice must ensure that it owns any Asset acquired with the Funding.

### **7.3. Terms applicable to Asset**

- 7.3.1. If Treasury owns the Asset, clauses 7.6, 7.8 and 7.9 do not apply.
- 7.3.2. If the Asset is owned by a third party then Choice agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with this clause 7 [Assets], except for clauses 7.6, 7.7 and 7.8 and 7.9.

### **7.4. Use of Asset**

- 7.4.1. During the Activity Period Choice agrees to use any Asset in accordance with this contract and for the purposes of the Activity.

### **7.5. Choices' responsibilities for Asset**

- 7.5.1. Throughout the term of this contract, Choice agrees to:

- a. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 7 [Assets], without Treasury's prior written approval;
- b. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- c. maintain all Assets in good working order;
- d. maintain all appropriate insurances for all Assets to their full replacement cost noting Treasury's interest, if any, in the Asset under the contract;
- e. if required by law, maintain registration and licensing of all Assets;
- f. be fully responsible for, and bear all risks relating to, the use or Disposal (where approved by Treasury) of all Assets;
- g. maintain an Assets register in the form and containing the details as described in the Contract Details; and
- h. as and when requested by Treasury, provide copies of the Assets register to Treasury.

**7.6. Sale or Disposal of Asset during term of this contract**

7.6.1. If Choice Disposes of an Asset during the term of this contract, the greater of the following proportions must be accounted for as Activity Generated Income and used for the Activity:

- a. the proportion of the sale proceeds from the Asset; or
- b. the proportion of the Undepreciated value of the Asset,

that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

**7.7. Loss, damage, etc of Asset**

7.7.1. If any of the Assets are lost, damaged or destroyed, Choice agrees to promptly reinstate the Assets including from the proceeds of the insurance, and this clause 7 [Assets] continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to Treasury and accounted for as Activity Generated Income and used for the Activity.

**7.8. Dealing with Asset**

7.8.1. On expiry of the Activity Period or earlier termination of the term of this contract, Treasury may require Choice to deal with an Asset as Treasury may, at the sole discretion of Treasury, notify Choice.

- 7.8.2. Subject to clause 7.8.1, if on expiry of the Activity Period or the earlier termination of this contract, an Asset has not been fully Depreciated, Treasury may, by written notice, require Choice to:
- a. pay to Treasury within 20 Business Days of the expiry of the Activity Period or earlier termination of the contract, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
  - b. sell the Asset for the best price reasonably obtainable and pay to Treasury within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by Choice) that was funded from the Funding; or
  - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by Treasury.

**7.9. Failure to make payment**

- 7.9.1. Amounts payable to Treasury under clause 7.8.2 form part of the Funding and are recoverable as such.

**8. RECORDS**

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**8.1. Keeping Records**

- 8.1.1. Choice must create and maintain full and accurate accounts and records of the conduct of the Activity including, without limitation, all:
- a. progress against the Milestones;
  - b. performance against Key Performance Indicators
  - c. receipt and use of Funding;
  - d. creation of Intellectual Property Rights in Activity Material; and
  - e. creation, acquisition and Disposal of Assets.

**8.2. Retention of Records**

- 8.2.1. Choice agrees to create and maintain records and accounts under clause 8.1.1 and retain them for a period of no less than 7 years after the end of the Activity Period.

**9. REPORTING**

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**9.1. Progress Reports**

- 9.1.1. Choice agrees to provide to Treasury written Reports of Choice's progress in undertaking the Activity within two weeks of the completion of Phase 1, and quarterly thereafter, which include (but are not limited to):
- a. financial information (prepared by a Qualified Accountant who, if notified by Treasury, must also be a person acceptable to Treasury) including:
    - i. an income and expenditure statement including:
      - A. a statement of the Funding to date including the amount spent and the amount remaining in the account referred to in clause 5.2.1.a; and
      - B. a statement on the amount and use of all Activity Generated Income; and
    - ii. a schedule of the Assets created, acquired written-off or Disposed of during the Financial Year to date; and
  - b. Activity performance information including:
    - i. a description of the progress of the Activity to date;
    - ii. detail of the Objectives achieved during the period to which the Report relates and reasons why any Objectives have not been met;
    - iii. a description of actual performance against the Key Performance Indicators during the period to which the Report relates and reasons why any Key Performance Indicators have not been met; and
    - iv. a discussion and statement as to whether the timeframes and Milestones for the Activity (and specifically during the Report period) are being met and an explanation of any delays that have occurred, including the reasons for those delays and the action Choice proposes to take to address the delay and the expected effects (if any) the delay will have on the Activity (including subsequent Milestones and the overall completion of the Activity).

**9.2. Annual Reports and Final Report**

- 9.2.1. Within 60 Business Days after:
- a. the completion of each Financial Year in which a payment of Funding is made or used by Choice except the Financial Year in which subparagraph b applies; and
  - b. the expiry of the Activity Period, completion of the Activity or the termination or expiry of this contract, whichever is the earlier,

Choice agrees to provide to Treasury:

- c. audited financial statements prepared in accordance with Australian Accounting Standards in respect of the Funding (separately and in the context of Choice's overall financial position), which must include a definitive statement as to whether the financial information for the Activity represents the financial transactions fairly and is based on proper accounts and Records;
- d. a written statement of Choice's financial position (assets and liabilities by class), which must include, under assets, the balance of Choice's account referred to in clause 5.2.1.a;
- e. a written statement of how much money Choice needs to meet current liabilities under legal commitments entered into by Choice pursuant to this contract;
- f. a copy of a letter to Choice from the Approved Auditor, or a report from the Approved Auditor, including:
  - i. specific comment on the adequacy of financial controls being maintained by Choice;
  - ii. specific comment on Choice's financial position as it relates to any issues affecting Choice's ability to repay surplus Funding or complete the Activity with available Funding;
  - iii. specific comment on Choice's ability to meet Choice's taxation liabilities and any costs associated with any court or tribunal orders made against Choice or involving Choice;
  - iv. specific comment on Choice's compliance with Choice's obligations to pay superannuation entitlements;
  - v. where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended; and
  - vi. an itemised list of fees paid to Directors, stating how much was paid, to whom, when and what travel costs were involved; and
- g. any other requirements specified in the Contract Details.

