

PHARMACY AGREEMENT

This PHARMACY AGREEMENT (the "**Agreement**"), is made and entered into as of _____, 2018 (the "**Effective Date**") by and between Tilray Australia New Zealand Pty Ltd, an Australian corporation ("**Tilray**"), and XXXX Pharmacy, an Australian corporation (the "**Retailer**").

BACKGROUND

WHEREAS Tilray is in the business of manufacturing and providing cannabis and related products for medical use.

AND WHEREAS Retailer is a pharmacy to distribute certain cannabis products for medical use in New South Wales (the "**Territory**").

AND WHEREAS Retailer wishes to distribute Tilray products directly to qualified patients in the Territory in accordance with applicable laws.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual covenants, terms, and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. Definitions

Applicable Laws means all laws, statutes, regulations, edicts, by-laws, mandatory codes of conduct, standards and guidelines, whether local, national, international or otherwise existing from time to time to which that party is subject and which is relevant to that party's rights or obligations, including, without limitation, the *Competition and Consumer Act 2010* (Cth), *Therapeutic Goods Act 1989* (Cth), *Therapeutic Goods Advertising Code 2015* (Cth) and the *Privacy Act 1988* (Cth).

Confidential Information means all confidential information of a party or its related bodies corporate including, but not limited to: (a) the existence, and terms, of the Agreement; and (b) any information or data that a party (**Recipient**) is given or which comes to the Recipient's knowledge during the course of the supply of the Products that: (i) the Recipient is told is confidential; or (ii) a reasonable person would expect to be confidential from its nature and content, but does not include: (d) information which, at the time of disclosure, was already in the public domain; (e) information which, subsequent to disclosure, enters the public domain except through breach of the Agreement or through breach of any other obligation of confidence; or (f) information which is required to be disclosed by law.

Durable Life means the anticipated amount of time that an unopened Product, when stored under appropriate conditions, will retain its freshness, taste, value or any other qualities identified by Tilray.

Durable Life Date means, for all medical cannabis Products, the earlier of the "best before" date printed on Product packaging, if applicable, or another stability period reasonably established by Tilray.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, Marks, trade secret, eligible layout or similar right whether at common law or conferred by statute, for the full period of the rights and all renewals and extensions.

Marks means all trade names, trademarks, service marks, logos, designs, identifications, decals, artwork and other symbols and devices relating to Tilray or its products or services.

Moral Rights has the meaning given to that term in the *Copyright Act 1968* (Cth).

Qualified Patient/s means those patients who are (a) listed on or approved to receive the Products under the Special Access Scheme, Authorized Prescriber scheme, or any equivalent federal scheme, and (b) permitted to receive the Products under any applicable state/territory rules.

Tilray IP means Tilray's exclusive right, title and interest in and to all Intellectual Property Rights pertaining to the Products, including without limitation, Product specifications, whether patentable or not.

B. RETAILER OBLIGATIONS

1. Retailer must provide Tilray with a valid Australian Business Number and applicable documentation under the Special Access Scheme, Authorised Prescriber authorization, or equivalent scheme under federal legislation ("**Federal Authorization**"), as well as state/territory approval if required.
2. Retailer shall remain fully responsible for charging and remitting all sales, excise and other applicable taxes on Retailer's sale of the Products as required by Applicable Laws.
3. Retailer will make Products and any associated documentation and instructions for use available only to Qualified Patients who provide a valid medical authorization and only in accordance with any direction or instruction provided by Tilray. For the avoidance of doubt, Retailer must not supply Products or any associated materials to any person or organisation that is not a Qualified Patient or contrary to any instruction or direction provided by Tilray.

