
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended November 30, 2023

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number: 001-38594

TILRAY BRANDS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
265 Talbot Street West,
Leamington, ON
(Address of principal executive offices)

82-4310622
(I.R.S. Employer
Identification No.)

N8H 5L4
(Zip Code)

Registrant's telephone number, including area code: (844) 845-7291

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	TLRY	The Nasdaq Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

As of January 5, 2024, the registrant had 742,725,148 shares of Common Stock, \$0.0001 par value per share issued and outstanding.

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Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q for the quarter ended November 30, 2023 (the "Form 10-Q") contains forward-looking statements under Canadian securities laws and within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that are intended to be subject to the "safe harbor" created by those sections and other applicable laws. Such statements involve risks, uncertainties and assumptions. If the risks or uncertainties ever materialize or the assumptions prove incorrect, our results may differ materially from those expressed or implied by such forward-looking statements under the Canadian securities laws and within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that are intended to be subject to the "safe harbor" created by those sections and other applicable laws. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "might," "plan," "project," "will," "would," "seek," or "should," or the negative or plural of these words or similar expressions or variations are intended to identify such forward-looking statements. Forward-looking statements include, among other things, our beliefs or expectations relating to our future performance, results of operations and financial condition; our intentions or expectations regarding our cost savings initiatives; our strategic initiatives, business strategy, supply chain, brand portfolio, product performance and expansion efforts; current or future macroeconomic trends; and our expectations regarding regulatory developments; future corporate acquisitions and strategic transactions; and our synergies, cash savings and efficiencies anticipated from the integration of our completed acquisitions and strategic transactions.

Risks and uncertainties that may cause actual results to differ materially from forward-looking statements include, but are not limited to, those identified in this Form 10-Q and other risks and matters described in our most recent Annual Report on Form 10-K for the fiscal year ended May 31, 2023 as well as our other filings made from time to time with the U.S. Securities and Exchange Commission and in our Canadian securities filings.

Forward looking statements are based on information available to us as of the date of this Form 10-Q and, while we believe that information provides a reasonable basis for these statements, these statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements. You should not rely upon forward-looking statements or forward-looking information as predictions of future events.

We undertake no obligation to update forward-looking statements to reflect actual results or changes in assumptions or circumstances, except as required by applicable law.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements (Unaudited).

TILRAY BRANDS, INC.
Consolidated Statements of Financial Position
(in thousands of United States dollars, unaudited)

	November 30, 2023	May 31, 2023
Assets		
Current assets		
Cash and cash equivalents	\$ 143,373	\$ 206,632
Restricted cash	1,576	—
Marketable securities	116,418	241,897
Accounts receivable, net	90,596	86,227
Inventory	252,702	200,551
Prepays and other current assets	36,626	37,722
Assets held for sale	736	—
Total current assets	642,027	773,029
Capital assets	615,087	429,667
Operating lease, right-of-use assets	13,551	5,941
Intangible assets	953,419	973,785
Goodwill	2,009,714	2,008,843
Interest in equity investees	4,638	4,576
Long-term investments	8,034	7,795
Convertible notes receivable	74,681	103,401
Other assets	9,406	222
Total assets	\$ 4,330,557	\$ 4,307,259
Liabilities		
Current liabilities		
Bank indebtedness	\$ 20,181	\$ 23,381
Accounts payable and accrued liabilities	216,898	190,682
Contingent consideration	7,704	16,218
Warrant liability	3,768	1,817
Current portion of lease liabilities	5,043	2,423
Current portion of long-term debt	12,993	24,080
Current portion of convertible debentures payable	128,399	174,378
Total current liabilities	394,986	432,979
Long - term liabilities		
Contingent consideration	13,000	10,889
Lease liabilities	69,974	7,936
Long-term debt	169,099	136,889
Convertible debentures payable	123,691	221,044
Deferred tax liabilities	166,454	167,364
Other liabilities	—	215
Total liabilities	937,204	977,316
Commitments and contingencies (refer to Note 19)		
Stockholders' equity		
Common stock (\$0.0001 par value; 1,198,000,000 common shares authorized; 732,907,552 and 656,655,455 common shares issued and outstanding, respectively)	73	66
Preferred shares (\$0.0001 par value; 10,000,000 preferred shares authorized; nil and nil preferred shares issued and outstanding, respectively)	—	—
Additional paid-in capital	5,942,671	5,777,743
Accumulated other comprehensive loss	(38,367)	(46,610)
Accumulated Deficit	(2,536,040)	(2,415,507)
Total Tilray Brands, Inc. stockholders' equity	3,368,337	3,315,692
Non-controlling interests	25,016	14,251
Total stockholders' equity	3,393,353	3,329,943
Total liabilities and stockholders' equity	\$ 4,330,557	\$ 4,307,259

The accompanying notes are an integral part of these condensed interim consolidated financial statements.

TILRAY BRANDS, INC.
Consolidated Statements of Loss and Comprehensive Loss
(in thousands of United States dollars, except for share and per share data, unaudited)

	Three months ended November 30,		Six months ended November 30,	
	2023	2022	2023	2022
Net revenue	\$ 193,771	\$ 144,136	\$ 370,720	\$ 297,347
Cost of goods sold	146,362	101,254	279,115	205,851
Gross profit	47,409	42,882	91,605	91,496
Operating expenses:				
General and administrative	43,313	37,878	83,829	78,386
Selling	7,583	9,669	14,442	19,340
Amortization	21,917	23,995	44,142	48,354
Marketing and promotion	9,208	8,535	17,743	15,783
Research and development	56	165	135	331
Change in fair value of contingent consideration	300	—	(10,807)	211
Litigation costs, net of recoveries	3,042	2,815	5,076	3,260
Restructuring costs	2,655	8,064	3,570	8,064
Transaction (income) costs	1,094	3,552	9,596	(9,264)
Total operating expenses	89,168	94,673	167,726	164,465
Operating loss	(41,759)	(51,791)	(76,121)	(72,969)
Interest expense, net	(8,625)	(3,107)	(18,460)	(7,520)
Non-operating income (expense), net	821	(18,450)	(3,581)	(51,442)
Loss before income taxes	(49,563)	(73,348)	(98,162)	(131,931)
Income tax (recovery) expense	(3,380)	(11,713)	3,884	(4,502)
Net loss	\$ (46,183)	\$ (61,635)	\$ (102,046)	\$ (127,429)
Total net income (loss) attributable to:				
Stockholders of Tilray Brands, Inc.	(49,008)	(69,463)	(120,533)	(142,945)
Non-controlling interests	2,825	7,828	18,487	15,516
Other comprehensive gain (loss), net of tax				
Foreign currency translation gain (loss)	5,203	(24,597)	8,412	(84,889)
Unrealized gain (loss) on convertible notes receivable	—	(17,643)	—	(20,168)
Total other comprehensive loss, net of tax	5,203	(42,240)	8,412	(105,057)
Comprehensive loss	\$ (40,980)	\$ (103,875)	\$ (93,634)	\$ (232,486)
Total comprehensive income (loss) attributable to:				
Stockholders of Tilray Brands, Inc.	(43,814)	(111,186)	(112,290)	(243,636)
Non-controlling interests	2,834	7,311	18,656	11,150
Weighted average number of common shares - basic	730,769,132	611,711,377	710,877,859	589,112,358
Weighted average number of common shares - diluted	730,769,132	611,711,377	710,877,859	589,112,358
Net loss per share - basic	\$ (0.07)	\$ (0.11)	\$ (0.17)	\$ (0.24)
Net loss per share - diluted	\$ (0.07)	\$ (0.11)	\$ (0.17)	\$ (0.24)

The accompanying notes are an integral part of these condensed interim consolidated financial statements.

TILRAY BRANDS, INC.
Consolidated Statements of Stockholders' Equity
(in thousands of United States dollars, except for share data, unaudited)

	Number of common shares	Common stock	Additional paid-in capital	Accumulated other comprehensive loss	Accumulated Deficit	Non- controlling interests	Total
Balance at May 31, 2022	532,674,887	\$ 53	\$ 5,382,367	\$ (20,764)	\$ (962,851)	\$ 42,561	\$ 4,441,366
Share issuance - equity financing	32,481,149	3	129,590	—	—	—	129,593
Shares issued to purchase HEXO convertible note receivable	33,314,412	3	107,269	—	—	—	107,272
HTI Convertible Note - conversion feature	—	—	9,055	—	—	—	9,055
Share issuance - Double Diamond Holdings dividend settlement	1,529,821	1	5,063	—	—	—	5,064
Share issuance - options exercised	3,777	—	—	—	—	—	—
Share issuance - RSUs exercised	950,893	—	—	—	—	—	—
Shares effectively repurchased for employee withholding tax	—	—	(1,189)	—	—	—	(1,189)
Stock-based compensation	—	—	9,193	—	—	—	9,193
Dividends declared to non-controlling interests	—	—	—	—	—	(8,561)	(8,561)
Comprehensive income (loss) for the period	—	—	—	(58,968)	(73,482)	3,839	(128,611)
Balance at August 31, 2022	600,954,939	60	5,641,348	(79,732)	(1,036,333)	37,839	4,563,182
Shares issued to purchase Montauk	1,708,521	—	6,422	—	—	—	6,422
Share issuance - options exercised	4,183	—	—	—	—	—	—
Share issuance - RSUs exercised	237,611	—	—	—	—	—	—
Stock-based compensation	—	—	10,943	—	—	—	10,943
Share issuance - Double Diamond Holdings note	10,276,305	1	38,753	—	—	(32,280)	6,474
Comprehensive income (loss) for the period	—	—	—	(41,723)	(69,463)	7,311	(103,875)
Balance at November 30, 2022	613,181,559	61	5,697,466	(121,455)	(1,105,796)	12,870	4,483,146
Balance at May 31, 2023	656,655,455	66	5,777,743	(46,610)	(2,415,507)	14,251	3,329,943
Share issuance - HEXO acquisition	39,705,962	4	65,158	—	—	—	65,162
Share issuance - settlement of contractual change of control severance incurred from HEXO acquisition	865,426	—	1,500	—	—	—	1,500
Share issuance - Double Diamond Holdings dividend settlement	5,004,735	—	8,146	—	—	—	8,146
Share issuance - HTI convertible note	17,148,541	2	49,998	—	—	—	50,000
Share issuance - RSUs exercised	3,912,481	—	—	—	—	—	—
Shares effectively repurchased for employee withholding tax	—	—	(4,860)	—	—	—	(4,860)
Equity component related to issuance of convertible debt, net of issuance costs	—	—	3,953	—	—	—	3,953
Stock-based compensation	—	—	8,257	—	—	—	8,257
Dividends declared to non-controlling interests	—	—	—	—	—	(7,891)	(7,891)
Comprehensive income (loss) for the period	—	—	—	3,049	(71,525)	15,822	(52,654)
Balance at August 31, 2023	723,292,600	72	5,909,895	(43,561)	(2,487,032)	22,182	3,401,556
Share issuance - HTI convertible note	1,032,616	—	2,313	—	—	—	2,313
Share issuance - Settlement of litigation claims from MediPharm Labs Inc	1,573,152	—	3,477	—	—	—	3,477
Share issuance - Repurchase of TRLRY 23 convertible note	7,000,000	1	20,457	—	—	—	20,458
Share issuance - Settlement of equity component of TRLRY 23 convertible note	—	—	(1,672)	—	—	—	(1,672)
Share issuance - RSUs exercised	9,184	—	—	—	—	—	—
Stock-based compensation	—	—	8,201	—	—	—	8,201
Comprehensive income (loss) for the period	—	—	—	5,194	(49,008)	2,834	(40,980)
Balance at November 30, 2023	732,907,552	73	5,942,671	(38,367)	(2,536,040)	25,016	3,393,353

The accompanying notes are an integral part of these condensed interim consolidated financial statements.

TILRAY BRANDS, INC.
Consolidated Statements of Cash Flows
(in thousands of United States dollars, unaudited)

	For the six months ended November 30,	
	2023	2022
Cash used in operating activities:		
Net loss	\$ (102,046)	\$ (127,429)
Adjustments for:		
Deferred income tax recovery	(4,042)	(12,941)
Unrealized foreign exchange (gain) loss	(5,604)	2,261
Amortization	62,341	67,387
(Gain) loss on sale of capital assets	(20)	13
Other non-cash items	(2,623)	10,372
Stock-based compensation	16,458	20,136
(Gain) loss on long-term investments & equity investments	(412)	1,918
Loss on derivative instruments	7,992	18,997
Change in fair value of contingent consideration	(10,807)	211
Change in non-cash working capital:		
Accounts receivable	4,524	6,690
Prepays and other current assets	3,764	(7,780)
Inventory	8,669	5,046
Accounts payable and accrued liabilities	(24,445)	(1,941)
Net cash used in operating activities	(46,251)	(17,060)
Cash provided by (used in) investing activities:		
Investment in capital and intangible assets, net	(10,011)	(7,537)
Proceeds from disposal of capital and intangible assets	365	2,160
Disposal (purchase) of marketable securities, net	125,479	(243,186)
Business acquisitions, net of cash acquired	(60,626)	(24,372)
Net cash provided by (used in) investing activities	55,207	(272,935)
Cash provided by (used in) financing activities:		
Share capital issued, net of cash issuance costs	—	129,593
Shares effectively repurchased for employee withholding tax	—	(1,189)
Proceeds from long-term debt	32,621	1,288
Repayment of long-term debt	(14,901)	(10,420)
Proceeds from convertible debt	21,553	—
Repayment of convertible debt	(107,330)	(48,975)
Repayment of lease liabilities	(91)	(1,114)
Net decrease in bank indebtedness	(3,200)	(2,819)
Net cash provided by (used in) financing activities	(71,348)	66,364
Effect of foreign exchange on cash and cash equivalents	709	(2,060)
Net decrease in cash and cash equivalents	(61,683)	(225,691)
Cash and cash equivalents, beginning of period	206,632	415,909
Cash and cash equivalents, end of period	\$ 144,949	\$ 190,218

Included in the statement of cash flows cash and cash equivalents is \$1,576 of restricted cash as of November 30, 2023, \$nil as of May 31, 2023.

The accompanying notes are an integral part of these condensed interim consolidated financial statements.

Note 1. Basis of presentation and summary of significant accounting policies

The accompanying unaudited condensed interim consolidated financial statements (the “financial statements”) reflect the accounts of the Company for the quarterly period ended November 30, 2023. The financial statements were prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) for interim financial information and pursuant to the rules and regulations of the United States Securities and Exchange Commission (“SEC”) for interim financial information. Accordingly, they do not include all of the information and notes required by U.S. GAAP and should be read in conjunction with the audited consolidated financial statements (the “Annual Financial Statements”) included in the Company’s Annual Report on Form 10-K for the fiscal year ended May 31, 2023 (the “Annual Report”). These unaudited condensed interim consolidated financial statements reflect all adjustments, which, in the opinion of management, are necessary for a fair presentation of the results for the interim periods presented. Interim results are not necessarily indicative of results for a full year.

These condensed interim consolidated financial statements have been prepared on the going concern basis which assumes that the Company will continue in operation for the foreseeable future and, accordingly, will be able to realize its assets and discharge its liabilities in the normal course of operations as they come due, under the historical cost convention except for certain financial instruments that are measured at fair value, as detailed in the Company’s accounting policies.

All amounts in the unaudited condensed interim consolidated financial statements, notes and tables have been rounded to the nearest thousand, except par values and per share amounts, unless otherwise indicated.

Certain items of the comparative figures have been changed to conform to the presentation adopted in the current period.

Basis of consolidation

Subsidiaries are entities controlled by the Company. Control exists when the Company either has a controlling voting interest or is the primary beneficiary of a variable interest entity. The financial statements of subsidiaries are included in the condensed interim consolidated financial statements from the date that control commences until the date that control ceases. A complete list of our subsidiaries that existed prior to our most recent year end is included in the Annual Report, except for the entities acquired within Note 7 (Business acquisitions), during the period ended November 30, 2023.

Marketable securities

We classify term deposits and other investments that have maturities of greater than three months but less than one year as marketable securities. The fair value of marketable securities is based on quoted market prices for publicly traded securities. Marketable securities are carried at fair value with changes in fair value recorded in the statement of net loss and comprehensive loss, within the line, “Non-operating income (expense)”.

Restricted cash

We classify cash that is legally or contractually restricted as to withdrawal or usage, as restricted cash. As of November 30, 2023, the Company reported \$1,576 restricted cash related to letters of credit and collateral from the acquisition of HEXO Corp. as described in Note 7 (Business acquisitions).

Assets held for sale

We classify capital assets that are available and which are probable for immediate sale in their present condition, which the Company has approved the action or plan to sell, as assets held for sale. As of November 30, 2023, the Company reported \$736 assets held for sale related to Kirkland lake property from the acquisition of HEXO Corp. as described in Note 7 (Business acquisitions). Assets held for sale are to be measured at the lower of carrying amount and the fair value less costs to sell. Disposition of assets held for sale are recorded in the statement of net loss and comprehensive loss, within the line, “Non-operating income (expense)”.

When there are changes in circumstances that were previously considered unlikely to occur, and it is decided not to proceed with a sale, an asset that was previously classified as assets held for sale is reclassified as held and used. The asset is then remeasured at the lower of its carrying amount before being classified as held for sale less the amortization that would have occurred and the fair value on the date the decision not to proceed with a sale was made. Changes in the carrying amount are recorded in the statement of net loss and comprehensive loss.

Long-term investments

Investments in equity securities of entities over which the Company does not have a controlling financial interest or significant influence are classified as an equity investment and accounted for at fair value. Equity investments without readily determinable fair values are measured at cost with adjustments for observable changes in price or impairments (referred to as the “measurement alternative”). In applying the measurement alternative, the Company performs a qualitative assessment on a quarterly basis and recognizes an impairment if there are sufficient indicators that the fair value of the equity investments is less than carrying values. Changes in value are recorded in the statement of net loss and comprehensive loss, within the line, “Non-operating income (expense)”.

Investments in entities over which the Company does not have a controlling financial interest but has significant influence, are accounted for using the equity method, with the Company's share of earnings or losses reported in earnings or losses from equity method investments on the statements of net loss and comprehensive loss. Equity method investments are recorded at cost, adjusted for the Company's share of undistributed earnings or losses, and impairment, if any, within "Interest in equity investees" on the balance sheets. The Company assesses investments in equity method investments when events or circumstances indicate that the carrying amount of the investment may be impaired. If it is determined that the current fair value of an equity method investment is less than the carrying value of the investment, the Company will assess if the shortfall is other than temporary (OTTI). Evidence of a loss in value might include, but would not necessarily be limited to, absence of an ability to recover the carrying amount of the investment or inability of the equity investee to sustain an earnings capacity that would justify the carrying amount of the investment. Once a determination is made that an OTTI exists, the investment is written down to its fair value in accordance with ASC 820 at the reporting date, which establishes a new cost basis.

Convertible notes receivable

Convertible notes receivable include various investments in which the Company has the right, or potential right to convert the indenture into common stock of the investee and are classified as available-for-sale and are recorded at fair value. Unrealized gains and losses during the year, net of the related tax effect, are excluded from income and reflected in other comprehensive income (loss), and the cumulative effect is reported as a separate component of shareholders' equity until realized. We use judgement to assess convertible notes receivables for impairment at each measurement date. Convertible notes receivables are impaired when a decline in fair value is determined to be other-than-temporary, an impairment charge is recorded in the statements of loss and comprehensive loss and a new cost basis for the investment is established. We also evaluate whether there is a plan to sell the security, or it is more likely than not that we will be required to sell the security before recovery. If neither of the conditions exist, then only the portion of the impairment loss attributable to credit loss is recorded in the statements of net loss and the remaining amount is recorded in other comprehensive income (loss).

Revenue

Revenue is recognized when the control of the promised goods or services, through performance obligation, is transferred/provided to the customer in an amount that reflects the consideration we expect to be entitled to in exchange for the performance obligations.

Excise taxes remitted to tax authorities are government-imposed excise taxes on cannabis and beer. Excise taxes are recorded as a reduction of sales in net revenue in the consolidated statements of operations and recognized as a current liability within accounts payable and accrued liabilities on the consolidated balance sheets, with the liability subsequently reduced when the taxes are remitted to the tax authority.

In addition, amounts disclosed as net revenue are net of excise taxes, sales tax, duty tax, allowances, discounts and rebates.

In determining the transaction price for the sale of goods or services, the Company considers the effects of variable consideration and the existence of significant financing components, if any.

We may enter into certain contracts for the sale of goods or services, which provide customers with rights of return, volume discounts, bonuses for volume/quality achievement, and/or sales allowances. In addition, the Company may provide in certain circumstances, a retrospective price reduction to a customer based primarily on inventory movement. The inclusion of these items may give rise to variable consideration. The Company uses the expected value method to estimate the variable consideration because this method provides the most accurate estimation of the amount of variable consideration to which the Company will be entitled. The Company uses historical evidence, current information and forecasts to estimate the variable consideration. The Company reduces revenue and recognizes a contract liability equal to the amount expected to be refunded to the customer in the form of a future rebate or credit for a retrospective price reduction, representing its obligation to return the customer's consideration. The estimate is updated at each reporting period date.

On July 12, 2022, the Company and HEXO Corp. ("HEXO") entered into various commercial transaction agreements, as described in Note 26 (Segment reporting), which included an advisory services arrangement. The fees associated with the advisory services arrangement were recognized as revenue when such services were provided to HEXO. Any payments that were received for such services in advance of performance were recognized as a contract liability. On June 22, 2023, the Company completed the acquisition of HEXO, as described in Note 7 (Business acquisitions), simultaneously terminating the advisory services arrangement and other commercial transactions.

Transaction (income) costs

The Company expenses costs net of any gains directly attributable to business acquisitions and classifies these items as transaction (income) costs. These items include among other things, legal fees to complete the acquisition, financial advisor and due diligence costs, and transaction related compensation. These items are recognized as incurred.

Earnings (loss) per share

Basic earnings (loss) per share is computed by dividing reported net income (loss) attributable to stockholders of Tilray Brands, Inc. by the weighted average number of common shares outstanding during the year. Diluted earnings (loss) per share is computed by dividing reported net income (loss) attributable to stockholders of Tilray Brands, Inc. by the sum of the weighted average number of common shares and the number of dilutive potential common share equivalents outstanding during the period. Potential dilutive common share equivalents consist of the incremental common shares issuable upon the exercise of vested share options, warrants, and RSUs and the incremental shares issuable upon conversion of the convertible debentures and similar instruments. Shares of common stock outstanding under the share lending arrangement entered into in conjunction with the TLRY 27 Notes, see Note 13 (Convertible debentures payable) are excluded from the calculation of basic and diluted earnings per share because the borrower of the shares is required under the share lending arrangement to refund any dividends paid on the shares lent.

In computing diluted earnings (loss) per share, common share equivalents are not considered in periods in which a net loss is reported, as the inclusion of the common share equivalents would be anti-dilutive. For the three months ended November 30, 2023 and November 30, 2022, the dilutive potential common share equivalents outstanding consisted of the following: 20,939,082 and 16,884,493 common shares from RSUs, 6,280,065 and 4,674,512 common shares from share options, 6,209,000 and 6,209,000 common shares for warrants and 77,181,260 and 23,981,704 common shares for convertible debentures, respectively.

New accounting pronouncements not yet adopted

In August 2023, the FASB issued ASU 2023-05, *Business Combination - Joint Venture Formations* (Subtopic 805-60) Recognition and Initial Measurement ("ASU 2023-05"), which is intended to address the accounting for contributions made to a joint venture. ASU 2023-05 is effective for the Company beginning June 1, 2026. This update will be applied prospectively on or after the effective date of the amendments. The Company is currently evaluating the effect of adopting this ASU.

In October 2023, the FASB issued ASU 2023-06, *Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative*, which amends the disclosure or presentation requirements related to various subtopics in the FASB Accounting Standards Codification (the "Codification"). The effective date for each amendment will be the date on which the SEC's removal of that related disclosure from Regulation S-X or Regulation S-K becomes effective, with early adoption prohibited. If by June 30, 2027, the SEC has not removed the applicable requirement from Regulation S-X or Regulation S-K, the pending content of the related amendment will be removed from the Codification and will not become effective for any entity. The Company is currently evaluating the effect of adopting this ASU.

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280) Improvements to Reportable Segment Disclosures*, which requires public entities to disclose information about their reportable segments' significant expenses on an interim and annual basis. ASU 2023-07 is effective for the Company beginning the year ended May 31, 2025. The Company is currently evaluating the effect of adopting this ASU.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740) Improvements to Income Tax Disclosures*, which requires public entities to disclose specific categories in the rate reconciliation and provide additional information for reconciling items that meet a quantitative threshold on an annual basis. ASU 2023-09 is effective for the Company beginning the year ended June 01, 2024. The Company is currently evaluating the effect of adopting this ASU.

New accounting pronouncements recently adopted

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Subtopic 805), Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* ("ASU 2021-08"), which is intended to improve the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency. The Company adopted the ASU 2021-08 beginning June 1, 2023, however, it did not have any impact on our condensed interim consolidated financial statements.

Note 2. Inventory

Inventory consisted of the following:

	November 30, 2023	May 31, 2023
Plants	\$ 14,908	\$ 10,884
Dried cannabis	107,805	89,801
Cannabis trim	-	322
Cannabis derivatives	4,814	9,229
Cannabis vapes	7,076	1,173
Packaging and other inventory items	17,924	19,997
Wellness inventory	11,395	11,164
Beverage alcohol inventory	52,371	27,837
Distribution inventory	36,409	30,144
Total	<u>\$ 252,702</u>	<u>\$ 200,551</u>

Note 3. Capital assets

Capital assets consisted of the following:

	November 30, 2023	May 31, 2023
Land	\$ 46,385	\$ 30,635
Production facility	344,593	344,627
Equipment	319,749	185,422
Leasehold improvement	8,147	7,753
Finance lease, right-of-use assets	57,056	—
Construction in progress	12,794	8,048
	<u>\$ 788,724</u>	<u>\$ 576,485</u>
Less: accumulated amortization	(173,637)	(146,818)
Total	<u>\$ 615,087</u>	<u>\$ 429,667</u>

Note 4. Leases

The table below presents the lease-related assets and liabilities recorded on the balance sheet.

	Classification on Balance Sheet	November 30, 2023	May 31, 2023
Assets			
Finance lease, right-of-use assets	Capital assets	\$ 57,056	\$ —
Operating lease, right-of-use assets	Right of use assets	13,551	5,941
Total right-of-use asset		\$ 70,607	\$ 5,941
Liabilities			
Current:			
Current portion of finance lease liabilities	Accrued lease obligations - current	\$ 1,336	\$ —
Current portion of operating lease liabilities	Accrued lease obligations - current	3,707	2,423
Non-current:			
Finance lease liabilities	Accrued lease obligations - non-current	56,010	—
Operating lease liabilities	Accrued lease obligations - non-current	13,964	7,936
Total lease liabilities		\$ 75,017	\$ 10,359

The following table presents the future undiscounted payment associated with lease liabilities as of November 30, 2023:

	Operating leases	Finance leases
2024	\$ 4,106	\$ 4,622
2025	3,295	4,699
2026	3,486	4,782
2027	3,412	4,542
Thereafter	4,012	87,903
Total minimum lease payments	\$ 18,311	\$ 106,548
Imputed interest	(640)	(49,202)
Obligations recognized	\$ 17,671	\$ 57,346

Note 5. Intangible Assets

Intangible assets consisted of the following items:

	November 30, 2023	May 31, 2023
Customer relationships & distribution channel	\$ 620,876	\$ 614,062
Licenses, permits & applications	370,753	366,793
Non-compete agreements	12,441	12,394
Intellectual property, trademarks, knowhow & brands	594,948	583,468
	1,599,018	\$ 1,576,717
Less: accumulated amortization	(229,755)	(187,088)
Less: impairments	(415,844)	(415,844)
Total	\$ 953,419	\$ 973,785

Included in licenses, permits & applications was \$184,858 of indefinite-lived intangible assets as of November 30, 2023, compared to \$181,093 as of May 31, 2023.

Expected future amortization expense for intangible assets as of November 30, 2023 are as follows:

	Amortization
2024 (remaining six months)	\$ 36,861
2025	73,722
2026	73,722
2027	73,722
2028	73,722
Thereafter	436,812
Total	\$ 768,561

Note 6. Goodwill

The following table shows the carrying amount of goodwill by reporting units:

Reporting Unit	November 30, 2023	May 31, 2023
Cannabis	\$ 2,640,669	\$ 2,640,669
Distribution	4,458	4,458
Beverage alcohol	120,802	120,802
Wellness	77,470	77,470
Effect of foreign exchange	8,746	7,875
Impairments	(842,431)	(842,431)
Total	<u>\$ 2,009,714</u>	<u>\$ 2,008,843</u>

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Note 7. Business acquisitions

Acquisition of Montauk Brewing Company, Inc.

On November 7, 2022, Tilray acquired Montauk Brewing Company, Inc. ("Montauk"), a leading craft brewer based in Montauk, New York, which expanded our distribution network with a strong brand in the tri-state region of the U.S. In consideration for the acquisition of Montauk, and after giving effect to post-closing adjustments, the Company paid an aggregate purchase price equal to \$35,123, which was comprised of \$ 28,701 in cash and the remainder through the issuance of 1,708,521 shares of Tilray's common stock (having a value of \$6,422 at closing). In the event that Montauk achieves certain volume and/or EBITDA targets on or before December 31, 2025, the stockholders of Montauk shall be eligible to receive additional contingent cash consideration of up to \$18,000. The Company determined that the closing date fair value of this contingent consideration was \$10,245 based on the inputs disclosed in Note 25 (Fair value measurements).

The table below summarizes fair value of the assets acquired and the liabilities assumed at the effective acquisition date.

	Amount
Consideration	
Cash	\$ 28,701
Shares	6,422
Contingent consideration	10,245
Net assets acquired	
Current assets	
Cash and cash equivalents	1,983
Accounts receivable	1,116
Prepays and other current assets	467
Inventory	1,570
Long-term assets	
Capital assets	420
Customer relationships (15 years)	18,540
Intellectual property, trademarks & brands (15 years)	13,650
Goodwill	17,803
Total assets	<u>55,549</u>
Current liabilities	
Accounts payable and accrued liabilities	1,580
Long-term liabilities	
Deferred tax liability	4,851
Other liabilities	3,750
Total liabilities	<u>10,181</u>
Total net assets acquired	<u>\$ 45,368</u>

In the event that the Montauk acquisition had occurred on June 1, 2022, the Company would have had additional net revenue of approximately \$3,100 and \$9,000 for the three and six months ended November 30, 2022 and net loss and comprehensive net loss would have increased by approximately \$600 and \$500 for the three and six months ended November 30, 2022, primarily as a result of amortization of the intangible assets acquired. This unaudited pro forma financial information does not reflect the realization of any expected ongoing synergies relating to the integration of Montauk.

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Acquisition of HEXO Corp.

