



**Transport
for NSW**

Apparel Management Services Agreement

The Secretary of the Department of Transport for and on behalf of
Transport for NSW (ABN 18 804 239 602) ("TfNSW")

Dina Corporate Pty Ltd (ACN 094 707 614) ("MSP")

Contract Reference Number **TfNSW 2012/014**

Parties	TfNSW and MSP	
TfNSW	Name	The Secretary of the Department of Transport for and on behalf of Transport for NSW
	ABN	18 804 239 602
	Address	18 Lee Street, Chippendale New South Wales
	<hr/>	
MSP	Name	Dina Corporate Pty Ltd
	ABN	45 094 707 614
	ACN	094 707 614
	Address	22 Justin Street, Smithfield New South Wales
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Date of agreement	13 MAR 2014	
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Recital	A. TfNSW issued a tender for apparel management services on 11 February 2013 to which the MSP responded on 15 March 2013.	
	B. In reliance on the MSP's response, TfNSW has selected the MSP to supply the apparel management services on the terms of this agreement.	

EXECUTED as an agreement.

EXECUTED by an Authorised Delegate
of the Secretary for and on behalf of
Transport for NSW:

J. King
Signature of witness

Julie King
Name of witness (print)

[Signature]
Signature of Authorised Delegate of the
Secretary

D. Stewart
Name of Authorised Delegate of the
Secretary (print)

EXECUTED by **Dina Corporate Pty
Ltd** in accordance with section 127(1) of
the Corporations Act 2001 (Cwlth) by
authority of its directors

[Signature]
Signature of director

PETER GYNN
Name of director (print)

[Signature]
Signature of director/ company
secretary* Witness
*delete whichever is not applicable

P. GYNN
Name of director/company secretary*
(print)
*delete whichever is not applicable

Apparel Management Service Agreement

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Apparel Management Service Agreement

Contract Details

Commencement Date (Clause 2)	The date of this agreement
Initial Term (Clause 2)	5 years
Further Term (Clause 2)	N/A
TfNSW Representative (Clause 19) and notices (Clause 31)	Name: David Ebert Position: General Manager Procurement Services Address: 18 Lee Street Chippendale NSW 2008 PO Box K659 Haymarket NSW 1240 Facsimile: 02 8202 2209 Email: David.Ebert@transport.nsw.gov.au
MSP Representative (Clause 19) and notices (Clause 31)	Name: Peter Glynn Position: Managing Director Address: 22 Justin Street Smithfield NSW 2164 Facsimile: 02 9756 6969 Email: peterg@dinacorporate.com.au
Reports (Clause 19.5)	As set out in clause B16 of Schedule B - Statement of Work
Review meetings (Clause 19.6)	Quarterly
MSP Liability Cap (Schedule A)	Unlimited

Insurance Policies (Clause 23.1)

TYPES OF INSURANCES	MINIMUM SUM INSURED	INDICATE IF REQUIRED
Broadform Public Liability and Product Liability	\$20 million For any single occurrence	Required

For details of requirements for each policy see Attachment 2.

Important contractual notices (Clause 31.2)

Important contractual notices under clause 31.2 must be copied to:

- 1 If to TfNSW:

Copy to: The General Counsel
(for notices under clause 31.2 only) Level 6, 18 Lee Street
Chippendale NSW 2008

2 If to MSP:
Copy to: The Managing Director
(for notices under clause 31.2 only) 22 Justin Street Smithfield
NSW 2164

Note: Under clause 31.2 important contractual notices are not permitted to be sent by facsimile or email.

Apparel Management Service Agreement

General Terms

1 Contract structure

1.1 Overview

This agreement consists of the following parts:

- (a) these General Terms - the clauses of these General Terms set out the contractual framework under which the MSP will perform Services;
- (b) the Contract Details - the Contract Details set out the key commercial variables applicable to this agreement;
- (c) the Schedules - the Schedules set out the detailed provisions relating to the Services and Service Levels; and
- (d) the other Attachments - the other Attachments set out forms and other material relevant to this agreement.

1.2 Priority

If there is any inconsistency between any of the parts of this agreement, then the part listed higher in clause 1.1 (Overview) takes priority and applies over any part listed lower in that clause, but only to the extent of the inconsistency.

1.3 Definitions and interpretation

The definitions used in this agreement and the rules of interpretation are set out in in Schedule A - Dictionary.

