

icare™

lifetime care

Terms of Approval

Case Manager Services

Lifetime Care and Support Authority
(Lifetime Care)

*

(You)

*enter your name

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Attachment:

Schedule 1 - Services

Schedule 2 - Fees

Schedule 3 - Service Standards

Schedule 4 - Service Provider Quality Assurance Procedures

KEY DETAILS

1 Commencement Date

2 Parties

Lifetime Care

Name Lifetime Care and Support Authority, a statutory corporation that is a NSW Government agency constituted by section 33 of the *Motor Accidents (Lifetime Care and Support) Act 2006*

ABN 85 084 267 228

Address Level 15, 321 Kent St, Sydney NSW 2000

Lifetime Care Representative Email casemanagement@icare.nsw.gov.au

You*

Name

ABN

Address

Attention of

Email

3 Term A period of 3 years from the Commencement Date

*enter your details

BACKGROUND

- A The Lifetime Care and Support Scheme (***Scheme***) is established under the *Motor Accidents (Lifetime Care and Support Act) 2006* (NSW) (***Act***), for the provision of lifetime care and support to eligible participants, being persons who have been injured in a motor accident. Insurance and Care NSW (***icare***) provides services to Lifetime Care in accordance with the *State Insurance and Care Governance Act 2015* (NSW).
- B Lifetime Care is established as a statutory corporation under the Act and has a number of functions, including paying for all of the reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment and care needs of the person while the person is a participant in the Scheme.
- C Treatment and care needs of participants in the Scheme typically include the Services. You agree to provide the Services on the terms and conditions of this Agreement.

TERMS

1 Interpretation

1.1 Definitions

Unless a contrary intention is indicated, the terms used in this Agreement are to be interpreted throughout in the same manner, and expressions will have the following meanings:

Act means the *Motor Accidents (Lifetime Care and Support) Act 2006*.

Agreement means these Terms of Approval and conditions including the Schedules and any attachments.

Authority means a statutory authority, statutory corporation, government or semi-government body.

Commencement Date means the date specified in the Key Details.

Confidential Information means information that:

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

and includes Personal Information, but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or

- (e) has been independently developed or acquired by the recipient as established by written evidence.

GST means a goods and services tax and has the same meaning as in the GST Law.

GST Law means any law imposing a GST and includes *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.

Lifetime Care's Representative means the person specified in the Key Details or otherwise notified by Lifetime Care to you.

Intellectual Property Rights means any intellectual property rights protected by statute or common law in Australia or elsewhere in the world and whether registered or unregistered and includes copyright, design, patent, trade mark, semi-conductor and circuit layout rights.

Key Details means the section of this Agreement headed Key Details.

icare means Insurance and Care NSW, a NSW Government agency that provides services to Lifetime Care in accordance with section 10 of the *State Insurance and Care Governance Act 2015* (NSW).

Law means any statutes, regulations, ordinances, by-laws, orders, awards, proclamations and any enforceable policy of an Authority, certificates, licences, consents, permits, approvals and requirements of Authorities (including Lifetime Care in its capacity as an Authority), applicable codes of practice, applicable standards, obligations under the common law and in equity as well as any fees and charges payable in connection with any of the foregoing.

Lifetime Care means the Lifetime Care and Support Authority, as specified in the Key Details.

New Contract Material means any material created, written or otherwise brought into existence by you in the course of performing this Agreement in which subsists newly created Intellectual Property Rights but not including your Pre-existing IP.

Working With Children Check means a Working With Children Check issued by the NSW Office of the Children's Guardian or relevant Authority in another state or territory.

Party means a party specified in the Key Details.

Participant means a participant that has been accepted as provided by the Act as a participant in the Lifetime Care and Support Scheme (either as a lifetime participant or as an interim participant).

Personal Information means personal information under the *Privacy and Personal Information Protection Act 1998* and includes health information under the *Health Records and Information Privacy Act 2002*.

Personnel means employees, officers, agents and subcontractors of a Party.

Pre-existing IP of a Party means any Intellectual Property Rights which are:

- (a) pre-existing as at the Commencement Date; or

- (b) brought into existence other than as a result of the performance of that Party's obligations under this Agreement.

Service Provider Quality Assurance Procedure means the Provider Management Procedure and the Provider Monitoring Procedure attached at Schedule 4.