4. Retailer shall at all times comply with all Applicable Laws relating to this Agreement and the Products, including, without limitation, obtaining and maintaining all requisite licences and permits to resell the Products to Qualified Patients directly or through registered mail (as applicable), and complying with instructions provided by the relevant prescribing doctor under the applicable Federal Authorization, as well as any applicable state/territory rules.
5. Retailer agrees to make best efforts to obtain and sell all Products prior to the expiration of their Durable Life. If, despite the best efforts of Retailer, certain Products that are not sold before the Durable Life Date, such Products shall be returned to Tilray or discarded pursuant to Tilray's instructions, and Tilray shall issue a credit to Retailer for the retail value of such Products.
6. Retailer agrees to adhere to all storage instructions provided by Tilray, but in any event, to employ storage consistent with industry best practices and in accordance with any Applicable Laws.
7. Retailer agrees to give prompt written notice to Tilray of any consumer or safety complaints or issues that may arise from or are related to this Agreement and/or the Products, and shall, in every reasonable manner, deal appropriately with such complaints including in accordance with any instructions or directions provided by Tilray.
8. Tilray reserves the right to require that Retailer should immediately cease supply of the Products and/or change or discontinue use of any Marks for any reason, in Tilray's sole discretion and Retailer must comply with such direction.
9. During the term of this Agreement and for a period of two (2) years thereafter, Retailer shall, at its own expense, maintain and carry insurance with commercially reasonable liability limits, and in any event no less than the types and amounts required by Applicable Laws. Upon Tilray's request, Retailer shall provide Tilray with a certificate of insurance from Retailer's insurer evidencing the insurance coverage. Except where prohibited by law, Retailer shall require its insurer to waive all rights of subrogation against Tilray's insurers and Tilray.
10. Retailer must obtain from each Qualified Patient a signed waiver, disclaimer or other documentation required by Tilray for the benefit of Tilray, its parent and related companies, on request by Tilray.
11. During the Term, Retailer will not distribute other medical cannabis products under any other brand or cannabis goods from any other supplier, and will refrain from providing or facilitating market education on any company other than Tilray and its affiliates, and any product other than the Products.

B. INTELLECTUAL PROPERTY

1. Retailer acknowledges and agrees that nothing in this Agreement gives the Retailer any right or entitlement to ownership of the Tilray IP, and that, except to the extent strictly necessary for it to perform its obligations under this Agreement, it must not modify, adapt or use any of the Tilray IP. Retailer will not have any legal or equitable claim or right to any part of the Tilray IP, except as provided for in this Agreement.
2. Retailer shall not at any time during or after the term of this Agreement take any act impairing the Tilray IP or do any thing that may otherwise adversely affect the Tilray IP, including without limitation:
 - a. causing to create or purporting to create any Intellectual Property Rights based on developments or derivations from the Products;
 - b. infringing, or permitting or authorising the infringement of, the Tilray IP;
 - c. infringing, or permitting or authorising the infringement of any Moral Rights related to the Products or the Tilray IP; or
 - d. challenging, disputing or otherwise contesting, or assisting others in challenging, disputing, or otherwise contesting the validity, enforceability or ownership by Tilray of the Tilray IP.
3. Retailer shall promptly notify Tilray of any infringement or suspected infringement of the Tilray IP of which it becomes aware. Retailer shall promptly notify Tilray of any claims or objections that the Tilray IP will infringe the proprietary rights of another person, and shall provide all reasonable assistance in connection with the defence of any such third party claim or objection.
4. All Marks shall remain the sole property of Tilray or its licensor(s).
5. Tilray hereby grants to Retailer a non-exclusive, limited, non-sublicenseable and non-transferable right to use the Marks solely for distributing, and selling the Products.
6. Except as expressly provided herein, Retailer is not licensed or otherwise authorised to use the Products or the Marks in any way, and no use of the Products or Marks may be undertaken by Retailer without prior written consent by Tilray. Retailer agrees that it will not sell any products that infringe the Marks, and further agrees that it will not sell or display any product that attempts to “knock off,” imitate, or is otherwise similar enough to the Products or the Marks that there is likelihood of confusion in the consumer’s mind.

C. CONFIDENTIALITY AND PRIVACY

1. Each party must: (a) protect and preserve the confidential nature and secrecy of the other party's Confidential Information; (b) not disclose the other party's Confidential Information without that party's prior written consent; and (c) not use the Confidential Information of the other party for any reason or purpose except as directed by Tilray.
2. Disclosure by either party will only be made where it is needed for the purpose of discharging an obligation under this Agreement or where required by law, any governmental or regulatory authority or by a court of competent jurisdiction.

