

Terms of Agreement

Approved Case Manager and Care Needs Assessor (Lifetime Care) Prequalification Scheme

Insurance and Care NSW and
Lifetime Care and Support Authority
(together 'Lifetime Care')

[X]

(Service Provider)

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KEY DETAILS

1 Commencement Date

2 Parties

Lifetime Care Insurance and Care NSW (ABN 16 759 382 489 and
Name Lifetime Care and Support Authority (ABN 85 084
267 228),
Address Level 15, 321 Kent St, Sydney NSW 2000
Lifetime Care Representative Jackie Sutherland
Email casemanagement@icare.nsw.gov.au

Service Provider

Name

ABN

Address

Attention of

Email

3 Term Commencement Date to 28 February 2027

BACKGROUND

- A Insurance and Care NSW (**icare**) is a NSW Government agency, constituted by the State Insurance and Care Governance Act 2015 (the **SICGA**).
- B icare provides services to the Lifetime Care and Support Authority (**Lifetime Care**) in accordance with the SICGA. 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.
- C 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.
- D Treatment and care needs of participants in the Scheme typically include the Services. The Service Provider agrees to provide the Services on the terms and conditions of this Agreement.
- E Lifetime Care has established The Approved Case Manager/Care Needs Assessor (Lifetime Care) Prequalification Scheme (the 'Scheme') under Part 18 of the *Lifetime Care and Support Guidelines (2018)*, under *Motor Accidents (Lifetime Care and Support Act) 2006* (NSW),

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 Agreement and conditions including the Schedules and any attachments.

APP code has the same meaning as defined in the Privacy Act 1988 (Cth).

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.

Data means all technical data, reports, test results, analyses, computer programs, computer data bases, diagrams and specifications, working papers, formulae, operating procedures and any other data or information of any kind relating to the Services or this Agreement.

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 the Service Provider.

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.

Key Personnel means the Service Provider's personnel detailed in Schedule 1, as approved by Lifetime Care to carry out the Services.

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.

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

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).

Party means a party specified in the Key Details.

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.

Privacy Commissioner means each of:

- (a) the Information and Privacy Commission of NSW; and
- (b) the Office of the Australian Information Commissioner.

Purchase Order means a pre-approval document or any other document issued by Lifetime Care or a Relevant Authority in accordance with clause 3.7(c) for Services.

Service Provider means the Service Provider specified in the Key Details, selected from the Scheme.

Scheme means the Approved Case Manager/Care Needs Assessor (Lifetime Care) Prequalification Scheme.

Scheme Conditions means the scheme conditions for the Scheme.

Service Standards means the service standards in Schedule 3.

Services means the services set out in Schedule 2.

State means the state of New South Wales.

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

Term means the term specified in the Key Details.

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.

2 Term

This Agreement will commence on the Commencement Date and, will remain in force for the Term, unless Terminated earlier in accordance with clause 9.

3 Services

3.1 Services

- (a) Lifetime Care may request that Services be provided by the Service Provider in respect of a Participant at any time during the Term.
- (b) Subject to clause 3.5(b), where Lifetime Care makes a request for Services to be provided and the Service Provider accept that request, the Service Provider will provide the Services described in Schedule 1 to this Agreement.

3.2 No minimum volume of Services

Lifetime Care does not guarantee a minimum level of procurement from the Scheme (whether quantified in volume of Services, allocation of work to the Service

Provider or fees). Any information relating to the volume of Services provided to the Service Provider (whether prior to this Agreement or during the Term) is indicative only and not binding on Lifetime Care.