On June 22, 2023, Tilray acquired HEXO, a cannabis company in Canada (the "HEXO Acquisition") for the purpose of expanding the Company's revenue base, production capabilities around certain form factors and growth opportunities with the Redecan brand. In consideration for the HEXO Acquisition, the Company paid a total purchase price equivalent of \$93,882, which consisted of stock consideration of \$63,927, settlement of convertible notes receivable of \$28,720, the fair value of HEXO stock-based compensation of \$1,188 and the assumption of warrants of \$47. In connection with the HEXO Acquisition, each outstanding HEXO common share was exchanged for 0.4352 of a share of Tilray common stock and each outstanding HEXO preferred share was exchanged for 0.7805 of a share of Tilray common stock. In the aggregate, the Company issued 39,705,962 shares of Tilray common stock, at a share price of \$1.61 per share, in connection with the HEXO Acquisition. The Company intends to sell HEXO's Kirkland lake property and has recorded the value of the associated capital assets as an asset held for sale.

The Company is in the process of assessing the fair value of the net assets acquired and, as a result, the fair value may be subject to adjustments pending completion of final valuations and post-closing adjustments. The table below summarizes the preliminary estimated fair value of the assets acquired and the liabilities assumed for the HEXO Acquisition at the effective acquisition date as follows:

	<u>Amount</u>
Consideration	
Shares	\$ 63,927
Settlement of convertible notes receivable	28,720
Warrants assumed	47
Estimated fair value of HEXO stock-based compensation	1,188
Net assets acquired	
Current assets	
Cash and cash equivalents	14,634
Restricted cash	1,656
Accounts receivable	7,855
Asset held for sale	755
Prepays and other current assets	2,709
Inventory	25,947
Long-term assets	
Prepaid expenses	8,384
Capital assets	70,634
Intellectual property, trademarks & brands (15 years)	2,680
Interest in equity investee	3,145
Total assets	<u>138,399</u>
Current liabilities	
Accounts payable and accrued liabilities	44,517
Total liabilities	<u>44,517</u>
Total net assets acquired	<u>\$ 93,882</u>

Included in accounts payable and accrued liabilities was \$12,253 of litigation settlement accruals as of June 22, 2023.

In the event the HEXO Acquisition had occurred on June 1, 2022, the Company would have had, on an unaudited proforma basis, additional net revenue of approximately \$nil and \$7,000 for the three and six months period ended November 30, 2023 and \$20,000 and \$40,000 for the three and six months period ended November 30, 2022, respectively, and its net loss and comprehensive net loss would have increased by approximately \$nil and \$1,800 for the three and six months period ended November 30, 2023, and \$30,000 and \$60,000 for the three and six months period ended November 30, 2022, respectively. This unaudited pro forma financial information does not reflect the realization of any expected ongoing synergies relating to the integration of HEXO.

Acquisition of Truss Beverage Co.

On August 3, 2023, Tilray acquired the remaining 57.5% equity interest in Truss Beverage Co. ("Truss"), a cannabis beverage company, from Molson Coors Canada ("Molson"). This purchase represents the equity portion of Truss that had not been previously acquired as part of the HEXO Acquisition. The consideration paid by Tilray consisted of \$74 (CAD\$100) in cash and contingent consideration fair valued at \$4,181. Tilray initially planned to divest Truss' assets and recorded the value of the associated capital assets and lease obligations as an asset held for sale. Tilray has agreed to pay Molson as contingent consideration an amount equal to 57.5% of any proceeds from any divestiture, net of any costs and expenses associated with the disposition. During the period ended November 30, 2023, due to a change in circumstance in the Company's ability to sell these assets, they were subsequently reclassified as capital assets as the Company has made alternative plans for their utilization. The asset was then remeasured at the lower of its carrying amount before being classified as held for sale less the amortization that would have occurred and the fair value on the date the decision not to proceed with a sale was made. Changes in the carrying amount were recorded in the statement of net loss and comprehensive loss as amortization in cost of goods sold.

The Company is in the process of assessing the fair value of the net assets acquired and, as a result, the fair value of the net assets acquired may be subject to adjustments pending completion of final valuations and post-closing adjustments. The table below summarizes preliminary estimated fair value of the assets acquired and the liabilities assumed at the effective acquisition date as follows:

	<u>Amount</u>
Consideration	
Cash consideration	\$ 74
Investment in equity investees	3,145
Contingent consideration	4,181
Net assets acquired	
Current assets	
Cash and cash equivalents	6,739

Accounts receivable	1,038
Prepays and other current assets	78
Inventory	2,573
Asset held for sale	2,960
Long-term assets	
Intangible assets	296
Total assets	<u>13,684</u>
Current liabilities	
Accounts payable and accrued liabilities	5,408
Other liabilities	876
Total liabilities	<u>6,284</u>
Total net assets acquired	<u><u>7,400</u></u>

In the event that the Truss acquisition had occurred on June 1, 2022 the Company would have had, on an unaudited proforma basis, additional net revenue of approximately \$nil and \$3,000 for the three and six months period ended November 30, 2023 and \$3,300 and \$6,300 for the three and six months period ended November 30, 2022, respectively, and its net loss and comprehensive net loss would have increased by approximately \$nil and \$700 for the three and six months period ended November 30, 2023, and \$500 and \$1,200 for the three and six months period ended November 30, 2022, respectively. This unaudited pro forma financial information does not reflect the realization of any expected ongoing synergies relating to the integration of Truss.

Acquisition of Craft Beverage Business Portfolio

On September 29, 2023, Tilray acquired a portfolio of craft brands, assets and businesses comprising eight beer and beverage brands from Anheuser-Busch Companies, LLC, ("AB") including breweries and brewpubs associated with them (the "Craft Acquisition"). The acquired businesses/brands include Shock Top, Breckenridge Brewery, Blue Point Brewing Company, 10 Barrel Brewing Company, Redhook Brewery, Widmer Brothers Brewing, Square Mile Cider Company, and HiBall Energy. The Company paid a total purchase price equivalent of \$83,658 in cash, net of a preliminary working capital adjustment at closing of \$1,342, which is subject to a final working capital adjustment. As described in Note 12 (Long-term debt), \$20,000 was borrowed under the 420 Delayed Draw Term Loan Agreement to fund part of the purchase price paid for the Craft Acquisition.

The Company is in the process of assessing the fair value of the net assets acquired and, as a result, the fair value may be subject to adjustments pending completion of final valuations and post-closing adjustments. The table below summarizes the preliminary estimated fair value of the assets acquired and the liabilities assumed for the Craft Acquisition at the effective acquisition date as follows:

	<u>Amount</u>
Consideration	
Cash consideration	\$ 83,658
Net assets acquired	
Current assets	
Cash and cash equivalents	77
Inventory	22,493
Prepays and other current assets	573
Long-term assets	
Capital assets	62,614
Finance lease, right-of-use assets	45,496
Operating lease, right-of-use assets	7,677
Other assets	108
Total assets	<u>139,038</u>
Current liabilities	
Accounts payable and accrued liabilities	2,206
Current portion of finance lease liabilities	1,031
Current portion of operating lease liabilities	1,408
Long - term liabilities	
Finance lease liabilities	44,465
Operating lease liabilities	6,270
Total liabilities	<u>55,380</u>
Total net assets acquired	<u><u>83,658</u></u>

In the event that the Craft Acquisition had occurred on June 1, 2022, the Company would have had, on an unaudited proforma basis, additional revenue of approximately \$14,000 and \$55,000 for the three and six months period ended November 30, 2023 and \$42,000 and \$85,000 for the three and six months period ended November 30, 2022, respectively, and its net loss and comprehensive net loss would have increased by approximately \$2,000 and \$5,000 for the three and six months period ended November 30, 2023, and \$1,400 and \$900 for the three and six months period ended November 30, 2022, respectively. This unaudited pro forma financial information does not reflect the realization of any expected ongoing synergies relating to the integration of the Craft Acquisition.

Note 8. Convertible notes receivable

Convertible notes receivable is comprised of the following:

	November 30, 2023	May 31, 2023
HEXO Convertible Note	\$ -	\$ 28,720
MedMen Convertible Note	74,681	74,681
Total convertible notes receivable	<u>74,681</u>	<u>103,401</u>
Deduct - current portion	-	-
Total convertible notes receivable, non current portion	<u>\$ 74,681</u>	<u>\$ 103,401</u>

HEXO Convertible Note

On June 22, 2023, the Company completed the HEXO Acquisition as described in Note 7 (Business acquisitions). Concurrently with the closing of the HEXO Acquisition, the HEXO convertible note was converted into shares of HEXO.

MedMen Convertible Note

On August 31, 2021, the Company issued 9,817,061 shares valued at \$117,804 to acquire 68% interest in Superhero Acquisition L.P. ("SH Acquisition"), which purchased a senior secured convertible note issued by MedMen (the "MedMen Convertible Note"), together with certain associated warrants to acquire Class B subordinate voting shares of MedMen, in the principal amount of \$165,799. The MedMen Convertible Note bears interest at the Secured Overnight Financing Rate ("SOFR") plus 6%, with a SOFR floor of 2.5% with any accrued interest being added to the outstanding principal amount. The outstanding principal amount, together with accrued interest is to be paid on August 17, 2028, the maturity date of the MedMen Convertible Note. SH Acquisition was also granted "top-up" rights enabling it (and its limited partners) to maintain its percentage ownership (on an "as-converted" basis) in the event that MedMen issues equity securities. SH Acquisition's ability to convert the MedMen Convertible Note and exercise the Warrants is dependent upon U.S. federal legalization of cannabis or Tilray's waiver of such requirement as well as any additional regulatory approvals.

The MedMen Convertible Note was based upon the fair value of the collateral assets net of disposal costs. In the prior year, the Company used the Black-Scholes model using the following assumptions: the risk-free rate of 3.50%; expected life of the convertible note; volatility of 70% based on comparable companies; forfeiture rate of nil; dividend yield of nil; probability of legalization between 0% and 60%; and, the exercise price of the respective conversion feature.

The Company did not derive any revenue or cash from MedMen's operations, and fully complies with all limitations imposed by applicable U.S. law and regulations in connection with its ownership of the MedMen Convertible Note. In addition, the Company did not recognize any interest income on the MedMen Convertible Note for the three and six months ended November 30, 2023, which would have increased its value.

Note 9. Long term investments

Long term investments consisted of the following:

	November 30, 2023	May 31, 2023
Equity investments measured at fair value	\$ 2,534	\$ 2,144
Equity investments under measurement alternative	5,500	5,651
Total	<u>\$ 8,034</u>	<u>\$ 7,795</u>

Note 10. Bank indebtedness

Aphria Inc., a subsidiary of the Company, has an operating line of credit in the amount of C\$1,000, which bears interest at the lender's prime rate plus 75 basis points. As of November 30, 2023, the Company has not drawn on the line of credit. The operating line of credit is secured by a security interest on that certain real property located at 265 Talbot St. West, Leamington, Ontario.

CC Pharma GmbH, a subsidiary of the Company, has two operating lines of credit for €7,000 and €500 each, which bear interest at Euro Short-Term Rate ("ESTR") plus 2.50% and Euro Interbank Offered Rate ("EURIBOR") plus 4.00%, respectively. As of November 30, 2023, a total of €7,438 (\$8,181) was drawn down from the available credit of €7,500. The operating line of credit for €7,000 are secured by an interest in the inventory of CC Pharma GmbH as well as the Densborn facility and underlying real property. The operating line of credit for €500 is unsecured.

Four Twenty Corporation ("420"), a subsidiary of the Company, has a revolving credit facility of \$30,000, which bears interest at SOFR plus an applicable margin. As of November 30, 2023, the Company has drawn \$12,000 on the revolving line of credit. The revolving credit facility is secured by all of Montauk, the Craft Acquisition's assets and 420's assets and includes a corporate guarantee by a subsidiary of the Company.

Note 11. Accounts payable and accrued liabilities

Accounts payable and accrued liabilities are comprised of:

	November 30, 2023	May 31, 2023
Trade payables	\$ 88,363	\$ 70,819
Accrued liabilities	75,851	48,394
Litigation expense accrual	25,338	25,000
Accrued payroll and employment related taxes	11,382	18,772
Income taxes payable	3,248	14,934
Accrued interest	8,147	8,102
Sales taxes payable	4,569	4,661
Total	<u>\$ 216,898</u>	<u>\$ 190,682</u>

Note 12. Long-term debt

The following table sets forth the net carrying amount of long-term debt instruments:

	November 30, 2023	May 31, 2023
Credit facility - C\$66,000 - Canadian prime interest rate plus an applicable margin, 3-year term, with a 10-year amortization, repayable in blended monthly payments, due in November 2025	\$ 42,920	\$ 45,260
Term loan - C\$25,000 - Canadian prime plus 1.00%, compounded monthly, 5-year term, with a 15-year amortization, repayable in equal monthly installments of C\$181 including interest, due in July 2033	10,726	10,959
Term loan - C\$25,000 - Canadian prime plus 1.00%, compounded monthly, 5-year term with a 15-year amortization, repayable in equal monthly installments of C\$196 including interest, due in July 2033	12,937	13,092
Term loan - C\$1,250 - Canadian prime plus 1.50%, 5-year term, with a 10-year amortization, repayable in equal monthly installments of C\$12 including interest, due in August 2026	309	346
Mortgage payable - C\$3,750 - Canadian prime plus 1.50%, 5-year term, with a 20-year amortization, repayable in equal monthly installments of C\$23 including interest, due in August 2026	2,125	2,104
Term loan - €5,000 - EURIBOR plus 2.15%, 5-year term, repayable in quarterly installments of €250 plus interest, due in December 2023	112	803
Term loan - €1,200 - at 4.26%, 1-year term, repayable in monthly installments of €100 plus interest, due in December 2023	275	755
Term loan - €1,500 - at 2.00%, 5-year term, repayable in quarterly installments of €94 plus interest, due in April 2025	634	819
Term loan - €3,500 - at 4.59%, 5-year term, repayable in monthly installments of €52 plus interest, due in August 2028	3,563	1,706
Mortgage payable - \$22,635 - EURIBOR rate plus 1.5%, 10-year term, repayable in monthly installments of \$57 including interest, due in October 2030	20,512	20,863
Term loan - \$90,000 - SOFR plus an applicable margin, 5-year term, repayable in quarterly installments of \$875 to \$1,750 due in June 2028	89,125	65,000
Carrying amount of long-term debt	183,238	161,707
Unamortized financing fees	(1,146)	(738)
Net carrying amount	182,092	160,969
Less principal portion included in current liabilities	(12,993)	(24,080)
Total noncurrent portion of long-term debt	<u>\$ 169,099</u>	<u>\$ 136,889</u>

During the quarter ended August 31, 2023, Four Twenty Corporation ("420"), a wholly-owned subsidiary of the Company, repaid its \$100,000 term loan and entered into a new secured credit agreement, which comprised of: (i) a \$70,000 term loan facility, bearing interest at SOFR plus an applicable margin and having a maturity date of June 30, 2028 (the "420 Term Loan"), and (ii) a \$20,000 delayed draw term loan facility, issued on the same terms as the \$70,000 term loan facility (the "420 Delayed Draw Term Loan" and, together with the 420 Term Loan the "420 Secured Credit Agreement"). The 420 Term Loan was fully drawn on June 30, 2023. The 420 Delayed Draw Term Loan was fully drawn on September 29, 2023 to fund part of the purchase price for the Craft Acquisition as described in Note 7 (Business acquisitions). Under the terms of the 420 Secured Credit Agreement, the Company pledged all of Sweetwater, Breckenridge, Montauk and the Craft Acquisition's assets and the related equity interests, and Tilray Brands, Inc. provided a limited guarantee, as well as requiring the lenders approval to transfer assets to Tilray Brands, Inc.

As of November 30, 2023, 420 was not in compliance with the leverage ratio covenant under the 420 Secured Credit Agreement, but obtained a waiver from the lender on January 5, 2024.

Note 13. Convertible debentures payable

The following table sets forth the net carrying amount of the convertible debentures payable:

	November 30, 2023	May 31, 2023
5.20% Convertible Notes ("TLRY 27")	\$ 123,691	\$ 100,476
HTI Convertible Note	-	47,834
5.25% Convertible Notes ("APHA 24")	128,399	120,568
5.00% Convertible Notes ("TLRY 23")	-	126,544
Total	252,090	395,422
Deduct - current portion	128,399	174,378
Total convertible debentures payable, non current portion	\$ 123,691	\$ 221,044

TLRY 27 Notes

	November 30, 2023	May 31, 2023
5.20% Contractual debenture	\$ 172,500	\$ 150,000
Unamortized discount	(48,809)	(49,524)
Net carrying amount	\$ 123,691	\$ 100,476

The TLRY 27 convertible debentures were issued on May 30, 2023 and on June 9, 2023 by way of overallotment, in the principal amount of \$172,500 (the "TLRY 27 Notes"). The TLRY 27 Notes bear interest at a rate of 5.20% per annum, payable semi-annually in arrears on June 15 and December 15 of each year, and mature on June 15, 2027, unless earlier converted. The TLRY 27 Notes are Tilray's general unsecured obligations and rank senior in right of payment to all of Tilray's indebtedness that is expressly subordinated in right of payment to the notes; equal in right of payment with any of Tilray's unsecured indebtedness that is not so subordinated, including TLRY 23 and APHA 24, effectively junior in right of payment to any of Tilray's secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables but excluding intercompany obligations) of Tilray's current or future subsidiaries. Noteholders will have the right to convert their TLRY 27 Notes into shares of Tilray's common stock at their option, at any time, until the close of business on the second scheduled trading day immediately before June 15, 2027. The initial conversion rate is 376.6478 shares per \$1,000 principal amount of TLRY 27 Notes, which represents a conversion price of approximately \$2.66 per share. The conversion rate and conversion price will be subject to adjustment upon the occurrence of certain events.

The TLRY 27 Notes will be redeemable, in whole and not in part, at Tilray's option at any time on or after June 20, 2025 at a cash redemption price equal to the principal amount of the notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if the last reported sale price of Tilray's common stock exceeds 130% of the conversion price for a specified period of time. If certain corporate events that constitute a fundamental change occur, then, subject to a limited exception, noteholders may require Tilray to repurchase their TLRY 27 Notes for cash. The repurchase price will be equal to the principal amount of the notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the applicable repurchase date. In connection with the Company's offering of the TLRY 27 Notes, the Company entered into a share lending agreement with an affiliate of Jefferies LLC (the "Share Borrower"), pursuant to which it lent to the Share Borrower 38,500,000 shares of the Company's common stock (the "Borrowed Shares"). The Borrowed Shares were newly-issued shares, will be held as treasury shares until the expiration or early termination of the share lending agreement and may be used by purchasers of the TLRY 27 Notes to sell up to 38,500,000 shares of the Company's common stock. The fair value of the share lending agreement has been recorded as part of the unamortized discount on the debenture. The Company expects that the selling stockholders will use their position created by such sales to establish their initial hedge with respect to their investments in the TLRY 27 Notes. The Company did not receive any proceeds from the sale of the Borrowed Shares.

During the three and six months ended November 30, 2023, the Company recognized interest expense of \$2,423 and \$4,485 and accretion of amortized discount interest of \$2,829 and \$5,624. For the same periods in the prior year there was no interest or accretion of amortized discount.

HTI Convertible Note

	November 30, 2023	May 31, 2023
4.00% Contractual debenture	\$ —	\$ 50,000
Unamortized discount	—	(2,166)
Net carrying amount	\$ —	\$ 47,834

On July 12, 2022, the Company issued a \$50,000 convertible promissory note to HTI ("HTI Convertible Note"), bearing a 4% interest rate payable on a quarterly basis and having a maturity date of September 1, 2023. On August 31, 2023, the Company settled in full the HTI Convertible Note through the issuance of shares as described in Note 15 (Stockholders' equity).

APHA 24 Notes

	November 30, 2023	May 31, 2023
5.25% Contractual debenture	\$ 350,000	\$ 350,000
Debt settlement	(213,260)	(213,260)
Fair value adjustment	(8,341)	(16,172)
Net carrying amount	\$ 128,399	\$ 120,568

The APHA 24 convertible debentures, were entered into in April 2019, in the principal amount of \$350,000, bear interest at a rate of 5.25% per annum, payable semi-annually in arrears on June 1 and December 1 of each year, and mature on June 1, 2024, unless earlier converted (the APHA 24 Notes"). The APHA 24 Notes are Tilray's general unsecured obligations and rank senior in right of payment to all of Tilray's indebtedness that is expressly subordinated in right of payment to the notes; equal in right of payment with any of Tilray's unsecured indebtedness that is not so subordinated, including TLRY 23 and TLRY 27, effectively junior in right of payment to any of Tilray's secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities (including trade payables but excluding intercompany obligations) of Tilray's current or future subsidiaries.

Holders of the APHA 24 Notes may convert all or any portion of such note, in multiples of \$1 principal amount, at their option at any time between December 1, 2023 to the maturity date of June 1, 2024. The initial conversion which the Company may settle in cash, or common shares of Tilray, or a combination thereof, at Tilray's election, is equivalent to an initial conversion price of approximately \$11.20 per common share, subject to adjustments in certain events.

The Company may redeem for cash all or part of the APHA 24, at its option, if the last reported sale price of the Company's common shares has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending on and including trading day immediately preceding the date on which the Company provides notice of redemption. The redemption of the APHA 24 will be equal to 100% of the principal amount plus accrued and unpaid interest to, but excluding, the redemption date.

The Company elected the fair value option under ASC 825 *Fair Value Measurements* for the APHA 24. The APHA 24 was initially recognized at fair value on the balance sheet. All subsequent changes in fair value, excluding the impact of the change in fair value related to instrument-specific credit risk are recorded in non-operating income. The changes in fair value related to instrument-specific credit risk is recorded through other comprehensive income (loss).

The Company plans to purchase or exchange some or all of its APHA 24 Notes, in open market purchases, privately negotiated transactions or otherwise prior to their maturity in June 2024. Such purchases or exchanges, if any, will depend on prevailing market conditions, contractual restrictions and other factors. See Note 27 (Subsequent Events) for additional details.

The overall change in fair value of APHA 24 during the six months ended November 30, 2023 decreased by \$7,831 (November 30, 2022 – \$6,542 of fair value changes), this was comprised of \$6,041 of fair value changes and a foreign exchange loss of \$1,790.

There was \$136,740 principal outstanding as at November 30, 2023 and May 31, 2023.

During the three and six months ended November 30, 2023, the Company recognized total interest expense of \$1,795 and \$3,589, respectively and total interest expense of \$3,393 and \$6,786, respectively for the same period in the prior year.

TLRY 23 Notes

	November 30, 2023	May 31, 2023
5.00% Contractual debenture	\$ —	\$ 277,856
Principal amount paid	—	(150,526)
Unamortized discount	—	(786)
Net carrying amount	<u>\$ —</u>	<u>\$ 126,544</u>

The TLRY 23 Notes bore interest at a rate of 5.00% per annum, payable semi-annually in arrears on April 1 and October 1 of each year. On September 12, 2023, the Company repurchased \$20,000 of its TLRY 23 Notes for cancellation by issuing 7,000,000 shares and paying \$610 of cash to settle both principal and accrued interest. Upon repurchase of the TLRY 23 Notes, a portion of the settlement consideration was allocated to the equity component of the instrument and was recognized as a \$1,672 reduction of additional paid-in capital in the Consolidated Statements of Changes in Equity. Additionally, this repurchase resulted in a loss of \$1,062 which was recorded in other non-operating (losses) gains, net as shown in Note 24 (Non-operating income (expense)).

After cancellation, the outstanding principal balance of the TLRY 23 Notes was \$107,330. On October 2, 2023, the Company repaid the remaining principal of the TLRY 23 Notes in cash upon maturity.

During the three and six months ended November 30, 2023, the Company recognized total interest expense of \$1,592 and \$2,122, respectively and total interest expense of \$2,373 and \$3,746, respectively for the same period in the prior year.

Note 14. Warrant liability

As of November 30, 2023 and May 31, 2023, there were 6,209,000 warrants outstanding, with an original exercise price of \$5.95 per warrant, expiring March 17, 2025. Each warrant is exercisable for one common share of the Company.

The warrants contain anti-dilution price protection features, which adjust the exercise price of the warrants if the Company subsequently issues common stock at a price lower than the exercise price of the warrants. In the event additional warrants or convertible debt are issued with a lower and/or variable exercise price, the exercise price of the warrants will be adjusted accordingly. During the six months ended November 30, 2023, the Company issued shares which triggered the anti-dilution price protection feature lowering the exercise price to \$1.61. These warrants are classified as liabilities as they are to be settled in registered shares, and the registration statement is required to be active, unless such shares may be subject to an applicable exemption from registration requirements. The holders, at their sole discretion, may elect to affect a cashless exercise, and be issued exempt securities in accordance with Section 3(a)(9) of the 1933 Act. In the event the Company does not maintain an effective registration statement, the Company may be required to pay a daily cash penalty equal to 1% of the number of shares of common stock due to be issued multiplied by any trading price of the common stock between the exercise date and the share delivery date, as selected by the holder. Alternatively, the Company may deliver registered common stock purchased by the Company in the open market. The Company may also be required to pay cash if it does not have sufficient authorized shares to deliver to the holders upon exercise.

The Company estimated the fair value of warrants outstanding at November 30, 2023 at \$0.607 per warrant using the Black Scholes pricing model (Level 3) with the following assumptions: Risk-free interest rate of 4.4%, expected volatility of 50%, expected term of 1.30 years, strike price of \$1.61 and fair value of common stock of \$1.81.

Expected volatility is based on both historical and implied volatility of the Company's common stock.

Note 15. Stockholders' equity

Issued and outstanding

As of November 30, 2023, the Company had 1,198,000,000 common shares and 10,000,000 preferred shares authorized to be issued, with 732,907,552 common shares and nil preferred shares issued and outstanding. Historically, the Company has issued shares of its common stock as consideration for business acquisitions, including the settlement of convertible notes, the settlement of litigation claims, in connection with public offerings and as payment of dividends to non-controlling interests for profit distributions.

During the six months ended November 30, 2023, the Company issued the following common shares:

- a) 39,705,962 shares in connection with the HEXO Acquisition, see Note 7 (Business acquisitions).
- b) 865,426 shares to settle a contractual change of control severance obligations in the aggregate amount of \$1,500 incurred in connection with the HEXO Acquisition.
- c) 5,004,735 shares to settle dividends payable to the non-controlling shareholders of Aphria Diamond in the amount of \$8,146.
- d) 17,148,541 shares for the settlement of the HTI Convertible Note payable see Note 13 (Convertible debentures payable).
- e) 1,032,616 shares to HTI Investments MA LLC pursuant to the terms of a \$50.0 million convertible promissory note originally issued by Tilray to HTI on July 12, 2022 and which was settled at maturity as previously disclosed.
- f) 1,573,152 shares to settle HEXO-based litigation judgement obtained by MediPharm Labs Inc. in 2022.
- g) 7,000,000 shares to repurchase \$20,000 of its TLRY 23 Notes for cancellation.
- h) 3,921,665 shares in connection with the exercise of previously awarded stock-based compensation awards.

The Company maintains stock-based compensation plans as disclosed in our Annual Financial Statements. For the three and six months ended November 30, 2023, the total stock-based compensation was \$ 8,201 and \$ 16,458. For the three and six months ended November 30, 2022, total stock based compensation was \$ 10,943 and \$ 20,136 respectively.

During the six months ended November 30, 2023 the Company granted 11,559,549 time-based RSUs, and 7,566,146 performance-based RSUs (November 30, 2022 - 6,004,995 time-based RSUs and 2,634,744 performance based RSUs). The 7,566,146 performance based RSUs issued during the quarter had performance conditions not yet finalized. The Company's total stock-based compensation expense recognized is as follows:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Stock options	\$ —	\$ 20	\$ —	\$ 624
RSUs	8,201	10,923	16,458	19,512
Total	\$ 8,201	\$ 10,943	\$ 16,458	\$ 20,136

Note 16. Accumulated other comprehensive income (loss)

Accumulated other comprehensive loss includes the following components:

	Foreign currency translation gain (loss)	Unrealized loss on convertible notes receivables	Total
Balance May 31, 2022	\$ 54,413	\$ (75,177)	(20,764)
Other comprehensive loss	(56,443)	(2,525)	(58,968)
Balance August 31, 2022	\$ (2,030)	\$ (77,702)	\$ (79,732)
Other comprehensive loss	(24,080)	(17,643)	(41,723)
Balance at November 30, 2022	<u>\$ (26,110)</u>	<u>\$ (95,345)</u>	<u>\$ (121,455)</u>
Balance May 31, 2023	\$ (46,610)	\$ —	\$ (46,610)
Other comprehensive loss	3,049	—	3,049
Balance August 31, 2023	\$ (43,561)	\$ —	\$ (43,561)
Other comprehensive loss	5,194	—	5,194
Balance November 30, 2023	<u>\$ (38,367)</u>	<u>\$ —</u>	<u>\$ (38,367)</u>

Note 17. Non-controlling interests

The following tables summarize the information relating to the Company's subsidiaries, SH Acquisition (68%), CC Pharma Nordic ApS (75%), Aphria Diamond (51%), and ColCanna S.A.S. (90%) before intercompany eliminations.