Service Standards means the document entitled Case Manager Expectations attached at Schedule 3.

Services means the services set out in Schedule 1.

Tax Invoice means a tax invoice for the purposes of the GST Law.

Term means the term specified in the Key Details.

2 Term

This Agreement will commence on the Commencement Date and, unless terminated earlier, will remain in force for 3 years.

3 Services

3.1 Services

- (a) Lifetime Care may request that Services be provided by you in respect of a Participant at any time during the Term.
- (b) Subject to clause 3.4(b), where Lifetime Care makes a request for Services to be provided and you accept that request, you will provide the Services described in Schedule 1 to this Agreement.
- (c) You have 2 business days in which to accept a request from Lifetime Care made under clause 3.1(b) above.
- (d) You acknowledge and agree that you are part of a panel of service providers and Lifetime Care makes no guarantee or representation in respect of the allocation of work to you.

3.2 Your obligations

You must:

- (a) ensure the Services are provided in a timely manner using the skill and care of a service provider similarly approved by Lifetime Care and at all times in accordance with good industry practice;
- (b) as soon as practicable after becoming aware of any matter which is likely to delay provision or completion of the Services, give written notice to Lifetime Care detailing the circumstances and likely extent of the change or delay so that Lifetime Care can decide what action to take under this Agreement or otherwise;

- (c) comply at all times with work health and safety laws, policies, procedures and programs of Lifetime Care and icare;
- (d) if working with children and where required by law, have a current Working With Children Check and not be the subject of an adverse finding with respect to such a check. Where you are the subject of an adverse finding in relation to a Working With Children Check, Lifetime Care will cease requesting Services from you that require such a check to be held;
- (e) arrange and submit to a criminal record check prior to commencing the Services, and not be the subject of an adverse finding with respect to such a check. Where you are the subject of an adverse finding in relation to a criminal record check, Lifetime Care may immediately terminate the Agreement in accordance with clause 8.2(a)(iii);
- (f) comply with all reasonable directions of Lifetime Care in relation to the Services;
- (g) attend any mandatory skills development or training courses as may be directed by Lifetime Care;
- (h) notify Lifetime Care if you are the subject of a complaint to the Health Care Complaints Commission or of any registration or professional body within 1 Working Day of being notified of such complaint;
- (i) not delegate or subcontract the performance of the Services without the prior approval of Lifetime Care and compliance with any additional requirements Lifetime Care sees fit. You acknowledge that any delegation or subcontracting will not relieve you of your obligations under these Terms of Approval and you will remain at all times fully responsible for ensuring the suitability of a delegate or subcontractor and for ensuring that the Services are performed in accordance with these Terms of Approval, including but not limited to the requirements in this clause 3.2;
- (j) participate in any mentoring program for new case managers as directed by Lifetime Care and as agreed with you;
- (k) perform the Services in a manner that will not damage the brand or reputation of Lifetime Care; and
- (l) take all reasonable steps to ensure that no injury or damage is caused to persons or to property arising out of or in connection with the performance of these Terms of Approval by you.

3.3 Representations and warranties by you

You represent and warrant that:

- (a) you have full capacity and authority to enter into and perform this Agreement;
- (b) you have the requisite skills, experience and ability to perform the Services and acknowledges and agrees that Lifetime Care relies upon your skill and knowledge in providing the Services;
- (c) in addition to any mandatory skills development or training courses that you are required to attend by Lifetime Care, you will undertake ongoing

professional development and keep abreast of developments in relevant health assessment and disability sector areas related to the Services provided to Participants;

- (d) to the best of your knowledge, no conflict of interest of the Service exists, and that if a conflict of interest arises, you will respond to, and manage, the conflict of interest to Lifetime Care's satisfaction within the time period specified by Lifetime Care in writing;
- (e) you will perform your obligations under this Agreement in accordance with, and will at all times comply with, all applicable Laws; and
- (f) you have conducted your own analysis and review of the information provided by Lifetime Care in relation to this Agreement and have satisfied yourself as to the accuracy and completeness and fitness for purpose of all information provided by Lifetime Care on which it places reliance.

3.4 Service Provider to manage conflicts of interest

- (a) You must ensure that no conflict of interest exists or is likely to arise in undertaking the Services.
- (b) You must not accept a referral from Lifetime Care with respect to a participant with whom they have, or could be perceived to have, a conflict of interest.
- (c) Where a real or perceived conflict of interest exists in relation to a participant to whom you are providing Services, you must notify Lifetime Care as soon as reasonably practicable, and where possible and in consultation with Lifetime Care, arrange for the Services to be provided by another appropriate person.