3.3 Service Provider Obligations

The Service Provider 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, ensure that all Key Personnel have a current Working With Children Check and not be the subject of an adverse finding with respect to such a check.
- (e) ensure all Key Personnel have had a valid criminal record check, verified by the Service Provider, at some time prior to commencing the Services, and not be the subject of an adverse finding with respect to such a check.
- (f) comply with all reasonable directions of Lifetime Care in relation to the Services;
- (g) Key Personnel attend any mandatory skills development or training courses as may be directed by Lifetime Care;
- (h) notify Lifetime Care if the Service Provider or any Key Personnel 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 imposed by Lifetime Care at its discretion. The Service Provider acknowledges that any delegation or subcontracting will not relieve the Service Provider of the Service Provider's obligations under this Agreement. The Service Provider 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 this Agreement, including but not limited to the requirements in this clause 3.2;
- (j) perform the Services in a manner that will not damage the brand or reputation of icare or Lifetime Care; and
- (k) 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 the Services by the Service Provider.

3.4 Representations and warranties by the Service Provider

The Service Provider represents and warrants that:

- (a) it has full capacity and authority to enter into and perform this Agreement;
- (b) its Key Personnel have the requisite skills, experience and ability to perform the Services in accordance with the terms of this Agreement and Service Standards in Schedule 4.
- (c) in addition to any mandatory skills development or training courses that the Service Provider is required to attend by Lifetime Care, the Service Provider will ensure that the Key Personnel undertake ongoing professional development and keep abreast of developments in relevant health and disability sector areas related to the Services provided to Participants;
- (d) to the best of its knowledge, no conflict of interest of the Service exists, and that if a conflict of interest arises, the Service Provider 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) obligations under this Agreement will be performed in accordance with, and will at all times comply with, all applicable Laws; and
- (f) it has conducted its own analysis and review of the information provided by Lifetime Care in relation to this Agreement and have satisfied itself as to the accuracy and completeness and fitness for purpose of all information provided by Lifetime Care on which it places reliance.

3.5 Service Provider to manage conflicts of interest

- (a) The Service Provider must ensure that no conflict of interest exists or is likely to arise in undertaking the Services.
- (b) The Service Provider 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 the Service Provider is providing Services, the Service Provider must notify Lifetime Care as soon as reasonably practicable.

3.6 Service Standards

- (a) The Service Provider 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) The Service Provider acknowledges and agrees that:
 - (i) Lifetime Care will monitor the Service Provider's performance against the Service Standards (Schedule 4) in accordance with Schedule 5 (Performance Management);
 - (ii) where Lifetime Care has concerns or identifies issues with the Service Provider's performance or any Key Personnel, Lifetime Care will notify the Service Provider of those concerns or issues in accordance with Schedule 5 (Performance Management); and

- (iii) where the Service Provider has failed to address Lifetime Care's concerns with the Service Provider's performance, Lifetime Care may cease to refer Services to the Service Provider and may terminate the Agreement in accordance with clause 9.2(a)(iii).
- (c) Where Lifetime Care ceases to refer Services to the Service Provider or terminates the Agreement in accordance with clause 3.5(b)(iii) above, the Service Provider may appeal this decision in accordance with the appeal procedures detailed in Schedule 5 (Performance Management).

3.7 Services to Relevant Authorities

- (a) The Service Provider acknowledges and agrees that each of the Relevant Authorities listed below may use this Agreement to procure Services in accordance with this Agreement.
- (b) If a Relevant Authority requires the Service Provider to provide Services to it, then it will issue a Purchase Order. The Service Provider agrees that the terms and conditions of this Agreement will be incorporated into the Purchase Order and will apply as though the Relevant Authority was Lifetime Care. The Relevant Authority will have all of the rights and obligations under this Agreement with respect to the Services covered by the Purchase Order.
- (c) For the purposes of this clause, a Relevant Authority includes each of:
 - (i) Workers Compensation (Dust Diseases) Authority;
 - (ii) Workers Compensation Nominal Insurer.

4 Contract Administration

4.1 Record keeping

In respect of each Participant the Service Provider provide the Services to, the Service Provider 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 (7) years after the Service Provider ceases providing the Services to the relevant Participant.