Summary of balance sheet information of the entities in which there is a non-controlling interest as of November 30, 2023:

	SH Acquisition	CC Pharma Nordic ApS	Aphria Diamond	ColCanna S.A.S.	November 30, 2023
Current assets	\$ —	\$ 73	\$ 131,023	\$ 196	\$ 131,292
Non-current assets	74,681	—	131,726	3,580	209,987
Current liabilities	—	(14)	(129,105)	(6,613)	(135,732)
Non-current liabilities	—	(1,195)	(49,833)	(1,460)	(52,488)
Net assets	<u>\$ 74,681</u>	<u>\$ (1,136)</u>	<u>\$ 83,811</u>	<u>\$ (4,297)</u>	<u>\$ 153,059</u>

Summary of balance sheet information of the entities there is a non-controlling interest as of May 31, 2023:

	SH Acquisition	CC Pharma Nordic ApS	Aphria Diamond	ColCanna S.A.S.	May 31, 2023
Current assets	\$ —	\$ 114	\$ 127,689	\$ 224	\$ 128,027
Non-current assets	74,681	—	135,085	3,307	213,073
Current liabilities	—	(1,166)	(142,554)	(6,697)	(150,417)
Non-current liabilities	—	—	(53,197)	(1,428)	(54,625)
Net assets	<u>\$ 74,681</u>	<u>\$ (1,052)</u>	<u>\$ 67,023</u>	<u>\$ (4,594)</u>	<u>\$ 136,058</u>

Summary of income statement information of the entities in which there is a non-controlling interest for the six months ended November 30, 2023:

	SH Acquisition	CC Pharma Nordic ApS	Aphria Diamond	ColCanna S.A.S.	November 30, 2023
Revenue	\$ —	\$ —	\$ 57,078	\$ —	\$ 57,078
Total expenses	—	54	32,803	(519)	32,338
Net (loss) income	—	(54)	24,275	519	24,740
Other comprehensive (loss) income	—	(30)	404	(222)	152
Net comprehensive (loss) income	\$ —	\$ (84)	\$ 24,679	\$ 297	\$ 24,892
Non-controlling interest %	32%	25%	49%	10%	NA
Comprehensive (loss) income attributable to NCI	-	(21)	12,093	30	12,102
Additional income attributable to NCI	—	—	6,554	—	6,554
Net comprehensive (loss) income attributable to NCI	\$ —	\$ (21)	\$ 18,647	\$ 30	\$ 18,656

Summary of income statement information of the entities in which there is a non-controlling interest for the six months ended November 30, 2022:

	SH Acquisition	CC Pharma Nordic ApS	Aphria Diamond	ColCanna S.A.S.	November 30, 2022
Revenue	\$ —	\$ 108	\$ 65,437	\$ —	\$ 65,545
Total expenses	(7,006)	471	39,039	56,265	88,769
Net (loss) income	7,006	(363)	26,398	(56,265)	(23,224)
Other comprehensive (loss) income	(11,321)	—	(1,590)	363	(12,548)
Net comprehensive (loss) income	\$ (4,315)	\$ (363)	\$ 24,808	\$ (55,902)	\$ (35,772)
Non-controlling interest %	32%	25%	49%	10%	NA
Comprehensive (loss) income attributable to NCI	(1,381)	(91)	12,156	(5,590)	5,094
Additional income attributable to NCI	—	—	6,056	—	6,056
Net comprehensive (loss) income attributable to NCI	\$ (1,381)	\$ (91)	\$ 18,212	\$ (5,590)	\$ 11,150

On January 5, 2024, Aphria Inc. (“Aphria”), a wholly-owned subsidiary of the Company, entered into an Amended and Restated Wholesale Cannabis Supply Agreement (the “Supply Agreement”) with 1974568 Ontario Limited (“Aphria Diamond”), Aphria’s joint venture with Double Diamond Holdings Ltd. The Supply Agreement amends and restates the existing supply agreement, effective as of September 1, 2023, and amends certain terms relating to pricing and product classes. Due to the terms stipulated in the Supply Agreement, the reduced transfer price will lead to a decrease in income attributable to non-controlling interest over the duration of the agreement. If this agreement had been effective June 1, 2023, the Company would have recognized approximately \$15,000 in additional net income attributed to the Stockholders of Tilray Brands, Inc.

Note 18. Income taxes

The determination of the Company’s overall effective tax rate requires significant judgment, the use of estimates, and the interpretation and application of complex tax laws. The effective tax rate reflects the income earned and taxed in various United States federal, state, and foreign jurisdictions. Tax law changes, increases, and decreases in temporary and permanent differences between book and tax items, valuation allowances against the deferred tax assets, stock compensation, and the Company’s change in income in each jurisdiction all affect the overall effective tax rate. It is the Company’s practice to recognize interest and penalties related to uncertain tax positions in income tax expense.

The Company reported income tax (recovery) expense of \$(3,380) and \$3,884 for the three and six months ended November 30, 2023, and income tax recovery of \$(11,713) and \$ (4,502) for the three and six months ended November 30, 2022. The income tax benefit in the current period varies from the US statutory income tax rate and prior period primarily due to the geographical mix of earnings and losses with no tax benefit resulting from valuation allowances in certain jurisdictions.

Note 19. Commitments and contingencies

Purchase and other commitments

The Company has payments on long-term debt, refer to Note 12 (Long-term debt), convertible notes, refer to Note 13 (Convertible debentures payable), material purchase commitments and construction commitments as follows:

	<u>Total</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>Thereafter</u>
Long-term debt repayment	\$ 183,238	\$ 12,993	\$ 45,968	\$ 8,953	\$ 10,332	\$ 104,992
Convertible notes	309,240	136,740	—	—	172,500	—
Material purchase obligations	56,972	33,584	21,388	2,000	—	—
Construction commitments	822	822	—	—	—	—
Total	\$ 550,272	\$ 184,139	\$ 67,356	\$ 10,953	\$ 182,832	\$ 104,992

Legal proceedings

In the ordinary course of business, we are at times subject to various legal proceedings and disputes, including the proceedings specifically discussed below. We assess our liabilities and contingencies in connection with outstanding legal proceedings utilizing the latest information available. Where it is probable that we will incur a loss and the amount of the loss can be reasonably estimated, we record a liability in our consolidated financial statements. These legal reserves may be increased or decreased to reflect any relevant developments on a quarterly basis. Where a loss is not probable or the amount of loss is not estimable, we do not accrue legal reserves. While the outcome of legal proceedings is inherently uncertain, based on information currently available and available insurance coverage, our management believes that it has established appropriate legal reserves. Any incremental liabilities arising from pending legal proceedings are not expected to have a material adverse effect on our consolidated financial position, consolidated results of operations, or consolidated cash flows. However, it is possible that the ultimate resolution of these matters, if unfavorable, may be material to our consolidated financial position, consolidated results of operations, or consolidated cash flows.

There have been no material changes from the legal proceedings since our Annual Report on Form 10-K for the fiscal year ended May 31, 2023, except with respect to certain aspects of the legal proceedings disclosed below:

Class Action Suits and Stockholder Derivative Suits

Authentic Brands Group Related Class Action (New York, United States)

On May 4, 2020, Ganesh Kasilingam filed a lawsuit in the United States District Court for the Southern District of New York (“SDNY”), against Tilray Brands, Inc., Brendan Kennedy and Mark Castaneda, on behalf of himself and a putative class, seeking to recover damages for alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Kasilingam litigation”). The complaint alleges that Tilray and the individual defendants overstated the anticipated advantages of the Company’s revenue sharing agreement with Authentic Brands Group (“ABG”), announced on January 15, 2019, and that the plaintiff suffered losses when Tilray’s stock price dropped after Tilray recognized an impairment with respect to the ABG deal on March 2, 2020. On August 6, 2020, SDNY entered an order appointing Saul Kassin as Lead Plaintiff and The Rosen Law Firm, P.A. as Lead Counsel. Lead Plaintiff filed an amended complaint on October 5, 2020, which asserts the same Sections 10(b) and 20(a) claims against the same defendants on largely the same theory, and includes new allegations that Tilray’s reported inventory, cost of sales, and gross margins in its financial reports during the class period were false and misleading because Tilray improperly recorded unsellable “trim” as inventory and understated the cost of sales for its products.

On September 27, 2021, the U.S. District Court entered an Opinion & Order granting the Defendants’ motion to dismiss the amended complaint in the Kasilingam litigation without prejudice. On December 3, 2021, the lead plaintiff filed a second amended complaint alleging similar claims against Tilray and Brendan Kennedy. The defendants moved to dismiss the second amended complaint on February 2, 2022. On September 28, 2022, the Court granted in part and denied in part the defendants’ motion to dismiss the second amended complaint. On October 12, 2022, the Company filed a motion for reconsideration and/or interlocutory appeal of this Court decision.

On August 21, 2023, the U.S. District Court granted Tilray’s motion for reconsideration and dismissed the second amended complaint with leave to amend one final time. On September 27, 2023, plaintiff filed a third amended complaint. Tilray continues to believe that all of the underlying claims in the amended complaint are without merit and should be dismissed with prejudice.

Legal Proceedings Related to Contractual Obligations

420 Investments Ltd. Litigation

On February 21, 2020, 420 Investments Ltd., as Plaintiff (“420 Investments”), filed a lawsuit against Tilray Brands, Inc. and High Park Shops Inc. as Defendants, in Calgary, Alberta in the Court of Queen’s Bench of Alberta. In August 2019, Tilray and High Park entered into an Arrangement Agreement with 420 Investments and others (the “Agreement”). Pursuant to the Agreement, High Park was to acquire the securities of 420 Investments. In February 2020, Tilray and High Park gave notice of termination of the Agreement. 420 Investments alleges that the termination was unlawful and without merit and further alleges that the Defendants had no legal basis to terminate. 420 Investments alleges that the Defendants did not meet their contractual and good faith obligations under the Agreement. 420 Investment seeks damages in the stated amount of C\$110,000, plus C\$20,000 in aggravated damages. The Tilray and High Park Statement of Defense and counterclaim were both filed on March 20, 2020. 420 Investment’s Statement of Defense to our counterclaim was filed on April 20, 2020. Respectively, 420 Investments and Tilray / High Park served each other with their Affidavits of Records on August 25, 2020 and November 30, 2020. Tilray and High Park cross-examined the litigation representative of 420 Investments. The Company denies the Plaintiff’s allegations and intends to continue to vigorously defend this litigation matter, although there can be no assurance as to its outcome.

In February 2023, Tilray and High Park filed an Application for Summary Judgment to collect an unpaid C\$7,000 bridge loan made to 420 Investments on August 28, 2019, relating to the subject transaction. That debt was repayable in March 2020, but was never repaid. The application is pending and a decision from the Court is expected on Tilray’s Application for Summary Judgment in the calendar year of 2024.

Docklight Litigation Settlement

On November 5, 2021 Docklight Brands, Inc. (“Docklight”) filed a complaint against the Company and its wholly-owned subsidiary, High Park Holdings, Ltd. in Superior Court of the State of Washington, King County. Docklight claimed breach of contract against High Park arising from a 2018 license agreement pursuant to which Docklight licensed certain Bob Marley-related brands to High Park (as amended in 2020 and 2021, the “High Park License”). In addition, Docklight brought a negligent misrepresentation claim against Tilray, alleging that certain individuals at Tilray or Aphria had made false statements to Docklight in order to induce Docklight to waive Docklight’s alleged right to terminate the High Park License for change-of-control on the basis of the 2021 Tilray-Aphria Arrangement Agreement. Effective October 10, 2023, the parties entered into a settlement agreement pursuant to which the Company paid an aggregate amount equal to \$3,000 to Docklight in exchange for mutual releases and a dismissal of the pending Docklight litigation claims.

MediPharm / HEXO Litigation Settlement

In July 2022, MediPharm Labs Inc. (“MediPharm”) and Peter Hwang obtained a judgement for damages against HEXO Inc. in an amount equal to CAD \$9,800, together with costs and interest, in connection with HEXO’s alleged failure to pay for certain products. Subsequent to Tilray’s acquisition of HEXO, on October 2, 2023, MediPharm, HEXO and Tilray reached a settlement of the MediPharm judgment. Specifically, the terms of the settlement consisted of the following: (i) CAD \$3,000 cash payment to MediPharm; (ii) issuance to MediPharm of a product supply credit for CAD \$1,000 for the purchase of Tilray cannabis products at market pricing; (iii) Tilray acquired all of the outstanding shares of a MediPharm subsidiary in exchange for the issuance by Tilray of 1,573,152 Tilray common shares; (iv) payment of CAD \$210 to Peter Hwang; and (v) dismissal of the MediPharm judgment and mutual releases of all claims.

Summary of litigation accruals

As described in Note 11 (Accounts payable and accrued liabilities), the total litigation expense accrual included in accrued liabilities as of November 30, 2023 was \$25,338 to cover various ongoing litigation matters that are probable and estimable (May 31, 2023 - \$25,000). During the six months ended November 30, 2023, the Company assumed \$12,253 of litigation accruals from the acquisition of HEXO, several of which were settled in the period as described above. The Company did not assume any litigation accruals from the Craft Acquisition.

Note 20. Net revenue

The Company reports its net revenue in four reporting segments: cannabis, distribution, beverage alcohol and wellness.

Net revenue is comprised of:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Cannabis revenue	\$ 94,556	\$ 66,696	\$ 191,440	\$ 142,385
Cannabis excise taxes	(27,442)	(16,798)	(53,993)	(33,917)
Net cannabis revenue	67,114	49,898	137,447	108,468
Beverage alcohol revenue	49,651	23,405	74,990	45,268
Beverage alcohol excise taxes	(3,146)	(2,010)	(4,323)	(3,219)
Net beverage alcohol revenue	46,505	21,395	70,667	42,049
Distribution revenue	67,223	60,188	136,380	120,773
Wellness revenue	12,929	12,655	26,226	26,057
Total	\$ 193,771	\$ 144,136	\$ 370,720	\$ 297,347

Note 21. Cost of goods sold

Cost of goods sold is comprised of:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Cannabis costs	\$ 46,472	\$ 28,577	\$ 96,989	\$ 57,438
Beverage alcohol costs	30,513	11,420	41,779	22,269
Distribution costs	60,147	52,495	121,615	107,479
Wellness costs	9,230	8,762	18,732	18,665
Total	\$ 146,362	\$ 101,254	\$ 279,115	\$ 205,851

Note 22. General and administrative expenses

General and administrative expenses are comprised of:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Executive compensation	\$ 3,324	\$ 3,050	\$ 6,985	\$ 6,605
Office and general	8,065	7,383	16,233	13,212
Salaries and wages	15,795	10,151	28,909	24,786
Stock-based compensation	8,201	10,943	16,458	20,136
Insurance	2,499	2,726	6,348	5,429
Professional fees	2,503	1,730	4,002	4,220
(Gain) loss on sale of capital assets	(23)	(64)	(20)	13
Travel and accommodation	1,374	1,219	2,481	2,380
Rent	1,575	740	2,433	1,605
Total	\$ 43,313	\$ 37,878	\$ 83,829	\$ 78,386

Note 23. Restructuring charges

In connection with the execution of our acquisition strategy and strategic transactions, the Company has incurred restructuring and exit costs associated with the integration efforts of these non-recurring transactions. The Company recognized \$2,655 and \$3,570 of restructuring charges for the three and six months ended November 30, 2023, compared to \$8,064 and \$8,064 for prior year comparative periods. The Company approves detailed restructuring initiative plans at the executive level and recognizes these expenses in the period in which the plan has been committed to. All amounts incurred as of November 30 2023, have been paid.

Within the Cannabis reporting unit, three restructuring plans have been initiated as follows; HEXO acquisition related charges which is expected to take place 24 months from the acquisition date, Truss acquisition related charges which is expected to take place 18 months from the acquisition date and the Canadian business cost reduction plan, which concluded during the quarter. In the six month period ended November 30, 2023, the following expenses were recognized, \$1,221 of employee termination benefits for the HEXO acquisition plan, \$1,586 of restructuring charges related to the costs of exiting the facility until the new business has resumed for the Truss acquisition plan and \$281 of employee termination benefits for the Canadian business cost reduction plan.

Within the Distribution reporting unit, the Company executed a cost optimization plan during the three months ended November 30, 2023. It is expected that this plan will be completed within the current fiscal year. In the six month period ended November 30, 2023, the Company recognized \$482 related to employee termination benefits in association with executing this plan.

For the prior period three and six months ended November 30, 2022, the Company recognized \$8,064 and \$8,064 which was comprised of \$1,599 of exit cost and \$2,758 for inventory adjustments from the termination of our producer partnership in Uruguay due to a breach of the underlying contract in our International cannabis business. Additionally, amounts related to the Tilray-Aphria Arrangement Agreement for the closure of our Canadian cannabis facility in Enniskillen of \$1,512 million were incurred. The Company also incurred \$2,195 million of write-offs from the exit of our medical device reprocessing business in our distribution reporting segment. These exit costs were completed in the prior year quarter ended November 30, 2022, and did not have on going impacts in the six months ended November 30, 2023.

Note 24. Non-operating income (expense)

Non-operating income (expense) is comprised of:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Change in fair value of convertible debenture payable	\$ (3,894)	\$ (12,698)	\$ (6,041)	\$ (20,582)
Change in fair value of warrant liability	6,247	37	(1,951)	1,585
Foreign exchange loss (gain)	(1,024)	907	5,243	(24,666)
Loss on long-term investments	459	(596)	350	(1,604)
Other non-operating (losses) gains, net	(967)	(6,100)	(1,182)	(6,175)
Total	<u>\$ 821</u>	<u>\$ (18,450)</u>	<u>\$ (3,581)</u>	<u>\$ (51,442)</u>

Included in other non-operating (losses) gains, net for the three and six months ended November 30, 2023, are losses of \$(967) and \$(1,182) resulting from the downside protection share issuance relating to the HTI note, as described in Note 15 (Stockholders' equity) and the gain on the settlement of TLRY 23 Convertible Notes.

Note 25. Fair value measurements

Financial instruments

The Company has classified its financial instruments as described in Note 3 Significant accounting policies in our Annual Financial Statements.

The carrying values of accounts receivable, bank indebtedness and accounts payable and accrued liabilities approximate their fair values due to their short periods to maturity.

At November 30, 2023 and May 31, 2023 the Company had long-term debt of \$4,472 and \$3,280, respectively, and the principal portion of convertible debentures payable of \$309,240 and \$464,070, respectively, subject to fixed interest rates. The Company's long-term debt is valued based on discounting the future cash outflows associated with the long-term debt. The discount rate is based on the incremental premium above market rates for the U.S. Department of the Treasury securities of similar duration. In each period thereafter, the incremental premium is held constant while the U.S. Department of the Treasury security is based on the then current market value to derive the discount rate.

The following tables present information about the Company's assets and liabilities that are measured at fair value on a recurring basis as of November 30, 2023 and May 31, 2023 and indicates the fair value hierarchy of the valuation techniques the Company utilized to determine such fair value:

	Level 1	Level 2	Level 3	November 30, 2023
Financial assets				
Cash and cash equivalents	\$ 143,373	\$ —	\$ —	\$ 143,373
Restricted cash	1,576			1,576
Marketable securities	116,418	—	—	116,418
Convertible notes receivable	—	—	74,681	74,681
Equity investments measured at fair value	—	—	5,500	5,500
Financial liabilities				
Warrant liability	—	—	(3,768)	(3,768)
Contingent consideration	—	—	(20,704)	(20,704)
APHA 24 Convertible debenture	—	—	(128,399)	(128,399)
Total recurring fair value measurements	\$ 261,367	\$ —	\$ (72,690)	\$ 188,677

	Level 1	Level 2	Level 3	May 31, 2023
Financial assets				
Cash and cash equivalents	\$ 206,632	\$ —	\$ —	\$ 206,632
Restricted cash	—	—	—	—
Marketable Securities	241,897	—	—	241,897
Convertible notes receivable	—	—	103,401	103,401
Equity investments measured at fair value	1,056	1,088	5,651	7,795
Financial liabilities				
Warrant liability	—	—	(1,817)	(1,817)
Contingent consideration	—	—	(27,107)	(27,107)
APHA 24 Convertible debenture	—	—	(120,568)	(120,568)
Total recurring fair value measurements	\$ 449,585	\$ 1,088	\$ (40,440)	\$ 410,233

The Company's financial assets and liabilities required to be measured on a recurring basis are its convertible notes receivable, equity investments measured at fair value, convertible debentures measured at fair value, acquisition-related contingent consideration, and warrant liability.

Convertible notes receivable and long-term investments are recorded at fair value. The estimated fair value is determined using the Black Scholes option pricing model, probability of legalization and is classified as Level 3.

Convertible debentures payable are recorded at fair value when elected or required under US GAAP. Specifically, the APHA 24 instrument's estimated fair value is determined using the Black-Scholes option pricing model and is classified as Level 3.

Certain equity investments recorded at fair value have quoted prices in active markets for identical assets and are classified as Level 1. The Company classified securities with observable inputs as Level 2 and without a quoted market price as Level 3.

The warrants associated with the warrant liability are classified as Level 3 derivatives. Consequently, the estimated fair value of the warrant liability is determined using the Black-Scholes pricing model. Until the warrants are exercised, expire, or other facts and circumstances lead the warrant liability to be reclassified to stockholders' equity, the warrant liability (which relates to warrants to purchase shares of common stock) is marked-to-market each reporting period with the change in fair value recorded in change in fair value of warrant liability. Any significant adjustments to the unobservable inputs disclosed in the table below would have a direct impact on the fair value of the warrant liability.

The contingent consideration from the acquisitions of SweetWater, Montauk, and Truss due in December 2023, December 2025, and upon the triggering event if met, respectively and are payable in cash, is determined by discounting future expected cash outflows at a discount rate in the range of 5% - 11.4%, and probability of achievement of 25% and 90%. The unobservable inputs into the future expected cash outflows result in a fair value measurement classified as Level 3. During the six months ended November 30, 2023, a decrease in fair value of \$10,584, inclusive of changes in foreign exchange, was recognized and was comprised of a decrease of fair value of \$13,218 for the contingent consideration from the Sweetwater acquisition as a result of a lower probability of achieving the incentive targets which was offset by an increase in fair value of \$2,411 for the contingent consideration from the Montauk acquisition as a result of a higher probability of achieving the incentive targets. Lastly, the addition of \$4,181 of contingent consideration liability was assumed as part of the Truss acquisition and an increase in fair value of \$223 as a result of foreign exchange.

The balances of assets and liabilities categorized within Level 3 of the fair value hierarchy measured at fair value on a recurring basis are reconciled, as follows:

	Convertible notes receivable	Equity Investments	Warrant Liability	Contingent Consideration	APHA 24 Convertible Debt
Balance, May 31, 2023	\$ 103,401	\$ 5,651	\$ (1,817)	\$ (27,107)	\$ (120,568)
Additions	—	—	—	(4,181)	—
Disposals	(28,720)	—	—	—	—
Unrealized gain (loss) on fair value	—	(151)	(1,951)	10,584	(7,831)
Impairments	—	—	—	—	—
Balance, November 30, 2023	<u>\$ 74,681</u>	<u>\$ 5,500</u>	<u>\$ (3,768)</u>	<u>\$ (20,704)</u>	<u>\$ (128,399)</u>

The unrealized gain (loss) on fair value for the convertible debenture, the warrant liability, contingent consideration, and debt securities classified under available-for-sale method is recognized in the consolidated statements of loss and comprehensive loss using the following inputs:

Financial asset / financial liability	Valuation technique	Significant unobservable input	Inputs
APHA Convertible debentures	Black-Scholes	Volatility, expected life (in years)	50% 0.5
Warrant liability	Black-Scholes	Volatility, expected life (in years)	50% 1.3
Contingent consideration	Discounted cash flows	Discount rate, achievement	5% - 11% 25% - 90%

Items measured at fair value on a non-recurring basis

The Company's prepaids and other current assets, long lived assets, including property and equipment, goodwill and intangible assets are measured at fair value when there is an indicator of impairment and are recorded at fair value only when an impairment charge is recognized.

Management reviews its capital management approach on an ongoing basis and believes that this approach, given the relative size of the Company, is reasonable. There have been no changes to the Company's capital management approach in the period. The Company considers its cash and cash equivalents and marketable securities as capital.

Note 26. Segment reporting

Information reported to the Chief Operating Decision Maker ("CODM") for the purpose of resource allocation and assessment of segment performance focuses on the nature of the operations. The Company operates in four reportable segments: (1) cannabis operations, which encompasses the production, distribution, sale, co-manufacturing and advisory services of both medical and adult-use cannabis, (2) beverage alcohol operations, which encompasses the production, marketing and sale of beverage and beverage alcohol products, (3) distribution operations, which encompasses the purchase and resale of pharmaceuticals products to wholesale and pharmacy customers, and (4) wellness products, which encompasses hemp foods and hemp-based cannabidiol ("CBD") consumer products. This structure is in line with how our Chief Operating Decision Maker ("CODM") assesses our performance and allocates resources.

Operating segments have not been aggregated and no asset information is provided for the segments because the Company's CODM does not receive asset information by segment on a regular basis.

Segment gross profit from external customers:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Cannabis				
Net cannabis revenue	\$ 67,114	\$ 49,898	\$ 137,447	\$ 108,468
Cannabis costs	46,472	28,577	96,989	57,438
Gross profit	<u>20,642</u>	<u>21,321</u>	<u>40,458</u>	<u>51,030</u>
Distribution				
Distribution revenue	67,223	60,188	136,380	120,773
Distribution costs	60,147	52,495	121,615	107,479
Gross profit	<u>7,076</u>	<u>7,693</u>	<u>14,765</u>	<u>13,294</u>
Beverage alcohol				
Net beverage alcohol revenue	46,505	21,395	70,667	42,049
Beverage alcohol costs	30,513	11,420	41,779	22,269
Gross profit	<u>15,992</u>	<u>9,975</u>	<u>28,888</u>	<u>19,780</u>
Wellness				
Wellness revenue	12,929	12,655	26,226	26,057
Wellness costs	9,230	8,762	18,732	18,665
Gross profit	<u>\$ 3,699</u>	<u>\$ 3,893</u>	<u>\$ 7,494</u>	<u>\$ 7,392</u>

Channels of Cannabis revenue were as follows:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Revenue from Canadian medical cannabis	\$ 6,288	\$ 6,365	\$ 12,430	\$ 12,885
Revenue from Canadian adult-use cannabis	72,048	52,390	143,243	110,745
Revenue from wholesale cannabis	4,289	236	9,584	628
Revenue from international cannabis	11,931	7,705	26,183	18,127
Less excise taxes	(27,442)	(16,798)	(53,993)	(33,917)
Total	<u>\$ 67,114</u>	<u>\$ 49,898</u>	<u>\$ 137,447</u>	<u>\$ 108,468</u>

On July 12, 2022, Tilray acquired the HEXO Convertible Note from HTI and also entered into a strategic alliance with HEXO Corp. (“HEXO”) as discussed in Note 8 (Convertible notes receivable) and Note 13 (Convertible debentures payable). In addition, the Company and HEXO entered into various commercial transaction agreements. On June 22, 2023, the Company completed the HEXO Acquisition as described in Note 7 (Business acquisitions), and thus these commercial arrangements were terminated and HEXO's financial results were consolidated in the current period results.

Included in revenue from Canadian adult-use cannabis is \$nil and \$1,500 of advisory services revenue for the three and six months ended November 30, 2023, from the aforementioned HEXO commercial transaction agreements, compared to \$7,882 and \$15,635 of advisory services revenue in the prior comparative period.

Geographic net revenue:

	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
North America	\$ 114,619	\$ 76,211	\$ 208,140	\$ 158,403
EMEA	75,292	62,715	154,996	128,756
Rest of World	3,860	5,210	7,584	10,188
Total	<u>\$ 193,771</u>	<u>\$ 144,136</u>	<u>\$ 370,720</u>	<u>\$ 297,347</u>

Geographic capital assets:

	November 30, 2023	May 31, 2023
North America	\$ 506,151	\$ 319,173
EMEA	105,325	107,131
Rest of World	3,611	3,363
Total	<u>\$ 615,087</u>	<u>\$ 429,667</u>

Major customers are defined as customers that are materially significant to the Company's annual revenues. For the three and six months ended November 30, 2023 and 2022, there were no major customers representing a material contribution to our quarterly revenues.

Note 27. Subsequent Events

On December 15, 2023 and December 21, 2023, the Company exchanged \$18,500 aggregate principal of its APHA 24 Notes for cancellation by issuing 9,601,538 shares.

On January 5, 2024, the Company obtained a Waiver from its lender as 420 was not in compliance with the leverage ratio covenant under the 420 Secured Credit Agreement. See "420 Credit Agreement" discussed in Part II, Item 5. Other Information.

On January 5, 2024, Aphria Inc. ("Aphria"), a wholly-owned subsidiary of the Company, entered into an Amended and Restated Wholesale Cannabis Supply Agreement (the "Supply Agreement") with 1974568 Ontario Limited ("Aphria Diamond"), Aphria's joint venture with Double Diamond Holdings Ltd. The Supply Agreement amends and restates the existing supply agreement, effective as of September 1, 2023, and amends certain terms relating to pricing and product classes. See "Aphria Diamond Amended Supply Agreement" discussed in Part II, Item 5. Other Information.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

This Management’s Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the Condensed Interim Consolidated Financial Statements and the related Notes thereto for the period ended November 30, 2023 contained in this Quarterly Report on Form 10-Q and the Audited Consolidated Financial Statements and the related Notes thereto contained in our Annual Report on Form 10-K for the fiscal year ended May 31, 2023, as well as in conjunction with the sections entitled “Item 1A. Risk Factors” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the fiscal year ended May 31, 2023. Forward looking statements in this Form 10-Q are qualified by the cautionary statement included in this Form 10-Q under the sub-heading “Cautionary Note Regarding Forward-Looking Statements” in the introduction of this Form 10-Q.

Company Overview

We are a leading global cannabis-lifestyle and consumer packaged goods company headquartered in Leamington and New York, with operations in Canada, the United States, Europe, Australia, and Latin America that is changing people’s lives for the better – one person at a time – by inspiring and empowering a worldwide community to live their very best life, enhanced by moments of connection and wellbeing. Tilray’s mission is to be the most responsible, trusted and market leading cannabis consumer products company in the world with a portfolio of innovative, high-quality and beloved brands that address the needs of the consumers, customers and patients we serve.

Our overall strategy is to leverage our brands, infrastructure, expertise and capabilities to drive market share in the industries in which we compete, achieve industry-leading, profitable growth and build sustainable, long-term shareholder value. In order to ensure the long-term sustainable growth of our Company, we continue to focus on developing strong capabilities in consumer insights, drive category management leadership and assess growth opportunities with the introduction of new products and entries into new geographies. In addition, we are relentlessly focused on managing our cost of goods and expenses in order to maintain our strong financial position.

Trends and Other Factors Affecting Our Business

Canadian cannabis market trends:

The cannabis industry in Canada continues to evolve at a rapid pace during the early periods following the federal legalization of adult-use cannabis. Through analysis of the current market conditions, the following key trends have emerged and are anticipated to influence the near-term future in the industry:

- *Market share.* Tilray continues to maintain its market leadership position in Canada. However, during the quarter, we experienced a marginal dip in market share in Canada from 13.4% to 12.5% from the immediately preceding quarter, as reported by Hifyre data for all provinces excluding Quebec where Weedcrawler was deemed more accurate. While our market share has increased from the prior year comparison as a result of the strategic acquisitions of HEXO and Truss, the current period decrease reflects the intricacies of integrating products from strategic acquisitions like HEXO and Truss into our distribution channels. Challenges during this integration, including issues with SKU-specific gaps due to facility transitions, impacted our performance. However, we anticipate a rebound in market share for the latter half of our third quarter as we address these issues and integrate our processes.
- *Price compression.* Historical price compression persists in the market, intensified by fierce competition among the approximately 1,000 Licensed Producers in Canada. Despite increased sales volume, year-over-year price compression has adversely impacted revenue by approximately \$3.6 million and \$6.7 million for the three and six months ended November 30, 2023, influencing both cannabis gross margin and the bottom line. The fixed impact of excise per gram, notwithstanding the decline in average selling prices, further compounds these challenges, prompting ongoing industry lobbying efforts.
- *Timing difference in recognizing synergized operating results.* As we continue to acquire businesses such as HEXO and Truss, a large part of our strategy involves removing legacy costs from these businesses as part of our acquisition strategy. Once we have completed our full \$27 million synergy plan for HEXO and integrated Truss's operations, we expect our operating results to be more profitable. Concurrently, we are actively evaluating our facilities, optimizing for efficiency, and implementing cost reduction measures to ensure our value chain operates at peak efficiency.

These identified trends have had impacts on the current period results of operations and are discussed in greater detail in the respective sections.