3.5 Service Standards

- (a) You must comply with the Service Standards as amended by Lifetime Care from time to time. Lifetime Care will make any amendments to the Service Standards available on its website.
- (b) You acknowledge and agree that:
 - (i) Lifetime Care will monitor the your performance in accordance with the Service Standards;
 - (ii) where Lifetime Care has concerns or identifies issues with your performance, Lifetime Care will notify you of those concerns or issues; and
 - (iii) where you have failed to address Lifetime Care's concerns with your performance, Lifetime Care may cease to refer Services to you and may terminate the Agreement in accordance with clause 8.2(a)(iii).
- (c) Where Lifetime Care ceases to refer Services to you or terminates the Agreement in accordance with clause 3.5(b)(iii) above, you may appeal this decision in accordance with Lifetime Care's Service Provider Quality Assurance Procedure (ref Schedule 4).

4 Contract Administration

4.1 Record keeping

In respect of each participant you provide the Services to, you must safely and securely store true and accurate accounts and records of:

- (a) the Services performed under this Agreement; and
- (b) all associated accounts and records including all supporting materials used to generate and substantiate invoices submitted in respect of Services,

for a period of seven years after you cease providing the Services to the relevant Participant.

4.2 Right to access and audit

In order for Lifetime Care to ensure your compliance with your obligations under this Agreement and to assist Lifetime Care to perform its obligations under this Agreement and at law, you acknowledge and agree that Lifetime Care and/or any person authorised by Lifetime Care may, at any time after giving reasonable notice to you, inspect and/or audit your records, information and correspondence relating to your compliance with this Agreement.

4.3 Variation of Agreement

Any variation or amendment to this Agreement must be in writing and agreed by both parties.

5 Payment for Services

- (a) Lifetime Care must pay you according to the fees in Schedule 2, subject to the terms of this Agreement. Any prices, fees and rates are inclusive of GST and any other applicable taxes unless Schedule 2 to this Agreement states otherwise.
- (b) You must keep proper accounts and records in accordance with general accounting principles and must provide these to Lifetime Care if Lifetime Care requests them in support of any payment you claim under this Agreement.
- (c) You and Lifetime Care both agree to comply with your respective obligations under the GST Law.
- (d) You must provide Lifetime Care with a Tax Invoice detailing the Services performed (and other information Lifetime Care may reasonably require) in whatever form and as often as Lifetime Care may set down from time to time. A Tax Invoice may only be provided to Lifetime Care for Services already performed.
- (e) Lifetime Care undertakes to make payment within 30 days after receipt of your valid Tax Invoice. If Lifetime Care has requested further information, the time for payment must be extended by the number of days between the

date of the request by Lifetime Care and the date the further information is provided to Lifetime Care by you.

- (f) If any payment made by Lifetime Care is found to have been incorrectly paid, any overpayment or underpayment of amounts may be recoverable or deducted (as the case may be) and without limiting recourse to other available means, and may be offset against any amount subsequently due to you.
- (g) Lifetime Care is not liable for any additional employee on-costs of yours including but not limited to employee wages, salaries, holiday pay, allowances or any relevant insurance.

6 Dealing with Information

6.1 Disclosure of information

- (a) Subject to this clause, a Party must not, without the prior written approval of the other Party, make public or disclose to any person other than the other Party, any Confidential Information. When giving written approval to the other Party to make public or disclose Confidential Information, a Party may impose such terms and conditions as in that Party's opinion are appropriate.
- (b) Each Party must take all reasonable steps to ensure its employees, agents and subcontractors do not make public or disclose the other Party's Confidential Information.
- (c) Each Party may disclose Confidential Information to its legal advisers in order to obtain advice in relation to its rights under this Agreement, but only to the extent necessary for that purpose.
- (d) Each Party may disclose Confidential Information:
 - (i) to the extent required by Law or by a lawful requirement of any government or governmental body, Authority or agency having authority over the first mentioned party; or
 - (ii) if required in connection with legal proceedings,but in each case, subject to the Party giving the other Party sufficient notice of any proposed disclosure to enable the other Party to seek a protective order or other remedy to prevent the disclosure.
- (e) Lifetime Care may also disclose your Confidential Information in order to fulfil its governmental, Parliamentary reporting and accountability obligations. To avoid doubt, Lifetime Care must provide your Confidential Information to Parliament or a Parliamentary Committee on request by that body.
- (f) Lifetime Care reserves the right to disclose any information relating to or concerning this Agreement to the Minister responsible for Lifetime Care and to government departments and authorities or any body corporate established by legislation, if necessary.
- (g) This clause will survive the expiration or termination of this Agreement.

