



**Australian Government**  
**Department of Health and Ageing**

**DEED OF VARIATION No. 4**

Between the

**COMMONWEALTH OF AUSTRALIA** ('the Commonwealth'), as represented by the Department of Health and Ageing ('the Department') ABN 83 605 426 759

and

**Anti-Cancer Council of Victoria trading as Cancer Council Victoria**, ABN 61 426 486 715, a body incorporated under section 7 of the *Cancer Act 1958* (Vic) having its office at 615 St Kilda Road, Melbourne, Victoria, 3053 ('the Participant').

**RECITALS:**

- A. The parties wish to vary the agreement relating to the National Monthly Tracking Survey of Smokers and Recent Quitters dated 6 November 2012, previously varied on 28 June 2012, 6 November 2012 and 27 February 2014 ('the Principal Agreement').
- B. Clause 1.6 of the Principal Agreement states that no variation is binding unless it is agreed in writing between the parties.

**OPERATIVE PART:**

- 1. Unless the context indicates otherwise, capitalised words in this Deed of Variation have the same meaning as is given to those terms in the Principal Agreement.
- 2. The parties vary the Principal Agreement as follows:
  - (a) In clause 1.1, delete the definitions '**Information Privacy Principle**' and '**National Privacy Principle**'.
  - (b) In clause 1.1, delete the definition '**Personal Information**' and replace with the following:

“**Personal Information**’ has the meaning given in the *Privacy Act 1988*;”

3. Delete clause 24 and replace with the following:

**"24. PROTECTION OF PERSONAL INFORMATION**

24.1 This clause 24 applies only where the Participant deals with Personal Information when, and for the purpose of, conducting the Project under this Agreement.

24.2 In this clause 24, the terms:

- (a) agency;
- (b) contracted service provider;
- (c) registered APP code ('RAC');
- (d) Australian Privacy Principle ('APP'),
- (e) health service; and
- (f) health information;

have the same meaning as they have in the *Privacy Act 1988* ('the Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

24.3 The Participant acknowledges that it may be treated as a 'contracted service provider' and agrees in respect of the provision of the Services under this Agreement:

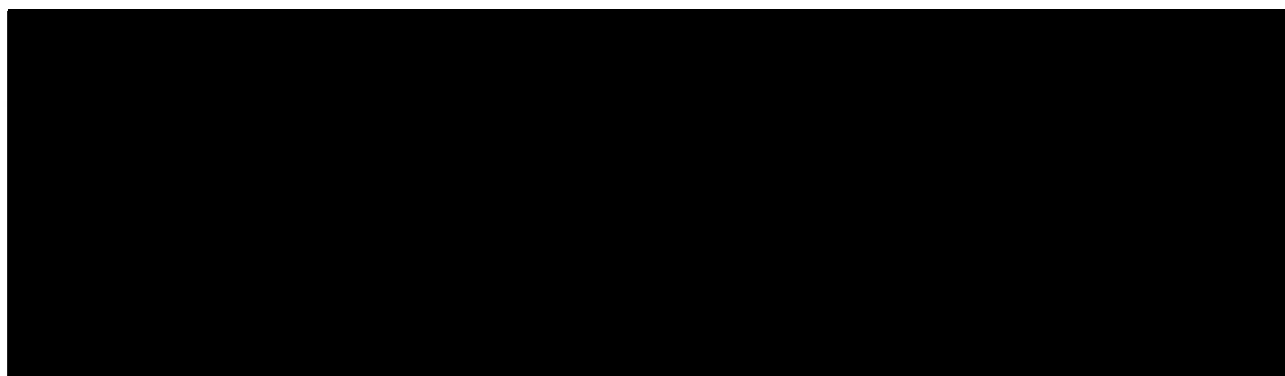
- (a) to use or disclose Personal Information obtained during the course of conducting the Project under this Agreement, only for the purposes of this Agreement;
- (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an APP;
- (c) to notify individuals whose Personal Information the Participant holds, that complaints about acts or practices of the Participant may be investigated by the Privacy Commissioner who has power to award compensation against the Participant in appropriate circumstances;
- (d) comply with the obligations contained in the APPs that apply to the Participant;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC, whichever is applicable to the Participant, unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the APP or RAC, whichever is applicable to the Participant;
- (f) to comply with any request under section 95C of the Privacy Act;
- (g) to immediately notify the Commonwealth if the Participant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause, whether by the Participant or any subcontractor;

- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause; and
    - (i) to ensure that any officers, employees or agents of the Participant who are required to deal with Personal Information for the purposes of this Agreement are made aware of the obligations of the Participant set out in this clause.
  - 24.4 The Participant agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Participant has under this clause, including the requirement in relation to subcontracts.
  - 24.5 The Commonwealth may at any time require the Participant to give, and to arrange for Participant Personnel to give, undertakings in writing in a form required by the Commonwealth, relating to the non-disclosure of Personal Information.
  - 24.6 If the Participant receives a request under clause 24.5, it agrees to promptly arrange for all such undertakings to be given.
  - 24.7 The Participant's obligations under this clause are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law including any such privacy codes or principles that would apply to the Participant but for the application of this clause.
  - 24.8 Notwithstanding any other provision in this clause 29.4, where the Participant provides a health service to an individual it will:
    - (a) comply with the APPs in relation to the use and disclosure of health information about the individual; and
    - (b) transfer health information to another health service provider when directed to do so by the Commonwealth; and
    - (c) inform the individual by way of a notice in the form required by the Privacy Act, at the time the health information is collected, that the health information may be disclosed to a new health service provider if required by the Commonwealth.
  - 24.9 This clause 24 survives the expiration or earlier termination of this Agreement."
4. In clause 26.1, delete '*Equal Opportunity for Women in the Workplace Act 1999*' and replace with '*Workplace Gender Equality Act 2012*'.

5. At page 32 of the Schedule, under **Item D. REPORTS**, delete the table under the subheading “**Progress Reports**” and add the following table:

<b>Due Date</b>	<b>Deliverable</b>
31 May 2012	First Progress Report – summarising the pilot survey data collection achieved to date and related technical aspects.
29 June 2012	Second Progress Report – will provide further update on the data collection achieved to date and related technical aspects.
30 November 2012	Third Progress Report – will cover the further baseline period from June to August 2012.
28 March 2013	Fourth Progress Report – will cover the transition period and first month of implementation of plain packaging from September to December 2012.
30 June 2013	Fifth Progress Report – will cover the introductory period from January to March 2013.
30 September 2013	Sixth Progress Report – will cover early effects from April to June 2013.
21 February 2014	Seventh Progress Report – will provide an update of the project.
23 May 2014	Eighth Progress Report – will provide an update of the project.
31 August 2014	Ninth Progress Report – will provide an update of the project.
20 March 2015	Final Report – the overall impact of packaging changes over the entire project period on key proximal outcome measures and on more distal outcome measures such as quit intentions, quit attempts and consumption.

6. At page 34 of the Schedule, under **Item E. FUNDS AND INVOICE REQUIREMENTS**, delete all existing text and replace with:



Deliverable	Amount (GST excl)	GST	Total (GST incl)
Execution of this Agreement			
Department acceptance of the <u>First Progress Report</u> summarising pilot survey data and related technical aspects and receipt of invoice: <i>Due 31 May 2012.</i>			
Department acceptance of the <u>Second Progress Report</u> providing further update on the data collection achieved to date and related technical aspects and receipt of invoice: <i>Due 29 June 2012.</i>			
<b>TOTAL 2011-12 FUNDING</b>			
Acceptance by the Department of the <u>Third Progress Report</u> covering the period from June to August 2012 and receipt of invoice: <i>Due 30 November 2012.</i>			
Acceptance by the Department of the <u>Fourth Progress Report</u> covering the period from September to December 2012 and receipt of invoice: <i>Due 28 March 2013.</i>			
Acceptance by the Department of the <u>Fifth Progress Report</u> covering the period from January 2013 to March 2013 and receipt of invoice: <i>Due 20 June 2013.</i>			
<b>TOTAL 2012-13 FUNDING</b>			
Acceptance by the Department of the <u>Sixth Progress Report</u> covering the period from April to June 2013 and receipt of invoice: <i>Due 30 September 2013.</i>			
Acceptance by the Department of the <u>Seventh Progress Report</u> and receipt of invoice: <i>Due 21 February 2014.</i>			
Acceptance by the Department of the <u>Eighth Progress Report</u> : <i>Due 23 May 2014.</i>			
<b>TOTAL 2013-14 FUNDING</b>			
Acceptance by the Department of the <u>Ninth Progress Report</u> and receipt of invoice: <i>Due 31 August 2014.</i>			
Acceptance by the Department of the <u>Final Report</u> : <i>Due by 20 March 2015.</i>			
<b>TOTAL 2014-15 FUNDING</b>			
<b>TOTAL PROJECT FUNDING</b>			
	<b>\$2,803,738.73</b>	<b>\$235,373.87</b>	<b>\$3,039,112.60</b>

The due date for payment is 30 days after receipt of a correctly rendered invoice and acceptance of the deliverable by the Commonwealth. A correctly rendered invoice is one that:

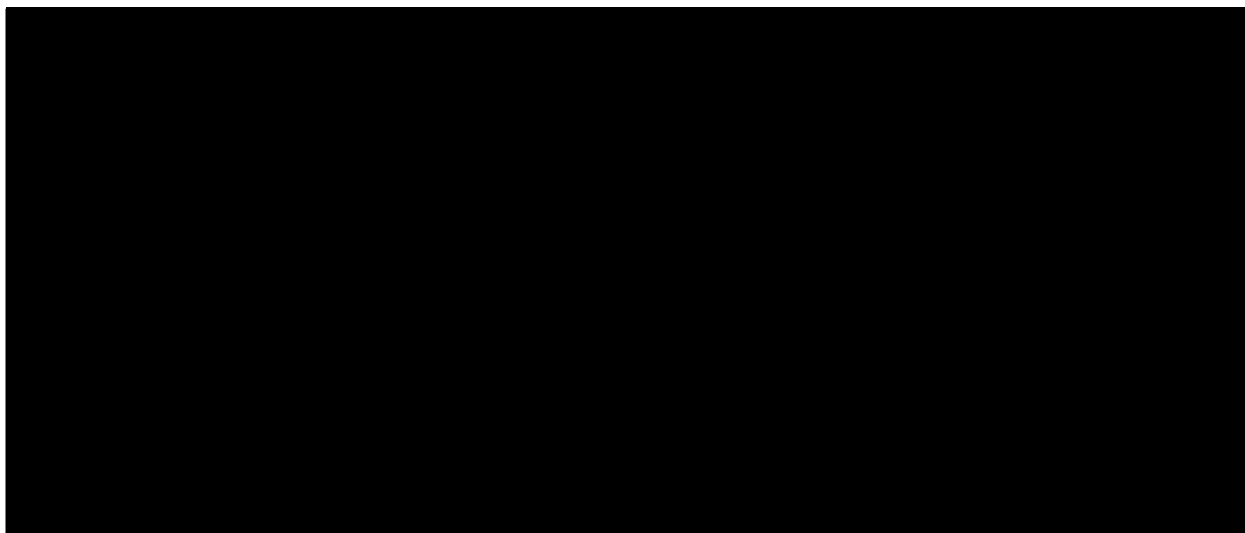
- a) identifies the name of the Project;
  - b) sets out the name of the Commonwealth Liaison Officer;
  - c) contains a claim for the amount of the Funds properly required; and
  - d) is a tax invoice.
2. This Deed of Variation takes effect on and from the date it is signed by the last party to do so.
  3. The Principal Agreement, as amended by this Deed of Variation, constitutes the entire agreement between the parties.

This Deed of Variation is EXECUTED as a Deed.

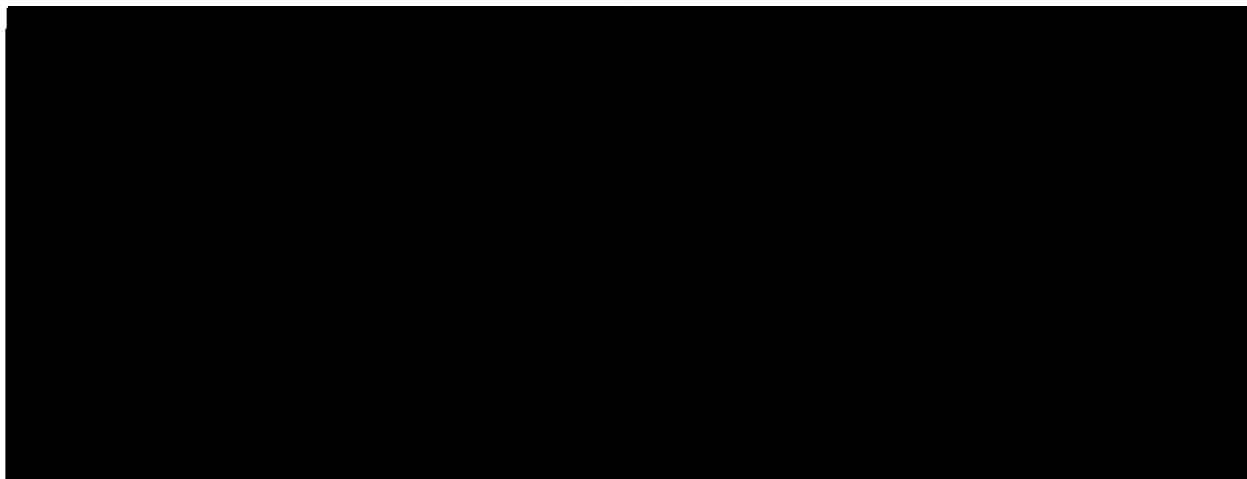
**SIGNED, SEALED AND DELIVERED** for and on behalf of the **COMMONWEALTH OF AUSTRALIA**  
as represented by the Department of Health and Ageing, ABN 83 605 426 759, on:

14 November 2014  
Date

by:



**SIGNED, SEALED AND DELIVERED** by Anti-Cancer Council of Victoria trading as Cancer  
Council Victoria ABN 61 426 486 715



The signatory warrants that he/she has the authority to bind Anti-Cancer Council of  
Victoria trading as Cancer Council Victoria in the presence of:

