

DEED

CONFIDENTIALITY UNDERTAKINGS – EIGHTH COMMUNITY PHARMACY AGREEMENT

THIS DEED is made on29..... 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

The Pharmacy Guild of Australia (the Guild) ABN 84 519 669 143

RECITALS

- A. On 11 April 2023, the parties entered into discussion protocols regarding the development of an Eighth Community Pharmacy Agreement (**the discussions**). A copy of the discussion protocols is annexed to this deed (**Discussion Protocols**).
- B. The Discussion Protocols remain on foot. This deed is supplemental to and amends the Discussion Protocols.
- C. The parties consider that it is necessary to enter into this deed in order to regulate the sharing and management of Confidential Information between the parties during the course of the discussions.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. INTERPRETATION

Authorised Person means a person that is subject to notification and approval under clause 3.4.

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; or 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.

Guild's Representative means the Executive Director of the Guild.

Representative means either the Commonwealth's Representative or the Guild's Representative.

2. DISCUSSION PROTOCOLS

The parties agree that the Discussion Protocols remain on foot and are unamended, except as expressly provided in this deed.

3. UNDERTAKINGS OF NON-DISCLOSURE

3.1 The parties acknowledge and agree that improper use or disclosure of Confidential Information can damage the parties and so, subject to clauses 3.2 and 3.3, 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) not use the Confidential Information except in accordance with clause 4;
- (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, or use of confidential information; and
- (f) promptly notify the other party if the party is required by law to disclose any Confidential Information.

- 3.2 A party may disclose Confidential Information:
- (a) to an Authorised Person;
 - (b) if required by statute of court order; or
 - (c) with the prior written agreement of:
 - (i) if the Guild is making the disclosure, the Commonwealth's Representative; or
 - (ii) if the Commonwealth is making the disclosure, the Guild's Representative.
- 3.3 The Guild 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.
- 3.4 Before the disclosure by a party (**Disclosing Party**) to the other party (**Recipient**) of any of the Disclosing Party's Confidential Information, the Recipient 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 Disclosing Party's Representative will promptly advise the Recipient of the persons who will be Authorised Persons for the purposes of this deed. Neither party will unreasonably withhold or delay the approval of an addition of any individual or category of personnel as an Authorised Person.

4. RESTRICTION ON USE

The parties agree that Confidential Information may only be used for the purposes of the discussions and implementing any agreement arising from the discussions.

5. 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.

6. 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.

7. 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.

8. 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.

9. COSTS

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

10. EXPIRY

Unless otherwise agreed between the parties, this deed will cease effect as from 30 June 2024.

Executed as a deed

SIGNED SEALED AND DELIVERED

<p>.....</p> <p>Suzanne Greenwood Executive Director Pharmacy Guild of Australia</p> <p>Witness</p>	<p>...</p> <p>Penny Shakespeare Deputy Secretary Health Resourcing Department of Health and Aged Care</p> <p>...</p> <p>Witness</p>
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Annexure

The Discussion Protocols are annexed.

DISCUSSION PROTOCOLS

EIGHTH COMMUNITY PHARMACY AGREEMENT

The following protocols apply to developing and discussing the Eighth Community Pharmacy Agreement in 2023 (Discussions and Negotiations) for the intended term of 1 July 2023 to 30 June 2030 proposed by the Pharmacy Guild of Australia (Guild).

1. The Parties to these Protocols (Parties) will keep the content of all Discussions and Negotiations and all information shared during Discussions and Negotiations strictly confidential. Information shared between Parties is only to be used in the context of the Discussions and Negotiations and not disclosed to any other person, except that:
 - a. a Party may disclose such information to their professional advisers who have an identifiable need to know such information and who are subject to an equivalent obligation of confidence;
 - b. the Department of Health and Aged Care (Department) may disclose such information to the Government, pursuant to a request from Parliament and to others within the Commonwealth of Australia; and
 - c. a Party may otherwise disclose such information to a third party with the prior written agreement of the other Party.
2. The obligation with respect to confidentiality under paragraph 1 will continue to bind the Parties even if the Discussions and Negotiations do not result in the agreement of an Eighth Community Pharmacy Agreement in 2023.
3. Discussions and Negotiations between the Parties are to be undertaken in a cordial and cooperative manner to bring about better health outcomes for all Australians and ethically and in good faith. All Discussions and Negotiations will be undertaken in a mutually respectful manner and genuine attempts made by all Parties to resolve any matters arising.
4. No voice or other recording of meetings on any electronic medium will be undertaken.
5. Discussions and Negotiations meetings will be scheduled in advance and agendas (and any papers) shared at least 24 hours in advance of a meeting.
6. Meeting outcomes will be shared, where possible, by both Parties and confirmed within 72 hours following a meeting.
7. All relevant information will be shared between the Parties within a timeframe agreed between the parties.
8. Should the Parties come to an area of dispute in relation to conformance with these Protocols, this will be referred to the Deputy Secretary (*as Identified*) of the Department and the Executive Director of the Guild for resolution.

By signing below, the representatives of the Department and the Guild commit to abide by these Protocols, including committing all representatives of their organisations.

These Protocols are signed by the Parties as a deed

Penny Shakespeare
Deputy Secretary

Representative

SUZANNE GREENWOOD

Position

EXECUTIVE DIRECTOR

Signature

Commonwealth of Australia represented by
Department of Health and Aged Care

The Pharmacy Guild of Australia

Kathleen Flanigan

Witness name

CHERYL BAKER

Signature

11/04/2023

Date

11-4-2023