International cannabis market updates:

The cannabis industry in Europe is in its early stages of development whereby countries within Europe are at different stages of legalization of medical and adult-use cannabis as some countries have expressed a clear political ambition to legalize adult-use cannabis (Germany, Portugal, Luxembourg and Czech Republic), some are engaging in an experiment for adult-use (Germany, Netherlands and Switzerland) and some are debating regulations for cannabinoid-based medicine (France and Spain). In Europe, we believe that, despite continuing recessionary economic conditions and the Russian conflict with Ukraine, cannabis legalization (both medicinal and adult-use) will continue to gain traction albeit more slowly than originally expected. We also continue to believe that Tilray remains uniquely positioned to maintain and gain significant market share in these markets with its infrastructure and its investments, which is comprised of two EU-GMP cultivation facilities within Europe located in Portugal and Germany, our distribution network and our demonstrated commitment to the availability, quality and safety of our cannabinoid-based medical products. Today, Germany remains the largest medical cannabis market in Europe.

The following is a summary of the state of cannabis legalization within Europe:

Germany. In late October 2022, the German government published key details of its plan to legalize and regulate adult-use cannabis, including what Health Minister Karl Lauterbach described as “complete” cultivation within the country.

Recently, Mr. Lauterbach advised that the proposal had been revised and that the new plan is a two-part model, which appears to be designed in order to legalize cannabis as broadly as possible without running afoul of European Union rules. On July 6, 2023, it was announced that the draft regulations pertaining to decriminalization, home cultivation and non-commercial “cultivation associations” (i.e., social clubs) (the “Pillar One Regulations”) had been finalized by the health ministry and was ready to be delivered to the German parliament. Due to lack of internal alignment by the SPD party, the Pillar One Regulations, which were initially expected to be introduced to the German parliament in the fourth quarter of calendar year 2023, now will not be brought until early in the calendar year of 2024. It is expected that the Pillar One Regulations will be passed in January 2024, with the new law coming into effect in the first quarter of calendar year 2024.

In addition to the Pillar One Regulations addressing decriminalization, home cultivation and non-commercial “cultivation associations”, it also contains provisions which provide for broad medical cannabis reform, to which there appears to be broad consensus. These provisions include the reclassification of medical cannabis as a non-narcotic, thereby increasing the accessibility of medical cannabis to patients and the abolishment of the tender procedure for in-country cultivation in favor of a permit procedure.

We expect to see the cornerstone framework for the Pillar Two Regulations governing the model projects in January 2024.

We continue to believe that Tilray is well-positioned in Germany to provide consistent and sustainable cannabis products for the adult-use market whether only in-country cultivation is permitted or whether imports are also allowed given our Aphria RX facility located in Germany and our EU-GMP-certified production facility in Portugal, as well as our distribution platform, which provides us with access to 13,000 pharmacies in Germany. Tilray is also well-positioned to continue to service the medical cannabis market and we believe that the reclassification of medical cannabis as a non-narcotic and the adoption of a permit procedure for in-country cultivation provides Tilray with a larger market opportunity.

Switzerland. In October 2021, Switzerland announced its intention to legalize cannabis by allowing production, cultivation, trade, and consumption, and in the meantime, it is commencing pilot projects in various cities, which permits selected participants to purchase cannabis for adult-use in various pharmacies in order to conduct studies on the cannabis market and its impact on Swiss society. It is the first trial for the legal distribution of adult-use cannabis containing THC in Europe. To date, Switzerland has granted several cities, including Basel, Bern, Biel/Bienne, Lucerne, Geneva, and Zurich, the opportunity to start their cannabis pilot projects. Zurich, which has recently been reported to lack cannabis consumers, is currently seeking 400 eligible individuals to participate.

Spain. The Spanish Congress' Health Committee has recently approved a Medical Cannabis Report that paves the way for a government-sponsored bill on medical cannabis. The Report explicitly opens the door to standardized preparations other than the drugs already approved, highlighting their advantages in relation to safety, security and stability; as well as the possibility to prescribe medical cannabis in community pharmacies and not only in hospitals, favoring the access to the patients that may need it.

France. France launched a two-year pilot experiment to supply approximately 3,000 patients with medical cannabis. To date, 2,300 patients are enrolled in the experiment, which has been extended for another year and is now ending March 2024 in order to collect more data and to adopt a legal framework. The first results of the experimentation are positive. Several independent agencies have produced reports that show the effectiveness of medical cannabis, especially in situations of chronic pain.

Czech Republic. The Czech Republic has discussed plans to launch a fully regulated adult-use cannabis market and is reviewing in the context of the European regulations.

Malta. In 2021, became the first country in the European Union to legalize personal possession of the drug and permit private “cannabis clubs,” where members can grow and share the drug.

Netherlands. The Netherlands launched a pilot program involving the cultivation of cannabis for adult-use. The purpose of the experiment is to determine whether and how controlled cannabis can be legally supplied to coffeeshops and what the effects of this would be. During the experiment, legally produced cannabis will be sold in coffeeshops in 10 municipalities. Coffeeshops in these municipalities may only sell legally produced cannabis. The term of the experiment is set for four years.

Beverage alcohol market trends:

The beverage alcohol category, while more established, continues to shift with changes in consumer trends for the craft industry. Specifically, based on IRI data, for the 13 weeks ended November 30, 2023, the US beer trends softened slightly as the industry increased 1.6%, while craft beer decreased 1.6%, a slight decline from the immediately preceding quarter, which is consistent with the historical seasonality of craft beer. Craft beer still maintains the 4th largest segment within total beer, generating over \$1.1B in retail sales. Sweetwater revenues in the quarter ending August 31, 2023, and November 30, 2023, were both 1% higher than the comparable quarters of the prior year. SweetWater is expected to maintain growth nationally during the remainder of the 2024 fiscal year through programming and product innovation launches. Early results from the launch of SweetWater’s latest innovation, Gummies, are encouraging, with the brand quickly becoming a top 3 offering in activated markets. Additionally, Montauk, which was acquired on November 7, 2022, finished the period with a 5.9% growth based on IRI data for the aforementioned period, through sustained success in home markets

and new market expansion. The Company anticipates continued growth through focused innovation, targeted marketing efforts, and gains in distribution across the portfolio of brands. The Company has also seen positive trends across the newly acquired brands portfolio from the Acquisition of the Beverage Alcohol Business Portfolio, which are included in our results from October 1, 2023.

Breckenridge Distillery is a leader in the bourbon industry and continues to gain market share in both the vodka and gin markets. A primary growth objective is to continue expansion of market share across the United States, including expanding the national chain's footprint, to maintain a double-digit annual top-line growth. To ensure continued growth in the future, the company is focused on expanding the marketing strategy, highlighting its quality products. Recent media coverage includes coverage of newly released products, the expanded Denver Broncos Sponsorship, and recognition of the world class restaurant located at the distillery. The overall whiskey market remains positive, but the growing tequila and RTD cocktail markets have slowed. The Company expects its spirits business to continue to grow with innovative new product offerings and continued expansion in the US market.

Wellness market trends:

Manitoba Harvest's branded hemp business continued to expand its U.S. and Canadian leading market share position this quarter with consumption up in both the Natural and Conventional Channels, with the brands top five customers all seeing growth. For the remainder of the year, the Company will look to expand the Happy Flower™ brand with retail distribution into key markets, focusing on U.S. states with established CBD permissibility and sales momentum in future periods.

Acquisitions, Strategic Transactions and Synergies

We strive to continue to expand our business on a consolidated basis, through a combination of organic growth and acquisition. While we continue to execute against our strategic initiatives that we believe will result in the long-term, sustainable growth and value to our stockholders, we continue to evaluate potential acquisitions and other strategic transactions of businesses that we believe complement our existing portfolio, infrastructure and capabilities or provide us with the opportunity to enter attractive new geographic markets and product categories as well as expand our existing capabilities. In addition, we have exited certain businesses and continue to evaluate certain businesses within our portfolio that are dilutive to profitability and cash flow. As a result, we incur transaction costs in connection with identifying and completing acquisitions and strategic transactions, as well as ongoing integration costs as we combine acquired companies and continue to achieve synergies, which is offset by income generated in connection with the execution of these transactions. For the three and six months ended November 30, 2023, we incurred \$1.1 million and \$9.6 million of transaction expenses, discussed further below.

Our acquisition strategy has had a material impact on the Company's results in the current quarter and we expect will continue into future periods, generating accretive impacts for our stockholders. A summary of their impacts are as follows:

- ***HEXO acquisition:***

On June 22, 2023, Tilray acquired HEXO Corp. ("HEXO") as discussed in Note 7 (Business acquisitions). With the HEXO Acquisition, Tilray initially expected to achieve additional cost savings of \$27 million on an annualized pre-tax basis and has subsequently increased this target to between \$30 to \$ 35 million. These synergies will be realized across production, sales, marketing, distribution, and corporate savings, with incremental upside resulting from consolidating packaging, procurement, freight, and logistics. This builds on Tilray's substantial progress optimizing its Canadian cannabis operations discussed below. During the three and six months ended November 30, 2023, we have achieved \$22.0 million of our synergy plan on an annualized run-rate basis, of which \$14.0 million represented actual cost savings during the period. As discussed in our trends section, these cost savings initiatives take time to implement, resulting in related benefits being realized over time.

- ***Craft beverage acquisition:***

On September 29, 2023, Tilray acquired a portfolio of craft beer brands, assets and businesses comprising eight beer and beverage brands from Anheuser-Busch Companies, LLC, including breweries and brewpubs associated with them (the "Craft Acquisition"). The acquired businesses include Shock Top, Breckenridge Brewery, Blue Point Brewing Company, 10 Barrel Brewing Company, Redhook Brewery, Widmer Brothers Brewing, Square Mile Cider Company, and HiBall Energy. The details of the acquisition are as described in Note 7 (Business acquisitions). The Craft Acquisition, is expected to be transformational to our beverage alcohol strategy elevating the Company to the 5th largest U.S. Craft Beer market share position from our previous 9th place market share position.

The Company further believes the Craft transaction will be accretive to our Adjusted EBITDA, driven by a range of strategic benefits, including:

- An established brand portfolio with a devoted consumer base, coupled with growth potential through integration and expanded capabilities in both alcoholic and non-alcoholic beverages.
- The acquisition encompasses four production facilities and eight brewpub locations, further solidifying our operational presence.
- A reinforced nationwide distribution footprint, propelling Tilray's beer sales volume from four million cases to twelve million, thereby tripling its market reach on a pro forma basis.

In addition to acquisitions completed above, the Company has also completed the following cost saving strategies during the quarter:

- ***Cannabis business cost reduction plan:***

During the fourth quarter of our fiscal year ended May 31, 2022, the Company launched a \$30 million cost optimization plan of our existing cannabis business to solidify our position as an industry leading low-cost producer. To date as of November 30, 2023, we have achieved \$22.3 million against the plan. The Company now considers this plan fulfilled, owing to a strategic shift in our Cannabis beverage strategy. The Company's original targets involved repurposing our beverage facility; however, this initiative was altered following the Truss acquisition, which required additional capacity from our existing infrastructure.

- ***International Cannabis business cost reduction plan:***

During our fiscal year ended May 31 2023, the Company launched an \$8.0 million cost optimization plan for our international cannabis business to adapt to changing market dynamics and slower than anticipated legalization in Europe. In the current period ended November 30, 2023, the Company achieved an annualized run-rate basis of \$7.6 million of cost savings. The Company concluded this savings plan as of November 30, 2023. The Company concluded this savings plan as of November 30, 2023. The remaining portion of the savings target was tied to an assumed temporary decrease in demand. However, the assumed temporary reduction did not occur rather demand for our European cannabis products increased, rendering the cost savings associated with that part of the plan unnecessary.

Political and Economic Environment

Our results of operations can also be affected by economic, political, legislative, regulatory, legal actions, the global volatility and general market disruption resulting from geopolitical tensions, such as Russia's incursion into Ukraine. Economic conditions, such as recessionary trends, inflation, supply chain disruptions, interest and monetary exchange rates, and government fiscal policies, and the recent banking credit crises, can have a significant effect on operations. Accordingly, we could be affected by civil, criminal, environmental, regulatory or administrative actions, claims or proceedings.

Results of Operations

Our consolidated results, in thousands except for per share data, are as follows:

(in thousands of U.S. dollars)	For the three months ended November 30,				For the six months ended November 30,			
			Change	% Change			Change	% Change
	2023	2022	2023 vs. 2022		2023	2022	2023 vs. 2022	
Net revenue	\$ 193,771	\$ 144,136	\$ 49,635	34%	\$ 370,720	\$ 297,347	\$ 73,373	25%
Cost of goods sold	146,362	101,254	45,108	45%	279,115	205,851	73,264	36%
Gross profit	47,409	42,882	4,527	11%	91,605	91,496	109	0%
Operating expenses:								
General and administrative	43,313	37,878	5,435	14%	83,829	78,386	5,443	7%
Selling	7,583	9,669	(2,086)	(22)%	14,442	19,340	(4,898)	(25)%
Amortization	21,917	23,995	(2,078)	(9)%	44,142	48,354	(4,212)	(9)%
Marketing and promotion	9,208	8,535	673	8%	17,743	15,783	1,960	12%
Research and development	56	165	(109)	(66)%	135	331	(196)	(59)%
Change in fair value of contingent consideration	300	—	300	0%	(10,807)	211	(11,018)	(5,222)%
Litigation costs, net of recoveries	3,042	2,815	227	8%	5,076	3,260	1,816	56%
Restructuring costs	2,655	8,064	(5,409)	(67)%	3,570	8,064	(4,494)	(0,056)%
Transaction (income) costs	1,094	3,552	(2,458)	(69)%	9,596	(9,264)	18,860	(204)%
Total operating expenses	89,168	94,673	(5,505)	(6)%	167,726	164,465	3,261	2%
Operating loss	(41,759)	(51,791)	10,032	(19)%	(76,121)	(72,969)	(3,152)	4%
Interest expense, net	(8,625)	(3,107)	(5,518)	178%	(18,460)	(7,520)	(10,940)	145%
Non-operating (expense) income, net	821	(18,450)	19,271	(104)%	(3,581)	(51,442)	47,861	(93)%
Loss before income taxes	(49,563)	(73,348)	23,785	(32)%	(98,162)	(131,931)	33,769	(26)%
Income tax expense	(3,380)	(11,713)	8,333	(71)%	3,884	(4,502)	8,386	(186)%
Net loss	\$ (46,183)	\$ (61,635)	\$ 15,452	(25)%	\$ (102,046)	\$ (127,429)	\$ 25,383	(20)%

Use of Non-GAAP Measures

Throughout this Management's Discussion and Analysis of Financial Condition and Results of Operations in this Quarterly Report on Form 10-Q, we discuss non-GAAP financial measures, including reference to:

- adjusted gross profit (excluding purchase price allocation ("PPA") fair value step up) for each reporting segment (Cannabis, Beverage alcohol, Distribution and Wellness) as applicable,
- adjusted gross margin (excluding purchase price allocation ("PPA") fair value step up) for each reporting segment (Cannabis, Beverage alcohol, Distribution and Wellness) as applicable,
- adjusted EBITDA,
- cash and marketable securities, and
- constant currency presentation of net revenue.

All these non-GAAP financial measures should be considered in addition to, and not in lieu of, the financial measures calculated and presented in accordance with accounting principles generally accepted in the United States of America, ("GAAP"). These measures, which may be different than similarly titled measures used by other companies, are presented to help investors' overall understanding of our financial performance and should not be considered a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP. Please see "Reconciliation of Non-GAAP Financial Measures to GAAP Measures" below for reconciliation of such non-GAAP Measures to the most directly comparable GAAP financial measures, as well as a discussion of our adjusted gross margin, adjusted gross profit and adjusted EBITDA measures and the calculation of such measures.

Constant Currency Presentation

We believe that this measure provides useful information to investors because it provides transparency to underlying performance in our consolidated net sales by excluding the effect that foreign currency exchange rate fluctuations have on period-to-period comparability given the volatility in foreign currency exchange markets. To present this information for historical periods, current period net sales for entities reporting in currencies other than the U.S. Dollar are translated into U.S. Dollars at the average monthly exchange rates in effect during the corresponding period of the prior fiscal year rather than at the actual average monthly exchange rate in effect during the current period of the current fiscal year. As a result, the foreign currency impact is equal to the current year results in local currencies multiplied by the change in average foreign currency exchange rate between the current fiscal period and the corresponding period of the prior fiscal year.

Cash and Marketable Securities

The Company combines the Cash and cash equivalent financial statement line item and the Marketable securities financial statement line item as an aggregate total as reconciled in the liquidity and capital resource section below. The Company's management believes that this presentation provides useful information to management, analysts and investors regarding certain additional financial and business trends relating to its short-term liquidity position by combining these three GAAP metrics.

Operating Metrics and Non-GAAP Measures

We use the following operating metrics and non-GAAP measures to evaluate our business and operations, measure our performance, identify trends affecting our business, project our future performance, and make strategic decisions. Other companies, including companies in our industry, may calculate operating metrics and non-GAAP measures with similar names differently which may reduce their usefulness as comparative measures. Certain variances are labeled as not meaningful ("NM") throughout management's discussion and analysis.

(in thousands of U.S. dollars)	For the three months ended November 30,		For the six months ended November 30,	
	2023	2022	2023	2022
Net cannabis revenue	\$ 67,114	\$ 49,898	\$ 137,447	\$ 108,468
Distribution revenue	67,223	60,188	136,380	120,773
Net beverage alcohol revenue	46,505	21,395	70,667	42,049
Wellness revenue	12,929	12,655	26,226	26,057
Cannabis costs	46,472	28,577	96,989	57,438
Beverage alcohol costs	30,513	11,420	41,779	22,269
Distribution costs	60,147	52,495	121,615	107,479
Wellness costs	9,230	8,762	18,732	18,665
Adjusted gross profit (excluding PPA step-up) ⁽¹⁾	52,110	43,989	101,412	93,710
Cannabis adjusted gross margin (excluding PPA step-up) ⁽¹⁾	35%	43%	35%	47%
Beverage alcohol adjusted gross margin (excluding PPA step-up) ⁽¹⁾	38%	52%	44%	52%
Distribution gross margin	11%	13%	11%	11%
Wellness gross margin	29%	31%	29%	28%
Adjusted EBITDA ⁽¹⁾	\$ 10,086	\$ 11,008	20,820	\$ 23,839
Cash and marketable securities ⁽¹⁾ as at the period ended:	259,791	433,504	259,791	433,504
Working capital as at the period ended:	\$ 247,041	\$ 388,200	247,041	388,200

⁽¹⁾ Adjusted EBITDA, adjusted gross profit (excluding PPA step-up) and adjusted gross margin (excluding PPA step-up) for each of our segments, and cash and marketable securities are non-GAAP financial measures. See "Use of Non-GAAP Measures" above for a reconciliation of these Non-GAAP Measures to our most comparable GAAP measure.

Segment Reporting

Our reporting segments revenue is comprised of revenues from our cannabis, distribution, beverage alcohol, and wellness operations, as follows:

(in thousands of U.S. dollars)	For the three months ended November 30,		Change	% Change	For the six months ended November 30,		Change	% Change
	2023	2022			2023 vs. 2022	2023		
Cannabis business	\$ 67,114	\$ 49,898	\$ 17,216	35%	\$ 137,447	\$ 108,468	\$ 28,979	27%
Distribution business	67,223	60,188	7,035	12%	136,380	120,773	15,607	13%
Beverage alcohol business	46,505	21,395	25,110	117%	70,667	42,049	28,618	68%
Wellness business	12,929	12,655	274	2%	26,226	26,057	169	1%
Total net revenue	\$ 193,771	\$ 144,136	\$ 49,635	34%	\$ 370,720	\$ 297,347	\$ 73,373	25%

Our reporting segments revenue using a constant currency⁽¹⁾ are as follows:

(in thousands of U.S. dollars)	For the three months ended November 30, as reported in constant currency				For the six months ended November 30, as reported in constant currency			
			Change	% Change			Change	% Change
	2023	2022	2023 vs. 2022		2023	2022	2023 vs. 2022	
Cannabis business	\$ 67,361	\$ 49,898	\$ 17,463	35%	\$ 138,750	\$ 108,468	\$ 30,282	28%
Distribution business	64,502	60,188	4,314	7%	131,454	120,773	10,681	9%
Beverage alcohol business	46,505	21,395	25,110	117%	70,667	42,049	28,618	68%
Wellness business	13,004	12,655	349	3%	26,463	26,057	406	2%
Total net revenue	<u>\$ 191,372</u>	<u>\$ 144,136</u>	<u>\$ 47,236</u>	<u>33%</u>	<u>\$ 367,334</u>	<u>\$ 297,347</u>	<u>\$ 69,987</u>	<u>24%</u>

Our geographic revenue is as follows:

(in thousands of U.S. dollars)	For the three months ended November 30,				For the six months ended November 30,			
			Change	% Change			Change	% Change
	2023	2022	2023 vs. 2022		2023	2022	2023 vs. 2022	
North America	\$ 114,619	\$ 76,211	\$ 38,408	50%	\$ 208,140	\$ 158,403	\$ 49,737	31%
EMEA	75,292	62,715	12,577	20%	154,996	128,756	26,240	20%
Rest of World	3,860	5,210	(1,350)	(26)%	7,584	10,188	(2,604)	(26)%
Total net revenue	<u>\$ 193,771</u>	<u>\$ 144,136</u>	<u>\$ 49,635</u>	<u>34%</u>	<u>\$ 370,720</u>	<u>\$ 297,347</u>	<u>\$ 73,373</u>	<u>25%</u>

Our geographic revenue using a constant currency⁽¹⁾ is as follows:

(in thousands of U.S. dollars)	For the three months ended November 30, as reported in constant currency				For the six months ended November 30, as reported in constant currency			
			Change	% Change			Change	% Change
	2023	2022	2023 vs. 2022		2023	2022	2023 vs. 2022	
North America	\$ 115,429	\$ 76,211	\$ 39,218	51%	\$ 210,643	\$ 158,403	\$ 52,240	33%
EMEA	70,129	62,715	7,414	12%	145,245	128,756	16,489	13%
Rest of World	5,814	5,210	604	12%	11,446	10,188	1,258	12%
Total net revenue	<u>\$ 191,372</u>	<u>\$ 144,136</u>	<u>\$ 47,236</u>	<u>33%</u>	<u>\$ 367,334</u>	<u>\$ 297,347</u>	<u>\$ 69,987</u>	<u>24%</u>

Our geographic capital assets are as follows:

(in thousands of U.S. dollars)	November 30,	May 31,	Change	% Change
	2023	2023	2023 vs. 2022	
North America	\$ 506,151	\$ 319,173	\$ 186,978	59%
EMEA	105,325	107,131	(1,806)	(2)%
Rest of World	3,611	3,363	248	7%
Total capital assets	<u>\$ 615,087</u>	<u>\$ 429,667</u>	<u>\$ 185,420</u>	<u>43%</u>

Cannabis revenue

Cannabis revenue based on market channel is as follows:

(in thousands of US dollars)	For the three months ended November 30,				For the six months ended November 30,			
	2023		2022		2023		2022	
			Change	% Change			Change	% Change
			2023 vs. 2022				2023 vs. 2022	
Revenue from Canadian medical cannabis	\$ 6,288	\$ 6,365	\$ (77)	(1)%	\$ 12,430	\$ 12,885	\$ (455)	(4)%
Revenue from Canadian adult-use cannabis	72,048	52,390	19,658	38%	143,243	110,745	32,498	29%
Revenue from wholesale cannabis	4,289	236	4,053	1,717%	9,584	628	8,956	1,426%
Revenue from international cannabis	11,931	7,705	4,226	55%	26,183	18,127	8,056	44%
Total cannabis revenue	94,556	66,696	27,860	42%	191,440	142,385	49,055	34%
Excise taxes	(27,442)	(16,798)	(10,644)	63%	(53,993)	(33,917)	(20,076)	59%
Total cannabis net revenue	\$ 67,114	\$ 49,898	\$ 17,216	35%	\$ 137,447	\$ 108,468	\$ 28,979	27%

Cannabis revenue based on market channel using a constant currency⁽¹⁾ is as follows:

(in thousands of US dollars)	For the three months ended November 30, as reported in constant currency				For the six months ended November 30, as reported in constant currency			
	2023		2022		2023		2022	
			Change	% Change			Change	% Change
			2023 vs. 2022				2023 vs. 2022	
Revenue from Canadian medical cannabis	\$ 6,377	\$ 6,365	\$ 12	0%	\$ 12,687	\$ 12,885	\$ (198)	(2)%
Revenue from Canadian adult-use cannabis	73,021	52,390	20,631	39%	146,132	110,745	35,387	32%
Revenue from wholesale cannabis	4,338	236	4,102	1,738%	9,796	628	9,168	1,460%
Revenue from international cannabis	11,442	7,705	3,737	49%	25,219	18,127	7,092	39%
Total cannabis revenue	95,178	66,696	28,482	43%	193,834	142,385	51,449	36%
Excise taxes	(27,817)	(16,798)	(11,019)	66%	(55,084)	(33,917)	(21,167)	62%
Total cannabis net revenue	\$ 67,361	\$ 49,898	\$ 17,463	35%	\$ 138,750	\$ 108,468	\$ 30,282	28%

(1) The constant currency presentation of our Cannabis revenue based on market channel is a non-GAAP financial measure. See "Use of Non-GAAP Measures – Constant Currency Presentation" above for a discussion of these Non-GAAP Measures.

Revenue from Canadian medical cannabis: Revenue from Canadian medical cannabis decreased to \$6.3 million and \$12.4 million for the three and six months ended November 30, 2023, compared to revenue of \$6.4 million and \$12.9 million for the prior year same period. On a constant currency basis revenue from Canadian medical cannabis was \$6.4 million and \$12.7 million for the three and six months ended November 30, 2023, compared to revenue of \$6.4 million and \$12.9 million for the prior year same periods. While revenue was relatively consistent period over period and on a constant currency basis for the three month period, the six month slight decrease in revenue from medical cannabis continues to be driven by increased competition from the adult-use recreational market and its related price compression impacting the medical cannabis market.

Revenue from Canadian adult-use cannabis: During the three and six months ended November 30, 2023, our revenue from Canadian adult-use cannabis increased to \$72.0 million and \$143.2 million, compared to revenue of \$52.4 million and \$110.7 million and for the prior year same period. Further, the prior year revenue includes advisory fees in the amount of \$7.9 million and \$15.6 million for the three and six months ended November 30, 2022, compared to \$nil and \$1.5 million for the three and six months ended November 30, 2023. Excluding these advisory service fees, revenue increased by \$27.4 million and \$46.6 million for the three and six months ended November 30, 2023. The increase in adult-use revenue was driven by continuous launches of new product innovations from our existing brand portfolios as well as the increased revenue from the acquisition of HEXO on June 22, 2023, and Truss on August 3, 2023. Additionally, excluding the decline in the Canadian dollar, on a constant currency basis, our revenue from Canadian adult-use cannabis increased to \$73.0 million and \$146.1 million for the three and six months ended November 30, 2023.

Wholesale cannabis revenue: Revenue from wholesale cannabis increased to \$4.3 million and \$9.6 million for the three and six months ended November 30, 2023, compared to revenue of \$0.2 million and \$0.6 million for the prior year same period. On a constant currency basis, revenue from wholesale cannabis increased to \$4.3 million and \$9.8 million for the three and six months ended November 30, 2023 compared to revenue of \$0.2 million and \$0.6 million. The Company continues to believe that wholesale cannabis revenue will remain subject to quarter-to-quarter variability and is based on opportunistic sales. The wholesale transactions that occurred in the current year periods aided with our liquidity initiatives to increase our cash flow from operations despite having unfavorable impacts on our gross margin and EBITDA of \$(0.2) million and \$(2.9) million for the three and six months ended November 30, 2023.

International cannabis revenue: Revenue from international cannabis increased to \$11.9 million and \$26.2 million for the three and six months ended November 30, 2023, compared to revenue of \$7.7 million and \$18.1 million for the prior year same period. Given the increase of the Euro against the U.S. Dollar when compared to the prior year quarter, on a constant currency basis, revenue from international cannabis was \$11.4 million and \$25.2 million compared to \$7.7 million and \$18.1 million in the prior year same period for the three and six months ended November 30, 2023. The increase in the period is largely driven by expansion into emerging international medical markets. Additionally, in the prior period the Company recognized a one-time return adjustment of \$3.1 million related to a former customer in Israel that commenced bankruptcy proceedings.

Distribution revenue

Revenue from Distribution operations increased to \$67.2 million and \$136.4 million for the three and six months ended November 30, 2023, compared to revenue of \$60.2 million and \$120.8 million for the prior year same period. Revenue was positively impacted during the three month period from the increase of the Euro against the U.S. Dollar in the quarter, which when the impacts are eliminated on a constant currency basis, revenue was \$64.5 million and \$131.5 million for the three and six months ended November 30, 2023. The increase in the period was driven by increased production capacity achieved through out-sourcing to third party production facilities as well as leveraging our own internal production and improved procurement processes, which has allowed CC Pharma to improve its product mix.

Beverage alcohol revenue

Revenue from our Beverage alcohol operations increased to \$46.5 million and \$70.7 million for the three and six months ended November 30, 2023, compared to revenue of \$21.4 million and \$42.0 million for the prior year same period. The increase in the three and six month periods relate primarily to our acquisitions of the newly acquired Craft Acquisition brands and Montauk which occurred on September 29, 2023 and November 7, 2022, respectively, and is not reflected in the full prior year comparative periods.

Wellness revenue

Our Wellness revenue from Manitoba Harvest was relatively consistent at \$12.9 million and \$26.2 million for the three and six months ended November 30, 2023 compared to \$12.7 million and \$26.1 million from the prior year same period. On a constant currency basis for the three and six months ended November 30, 2023, Wellness revenue increased to \$13.0 million and \$26.5 million from \$12.7 and \$26.1 million. Overall, sales remained relatively consistent period over period with the increase being driven by a promotional sale at a large bulk retailer.

