

# Scan Data Deed

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**Date** ►

**Parties**

**Metcash Trading Limited**  
ACN 000 031 569  
1 Thomas Holt Drive  
Macquarie Park NSW 2113  
AUSTRALIA

**Metcash Food & Grocery Pty Ltd**  
ACN 004 391 422  
1 Thomas Holt Drive  
Macquarie Park NSW 2113

(together **Metcash**)

«Retailer's Name eg ABC\_123\_Pty\_Ltd»  
«ACN/ABN Retailer's ACN\_or\_ABN if Retailer is company or corporate trustee»  
«as trustee for «name of trust» if Retailer is a trustee»  
«Address»  
«Address»

(Retailer)

**This Deed witnesses**

that in consideration of, among other things, the mutual promises contained in this Deed, the parties agree as follows:

## 1 Scan Software

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- (a) Metcash will notify the Retailer of the format of the Data Metcash requires from time to time.
- (b) The Retailer must:
  - (1) install or procure the instalment of Scan Software in accordance with directions given by Metcash;
  - (2) use only Scan Software and IT Systems approved by Metcash to collect, process and transmit the Data; and
  - (3) not do, or permit to be done, anything that will interfere with the operation of the Scan Software or the collection, processing or transmission of Data to Metcash in the format notified under clause 1(a).
- (c) The Retailer must not:
  - (1) misuse, interfere with or damage the Scan Software;
  - (2) do any act or thing which would infringe the intellectual property rights of Metcash or any of its Related Bodies Corporate or any other person in the Scan Software; or
  - (3) otherwise do any act or thing which would cause Metcash or any of its Related Bodies Corporate to breach its licence (if any) to use the Scan Software.

## 2 Provision, ownership and use of Data and Transmitted Data

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- (a) During the Term the Retailer must collect and process (or procure the collection and processing of) the Data and transmit (or procure the transmission of) the Data to Metcash or its nominee in the format notified under clause 1(a), at such times required by Metcash from time to time, and otherwise by such manner and method as is notified by Metcash from time to time to the Retailer.
- (b) The Retailer:
  - (1) agrees that:

- (i) the Transmitted Data, and all intellectual property rights in respect of the Transmitted Data, are owned by Metcash; and
  - (ii) the Transmitted Data forms part of the Confidential Information of Metcash and, to the full extent permitted by law, the Transmitted Data will be deemed to remain the Confidential Information of Metcash even if some individual items of information or parts of the Transmitted Data are in the public domain; and
  - (iii) to avoid doubt, Metcash may use and disclose Transmitted Data as it determines in its discretion and despite Data being the Retailer's Confidential Information;
- (2) hereby assigns all rights, title and interest in the Transmitted Data (including all intellectual property rights in respect of the Transmitted Data) to Metcash;
- (3) must do all things reasonably necessary, including executing appropriate documents (including any moral rights consents Metcash reasonably requires), to give effect to this assignment of rights, title and interest in the Transmitted Data (including all intellectual property rights in respect of the Transmitted Data) to Metcash; and
- (4) must not challenge the subsistence, validity or ownership of Metcash's intellectual property rights in respect of the Transmitted Data, or make or bring any Claim with respect to Metcash's use or disclosure of or any dealing in the Transmitted Data (or any part of it), and will not assist any other person to do so.
- (c) Subject to clause 2(b), Metcash acknowledges and agrees that:
- (1) the Data, and all intellectual property rights in respect of the Data, are owned by the Retailer; and
  - (2) the Data forms part of the Confidential Information of the Retailer.
- (d) Despite clause 2(c), the Retailer must:
- (1) only use the Data solely for the purpose of performing its obligations under the Transaction Documents or its internal business requirements, unless otherwise expressly agreed in writing by Metcash or required by law;
  - (2) not disclose the Data, or allow any person to access the Data, in any form, except in accordance with this Deed or with Metcash's prior written consent or as required by law; and
  - (3) not transfer, assign, license, encumber, or otherwise dispose of or create an interest in, any of the Retailer's rights, title or interest in the Data (including any intellectual property rights of the Retailer in respect of the Data) to or in favour any other person without Metcash's prior written consent.

