

Deed of licence of a trade mark

THIS DEED is made the 21 day of March, 2013

BETWEEN:

The Secretary to the Department of Health, a body corporate established under the *Public Health and Wellbeing Act 2008 (Vic)* ABN 74 410 330 756 of 50 Lonsdale Street, Melbourne, Victoria 3000 ("Licensor")

AND:

The Australian Capital Territory (Territory), the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* represented by the Community Services Directorate ("Licensee").

RECITALS

- A. The State of Victoria is the exclusive owner and registered proprietor in Australia under the *Trade Marks Act 1995 (Cth)* ("Act") of the right, title, interest and goodwill in the Trade Mark(s) set out in Schedule 1 of this Licence ("Trade Marks").
- B. The Licensee desires to use the Trade Marks in connection with the provision or supply of goods for which the Trade Marks are registered ("Goods") and/or in relation to the provision of the services for which the Trade Marks are registered ("Services"). The Licensee may also wish to record its interest in the Trade Marks, as an authorised user of the Trade Marks, under section 113 of the Act.
- C. The Licensee shall use the Trade Marks within the territory of the Australian Capital Territory ("Jurisdiction") in connection with a program it funds, whereby individuals who hold a seniors card issued by or on behalf of the Licensee ("Seniors Card") are entitled to discounts on goods and services supplied by businesses participating in the program ("Seniors Card Program").
- D. The Licensor licences the use of the Trade Marks by the Licensee on the terms of this Licence.

NOW THE PARTIES AGREE as follows:

1. Appointment of Licensee

The Licensor licenses the Licensee to use the Trade Marks in the Jurisdiction during the continuance of this Agreement, upon and in relation to the Goods and/or Services.

2. Registration of Licensee

- 2.1. Upon receiving a request from the Licensee to do so, the Licensor and Licensee shall together apply to the Registrar of Trademarks in Australia to record the Licensee's interest in the Trade Marks pursuant to section 113 of the Act. The Licensee may be registered as an authorised user of the Trade Marks in relation to the Goods and/or Services.
- 2.2. The Licensee shall pay any costs associated with its registration pursuant to clause 2.1.

3. Licence for non-exclusive use

The Licence granted to the Licensee by this Licence is non-exclusive.

4. Quality control of Trade Marks

- 4.1. The Licensee must comply with the requirements described in the Seniors Card Brand Guide, as set out in Annexure A.
- 4.2. The Licensee must not use the Trade Marks other than as expressly authorised under this Licence, without the prior written consent of the Licensor.

5. Prominence of Trade Marks

The Licensee must give prominence to the Trade Marks when used in any advertising, displays or literature undertaken or published by or on behalf of the Licensee upon or in relation to the Goods and/or Services.

6. Term

This Licence commences on the date this Licence is fully executed and will continue in effect unless and until terminated by either of the parties in accordance with clause 7.

7. Termination

- 7.1. Either party may terminate this Licence by giving ninety (90) days' notice in writing to the other party.
- 7.2. This Licence shall terminate immediately if the Trade Marks cease to be registered in accordance with the Act.
- 7.3. From the date of the termination of this Licence, the Licensee must:
 - a) stop all use of the Trade Marks;
 - b) procure that each person that the Licensee has authorised to use the Trade Marks pursuant to clause 9 or clause 9A stops all use of the Trade Marks; and
 - c) if necessary, do all such acts and execute all such documents required to cancel the registration of the Licensee's interest in the Trade Marks.

8. Obligation to maintain and protect the Trade Marks

- 8.1. The Licensor must do all things reasonably necessary to ensure that the Trade Marks remain registered.
- 8.2. The Licensee must do all things reasonably necessary to protect the registration and prevent the infringement of the Trade Marks.

9. Sub-Licence

- 9.1. Subject to clauses 9.2 and 9.3, the Licensee may authorise the use of the Trade Marks by a business participating in the Seniors Card Program ("Sub-licensee"). The Sub-licensee may be authorised to use the Trade Marks for the supply of Goods and/or Services in connection with the Seniors Card Program in accordance with the agreement between the Licensee and the Sub-Licensee in relation to the Seniors Card Program.
- 9.2. The Licensee must ensure that the Sub-licensee:
 - a) complies with the terms of the Seniors Card Brand Guide, as set out in Annexure A;
 - b) meets the minimum eligibility requirements for participation in the Seniors Card Program, as set out in Annexure B; and

- c) agrees to comply with the minimum terms and conditions in respect of the Seniors Card Program, as set out in Annexure C.
- 9.3. Under the terms of any licence granted by the Licensee pursuant to clause 9.1, the Sub-licensee must not:
 - a) be permitted to grant any further licence in respect of the Trade Marks;
 - b) be entitled to have its interest in the Trade Marks registered under the Act; and
 - c) have any other rights to use the Trade Marks beyond the rights granted to the Licensee in accordance with this Licence.
- 9.4. The Licensee must not grant any sub-licence in respect of the Trade Marks, other than in accordance with clause 9.1 or clause 9A.1, without the prior written consent of the Licensor.