9.2.2. Information required to be provided under clauses 9.1 and 9.2 must be accompanied by a statement that:

- a. all Funding received were spent for the purpose of the Activity and in accordance with this contract, and that Choice has complied with the contract;
- b. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations;

- c. unless the Activity Period has expired or the contract has been terminated, the unspent portion of the Funding (if any) is available for use within the next Reporting period;
- d. the financial information is presented in accordance with any other financial Reporting requirements Treasury may notify to Choice;
- e. where an Asset has been created or acquired with the Funding, that clauses 7.5.1.d and 7.5.1.g have been complied with in respect to the Asset; and
- f. at the time the Report or financial statement is provided to Treasury, Choice is able to pay all Choice's debts as and when they fall due and Choice has sufficient resources to discharge all Choice's debts at the end of the current Financial Year.

**9.3. Use of Approved Auditor and Qualified Accountant**

- 9.3.1. The audited statement referred to in clause 9.2.1.c must be prepared by an Approved Auditor and must comply with the Australian Auditing Standards, and the statements referred to in clauses 9.2.1.c, 9.2.1.d and 9.2.1.e must be prepared by a Qualified Accountant who, if notified by Treasury, must also be a person acceptable to Treasury.

**9.4. Who provides certification**

- 9.4.1. The statement referred to in clause 9.2.2 must be provided by Choice's Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by Choice to execute documents and legally bind Choice by their execution. Satisfactory evidence of the authorisation is to be provided to Treasury before the statement is made.

**9.5. Other Reports**

- 9.5.1. Throughout the Activity Period, Treasury may require Choice to provide ad-hoc Reports concerning:
- a. any significant developments concerning the Activity; and
  - b. any significant delays or difficulties encountered in performing the Activity in accordance with the contract.
- 9.5.2. Choice must provide any such ad-hoc Reports within the timeframe notified by Treasury.

## **10. RELATIONSHIP MANAGEMENT**

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### **10.1. Liaison and monitoring**

10.1.1. Choice agrees to liaise with and provide information to Treasury as reasonably notified by Treasury.

### **10.2. Choice's Representative**

10.2.1. Choice shall appoint and at all times maintain a Choice Representative with full power and authority to represent and bind it in any matter related to this contract.

### **10.3. General**

10.3.1. Notwithstanding any other provision of this contract, an instruction, advice or notice given to the Choice Representative is deemed to be given to Choice.

10.3.2. Choice must ensure that the Choice Representative is available to provide information, advice and assistance to Treasury and to discuss and facilitate any matter related to this contract at all reasonable times.

### **10.4. Schedules Meetings**

10.4.1. The parties will meet on a quarterly basis to discuss Choice's progress in undertaking the Activity and any issues that relate to the Grocerychoice Website generally, on a time and day specified by Treasury or as otherwise agreed by the parties.

### **10.5. Information and Review**

10.5.1. Choice agrees to:

- a. provide all reasonable assistance required by Treasury;
- b. respond to all of Treasury's reasonable requests; and
- c. provide any information Treasury reasonably requires,

in relation to the Activity and any matter relevant to this contract.

## **11. INTELLECTUAL PROPERTY**

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### **11.1. Activity Material**

11.1.1. Intellectual Property Rights in the Activity Material vest in Choice or as it may otherwise arrange.

### **11.2. Licence of Treasury Background Material to Choice**

11.2.1. Subject to clause 11.2.2, Treasury grants to Choice:

- a. a perpetual, royalty free, worldwide, non-exclusive licence to use, reproduce, modify, adapt, publish and communicate the Treasury Background Material; and
- b. the right to grant a sub-licence on the same terms to third parties.

11.2.2. Treasury may cancel the licence provided under clause 11.2.1 at any time by written notice to Choice should Choice fail to perform the Activity to the reasonable satisfaction of Treasury or if this contract is terminated for any reason.

**11.3. Licensing of Choice Material to Treasury**

11.3.1. Choice grants (and undertakes to ensure that all relevant third parties will grant) to Treasury:

- a. an irrevocable, perpetual, royalty free, worldwide, non-exclusive licence to use, reproduce, modify, adapt, publish, communicate and exploit the Activity Material; and
- b. the right to grant a sub-licence on the same terms to third parties, providing however, that such a sub-licence shall not be granted to a person where it will be used by the sub-licensee for purposes that might reasonably compete with business activities of Choice being conducted at the time of the grant of the sub-licence unless Choice is no longer operating the Grocerychoice Website.

**11.4. Provision of Activity Material to Treasury**

11.4.1. Choice will provide a copy of any and all Activity Material (including, as relevant, any Source Code) to Treasury promptly following Treasury's request.

**11.5. Dealing with Intellectual Property Rights**

11.5.1. Choice:

- a. agrees, if requested by Treasury to do so, to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 10 [Intellectual Property]; and
- b. warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material in accordance with this clause 10 [Intellectual Property].

**11.6. Consent to Specified Acts**

11.6.1. Choice agrees:

- a. to obtain from each author of any Activity Material a written consent to the Specified Acts (whether occurring before or after the consent is given)



which extends directly or indirectly to the performance of the Specified Acts by Treasury or any person claiming under or through Treasury;

- b. to obtain from each author of any Activity Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Treasury's benefit in relation to Treasury's licensed use of such material; and
- c. upon request, to provide the executed original of each such consent to Treasury.

## **12. CONFIDENTIAL INFORMATION**

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### **12.1. Confidential Information not to be Disclosed**

- 12.1.1. Subject to clause 12.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

### **12.2. Written Undertakings**

- 12.2.1. Choice must, on request by Treasury at any time, arrange for:

- a. its Personnel; or
- b. any person with a Third Party Interest,

to give a written undertaking in a form acceptable to Treasury relating to the use and non disclosure of Treasury's Confidential Information.

### **12.3. Exceptions to Obligations**

- 12.3.1. The obligations on the parties under this clause 12 [Confidential Information] will not be taken to have been breached to the extent that Confidential Information:
  - a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this contract;
  - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of contract-related activities;
  - c. is disclosed by Treasury to the responsible Minister;
  - d. is disclosed by Treasury, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - e. is shared by Treasury within Treasury's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
  - f. is authorised or required by law to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of this clause 12 [Confidential Information].

12.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 12.3.1.a - 12.3.1.e, the disclosing party must notify the receiving person that the information is confidential.

12.3.3. In the circumstances referred to in clauses 12.3.1.a, 12.3.1.b and 12.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential.

12.3.4. Choice agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.

**12.4. Period of Confidentiality**

12.4.1. The obligations under this clause 12 [Confidential Information] will continue, notwithstanding the expiry or termination of this contract:

- a. in relation to an item of information described in the Contract Details – for the period set out in respect of that item; and
- b. in relation to any item of information agreed after the date of this contract to be Confidential Information – for the period agreed by the parties in writing in respect of that item.