D. ORDERS, RETURNS, PRICES, PAYMENT, DISTRIBUTION

1. The prices for the Products will be those listed on a quotation or price list supplied by Tilray. Prices shall exclude GST. Retailer shall submit orders for the Products in a format requested by Tilray ("**Purchase Order**"). Prior to Tilray's acceptance of a Purchase Order, Tilray reserves the exclusive right to change the prices or availability of the Products at any time, in its sole discretion.
2. After submission, all Purchase Orders are subject to acceptance and confirmation of inventory by Tilray, who may accept and fill orders in its sole discretion. Retailer may cancel a Purchase Order at any time prior to delivery.
3. Retailer must immediately inspect all Products received and give written notice of any defect or shortage to Tilray within two (2) business days. Failure to inform Tilray will be considered acceptance of shipment by Retailer. Any alleged defective Products are subject to Tilray's inspection and confirmation of defect in its discretion. Retailer shall allow Tilray access or use its best endeavours to procure such access at any time to Retailer's premises or Products for this purpose.
4. Other Product returns will be evaluated and approved by Tilray, in its discretion and on a case by case basis and subject to any Applicable Laws which cannot be excluded. Any approved returns will be given a credit to be used against future orders.
5. Retailer will store the Products in accordance with Tilray's instructions and with Applicable Laws. Tilray shall provide Retailer with a refrigerator if certain Products require refrigeration.
6. Title to and property in the Products shall transfer to Retailer upon payment in full of the applicable purchase price.
7. Risk of loss shall transfer to Retailer upon delivery of the Products.

8. Subject to any Applicable Laws which cannot be excluded, Tilray shall have no obligation to replace or refund any non-defective items. Courtesy returns for non-defective items, if any, are subject to a restocking fee.

9. All invoices are due according to approved payment terms in an applicable Purchase Order, which unless otherwise specified, shall be Net 30 days from delivery to Retailer. Any payments due hereunder which are not paid on the date such payments are due shall bear interest at a rate equivalent to the lesser of 1.5% per month and the maximum allowable legal rate, calculated on the number of days such payment is delinquent. This section shall not limit any other remedies available to Tilray.

10. Retailer shall distribute the Products to Qualified Patients through registered mail, in compliance with Applicable Laws. For clarity, Retailer is solely responsible for ensuring that the Product(s) are dispensed and distributed in compliance with applicable law, including any requirements applicable to Schedule 4 and Schedule 8 medicines.

11. Retailer may charge Qualified Patients a mark-up of up to 10% of the wholesale value of Product(s) dispensed, as well as a dispensing fee of \$7.29 and an Administration, Handling & Infrastructure fee of \$4.04 per transaction . Any other expenses incurred by Retailer in distributing Products to Qualified Patients may be passed through to Qualified Patients at cost.

E. WARRANTY; INDEMNIFICATION; DISCLAIMER; LIMITATION OF LIABILITY

1. Tilray warrants that all Products supplied hereunder shall conform to the product specifications as described in the applicable Purchase Order.

2. Retailer warrants that:

(a) it will supply the Products only to Qualified Patients and in accordance with Applicable Laws;

(b) it has all permits and licences necessary under any Applicable Laws for the performance of its obligations under this Agreement

3. Retailer agrees to indemnify, defend and hold harmless Tilray, its parent and related companies, and all of their respective directors, officers, employees, agents and representatives, with respect to any claim, loss, expense (including reasonable legal fees) or liability, arising out of or resulting from breach by Retailer of any representation, warranty or obligation under this Agreement or the negligence or willful misconduct of Retailer, its employees or agents, heirs, successors, and assigns; provided, however, such indemnification shall not include any claims arising from injury or damage to the extent caused by the willful misconduct or gross negligence of Tilray.

4. EXCEPT AS OTHERWISE SPECIFICALLY WARRANTED HEREIN, AND SUBJECT TO ANY APPLICABLE LAWS WHICH CANNOT BE EXCLUDED, TILRAY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

5. RETAILER, ON BEHALF OF ITSELF AND ITS HEIRS, SUCCESSORS, AND ASSIGNS, HEREBY AGREES TO HOLD HARMLESS TILRAY, ITS OFFICERS, AGENTS AND REPRESENTATIVES, FROM ANY AND ALL CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS, ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS OR RETAILER'S SALE OF THE PRODUCTS.

6. IN NO EVENT SHALL TILRAY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY RETAILER OR COULD HAVE BEEN REASONABLY FORESEEN BY RETAILER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

7. IN NO EVENT SHALL TILRAY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO TILRAY FOR THE PRODUCTS SOLD HEREUNDER.

F. TERM AND TERMINATION:

1. This Agreement shall be effective as of the Effective Date and shall continue for a period of three (3) years unless earlier terminated as set forth below.
2. Either party may terminate the Agreement without cause at any time upon ninety (90) days written notice to the other party. Tilray may terminate this Agreement for cause immediately upon notice to Retailer (a) in the event of a breach by Retailer of any representation, warranty or obligation under this Agreement or the negligence or willful misconduct of Retailer, its employees or agents; (b) in the event of a change in laws or regulations, or a communication from a regulatory authority, which renders it impossible or impracticable for Tilray to continue supplying medical cannabis in the Territory; or (c) if Retailer becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due (each, a termination for "Cause").