9A Outsourcing by the Licensee

- 9A.1 If a third party is engaged by the Licensee to administer the Seniors Card Program or part thereof, the Licensee is authorised to grant to that third party ("the Contractor") a sub-licence to allow the Contractor to exercise rights in respect of the Trade Marks on the same terms as those granted to the Licensee under this Deed, including the right to sub-licence the use of the Trade Marks in accordance with clause 9.1, for the purposes of administration of the Seniors Card Program.
- 9A.2 If the Licensee grants a sub-licence in accordance with clause 9A.1, the Licensee must ensure that:
 - (a) any sub-licensees to whom the Contractor grants a sub-licence comply with the obligations set out in clause 9.2(a) to (c) inclusive; and
 - (b) any sub-licence granted by the Contractor contains the terms and conditions set out in clause 9.3.
- 9A.3 Nothing in this clause 9A shall have the effect of restricting the right of the Licensee to enjoy the full use and benefit of the Trade Marks for the term of the licence, regardless of the grant of any sub-licence in accordance with clause 9A.1.

10. Eligibility to be issued a Seniors Card

The parties acknowledge that the eligibility criteria for an individual to be issued with a Seniors Card within the Licensee's jurisdiction are to be determined by the Licensee in its sole discretion.

11. Infringements and claims

11.1. In the event that:

- a) the Licensee receives notice or becomes aware of any infringement or threatened infringement of any of the Trade Marks or any common law rights which arise in connection with the Trade Marks, including in respect of passing off by reason of imitation of get-up or otherwise;
- b) the Licensee receives notice or becomes aware of any breach by a Sub-licensee of the terms of its sub-licence; or
- c) any third party makes an allegation or claim in respect of the use of the Trade Marks, including a claim or allegation that the use of the Trade Marks is liable to mislead, deceive or cause confusion to the public,

the Licensee must notify the Licensor of the infringement, breach or claim, giving all relevant particulars.

11.2. Subject to clause 11.3, the Licensor may, at its sole and absolute discretion, enforce its rights in respect of an infringement of the Trade Marks or any of its common law rights which arise in connection with the Trade Marks.

11.3. Where a Sub-licensee breaches the terms of its sub-licence and such breach prejudices, or is likely to prejudice, the Licensor's rights as the registered owner of the Trade Marks, the Licensee must take all action reasonably necessary to enforce the terms of the sub-licence and to prevent any further actual or potential prejudice to the Licensor's rights as the registered owner of the Trade Marks.

11.4. The Licensee must provide the Licensor with all information and assistance reasonably requested by the Licensor in relation to an infringement or claim notified in accordance with clause 11.1 or any proceedings commenced pursuant to clause 11.2.

12. Warranty

The Licensor warrants that the use of the Trade Marks as described in this Licence will not breach the intellectual property rights of any third parties.

13. Applicable law

This Licence is governed by the laws of the State of Victoria and the parties submit to the jurisdiction of the courts of that State.

14. Charges

14.1. The parties to this Licence confirm that there will be no fee payable to the Licensor under this Licence.

14.2. All stamp duties and governmental charges arising out of, or incidental to, this Licence are the responsibility of, and must be paid by, the Licensee.

15. Amendments

This Licence may not be varied except in writing signed by all of the parties.

16. Severability

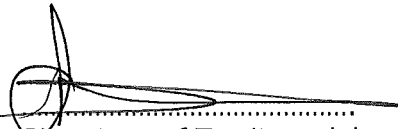
If any provision of this Licence is held to be unlawful, invalid or unenforceable or in conflict with any rule of law, statute, ordinance or regulation it is to be severed so that the validity and enforceability of the remaining provisions are not affected.

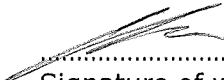
EXECUTED as a Deed.