**12.5. No reduction in Privacy Obligations**

12.5.1. This clause 12 [Confidential Information] does not detract from any of Choice's obligations under the Privacy Act or under clause 13 [Privacy], in relation to the protection of Personal Information (as defined in clause 13.1.1).

**13. PRIVACY**

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**13.1. Interpretation and application of clause**

13.1.1. In this clause 13 [Privacy]:

**Information** has the same meaning as it has in the Privacy Act; and  
**Privacy Principle**

**Personal Information** has the same meaning as it has in the Privacy Act.

13.1.2. This clause applies only where Choice deals with Personal Information when, and for the purpose of, conducting the Activity.

**13.2. Obligations of Recipient in relation to privacy**

13.2.1. Choice agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by Treasury, would be a breach of an Information Privacy Principle; and

- b. to comply with any directions, guidelines, determinations or recommendations of Treasury, to the extent that they are consistent with the Information Privacy Principles.
- 13.2.2. Choice agrees to notify Treasury immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 13 [Privacy].

## **14. ACKNOWLEDGEMENT AND PUBLICITY**

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### **14.1. Acknowledgement of support**

- 14.1.1. Unless or until notified by Treasury, Choice agrees, in all publications, promotional and advertising materials, public announcements and activities by Choice or on Choice's behalf in relation to the Activity, or any products, processes or inventions developed as a result of it including on the Grocerychoice Website to acknowledge the financial and other support Choice has received from the Australian Government, in the manner set out in the Contract Details or as otherwise approved by Treasury prior to its use.

### **14.2. Right to publicise Funding**

- 14.2.1. Treasury reserves the right to publicise and report on the awarding of Funding to Choice. Treasury may do (but is not limited to doing) this by including Choices' name, the amount of the Funding given to Choice, the title and a brief description of the Activity in media releases, general announcements about the Funding, annual reports or through any other means as determined by Treasury.

### **14.3. Copies of publications**

- 14.3.1. Where Choice has been provided with Funding to produce any publication, a copy of the publication must be provided to Treasury, if notified by Treasury.

### **14.4. Public Announcements/Media Contact**

- 14.4.1. Choice must not make any public announcement or make any representation to any media representative about or concerning:
- a. this contract;
  - b. the Grocerychoice Website to the extent that the announcement involves any matter that might directly or indirectly be construed as relating to the Australian Government's association with the Activity; or
  - c. the Australian Government Grocerychoice Initiative;
- or any related matter without providing details of the relevant public announcement or representation to Treasury prior to its public release.

14.4.2. Communications by Choice with external parties regarding the Grocerychoice Website or the Australian Government Grocerychoice Initiative must be consistent with the Australian Government's public policy in respect to the Grocerychoice Website and the Australian Government Grocerychoice Initiative.

**14.5. No restriction on advocacy activities**

14.5.1. Treasury confirms that, subject to clause 14.5.2:

- a. no right or obligation arising under this contract should be interpreted as limiting Choice's ability to enter into public debate or criticism of the Commonwealth or its agencies, employees, servants or agents;
- b. Treasury does not require Choice to obtain advance approval of any involvement by Choice in public debate or advocacy activities; and
- c. Treasury will only exercise its rights under clause 3.7 on reasonable grounds relating to the performance of the Activity.

14.5.2. Nothing in this clause 14.4 limits or derogates from Choice's obligations under clauses 12 [Confidential Information] and 13 [Privacy].

**15. INDEMNITY**

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**15.1. General indemnity**

15.1.1. Choice indemnifies (and agrees to keep indemnified) Treasury against any:

- a. cost or liability incurred by Treasury or Treasury's Personnel;
- b. loss of or damage to property of Treasury; or
- c. loss or expense incurred by Treasury 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 Treasury,

arising from:

- d. any act or omission by Choice or Choice's Personnel, in connection with this contract, the Grocerychoice Website, the Australian Government Grocerychoice Initiative or the Activity, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- e. any breach by Choice of the contract;
- f. use or Disposal of the Assets; or
- g. the use by Treasury of the Activity Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in the Activity Material.

**15.2. Reduction of scope**

15.2.1. Choice's liability to indemnify Treasury under this clause 15 [Indemnity] will be reduced proportionally to the extent that any act or omission involving fault on the part of Treasury or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

**15.3. Preservation of other rights**

15.3.1. The right of Treasury to be indemnified under this clause 15 [Indemnity] is in addition to, and not exclusive of, any other right, power or remedy provided by law, but Treasury is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

**15.4. Meaning of 'fault'**

15.4.1. In this clause 15 [Indemnity], 'fault' means any negligent or unlawful act or omission or wilful misconduct.

**16. DISPUTE RESOLUTION**

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**16.1. Procedure for dispute resolution**

16.1.1. The parties agree that a dispute arising under this contract will be dealt with as follows:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
  - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
  - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1 d in order to achieve a speedy resolution; and
- f. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

**16.2. Costs**

16.2.1. Each party will bear its own costs of complying with this clause 16 [Dispute resolution], and the parties will bear equally the cost of any third person engaged under clause 16.1.1. d.

**16.3. Application of clause**

16.3.1. This clause 16 [Dispute resolution] does not apply to:

- a. legal proceedings by either party for urgent interlocutory relief; or
- b. clauses 4 [Payment], 5 [Financial accountability], 21.1 [Audit and Access] or 17 [Termination, or reduction in scope of contract].

**16.4. Performance of obligations**

16.4.1. Despite the existence of a dispute, Choice will (unless requested in writing by Treasury not to do so) continue to perform Choice's obligations under this contract.

**17. TERMINATION, OR REDUCTION IN SCOPE OF CONTRACT**

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**17.1. Termination for convenience**

17.1.1. In addition to any other rights it has under this contract, Treasury may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the contract.

17.1.2. Treasury will give Choice not less than three month's prior written notice in respect to any termination under clause 17.1.1

17.1.3. Choice acknowledges and agrees that it must take all reasonable action to arrange its affairs to ensure that its involvement in this contract and all matters supporting it can be terminated, cancelled, unwound or discontinued at minimal cost, expense or damage should Treasury exercise its rights under clause 17.1.1 and will immediately comply with any directions given in the notice by Treasury. Without limiting the foregoing, Choice must in each order, contract, or subcontract to the value or potential liability exposure of \$5,000 or more include a right for Choice to terminate it for convenience on terms no less favourable than as between Treasury and Choice in these clauses 17.1.1 to 17.1.8.