6.2 Compliance with Privacy Laws

- (a) You must comply with:
- (i) all relevant privacy and data protection legislation applicable in NSW, in particular the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW) (the **State Privacy Laws**); and
 - (ii) cabinet administrative instructions or NSW government standards relating to personal or health information,
- in connection with the performance of this Agreement as if you are a NSW government agency, regardless of whether such legislation, instructions and standards would apply to you in the absence of this Agreement.
- (b) In addition to any obligations it has under clause 6.2(a), you must:
- (i) take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only your authorised representatives and employees have access to it;
 - (ii) not transfer such information outside New South Wales, or allow parties outside New South Wales to have access to it, without the prior approval of Lifetime Care, unless the Services are being provided to a Participant who resides outside of New South Wales;
 - (iii) immediately notify Lifetime Care when you become aware of a breach of any obligation concerning security, use and disclosure of Personal Information; and
 - (iv) notify Lifetime Care of, and co-operate with Lifetime Care in the resolution of, any complaint alleging an interference with privacy.
- (c) You also undertake to ensure that your employees, subcontractors and agents will comply with the obligations specified in clause 6.2.
- (d) This clause will survive the expiration or termination of this Agreement.

6.3 Public access to government information

- (a) You acknowledge the requirements of Part 3, Division 5 of the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and that Lifetime Care may, at any time during or after the Term, in compliance with the GIPA Act publish or make available parts of this Agreement on any website or in any format as required under the GIPA Act.
- (b) You must notify Lifetime Care immediately of any request received from any person which relates to or arises out of the GIPA Act.

6.4 Intellectual property

- (a) Lifetime Care will retain its Pre-existing IP and nothing in this Agreement assigns or transfers the Pre-existing IP of Lifetime Care to you. You must not assert or bring any claim for ownership of any or all of Lifetime Care's Pre-existing IP.

- (b) Intellectual Property Rights in all New Contract Material will vest in Lifetime Care. You must do all things necessary to vest title and Intellectual Property Rights in the New Contract Material to Lifetime Care.

7 Indemnity and Insurance

7.1 Indemnity

- (a) You indemnify, and must keep indemnified, Lifetime Care, its officers, employees and agents (each and collectively, "those indemnified" for the purposes of this indemnity) in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which those indemnified pay, suffer, incur or are liable for arising out of or in connection with:
 - (i) any unlawful conduct by you or by your Personnel;
 - (ii) any negligent act or omission of you or your Personnel; and
 - (iii) personal injury or death of any person or loss of or damage to any property (including the property of those indemnified) caused or contributed to by you or by your Personnel.
- (b) Your indemnity in this clause will be reduced to the extent that the loss, cost, expense or liability is directly caused by those indemnified, as substantiated by you.
- (c) This indemnity will survive the expiration or termination of this Agreement.

7.2 Insurance

- (a) You must, at your own expense, effect and maintain with a reputable insurance company valid and enforceable insurance policies for:
 - (i) public liability insurance for an amount of at least \$10 million for any single occurrence and unlimited in the annual aggregate for the Term; and
 - (ii) professional indemnity insurance for an amount of at least \$10 million in the aggregate for the Term and for 7 years following the expiry or termination of this Agreement.
- (b) You must, if requested by Lifetime Care, provide evidence that is acceptable to Lifetime Care of the insurance, the reasonableness of the cover and its currency.

7.3 Your responsibility

You must take all reasonable steps to ensure that no injury or damage is caused to persons or to property arising out of or in connection with the performance of this Agreement by you.