THE CORPORATE SEAL of SECRETARY)
TO THE DEPARTMENT OF HEALTH a)
body corporate established under the)
Public Health and Wellbeing Act 2008)
ABN 74 410 330 756, was affixed by:)


.....
Signature of Secretary

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY)
in the presence of:)


.....
Signature of Territory delegate


.....
Signature of witness

Mr Nic Manikis
Executive Director
Policy and Organisational Services
Community Services Directorate

GERRY MCKEON
.....
Print name

17. Notices

17.1. Any notice required to be given under this Licence shall be sent to the following recipient ("Authorised Representative"):

To the Licensor

Name: Barbara Mountjouris
Position: Manager,
Seniors Programs and Participation,
Department of Health
Address: Level 12, 50 Lonsdale Street
MELBOURNE VIC 3000
Fax: (03) 9096 9162

To the Licensee

Name: Nic Manikis
Position: Executive Director,
Policy and Organisational Services,
Community Services Directorate
Address: 11 Moore St
CANBERRA ACT 2601
Fax: (02) 6205 0343

17.2. Notices must be in writing and in English, and be given by the Authorised Representative of the sender, or any other person duly authorised by the sender to give such notice.

17.3. Subject to clause 17.4, a notice is deemed to be received by the recipient:

- a) if sent by pre-paid mail, three (3) business days after the date the notice is posted; or
- b) if sent by facsimile and confirmed by pre-paid mail, at the time and on the day shown in the sender's transmission report, if the sender's transmission report shows that the whole notice was sent to the facsimile number last notified by the recipient.

17.4. If the notice is deemed to be received on a day which is not a business day or after 5 pm, it is deemed to be received at 9 am on the next business day.

SCHEDULE 1
Registered Trade Marks

<i>Mark</i>	<i>Application No</i>	<i>Lodgement Date</i>	<i>Class</i>	<i>Goods/Service</i>
Seniors Card	1316955	25 August 2009	9,16,36	<p>Class: 9 Magnetic data carrier</p> <p>Class: 16 Printed publications and matter including leaflets, brochures, cardboard and paper signs and posters, newspapers, magazines and periodicals; adhesives including stickers; paper flags; pens; cards; stationery; advertisement boards and signs of paper and cardboard including shelf wobblers and banners</p> <p>Class: 36 Discount card services</p>

ANNEXURE A
Hard copies of the Seniors Card Brand Guides

Seniors Card logo guide



SENIORS CARD

*Preferred



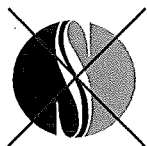
SENIORS CARD



SENIORS CARD



SENIORS CARD

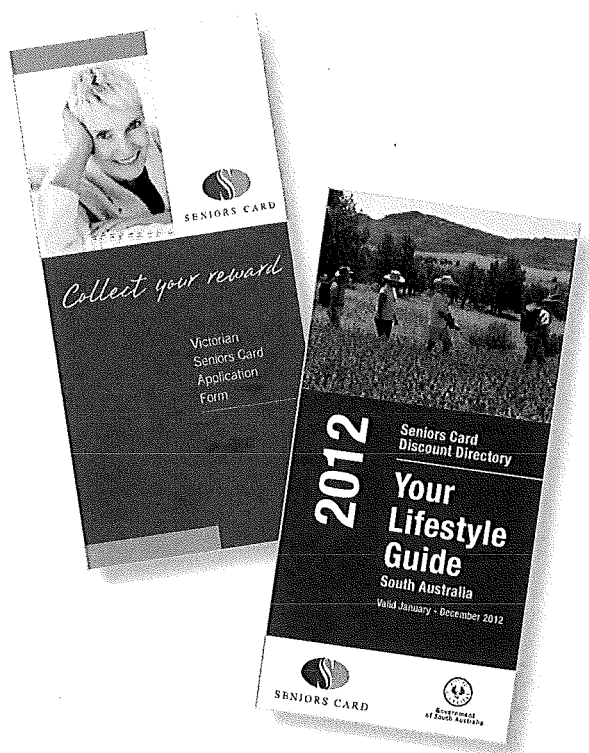


SENIORS CARD

Do not use in
greyscale or stretch

Examples of use

Suggested uses include (yet not limited to) DL flyers, stickers, promotional factsheets, posters and applications forms.



Seniors Card logo

The **Seniors Card logo** is the primary element of the Seniors Card brand and should appear on all Seniors Card material.

Colours

The Seniors Card logo is made from 2 PMS colours:

PMS 534 C (blue) and **PMS 873 C** (metallic gold).

The CMYK (process colour) breakdowns of the colours are:

PMS 534 C (blue) = C 95 M 72 Y 9 K 38

PMS 873 C (gold) = C 30 M 30 Y 60 K 10

Logos available for use

There are different versions of the basic Seniors Card logo that may be used. They're available for promotional material, stationery and the web. As a guide, the following list may assist you – when in doubt, ask your designer or printer.