17.1.4. Choice agrees, on receipt of a notice of termination or reduction, to:

- a. stop or reduce the performance of Choice's obligations as specified in the notice;
- b. do everything possible to minimise loss arising out of resulting from or otherwise connected with that termination or reduction;
- c. continue work on any part of the Activity not affected by the notice; and

- d. immediately return to Treasury any Funding in accordance with clause 17.1.5.e, or deal with any such Funding as directed by Treasury.
- 17.1.5. In the event of termination under clause 17.1.1, Treasury:
- a. will be liable only for payments due and owing to Choice under the payment provisions of the contract as at the date of the notice;
  - b. will be liable to reimburse any reasonable costs incurred by Choice and directly attributable to the termination of the contract;
  - c. will, in addition to amounts payable under clause 17.1.5.b, pay to Choice a sum equivalent to twenty per cent of the committed cash Funding that would have been paid to Choice but for the termination, as liquidated termination to cover costs and expenses incurred by Choice as a result of the termination that cannot be identified and claimed under clause 17.1.5.b;
  - d. will not be liable to pay amounts under 17.1.5. a and 17.1.5. b which would, added to any payments already paid to Choice under this contract, together exceed the Funding set out in Schedule 2;
  - e. will be entitled to recover from Choice any part of the Funding which:
    - i. has not been legally committed for expenditure by Choice in accordance with the contract and payable by Choice as a current liability by the date that the notice of termination is received; or
    - ii. has not, in Treasury's opinion, been spent by Choice in accordance with the contract.
- 17.1.6. In the event of a reduction in the scope of the contract under clause 17.1.1, Treasury's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 17.1.7. Treasury's liability to pay any compensation under or in relation to this clause 17.1 [Termination, or reduction in scope of contract] is subject to:
- a. Choice's compliance with this clause 17.1 [Termination, or reduction in scope of contract]; and
  - b. Choice's substantiation of any amount claimed under clause 17.1.5.b.
- 17.1.8. Choice will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on Choice.
- 17.2. Termination for fault**
- 17.2.1. Treasury may by notice terminate this contract immediately (but without prejudice to any right of action or remedy which either party has or may have) if:

- a. Choice fails to fulfil, or is in breach of any of its obligations under this contract, and Treasury considers that this failure or breach is not capable of remedy;
- b. Choice fails to fulfil, or is in breach of any of its obligations under this contract, and does not rectify the omission or breach within 10 Business Days of receiving a notice from Treasury to do so;
- c. Choice is unable to pay all its debts as and when they become due and payable;
- d. Choice has applied to come under, received a notice requiring it to show cause why it should not come under, or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or an order has been made for the purpose of placing Choice under external administration;
- e. in relation to the contract, Choice breaches any law of the Commonwealth, or of a State or Territory;
- f. Treasury is satisfied that any statement made in Choice's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- g. Treasury exercises any other specific right of termination under the contract.

17.2.2. Where Treasury terminates this contract under clause 17.2.1 Treasury:

- a. will be liable only for payments due and owing to Choice under the payment provisions of the contract as at the date of the notice; and
- b. will be entitled to recover from Choice any part of the Funding which:
  - i. has not been legally committed for expenditure by Choice in accordance with the contract and is not payable by Choice as a current liability by the date that the notice of termination is received; or
  - ii. has not, in Treasury's opinion, been spent by Choice in accordance with the contract.

**17.3. Preservation of other rights**

17.3.1. Clause 17.2 does not limit or exclude any of Treasury's other rights under this contract.



## **18. OCCUPATIONAL HEALTH AND SAFETY**

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### **18.1. Use of Agency's premises**

- 18.1.1. Choice agrees, when using Treasury's premises or facilities, to comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Treasury or as might reasonably be inferred from the use to which the premises or facilities are being put.

## **19. CORPORATE GOVERNANCE**

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### **19.1. Constitution**

- 19.1.1. Choice agrees to provide a copy of Choice's Constitution to Treasury upon notification by Treasury.
- 19.1.2. Choice agrees to inform Treasury whenever there is a change in Choice's Constitution.
- 19.1.3. If Choice is registered under the *Corporations Act 2001* (Cth), in the event that Choice applies to come under, receives a notice requiring Choice to show cause why Choice should not come under, receives a notice or an application from any other person for Choice to come under or has otherwise come 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 Choice under external administration, Choice agrees to notify Treasury within 5 Business Days of the date of the making or receipt of such a notice or application or the making of such an order.

## **20. NOTICES**

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

- 20.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:
- a. *if given by Choice to Treasury* - addressed to Treasury at the address specified in the Contract Details or as otherwise notified by Treasury; or
  - b. *if given by Treasury to Choice* - given by Treasury and addressed (and marked for attention) as specified in the Contract Details or as otherwise notified by Choice.
- 20.1.2. A notice must be:
- a. signed by the person giving the notice and delivered by hand;
  - b. signed by the person giving the notice and sent by pre-paid post; or

- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

**20.2. When effective**

- 20.2.1. A notice is deemed to be effected:
  - a. *if delivered by hand* - upon delivery to the relevant address;
  - b. *if sent by post* - upon delivery to the relevant address; or
  - c. *if transmitted electronically* - upon actual receipt by the addressee.
- 20.2.2. A notice received after 5.00 pm, or on a weekend or public holiday in the place of receipt, is deemed to be effected on the next Business Day in that place.

**21. GENERAL PROVISIONS**

**21.1. Audit and Access**

21.1.1. Choice agrees:

- a. to give Treasury, or any persons authorised in writing by Treasury, access to premises where obligations under this contract are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this contract.

21.1.2. The rights referred to in clause 21.1.1. are subject to:

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

21.1.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of clause 21.1.1.

21.1.4. This clause 21.1 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

**21.2. Insurance**

21.2.1. Choice agrees:

- a. to effect and maintain the insurance specified in the Contract Details; and
- b. on request, to provide proof of insurance acceptable to Treasury.

21.2.2. This clause 21.2 continues in operation for so long as any obligations remain in connection with this contract.

**21.3. Conflict of interest**

21.3.1. Choice warrants that, to the best of its knowledge after making diligent inquiry, at the date of this contract no Conflict exists or is likely to arise in the performance of Choice's obligations under the contract.