1.4 No exclusivity or minimum volume

The MSP acknowledges that:

- (a) it is not the exclusive supplier of the Services to the Agencies and any Agency may at any time during the Term perform for itself or obtain from a third party any part of the Services; and
- (b) no Agency is under any obligation to commit to any minimum level of expenditure or acquire any minimum quantity of Services under this agreement.

2 Term

2.1 Term of Agreement

This agreement commences on the Commencement Date and continues until expiry of the Initial Term unless extended under clause 2.2 (Extension) or terminated in accordance with this agreement.

2.2 Extension

TfNSW may extend this agreement on the same terms and conditions for each of the Further Terms by notifying the MSP at least 30 days prior to expiry of

the Initial Term or, in the case of a second extension, the expiry of the first extension.

3 Implementation Services

3.1 Implementation Services

- (a) The MSP must complete the Implementation Services, to the satisfaction of TfNSW, within the relevant times stipulated in this agreement, or if no time is stipulated, by the end of the Implementation Period.
- (b) The MSP must not provide the Services until it has completed the Implementation Services in accordance with clause 3.1(a) unless otherwise agreed in writing by TfNSW.

3.2 Failure to complete Implementation Services

If the MSP has not completed any Implementation Service within the relevant time stipulated in this agreement, or if no time is stipulated, by the end of the Implementation Period, TfNSW may terminate this agreement under clause 29.1 (Termination by TfNSW for cause).

3.3 Services Commencement Date

- (a) Subject to clause 3.3(b), the MSP must promptly notify TfNSW when it becomes aware that any Implementation Service is, or is about to be, completed or that it cannot be completed by the MSP within the relevant time.
- (b) The MSP must immediately notify TfNSW of when it becomes aware that the final Implementation Service to be completed is within 5 Business Days of completion.

4 Data exchange

4.1 Compatibility with the Agency IT Systems

The MSP must ensure that the MSP IT System complies with the Interface Requirements during the Term. The MSP acknowledges that it is a fundamental requirement of this agreement that the MSP IT System meets the Interface Requirements, and TfNSW has relied on representations by the MSP that the MSP IT System meets, or will be modified to meet, the Interface Requirements prior to the end of the Implementation Period.

4.2 Failure of the MSP IT System to be compatible

The MSP must make the MSP IT System available for testing by TfNSW within 60 days of the Commencement Date. If the testing does not demonstrate that the MSP IT System meets the Interface Requirements, then TfNSW may (at its sole option) require the MSP to modify the MSP IT System (at the MSP's cost) and resubmit it for testing within a further 10 days in which case this clause 4.2 will apply to a further round of testing.

4.3 No degradation to the Agency IT Systems

The MSP must ensure there is no degradation in terms of quality or performance of the Agency IT Systems resulting from or in connection with

interfacing with the MSP IT System. The MSP must ensure that no viruses or harmful code are introduced to any Agency IT System through the MSP IT System.

5 Services

5.1 General

The MSP must on and from the Services Commencement Date provide the Services to each Agency to a standard that meets or exceeds any applicable Service Levels in accordance with the terms and conditions of this agreement.

5.2 Incidental services

The MSP must provide (without additional charge) any incidental or related services not specifically described in the Statement of Work or this agreement which are required for the proper performance or use of the Services.

5.3 Capability levels

The MSP must ensure that throughout the Term it maintains sufficient capability and resources in relation to Services to meet its obligations under this agreement.

6 Approved Subcontractors

6.1 Selection of Approved Subcontractors

TfNSW acknowledges that the MSP may use third party providers to perform certain Services on the MSP's behalf. Before appointing a third party to provide any of the Services on the MSP's behalf the MSP must ensure that:

- (a) it obtains TfNSW's prior written approval for that third party;
- (b) the third party meets the Minimum Standards; and
- (c) the third party executes an Approved Subcontractor Deed Poll in the form set out at Attachment 3.

6.2 Probity in selection

The MSP must ensure that the engagement of third party providers to perform certain Services on the MSP's behalf is conducted:

- (a) ethically, fairly and to the highest standards of probity;
- (b) so as to maximise value for money for the Agencies; and
- (c) in accordance with any requirements notified by each Agency.

6.3 Withdrawal of approval

TfNSW may withdraw its approval of Approved Subcontractors at any time, in which case the MSP must immediately cease using that Approved Subcontractor and propose an alternative provider to TfNSW as soon as possible.

