

## Instructions

This licence should be completed where an organisation wishes to use National Tobacco Campaign copyright materials for independent use. Examples of when an organisation would need a licence agreement include:

- Using materials in paid advertising such as (however not limited to) television, radio or online.
- Placing materials in publications such as journal articles, books, magazines or newspapers.
- Where organisations wish to modify or adapt campaign materials in any form

A licence agreement is not required when:

- Materials are used for educational purposes and not for financial gain (including student assessment pieces). In this instance, materials should not be altered/edited in any way.
- Using campaign merchandise to display in workplaces, schools, clinics and other similar locations.

Please complete all sections highlighted in red within the attached licence agreement.

An explanation of each section to complete is provided below:

**Organisation Name** – Registered business name e.g. Department of Health. This should be consistent throughout the licence.

**ABN** – Australian Business Number (Please leave blank if the organisation is outside Australia)

**Address** – Physical address of the Organisation

**Background (A.1)** – List here the campaign materials for licence

**Background (2)** – insert the purpose for using the campaign materials including how you intend to use the materials. **This is will be the 'Permitted Use'. Careful attention should be given to the description of the Permitted Use as this specifies the scope of the licence being granted.**

**Term of licence (1.1)** – insert expected final date for use of materials (this date should not exceed two years).

**Delivery and receipt of notices (13.1c)** – include details of organisation contact including address, contact person, phone number and email.

**Executed as an agreement** – insert name of Organisation and ABN

Once completed please send the form to [quitnow@health.gov.au](mailto:quitnow@health.gov.au). For more information or if you are unsure as to whether you require a licence agreement, please contact [quitnow@health.gov.au](mailto:quitnow@health.gov.au).

While National Tobacco Campaign materials can generally be licenced free-of-charge, please be aware that some campaigns may require talent agreement negotiations that will incur fees. Existing talent agreements may impact on the term of licence (1.1).

Organisations may also incur a file transfer fee if a large volume of campaign materials is required.

# COPYRIGHT LICENCE AGREEMENT

THIS AGREEMENT is made on this                      day of                      2016

BETWEEN

COMMONWEALTH OF AUSTRALIA ('Commonwealth') as represented by the Department of Health ABN 83 605 426 759 ('Department') of 3<sup>rd</sup> floor, Sirius Building, Furzer Street, Woden ACT 2606

AND

INSERT ORGANISATION NAME

ABN insert ABN number of insert address ('Licensee')

## BACKGROUND

- A. The Commonwealth is the copyright owner of the following creative material:
  1. **Insert national tobacco campaign materials for licence**

('Copyright Material') which have been developed for the purpose of promoting smoking cessation to the Australian community.
- B. The Licensee has requested the Department's permission to use the Copyright Material for the purpose of insert reason for use ('Permitted Use').
- C. In consideration of the Licensee using the Copyright Material for the Permitted Use in accordance with this Copyright Licence Agreement ('Agreement'), the Commonwealth agrees to grant the Licensee a licence for the non-commercial use of the Copyright Material on the terms and conditions set out in this Agreement.

## OPERATIVE PROVISIONS

### 1. Term of licence

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- 1.1 This Agreement commences on the date of the last party signing this Agreement and will remain valid to day month year or on the End Date as specified in clause 10.2(c), or on the date specified via a termination notice issued under clause 9.3, whichever is the earlier.

### 2. Grant of licence

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- 2.1 The Commonwealth grants to the Licensee a licence:
  - a. to use, reproduce, publish, broadcast, communicate, distribute and display the Copyright Material solely for the Permitted Use and subject to the terms of this Agreement;
  - b. if required for the Permitted Use, to make the following permitted changes ('Permitted Changes'):
    - i. to reformat the Copyright Material; and
    - ii. to adjust the size of the Copyright Material; and
  - c. subject to clauses 2.3, to sub-licence the licence granted under clause 2.1(a) and (b) but only for the Permitted Use.
- 2.2 The licence granted to the Licensee under clause 2.1 is:
  - a. non-exclusive;
  - b. non-transferable and non-assignable;

- c. licence-fee free and royalty free;
- d. worldwide;
- e. subject to clause 3.1;
- f. subject to approval under clause 4.1; and
- g. subject to the acknowledgement in clause 4.4.

2.3 A sub-licence granted by the Licensee under clause 2.1(c) must:

- a. only be granted if the sub-licensee has first been approved in writing by the Department;
- b. not permit the sub-licensee to grant further sub-licences;
- c. contain a provision that the sub-licence will automatically end at the same time this Agreement ends; and
- a. be in writing.

### **3 Restrictions on licence**

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3.1 The Licensee has no rights:

- a. to adjust, change, modify, adapt or improve the Copyright Material except for the Permitted Changes;
- b. to use the Copyright Material for any commercial purpose; and
- c. to give a sub-licensee greater rights than the Licensee has under this Agreement.

### **4 Prior approval and acknowledgement**

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4.1 Subject to clause 4.2, prior to exercising any of its licence rights under clause 2.1, the Licensee must:

- a. provide a notice to the Department setting out the details of any proposed use, reproduction, publication, broadcast, communication, distribution or display of the Copyright Material to the Department; and
- b. obtain approval in writing from the Department to use, reproduce, publish, broadcast, communicate, distribute or display the Copyright Material in the proposed manner.