21.3.2. If during the term of this contract a Conflict arises, Choice agrees to:

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

**21.4. Relationship of parties**

21.4.1. Choice is not by virtue of this contract an officer, employee, partner or agent of Treasury, nor does Choice have any power or authority to bind or represent Treasury.

21.4.2. Choice agrees:

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

**21.5. Waiver**

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

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

**21.6. Variation of contract**

21.6.1. Except for action Treasury is expressly authorised to take elsewhere in this contract, no variation of this contract is binding unless it is agreed in writing and signed by both parties.

**21.7. Assignment**

21.7.1. Choice cannot assign its obligations, and agrees not to assign its rights, under this contract without Treasury's prior written approval.

**21.8. Survival**

21.8.1. The operation of clauses 7 [Assets], 8 [Records], 10 [Relationship Management], 11 [Intellectual Property], 12 [Confidential Information], 13 [Privacy], 15 [Indemnity], 21.2 [Insurance], 16 [Dispute resolution] and any other provision which expressly or by implication from its nature is intended to continue survive the expiration or earlier termination of this contract.

21.8.2. Clause 21.1 applies for the term of this contract and for a period of 7 years from the date of expiration or earlier termination of the contract.

**21.9. Applicable law and jurisdiction**

21.9.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

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

## **SCHEDULE 1 GROCERYCHOICE ACTIVITY DETAILS**

### **1. Activity Period**

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**(Recital A, clauses 1.1.1 and 3.5.1)**

The Activity Period commences on the date of this contract and ends on 31 March 2011 (or as otherwise agreed in writing between the parties).

### **2. Objectives**

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The Australian Government's objective for this contract is to

2.1.1. provide a dedicated website for consumers that provides reliable information on overall grocery prices, so as to help them make better informed purchasing decisions, and to provide this information in a manner which promotes competition in the market, without introducing distortions.

2.1.2. More specifically, the Grocerychoice Website will:

- a. provide current, relevant and accurate information on the prices of supermarket grocery products;
- b. provide functionality that allows consumers to make assessments about grocery prices both at detailed level and from an overall perspective within and across appropriately defined regions;
- c. will be available to all users and capable of facilitating a high volume of traffic with minimum disruptions to the user experience;
- d. will provide all information free of charge; and
- e. will represent the information made available via the Grocerychoice Website as a Choice product.

### **3. Activity Description**

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#### **3.1. Overview**

Choice is responsible for the management, editorial content, IT, data collection and publication and other operational requirements necessary to successfully operate the Grocerychoice Website according to three main phases:

##### **Phase 1**

Choice must re-skin the Grocerychoice Website with the Choice brand and style and takes editorial responsibility for the content of the Grocerychoice Website.

Choice must launch the re-skinned Grocerychoice Website no later than 30 January 2009.

**Phase 2**

Choice must continue to publish monthly basket prices using the data provided by the ACCC under the existing data collection survey, with the option to modify the presentation of this information and include additional information.

Choice must research and develop the new website strategy to be implemented from the commencement of Phase 3.

Phase 2 commences immediately upon the completion of Phase 1.

**Phase 3**

Choice must launch a new Grocerychoice Website on or before 01 July 2009.

The new website must have an expanded range of services for consumers, an amended data presentation and alternative user functionality to the existing Grocerychoice Website.

**3.2. Detailed Description of Phases**

**PHASE 1**

Treasury will facilitate arrangements Choice wishes to put in place as a matter of expediency with the contractor under the Grocerychoice IT Contract (Getronics). This will include the work relating to the Grocerychoice Website SOW. This work will be in accordance with clause 3.4 and be an Identified In-Kind Contribution. Choice will be responsible for performing tasks and responsibilities specified in the Grocerychoice Website SOW to be performed by Choice and working with Getronics to ensure that the changes associated with the re-skin of the Grocerychoice Website are implemented no later than 30 January 2009.

The re-skin of the Grocerychoice Website is detailed in the Grocerychoice Website SOW, and must include, but is not restricted to, the following website changes;

- a. the Grocerychoice Website must display the Choice brand and style (including new colour presentation and maps) and replace the ACCC name and logo on the website to ensure no conflict of interest, real or apparent, for the ACCC;
- b. the Grocerychoice Website must include a comments forum where users can provide moderated feedback and comments;



- c. the Grocerychoice Website must include access to a user survey; and
- d. the Grocerychoice Website must continue to make available to consumers the option to subscribe to a service which informs consumers about new data releases.

Choice will have responsibility for all editorial content on the re-skinned Grocerychoice Website from the commencement of the re-skin.

All changes to the Grocerychoice Website under Phase 1 not specified above or in the Grocerychoice Website IT Contract must be made in accordance with the Change Management processes specified in this Schedule.

## **PHASE 2**

Choice will be responsible for all changes to the 'live' website.

Choice must continue to publish monthly basket prices from the existing survey data provided under the Grocerychoice Survey Contract until the introduction of the new Grocerychoice Website from the commencement of Phase 3.

Choice must publish the existing survey data provided under the Grocerychoice Survey Contract on the first business day of the month following the survey. Choice must ensure that the basket prices remain on the Grocerychoice Website until the next set of basket prices are published.

Treasury will have responsibility for the management of the Grocery Product Prices Survey Contract and will conduct the management of this contract in consultation with Choice.

A protocol document (Protocol for the publication of monthly survey results under Phase 2 of the Grocerychoice website contract), to be agreed between Treasury, Choice and the ACCC will set out the roles and responsibilities of the ACCC and Choice under Phase 2 in relation to the collection, dissemination, and quality assurance of the monthly survey data, in preparation for its publication.

The Protocol is at Schedule 7 to this contract. Choice must conduct the tasks assigned to it in, and otherwise comply with, the Protocol.

Choice must research and develop the new Grocerychoice Website to be implemented from the commencement of Phase 3. The development must include consideration of at least the following elements and functionality and achieve the following outcomes:

- a. publication of basket prices for individual supermarkets, with the contents of the baskets transparent to users;

- b. publication of basket prices for all leading supermarkets chains or groups (e.g. Coles, Woolworths, IGA, Franklins, Supabarn, Foodworks, ALDI etc) and other smaller independent operators;
- c. publication of a 'staples' basket, or similar basket, that allows for a suitable comparison of prices between the larger supermarket chains, smaller independent supermarkets and ALDI;
- d. publication of grocery prices on a no less than a weekly basis with the 'date updated' clearly indicated on the Grocerychoice Website;

Choice must ensure that independent verification of data on the Grocerychoice Website is conducted to ensure the accuracy of prices data displayed on the Grocerychoice Website.

