

## DEED

### CONFIDENTIALITY UNDERTAKINGS – EIGHTH COMMUNITY PHARMACY AGREEMENT

THIS DEED is made on .....18th..... day of .....August..... 2023 between:

#### THE PARTIES:

**The Commonwealth of Australia**, as represented by the Department of Health and Aged Care (**the Commonwealth**) ABN 83 605 426 759

AND

**Chemist Warehouse Group (the Organisation)** ABN 25 110 869 059

#### RECITALS

- A. The Commonwealth has invited the Organisation to participate in bilateral discussions regarding the development of an Eighth Community Pharmacy Agreement (**the discussions**); and
- B. During the course of the discussions, the parties may share Confidential Information.
- C. The parties enter into this deed

#### NOW THIS DEED WITNESSES AS FOLLOWS:

##### 1. INTERPRETATION

**Authorised Person** means a person that is subject to notification and approval under clause 2.4.

**Commonwealth's Representative** means Deputy Secretary, Health Resourcing.

**Confidential Information** means any discussions or information relating to the development of the Eighth Community Pharmacy Agreement that passes between the parties, including information:

- (a) which is by its nature confidential;
- (b) which is designated by the disclosing party as confidential; or
- (c) the recipient knows or ought to know is confidential

but does not include information which:

- (d) is or becomes public knowledge, other than by breach of this deed of any other confidentiality obligation;
- (e) is in possession of a party that has been received from the other party not received under a condition of confidence.

**Department** means the Department of Health and Aged Care.

**Organisation's Representative** means Damien Gance.

## **2. UNDERTAKINGS OF NON-DISCLOSURE**

2.1 the parties acknowledge and agree that improper use or disclosure of Confidential Information can damage the parties and so, subject to clauses 2.2 and 2.3, will:

- (a) ensure Confidential Information is not directly or indirectly disclosed or divulged to others, except as permitted by this deed;
- (b) not reproduce in any way any material containing, or referring to, any Confidential Information nor allow any other person to use or reproduce such material;
- (c) use the Confidential Information except in accordance with clause 3;
- (d) take all reasonable measures to ensure that any confidential information is protected against loss, unauthorised access, use, modification, disclosure or other misuse;
- (e) promptly notify the other party if the party suspects or becomes aware of any unauthorised access to, reproduction of, use of confidential information; and
- (f) promptly notify the other party if the party is required by law to disclose any Confidential Information.

2.2 A party may disclose Confidential Information:

- (a) in the case of the Organisation, to an Authorised Person;
- (b) in the case of the Commonwealth, to professional advisers and stakeholders who have an identifiable need to know such information in connection with the discussions and who are subject to an equivalent obligation of confidence;
- (c) if required by statute of court order; or

- (d) if the party is the Organisation, with the prior written agreement of the Commonwealth's Representative.

2.3 The Organisation acknowledges that the Department may disclose Confidential Information pursuant to a request from Parliament, or to others within the Commonwealth of Australia or pursuant to another binding obligation of the Department.

2.4 Before the disclosure by the Commonwealth to the Organisation of any Confidential Information, the Organisation must provide a list of the persons who it wishes to be Authorised Persons for the purpose of this deed. Authorised Persons may be individuals or categories of personnel. The Commonwealth will promptly advise the Organisation of the persons who will be Authorised Persons for the purposes of this deed.

### **3. RESTRICTION ON USE**

The parties agree that Confidential Information may only be used for the purposes of the discussions and in the case of the Commonwealth implementing any policy initiative arising from the discussions.

### **4. PROCEEDINGS**

The parties acknowledge legal proceedings may commence if there is an actual, threatened or suspected breach of this deed, including the obtaining of an injunction to restrain such breach.

### **5. LIMITATIONS REGARDING INFORMATION**

Each party agrees to use reasonable efforts to ensure that Confidential Information that it discloses to the other is accurate, complete and up to date. However, neither party:

- (a) represents or warrants that Confidential Information disclosed under this deed will be accurate, complete and up to date; or
- (b) will be liable to the other party in connection with any inaccuracy, incompleteness or change in any Confidential Information disclosed under this deed.

### **6. SURVIVAL OF UNDERTAKINGS**

The parties acknowledge the obligations with respect to confidential information contained in this deed will survive the termination or expiry of this deed and continue for as long as the information remains confidential.

**7. GOVERNING LAW**

The parties agree the deed is governed by and will be construed according to the laws of the Australian Capital Territory and agree to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in relation to all matters arising under, or in relation to, this deed.

**8. COSTS**

Each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

**9. EXPIRY**

Unless otherwise agreed between the parties, this deed will cease effect as from 1 June 2024.

**Executed as a deed**

**SIGNED SEALED AND DELIVERED**

<p>.....</p> <p><b>Mr Damien Gance</b></p> <p><b>Director</b></p> <p><b>Chemist Warehouse Group</b></p> <p>.....</p> <p><b>Witness</b></p>	<p>.....</p> <p><b>Daniel McCabe</b></p> <p><b>Acting Deputy Secretary</b></p> <p><b>Health Resourcing</b></p> <p><b>Department of Health and Aged Care</b></p> <p>.....</p> <p><b>Witness</b></p>
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