Gross profit, gross margin and adjusted gross margin⁽¹⁾ for our reporting segments

Our gross profit and gross margin for the three and six months ended November 30, 2023 and 2022, is as follows:

(in thousands of U.S. dollars)	For the three months ended November 30,		Change 2023 vs. 2022	% Change	For the six months ended November 30,		Change 2023 vs. 2022	% Change
	2023	2022			2023	2022		
Cannabis								
Net revenue	67,114	49,898	17,216	35%	137,447	108,468	28,979	27%
Cost of goods sold	46,472	28,577	17,895	63%	96,989	57,438	39,551	69%
Gross profit	20,642	21,321	(679)	(3)%	40,458	51,030	(10,572)	(21)%
Gross margin	31%	43%	(12)%	(28)%	29%	47%	(18)%	(38)%
Purchase price accounting step-up	2,938	—	2,938	—	7,454	—	7,454	0%
Adjusted gross profit (1)	23,580	21,321	2,259	11%	47,912	51,030	(3,118)	(6)%
Adjusted gross margin (1)	35%	43%	(8)%	(19)%	35%	47%	(12)%	(26)%
Distribution								
Net revenue	67,223	60,188	7,035	12%	136,380	120,773	15,607	13%
Cost of goods sold	60,147	52,495	7,652	15%	121,615	107,479	14,136	13%
Gross profit	7,076	7,693	(617)	(8)%	14,765	13,294	1,471	11%
Gross margin	11%	13%	(2)%	(15)%	11%	11%	0%	0%
Beverage alcohol								
Net revenue	46,505	21,395	25,110	117%	70,667	42,049	28,618	68%
Cost of goods sold	30,513	11,420	19,093	167%	41,779	22,269	19,510	88%
Gross profit	15,992	9,975	6,017	60%	28,888	19,780	9,108	46%
Gross margin	34%	47%	(13)%	(28)%	41%	47%	(6)%	(13)%
Purchase price accounting step-up	1,763	1,107	656	59%	2,353	2,214	139	6%
Adjusted gross profit (1)	17,755	11,082	6,673	60%	31,241	21,994	9,247	42%
Adjusted gross margin (1)	38%	52%	(14)%	(27)%	44%	52%	(8)%	(15)%
Wellness								
Net revenue	12,929	12,655	274	2%	26,226	26,057	169	1%
Cost of goods sold	9,230	8,762	468	5%	18,732	18,665	67	0%
Gross profit	3,699	3,893	(194)	(5)%	7,494	7,392	102	1%
Gross margin	29%	31%	(2)%	(6)%	29%	28%	1%	4%
Total								
Net revenue	193,771	144,136	49,635	34%	370,720	297,347	73,373	25%
Cost of goods sold	146,362	101,254	45,108	45%	279,115	205,851	73,264	36%
Gross profit	47,409	42,882	4,527	11%	91,605	91,496	109	0%
Gross margin	24%	30%	(6)%	(20)%	25%	31%	(6)%	(19)%
Purchase price accounting step-up	4,701	1,107	3,594	325%	9,807	2,214	7,593	343%
Adjusted gross profit (1)	52,110	43,989	8,121	18%	101,412	93,710	7,702	8%
Adjusted gross margin (1)	27%	31%	(4)%	(13)%	27%	32%	(5)%	(16)%

(1) Adjusted gross profit is our Gross profit (adjusted to exclude purchase price accounting valuation step-up) and adjusted gross margin is our Gross margin (adjusted to exclude purchase price accounting valuation step-up) and are non-GAAP financial measures. See "Use of Non-GAAP Measures" above for additional discussion regarding these non-GAAP measures. The Company's management believes that adjusted gross profit and adjusted gross margin are useful to our management to evaluate our business and operations, measure our performance, identify trends affecting our business, project our future performance, and make strategic decisions. We do not consider adjusted gross profit and adjusted gross margin in isolation or as an alternative to financial measures determined in accordance with GAAP.

Cannabis gross margin: Gross margin decreased during the three and six months ended November 30, 2023 to 31% and 29% from 43% and 47% for the prior year same period. Excluding the impact of the non-cash fair value purchase price accounting step-up, adjusted gross margin during the three and six months ended November 30, 2023 decreased to 35% and 35% from 43% and 47% when comparing the same prior year period. A portion of the decrease is a result of the termination of the HEXO advisory services agreement which contributed \$nil and \$1.5 million of gross profit in the current year compared to \$7.9 and \$15.6 million in the prior year, which if excluded would decrease adjusted gross margin to 32% and 38% for the three and six months ended November 30, 2022. Further, in the prior year second quarter the Company's international cannabis revenue section recognized a one-time return that reduced our top line revenue as well as a one-time inventory disposals incurred as exit costs from Israel for a combined impact of reducing gross profit by \$1.4 million. Lastly, significant wholesale transactions with negative gross profit of \$(0.2) and \$(2.9) million, were entered into to optimize our inventory levels and prioritize the generation of positive operating cash flow. Combining the aforementioned factors, adjusted gross cannabis margin would have been 37% and 38% compared 33% and 38% in the prior period comparative period.

Distribution gross margin: Gross margin of 11% and 11% for the three and six months ended November 30, 2023 decreased from 13% and 11% for the same periods in the prior year. While consistent for the six month period comparison, the decrease in the gross margin for the three month period is attributed to product mix.

Beverage alcohol gross margin: Gross margin of 34% and 41% for the three and six months ended November 30, 2023 decreased from 47% and 47% from the same period in the prior year. Adjusted gross margin of 38% and 44% for the three and six months ended November 30, 2023 decreased from 52% and 52% from the same periods in the prior year. The decrease in the adjusted beverage alcohol gross margin was a result of the newly acquired Craft Acquisition brands, which currently have lower margins than our historical business, primarily due to the current under utilization of the breweries we acquired.

Wellness gross margin: Gross margin of 29% and 29% for the three and six months ended November 30, 2023 decreased from 31% and 28% from the same period in the prior year. The decrease in the three month period was a result of a change in sales mix towards more bulk retail sales which have a lower margin. Wellness gross margin stayed consistent during the six month period.

Operating expenses

(in thousands of US dollars)	For the three months ended November 30,		Change 2023 vs. 2022	% Change	For the six months ended November 30,		Change 2023 vs. 2022	% Change
	2023	2022			2023	2022		
General and administrative	\$ 43,313	\$ 37,878	\$ 5,435	14%	\$ 83,829	\$ 78,386	\$ 5,443	7%
Selling	7,583	9,669	(2,086)	(22)%	14,442	19,340	(4,898)	(25)%
Amortization	21,917	23,995	(2,078)	(9)%	44,142	48,354	(4,212)	(9)%
Marketing and promotion	9,208	8,535	673	8%	17,743	15,783	1,960	12%
Research and development	56	165	(109)	(66)%	135	331	(196)	(59)%
Change in fair value of contingent consideration	300	—	300	0%	(10,807)	211	(11,018)	(5,222)%
Litigation costs, net of recoveries	3,042	2,815	227	8%	5,076	3,260	1,816	56%
Restructuring costs	2,655	8,064	(5,409)	(67)%	3,570	8,064	(4,494)	(56)%
Transaction (income) costs	1,094	3,552	(2,458)	(69)%	9,596	(9,264)	18,860	(204)%
Total operating expenses	<u>\$ 89,168</u>	<u>\$ 94,673</u>	<u>\$ (5,505)</u>	<u>(6)%</u>	<u>\$ 167,726</u>	<u>\$ 164,465</u>	<u>\$ 3,261</u>	<u>2%</u>

Operating expenses are comprised of general and administrative, share-based compensation, selling, amortization, marketing and promotion, research and development, change in fair value of contingent consideration, impairments, litigation costs, net of recoveries, restructuring costs and transaction (income) costs. These costs decreased by (\$5.5) and increased by \$3.2 million to \$89.2 and \$167.7 million for the three and six months ended November 30, 2023 as compared to \$94.7 and \$164.5 million for the same period of the prior year. These changes period over period are described below.

General and administrative costs

During the three and six months ended November 30, 2023, the changes in general and administrative costs when compared to the prior year same periods are described as follows:

(in thousands of US dollars)	For the three months ended November 30,		Change 2023 vs. 2022	% Change	For the six months ended November 30,		Change 2023 vs. 2022	% Change
	2023	2022			2023	2022		
Executive compensation	\$ 3,324	\$ 3,050	\$ 274	9%	\$ 6,985	\$ 6,605	\$ 380	6%
Office and general	8,065	7,383	682	9%	16,233	13,212	3,021	23%
Salaries and wages	15,795	10,151	5,644	56%	28,909	24,786	4,123	17%
Stock-based compensation	8,201	10,943	(2,742)	(25)%	16,458	20,136	(3,678)	(18)%
Insurance	2,499	2,726	(227)	(8)%	6,348	5,429	919	17%
Professional fees	2,503	1,730	773	45%	4,002	4,220	(218)	(5)%
(Gain) loss on sale of capital assets	(23)	(64)	41	(64)%	(20)	13	(33)	(254)%
Travel and accommodation	1,374	1,219	155	13%	2,481	2,380	101	4%
Rent	1,575	740	835	113%	2,433	1,605	828	52%
Total general and administrative costs	<u>\$ 43,313</u>	<u>\$ 37,878</u>	<u>\$ 5,435</u>	<u>14%</u>	<u>\$ 83,829</u>	<u>\$ 78,386</u>	<u>\$ 5,443</u>	<u>7%</u>

Executive compensation increased by 9% and 6% in the three and six months ended November 30, 2023. Executive compensation has remained generally consistent period over period.

Office and general increased by 9% and 23% during the three and six months ended November 30, 2023. The increase for the three month period is a result of the acquisition of the newly acquired beverage alcohol business portfolio, Montauk and HEXO, which did not occur in the prior period.

Salaries and wages increased by 56% and 17% during the three and six months ended November 30, 2023. The increase is primarily due to the inclusion of newly acquired beverage alcohol business portfolio, Montauk and HEXO employees, which were not in the prior period.

The Company recognized stock-based compensation expense of \$8.2 and \$16.5 million for the three and six months ended November 30, 2023 compared to \$10.9 and \$20.1 million for the same period in the prior year. The balance is based on the time-based vesting schedules and varies according to the assumptions used in the vesting model. During the quarter, as a result of a change in the probability of achievement of stock price targets for certain grants issued in 2021, as well as an increased forfeiture rate, stock based compensation decreased period over period.

Insurance expenses decreased by 8% and increased by 17% for the three and six months ended November 30, 2023 to \$2.5 and \$6.3 million from \$2.7 and \$5.4 million for the same period in the prior year. The decrease for the three months ended November 30, 2023, was driven by the Company's decision to self-insure certain of its property risks. The increase for the six months ended November 30, 2023, was driven by the expanded policies required for our newly acquired beverage alcohol business portfolio, HEXO and Montauk entities.

Rent expenses increased by 113% and 52% for the three and six months ended November 30, 2023 to \$1.6 and \$2.4 million from \$0.7 and \$1.6 million for the same period in the prior year. This increase was driven by the expanded policies required for our newly acquired beverage alcohol business portfolio, HEXO and Montauk entities.

Selling costs

For the three and six months ended November 30, 2023, the Company incurred selling costs of \$7.6 and \$14.4 million or 3.9% and 3.9% of net revenue as compared to \$9.7 and \$19.3 million and 6.7% and 6.5% of net revenue in the prior year period. These costs relate to third-party distributor commissions, shipping costs, Health Canada cannabis fees, and patient acquisition and maintenance costs. Patient acquisition and ongoing patient maintenance costs include funding to individual clinics to assist with additional costs incurred by clinics resulting from the education of patients using the Company's products. The decrease in the three month period was related to the renegotiation of terms in one of our distributor relationships resulting in reduced variable fees. This impact was also emphasized in the three month period as a portion of our selling fees related to our Canadian adult-use cannabis with fixed components and did not increase with the increase in our revenue during the quarter.

Amortization

The Company incurred non-production related amortization charges of \$21.9 and \$44.1 million for the three and six months ended November 30, 2023 compared to \$24.0 and \$48.4 million in the prior year period. The decreased amortization in the period is a result of the reduced intangible asset levels, as a result of prior year impairments.

Marketing and promotion costs

For the three and six months ended November 30, 2023, the Company incurred marketing and promotion costs of \$9.2 and \$17.7 million as compared to \$8.5 and \$15.8 million for the prior year period. The increase is due to the acquisition of the newly acquired beverage alcohol business portfolio, HEXO and Montauk.

Research and development

Research and development costs were \$0.1 and \$0.1 million during the three and six months ended November 30, 2023 compared to \$0.2 and \$0.3 million in the prior year period. These relate to external costs associated with the development of new products.

Change in fair value of contingent consideration

The Company measures contingent consideration at fair value classified as Level 3, as discussed in Note 25 (Fair value measurements). The Company currently has three contingent consideration liabilities of \$3.0 million, \$13.3 million and \$4.4 million for the Sweetwater, Montauk, and Truss acquisitions, respectively, as of November 30, 2023 compared to \$16.2 million, \$10.9 million and \$nil respectively as of May 31, 2023. The decrease in fair value of \$10.8 million was driven by the lowered probability of achieving the incentive targets, primarily relating to Sweetwater, which was offset by an increase related to the increased probability of achieving the contingent consideration from the Montauk acquisition as well as the newly acquired contingent consideration from the Truss acquisition.

Litigation

For the three and six months ended November 30, 2023, the Company recorded \$3.0 and \$5.1 million of litigation settlements costs, net of favorable recoveries, and the third party fees associated with defending these claims, compared to an expense of \$2.8 and \$3.3 million for the prior period comparative. The increase is related to period to period variability as litigation is non-recurring in nature.

Restructuring costs

In connection with the execution of our acquisition strategy and strategic transactions, the Company has incurred non-recurring restructuring and exit costs associated with the integration efforts of these transactions. For the three and six months ended November 30, 2023, the Company incurred \$2.7 and \$3.6 million of restructuring costs compared to \$8.1 and \$8.1 million for the prior period comparative.

The Company approves detailed restructuring initiative plans at the executive level and recognizes these expenses in the period in which the plan has been committed to. The detailed breakdown of the restructuring plans in place, inclusive of their expected timeline for completion, for the three and six months ended November 30, 2023, is as follows:

HEXO Acquisition: Pursuant to our announced synergy program of \$27 million in relation to the HEXO acquisition, we expect our HEXO restructuring plan to span the first 24 months following the acquisition. In the current six-month period, we recognized \$1.2 million related to employee termination benefits in relation to the conversion of our Masson facility from cannabis to produce and the optimization of our Redecan facilities.

Truss Acquisition: In relation to the acquisition of Truss, the Company has decided to repurpose the facility for the production of non-cannabis beverages. The Company expects the timeline of completion of this program to be 18 months from date of acquisition. In the current six-month period, we recognized \$1.6 million of restructuring charges related to the costs of exiting the facility until the new business has resumed.

Canadian Business Cost Reduction Plan: As referenced in our Canadian cannabis cost optimization plan for \$30 million, the Company has committed to reducing costs, which was completed during the three months ended November 30, 2023. In the current six-month period, we recognized \$0.3 million of restructuring charges related to the relocation of our Broken Coast facility from Duncan to Nanaimo, BC, and the employee termination benefits associated with the transition of packaging finished goods to the Aphria One location.

Distribution Cost Optimization: The Company executed a cost optimization plan during the quarter to reduce costs within the distribution segment by \$1.5 million annually. It is expected that this plan will be completed within the fiscal year, however the Company continues to evaluate this segment for further cost optimizations and production efficiencies. In the current six-month period, we recognized \$0.5 million related to employee termination benefits in association with executing this plan.

For the prior period three and six months ended November 30, 2022, the Company recognized \$8.1 and \$8.1 million of restructuring charges. This was comprised of \$1.6 million of exit cost and \$2.8 million for inventory adjustments from the termination of our producer partnership in Uruguay due to a breach of the underlying contract in our International cannabis business. Additionally, amounts related to the Tilray-Aphria Arrangement Agreement for the closure of our Canadian cannabis facility in Enniskillen of \$1.5 million were incurred. The Company also incurred \$2.2 million of write-offs from the exit of our medical device reprocessing business in our distribution reporting segment. These exit costs were non-recurring in nature and did not have on going impacts in the current year.

Transaction (income) costs

Transaction (income) costs, which includes acquisition related income and expenses, related legal, financial advisor and due diligence cost and expenses and transaction related compensation. The three and six months ended November 30, 2023 decrease of 69% and 204% from the prior year period is related to the following items:

- the current period included costs associated with completing the HEXO Acquisition on June 22, 2023, including, but not limited to, due diligence fees of \$2.4 million, discretionary incentive compensation payments of \$5.8 million, transaction income from the loan amendment agreement of \$(6.0) million, and HEXO director and office runoff insurance of \$5.1 million;
- costs related to the acquisition of the beverage alcohol business portfolio;
- refunds from outstanding government rebates of \$(1.1) million claims not previously recognized as assets associated with the Aphria and Tilray Arrangement Agreement;
- in the prior year period comparative, we recognized transaction income for a change in fair value of \$(18.3) million on the HTI Share Consideration's purchase price derivative as a result of an increase in our share price on the shares paid for the HEXO convertible note receivable in the previous year. This did not recur in the current period results.

Non-operating (expense) income, net

Non-operating (expense) income is comprised of:

(in thousands of US dollars)	For the three months ended November 30,		Change 2023 vs. 2022	% Change	For the six months ended November 30,		Change 2023 vs. 2022	% Change
	2023	2022			2023	2022		
Change in fair value of convertible debenture payable	\$ (3,894)	\$ (12,698)	\$ 8,804	(69)%	\$ (6,041)	\$ (20,582)	\$ 14,541	(71)%
Change in fair value of warrant liability	6,247	37	6,210	16,784%	(1,951)	1,585	(3,536)	(223)%
Foreign exchange (loss) gain	(1,024)	907	(1,931)	(213)%	5,243	(24,666)	29,909	(121)%
Loss on long-term investments	459	(596)	1,055	(177)%	350	(1,604)	1,954	(122)%

Other non-operating (losses) gains, net	(967)	(6,100)	5,133	(84)%	(1,182)	(6,175)	4,993	(81)%
Total non-operating income (expense)	<u>\$ 821</u>	<u>\$ (18,450)</u>	<u>\$ 19,271</u>	<u>(104)%</u>	<u>\$ (3,581)</u>	<u>\$ (51,442)</u>	<u>\$ 47,861</u>	<u>(93)%</u>

For the three and six months ended November 30, 2023, the Company recognized a change in fair value of its convertible debentures payable of (\$3.9) million and (\$6.0) million compared to (\$12.7) million and (\$20.6) million in the prior year same periods. The change is driven primarily by the changes in the Company's share price, the change in the trading price of the convertible debentures payable. Additionally, for the three and six months ended November 30, 2023, the Company recognized a change in fair value of its warrants, resulting in a gain of \$6.2 million and a loss (\$2.0) million compared to gains of \$0.0 million and \$1.6 million also as a result of the change in our share price and the exercise price of the instrument. For the three and six months ended November 30, 2023, the Company recognized a loss of (\$1.0) million and a gain of \$5.2 million, resulting from the changes in foreign exchange rates during the period, compared to a gain of \$0.9 million and a loss of (\$24.7) million for the prior year same periods, largely associated with the recovery of the Euro. Lastly, included in other non-operating (losses) gains, net for the three and six months ended November 30, 2023 was the downside protection share issuance relating to the HTI Note settlement, as described in Note 15 (Stockholders' equity) offset by a \$1.1 million gain from the repurchase of the TLRY 23 convertible note.

Reconciliation of Non-GAAP Financial Measures to GAAP Measures

Adjusted EBITDA

Adjusted EBITDA is a non-GAAP financial measure that does not have any standardized meaning prescribed by GAAP and may not be comparable to similar measures presented by other companies. The Company calculates adjusted EBITDA as net loss/net income before income taxes, net interest expense, depreciation and amortization, equity in net loss of equity-method investees, purchase price accounting step-up on inventory, stock-based compensation, restructuring costs, transaction (income) costs, litigation costs net of recoveries, change in fair value of contingent consideration, unrealized currency gains and losses and other adjustments.

We believe that this presentation provides useful information to management, analysts and investors regarding certain additional financial and business trends relating to its results of operations and financial condition. In addition, management uses this measure for reviewing the financial results of the Company and as a component of performance-based executive compensation.

Historically, we have included lease expenses for leases that were treated differently under IFRS 16 and ASC 842 in the calculation of adjusted EBITDA, aiming to align our definition with industry peers reporting under IFRS. The decision to include these lease expenses in the Company's definition of adjusted EBITDA was based on our efforts to maintain comparability with peers. However, as the Company has continued to diversify, particularly with strategic acquisitions such as the newly acquired beverage alcohol business portfolio, this comparison is no longer relevant, accordingly, we are no longer including this adjustment.

Had the Company continued to include lease expenses that were treated differently under IFRS 16 and ASC 842, the impact to adjusted EBITDA would have been \$1.1 million and \$1.8 million for the three and six months ended November 30, 2023. In comparison, under the previous reconciliation, the impact to adjusted EBITDA would have been \$0.7 million and \$1.4 million for the three and six months ended November 30, 2022.

We do not consider Adjusted EBITDA in isolation or as an alternative to financial measures determined in accordance with GAAP. The principal limitation of Adjusted EBITDA is that it excludes certain expenses and income that are required by U.S. GAAP to be recorded in our consolidated financial statements. In addition, Adjusted EBITDA is subject to inherent limitations as this metric reflects the exercise of judgment by management about which expenses and income are excluded or included in determining Adjusted EBITDA. In order to compensate for these limitations, management presents Adjusted EBITDA in connection with GAAP results.

For three and six months ended November 30, 2023, adjusted EBITDA decreased to \$10.1 million and \$20.8 million compared to \$11.0 and \$23.8 million from the prior year same period. The decrease was primarily driven by the aforementioned negative impacts to our cannabis gross margin.

	For the three months ended November 30,		Change	% Change	For the six months ended November 30,		Change	% Change
	2023	2022			2023 vs. 2022	2023		
Adjusted EBITDA reconciliation:								
Net loss	\$ (46,183)	\$ (61,635)	\$ 15,452	(25)%	\$ (102,046)	\$ (127,429)	\$ 25,383	(20)%
Income tax expense	(3,380)	(11,713)	8,333	(71)%	3,884	(4,502)	8,386	(186)%
Interest expense, net	8,625	3,107	5,518	178%	18,460	7,520	10,940	145%
Non-operating income (expense), net	(821)	18,450	(19,271)	(104)%	3,581	51,442	(47,861)	(93)%
Amortization	31,552	33,318	(1,766)	(5)%	62,341	67,387	(5,046)	(7)%
Stock-based compensation	8,201	10,943	(2,742)	(25)%	16,458	20,136	(3,678)	(18)%
Change in fair value of contingent consideration	300	—	300	0%	(10,807)	211	(11,018)	(5,222)%
Purchase price accounting step-up	4,701	1,107	3,594	325%	9,807	2,214	7,593	343%
Facility start-up and closure costs	300	3,000	(2,700)	(90)%	900	4,800	(3,900)	(81)%
Litigation costs, net of recoveries	3,042	2,815	227	8%	5,076	3,260	1,816	56%
Restructuring costs	2,655	8,064	(5,409)	(67)%	3,570	8,064	(4,494)	(56)%
Transaction (income) costs	1,094	3,552	(2,458)	(69)%	9,596	(9,264)	18,860	(204)%
Adjusted EBITDA	\$ 10,086	\$ 11,008	\$ (922)	(8)%	\$ 20,820	\$ 23,839	\$ (3,019)	(13)%

Adjusted EBITDA should not be considered in isolation from, or as a substitute for, net loss. There are a number of limitations related to the use of Adjusted EBITDA as compared to net loss, the closest comparable GAAP measure. Adjusted EBITDA adjusts for the following:

- Non-cash amortization expenses and, although these are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future;
- Stock-based compensation expenses, a non-cash expense and are an important part of our compensation strategy;
- Non-cash impairment charges, as the charges are not expected to be a recurring business activity;
- Non-cash foreign exchange gains or losses, which accounts for the effect of both realized and unrealized foreign exchange transactions. Unrealized gains or losses represent foreign exchange revaluation of foreign denominated monetary assets and liabilities;
- Non-cash change in fair value of warrant liability;
- Interest expense, net;
- Costs incurred to start up new facilities, and to fund emerging market operations;
- Transaction (income) costs, which includes acquisition related income and expenses, related legal, financial advisor and due diligence cost and expenses and transaction related compensation, which vary significantly by transaction and are excluded to evaluate ongoing operating results;
- Restructuring charges;
- Litigation costs, net of favorable recoveries and the third party fees associated with defending these claims, includes costs related to legacy and non-operational litigation matters, legal settlements and recoveries;
- Amortization of purchase accounting fair value step-up in inventory value included in costs of goods sold; and
- Current and deferred income tax expenses and recoveries, which could be a significant recurring expense or recovery in our business in the future and reduce or increase cash available to us.

Adjusted Gross Profit and Adjusted Gross Margin

Adjusted gross profit and adjusted gross margin are non-GAAP financial measures and may not be comparable to similar measures presented by other companies. Adjusted gross profit is our Gross profit (adjusted to exclude purchase price accounting valuation step-up) and adjusted gross margin is our Gross margin (adjusted to exclude purchase price accounting valuation step-up) and are non-GAAP financial measures. The Company's management believes that adjusted gross profit and adjusted gross margin are useful to our management to evaluate our business and operations, measure our performance, identify trends affecting our business, project our future performance, and make strategic decisions. We do not consider adjusted gross profit and adjusted gross margin percentage in isolation or as an alternative to financial measures determined in accordance with GAAP.

Liquidity and Capital Resources

We actively manage our cash and investments in order to internally fund operating needs, make scheduled interest and principal payments on our borrowings, and complete acquisitions. We believe that existing cash, cash equivalents, marketable securities and cash generated by operations, together with access to external sources of funds, will be sufficient to meet our domestic and foreign capital needs for a short and long term outlook.

For the Company's short-term liquidity requirements, we are focused on generating positive cash flows from operations and being free cash flow positive. As a result of delays in legalization across multiple markets, management continues to optimize our operating structure, headcount, as well as the elimination of other discretionary operational costs. Some of these actions may be less accretive to our adjusted EBITDA in the short term, however we believe that they will be required for our liquidity aspirations in the near term future. Additionally, the Company continues to invest our excess cash in the short-term in marketable securities which are comprised of U.S. treasury bills and term deposits with major Canadian banks.

Subsequent to the period ended November 30, 2023, the Company exchanged \$18.5 million principal of APHA 24 Notes prior to their maturity, demonstrating our commitment to optimizing our capital structure and enhancing financial flexibility. We intend to continue to opportunistically purchase or exchange additional APHA 24 Notes prior to their underlying maturity date in June 2024. We believe this demonstrates and reinforces our commitment to optimizing our capital structure and enhancing financial flexibility.

For the Company's long-term liquidity requirements, we will be focused on funding operations through profitable organic and inorganic growth through acquisitions. We may need to take on additional debt or equity financing arrangements in order to achieve these ambitions on a long-term basis.

The following table sets forth the major components of our statements of cash flows for the periods presented:

	For the three months ended November 30,		Change 2023 vs. 2022	% Change	For the six months ended November 30,		Change 2023 vs. 2022	% Change
	2023	2022			2023	2022		
Net cash provided by (used in) operating activities	\$ (30,409)	\$ 29,209	\$ (59,618)	(204)%	\$ (46,251)	\$ (17,060)	\$ (29,191)	171%
Net cash provided by (used in) investing activities	81,497	(271,398)	352,895	(130)%	55,207	(272,935)	328,142	(120)%
Net cash (used in) provided by financing activities	(85,366)	(57,256)	(28,110)	49%	(71,348)	66,364	(137,712)	(208)%
Effect on cash of foreign currency translation	95	(980)	1,075	(110)%	709	(2,060)	2,769	(134)%
Cash and cash equivalents, beginning of period	179,132	490,643	(311,511)	(63)%	206,632	415,909	(209,277)	(50)%
Cash and cash equivalents, end of period	<u>\$ 144,949</u>	<u>\$ 190,218</u>	<u>\$ (45,269)</u>	<u>(24)%</u>	<u>\$ 144,949</u>	<u>\$ 190,218</u>	<u>\$ (45,269)</u>	<u>(24)%</u>
Marketable securities	116,418	243,286	(126,868)	(52)%	116,418	243,286	(126,868)	(52)%
Less: restricted cash	(1,576)	-	(1,576)	0%	(1,576)	-	(1,576)	0%
Cash and marketable securities ⁽¹⁾	<u>\$ 259,791</u>	<u>\$ 433,504</u>	<u>\$ (173,713)</u>	<u>(40)%</u>	<u>\$ 259,791</u>	<u>\$ 433,504</u>	<u>\$ (173,713)</u>	<u>(40)%</u>

(1) Cash and marketable securities are non-GAAP financial measures. See "Use of Non-GAAP Measures" above for additional discussion regarding these non-GAAP measures. The Company combines the Cash and cash equivalent financial statement line item, and the Marketable securities financial statement line item as an aggregate total as reconciled in the liquidity and capital resource section below. The Company's management believes that this presentation provides useful information to management, analysts and investors regarding certain additional financial and business trends relating to its short-term liquidity position by combining these three GAAP metrics.

Cash flows from operating activities

The change in net cash provided by (used in) operating activities was (\$30.4) million and (\$46.3) million for three and six months ended November 30, 2023 compared to \$29.2 million and (\$17.1) million for the prior year same period. This increase in cash used in the three month period was primarily related to the settlement of pre-acquisition liabilities assumed from the HEXO acquisition. Additionally, the prior period included the cash collection of the \$18.3 million purchase price derivative from HTI as noted in the transaction cost section above, which did not recur in the current year.

Cash flows from investing activities

The change in net cash provided by (used in) investing activities was \$81.5 million and \$55.2 million for three and six months ended November 30, 2023 compared to (\$271.4) million and (\$272.9) million for the prior year same period, and is a result of the sale of marketable securities in the current periods compared to investing in marketable securities in the prior periods as well as the cash used in the acquisition of various businesses, Note 7 (Business acquisitions).

Cash flows from financing activities

The change in cash (used in) provided by financing activities was (\$85.4) million and (\$71.3) million for three and six months ended November 30, 2023 compared to (\$57.3) million and \$66.4 million for the prior year same period. In the current period, cash was provided by funds from the overallotment of TLRY 27 Notes and other long term debt offset by the repurchase of convertible notes and long-term debt, while in the comparative period a larger amount of cash was provided by the ATM capital raise and smaller amounts of repurchased debt.

Subsequent Events

Refer to Part I, Financial Information, Note 27 *Subsequent Events*.

Contingencies

In addition to the litigation described in the Part II, Item 1 - Legal Proceedings, the Company is and may be a defendant in lawsuits from time to time in the normal course of business. While the results of litigation and claims cannot be predicted with certainty, the Company believes the reasonably possible losses of such matters, individually and in the aggregate, are not material. Additionally, the Company believes the probable final outcome of such matters will not have a material adverse effect on the Company's consolidated results of operations, financial position, cash flows or liquidity.

Critical Accounting Estimates

Our financial statements are prepared in accordance with accounting principles generally accepted in the United States. The accounting principles we use require us to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and amounts of income and expenses during the reporting periods presented. We believe in the quality and reasonableness of our critical accounting policies; however, materially different amounts may be reported under different conditions or using assumptions different from those that we have applied. The accounting estimates that have been identified as critical to our business operations and to understanding the results of our operations pertain to revenue recognition, valuation of inventory, valuation of long-lived assets, goodwill and intangible assets, stock-based compensation and valuation allowances for deferred tax assets. The application of each of these critical accounting policies and estimates is discussed in Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, of our Annual Report on Form 10-K for the fiscal year ended May 31, 2023.

Recently Issued Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact our financial position and results of operations is disclosed in "Part I, Item 1. Note 1 – Basis of presentation and summary of significant accounting policies" to our financial statements appearing elsewhere in this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

There have been no material changes in market risk from those addressed in the Company's Annual Report on Form 10-K for the fiscal year ended May 31, 2023 during the six months ended November 30, 2023. See the information set forth in Part II, Item 7A, Quantitative and Qualitative Disclosures About Market Risk, of the Company's Annual Report on Form 10-K for the fiscal year ended May 31, 2023.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that information required to be disclosed in our reports under the Exchange Act is recorded, processed, and summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. An evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report was made under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer.