8 Termination

8.1 Termination for Convenience

- (a) Lifetime Care may, at any time terminate this Agreement for convenience, by giving 7 days' notice in writing to you, such termination being effective upon expiry of this 7 day period.
- (b) You may terminate this Agreement for convenience, by giving 28 days' notice in writing to Lifetime Care, such termination being effective upon expiry of this 28 day period.
- (c) If Lifetime Care terminates this Agreement for convenience:
 - (i) Lifetime Care will reimburse you your unavoidable costs and expenses directly incurred as a result of termination provided that any claim by you:
 - (A) does not exceed the total fees payable by Lifetime Care to you under the Agreement;
 - (B) is supported by satisfactory written evidence of the costs claimed; and
 - (C) will be in total satisfaction of the liability of Lifetime Care to you in respect of this Agreement and its termination.
- (d) You must do everything reasonably possible to prevent or otherwise mitigate any losses resulting to you from the termination.

8.2 Termination for Cause

- (a) Lifetime Care may, by notice in writing to you, immediately terminate this Agreement if you:
 - (i) commit a material breach of this Agreement which, in Lifetime Care's opinion, is not capable of being remedied;
 - (ii) fail to remedy a material breach which, in Lifetime Care's opinion is capable of being remedied, within 7 days of receiving notice from Lifetime Care requiring it to remedy that breach, or such longer period as Lifetime Care may reasonably allow having regard to the nature of the breach and a reasonable time to remedy it;
 - (iii) are the subject of an adverse finding of a criminal record check or is convicted of a criminal offence;
 - (iv) fails to address the concerns raised by Lifetime Care in relation to your performance in accordance with clause 3.5(b)(iii);
 - (v) are declared bankrupt or bankruptcy proceedings have commenced against you or you become subject to any form of insolvency administration;
 - (vi) engage in conduct that is corrupt or is the subject of proceedings or investigations commenced or threatened by the Independent

Commission Against Corruption, the police service or similar public body; or

- (vii) assign or novate your rights or obligations under this Agreement otherwise than in accordance with the requirements of this Agreement.
- (b) For the purposes of the termination provisions in the Agreement, you acknowledge that a series of minor breaches may constitute a “material breach”.

8.3 Consequences of Termination

- (a) You must remove any references to Lifetime Care from all of your professional letterheads or other external communications.
- (b) The covenants, conditions and provisions of this Agreement, which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration or termination of this Agreement.

9 General

9.1 Negation of Employment Partnership and Agency

- (a) You must not represent yourself, and must ensure that your employees do not represent themselves, as being employees, partners or agents of Lifetime Care.
- (b) You will not by virtue of this Agreement be, or for any purpose be deemed to be, an employee, partner or agent of Lifetime Care.
- (c) You must not act outside the scope of the authority conferred on you by this Agreement and must not purport to bind Lifetime Care in any way or hold itself out as having any authority to do so, except as specifically authorised pursuant to this Agreement.
- (d) Lifetime Care entitles you to use the reference “Lifetime Care Approved Case Manager/Building Modifications Occupational Therapist” or “Approved Case Manager (icare lifetime care)/Approved Building Modifications Occupational Therapist (icare lifetime care)” in your correspondence. You must remove any such reference upon termination of this Agreement.

9.2 Entire Agreement and Waiver

- (a) This Agreement constitutes the entire agreement between the parties and supersedes prior agreements and all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- (b) A waiver by a party to this Agreement in respect of a breach or a provision of this Agreement by the other party will not be deemed to be a waiver in respect of any other breach, and the failure of a party to enforce at any time

any of the provisions of this Agreement will in no way be interpreted as a waiver of such provision.

9.3 Resolution of Disputes

- (a) The parties will attempt to settle a dispute in relation to this Agreement in good faith before resorting to court proceedings.
- (b) If Lifetime Care requests it, you must continue performing this Agreement while a dispute is being dealt with in accordance with this clause 10.3, other than the Services (or part thereof) the subject of the dispute, to the extent practicable to do so.

9.4 Applicable Law

This Agreement is governed by the laws for the time being in force in New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

9.5 Notices

A notice required or permitted to be given by one Party to another under this Agreement must be in writing.

9.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

EXECUTION

Executed as a Agreement on*

*Lifetime care will insert date

Executed by Lifetime Care and Support Authority (ABN 85 084 267 228) by its duly authorised representative in the presence of:

Signature of witness

Signature of authorised representative

Name of witness

Name of authorised representative

Date

Executed by**

in the presence of:

Signature of witness

Signature of Service Provider

Name of witness

Name of Service Provider

Date

**enter your name