4.2 Right to access and audit

- (a) In order for Lifetime Care to ensure the Service Provider's compliance with its obligations under this Agreement and to assist Lifetime Care to perform its obligations under this Agreement and at law, the Service Provider acknowledges and agrees that Lifetime Care and/or any person authorised by Lifetime Care may, at any time after giving reasonable notice to the Service Provider, inspect and/or audit the records, information and correspondence of the Service Provider relating to the Service Provider's compliance with this Agreement.

- (b) Lifetime Care and/or any person authorised by icare will be entitled (at the expense of icare) to take copies of or extracts from any such records.
- (c) The right of access and audit granted under this clause 2 may be exercised by Lifetime Care at any time during the Term or in the seven (7) year period after the end of the Term.
- (d) Each party will bear its own costs of conducting or participating in any audit under this clause 4.2.

The Service Provider must provide reasonable access to its premises and Personnel to enable Lifetime Care to carry out any audit and must co-operate with and provide all assistance reasonably requested by Lifetime Care when carrying out any such audit. Lifetime Care will comply with the Service Provider's reasonable security and confidentiality requirements when conducting an audit under this clause 4.2.

4.3 Variation of Agreement

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

4.4 Non-exclusivity

- (a) This Agreement is not a commitment or representation from icare or Lifetime Care that:
 - (i) the Service Provider will receive any minimum number of Participant referrals under this Agreement; and
 - (ii) the Service Provider is the exclusive provider of the Services.
- (b) The Service Provider acknowledges and agrees that icare and/or Lifetime Care may, from time to time, in its absolute discretion, appoint other Service Providers under an agreement to supply case management services similar to or the same as the Service Provider.

4.5 Resources and technology capabilities

The Service Provider must, for the duration of the Term, have all the necessary resources, equipment and technology capabilities to provide the Services, including any resources, equipment or technology requirements reasonably required by Lifetime Care.

4.6 Variation of Services

- (a) If the Service Provider becomes aware that any services are required which are additional to the Services, or that there is a need to vary the Services, the Service Provider must promptly notify Lifetime Care's Representative giving details of the nature and extent of the variation. Lifetime Care must agree in writing on the scope and extent of the variation to the Services before the Service Provider carries out the varied Services.
- (b) Lifetime Care may at any time give written directions to the Service Provider to vary the nature and extent of, or increase, decrease or omit any part of the Services. In that event, the Service Provider must carry out the Services as varied by such direction as if the Services were originally defined as varied.

5 Payment for Services

- (a) Lifetime Care will pay the Service Provider according to the fees in Schedule 3, subject to the terms of this Agreement. Any prices, fees and rates are inclusive of GST and any other applicable taxes unless Schedule 3 to this Agreement states otherwise.
- (b) The Service Provider 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 the Service Provider claim under this Agreement.
- (c) The Service Provider and Lifetime Care both agree to comply with the Service Provider's respective obligations under the GST Law.
- (d) The Service Provider 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 the Service Provider's valid Tax Invoice (exceptions apply for registered small businesses under the NSW Government Fast Payments Terms Policy). 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 the Service Provider.
- (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 the Service Provider.
- (g) Lifetime Care is not liable for any additional employee on-costs of the Service Provider's 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 the Service Provider's Confidential Information in order to fulfil its governmental, Parliamentary reporting and accountability obligations. To avoid doubt, Lifetime Care must provide the Service Provider's 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) The Service Provider 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) icare's Privacy Management Plan; and
 - (iii) cabinet administrative instructions or NSW government standards relating to personal or health information,in connection with the performance of this Agreement as if the Service Provider are a NSW government agency, regardless of whether such legislation, instructions and standards would apply to the Service Provider in the absence of this Agreement.
- (b) In addition to any obligations it has under clause 6.2(a), the Service Provider must:
 - (i) co-operate with any reasonable demands or inquiries made by any Authority responsible for administering the State Privacy Laws;
 - (ii) ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which Lifetime Care has obligations under the State Privacy Laws is made aware of, and undertakes in writing, to observe the relevant provisions of this clause 6.2;

- (iii) 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 the Service Provider authorised representatives and employees have access to it;
 - (iv) 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;
 - (v) immediately notify Lifetime Care when the Service Provider become aware of a breach of any obligation concerning security, use and disclosure of Personal Information; and
 - (vi) not disclose to any third party, including a Privacy Commissioner, the existence or circumstances surrounding any Data Breach without obtaining Lifetime Care's prior written consent, to the extent permitted by law; and
 - (vii) notify Lifetime Care of, and co-operate with Lifetime Care in the resolution of, any complaint alleging an interference with privacy.
- (c) The Service Provider's obligations under this clause 6.2(a) are in addition to, and do not restrict, any obligations it may have under the *Privacy Act 1988* (Cth), any registered APP code binding on the Service Provider and any State or Territory law, to the extent that such obligations:
- (i) are consistent with the provisions of this Agreement; or
 - (ii) have no corresponding provision in this Agreement.
- (d) The Service Provider also undertake to ensure that the Service Provider employees, subcontractors and agents will comply with the obligations specified in clause 6.2.
- (e) This clause will survive the expiration or termination of this Agreement.

6.3 Public access to government information

- (a) The Service Provider 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) The Service Provider must notify Lifetime Care immediately of any request received from any person which relates to or arises out of the GIPA Act.

6.4 IT Security Requirements

- (a) The Service Provider should maintain adequate procedures for maintaining information security and protecting Data.
- (b) The Service Provider should maintain adequate procedures for managing any security related events or incidents that impact Data.
- (c) In the event of a Data breach or a security incident impacting the Services, the Service Provider must ensure that Lifetime Care is notified immediately.

Notification must be made within twenty-four (24) hours following the breach.

- (d) If the Service Provider has ISO 27001 certification, this must be maintained throughout the Term of the Agreement. The scope and locations of the ISO 27001 certification must include all Services provided to Lifetime Care and cannot be cancelled or modified without Lifetime Care's prior approval.
- (e) If the Service Provider does not have ISO 27001 certification, they must adopt and maintain security best practice in accordance with Law or applicable professional standards.
- (f) The Service Provider should ensure that their IT systems (desktops, laptops etc.) which are used for providing the Services, are patched to the latest updates and have an up-to-date anti-virus software installed to prevent malware attacks.
- (g) The Service Provider should maintain internal Code of Conduct/Appropriate Use procedures to ensure:
 - (i) Authorised personnel have access to Data on a need to know basis;
 - (ii) Strong passwords are set-up to access IT systems storing or receiving Data; and
 - (iii) Personnel undergo periodic security awareness (privacy, data protection, phishing etc.) exercises or training to enhance awareness around security and best practices.
- (h) Subject to complying with any professional obligations and regulatory requirements, the Service Provider must return Data in its possession or control to Lifetime Care immediately on termination or expiration of this Agreement or on request by Lifetime Care at any time.
- (i) All security information provided by the Service Provider will be evaluated by icare's IT Security team and may require supporting evidence and further clarifications.

6.5 No public statements

- (a) The Service Provider must not disclose or advertise the existence of this Agreement, or issue any information, publication, document or article or make any statement to or advertise in any media any matters relating to this Agreement without the prior written consent of Lifetime Care's 's Representative (unless required to do so by law).
- (b) Lifetime Care may publish information about this Agreement, including on its website.

6.6 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 the Service Provider. The Service Provider 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. The Service Provider must do all things necessary to vest title and Intellectual Property Rights in the New Contract Material to Lifetime Care.