Based upon this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of November 30, 2023, our disclosure controls and procedures (a) are effective to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is timely recorded, processed, summarized and reported and (b) include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Consistent with guidance issued by the SEC, the scope of management's assessment of the effectiveness of our disclosure controls and procedures did not include the internal controls over financial reporting of our recently acquired businesses including: (i) HEXO Corp., acquired June 22, 2023; (ii) Truss Beverage Co. acquired August 3, 2023; and (iii) the portfolio of craft beer brands, assets and businesses comprising eight beer and beverage brands, acquired on September 29, 2023. These acquired businesses represented 2.3%, 0.6% and 3.2% of our consolidated assets and 5.9%, 1.3%, and 3.2% of our consolidated net revenues respectively as of and for the six months ended November 30, 2023.

Changes in Internal Control over Financial Reporting

There have been no changes in our "internal control over financial reporting" (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this Quarterly Report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. As mentioned above, the Company acquired HEXO Corp. on June 22, 2023, Truss Beverage Co., on August 3, 2023 and the eight beer and beverage brands on September 29, 2023. The Company is in the process of reviewing the internal control structure of HEXO Corp., Truss Beverage Co., and the eight beer and beverage brands and if necessary, will make appropriate changes as it integrates them into the Company's overall internal control over financial reporting process.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

In the ordinary course of business, we are at times subject to various legal proceedings and disputes, including the proceedings specifically discussed below. We assess our liabilities and contingencies in connection with outstanding legal proceedings utilizing the latest information available. Where it is probable that we will incur a loss and the amount of the loss can be reasonably estimated, we record a liability in our consolidated financial statements. These legal reserves may be increased or decreased to reflect any relevant developments on a quarterly basis. Where a loss is not probable or the amount of loss is not estimable, we do not accrue legal reserves. While the outcome of legal proceedings is inherently uncertain, based on information currently available, our management believes that it has established appropriate legal reserves. Any liabilities arising from pending legal proceedings are not expected to have a material adverse effect on our consolidated financial position, consolidated results of operations, or consolidated cash flows. However, it is possible that the ultimate resolution of these matters, if unfavorable, may be material to our consolidated financial position, consolidated results of operations, or consolidated cash flows.

“Item 3. Legal Proceedings” of our Annual Report on Form 10-K for the fiscal year ended May 31, 2023 includes a discussion of our legal proceedings. There have been no material changes from the legal proceedings described in our Form 10-K, except with respect to the matters disclosed and incorporated herein by reference to Note 19 (Commitments and contingencies), in the Notes to the Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

Item 1A. Risk Factors.

“Item 1A. Risk Factors” of our Annual Report on Form 10-K for the fiscal year ended May 31, 2023 includes a discussion of our known material risk factors, other than risks that could apply to any issuer or offering. A summary of our risk factors is included below. Except for the below risk factors, there have been no material changes from the risk factors described in our Form 10-K.

- We may not achieve the expected revenue or other benefits from the craft beer operations acquired.
- We may experience difficulties integrating HEXO’s operations and realizing the expected benefits of the HEXO arrangement.
- Additional impairments of our goodwill, impairments of our intangible and other long-lived assets, and changes in the estimated useful lives of intangible assets could have a material adverse impact on our financial results.
- Our business is dependent upon regulatory approvals and licenses, ongoing compliance and reporting obligations, and timely renewals.
- Government regulation is evolving, and unfavorable changes or lack of commercial legalization could impact our ability to carry on our business as currently conducted and the potential expansion of our business.
- Our production and processing facilities are integral to our business and adverse changes or developments affecting our facilities may have an adverse impact on our business.
- We face intense competition, and anticipate competition will increase, which could hurt our business.
- Regulations constrain our ability to market and distribute our products in Canada.
- United States regulations relating to hemp-derived CBD products are new and rapidly evolving, and changes may not develop in the timeframe or manner most favorable to our business objectives.
- Changes in consumer preferences or public attitudes about alcohol could decrease demand for our beverage alcohol products.
- SweetWater, Breckenridge and Montauk each face substantial competition in the beer industry or the broader market for alcoholic beverage products which could impact our business and financial results.
- We have a limited operating history and a history of net losses, and we may not achieve or maintain profitability in the future.
- We are subject to litigation, arbitration and demands, which could result in significant liability and costs, and impact our resources and reputation.
- Our strategic alliances and other third-party business relationships may not achieve the intended beneficial impact and expose us to risks.
- We may not be able to successfully identify and execute future acquisitions, dispositions or other equity transactions or to successfully manage the impacts of such transactions on our operations.
- We are subject to risks inherent in an agricultural business, including the risk of crop failure.
- We depend on significant customers for a substantial portion of our revenue. If we fail to retain or expand our customer relationships or significant customers reduce their purchases, our revenue could decline significantly.
- Our products may be subject to recalls for a variety of reasons, which could require us to expend significant management and capital resources.
- Significant interruptions in our access to certain supply chains for key inputs such as raw materials, supplies, electricity, water and other utilities may impair our operations.
- Management may not be able to successfully establish and maintain effective internal controls over financial reporting.
- The price of our common stock in public markets has experienced and may continue to experience severe volatility and fluctuations.
- The volatility of our stock and the stockholder base may hinder or prevent us from engaging in beneficial corporate initiatives.
- The terms of our outstanding warrants may limit our ability to raise additional equity capital or pursue acquisitions, which may impact funding of our ongoing operations and cause significant dilution to existing stockholders.
- We may not have the ability to raise the funds necessary to settle conversions of the convertible securities in cash or to repurchase the convertible securities upon a fundamental change.
- We are subject to other risks generally applicable to our industry and the conduct of our business.

We may experience difficulties achieving the expected benefits, including revenue and sales growth, of acquiring certain craft beer operations (the “Craft Acquisition”).

The Craft Acquisitions were completed on September 29, 2023. Efforts to achieve expected benefits of the Craft Acquisitions may require substantial resources and divert management attention. Challenges associated with achieving such benefits may include those related to sales and marketing

efforts across our expanded product portfolio, operational efficiency and production optimization, and effectively integrating the Craft Acquisitions into Tilray. If we are unable to successfully integrate certain aspects of the operations of the Craft Acquisitions or experience delays, we may incur unanticipated liabilities and be unable to fully realize the potential benefit of the revenue growth, synergies and other anticipated benefits resulting from the arrangement, and our business, results of operations and financial condition could be adversely affected. Some of these factors are outside our control, and any of them could delay or increase the cost of our efforts.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Recent Sales of Unregistered Equity Securities

On September 12, 2023, Tilray repurchased \$20,000 of its TLRY 23 Notes for cancellation by issuing 7,000,000 shares and paying \$610 of cash to settle both principal and accrued interest. After cancellation, the outstanding principal balance of the TLRY 23 Notes was \$107,331.

On September 29, 2023, Tilray issued 1,032,616 shares of its common stock to HTI Investments MA LLC pursuant to the terms of a \$50.0 million convertible promissory note originally issued by Tilray to HTI on July 12, 2022 and which was settled at maturity on August 31, 2023 as previously disclosed.

On October 4, 2023, Tilray entered into an arrangement with MediPharm Labs Inc. (“MediPharm”) to acquire 100% ownership of 1000652011 Ontario Inc.. As consideration for such acquisition, Tilray issued 1,371,157 shares of its common stock to MediPharm. On October 13, 2023, Tilray issued an additional 201,995 shares of its common stock to MediPharm to satisfy certain obligations under the acquisition arrangement.

Each of the foregoing issuances of Tilray’s common stock was made in reliance on the exemption provided by Section 4(a)(2) of the Securities Act of 1933, as amended, for the offer and sale of securities not involving a public offering. No underwriter participated in the offer and sale of the shares issued pursuant to the foregoing issuances, and no commission or other remuneration was paid or given directly or indirectly in connection therewith. Additionally, each of the foregoing issuance of Tilray's common stock was reported on a Form 8-K filed by the Company with the U.S. Securities and Exchange Commission.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

420 Credit Agreement

On January 5, 2024, the Company’s wholly-owned subsidiary, Four Twenty Corporation (the “Borrower”), entered into a Waiver (the “Waiver”) to that certain Credit Agreement dated as of June 30, 2023 (the “420 Credit Agreement”) by and among the Borrower, Bank of America, N.A., in its capacity as Administrative Agent (in such capacity, the “Administrative Agent”), and certain other guarantors and lenders thereto. The Waiver provides for a waiver of a potential event of default relating to the “Consolidated Leverage Ratio” financial covenant contained in the 420 Credit Agreement. The foregoing description of the Waiver does not purport to be complete and is qualified in its entirety by the full text of the Waiver, which is being filed as Exhibit 10.2 to this quarterly report on Form 10-Q for the quarter ended November 30, 2023.

Aphria Diamond Amended Supply Agreement

On January 5, 2024, Aphria Inc. (“Aphria”), a wholly-owned subsidiary of the Company, entered into an Amended and Restated Wholesale Cannabis Supply Agreement (the “Supply Agreement”) with 1974568 Ontario Limited (“Aphria Diamond”), Aphria’s joint venture with Double Diamond Holdings Ltd.

The Supply Agreement amends and restates the existing supply agreement, effective as of September 1, 2023, and amends certain terms relating to pricing and product classes. Pursuant to the Supply Agreement, Aphria will purchase cannabis products on a non-exclusive basis from Aphria Diamond grown at Aphria Diamond’s Leamington, Ontario cannabis cultivation facility (the “Aphria Diamond Facility”) and will supply Aphria Diamond with rooted cuttings to be used for cultivation of cannabis products at the Aphria Diamond Facility. Aphria Diamond agrees to exclusively supply cannabis products to Aphria, subject to limited exceptions to allocate un-utilized cultivation capacity at the Aphria Diamond Facility. The foregoing summary of the Supply Agreement does not purport to be complete and is qualified in its entirety by reference to the Supply Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Item 6. Exhibits.

Exhibit Number	Description
3.1*	<u>Fourth Amended and Restated Certificate of Incorporation of Tilray Brands, Inc., dated as of November 30, 2023.</u>
10.1*†	<u>Fourth Amended and Restated Wholesale Cannabis Supply Agreement, dated as of January 5, 2024, by and between 1974568 Ontario Limited and Aphria Inc.</u>
10.2*†	<u>Waiver to Credit Agreement, dated as of January 5, 2024, by and between Four Twenty Corporation, Bank of America, N.A., and the Guarantors and Lenders party thereto.</u>
31.1*	<u>Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
31.2*	<u>Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
32.1**	<u>Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>

Exhibit Number	Description
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101*	The following financial statements from the Company's Quarterly Report on Form 10-Q for the quarter ended November 30, 2023, formatted in Inline XBRL: (i) Consolidated Statements of Financial Position, (ii) Consolidated Statements of Loss and Comprehensive Loss , (iii) Consolidated Statements of Stockholders' Equity, (iv) Consolidated Statements of Cash Flows, and (v) Notes to Condensed Interim Consolidated Financial Statements, tagged as blocks of text and including detailed tags.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)
*	Filed herewith.
**	Furnished herewith.
†	Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Tilray Brands, Inc.

Date: January 9, 2024

By: /s/ Irwin D. Simon

Irwin D. Simon
Chairman and Chief Executive Officer

Date: January 9, 2024

By: /s/ Carl Merton

Carl Merton
Chief Financial Officer

**FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
TILRAY BRANDS, INC.
November 30, 2023**

The undersigned, for the purposes of amending and restating the certificate of incorporation of Tilray Brands, Inc. (the “*Corporation*”), does hereby certify that:

ONE: The present name of the Corporation is Tilray Brands, Inc. The Corporation was originally incorporated under the name “Tilray, Inc.,” by the filing of the original certificate of incorporation of the Corporation (the “*Original Certificate*”) with the Secretary of State of the State of Delaware on January 24, 2018, thereby causing the Corporation to become organized and existing under and by virtue of the General Corporation Law of the State of Delaware, as amended (the “*DGCL*”).

TWO: The amended and restated certificate of incorporation of the Corporation (the “*First Amended and Restated Certificate*”), which amended and restated in its entirety the Original Certificate, was filed with the Secretary of State of the State of Delaware on July 23, 2018.

THREE: The amended and restated certificate of incorporation of the Corporation (the “*Second Amended and Restated Certificate*”), which amended and restated in its entirety the First Amended and Restated Certificate, was filed with the Secretary of State of the State of Delaware on December 12, 2019.

FOUR: The certificate of retirement of Class 1 common stock of the Corporation (the “*Certificate of Retirement*”), which amended certain provisions of the Second Amended and Restated Certificate, was filed with the Secretary of State of the State of Delaware on October 1, 2020.

FIVE: The certificate of amendment (the “*First Certificate of Amendment*”), which amended certain provisions of the Second Amended and Restated Certificate, was filed with the Secretary of State of the State of Delaware on September 10, 2021.

SIX: The second certificate of amendment (the “*Second Certificate of Amendment*”), which amended certain provisions of the Second Amended and Restated Certificate, was filed with the Secretary of State of the State of Delaware on January 10, 2022, and a Certificate of Designation of Series A Preferred Stock (the “*Certificate of Designation*”), which designated 120,000 shares of Preferred Stock as “Series A Preferred Stock” that have already automatically converted into shares of Common Stock in accordance with the terms of the Certificate of Designation, was filed with the Secretary of State of the State of Delaware on February 21, 2023.

SEVEN: The third amended and restated certificate of incorporation (the “*Existing Certificate*”), which amended certain provisions of the Second Amended and Restated Certificate, was filed with the Secretary of State of the State of Delaware on March 20, 2023.

EIGHT: This fourth amended and restated certificate of incorporation (this “*Amended and Restated Certificate of Incorporation*” or “*Restated Certificate*”), which amends and restates the Existing Certificate in its entirety, was duly adopted in accordance with Sections 242 and 245 of the DGCL, and by the Corporation’s stockholders in accordance with Section 212 of the DGCL.

NINE: This Amended and Restated Certificate of Incorporation shall become effective upon filing with the Secretary of State of the State of Delaware (the “*Effective Time*”).

TEN: The Existing Certificate is hereby amended and restated to read as follows:

I.

The name of this corporation shall be **Tilray Brands, Inc.** (the “*Company*”).

II.

The address of the registered office of the Company in the State of Delaware is to be 251 Little Falls Drive, Wilmington, DE 19808, County of New Castle and the name of the registered agent of the Company in the State of Delaware at such address is Corporation Service Company.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

IV.

- A.** The Company is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that the Company is authorized to issue is One Billion Two Hundred Eight Million (1,208,000,000) shares of which One Billion One Hundred Ninety Eight Million (1,198,000,000) shares shall be Common Stock (“*Common Stock*”), and Ten Million (10,000,000) shares of which shall be Preferred Stock (the “*Preferred Stock*”). The Preferred Stock shall have a par value of \$0.0001 per share, and the Common Stock shall have a par value of \$0.0001 per share.

Immediately upon the Effective Time, and without any further action on the part of the Company or its stockholders, each share of Class 2 common stock, par value \$0.0001 per share, of the Company issued and outstanding prior to the Effective Time, shall automatically be reclassified as one fully paid and nonassessable share of Common Stock.

- B.** The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares of Common Stock, or Preferred Stock then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of stock of the Company entitled to vote thereon, without a vote of the holders of the Preferred Stock, or of any series thereof, or

Common Stock unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock (a “*Certificate of Designation*”).

C. The Preferred Stock authorized by this Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. The board of directors of the Company (the “*Board of Directors*”) is hereby expressly authorized to provide for the issue of all or any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

D. Except as provided above, the rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

1. **Definitions.** For purposes of this Article IV(D), the following definitions shall apply:

(a.) “*Change of Control Transaction*” means (i) the sale, lease, exchange, or other disposition (other than liens and encumbrances created in the ordinary course of business, including liens or encumbrances to secure indebtedness for borrowed money that are approved by the Board of Directors, so long as no foreclosure occurs in respect of any such lien or encumbrance) of all or substantially all of the Company’s property and assets (which shall for such purpose include the property and assets of any direct or indirect subsidiary of the Company), provided that any sale, lease, exchange or other disposition of property or assets exclusively between or among the Company and any direct or indirect subsidiary or subsidiaries of the Company shall not be deemed a “Change of Control Transaction”; (ii) the merger, consolidation, business combination, or other similar transaction of the Company with any other entity, other than a merger, consolidation, business combination, or other similar transaction that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the

voting securities of the Company and more than fifty percent (50%) of the total number of outstanding shares of the Company’s capital stock, in each case as outstanding immediately after such merger, consolidation, business combination, or other similar transaction, and the stockholders of the Company immediately prior to the merger, consolidation, business combination, or other similar transaction own voting securities of the Company, the surviving entity or its parent immediately following the merger, consolidation, business combination, or other similar transaction in substantially the same proportions (vis a vis each other) as such stockholders owned the voting securities of the Company immediately prior to the transaction; and (iii) the recapitalization, liquidation, dissolution, or other similar transaction involving the Company, other than a recapitalization, liquidation, dissolution, or other similar transaction that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company and more than fifty percent of the total number of outstanding shares of the Company’s capital stock, in each case as outstanding immediately after such recapitalization, liquidation, dissolution or other similar transaction, and the stockholders of the Company immediately prior to the recapitalization, liquidation, dissolution or other similar transaction own voting securities of the Company, the surviving entity or its parent immediately following the recapitalization, liquidation, dissolution or other similar transaction in substantially the same proportions (vis a vis each other) as such stockholders owned the voting securities of the Company immediately prior to the transaction.

(b) “*Distribution*” means (i) any dividend or distribution of cash, property or shares of the Company’s capital stock; and (ii) any distribution following or in connection with any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary.

(c) “*IPO*” means the Company’s first firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company.

2. **Rights relating to Distributions, Subdivisions, Combinations and Change of Control.**

(a) Any Distributions paid or payable to the holders of shares of Common Stock shall be paid pro rata in accordance with the number of shares of Common Stock held by each such holder as of the record date of such Distribution; *provided, however*, that in the event a Distribution is paid in the form of Common Stock (or any option, warrant, conversion right or contractual right of any kind to acquire shares of Common Stock), then the holders of Common Stock shall receive Common Stock (or any option, warrant, conversion right or contractual right of any kind to acquire shares of Common Stock).

(b) In connection with any Change in Control Transaction, shares of Common Stock shall be treated equally, identically and ratably, on a per-share basis, with respect to any consideration into which such shares are converted or any consideration paid or otherwise distributed to stockholders of the Company.

3. **Voting Rights.**

(a) **Common Stock.** Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

(b) **General.** Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and Common Stock shall vote together and not as separate series or classes.

V.

A. The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

B. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which applicable law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL and, if applicable, Section 317 of the California General Corporation Law. If the DGCL or any other law of the State of Delaware is amended after approval by the stockholders of this Article V to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Company shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

- C. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability or indemnification.
- D. Unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Company to the Company or the Company's stockholders; (iii) any action asserting a claim against the Company arising pursuant to any provision of the DGCL, the certificate of incorporation or the Bylaws of the Company; or (iv) any action asserting a claim against the Company governed by the internal affairs doctrine. Unless the Company consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Company shall be deemed to have notice of and to have consented to the provisions of this Section D of Article V.

VI.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further *provided* that:

A. Board of Directors.

1. **Generally.** The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors that shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.
 2. **Election.**
 - (a) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the IPO, and for so long as permitted by applicable law, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the closing of the IPO, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the IPO, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the IPO, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.
 - (b) At any time that applicable law prohibits a classified board as described in Article VI, Section (A)(2)(a), all directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.
 - (c) No stockholder entitled to vote at an election for directors may cumulate votes to which such stockholder is entitled unless required by applicable law at the time of such election. During such time or times that applicable law requires cumulative voting, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.
 - (d) Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.
 3. **Removal of Directors.** Subject to any limitations imposed by applicable law, any individual director or directors may be removed (a) with or without cause, by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the Company entitled to vote generally at an election of directors, or (b) with cause by the affirmative vote of the holders of at least 66 2/3% of the voting power of all then-outstanding shares of capital stock of the Company entitled to vote generally at an election of directors.
 4. **Vacancies.** Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders and except as otherwise provided by applicable law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.
- B. **Stockholder Actions.** No action shall be taken by the stockholders of the Company except at an annual or special meeting of stockholders called in accordance with the Bylaws, and action shall be taken by the stockholders by written consent or electronic transmission. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner provided in the Bylaws of the Company.
- C. **Bylaws.** The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. Any adoption, amendment or repeal of the Bylaws of the Company by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Company; *provided, however*; that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Amended and Restated Certificate of Incorporation, such action by

stockholders shall require the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class.

VII.

- A. The Company renounces any interest or expectancy of the Company or any of its Affiliated Companies in, or in being offered an opportunity to participate in, any Dual Opportunity about which a Dual Role Person acquires knowledge. A Dual Role Person shall have no duty to communicate or offer to the Company or any of its Affiliated Companies any Dual Opportunity that such Dual Role Person has communicated or offered to the Investment Fund, shall not be prohibited from communicating or offering any Dual Opportunity to the Investment Fund, and shall not be liable to the Company or its stockholders for breach of any fiduciary duty as a stockholder, director or officer of the Company, as the case may be, resulting from (i) the failure to communicate or offer to the Company or any of its Affiliated Companies any Dual Opportunity that such Dual Role Person has communicated or offered to the Investment Fund or (ii) the communication or offer to the Investment Fund of any Dual Opportunity, so long as (x) the Dual Opportunity does not become known to the Dual Role Person expressly and solely in his or her capacity as a director or officer of the Company, and (y) the Dual Opportunity is not presented by the Dual Role Person to any party other than the Investment Fund and the Dual Role Person does not pursue the Dual Opportunity individually.
- B. In addition to and notwithstanding the foregoing provisions of this Article VII, the Company renounces any interest or expectancy of the Company or any of its Affiliated Companies in, or in being offered an opportunity to participate in, any business opportunity that the Company is not financially able or contractually permitted or legally able to undertake. Moreover, nothing in this Article VII shall amend or modify in any respect any written contractual agreement now existing or entered into after the date hereof between the Investment Fund, on the one hand, and the Company or any of its Affiliated Companies, on the other hand.
- C. For purposes of this Article VII:

“Affiliate” means with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of the foregoing definition, the term “controls,” “is controlled by,” or “is under common control with” means the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of clarification, the Company and any Investment Fund are deemed not to be Affiliates.

“Affiliated Company” means (i) with respect to the Company, any Person controlled by the Company and (ii) with respect to an Investment Fund, any Person controlled by such Investment Fund. For purposes of the foregoing definition, the term “controlled by” means the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of clarification, the Company and any Investment Fund are deemed not to be Affiliated Companies.

“Dual Opportunity” means any potential transaction or matter which may be a corporate opportunity for both the Investment Fund or its Affiliated Companies, on the one hand, and the Company or any of its Affiliated Companies, on the other hand.

“Dual Role Person” means any individual who is an officer or director of the Company and an officer, director, or general partner of the Investment Fund.

“Investment Fund” means one or more Persons (other than the Company and any Affiliated Company of the Company) which a Dual Role Person has established or may in the future establish (together with other Dual Role Persons or other Persons) for purpose of pursuing investment opportunities in areas broadly similar to the areas of the Company’s current and anticipated business focus.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

- D. The provisions of this Article VII shall have no further force or effect with respect to the Investment Fund at such time as (i) the Company and the Investment Fund are no longer Affiliates and (ii) none of the directors and/or officers and/or general partners of the Investment Fund serve as directors and/or officers of the Company and its Affiliated Companies; provided, however, that any such termination shall not terminate the effect of the provisions of this Article VII with respect to any agreement, arrangement or other understanding between the Company or an Affiliated Company thereof, on the one hand, and the

Investment Fund, on the other hand, that was entered into before such time or any transaction entered into in the performance of such agreement, arrangement or other understanding, whether entered into before or after such time.

- E. Any person or entity purchasing or otherwise acquiring or obtaining any interest in any capital stock of the Company shall be deemed to have notice and to have consented to the provisions of this Article VII.
- F. The invalidity or unenforceability of any particular provision, or part of any provision, of this Article VII shall not affect the other provisions or parts hereof, and this Article VII shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

VIII.

- A. The Company reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate, in the manner now or hereafter prescribed by statute, except as provided in Section B of this Article VIII, and all rights conferred upon the stockholders herein are granted subject to this reservation.
- B. Notwithstanding any other provisions of this Restated Certificate or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Company required by law or by this Restated Certificate or any Certificate of Designation, the affirmative vote of either (a) the holders of a majority of the voting power of all then-outstanding shares of capital stock entitled to vote generally at an election of directors, voting together as a single class or (b) the holders of at least 66 2/3% of the voting power of all of the then outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, and VIII.

* * * *

ELEVEN: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of this Corporation.

TWELVE: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of this Corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance

with the provisions of Sections 242 and 245 of the DGCL by the stockholders of this Corporation.

Tilray Brands, Inc. has caused this Amended and Restated Certificate of Incorporation to be duly executed and acknowledged in its name and on its behalf by the undersigned officer, thereunto duly authorized, as of the date first set forth above.

TILRAY BRANDS, INC.

/s/ Mitchell Gendel

Name: Mitchell Gendel

Title: Global General Counsel and Corporate Secretary

FOURTH AMENDED AND RESTATED WHOLESALE CANNABIS SUPPLY AGREEMENT

This Third Amended and Restated Wholesale Cannabis Supply Agreement is entered into and effective as of September 1, 2023;

BETWEEN

1974568 ONTARIO LIMITED of the Municipality of Leamington in the Province of Ontario (“**Aphria Diamond**”),

- and -

APHRIA INC. of the Municipality of Leamington in the Province of Ontario (the “**Aphria**”),

Each of Aphria Diamond and Aphria may be referred to herein as a “**Party**,” and collectively referred to as “**Parties**.”

RECITALS:

WHEREAS Aphria Diamond wishes to supply Products (as defined below) to Aphria and Aphria has agreed to purchase such Products from Aphria Diamond on the terms set forth in this Agreement.

AND WHEREAS Aphria Diamond and Aphria have previously entered into that certain Wholesale Cannabis Supply Agreement on February 16, 2018, an Amended and Restated Wholesale Cannabis Supply Agreement dated November 1, 2019, a Second Amended and Restated Wholesale Cannabis Supply Agreement dated April 6, 2021, and a Third Amended and Restated Wholesale Cannabis Supply Agreement dated March 1, 2022 (collectively, the “**Original Supply Agreement**”) and the Parties now wish to amend, modify, restate and supplement the Original Supply Agreement as set out below.

NOW THEREFORE in consideration of the foregoing recitals (which are incorporated into and form part of this Agreement) and the mutual covenants hereinafter expressed, the Parties hereby agree as follows:

1. DEFINITIONS

Capitalized terms appearing in this Agreement without definition shall have the meaning given them in this Section 1.

1. “**ADRIC**” has the meaning set forth in Section 15.1.
2. “**Affected Obligations**” has the meaning set forth in Section 5.8(a).
3. “**Affiliate**” shall mean (a) any corporation directly or indirectly controlling, controlled by, or under common control of Aphria Diamond or (b) any partnership, joint venture or other entity directly or indirectly controlled by, controlling, or under common control of Aphria Diamond, but in each case only for so long as such ownership or control shall continue.
4. “**Agreement**” means this third amended and restated wholesale cannabis supply agreement, including all Schedules and Exhibits hereto and all Purchase Orders issued by Aphria and accepted by Aphria Diamond pursuant hereto, as the same may be amended, supplemented, restated and/or otherwise modified from time to time in accordance with the terms hereof.
5. “**Amendment Effective Date**” means September 1, 2023.
6. “**Aphria**” has the meaning set forth in the recitals to this Agreement.
7. “**Aphria Diamond**” has the meaning set forth in the recitals to this Agreement.
8. “**Aphria Diamond Facility**” means, collectively, those buildings located at 620 county Rd, 14, Leamington, Ontario, N8H 3V8 as long as such buildings remain subject to License Number LIC-KX10UDSC08-2023 issued by Health Canada, as such license may be amended from time to time or any other facility of Aphria Diamond or its Affiliates (excluding Aphria) in respect of which a Cannabis Licence has been issued.
9. “**Aphria Facility**” means Aphria’s facility in Leamington in respect of which a Cannabis Licence has been issued or any other facility of Aphria (excluding Aphria Diamond) in respect of which a Cannabis Licence has been issued.
10. “**Applicable Laws**” means any applicable (i) domestic statute, law (including the common and civil law and equity), constitution, code, ordinance, rule, regulation, restriction, regulatory policy or guideline having the force of law, by-law (zoning or otherwise) or order, (ii) consent, exemption, approval or licence of any Governmental Authority, and (iii) policy, practice, guidance document or guideline of, or contract with, any Governmental Authority.
11. “**Arbitration**” has the meaning set forth in Section 15.2.
12. “**Business Day**” means any day of the week, other than a Saturday or Sunday or day on which Canadian chartered banks in Toronto, Ontario are authorized or obligated by law to close or are generally closed.
13. “**Canadian Regulatory Approval**” means any and all approvals (including price and reimbursement approvals, if required), licenses, registrations, or authorizations that are necessary to possess, produce, cultivate, process, package/label, test, import, export, store, sell, deliver, transport, distribute or destroy a Product in Canada, including such approvals as may be required under the Cannabis Act pursuant to any other Applicable Laws or by any other applicable Canadian Regulatory Authority.
14. “**Canadian Regulatory Authority**” means any supra-national, national, provincial or local regulatory agency, department, bureau, commission, council or other Governmental Authority involved in or responsible for regulation of the possession, production, cultivation, processing, packaging/labeling, testing, importing, exporting, storing, selling, delivering, transporting, distributing and destroying of the Products intended for human use in Canada, including Health Canada.
15. “**Canadian Regulatory Filing**” means an application required to be filed with a Canadian Regulatory Authority seeking any Canadian Regulatory Approval required by Aphria to possess, produce, cultivate, process, package/label, test, import, export, store, sell, deliver, transport, distribute or destroy the Products in Canada, and all updates, amendments and reports filed therewith.
16. “**Cannabis Act**” means the *Cannabis Act* (Canada) and all regulations made thereunder, including the Cannabis Regulations, as amended or superseded from time to time.
17. “**Cannabis Regulations**” means Regulation SOR/2018-144, and any other regulations made under the Cannabis Act, as amended or

superseded from time to time.