6.4 No agency

- (a) If requested in writing by TfNSW, the MSP will enter into contracts with Approved Subcontractors as principal in the performance of the Services.
- (b) If clause 6.4(a) applies, then the MSP:
 - (i) is not authorised, and must not represent that it has any authority to act as any Agency's agent or bind any Agency; and
 - (ii) must indemnify each Agency against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that any Agency may sustain or incur as a result of a breach of clause 6.4(b)(i).

7 Authorised Orders

7.1 Ordering System

The MSP must make available to each Agency the Ordering System through which each Agency and Agency Personnel may:

- (a) make an Order; or
- (b) cancel or amend an Order either in whole or in part.

7.2 Contents of Orders

Each Agency and Agency Personnel may place Orders during the Term. Orders will contain the following information:

- (a) the name and staff number of the Agency Personnel placing the Order (if applicable);
- (b) the item code(s) and quantity of the Agency Apparel to be supplied and delivered and Services to be performed;
- (c) the required delivery date of the Agency Apparel;
- (d) the address for delivery of the Agency Apparel; and
- (e) any other information which the Agency or Agency Personnel placing the Order considers necessary or appropriate.

7.3 Request for more information

If an Order does not contain all the information required under clause 7.2 (Contents of Orders), the MSP must immediately contact the relevant Agency or Agency Personnel to obtain the further information required.

7.4 Authorised Orders

- (a) Orders that have been placed through the Ordering System will be sent to the Authorised Personnel for approval.

- (b) An Order will only be an Authorised Order if the Order is approved by an Authorised Personnel.
- (c) Once an Order becomes an Authorised Order, the Authorised Order will be placed with the MSP.
- (d) Agency Apparel must only be supplied and delivered under Authorised Orders.
- (e) Each Authorised Order will be incorporated into this agreement and governed by its applicable terms and conditions. If there is any inconsistency between an Authorised Order and this agreement, this agreement will prevail to the extent of the inconsistency.

7.5 Authorised Order Change Request

- (a) An Agency or Agency Personnel may, through the Ordering System request a change to an Authorised Order, including the cancellation of the whole or part of an Authorised Order or the alteration or substitution of goods, services or the delivery date specified in an Authorised Order ("**Authorised Order Change Request**").
- (b) Subject to clause 7.5(c), an Authorised Order Change Request will not be placed with the MSP unless it has first been approved by an Authorised Personnel.
- (c) An Authorised Order Change Request may be made verbally and directly to the MSP but does not become effective without compliance with clause 7.8 (No change effective until approved).
- (d) The MSP agrees that cancellation or amendment to an Authorised Order may be made, without additional charge, if made prior to dispatch of the initial Authorised Order to the relevant Agency Premises. Where an Authorised Order has been dispatched to the relevant Agency Premises prior to the cancellation being received then the relevant Agency may either return the Authorised Order or pay for the Authorised Order in accordance with this agreement.

7.6 Cost statement

- (a) Within a reasonable time (and in any event within 2 days) of receipt of the Authorised Order Change Request, the MSP will provide the relevant Agency with a cost statement detailing any increase or decrease in the Charges if the Authorised Order Change Request was implemented ("**Cost Statement**").
- (b) In preparing the Cost Statement, the MSP will use the Charges applicable on the date the Authorised Order was first approved by an Authorised Personnel.
- (c) The Cost Statement will show the costs incurred by the MSP in relation to work done or services provided in respect of the Authorised Order which will not be required to be performed if the Authorised Order Change Request is implemented ("**Redundant Work**").

7.7 Proceeding with an Authorised Order Change Request

Following the receipt of the Cost Statement, the relevant Agency will instruct the MSP whether or not to proceed with the Authorised Order Change Request. The relevant Agency will be responsible for any additional charges including any charges for Redundant Work as specified in the Cost Statement and will receive the benefit of any reduction in the Charges resulting from implementing the Authorised Order Change Request, as specified in the Cost Statement.

7.8 No change effective until approved

No Authorised Order Change Request will become effective until approved by an Authorised Personnel.