### 3 Third parties and data security

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- (a) The Retailer must not, without Metcash's prior written consent, allow any service provider or other person (**Service Provider**) to access, collect, process or transmit the Data or to access any Scan Software or IT System used to collect, process or transmit the Data (whether for the purpose of providing support, maintenance or other services) unless the Service Provider is an authorised employee or agent of Metcash or an authorised employee of the Retailer.
- (b) If Metcash gives its consent under clause 3(a), the Retailer must, before granting the relevant access to the Service Provider, enter into a written agreement with the Service Provider on terms including or consistent with the following:
- (1) The Service Provider acknowledges and agrees that all Transmitted Data:
    - (i) and all intellectual property rights in respect of the Transmitted Data are owned by Metcash; and
    - (ii) is the Confidential Information of Metcash and, to the full extent permitted by law, the Transmitted Data will be deemed to remain the Confidential Information of Metcash

even if some individual items of information or parts of the Transmitted Data are in the public domain,

and that the Service Provider will acquire no intellectual property rights or any other rights, title or interest in respect of the Data or the Transmitted Data in the course of performing the agreement;

- (2) To the extent that the Service Provider processes, enhances, changes or develops the Data or otherwise acquires any intellectual property rights in respect of the Data, the Service Provider hereby assigns all its intellectual property rights in respect of the Data to the Retailer;
  - (3) The Service Provider will not access, copy, use (including performing analysis or creating subsidiary datasets, extracts or derivative works from the Data) or retain the Data (or any part of it) except to the extent necessary to provide the relevant services to the Retailer;
  - (4) The Service Provider will not provide a copy of the Data (or any part of it) to any other person and will take reasonable steps to ensure that no other person may access the Data (or any part of it); and
  - (5) On completion of the relevant services, the Service Provider will delete, destroy or return to the Retailer (at the Retailer's option) all the Data.
- (c) The Retailer must:
- (1) ensure that the Service Provider complies with the relevant terms of the agreement between the Service Provider and the Retailer referred to in clause 3(b); and
  - (2) enforce the terms of that agreement against the Service Provider if Metcash requires.

#### **4 Confidential Information**

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- (a) Subject to clauses 2(b), 4(b) and 4(d), each Recipient must:
- (1) hold the other party's Confidential Information in strict confidence and not disclose, or permit the disclosure of, the other party's Confidential Information except as expressly permitted by a Transaction Document or with the prior written consent of the other party; and
  - (2) keep the other party's Confidential Information secure and protected from any use, access, storage, copying or disclosure which is inconsistent with this Deed.
- (b) A Recipient may disclose:
- (1) the other party's Confidential Information to those of its Related Bodies Corporate or Representatives to the extent that is reasonably necessary to give effect to, perform or enforce the Transaction Documents and provided that the disclosure is on a confidential basis; and
  - (2) so much of the other party's Confidential Information as the Recipient is legally required to disclose by any applicable law or legally binding court order.
- (c) Each Recipient must procure that its Related Bodies Corporate and Representatives do not do, or omit to do, anything which if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this clause 4.
- (d) Clause 4(a) does not apply to Confidential Information:
- (1) from the time it is in the public domain, other than as a result of a breach of this Deed or any other obligation of confidence;
  - (2) that the Recipient can show by documentary evidence was already in its lawful possession at the time of disclosure by the other party or any Related Body Corporate or Representative of the other party to the Recipient; or

- (3) from the time it is received by the Recipient from a person (other than the other party or any Related Body Corporate or Representative of the other party) legally entitled to possess that information and provide it to the Recipient.
- (e) Each Recipient acknowledges and agrees that damages may be inadequate compensation for breach of this clause 4 and, subject to the court's discretion, the other party may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this clause 4.

## 5 Termination

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- (a) This Deed automatically terminates on expiry of the Term.
- (b) Metcash may terminate this Deed at any time by giving at least 1 month's written notice to the Retailer.
- (c) Clause 2(b) survives termination of this Deed.