7 Key Personnel

7.1 Key Personnel

- (a) The Service Provider acknowledges and agrees that Key Personnel nominated in Schedule 1 will have a critical role in the provision of the Services and will directly affect the quality of the Services.
- (b) The Service Provider must not replace any Key Personnel nominated in Schedule 1 without the prior written approval of Lifetime Care.
- (c) The Service Provider must properly manage any absences of Key Personnel nominated in Schedule 1 and must ensure that at all times the Services are adequately resourced and supervised.
- (d) Key Personnel will conduct the Services honestly and in accordance with icare's values.
- (e) The Service Provider will undertake that all Key Personnel understand and acknowledge their obligations under the Agreement, especially in relation to this clause 7 and clauses 3 and 6.
- (f) Lifetime Care may by notice to the Service Provider, in its absolute discretion, require the immediate removal and replacement of any Personnel, including Approved Case Managers.
- (g) If applicable, the Service Provider will ensure that any Key Personnel obtaining access to icare's IT systems undertake any background checks and access requirements required by Lifetime Care.

7.2 Subcontracting

- (a) The Service Provider must not subcontract the performance of the Services without the prior written approval of Lifetime Care.
- (b) Any subcontracting will not relieve the Service Provider of its obligations under this Agreement. The Service Provider will remain at all times fully responsible for ensuring the suitability of a subcontractor and for ensuring that the Services are performed in accordance with this Agreement.

7.3 Criminal records checks

- (a) The Service Provider will ensure that Key Personnel have had a valid criminal records check verified by the Service Provider prior to commencing the Services and if appropriate, from time to time during the currency of the Term.
- (b) The Service Provider agrees to immediately bring to Lifetime Care's attention, any matter of a criminal nature it is aware of or becomes aware of relating to the Service Provider or its Key Personnel, including but not limited to details of any criminal convictions.
- (c) In the event that the criminal records check is unsatisfactory in respect of any one or more Key Personnel, Lifetime Care reserves all of its rights including the right of refusal to such Key Personnel of the Service Provider being involved in the provision of any part of the Services.

7.4 Working with Children Check

- (a) Where any activities in connection with the Services involve Child Related Work by any of the Key Personnel, the Service Provider must procure that each such Key Personnel:
 - (i) hold and maintain a Working with Children Check clearance, verified by the Service Provider; and
 - (ii) provide, if requested, all relevant personal details (including full name, date of birth and Working with Children Check number) as may be required to enable the Service Provider and Lifetime Care to verify the Working with Children Check status of the Key Personnel.
- (b) Where any of the Key Personnel are subject of an adverse finding in relation to a Working With Children Check, Lifetime Care will cease requesting Services from those Personnel

7.5 Reporting children at risk of harm

In the event that a Key Personnel, in the course of his or her work, reasonably suspects that a child is at risk of harm, the Service Provider will make a report to the NSW Department of Family and Community Services indicating the name (or description) of the child and the grounds for suspecting that the child is at risk of harm. If a report is made to NSW Department of Family and Community Services, the Service Provider must also report this to Lifetime Care.

8 Indemnity and Insurance

8.1 Indemnity

- (a) The Service Provider indemnifies, 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 the Service Provider or by the Service Provider's Personnel;
 - (ii) any negligent act or omission of the Service Provider or the Service Provider's 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 the Service Provider or by the Service Provider's Personnel.
- (b) The Service Provider's 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 the Service Provider.
- (c) This indemnity will survive the expiration or termination of this Agreement.

8.2 Insurance

- (a) The Service Provider must, at the Service Provider's own expense, effect and maintain with a reputable insurance company valid and enforceable insurance policies for:
 - (i) public liability insurance (subject to 7.2 (a)(iii)) for an amount of at least \$10 million for any single occurrence and \$30 million 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.
 - (iii) workers' compensation insurance as required by Law for the Term.
- (b) The Service Provider 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.