18. “**Cannabis Licence**” means a licence to conduct and engage in licensable activities, including possession, production, cultivation, processing, packaging/labeling, testing, storing, selling, delivering, transporting, distributing and destroying the Products as required by one or more Canadian Regulatory Approvals.
19. “**Change in Control**”, in respect of any Party, shall be deemed to have occurred upon: (i) the sale, transfer, conveyance or other disposition by such Party of all or substantially all of its assets; or (ii) a take-over bid, tender offer or exchange offer by any person (or two or more Persons who are acting jointly or in concert in respect of the foregoing) pursuant to which such person or persons would come to own a majority of all of the issued and outstanding voting shares or equity securities upon the completion thereof, or (iii) a merger, amalgamation, arrangement, reorganization, or other business combination or similar transaction involving a Party in which holders of all of the issued and outstanding voting securities or equity securities before the completion of the transaction would hold less than 50% of all of the issued and outstanding voting securities, or equity securities of such Party’s successor or of the continuing or surviving entity (the “**Resulting Issuer**”), upon the completion of such transaction, provided that in either case no Change of Control shall be deemed to have occurred if upon completion of any such transaction individuals who were members of the Board of Directors of such Party immediately prior to the effective date of such transaction constitute a majority of the Board of Directors of the Resulting Issuer following such effective date.
20. “**Change of Law**” has the meaning set forth in Section 5.8(a).
21. “**Change of Law Amendment**” has the meaning set forth in Section 5.8(b).
22. “**Change of Law Notice**” has the meaning set forth in Section 5.8(a).
23. “**Change Period**” has the meaning set forth in Section 5.8(b).
24. “**Control**” (including the terms “control”, “controlled by”, “controlling” and “under common control with”) means the possession, directly or indirectly, or as trustee, executor or other legal representative, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee, executor or other legal representative, by contract or credit arrangement or otherwise.
25. “**Damages**” has the meaning set forth in Section 13.2.
26. “**Diamond Payment**” has the meaning set forth in Section 8.3.
27. “**Default**” has the meaning set forth in Section 14.1.
28. “**Defaulting Party**” has the meaning set forth in Section 14.2.
29. “**Designated Representatives**” has the meaning set forth in Section 5.8(b).
30. “**Early Termination Notice**” has the meaning set forth in Section 14.2.
31. “**Effective Date**” means November 1, 2019.
32. “**Encumbrance**” means any encumbrance of any kind whatever (registered or unregistered) and includes any security interest, mortgage, conditional sale, lien, hypothec, pledge, hypothecation, assignment, charge, security under section 426 or section 427 of the *Bank Act* (Canada), trust or deemed trust (whether contractual, statutory or otherwise arising), any adverse claim, or joint ownership interest, any grant of any exclusive licence or sole licence, or any other right, option or claim of others of any kind whatever affecting the Products or the use of any thereof, any covenant or other agreement, restriction or limitation on the transfer of the Products or the use thereof, or a deposit by way of security or an easement, restrictive covenant, limitation, agreement or right of way, restriction, preferential arrangement, encroachment, burden or title reservation of any kind, or any rights or privileges capable of becoming any of the foregoing.
33. “**Exceptional Circumstances**” means a situation involving an inspection by a Governmental Authority and/or an emergency situation, including as a result of compliance with Applicable Laws and/or a Force Majeure event.
34. “**Expenses of the Recall**” has the meaning set forth in Section 10.1.
35. “**Excess Capacity**” has the meaning set forth in Section 2.3(i).
36. “**Excess Products**” has the meaning set forth in Section 2.3(i).
37. “**Flower**” means Products that are dried cannabis flower (includes all commercial grades but does not include Gradeout, Trim and Shake).
38. “**FOB**” means freight on board, where upon shipment, the cosignor (or the shipper’s agent) is liable for loss or damage to the Products until the Product is received at its destination.
39. “**Force Majeure**” has the meaning set forth in Section 11.1.
40. “**Fresh Bud**” means Products that are harvested and are still measured as wet. For the purposes of this agreement, Fresh Bud is only to be sold as part of a Trial Lot or as fresh frozen material designated for extraction purposes.
41. “**Good Production Practices**” means those good production practices and quality system rules set forth in Applicable Laws.

42. **“Governmental Authority”** means (i) any court, judicial body, tribunal or arbitral body, (ii) any domestic government whether national, federal, provincial, territorial, state, municipal or local and any governmental agency, governmental authority, governmental tribunal or governmental commission of any kind whatever, (iii) any subdivision or authority of any of the foregoing, (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above, (v) deleted, and (vi) any stock exchange, and for clarity, includes any Canadian Regulatory Authority.
43. **“Gradeout”** means Products that are Grade Out (as set out in the Quality Agreement).
44. **“including”** means “including without limitation” and the term “including” shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it.
45. **“Indemnified Party”** has the meaning set forth in Section 13.4.
46. **“Indemnifying Party”** has the meaning set forth in Section 13.4.
47. **“Independent Laboratory”** has the meaning set forth in Section 6.3.
48. **“Litigious Dispute”** has the meaning set forth in Section 15.1.
49. **“Non-Defaulting Party”** has the meaning set forth in Section 14.2.
50. **“Notice of Dispute”** has the meaning set forth in Section 15.1.
51. **“Optional Change”** has the meaning set forth in Section 6.6.
52. **“Original Supply Agreement”** has the meaning set forth in the recitals to this Agreement.
53. **“Party”** and **“Parties”** each has the respective meanings given to such term in the recitals to this Agreement.
54. **“Person”** means any individual, sole proprietorship, general partnership, limited partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator or other legal representative.
55. **“Price Per Gram”** has the meaning set forth in Section 8.1.
56. **“Product”** or **“Products”** means cannabis products derived from Rooted Cuttings supplied to Aphria by Aphria Diamond under this Agreement and which are delivered either as (i) cannabis plants; or (ii) harvested, irradiated and tested dried cannabis, and for certainty, Product does not include Rooted Cuttings, and for further certainty, Product will be further specified as being either (A) Flower, (B) Shake, (C) Gradeout, (D) Trim, or (E) Fresh Bud.
57. **“Purchase Orders”** has the meaning set forth in Section 7.1.
58. **“Quality Agreement”** has the meaning set forth in Section 9.2.
59. **“Rejected Product(s)”** has the meaning set forth in Section 6.2.
60. **“Required Change”** has the meaning set forth in Section 6.6.
61. **“Rooted Cuttings”** means cannabis rooted cuttings, clippings and other starting genetic materials.
62. **“Rules”** has the meaning set forth in Section 15.2.
63. **“Safety Data”** means information required to be reported to a Governmental Authority relating to the safety of a Product, including any noxious and unintended response to a Product experienced by a customer, any response that requires in-patient hospitalization or prolongation of existing hospitalization, causes congenital malformation, is persistent or causes significant disability or incapacity, is life-threatening or results in death.
64. **“Set Off Invoice”** has the meaning set forth in Section 8.3.
65. **“Specifications”** includes for each Product: (i) material and component specifications (including approved Aphria Diamond and distributors; physical, chemical and microbiological specifications, as appropriate); (ii) labeling specifications (including physical attributes); (iii) sampling requirements (including quantities required for physical, chemical, microbiological testing); (iv) production and cultivation requirements, including processing and equipment requirements; (v) in-process control specifications (as appropriate); (vi) packaging requirements, including processing and equipment requirements; (vii) finished product release requirements (including identity, purity, quantity, potency, testing, testing methodology, equipment requirements, and release specifications); (viii) stability specifications (including storage conditions, testing methodology and equipment requirements); (ix) record-keeping standards (including master production documents, list of ingredients or processes undergone by the Products, materials used in the cultivation, testing performing, lot and batch tracking, sanitation program); and (x) such other analysis as may be reasonably requested in writing by Aphria, including phenotype analysis. Specifications for the Products are set forth in Schedule A, as may be amended from time to time in accordance with this Agreement. The Specifications include that all Products must comply with all Canadian Regulatory Approvals, Good Production Practices and also be consistent with Applicable Laws, as appropriate.
66. **“Shake”** means Products as commonly understood in the cannabis industry to be shake, but **“Shake”** specifically excludes Trim.
67. **“Term”** has the meaning set forth in Section 3.

68. “**Third Party Claim**” has the meaning set forth in Section 13.4.

69. “**Trial Lot**” means fresh plant cuttings derived from Rooted Cuttings that are to be sold to Aphria at cost with the understanding that the Trial Lot is not to be sold to a third party but to be used by Aphria to perform research and development at its own cost.

70. “**Trim**” means Products generated from the cannabis trimming process and includes stems, dried leaves and sugar buds. Harvested Trim from all Products is to be considered Excess Product.

71. “**Trim Premium**” has the meaning set forth in Section 8.1.

2. SUPPLY OF PRODUCTS AND ROOTED CUTTINGS

1. Supply of Products by Aphria Diamond:

- i. Upon and subject to the terms and conditions hereof, Aphria Diamond agrees that it shall supply Products set out in Purchase Orders accepted by Aphria Diamond, to Aphria, on an exclusive basis, and Aphria agrees that it shall purchase Products from Aphria Diamond on a non-exclusive basis, as of and with effect from the Effective Date.
- ii. Aphria agrees that it will purchase: (a) 100% of the Flower, Shake and Gradeout produced by Aphria Diamond and (b) all of the other Products, if any, produced by Aphria Diamond; in each case, to the extent set out in a Purchase Order provided by Aphria and accepted by Aphria Diamond from time to time.
- iii. Aphria acknowledges that the Product being received is in a bulk state and has not undergone a final grading process.
- iv. Aphria Diamond is liable for waste product identified as part of the final grading process conducted in accordance with this Agreement and final billing for the Products will be on a net basis of waste product identified as part of the final grading.
- v. Aphria agrees that it will not resell any Products supplied by Aphria Diamond as Trial Lots, including any Fresh Bud, and that such Products will be used by Aphria solely for purposes of research and development.

2. Supply of Rooted Cuttings by Aphria:

- i. Aphria will supply Aphria Diamond with the Rooted Cuttings required by Aphria to be used for the cultivation of Products at the Aphria Diamond Facility and production of various strains, in each case, to the extent set out in a Purchase Order, as well as historical records on harvest yields by strain to be used by both Aphria Diamond and Aphria when performing applicable tests described in the Specifications and for the inspection of each lot of Products. Aphria Diamond will follow the grow plan established by Aphria for the cultivation and production of Products at the Aphria Diamond Facility and, for certainty, Aphria will have the final decision with respect to the timing of planting.
- ii. All Rooted Cuttings will be provided by Aphria on an “**AS-IS**” “**WHERE-IS**” basis and will be shipped at Aphria Diamond’s expense and be delivered FOB at Aphria’s Facility in Leamington.
- iii. Aphria Diamond will have 5 days from the date of delivery of the Rooted Cuttings to accept or reject the Rooted Cuttings delivered by Aphria. Aphria Diamond may reject Rooted Cuttings for one of the following reasons: (a) visual inspection reveals the presence of mold or other physical defect that, if accepted and grown in the Aphria Diamond Facility, could contaminate other live plants; (b) the Rooted Cuttings do not conform to the specification provided with the Rooted Cuttings.
- iv. In the event that Aphria Diamond rejects the Rooted Cuttings on the basis of any of the foregoing reasons, Aphria Diamond shall deliver a notice setting forth the reason for the rejection. Aphria shall promptly replace the Rooted Cuttings and deliver new Rooted Cuttings to Aphria Diamond. This shall be Aphria Diamond’s sole remedy with respect to the Rooted Cuttings. Rooted Cuttings will be deemed to be accepted by Aphria Diamond if there is no notice delivered to Aphria explicitly rejecting the Rooted Cuttings within 5 days of the date of delivery of the Rooted Cuttings to the Aphria Diamond Facility. Any dispute between the parties arising with respect to the quality or suitability of the Rooted Cuttings shall be resolved in accordance with the Section 6.3.

3. Excess Capacity

- i. In the event that Aphria Diamond, in its reasonable opinion, believes there will be un-utilized cultivation capacity at the Aphria Diamond Facility (“**Excess Capacity**”), then Aphria Diamond, acting reasonably, may elect to allocate Excess Capacity to cultivate and produce additional cannabis products at the Aphria Diamond Facility (“**Excess Products**”). Aphria covenants and agrees that it will allocate capacity for the cultivation of Products at the Aphria Diamond Facility in priority over capacity at any other Aphria cultivation facility, except if any of the following apply: (a) Aphria Diamond does not possess a Cannabis Licence or Canadian Regulatory Approval required for the cultivation, propagation, processing, possession, sale or distribution of such Product at the Aphria Diamond Facility or by Aphria Diamond or any certification; or (b) the Product is derived from a specific strain being grown, as of the Amendment Effective Date, for production at Redcan’s indoor growing facility located at 182 Foss Road, Fenwick, Ontario, L0S 1C0.
- ii. Aphria Diamond may source Rooted Cuttings to support cultivation to fill any Excess Capacity from one or more third parties so long as doing so does not adversely impact the quality of or contaminate any cultivation or production allocated to the Products to be sold to Aphria hereunder.

- iii. Aphria will not be obligated to purchase any Excess Products from Aphria Diamond. Any Excess Products supplied to Aphria by Aphria Diamond will be deemed to be “**Products**” for purposes of the representations, warranties and covenants set forth in Sections 4, 5, 6, 7, 8.3, 9, 10, 13 and 16.7 of this Agreement.
- iv. Notwithstanding Section 2.1(i), Aphria Diamond may from time to time sell Excess Products to third parties on the open market so long as doing so does not impede, interfere with or otherwise derogate from the performance of its obligations hereunder, including, without limitation, its obligation to supply Aphria with Products conforming to the Specifications.

3. **TERM**

Unless earlier terminated in accordance with the terms hereof, this Agreement shall be for a term commencing on the Effective Date and expiring on the date that is one hundred and twenty (120) months from the Amendment Effective Date (the “**Term**”).

4. **REGULATORY MATTERS**

1. Regulatory Approval.
2. Each Party will use commercially reasonable efforts to prepare, submit, obtain and maintain, any of its own required Canadian Regulatory Approval and any other approvals necessary for such Party to use, possess, process, package/label, test, import, export, sell, deliver, transport, distribute and destroy the Products at the applicable Aphria or Aphria Diamond Facility, as the case may be, in accordance with this Agreement and Applicable Laws.

4.2 Safety Data.

3. To the extent Safety Data exists in respect of any Product, Aphria shall be entitled to, and shall be provided with reasonable access to, all such Safety Data for such Product. Aphria may use any Safety Data in respect of such Product in connection with any Canadian Regulatory Filing, whether or not such filing is mandatory.

4.3 Responsibility for Labeling and Packaging.

All Products supplied by Aphria Diamond to Aphria pursuant to this Agreement will be sold and distributed by Aphria under its private label brands. Aphria is solely responsible, at its own expense, for designing, developing, maintaining and updating all Product labeling, packaging, directions and inserts. Aphria will be solely responsible for ensuring that all Product labeling, packaging, directions and inserts it uses complies with Applicable Laws, including as set forth in any Canadian Regulatory Approval. To the extent that any information on a Product label, package, direction or insert is deficient and/or not in compliance with Applicable Laws, including as set forth in any Canadian Regulatory Approval, Aphria Diamond shall cooperate with and provide the necessary information to Aphria and shall provide assistance, as reasonably requested, at Aphria’s expense, to Aphria in order to permit Aphria to modify Product labeling, packaging, directions or inserts so that it conforms with Applicable Laws.

4. Regulatory Fees.

Aphria Diamond will be solely responsible for all fees payable with respect to the submission (filing), prosecution and maintenance of the Canadian Regulatory Filings in respect of the licensing of the applicable Aphria Diamond Facility.

5. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

1. Product Criteria.

Aphria Diamond represents, warrants and covenants, as applicable, that all Products will, at the time of delivery: (i) be free from defects and will conform with the Specifications; (ii) be of a good and merchantable quality and fit for the intended purpose; not be adulterated, except as it relates to the irradiation of the Product or as otherwise agreed by the Parties; (iii) comply with Applicable Laws; (iv) be labeled and handled in accordance with Good Production Practices and all Applicable Laws; (v) be produced, packaged and stored under sanitary conditions and in compliance with Good Production Practices and all Applicable Laws; (vi) be shipped in packaging in compliance with Applicable Laws and consistent with Aphria Diamond’s then current practices; and (vii) be free from any Encumbrances. As Aphria’s sole remedy for a breach of any of the foregoing, if Aphria Diamond is notified in writing of the breach within thirty (30) days of Aphria selling the applicable Product but no later than ninety (90) days after the date of delivery, Aphria Diamond shall at Aphria Diamond’s option, replace such defective Products or refund the amounts paid by Aphria in respect of such defective Products. Any dispute arising between the parties from a notice received by Aphria Diamond pursuant to this Section 5.1 shall be resolved in accordance with the procedure set forth in Section 6.3.

2. Intellectual Property Rights.

Aphria Diamond represents, warrants and covenants, as applicable, that to its knowledge: (i) the Products do not and will not infringe or violate any intellectual property rights of any third party; and (ii) in the event that the use, sale and/or distribution of any Products constitutes or is alleged to constitute an infringement of intellectual property rights, Aphria Diamond shall, at Aphria Diamond’s expense and at Aphria’s option, procure for Aphria the right to continue the use, sale and distribution, or replace such Products with non-infringing Products.

Aphria represents, warrants and covenants, that: (a) the Rooted Cuttings (and Aphria Diamond’s use of the Rooted Cuttings and resulting materials), and Aphria’s conversion or manipulation of the Products (if applicable) will not infringe or violate any intellectual property rights of any third party; and (b) in the event that the Rooted Cuttings (and Aphria Diamond’s use of the Rooted Cuttings and resulting materials) or the use, sale and/or distribution of any such converted or manipulated Products constitutes or is alleged to constitute an infringement of intellectual property rights, Aphria shall, at Aphria’s expense and at Aphria Diamond’s option, procure for Aphria the right to continue the use, sale and distribution, or replace such converted or manipulated Products with non-infringing Products.

3. Licenses and Permits.

Aphria Diamond represents and warrants to Aphria that it shall maintain throughout the Term all applicable licenses, permits and authorizations necessary to perform its obligations under this Agreement with respect to the Products.

Aphria represents, warrants and covenants to Aphria Diamond that it shall at all times comply with Applicable Law and shall obtain and shall subsequently maintain throughout the Term all applicable licenses, permits and authorizations necessary to perform its obligations under this Agreement with respect to the Products.

4. Suitability.

Aphria Diamond represents, warrants and covenants, as applicable, to Aphria that it has: (i) the requisite experience, knowledge and expertise; (ii) qualified personnel; and (iii) the legal right, to perform its obligations under this Agreement and Aphria Diamond covenants to Aphria that Aphria Diamond will perform such obligations in a sound, safe, lawful and workmanlike manner.

Aphria represents, warrants and covenants, as applicable, to Aphria Diamond that it has: (a) the requisite experience, knowledge and expertise; (b) qualified personnel; and (c) the legal right, to perform its obligations under this Agreement and Aphria covenants to Aphria Diamond that Aphria will perform such obligations in a sound, safe, lawful and workmanlike manner.

5. Facilities.

Aphria Diamond represents and warrants that: (i) all Products will be produced at the Aphria Diamond Facility; and (ii) the Aphria Diamond Facility is registered, licensed and in good standing under Applicable Laws.

6. Aphria Diamond Facility.

Aphria will have the right, but not the obligation, to have one or more employee agent(s) or representative(s) attend the Aphria Diamond Facility upon 48 hours' prior written notice or at times mutually agreeable to both Parties to assess Aphria Diamond's compliance with the Specifications, Good Production Practices and Applicable Laws and any other requirements contemplated by this Agreement; provided, however, that: (i) such assessments will be conducted by an employee agent(s) or representative(s) during customary business hours and shall not unreasonably interfere with the operations of the Aphria Diamond Facility; (ii) all such employee agent(s) or representative(s) will report solely to Aphria on a confidential basis confirming compliance or non-compliance, as applicable, with the Specifications, Good Production Practices and Applicable Laws and any other requirements contemplated by this Agreement; and (iii) in Exceptional Circumstances, Aphria's employee agent(s) and/or representative(s) shall have the right to attend the Aphria Diamond Facility on such shorter notice as is reasonable in such circumstance.

7. Obligations of Aphria.

In addition to any other obligations Aphria may have under this Agreement, Aphria covenants and agrees with Aphria Diamond that:

- i. Aphria will comply with all Applicable Laws including in its use, possession, processing, packaging/labelling, testing, importing, exporting, storage, sale, delivery, transportation, distribution and destruction of the Products; and
- ii. Aphria shall bear all responsibility with regard to the nature, content and use of all Aphria promotional and marketing materials used by Aphria in respect of the Products.

8. Change of Law.

- a. The Parties acknowledge and confirm that the business of Aphria Diamond, Aphria and the Products are and will be subject to extensive regulation and Applicable Laws. The Parties have attempted to structure their relationship pursuant to this Agreement in compliance with all Applicable Laws. However, if, at any time during the Term, there is any change in Applicable Laws with which a Party is required to comply (including any change to the *Cannabis Act* or any other Applicable Laws governing the legalization of the production, cultivation, processing, sale and distribution of cannabis in Canada), or any other change in the application or administration of Applicable Laws whether affecting a Party specifically or affecting all businesses of a similar nature to those of the Party, and, as a result of such compliance, such Party is no longer able to comply with one or more provisions of this Agreement (each such change, a "**Change of Law**") the affected Party shall promptly notify the other Party in writing (a "**Change of Law Notice**") of the Change of Law and any such notice shall contain a description of the Change of Law and the exact obligations under this Agreement which the affected Party is delayed or prevented from performing and/or the manner in which such Party's obligations are performed as a result of such Change of Law (the "**Affected Obligations**").
- b. Upon delivery of a Change of Law Notice, the respective Chief Executive Officers of the Parties, or their designates ("**Designated Representatives**") will meet within three (3) calendar days and, in good faith, use their commercially reasonable efforts to agree on amendments to this Agreement necessary and appropriate to take account of the Change of Law, so that this Agreement may continue in force (a "**Change of Law Amendment**"). All Change of Law Amendments shall be agreed to by the Designated Representatives of the Parties no later than five (5) calendar days from the date of the Change of Law Notice, or such later date as the Designated Representatives may mutually agree in writing (the "**Change Period**"). Without limiting the generality of the foregoing, where a Change of Law Amendment would result in additional costs being incurred disproportionately by one Party, the Parties shall negotiate in good faith to ensure that the contractual arrangements remain beneficial to both Parties.
- c. During the Change Period the obligation of the affected Party to perform the Affected Obligations shall be suspended and the affected Party shall not suffer or incur any liability to the non-affected Party or other Person in connection with its delayed, modified and/or non-performance of the Affected Obligations, as the case may be; provided, however, that the affected Party has used and continues to use its good faith, commercially reasonable efforts to minimize the impact of its delay, modified and/or non-performance of the Affected Obligations, including cooperating and collaborating with the non-affected Party to impose interim procedures and/or workarounds to minimize the impact of its delay, modification and/or non-performance of the Affected Obligations.

6. **PRODUCTS; REJECTED PRODUCTS**

1. Compliance with Specifications.

Prior to delivering any Products to Aphria, Aphria Diamond shall conduct such tests described in the Specifications and inspect each lot of Products for compliance with the applicable Specifications, consistent with Applicable Law and will ensure that all such Products have been approved by Aphria Diamond's quality assurance person prior to delivery.

2. Rejection of Products.

Other than notice provided pursuant to Section 5.1, if following delivery any Product fails to conform to the Specifications, Aphria may reject such Product (a "**Rejected Product**") within five (5) days after receipt thereof. Aphria will provide written notice to Aphria Diamond of any Rejected Product within such five (5) day period setting out in reasonable detail how such Rejected Product fails to conform to the Specifications. Aphria Diamond shall not charge Aphria for any Rejected Product or shall reimburse or credit the cost to Aphria of any Rejected Product that may already have been paid by Aphria. If Aphria fails to deliver a notice regarding Rejected Product within five (5) days of receipt thereof, the Product shall be deemed to be accepted by Aphria. All Products accepted by Aphria, whether accepted following the replacement by Aphria Diamond or the resolution pursuant to Section 6.3, will be invoiced by Aphria Diamond to Aphria at the Price Per Gram. Other than the remedy set forth in Section 5.1, the provisions of this Section shall be Aphria's sole remedy with respect to the Rejected Product.

3. Dispute Resolution.

In the event of a dispute regarding whether any Rejected Product complies with the Specifications, Aphria and Aphria Diamond shall utilize an independent laboratory as may be acceptable to both Aphria Diamond and Aphria, acting reasonably (the "**Independent Laboratory**"), to evaluate whether such Rejected Product conforms with the applicable Specifications. If such issue is submitted to the Independent Laboratory for resolution, (i) Aphria Diamond and Aphria will furnish or cause to be furnished to the Independent Laboratory such documents and information relating to the disputed issue as the Independent Laboratory may request and are available to that Party or its agents and will be afforded the opportunity to make written submissions to the Independent Laboratory; and (ii) the determination by the Independent Laboratory, as set forth in a notice to be delivered to both Aphria Diamond and Aphria within five (5) days of the submission to the Independent Laboratory of the issues remaining in dispute, will be final, binding and conclusive on the Parties, absent clerical manifest error. If such Independent Laboratory determines that a Rejected Product complies with the Specifications, Aphria will bear full responsibility for any fees charged by the Independent Laboratory in respect of testing such Rejected Product and will be obligated to purchase such Product and accept shipment of such Product, subject to the terms and conditions set forth in this Agreement. If such Independent Laboratory determines that a Rejected Product does not comply with the Specifications, Aphria Diamond will bear full responsibility for any fees charged by the Independent Laboratory in respect of testing such Rejected Product. The terms and existence of any dispute regarding a Rejected Product shall be kept in the strictest and utmost confidence by the Parties, consistent with the confidentiality obligations of the Parties for Arbitration proceedings under Section 15.2.

4. Obligations Regarding a Rejected Product.

Aphria Diamond will, at its own expense: (i) replace any Rejected Product as soon as practicable, and in any event, (a) within five (5) days of Aphria's notice of rejection or, (b) in the event of a dispute regarding such Rejected Product that is resolved by an Independent Laboratory, within fourteen (14) days of the determination by such Independent Laboratory that such Rejected Product does not conform to the Specifications; and (ii) promptly arrange for and pay all costs associated with the disposal and, if deemed necessary by Aphria Diamond, the destruction of such Rejected Product. Any disposal or destruction of Rejected Product shall be in accordance with all Applicable Laws.

5. Return of Products.

Aphria acknowledges that it shall be responsible for maintaining and managing its inventory of accepted Products and that, except as otherwise set forth in this Agreement, no accepted Products delivered by Aphria Diamond in accordance with this Agreement shall be returnable to Aphria Diamond without Aphria Diamond's prior written consent, which consent may not be unreasonably withheld. Except as otherwise set forth in this Agreement, all accepted Products that expire while in the possession of Aphria shall be destroyed at Aphria's own expense and in accordance with Applicable Laws.

6. Changes to Product.

Following Aphria Diamond's Acceptance of a Purchase Order, Aphria Diamond will not make any change to any Products which are included in such Purchase Order or the production process in respect of any Products which are included in such Purchase Order unless: (i) such change is required by the Canadian Regulatory Authority or Applicable Laws and Aphria Diamond has provided reasonable detail to Aphria in respect of such change, including whether any such change would result in an increase or decrease in the purchase price of such Product (a "**Required Change**"); or (ii)(a) such change is proposed by Aphria Diamond in order to maintain or improve the quality of any Product; (b) Aphria Diamond has provided reasonable detail to Aphria in respect of such change, including whether any such change would result in an increase or decrease in the purchase price of such Product; and (c) Aphria Diamond has obtained the prior written consent of Aphria for such change, which consent may be withheld in Aphria's sole discretion (an "**Optional Change**"). Upon adoption of any Required Change or any Optional Change, such Required Change or Optional Change, as the case may be, shall become part of the Specifications for such Product. Aphria shall solely bear the costs associated with any Required Change or any Optional Change.

7. Storage.

Aphria Diamond shall store the Products at the Aphria Diamond Facility in accordance with the Specifications, Good Production Practices and Applicable Laws, consistent with the same practices and procedures used by Aphria Diamond in its own operations and in respect of its other Aphria Diamond relationships. Aphria will have the right to inspect, from time to time, the Aphria Diamond Facility subject to the conditions provided under Section 5.6.

8. Bulk Transfer Transaction Form.

As applicable and prior to each shipment of Products, the Parties agree to complete a bulk transfer transaction form and such other documents as otherwise may be required by Applicable Laws. The quantities listed on the bulk transfer transaction form must be in line with approved amounts for possession, storage, sale and distribution of the Products under the cultivation licence for the Aphria Facility and the Aphria Diamond Facility. If applicable, the bulk transfer transaction form must be signed by both Aphria Diamond and Aphria and be submitted to the Canadian Regulatory Authority (Health Canada) a minimum of ten (10) Business Days in advance of each shipment or such other time period as may be specified by any

Canadian Regulatory Authority. The Parties acknowledge and agree that Aphria Diamond may not ship any Products if it has been directed by the Canadian Regulatory Authority (Health Canada) not to do so.

9. Shelf Life.

Unless otherwise agreed upon by the Parties, Aphria Diamond shall ensure that all Products supplied to Aphria will be quality assurance released and delivered to Aphria no later than two (2) months after the Product has left the grow room. Where both Parties agree to storage at the Aphria Diamond Facility at Aphria's request, any quality issues that are found as a result of such storage are the responsibility of Aphria. Aphria Diamond is only responsible for ensuring the Product meets the Specification at the time of release.

10. Shipping.

Aphria Diamond will ship the Products in accordance with Applicable Laws at Aphria's sole expense. Such shipments will occur weekly, so long as there is Product released and available to ship. In respect of Products shipped to the Aphria Facility in Leamington, all such Products will be delivered FOB Aphria's Facility.

11. Mandatory Product Handling Instructions for Shipment and Storage.

Aphria Diamond will prepare each Product for transportation with due care in accordance with the Specifications, consistent with the Applicable Law, the Specifications and the Quality Agreement.

7. **PURCHASE ORDERS**

1. Purchase Orders.

- i. The Products will be ordered by Aphria by the issuance of pre-numbered purchase orders ("**Purchase Orders**"). All Purchase Orders are subject to acceptance by Aphria Diamond before they become binding on Aphria Diamond.
- ii. Each Purchase Order will designate the desired delivery dates for the Products and packaging configurations for the Products and will specify the Aphria Facility ordering the Products. Aphria shall not be required to deliver, and Aphria Diamond shall not accept, Purchase Orders for any Product to be delivered after the date of termination or expiration of this Agreement.
- iii. All sales of accepted Products by Aphria Diamond to Aphria will be subject to the provisions of this Agreement and will not be subject to the terms and conditions contained in any Purchase Order of Aphria or confirmation of Aphria Diamond, except insofar as any such Purchase Order or confirmation establishes: (a) the type of Product to be sold; (b) the quantity of Products to be sold; (c) the delivery dates for those Products; (d) the packaging configuration for those Products; and (e) the location to which those Products are to be delivered.
- iv. For greater certainty, Aphria shall have no obligation to purchase any quantities of Products that are not specifically set out in a Purchase Order provided by Aphria and accepted by Aphria Diamond.

2. Delivery.

Aphria Diamond shall use commercially reasonable efforts to deliver Products to Aphria within seven (7) days of the delivery date specified in the applicable Purchase Order, unless otherwise mutually agreed in writing by the Parties. Aphria Diamond shall not be liable for any delay in delivery if Aphria Diamond used commercially reasonable efforts to deliver Products within the time periods specified herein.