For print, you can use the following versions:

- 2 colour SPOT (.eps)*
- 2 colour CMYK (.eps)*
- 1 colour PMS 534 (.eps)
- 2 colour CMYK (.jpg)

For stationery you can use:

- 1 colour PMS 534 (.eps)
- 2 colour SPOT (.eps)*

For web use:

- 2 colour web RGB (.jpg)

Do not create other versions of the logo.

Only use reversed logo on solid/dense colour.

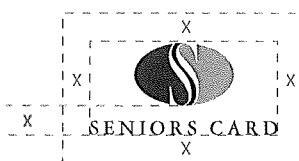
Do not use over images.

Clear space and minimum size

The logo must always be positioned within a clear space to maintain its visual identity and integrity.

The minimum clear space around all sides of the logo should be the same as the distance between the base of the ellipse and the base of the type.

The Seniors Card logo should not appear any smaller than 17 mm wide.



Seniors Card Welcome Here logo guide

1)



*Preferred

SENIORS CARD
welcome here



Do not use in
greyscale or stretch

2)



*Preferred

SENIORS CARD
welcome here



Do not use in
greyscale or stretch

Seniors Card Welcome here logos

These logos are for participating businesses to add to their marketing material or displays, to promote their participation in the Seniors Card program.

Two design options

There are two designs for the Welcome here logo. Either logo is acceptable for use by participating businesses:

- 1) Welcome here wave logo
- 2) Welcome here standard logo

Colours

The Seniors Card logo is made from 2 PMS colours:
PMS 534 C (blue) and **PMS 873 C** (metallic gold).

The CMYK (process colour) breakdowns of the colours are:
PMS 534 C (blue) = C 95 M 72 Y 9 K 38
PMS 873 C (gold) = C 30 M 30 Y 60 K 10

Logos available for use

There are different versions of these logos that may be used. They're available for promotional material, stationery and the web. As a guide, the following list may assist you – when in doubt, ask your designer or printer.

For print, you can use the following versions:

- 2 colour SPOT (.eps)*
- 2 colour CMYK (.eps)*
- 1 colour PMS 534 (.eps)
- 2 colour CMYK (.jpg)

For stationery you can use:

- 1 colour PMS 534 (.eps)
- 2 colour SPOT (.eps)*

For web use:

- 2 colour web RGB (.jpg)

Do not create other versions of the logo.
Only use reversed logo on solid/dense colour.
Do not use over images.

Clear space and minimum size

The logo must always be positioned within a clear space to maintain its visual identity and integrity. The minimum clear space around all sides of the logo should be the same as the distance between the base of the ellipse and the base of the type. The Seniors Card logo should not appear any smaller than 17 mm wide.



ANNEXURE B
Eligibility Requirements

A business ("Applicant") may be eligible to participate in the Seniors Card Program if the Applicant's application to participate meets the following requirements:

1. the Applicant must be a legal entity (eg, a company, incorporated association or person);
2. the Applicant must provide an offer that is specifically for Seniors Card holders, provides genuine savings to seniors, gives clear statements about savings for cash and credit transactions and is otherwise acceptable to the State or Territory;
3. the Applicant and the business must be considered by the State or Territory to be appropriate to be part of the Seniors Card Program, having regard to the nature and conduct of the Applicant and the business. In considering whether the Applicant and business are appropriate, the State or Territory may, without in any way limiting its discretion, take into account:
 - a. any past conduct of the Applicant or the business in relation to the Seniors Card Program;
 - b. information provided by government agencies regarding the Applicant or the business; and
 - c. whether the Applicant is bankrupt or insolvent or has entered into voluntary administration, made any arrangement with its creditors or taken advantage of any statute for the relief of insolvent debtors.

ANNEXURE C
Minimum Terms and Conditions

A business participating in the Seniors Card Program ("Participating Business") must:

1. display 'Seniors Card Welcome Here' signage in a prominent place in all business outlets that participate in the Offer;
2. only use a Seniors Card logo in accordance with the Seniors Card Brand Guide;
3. ensure that products or services provided are sold in accordance with all relevant consumer laws, are free from defect in materials and workmanship and will be fit for the purpose for which the products or services are purchased by the consumer;
4. not represent that the Seniors Card Program or the relevant State or Territory is the provider or supplier of the Offer; and
5. authorise the relevant State or Territory to make enquiries and exchange information with government agencies and other authorities regarding the Participating Business' trading activities and any other matters relevant to the Participating Business' participation in the Seniors Card Program;