Choice must examine the implementation of appropriate changes to the method of data collection for grocery prices to fully support the above in the most efficient and effective way possible. To the extent that these changes involve the introduction of data capture through electronic means, appropriate alternative arrangements must also be developed for those supermarkets unable to provide data in Choice's desired format.

Choice must engage with major interest groups and independent experts regarding potential amendments to the Grocerychoice Website with initial consultations to be completed prior to the commencement of Phase 3.

Choice must continue to provide the existing Grocerychoice Website subscription service up to the launch of the Phase 3 Grocerychoice Website. This must include despatching monthly emails to subscribers as well as the addition of new subscribers and the deletion of subscribers requesting removal from the list.

Choice must continue, in an amended form if required, the existing Grocerychoice Website electronic feedback and inquiry service until the commencement of Phase 3. Choice must respond to all inquiries within 7 Business Days.

Choice, in consultation with Treasury, may consider publishing an alternative presentation of the data collected from the existing Grocerychoice Website survey.

All changes to the Grocerychoice Website under Phase 2 not specified above must be made in accordance with the Change Management processes specified in this Schedule.



**Contingency if Phase 3 Commencement Date not met**

In the event that Choice is unable to transition to Phase 3 by the Phase 3 Commencement Date, Treasury and Choice, in consultation with the ACCC where applicable, will reach an agreement on the future roles and responsibilities of the parties in relation to the Grocerychoice Website beyond this period, in accordance with the two options specified below.

Under both options, Choice will continue to improve and progress the Grocerychoice Website, consistent with the Australian Government's objectives for the Grocerychoice Website. This may include, but is not limited to:

- a. providing a small subset of grocery prices updated on a more frequent basis, in addition to the existing data presented on the website (such as weekly specials);
- a. providing additional information on grocery products, supermarkets, smart shopping etc; or
- b. providing greater detail on grocery prices for some individual supermarkets.

All changes to the Grocerychoice Website under the continuation of Phase 2 not specified above must be made in accordance with the Change Management arrangements specified in this Schedule.

If Choice requests a change in the scope of the Activity under Phase 3, outside of the review process in accordance with clause 3.3, it will be dealt with in accordance with clause 17, 21.6 or other relevant provisions of the contract.

**Option 1**

The ACCC will continue to provide support to Choice as specified in the Protocol, and continue the corresponding financial arrangements. Choice will continue its responsibility for the publication of monthly basket prices as per the arrangements specified under Phase 2.

In the event of a change in the roles and responsibilities specified in the Protocol being agreed, the funding arrangements will also be modified accordingly.

All parties will be required to agree to any changes. In the event of disagreement, the existing Protocol arrangements will continue.

As part of this arrangement, Treasury will, if requested by Choice, enable Choice to contract directly with the Bailey Group Pty Ltd (Retail Facts) for the services provided under the Grocery Product Prices Survey Contract by:

- a. subject to agreement of Retail Facts and Choice, novating the Grocery Product Prices Survey Contract to Choice; or
- b. terminating the Grocery Product Prices Survey Contract.

Should Choice not wish to retain the Grocery Product Prices Survey Contract, it will make arrangements for a similar data collection survey to be undertaken, with no gap between survey collection periods.

### **Option 2**

Choice will assume all responsibility for the data management, collection and publication of the survey undertaken by the ACCC in the Protocol and continue its responsibility for the publication of monthly basket prices. The ACCC will assist in facilitating the transfer of knowledge and skills from the ACCC to Choice as quickly as possible.

As part of this arrangement, Treasury will, if requested by Choice, enable Choice to contract directly with Retail Facts for the services provided under the Grocery Product Prices Survey Contract by:

- c. subject to agreement of Retail Facts and Choice, novating the Grocery Product Prices Survey Contract to Choice; or
- d. terminating the Grocery Product Prices Survey Contract.

Should Choice not wish to retain the Grocery Product Prices Survey Contract, it will make arrangements for a similar data collection survey to be undertaken, with no gap between survey collection periods.

### **PHASE 3**

Choice must launch a new Grocerychoice Website on or before the Phase 3 Commencement Date.

The Grocerychoice Website must at all times include at least the following elements and functionality and achieve the following outcomes:

- a. publication of basket prices for individual supermarkets locations, with the contents of the baskets transparent to users;
- c. publication of basket prices for all leading supermarkets chains or groups (e.g. Coles, Woolworths, IGA, Franklins, Supabarn, Foodworks, ALDI etc) and other smaller independent operators;
- d. publication of a 'staples' basket, or something similar, that allows for a suitable comparison of prices between the larger supermarket chains, smaller independent supermarkets and ALDI;

- e. publication of grocery prices on a no less than a weekly basis with the 'date updated' clearly indicated on the Grocerychoice Website. All data that is out of date or has not been updated in over a week must be removed from the Grocerychoice Website;

Choice must ensure that independent verification of data on the Grocerychoice Website is conducted to ensure the accuracy of prices data displayed on the Grocerychoice Website; and

Choice must examine the implementation of appropriate changes to the method of data collection for grocery prices to fully support the above in the most efficient and effective way possible. To the extent that these changes involve the introduction of data capture through electronic means, appropriate alternative arrangements must also be developed for those supermarkets unable to provide data in Choice's desired format.

Choice must continue to research and develop improvements in the Grocerychoice Website. Any future developments must comply with the Objectives.

Further enhancements to the Grocerychoice Website may include, but are not restricted to, the following;

- a. the provision of additional information on grocery products, such as nutritional information, unit pricing information, product origin etc; and
- f. the addition of new functionality that allows users to construct their own baskets of grocery products and to compare these baskets across supermarkets.

All changes to the Grocerychoice Website under Phase 3 not specified above must be made in accordance with the Change Management processes specified in this Schedule.

The ACCC may be called upon to assist as appropriate in the transfer of knowledge from the ACCC to Choice under Phase 3.

### **3.3. Website Hardware**

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- a. Choice must acquire all the necessary hardware, software and other facilities and systems for the development, testing and hosting of the Grocerychoice Website prior to the Phase 3 Commencement Date.

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#### **3.4. Website Hosting**

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- a. Except as otherwise specifically agreed in writing by Treasury, the Grocerychoice Website will continue to be hosted in accordance with the Hosting Arrangement until the commencement of Phase 3.
  - b. Choice must host and support the Grocerychoice Website on its own infrastructure or under its own outsourcing arrangements from the commencement of Phase 3.
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#### **3.5. Website Performance**

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The Grocerychoice Website must be a highly available system capable of meeting traffic peaks without failure or performance loss.