3. Upon expiration or termination of this Agreement for any reason, Retailer shall immediately cease any use or display of the Marks. Upon termination of this Agreement by Tilray without cause, Retailer shall be entitled to thirty (30) days' sell-off to Qualified Patients of any remaining Products currently in its possession or under an open Purchase Order. Upon termination of this Agreement by Retailer with or without cause, or by Tilray with cause, Retailer shall immediately cease any sale or display of the Products, and all remaining payments owing hereunder shall become immediately due and payable.

4. Sections B (Intellectual Property), C (Confidentiality and Privacy), D (Indemnification; Disclaimer; Limitation of Liability), E (Term and Termination) and F (Miscellaneous) shall survive expiration or termination of this Agreement.

5. Termination of the Agreement for any reason will be without prejudice to the rights and remedies of either party: (a) accrued up to and including the date of such termination; or (b) that survive termination.

G. MISCELLANEOUS:

1. Retailer must not assign, sublicense, novate or otherwise transfer its rights and obligations under the Agreement to any third party, except with the prior written consent of Tilray. Any such assignment, sublicense or transfer in contravention of this provision will be null and void. This Agreement shall inure to the benefit and be binding upon the parties hereto, and their respective successors and permitted assigns.

2. No alteration or variation of the Agreement will be binding on Tilray unless in writing and executed by Tilray and Retailer.

3. For clarity, nothing in this Agreement precludes Tilray from distributing its products through any other pharmacy in the Territory.

4. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employer/employee relationship. Retailer expressly acknowledges that it is an independent contractor of Tilray. Neither party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

5. TILRAY DOES NOT OFFER MEDICAL ADVICE. ANY INFORMATION ACCESSED THROUGH TILRAY'S WEBSITE, SOCIAL MEDIA PAGES, OR INFORMATIONAL MATERIALS IS FOR INFORMATIONAL PURPOSES ONLY, IS NOT INTENDED TO BE A SUBSTITUTE FOR MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT, AND IS NOT INTENDED TO COVER ALL POSSIBLE USES, DIRECTIONS, PRECAUTIONS, OR ADVERSE EFFECTS. RETAILER SHOULD ALWAYS ADVISE ITS CUSTOMERS TO CONSULT A QUALIFIED HEALTH CARE PROVIDER IF THEY HAVE ANY QUESTIONS ABOUT A MEDICAL CONDITION. TO THE MAXIMUM EXTENT PERMITTED BY

LAW TILRAY WILL NOT BE LIABLE FOR ANY LOSS, CLAIM OR DAMAGE ARISING FROM, OR IN CONNECTION WITH, RELIANCE ON SUCH INFORMATION.

6. This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the local laws of Australia, without regard to its conflict of law rules. Unless otherwise agreed upon in writing by the parties, any legal action or proceeding between Tilray and Retailer for any purpose concerning this Agreement or the parties' obligations hereunder shall be subject to the exclusive jurisdiction of and venue in any competent court within the State of New South Wales and the parties hereby consent to the personal and exclusive jurisdiction and venue of such courts. To the fullest extent permitted by law, each party hereby waives any right to a trial by jury in connection with any action hereunder.

7. If a dispute arises, each party agrees that it will endeavour to resolve the dispute in good faith and will not commence any legal proceedings or take any other action in relation to such dispute without first attempting to resolve it.

8. In the event that any provision of this Agreement or any obligation or grant of rights by either party is found to be invalid or unenforceable pursuant to a judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

9. Any waiver or failure to enforce any provision of this Agreement on one occasion shall not constitute a waiver of any other provision or of such provision on any other occasion.

10. The prevailing party in a suit, action or proceeding between the parties relating to this Agreement will be entitled to recover its reasonable and documented legal fees and court costs, in addition to any other relief that such party may be awarded.

11. All notices pursuant to the Agreement shall be in writing, addressed as set forth below (or to such other address that may be designated by the receiving party in accordance with this Section):

To Tilray:

Tilray Australia New Zealand Pty. Ltd.
Attn: Legal
Level 36, 1 Macquarie Place, Sydney, NSW 2000.

With copy by email to: legal@tilray.ca

To Retailer:

XXXX
Attn: Legal
Pharmacy in WA

Address: XXXX
Phone: XXXXXXXXXXX

TILRAY

RETAILER

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____