## 6 General

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- (a) This Deed does not affect in any way the validity or enforceability of any liability of the Retailer under or in connection with any other Transaction Document.
- (b) This Deed is the entire agreement of the parties about the subject matter of this Deed and supersedes and overrides all prior representations, negotiations, arrangements, understandings, agreements, deeds and communications about that subject matter.
- (c) Metcash may assign any of its rights, title or interest in or under this Deed by written notice to the Retailer. This Deed is personal to the Retailer and the Retailer may not assign any of its rights, title or interest in or under this Deed without Metcash's prior written consent.
- (d) This Deed may only be amended by the written agreement of all parties.
- (e) The parties may each execute one or more counterparts of this Deed. If so, all executed counterparts will be taken to constitute a single document.
- (f) Each party must promptly at its cost do all things, including executing all documents, necessary or desirable to give full effect to this Deed.
- (g) If anything in this Deed is invalid or unenforceable, then it is severed and the rest of this Deed remains in force.
- (h) This Deed is governed by the laws of the State and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts in and of that State.

## 7 Definitions and interpretation

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- (a) In this Deed, unless the context requires otherwise:

**Alliance Agreement** means the agreement between Metcash and/or any of its Related Bodies Corporate and the Retailer setting out the strategic alliance between Metcash and/or any of its Related Bodies Corporate and the Retailer and known as the IGA Alliance Agreement or the Foodland/IGA Alliance Agreement.

**Business** means the retail business owned and conducted by the Retailer at the Premises.

**Claim** means any claim, allegation, demand, suit, action, cause of action, proceeding or judgment of any kind however caused, and whether arising under contract, tort, equity, statute or otherwise.

**Collateral Documents** means any document or instrument (including a banner agreement, credit application, any document setting out terms of trade, a lease, licence, charge, pledge, guarantee or any other form of security) to which any one or more of Metcash, the Retailer and/or any of their respective Related Bodies Corporate are, or become, a party at any time.

**Confidential Information** means:

- (1) in the case of Metcash, Metcash Confidential Information;
- (2) in the case of the Retailer, Retailer Confidential Information; and
- (3) in the case of each party:
  - (i) the content of the Transaction Documents;
  - (ii) the Scan Software and the content of all documentation relating to the Scan Software; and
  - (iii) all matters relating to any dispute, controversy or claim arising out of, relating to or in connection with a Transaction Document, including any question regarding its existence, validity or termination, and includes the existence of such a dispute.

**Data** includes any representation of information about a product's sales, descriptions of products, retail prices, inventory, information about customers, numbers of customers passing through the checkouts at the Premises, suppliers, employees or trading hours, but does not include Personal Information in relation to the Retailer or the employees of the Retailer collected by the Retailer in operating the Business.

**Deed** means this scan data deed.

**IT Systems** means information technology and telecommunications systems hardware, software or data.

**Metcash Confidential Information** means:

- (a) all information relating to Metcash or its Related Bodies Corporate or their respective businesses;
- (b) all information (including market and pricing information and specifications) relating to the Products;
- (c) the Transaction Data; and
- (d) any information Metcash designates as confidential.

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

**Premises** means the premises specified as the "Store" in the Annexure.

**Products** means those goods supplied, and referred to in any list of products published, by Metcash or any of its Related Bodies Corporate from time to time including any products referred to in such list or otherwise as 'hosted directs'.

**Recipient** means Metcash as a recipient of Retailer Confidential Information or the Retailer as a recipient of Metcash Confidential Information, as the case may be.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Representative** means, in respect of a person, each of the directors, officers, employees, contractors, consultants, agents, advisers, partners, joint venturers, sub-contractors, insurers, insurance brokers and financiers of that person and of each of its Related Bodies Corporate.

**Retailer Confidential Information** means:

- (a) all information relating to the Retailer or its Related Bodies Corporate or their respective businesses;
- (b) the Data; and
- (c) any information the Retailer designates as confidential.

**Scan Software** means software which is capable of collecting, processing and transmitting Data to Metcash (or which has any one or more of those capabilities).

**Service Provider** has the meaning given in clause 3(a).

**State** means the state or territory specified as the "State / Territory" in the Annexure.

**Term** means the period specified as the "Term" in the Annexure.

**Transaction Documents** means this Deed, the Alliance Agreement and the Collateral Documents.

**Transmitted Data** means all Data transmitted by or on behalf of the Retailer to Metcash or any of its Related Bodies Corporate or to any other person nominated by Metcash.