The Grocerychoice Website must have a highly detailed website usage monitoring in place.

The Grocerychoice Website must perform with each page taking no longer than 5 seconds to load. This must also occur when being used on a low speed (56kbs) connection.

The Grocerychoice Website must be available to the public 24 hours x 7 days per week, excluding scheduled maintenance.

The Grocerychoice Website must have 24 hours x 7 days per week monitoring and alert processes to identify unexpected system and software failures.

Choice must provide Grocerychoice Website support during normal business hours.

The Grocerychoice Website must not be offline for a period exceeding 30 minutes. Choice must notify Treasury of all outages exceeding 10 minutes in duration.

Choice must notify Treasury of scheduled maintenance for the website. Scheduled maintenance will be in addition to the offline period requirements detailed above.

Choice must implement appropriate systems and user testing procedures to ensure that all amendments to the Grocerychoice Website are made effectively and without error.

### **3.6. GroceryChoice domain names**

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Subject to this contract, Treasury will provide Choice with technical control of the www.grocerychoice.net.au and grocerychoice.com.au, but the Commonwealth will remain the registered domain name holder during the term of this contract.

Providing Choice performs this contract to Treasury's satisfaction and Treasury is satisfied that Choice will continue to operate the Grocerychoice website in an appropriate manner into the indefinite future, Treasury will transfer the www.grocerychoice.net.au and grocerychoice.com.au domain names to Choice following the completion of this contract.

Treasury will also arrange for the www.grocerychoice.gov.au domain to be redirected to grocerychoice.com.au for an appropriate period to ensure a smooth transition.

### **3.7. Change management processes**

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Choice must notify Treasury about all changes to the Grocerychoice Website prior to their occurrence in accordance with the following requirements:

- a. changes classified as 'minor' in nature will require notification only, and will not be subject to Treasury approval. Changes classified as 'significant' in nature will require Treasury approval.

—'minor' changes are those that do not affect the substantive experience for consumers, and include, but are not limited to, changes to presentation, text, layout, graphic, editorial content or formatting of the website, minor operational changes to the data collection methods or presentation etc.

—'significant' changes are those that affect the substantive experience for consumers are include, but not limited to, changes to the consumer's interaction with the website, the number or types of grocery baskets, the representation of aggregated grocery price information, and the expansion of the grocery price/product information to include other information about supermarkets or grocery products etc.

- b. changes classified as 'significant' that are considered by Choice and Treasury to be consistent with the Objectives cannot be rejected by Treasury without explanation.

Choice should consult Treasury for clarification in the event of uncertainty regarding the definition of a change.

#### 4. Activity Timetable

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Activity	Completion Date or Period (as applicable)
Phase 1	From date of contract signing until the commencement of Phase 2.
Launch of re-skinned Grocerychoice Website	By no later than 30 January 2009
Phase 2	From the launch of the re-skinned Grocerychoice website until the commencement of Phase 3.
Phase 3	No later than 01 July 2009 until 31 March 2011

#### 5. Key Performance Indicators

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Key Performance Indicators may be changed, added to or subtracted from with agreement between Treasury and Choice. Each rating assigned to a KPI denotes the partial Adjustment Factor assigned to that criteria for which a penalty may be applied, if it is not met.

Consumer experience KPIs will include either a and b or c and d but not both.

The maximum penalty that can be imposed for non-compliance with KPIs is 20 per cent of the Base Funding Amount.

##### **Consumer experience**

##### *Phases 1 and 2*

- a. Updated grocery price information for all 61 regions is provided no less frequently than on the first Business Day of each month. (12.5 per cent of 20 per cent of Base Funding Amount)
- b. Consumers can successfully locate information about grocery prices in their area by using the Grocerychoice Website search functions. (12.5 per cent of 20 per cent of Base Funding Amount)

*Phase 3*

- c. Updated grocery price information for all defined regions is provided no less frequently than on a weekly basis. (12.5 per cent of 20 per cent of Base Funding Amount)
- d. Consumers can successfully locate information about grocery prices in their area by using the Grocerychoice Website search functions. (12.5 per cent of 20 per cent of Base Funding Amount)

**IT**

- e. All Grocerychoice Website pages complete loading in 5 seconds or less. (12.5 per cent of 20 per cent of Base Funding Amount)
- f. The Grocerychoice Website is available 99.7 per cent of each month. (12.5 per cent of 20 per cent of Base Funding Amount)
- g. The Grocerychoice Website is not offline for more than 30 minutes within each 24 hour period, excluding scheduled maintenance. (12.5 per cent of 20 per cent of Base Funding Amount)

**Communications**

- h. Choice responds to requests from the Treasury in a timely manner. (5 per cent of 20 per cent of Base Funding Amount)
- i. Choice responds to all inquiries by the general public to the Grocerychoice Website within 7 Business Days. (5 per cent of 20 per cent of Base Funding Amount)
- j. Choice notifies Treasury of all 'minor' changes to the Grocerychoice Website. (5 per cent of 20 per cent of Base Funding Amount)
- k. Choice consults Treasury on all 'significant' changes to the Grocerychoice Website. (5 per cent of 20 per cent of Base Funding Amount)

**Quality of service**

- l. Where complaints are made in respect to the Grocerychoice Website, Choice will act to investigate and if necessary correct such information, within 2 Business Days. (8 per cent of 20 per cent of Base Funding Amount)
- m. Choice records, investigates and rectifies all legitimate complaints about the Grocerychoice Website. (7.5 per cent of 20 per cent of Base Funding Amount)

**Record keeping**

- n. Choice records website 'hits' on a daily basis. (1 per cent of 20 per cent of Base Funding Amount)

- o. All information provided in the consumer feedback forums and the Grocerychoice Website survey is recorded.(1 per cent of 20 per cent of Base Funding Amount)



**SCHEDULE 2 Funding Schedule**

**Funding and Payment**

(clauses 1.1.1, 4.1, 4.2, 4.4)

Payments will be conditional upon Milestones being achieved. Once a Milestone has been achieved, the KPI Adjustment Factors (if applicable) will then be applied to determine the final payment.