3. Supply Levels.

If Aphria Diamond anticipates that it will be unable to supply at least ninety percent (90%) (in grams) of the quantity of a Product ordered pursuant to a Purchase Order, Aphria Diamond shall notify Aphria as soon as reasonably practicable prior to the date on which Product is to be delivered to Aphria as contemplated in Section 7.2.

8. **PURCHASE PRICE AND PAYMENT**

1. Purchase Price of Aphria Diamond Product.

The purchase price of the Product (the "**Price Per Gram**") shall be as set forth in Schedule B.

2. Records and Inspections.

Aphria Diamond will maintain accurate records containing sufficient data from which the purchase price payable pursuant to this Agreement may be calculated. Aphria Diamond will maintain those records for two (2) years after the end of the applicable contract year to which those records relate. Promptly following any request by Aphria, Aphria Diamond will permit examination of those records by Aphria during Aphria Diamond's customary business hours.

3. Payment Terms.

4. The price of all Products will be paid within thirty (30) days following the receipt of the invoice by Aphria from Aphria Diamond for Products delivered to Aphria during the preceding month, and/or consistent with past practices established between the parties.

4. Withholding Taxes. All prices under this Agreement shall be exclusive of applicable sales tax, for which Aphria will be responsible. Any payments under this Agreement shall be paid in full without any deduction or withholding of taxes, except to the extent required

by law. If any taxes are required to be deducted or withheld by Aphria pursuant to legal requirements, Aphria will (i) pay the taxes to the taxing authority, and (ii) send proof of such payment to Aphria Diamond. Each Party agrees to use commercially reasonable efforts to assist the other Party in claiming any legal exemptions from the respective obligation to deduct or withhold tax.

9. PRODUCT QUALITY; PHARMACOVIGILANCE

1. Quality Complaints.

Within ten (10) days after receiving a complaint regarding the quality of any Product, the Party that received such complaint will provide a copy of such complaint to the other Party. Aphria Diamond, in cooperation with Aphria, will promptly investigate any such complaint and will, as soon as reasonably practicable but in any event within thirty (30) days after receiving such complaint, provide a report to Aphria setting out the findings of such investigation in reasonable detail. Aphria shall be responsible for filing with the Canadian Regulatory Authority any report that may be required in respect of a quality complaint regarding any Product.

2. Quality Agreement. Each Party is responsible for fulfilling its technical, quality and Good Production Practices. The Parties agree to comply with the terms of the quality agreement (“**Quality Agreement**”), which Quality Agreement shall be in the form attached hereto as Exhibit I to Schedule A. In the event of any conflict between the terms of the Quality Agreement and any other term of this Agreement, the terms of this Agreement shall be paramount.

10. PRODUCT RECALLS

1. In the event (i) any Governmental Authority issues a request, directive or order that a Product be recalled, or (ii) a court of competent jurisdiction orders such a recall, or (iii) Aphria, after consultation with Aphria Diamond, reasonably determines that a Product should be recalled because the Product does not conform to Specifications, or (iv) Aphria Diamond, after consultation with Aphria, reasonably determines that a Product should be recalled for any reason, the Parties shall take all appropriate corrective actions reasonably requested by the other Party hereto or by any Governmental Authority. In the event that such recall results from the breach of Aphria Diamond’s representations, warranties and/or covenants under this Agreement, or Aphria Diamond is otherwise responsible for the recall, Aphria Diamond shall be responsible for 100% of the Expenses of the Recall. In the event the recall results from the breach of Aphria’s representations, warranties and/or covenants under this Agreement, or Aphria is otherwise responsible for the recall, Aphria shall be responsible for one hundred percent (100%) of Expenses of the Recall. In the event of a recall that is neither Party’s fault, the Parties shall evenly split the Expenses of the Recall. In the event of a recall that is the fault of both Parties, the Parties shall allocate the Expenses of the Recall between each of the Parties based on each Party’s respective culpability for such recall, with the Parties acting reasonably. For the purposes of this Agreement, “**Expenses of the Recall**” shall mean the reasonable and direct costs and expenses of notification of customers and destruction or return of the recalled Product, as well as any reasonable and direct out-of-pocket costs, solely in connection with any corrective action taken by Aphria Diamond. For greater certainty, Expenses of the Recall shall not include any indirect or consequential costs, loss of profits, business revenues, business interruption and the like, of either Party. Aphria shall lead and conduct a recall in accordance with its standard operating procedures and the Quality Agreement and Aphria Diamond shall fully cooperate with Aphria to assist with the recall process as necessary.
2. **Allocation of Fault.** If the Parties disagree as to the allocation of fault described above, Aphria Diamond shall deliver the samples of the recalled Product to an Independent Laboratory for analytical testing to confirm the Product’s conformance to the Specifications and whether the Product does not conform with the Specifications as a result of a deficiency in the Rooted Cuttings provided by Aphria to Aphria Diamond. All costs and expenses associated with such third party testing shall be for the account of the Aphria if it is determined by the Independent Laboratory that the recalled Product did not meet the Specifications as a result of a deficiency in the Rooted Cuttings provided by Aphria Diamond, otherwise all costs and expenses for such third party testing shall be for the account of Aphria Diamond.

11. FORCE MAJEURE

1. A Party shall be excused for any failure or delay in performing any of its obligations under this Agreement (other than payment obligations), if such failure or delay is caused by, or contributed to by, Force Majeure, or if performance of this Agreement becomes commercially impractical as a result of Force Majeure, provided that such Party shall (i) promptly notify the other Party in writing of the occurrence or circumstance upon which it intends to rely to excuse its performance, and (ii) promptly resume performance after the cause of such delay is removed. For purposes of this Agreement, “**Force Majeure**” shall mean any act of God, accident, explosion, fire, storm, earthquake, flood, drought, riot, embargo, civil commotion, war, act of war, terrorism, act or order of any Governmental Authority or inability to obtain or delay in the delivery of raw materials, parts or completed merchandise by Aphria Diamond thereof, but shall specifically exclude labour disputes of either Party.

12. INTELLECTUAL PROPERTY RIGHTS

1. Intellectual Property.

- i. Each Party hereby acknowledges that it does not have, and shall not acquire any interest in any of the other Party’s intellectual property unless otherwise expressly agreed in writing.
- ii. Each Party agrees not to use any trade names or trademarks of the other Party, except as specifically authorized by the other Party in writing or under this Agreement both as to the names or marks which may be used and as to the manner and prominence of use, except as required under Applicable Law.
- iii. Aphria hereby grants to Aphria Diamond, the exclusive, limited, royalty free, revocable licence to use the word mark “Aphria” in Canada, solely as part of the composite name “Aphria Diamond” to connote the operating entity of 1974568 ONTARIO LIMITED. This limited licence will be automatically revoked and terminated by Aphria upon the termination

13. INSURANCE; INDEMNIFICATION AND LIMITATION OF LIABILITY

1. Insurance.

Each Party will (i) at all times during the Term and continuing for a period of two (2) years after the date of any expiration or termination of this Agreement, maintain in full force and effect, for the benefit of itself and the other Party, commercial general liability insurance which is sufficient to adequately protect against the risks associated with its ongoing business, including the risks which might possibly arise in connection with the transactions contemplated by this Agreement and in any event, will maintain product liability insurance in an amount not less than five million dollars (\$5,000,000) for each occurrence and in the aggregate (it being understood that either Party may self-insure a portion of such coverage as may be commercially reasonable and furnishes adequate protection as described above), and (ii) use its commercially reasonable efforts to cause its insurer of such policy to provide that policy cannot be terminated or canceled without giving the other Party thirty (30) days prior written notice. During the Term, each Party's insurance policy will name the other Party as an additional insured. Upon request by the other Party from time to time but not more often than once annually, each Party shall furnish the other with a certificate of insurance evidencing that such insurance coverage is in force.

2. Indemnification by Aphria Diamond.

Aphria Diamond shall indemnify, defend and hold Aphria, and its respective officers, directors, employees, and representatives harmless from and against any and all losses, liabilities, damages, costs and expenses, including reasonable legal fees and disbursements (collectively, "**Damages**"), claimed by a third party pursuant to any and all suits, investigations, claims or demands by third parties to the extent resulting from or arising out of: (i) any breach by Aphria Diamond, its Affiliates or their respective officers, directors, employees, or representatives of any representation, warranty and/or covenant of Aphria Diamond under this Agreement; (ii) any negligence or willful misconduct by Aphria Diamond, its Affiliates or their respective officers, directors, employees, or representatives; (iii) a Product defect caused by the failure of Aphria Diamond, its Affiliates or their respective officers, directors, employees, or representatives to comply with Good Production Practices and Applicable Laws; (iv) any product liability action arising from or in connection with the sale of the Products (including, design defect claims, product defect claims, or claims under strict liability in tort, except to the extent such product liability action arises from an indemnified event pursuant to Section 13.3); and/or (v) any failure to properly dispose of or destroy any Rejected Product in accordance with Applicable Laws.

3. Indemnification by Aphria.

Aphria shall indemnify, defend and hold Aphria Diamond and its respective officers, directors, employees, and representatives harmless from and against any and all Damages claimed by a third party pursuant to any and all suits, investigations, claims or demands by third parties to the extent resulting from or arising out of: (i) any breach by Aphria or its respective officers, directors, employees or representatives of any representation, warranty and/or covenant of Aphria under this Agreement; (ii) any negligence or willful misconduct by Aphria or its respective officers, directors, employees or representatives; (iii) a Product defect caused by Aphria or its respective officers, directors, employees, or representatives; (iv) any product liability action arising from or in connection with the sale of Products (including design defect claims, product defect claims, or claims under strict liability in tort, except to the extent such product liability action arises from an indemnified event pursuant to Section 13.2).

4. Procedures.

The obligations and rights of each of the Parties as an Indemnifying Party (as defined below) or as an Indemnified Party (as defined below) under Section 13.2 or 13.3, as the case may be, with respect to claims of any third party that are subject to indemnification as provided for in Sections 13.2 or 13.3 (a "**Third Party Claim**") shall be governed by and be contingent upon the following additional terms and conditions set forth in this Section 13.4. As soon as a Party becomes aware of a Third Party Claim (actual or threatened) for which it intends to seek indemnification under Section 13.2 (in the case of Aphria) or Section 13.3 (in the case of Aphria Diamond) (the Party seeking indemnification being referred to as the "**Indemnified Party**" and the Party obligated for indemnification being referred to as the "**Indemnifying Party**"), the Indemnified Party shall give the Indemnifying Party prompt written notice and shall permit the Indemnifying Party to have control over the defense of such Third Party Claim. The Indemnified Party agrees to provide all reasonable information and assistance to the Indemnifying Party in such defense. The Indemnifying Party is authorized to direct all aspects of the defense for which it has an obligation of indemnification and defense hereunder, including selection of counsel, discovery, motions and settlement, provided that the Indemnifying Party may not settle or dispose of any such matter in any manner which would confess wrongdoing or otherwise adversely impact the rights or interest of the Indemnified Party without the prior written consent of the Indemnified Party, which consent may not be unreasonably withheld, conditioned or delayed.

5. IN NO EVENT SHALL APHRIA DIAMOND OR ANY OF ITS CONTRACTORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOSS OF REVENUE OR LOSS OF PROFITS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT INCLUDING NEGLIGENCE OR INDEMNITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN IN THE EVENT OF A RECALL, NEGLIGENCE OR WILLFUL MISCONDUCT. THE LIABILITY OF APHRIA DIAMOND OR ANY OF ITS CONTRACTORS SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE TO APHRIA DIAMOND BY APHRIA PURSUANT TO THIS AGREEMENT IN THE PRECEDING THREE MONTHS FROM THE DATE OF THE CLAIM, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT (INCLUDING AS SET OUT IN SECTION 13.2), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APHRIA DIAMOND DISCLAIMS ALL IMPLIED WARRANTIES AND IMPLIED CONDITIONS.

14. TERMINATION

1. Events of Default.

Any of the following events or circumstances shall constitute a default ("**Default**") under this Agreement:

- i. if the other Party: (a) admits its inability or is unable to pay its debts generally as they become due; (b) ceases to carry on business in the ordinary course; (c) is adjudged (or is sought by a creditor to be adjudged) a bankrupt or insolvent; (d) makes an assignment or arrangement with or for the benefit of creditors; (e) has a custodian or receiver or receiver manager or any other official with similar powers appointed for it or a substantial portion of its properties or assets and

such appointment is not dismissed or discharged within thirty (30) days thereof; or (f) seeks protection from its creditors under legislation affecting the rights of creditors generally or similar legislation;

2. Upon the occurrence of a Default by a Party hereto (the “**Defaulting Party**”), the other Party (the “**Non-Defaulting Party**”) may by notice to the Defaulting Party declare the Defaulting Party to be in default and the Non-Defaulting Party, in its sole and absolute discretion, may terminate its rights and obligations under this Agreement by giving notice (an “**Early Termination Notice**”) to the Defaulting Party, without prejudice to its rights under this Agreement accrued to the date of termination and its rights to seek damages as a result of such Default and termination.
3. Canadian Regulatory Authority.
 - i. If a Canadian Regulatory Authority or any third party challenges a Product and such challenge is reasonably likely, in the mutual determination of both Parties, to impact the commercial viability of such Product, Aphria may, upon thirty (30) days prior written notice to Aphria Diamond, (a) terminate its rights and obligations under this Agreement with respect to the Products that are subject to such challenge; and (b) cancel those portions of its existing Purchase Orders, without penalty or recourse by Aphria Diamond, relating to the Products that are subject to such challenge.
 - ii. If a Canadian Regulatory Authority provides notice to a Party that it intends to seek the withdrawal from the market of any of the Products, either Party shall have the right, but not the obligation, to challenge the Canadian Regulatory Authority’s proposed action and exhaust all avenues of redress available to such Party. If, following such challenge, the Canadian Regulatory Authority prevails in its effort to withdraw from the market any of the Products, as evidenced by a final, non-appealable administrative or legal order, then either Party may immediately upon written notice to the other Party: (a) terminate its rights and obligations under this Agreement with respect to the Products that are subject to such withdrawal; and (b) cancel those portions of any existing Purchase Orders, without penalty or recourse, relating to the Products that are subject to such withdrawal. In the event that a Party determines not to challenge the proposed regulatory action, the other Party may immediately upon written notice to such Party terminate its rights and obligations under this Agreement with respect to such Products (including under any Purchase Order).

15. DISPUTE RESOLUTION

1. Litigious Disputes.

Except for disputes requiring resolution pursuant to Section 6.3 of this Agreement, any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, breach or termination (a “**Litigious Dispute**”), shall be referred, upon written notice (a “**Notice of Dispute**”) given by one Party to the other, to a senior executive from each Party. The senior executives shall seek to resolve the Litigious Dispute on an amicable basis within thirty (30) days of the Notice of Dispute being received. If both Parties agree, the Litigious Dispute may be referred to mediation before a mediator mutually agreed upon by the Parties or, failing such agreement, to be appointed by the ADR Institute of Canada, Inc. (the “**ADRIC**”). The Parties shall equally share the costs of the mediator, the mediation venue and the ADRIC.

2. Arbitration.

If the Litigious Dispute is not resolved within thirty (30) days of receipt of the Dispute Notice, the Litigious Dispute shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the ADR Institute of Canada, Inc. (the “**Rules**”) but, subject to the agreement of both Parties, the ADRIC is not required to administer the arbitration (the “**Arbitration**”). Unless otherwise agreed to in writing by the Parties:

- i. the Arbitration shall be conducted before one (1) arbitrator mutually agreed upon by the Parties. If the Parties are unable to agree upon an arbitrator within ten (10) Business Days of the commencement of the Arbitration, the arbitrator shall be appointed in accordance with the Rules and the Arbitration shall proceed thereafter as an administered arbitration under the auspices of the ADRIC;
 - ii. the seat of the Arbitration shall be Toronto, Ontario, Canada;
 - iii. the language of the Arbitration shall be English;
 - iv. any award or determination of the arbitrator shall be final and binding on the Parties and there will be no appeal on any ground, including, for certainty, any appeal on a question of law, a question of fact, or a question of mixed fact and law; and
 - v. all matters relating to the Arbitration, including all documents created in the course of or for the purposes of the Arbitration and any interim or final decision, order or award in the Arbitration, shall be kept confidential and shall not be disclosed by any Party to any third party (excluding their respective legal counsel and where necessary, financial advisors) without the prior written consent of the other Party, or unless required by Applicable Laws.
3. Urgent Interim Measures. Notwithstanding the timelines set out in Sections 15.1 and 15.2 above, to the extent that any Party has a Litigious Dispute that requires urgent interlocutory relief or urgent interim measures, that Party may commence an urgent interim measures application pursuant to the Rules. Any such application shall proceed as an Arbitration administered by the ADRIC. The Parties shall not commence legal proceedings in any court in connection with a request for urgent interlocutory relief or urgent interim measures.

16. GENERAL PROVISIONS

1. Entire Agreement; Amendment. The Parties hereto acknowledge that this Agreement, together with all documents referred to in this Agreement and all schedules attached hereto, sets forth the entire agreement and understanding of the Parties and supersedes all prior and contemporaneous written and/or oral agreements and/or understandings with respect to the subject matter of this Agreement,

including the Original Supply Agreement and any other ancillary agreements among the Parties. No modification of any of the terms of this Agreement or any amendments thereto shall be deemed to be valid unless in writing and signed by the Party against whom enforcement is sought. No course of dealing or usage of trade shall be used to modify the terms and conditions herein.

2. Currency.

All currency amounts in this Agreement are stated in Canadian dollars.

3. Waiver.

No waiver by either Party of any default or other breach of this Agreement shall be effective unless in writing, nor will any waiver operate as a waiver of any other default or other breach of this Agreement, including the same default or breach on a future occasion.

4. Obligations to Third Parties.

Each Party represents and warrants that its obligations under this Agreement do not violate any of its obligations, express or implied, undertaken with any third party.

5. Assignment.

This Agreement shall be binding upon and inure to the benefit of the successors, permitted assigns and transferee of each of the Parties. This Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. A Party may, however, assign its rights hereunder to an affiliate with the written consent of the other Party which shall not be unreasonably withheld. No assignment shall release the original Party hereto from its duties and obligations under this Agreement.

6. Governing Law and Jurisdiction. This Agreement will be governed by, and construed, interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any rule or principle of the conflict of laws which might refer such construction or interpretation to the laws of another jurisdiction) and the laws of Canada applicable therein. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.

7. Time of the Essence.

Time is of the essence of each provision of this Agreement, including with respect to delivery of Products, and no extension or variation of this Agreement shall operate as a waiver of this provision.

8. Notices.

Any notice or other communication required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given if in writing and either delivered by e-mail, facsimile transmission (with electronic receipt), overnight courier service against receipt or sent by registered or certified mail, return receipt requested, addressed as indicated below:

If to Aphria Diamond:

1974568 Ontario Limited.
2237 Essex Rd. 31
Kingsville, Ontario, N9Y 2E5

Attention: ***

E-mail: ***

If to Aphria:

Aphria Inc.
98 Talbot Street West
Leamington, Ontario

N8H 1M8

Attention: ***

E-mail: ***

With copy to: ***

Notice so given will be deemed to have been given and received on: (i) the same day the notice is sent if transmission of the notice is by e-mail or facsimile sent before 4:00 pm (recipient's time) on a Business Day; (ii) the next Business Day following the date that the notice is sent if transmission of the notice is by e-mail or facsimile transmission sent on a day that is not a Business Day or sent on or after 4:00 pm (recipient's time) on a Business Day; (iii) on the day of delivery of the notice by overnight courier service; or (iv) on the seventh Business Day following the day of mailing. Any party from time to time by notice given pursuant to the terms of this Agreement may change its address for the purpose of this Agreement. In the event of actual or threatened disruption of postal service, notice will be delivered by overnight courier service or sent by facsimile or e-mail.

9. Severability.

If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by Applicable Law, all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the Parties hereto as nearly as may be possible; provided, however, that nothing herein shall be construed so as to defeat the overall intention of the Parties.

10. Headings, Interpretation.

The headings used in this Agreement are for convenience only and are not a part of this Agreement. This Agreement shall be deemed to have been drafted jointly by both Aphria and Aphria Diamond for purposes of interpreting any of the terms or provisions of this Agreement.

11. Counterparts.

This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument. Any counterpart may be signed and transmitted by facsimile or PDF with the same force and effect as if such counterpart was a signed original.

12. Independent Contractor.

The Parties agree that each is acting as an independent contractor with respect to the other and nothing contained in this Agreement is intended, or is to be construed, to constitute Aphria and Aphria Diamond as partners or joint venturers or Aphria or Aphria Diamond as an agent of the other. Neither Party hereto 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.

13. Further Assurances.

The Parties shall sign such further and other documents and shall perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.

14. Survival. The following sections shall survive the expiration or termination of this Agreement, regardless of the reasons for its expiration or termination, in addition to any other provision which by law or by its nature should survive: 1, 8.1, 8.2, 10, 12, 13, 15, 16, Schedule A, Exhibit I and Schedule B.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties hereto have each caused this Agreement to be executed by their duly authorized officers as of the date first above written.

1974568 ONTARIO LIMITED

By: _____
Name:
Title:

APHRIA INC.

By: _____
Name:
Title:

WAIVER TO CREDIT AGREEMENT

THIS WAIVER TO CREDIT AGREEMENT dated as of January 5, 2024 (this "Waiver") is by and among FOUR TWENTY CORPORATION, a Delaware corporation (the "Borrower"), the Guarantors identified on the signature pages hereto, the Lenders identified on the signature pages hereto and BANK OF AMERICA, N.A., in its capacity as Administrative Agent (in such capacity, the "Administrative Agent"), Swingline Lender and L/C Issuer.

WITNESSETH

WHEREAS, a credit facility has been extended to the Borrower pursuant to the Credit Agreement dated as of June 30, 2023 by and among the Borrower, the Guarantors identified therein, the Lenders identified therein and Bank of America, N.A., as Administrative Agent, Swingline Lender and L/C Issuer (as amended, modified, supplemented, restated and extended from time to time, the "Credit Agreement");

WHEREAS, the Borrower has informed the Administrative Agent that a potential Event of Default may exist under Section 8.01(b) of the Credit Agreement as a result of the Borrower's potential failure to comply with Section 7.11(a) of the Credit Agreement with respect to the four Fiscal Quarter Period ended November 30, 2023 (the "Potential Event of Default");

WHEREAS, the Loan Parties have requested that the Lenders waive the Potential Event of Default; and

WHEREAS, the Required Lenders are willing to waive the Potential Event of Default to the Credit Agreement, in accordance with and subject to the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Credit Agreement as amended hereby.
2. Waiver. Notwithstanding the provisions of the Credit Agreement to the contrary, the Required Lenders hereby temporarily waive, on a one-time basis, the Potential Event of Default; provided, that, (a) the failure of the Borrower to enter into an amendment to the Credit Agreement with the Administrative Agent, the requisite Lenders, the Swingline Lender and the L/C Issuer on or prior to March 31, 2024 (the "Proposed Amendment") to address the financial covenants and/or such other matters as may be agreed to between the parties hereto shall, to the extent that the Potential Event of Default is an actual Event of Default, result in an immediate Event of Default and (b) to the extent the Proposed Amendment is duly executed by the parties hereto on or before March 31, 2024, this Waiver shall become permanent.

This waiver shall be effective only to the extent specifically set forth herein and shall not (a) be construed as a waiver of any breach, Default or Event of Default other than as specifically waived herein nor as a waiver of any breach, Default or Event of Default of which the Lenders have not been informed by the Loan Parties, (b) affect the right of the Lenders to demand compliance by the Loan Parties with all terms and conditions of the Loan Documents, except as specifically modified or waived by this Waiver, (c) be deemed a waiver of any transaction or future action on the part of the Loan Parties requiring the Lenders' or the Required Lenders' consent or approval under the Loan Documents, or (d) except as waived hereby, be deemed or construed to be a waiver or release of, or a limitation upon, the Administrative Agent's or the Lenders' exercise of any rights or remedies under the Credit Agreement or any other Loan Document, whether arising as a consequence of any Default or Event of Default (other than the Potential Event of Default) which may now exist or otherwise, all such rights and remedies hereby being expressly reserved.

3. Conditions Precedent. This Waiver shall be and become effective as of the date hereof when the following conditions precedent have been satisfied:
 - a. The Administrative Agent shall have received counterparts of this Waiver, which collectively shall have been duly executed on behalf of each of the Borrower, the Guarantors, the Administrative Agent, each Lender, the Swingline Lender and the L/C Issuer;
 - b. After giving effect to this Waiver, no Default or Event of Default shall exist;
 - c. The Borrower shall have paid all fees and expenses required to be paid to the Administrative Agent and the Lenders on or before the date hereof; and
 - d. All other documents and legal matters in connection with the transactions contemplated by this Waiver shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel.
4. Expenses. The Loan Parties agree to reimburse the Administrative Agent for all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including, but not limited to, (A) the reasonable fees, charges and disbursements of one (1) counsel (and one (1) special counsel or one (1) local counsel in any relevant jurisdiction and, in the case of an actual or potential conflict of interest, one (1) additional counsel of each group of similarly situated affected persons subject to such conflict) for the Administrative Agent and its Affiliates and (B) due diligence expenses) in connection with the preparation, execution and delivery of this Waiver.
5. Waiver is a "Loan Document". This Waiver is a Loan Document and all references to a "Loan Document" in the Credit Agreement and the other Loan Documents (including, without limitation, all such references in the representations and warranties in the Credit Agreement and the other Loan Documents) shall be deemed to include this Waiver.
6. Authorization; Enforceability. Each Loan Party represents and warrants as follows:
 - a. It has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Waiver.
 - b. This Waiver has been duly executed and delivered by such Loan Party and constitutes its legal, valid and binding obligations, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity.

- c. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, such Loan Party of this Waiver, other than authorizations, approvals, actions, notices and filings which have been duly obtained, taken or made.
- d. The execution, delivery and performance by such Loan Party of this Waiver does not and will not (i) contravene the terms of any of such Loan Party's Organization Documents; (ii) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under, or require any payment to be made under (1) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (2) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (iii) violate any Applicable Law.
7. Representations and Warranties; No Default. Each Loan Party represents and warrants to the Administrative Agent and each Lender that, after giving effect to this Waiver, (a) the representations and warranties of the Borrower and each Loan Party contained in Article II or Article V of the Credit Agreement or any other Loan Document or which are contained in any document furnished at any time under or in connection therewith, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects, in each case, on and as of the date hereof, and except that for purposes of this Section 7(a), the representations and warranties contained in Sections 5.05(a) and (b) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively, of the Credit Agreement, and (b) no Default exists.
8. Reaffirmation of Obligations. Each Loan Party (a) acknowledges and consents to all of the terms and conditions of this Waiver, (b) affirms all of its obligations under the Loan Documents, as modified hereby, and (c) agrees that this Waiver and all documents, agreements and instruments executed in connection with this Waiver do not operate to reduce or discharge such Loan Party's obligations under the Loan Documents.
9. Reaffirmation of Security Interests. Each Loan Party (a) ratifies and affirms that each of the Liens granted in or pursuant to the Loan Documents and confirms and agrees that such Liens are valid and subsisting and (b) agrees that this Waiver and all documents, agreements and instruments executed in connection with this Waiver do not in any manner impair or otherwise adversely affect any of the Liens granted in or pursuant to the Loan Documents. Without limiting the foregoing, each Loan Party confirms and agrees that each of the Liens granted in or pursuant to the Loan Documents by such Loan Party secure all of the Obligations as amended hereby and hereby re-grants a security interest and liens in all of its right, title and interest in the Collateral, as defined in, and on the terms set forth in, the Security Agreement, to secure all of the Obligations as amended hereby and, further, ratifies and reaffirms as of the date hereof that the security constituted by the Collateral Documents continue to secure the payment of liabilities and obligations of the Loan Parties under the Loan Documents.
10. No Other Changes. Except as modified hereby, all of the terms and provisions of the Loan Documents shall remain in full force and effect.
11. Counterparts; Electronic Record. This Waiver may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Waiver or any other document required to be delivered hereunder, by fax transmission or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement. Without limiting the foregoing, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.
12. Governing Law. THIS WAIVER AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS WAIVER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
13. Consent to Jurisdiction; Service of Process; Waiver of Jury Trial. The jurisdiction, service of process and waiver of jury trial provisions set forth in Sections 11.14 and 11.15 of the Credit Agreement are hereby incorporated by reference, mutatis mutandis

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Waiver to be duly executed as of the date first above written.

BORROWER:

FOUR TWENTY CORPORATION,
a Delaware corporation

By: _____

Name: Carl Merton

Title: Chief Financial Officer

GUARANTORS:

DOUBLE DIAMOND DISTILLERY LLC,

a Colorado limited liability company

By: _____

Name: Carl Merton

Title: Chief Financial Officer

SWEETWATER COLORADO BREWING COMPANY, LLC,

a Delaware limited liability company

By: _____

Name: Carl Merton

Title: Chief Financial Officer

MONTAUK BREWING COMPANY, INC.,

a New York corporation

By: _____

Name: Carl Merton

Title: Chief Financial Officer

TILRAY HOLDCO M, LLC,

a Delaware limited liability company

By: _____

Name: Carl Merton

Title: Chief Financial Officer

TILRAY BEVERAGES, LLC,

a Delaware limited liability company

By:

Name:	Carl Merton
Title:	Chief Financial Officer

TILRAY ABC, LLC,

a Delaware limited liability company

By:

Name:	Carl Merton
Title:	Chief Financial Officer

AMERICAN BEVERAGE CRAFTS, LLC,

a Delaware limited liability company

By:

Name:	Carl Merton
Title:	Chief Financial Officer

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A.,

as Administrative Agent

By: _____

Name: Erik M. Truette

Title: Vice President

LENDERS:

BANK OF AMERICA, N.A.,
as a Lender, L/C Issuer and Swingline Lender

By: _____

Name: Charles Hart

Title: Senior Vice President

PINNACLE BANK, A TENNESSEE BANK,
as a Lender

By: _____

Name: Chris Gruehn

Title: Senior Vice President

CITY NATIONAL BANK,

as a Lender

By: _____

Name:

Title:

THE TORONTO-DOMINION BANK, NEW YORK BRANCH,
as a Lender

By: _____

Name:

Title:

Exhibit 31.1

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Irwin D. Simon, certify that:

1. I have reviewed this Form 10-Q of Tilray Brands, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 9, 2024

By: /s/ Irwin D. Simon

Irwin D. Simon
Chairman and Chief Executive Officer

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Carl A. Merton, certify that:

1. I have reviewed this Form 10-Q of Tilray Brands, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 9, 2024

By: /s/ Carl A. Merton
Carl A. Merton
Chief Financial Officer

Exhibit 32.1

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Tilray Brands, Inc. (the “Company”) on Form 10-Q for the period ending November 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: January 9, 2024

By: /s/ Irwin D. Simon

Irwin D. Simon
Chairman and Chief Executive Officer

Exhibit 32.2

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Tilray Brands, Inc. (the “Company”) on Form 10-Q for the period ending November 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: January 9, 2024

By: /s/ Carl A. Merton
Carl A. Merton
Chief Financial Officer