4.2 The Department must provide written approval for, or written feedback on, the proposed use, reproduction, publication, broadcast, communication, distribution or display of the Copyright Material within twenty-one (21) days of receiving a notice under 4.1(a)..

4.3 A notice given under clause 4.1 must:

- a. be given in writing;
- b. contain specific details of how and when those licence rights will be exercised; and
- c. be received by the Department at least 21 days before the date on which the Licensee proposes to exercise the licence rights.

4.4 The Licensee must acknowledge the Australian Government's National Tobacco Campaign as the source of the Copyright Material when exercising any licence rights under clause 2.1.

### **5 Intellectual property rights and moral rights**

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5.1 The Licensee must not challenge, or call into question, the Commonwealth's copyright ownership of the Copyright Material.

5.2 The Licensee agrees that:

- a. the licence granted under clause 2.1 does not change or affect the Commonwealth's copyright ownership of the Copyright Material; and

- b. all intellectual property rights not expressly granted under this Agreement are reserved to the Commonwealth.

5.3 The Licensee must notify the Department if the Licensee becomes aware that a person may have infringed:

- a. the copyright subsisting in; or
- b. an author's moral right connected with, the Copyright Material.

5.4 A notice given under clause 5.3 must:

- a. be given in writing;
- b. contain details of, and the circumstances surrounding, the infringement;
- c. include the name, address and contact details of the person infringing; and
- d. be given within 7 days after the Licensee becomes aware that an infringement may have occurred.

5.5 The Licensee must not use any emblem, logo (including trademark) or crest of the Commonwealth in any way without first obtaining written permission from the Department to do so.

5.6 The Licensee must ensure that the Copyright Material is not subjected to any treatment which would infringe the moral rights of an author of the Copyright Material.

## **6 Copyright, moral rights attribution and disclaimer notices**

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6.1 The Licensee agrees, at its own expense, to immediately follow all directions given by the Commonwealth in respect of the use and content of:

- a. any copyright notice;
  - b. any moral rights attribution notice; and
  - c. any disclaimer notice,
- which the Commonwealth may require.

## **7 Allocation of risk and liability**

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7.1 The Licensee:

- a. accepts all risks and consequences connected with; and
- b. releases the Commonwealth (including its officers, employees and agents) from all liability arising directly or indirectly from, any use of the Copyright Material by the Licensee (including its officers, employees and agents) or any sub-licensees.

7.2 The Licensee fully indemnifies the Commonwealth (including its officers, employees and agents) against:

- a. any claim, demand, suit, action or proceeding that is threatened, made or commenced against; and
  - b. any loss, liability, damage, injury, cost and expense incurred or suffered by, the Commonwealth (including its officers, employees and agents), arising directly or indirectly from any:
    - c. use of the Copyright Material;
    - d. infringement of a person's intellectual property rights or moral rights;
    - e. negligence or any other tort; or
    - f. breach of this Agreement,
- by the Licensee (including its officers, employees and agents) or any sub-licensees.

7.3 The Commonwealth's right to be indemnified under clause 7.2 is in addition to any other right, power or remedy provided by law.

7.4 Where this clause refers to an officer, employee or agent of the Commonwealth, the Commonwealth holds the benefit of this clause on trust for that person.

## **8 Warranties and representations**

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8.1 The Commonwealth gives the Licensee no warranty (express or implied) in respect of the Copyright Material.

8.2 Without limiting clause 8.1, the Commonwealth does not warrant that the Copyright Material is:

- a. suitable for the Permitted Use;
- b. fit for the purpose of the Permitted Use;
- c. without error; or
- d. able to be used without infringing a person's intellectual property rights or moral rights.

## **9 Conflict of interest**

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9.1 The Licensee warrants that, to the best of their knowledge and after making diligent enquiry, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the exercise of the Licensee's rights and duties under this Agreement.

9.2 If, during the term of the Agreement a conflict of interest arises in respect of the Licensee, the Licensee must:

- a. immediately notify the Department in writing of that conflict of interest, making a full disclosure of all information relating to the conflict of interest; and
- b. take such steps as the Department may reasonably require to resolve or otherwise deal with the conflict.

9.3 If the Licensee fails to notify the Department of a conflict of interest or is unable or unwilling to resolve or deal with the conflict of interest as required by the Department, the Department may immediately terminate this Agreement by giving written notice to the Licensee.

## **10 Ending this Agreement**

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10.1 Either party may end this Agreement at any time by notifying the other party that this Agreement has ended.

10.2 A notice given under clause 10.1:

- a. must be in writing;
- b. may be given for any or no reason at all; and
- c. must specify the date on which the Agreement will end, being a date at least 7 days after the date on which the notice is given ('**End Date**').