8 Service Levels and Service Credits

8.1 Notification of failure to meet Service Level

- (a) If the MSP becomes aware of any matter which may affect the ability of the MSP to meet or exceed the Service Levels, the MSP must as soon as practicable (and in any event within 24 hours) give written notice ("**SLA Failure Notice**") to TfNSW and the relevant Agency detailing the circumstances and extent or likely extent of the failure to meet the Service Levels and the Services affected.
- (b) On receipt of a SLA Failure Notice, the relevant Agency may at its option and without prejudice to any other right it may have:
 - (i) require the MSP to do all things necessary to supply Services in accordance with the Service Level, including if appropriate re-processing the affected Authorised Order, at the MSP's expense; or
 - (ii) by notice in writing to the MSP withdraw the applicable Authorised Order, in which case TfNSW and the relevant Agency will have no obligations to the MSP in relation to the applicable Authorised Order (including any obligation to pay the Charges).

8.2 Failure to meet Service Levels

- (a) Where the MSP fails to meet any Service Level, without limiting other rights and remedies available to TfNSW and the relevant Agency, the MSP must at no additional cost to TfNSW and the relevant Agency promptly:
 - (i) at the option of the relevant Agency, pay to or credit and the relevant Agency, the Service Credits;
 - (ii) if requested by the relevant Agency, in the case of Services re-perform those Services which gave rise to the failure to meet the Service Level;
 - (iii) use all reasonable endeavours to correct the issue which caused the failure to meet the Service Level;

- (iv) arrange all additional resources reasonably necessary to perform the Services in accordance with the Service Level as soon as practicable; and
 - (v) if requested by the relevant Agency, provide at no charge to the relevant Agency a detailed report on the steps taken by the MSP to prevent similar future non-compliance with the Service Levels.
- (b) TfNSW may terminate this agreement under clause 29.1 (Termination by TfNSW for cause) if the MSP during 2 consecutive quarter reporting periods commits any breaches of:
- (i) the same Service Level more than 3 times in 2 consecutive quarter reporting periods; or
 - (ii) any Service Level more than 5 times in 2 consecutive quarter reporting periods.

8.3 Measurement and monitoring

The MSP must in respect of the Service Levels:

- (a) use measurement and monitoring tools and procedures to measure accurately and promptly and report the MSP's performance against the Service Levels; and
- (b) provide Service Level reporting in the manner specified in the Statement of Work or as reasonably requested by TfNSW from time to time.

8.4 Performance management framework

The performance management framework for this agreement will include a profit-at-risk arrangement.

- (a) The MSP risks a percentage of the profit component of the management fee (as set out in Schedule D - Charges) if Service Levels are not met
- (b) The management fee to be paid monthly in arrears will comprise a base component and a profit component.
- (c) 55% of the profit component of the management fee will be profit-at-risk and subject to these arrangements.
- (d) At the end of each quarter of the Term, the percentage of the profit-at-risk to be adjusted will be calculated in accordance with the Service Levels set out in Schedule C - Service Levels and adjustments to Charges set out in Schedule D - Charges.
- (e) If performance against those Service Levels is again below acceptable levels by the following quarterly review, the next three monthly management fee payments will be adjusted in accordance with both

the initial adjusted profit-at-risk and subsequent adjusted profit-at-risk.

9 Other MSP Obligations

9.1 Standard of performance

Without limiting the MSP's obligations under this agreement, the MSP must perform its obligations under this agreement:

- (a) in accordance with best industry practice;
- (b) with all due care, skill and diligence expected of a professional service supplier and in a proper and workmanlike manner; and
- (c) in a cost effective manner consistent with the required level of quality and performance.

9.2 Comply with requirements

Without limiting the MSP's obligations under this agreement, the MSP must comply, and must ensure that the MSP Personnel comply, with:

- (a) all Agency standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with this agreement);
- (b) all other reasonable requirements and directions of each Agency in relation to the Services, including:
 - (i) that the MSP must reasonably co-operate with other Agency suppliers; and
 - (ii) that the MSP must comply with the Security Requirements and protect and keep safe and secure all Agency Apparel and any other goods, materials and documentation provided to the MSP; and
- (c) the MSP's own internal standards and policies (other than any which are inconsistent with this agreement).

Where there is any inconsistency between any of the requirements set out above, the requirement listed earlier prevails to the extent of the inconsistency.

9.3 Third party assistance and co-operation

Where any third party provides any goods or services to an Agency which requires assistance or co-operation from the MSP, the MSP agrees to provide all reasonable assistance and co-operation to that third party to ensure that the relevant Agency receives those goods and services in a seamless and efficient manner.

9.4 No adverse impact

The MSP must not do (or omit to do) and ensure that the MSP Personnel must not do (or omit to do) anything which has or could reasonably be expected to

have, an adverse impact on the reputation, security or integrity of any Agency, their businesses or their customers.