(b) In this Deed, except to the extent the context requires otherwise:

(1) a reference to:

- (i) Metcash means either or both of Metcash Trading Limited ACN 000 031 569 and Metcash Food & Grocery Pty Ltd ACN 004 391 422;
- (ii) a person (including a party), includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government authority, body or agency as the case requires and that person's heirs, successors, executors, administrators and permitted assigns; and
- (iii) a law or law includes any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange and any regulation, rule, ordinance, proclamation, by-law or judgement made under that law and is to that law as amended, consolidated, supplemented or replaced;

(2) headings are for convenience only and do not affect interpretation; and

(3) the words "including" and "includes" mean "including, but not limited to" and "includes, without limitation", respectively.

## Execution

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**Executed** as a deed.

Executed by **Metcash Trading Limited ACN 000 031 569** by its attorneys under Power of Attorney dated 11 April 2018:

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Attorney (Signature)

\_\_\_\_\_  
Name of Witness (Print Name)

\_\_\_\_\_  
Name of Attorney (Print Name)

\_\_\_\_\_  
Title of Attorney

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Attorney (Signature)

\_\_\_\_\_  
Name of Witness (Print Name)

\_\_\_\_\_  
Name of Attorney (Print Name)

\_\_\_\_\_  
Title of Attorney

Executed by **Metcash Food & Grocery Pty Ltd ACN 004 391 422** by its attorneys under Power of Attorney dated 11 April 2018:

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Attorney (Signature)

\_\_\_\_\_  
Name of Witness (Print Name)

\_\_\_\_\_  
Name of Attorney (Print Name)

\_\_\_\_\_  
Title of Attorney

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Attorney (Signature)

\_\_\_\_\_  
Name of Witness (Print Name)

\_\_\_\_\_  
Name of Attorney (Print Name)

\_\_\_\_\_  
Title of Attorney

**«Option 1: Retailer is a company or corporate trustee and has more than one director»**

Executed by  
«Retailer's Name eg ABC\_123\_Pty\_Ltd»  
«ACN/ABN Retailer's ACN\_or\_ABN» «as trustee for «name of trust»»  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth) by two directors  
or a director and company secretary:

\_\_\_\_\_  
Director (signature)

\_\_\_\_\_  
Director/company secretary (signature)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**«Option 2: Retailer is a company or corporate trustee and has a sole director and company secretary»**

Executed by  
«Retailer's Name eg ABC\_123\_Pty\_Ltd»  
«ACN/ABN Retailer's ACN\_or\_ABN» «as trustee for «name of trust»»  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth) by its sole director  
and company secretary:

\_\_\_\_\_  
Sole director and company secretary  
(signature)

\_\_\_\_\_  
Name of sole director and company secretary  
(print)

**«Option 3: Retailer is a company or corporate trustee and has one director and no company secretary»**

Signed, sealed and delivered by  
«Retailer's Name eg ABC\_123\_Pty\_Ltd»  
«ACN/ABN Retailer's ACN\_or\_ABN» «as trustee for «name of trust»»  
by its sole director in the presence of:

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Director (signature)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of director (print)



**«Option 4: Retailer is a partnership»**

Signed, sealed and delivered by  
«Retailer's\_Name»  
by a partner in the presence of:

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Partner (signature)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of partner (print)

**«Option 5: Retailer is a sole trader/individual»**

Signed, sealed and delivered by  
«Retailer's\_Name»  
in the presence of:

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
«Retailer's\_Name»

\_\_\_\_\_  
Name of witness (print)

## Annexure

<b>MFG Customer Number</b>		
<b>Store Contact Name</b>		
<b>Store Contact Email</b>		
<b>Store Contact Phone Number (Landline)</b>		
<b>Scanning System used in Store (if applicable)</b>	Grocery Manager Profit Track Merlin ESP Surefire	Retail Touch Convenience Shop Ezi (GaP) Checkmate
<b>Retailer</b>	Name & ABN	
	Address	
<b>Store</b>	Name	
	Address	
<b>State / Territory</b>		
<b>Term</b>	The term of the Alliance Agreement.	
<b>Alliance Agreement Date</b>		