The maximum amount of Funding for the Activity is **\$8.0** million GST inclusive, which will be paid as follows:

Table of Milestones and Funding Allocations

Milestone	Milestone Date	Base Funding Amount upon delivery of Milestone (cash) (GST Incl) (\$)	Applicable KPIs	Total KPI Adjustment Factor	Maximum penalty imposed for non-compliance with KPIs
<b>2008-09</b>					
Execution of this contract	19 Dec 09	\$1,000,000	n/a	n/a	n/a
Website re-skinned: Phase 2 begins	30 Jan 09	\$1,000,000	n/a	n/a	n/a
Phase 2 progressed: Specification documents issued for tender	1 Mar 09	\$1,000,000	a, b and e-o	Maximum 20 per cent of Base Funding Amount	\$200,000
Phase 2 progressed: Tender awarded; Website built; Data feeds from supermarkets received	1 Jun 09	\$1,000,000	a, b and e-o	Maximum 20 per cent of Base Funding Amount	\$200,000
<b>2009-10</b>					
New Website launched: Phase 3 begins	1 Jul 09	\$1,000,000	c-o	Maximum 20 per cent of Base Funding	\$200,000

				Amount	
Phase 3 KPI period 1: Report to Treasury delivered; Consumer survey published	1 Oct 09	\$500,000	c-o	Maximum 20 per cent of Base Funding Amount	\$100,000
Phase 3 KPI period 2: Report to Treasury delivered; Small supermarket facility added; New features added	1 Jan 10	\$500,000	c-o	Maximum 20 per cent of Base Funding Amount	\$100,000
Phase 3 KPI period 3: Report to Treasury delivered; New features added	1 May 10	\$500,000	c-o	Maximum 20 per cent of Base Funding Amount	\$100,000
<b>2010-11</b>					
Phase 3 KPI period 4: Report to Treasury delivered;  New features added	1 Aug 10	\$500,000	c-o	Maximum 20 per cent of Base Funding Amount	\$100,000
Phase 3 KPI period 5: Report to Treasury delivered	1 Nov 2010	\$750,000	c-o	Maximum 20 per cent of Base Funding Amount	\$150,000
Phase 3 KPI period 6 and completion of Phase 3: Final report to Treasury delivered; Final audit carried out	31 Mar 2011	\$250,000	c-o	Maximum 20 per cent of Base Funding Amount	\$50,000

Treasury will also make In-Kind Contributions in accordance with the table below. Choice will be notified of any changes to these contributions.

Table of In-Kind Contributions to be paid by Treasury

Activity Phase	Expenditure Item	Date	Funding (cash) GST Incl (\$)
Phase 1	Grocerychoice website SOW	December 2008	\$95,372 (currently GST exclusive)
	Grocery Product Prices Survey Contract	December 2008 survey	\$208,019
Phase 2	Grocery Product Prices Survey Contract	January 2009 survey	\$208,019
	Grocery Product Prices Survey Contract	February 2009 survey	\$208,019
	Grocery Product Prices Survey Contract	March 2009 survey	\$208,019
	Grocery Product Prices Survey Contract	April 2009 survey	\$208,019
	Grocery Product Prices Survey Contract	May 2009 survey	\$208,019
	ACCC staff costs (\$15,911 per month)	Jan -June	\$95,466

**Invoicing**

Invoices forwarded by Choice in accordance with this contract must be correctly addressed to Heather Cotching, Department of the Treasury, and include the following information:

- (a) title of Activity;
- (b) date and name of this contract (including the contract number (if any));
- (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges);
- (d) details of all aspects of the Activity performed in respect of the amount invoiced; and
- (e) any other details as notified by Treasury from time to time.

**SCHEDULE 3 Contract Details**

**A. Reporting**  
(clauses 1.1.1, 9)

**A.1. Final Report**

The final progress Report must be a stand-alone document that can be used for public information dissemination purposes.

The final progress Report must:

- a. summarise Choice's actual performance against the Key Performance Indicators during the whole Activity Period and the reasons why any Key Performance Indicators were not met;
- b. discuss in detail the conduct, benefits and outcomes of the Activity as a whole during the entire Activity Period; and
- c. evaluate the Activity and include a detailed discussion as to whether the Objectives of the Activity were achieved, and if not, an explanation of why any Objectives were not met.

Choice must also include in the final progress Report a discussion of any other matters, relating to the evaluation of the Activity, which Treasury notifies Choice is required to be included in the final progress Report. Any such requirement will be notified to Choice at least 20 Business Days before the final progress Report is due.

**B. Assets**  
(clauses 1.1.1 and 7)

Treasury approves the use of the Funding for purchase of the following Assets:

- 1) the necessary hardware and software for the development, testing and hosting of the Grocerychoice Website prior to the commencement of Phase 3.

Choice must for the term of this contract maintain an Asset register in the following form and containing the following information:

Asset number	Description of Asset	Creation, acquisition or total lease cost	Date of creation, acquisition or lease	Term of lease or other arrangement	Location of Asset	Method of, and date, which Asset was written off or Disposed of

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**C. Insurance**  
**(clause 21.2)**

Choice must maintain:

- a. workers compensation insurance as required by law where Choice carries out activities under this contract;
- b. public liability insurance to the value of at least \$20 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this contract, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

**D. Subcontracting**  
**(clause 3.6)**

not applicable

**E. Acknowledgement and publicity and Disclaimer**  
**(clause 3.5.4.b, 14)**

**Acknowledgement**

Choice must acknowledge the provision of the Funding by Treasury in the following way:

- a. The Grocerychoice Website is supported by funding from the Australian Government.

**Disclaimer**

*Although the Australian Government supports this website by contributing funding to its operation, it is not an Australian Government website and the Australian Government is not responsible for its content or operation and, to the extent permitted by law the Australian Government makes no representation and gives no warranty and accepts no liability in respect to it.*

**F. Notice**  
**(clause 20.1)**

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Treasury's details are as follows:

HK Holdaway, Project Manager Grocerychoice contract. Manager, Competition Policy Framework Unit, The Treasury. Phone 02 6263 3791, email hk.holdaway@treasury.gov.au

Choice's details are as follows:

Linda Magee, Manager, Choice Online. Phone 02 9577 3378, email Imagee@choice.com.au

**G. Confidential Information**  
**(clause 12)**

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<b>Treasury Confidential Information</b>	<b>Period of Confidentiality</b>
Treasury Personal Information	Indefinitely
Security Classified Information	Indefinitely
Funding details (not publicly available)	Indefinitely
Grocerychoice IT Contract	Indefinitely
Grocery Product Prices Survey Contract	Indefinitely

<b>Choice Confidential Information</b>	<b>Period of Confidentiality</b>
Choice Personal Information	Indefinitely