9 Termination

9.1 Termination for Convenience

- (a) Lifetime Care may, at any time terminate this Agreement for convenience, by giving 7 days' notice in writing to the Service Provider, such termination being effective upon expiry of this 7 day period.
- (b) The Service Provider 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 the Service Provider unavoidable costs and expenses directly incurred as a result of termination provided that any claim by the Service Provider:
 - (A) does not exceed the total fees payable by Lifetime Care to the Service Provider 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 the Service Provider in respect of this Agreement and its termination.
- (d) The Service Provider must do everything reasonably possible to prevent or otherwise mitigate any losses resulting to the Service Provider from the termination.

9.2 Termination for Cause

- (a) Lifetime Care may, by notice in writing to the Service Provider, immediately terminate this Agreement if the Service Provider:

- (i) commits a material breach of this Agreement or the Scheme Conditions which, in Lifetime Care's opinion, is not capable of being remedied;
 - (ii) fails 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) is 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 the Service Provider's performance in accordance with clause 3.5(b)(iii);
 - (v) is declared bankrupt or bankruptcy proceedings have commenced against the Service Provider; or the Service Provider becomes subject to any form of insolvency administration;
 - (vi) engages 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) assigns or novates the Service Provider's 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, the Service Provider acknowledges that a series of minor breaches may constitute a "material breach".

9.3 Consequences of Termination

- (a) The Service Provider must remove any references to Lifetime Care from all of the Service Provider's 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.

10 General

10.1 Negation of Employment Partnership and Agency

- (a) The Service Provider must not represent itself and must ensure that the Service Provider's employees do not represent themselves, as being employees, partners or agents of Lifetime Care.
- (b) The Service Provider 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) The Service Provider must not act outside the scope of the authority conferred on the Service Provider 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 the Key Personnel to use the reference “Approved Case Manager (Lifetime Care)” or “Approved Care needs Assessor (Lifetime Care)” (**the Reference**), where relevant, in correspondence. The Service Provider and its Key Personnel must cease use of the Reference upon termination of this Agreement and comply with any other reasonable directions from Lifetime Care in respect of the use of the Reference.

10.2 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.

10.3 Resolution of Disputes

- (a) The parties shall attempt to settle a dispute in relation to this Agreement using the dispute resolution process provided for in this Agreement before resorting to court proceedings, provided however, nothing in this clause will preclude either party from seeking urgent interlocutory relief.
- (b) If Lifetime Care requests it, the Service Provider 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.
- (c) A party claiming that a dispute has arisen must give written notice of the dispute to the other party. The parties must endeavour in good faith to resolve the dispute within 10 Working Days of receipt of a notice of dispute.
- (d) If a dispute is not resolved within the 10 Working Day period or such further period as the parties agree in writing, the dispute shall be referred to the Australian Disputes Centre (“ADC”) for mediation in accordance with the ADC’s ‘Mediation Guidelines for Commercial Mediation’ which are operating at the time the matter is referred to the ADC. The ADC’s mediation guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the ADC’s mediation guidelines are hereby deemed incorporated into this Agreement.
- (e) The parties shall do all things reasonably required to refer the dispute to mediation by ADC.
- (f) In the event that the dispute is not resolved within 20 Working Days (or such other period as agreed between the parties in writing) after the parties have referred the matter to mediation, then either party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.

10.4 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.

10.5 Notices

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

10.6 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.

10.7 Use of this Agreement by Relevant Authorities

- (a) The Service Provider acknowledges and agrees that Relevant Authorities may use this Agreement to procure the Services in accordance with this clause 10.7.
- (b) For the purposes of this clause 10.7, each of the following is a 'Relevant Authority':
 - (i) The Nominal Insurer
 - (ii) the Workers Compensation (Dust Diseases Authority);
 - (iii) the Sporting Injuries Compensation Authority; and
 - (iv) Building Insurers' Guarantee Corporation.

EXECUTION

Executed as a Agreement on*

*Lifetime care will insert date

**Executed by Insurance and Care
NSW (ABN 16 759 382 489) and
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 the Service Provider name

DRAFT