## **11 Returning or destroying Copyright Material**

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11.1 When this Agreement has ended, the Licensee must, at its own expense:

- a. immediately stop exercising its licence rights granted under this Agreement;
- b. promptly ensure that:

- i. each sub-licensee stops exercising any rights granted to it under a sub-licence; and
  - ii. each sub-licence is ended; and
- c. within 21 days after the Agreement has ended, either:
  - i. deliver up and return all Copyright Materials; or
  - ii. destroy or otherwise deal with the Copyright Material as directed by the Commonwealth, and
  - iii. deliver to the Department a formal written declaration stating that the Licensee has fully complied with clause 11.1(c).

## **12 Dispute resolution**

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12.1 Subject to clause 12.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by clause 12.2 has been followed.

12.2 The parties agree that any dispute arising out of, or in connection with, this Agreement will be dealt with as follows:

- a. the party claiming that there is a dispute will send the other a notice in writing setting out the nature of the dispute;
- b. the parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute;
- c. the parties have 14 days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- d. if:
  - i. there is no resolution of the dispute;
  - ii. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
  - iii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 60 days of the submission, or such extended time as the parties may agree in writing before the expiration of the 60 days,
 then either part may commence legal proceedings.

12.3 This clause 12 does not apply where either party commences legal proceedings for urgent interlocutory relief.

## **13. Delivery and receipt of notices**

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13.1 A notice in writing given under clauses 4.1, 5.3, 9.2, 9.3, 10.1 and 12.2(a) must:

- a. be signed by a party's authorised person; and
- b. if given by the Licensee to the Commonwealth, be addressed to the Department as follows:

National Tobacco Campaign manager  
 Health Marketing Unit, Communication Branch  
 Australian Government Department of Health

Postal address: GPO Box 9848 Canberra ACT 2601  
 Physical address: MDP 303 Level 3, Sirius Building, Furzer Street Woden ACT 2606  
 Attention: Kellie Mastersen  
 Ph: 02 6289 5022

[quitnow@health.gov.au](mailto:quitnow@health.gov.au)

Or

- c. if given by the Commonwealth to the Licensee, be addressed to the Licensee as follows:

**ORGANISATION NAME**

Postal address: *insert postal address*

Physical address: *insert address*

*insert name, insert position*

Ph: *insert phone number*

Email: *insert email address*

13.2 A notice given under this Agreement may be:

- a. delivered by hand;
- b. sent by post;
- c. transmitted electronically by facsimile; or
- d. transmitted electronically by email.

13.3 subject to clause 13.4, the parties agree that a notice given under in accordance with clause 13.1 is received:

- a. if delivered by hand – upon delivery at the relevant address;
- b. if sent by post – on the third business day after the date of posting; or
- c. if transmitted electronically by email or facsimile – when received by the addressee or when the sender’s computer or facsimile machine generates a notification that the notice has been received by the addressee, whichever is earlier.

13.4 If a notice is delivered by hand, sent by post, transmitted electronically by facsimile or transmitted electronically by email:

- a. after 5.00 pm on a business day; or
- b. on a day that is not a business day,  
it will be taken to be received on the next business day.

## **14. General provisions**

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14.1 This Agreement records the entire agreement, and supersedes all previous agreements or understandings, between the parties in relation to the licensing of the Copyright Material.

14.2 Any variation of this Agreement must be in writing and signed by both parties.

14.3 Each party must, at its own expense, do everything necessary or desirable to give full effect to:

- a. this Agreement; and
- b. any transaction contemplated by it, including executing documents.

14.4 This Agreement is governed by the laws of the Australian Capital Territory, and each party agrees to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

14.5 The Licensee agrees not to offer its rights under this Agreement as a security, or part of a security, for a loan.

14.6 A provision, or part of a provision, of this Agreement that is illegal, invalid or unenforceable, may be severed from this Agreement and the remaining provisions, or parts of a provision, of this Agreement continue in force.

14.7 Waiver of any provision of, or right under, this Agreement:

- a. must be in writing signed by the party entitled to the benefit of that provision or right; and
- b. is effective only to the extent set out in any written waiver.

14.8 The parties must not represent themselves, and must ensure that their employees, officers and agents do not represent themselves, as being an officer, employee or agent of the other party, or as otherwise able to bind or represent the other party.

14.9 This Agreement does not create a relationship of employment, agency or partnership between the parties.

14.10 The end of this Agreement will not affect the continued operation of:

- a. any accrued rights of a party accrued prior to the date on which this Agreement ends; and
- b. any provisions which by their nature survive this Agreement, including clauses 6, 7, 8, 11, 12, 14.3 and 14.4, and all clauses required to give effect to those clauses.



**EXECUTED AS A DEED**

**SIGNED, SEALED AND DELIVERED** for and on behalf of **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Health (ABN 83 605 426 759) by its duly authorised person:

Name and title of authorised person: \_\_\_\_\_

Signature of authorised person: \_\_\_\_\_

Date: \_\_\_\_\_

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

Name of witness: \_\_\_\_\_

Date: \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED** for and on behalf of **INSERT ORGANISATION NAME** (ABN **insert ABN number**) by its duly authorised person:

Name and title of authorised person: \_\_\_\_\_

Signature of authorised person: \_\_\_\_\_

Date: \_\_\_\_\_

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

Name of witness: \_\_\_\_\_

Date: \_\_\_\_\_