9.5 Access to MSP Premises

On the giving of 1 Business Day's written notice by an Agency, the MSP must give the relevant Agency access to the MSP Premises to allow the relevant Agency to inspect Agency Apparel and to, discuss and assess the Services performed in connection with the MSP's obligations under this agreement.

10 Charges, invoices and payments

10.1 Applicable Charges

Subject to this clause 10 (Charges, invoices and payments), in consideration of the MSP performing the Services, each Agency will pay to the MSP the applicable Charges in respect of the Services provided by the MSP to that Agency (which will include that Agency's respective proportion, as notified by TfNSW to the MSP from time to time, of the management fee). The MSP is not entitled to recover from any Agency any charge or expenses additional to the Charges for the performance of the Services, the provision of Agency Apparel, the provision of any benefit or the performance of any acts, even if required to do so under this agreement, unless the agreement provides otherwise.

10.2 Payment of Apparel Costs

The MSP must:

- (a) on behalf of any Agency, pay the relevant Approved Apparel Supplier the Apparel Costs in respect of all Authorised Orders by the relevant due date; and
- (b) indemnify each Agency against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that the Agency may sustain or incur as a result of the failure of the MSP to pay the Approved Apparel Supplier the Apparel Costs.

10.3 Invoice timing

The MSP will issue an invoice to each relevant Agency for the applicable Charges in respect of the Services provided by the MSP to the Agency (which will include each relevant Agency's respective proportion, as notified by TfNSW to the MSP from time to time, of the management fee) in accordance with this agreement each calendar month.

10.4 Invoices

Within 6 days after the end of each calendar month during the Term, the MSP must submit:

- (a) to each relevant Agency valid and correctly rendered consolidated tax invoices for the Apparel Costs for Authorised Orders delivered to that Agency in that preceding calendar month and provide sufficiently detailed information to enable that Agency to ensure and verify the accuracy of such invoices.

- (b) To TfNSW the applicable Charges (the management fee) in respect of the Services provided to that Agency in that preceding calendar month

10.5 Payment of invoices

No Agency is required to pay any amount to the MSP unless:

- (a) it has received a correctly rendered Tax Invoice for that amount; and
- (b) there are no outstanding reports directly relating to the relevant Tax Invoice due from the MSP under this agreement.

Each Agency must pay each correctly rendered Tax Invoice addressed to that Agency within 14 days after receipt of that invoice.

10.6 Correctly rendered invoice

For the purposes of this agreement, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment in accordance with clause 10.3 (Invoice timing);
- (c) the amount claimed in the invoice is correctly calculated under this agreement and includes credits for any applicable discounts or reductions;
- (d) the invoice includes a unique reference number and is set out in a manner that identifies the Services performed and the Agency Apparel delivered to the relevant Agency and itemises each amount claimed, to a level of detail satisfactory to the relevant Agency acting reasonably;
- (e) the invoice is accompanied by documents that adequately demonstrates to the relevant Agency the Services that were performed and the Agency Apparel delivered to that Agency and the basis on which the amounts are claimed;
- (f) the invoice is addressed to the relevant Agency with attention to the Agency Representative; and
- (g) the invoice is accompanied by a completed Contractor Statement in the form set out in Attachment 1 in respect of the period to which the invoice relates.

10.7 Disputed invoices

Where an Agency considers that an invoice is not correctly rendered that Agency will issue to the MSP within 10 Business Days after receipt of the invoice a notice setting out the reasons and identifying any amounts which are in dispute.

10.8 Amounts due to an Agency

Each amount payable by the MSP to an Agency under an indemnity, warranty, reimbursement, rebate or refund obligation, or default event under this agreement is a debt due and payable to that Agency on demand. Any demand must be accompanied by any relevant verifying documentation and, if the amount payable is a taxable supply must be a Tax Invoice. At the relevant Agency's option the MSP must pay or credit the amount to the relevant Agency, within 30 days after issue of the demand or in accordance with the time otherwise set out in this agreement.

10.9 Set off rights

Without prejudicing any other rights available to each Agency, each Agency is entitled to set off against any amount due for payment by it to the MSP any amount payable by the MSP to that Agency (including Service Credits).

10.10 Payment does not affect other rights or obligations

Payment of money under clause 10.1 (Applicable Charges) is not evidence:

- (a) that an Agency accepts any Services or Agency Apparel under this agreement;
- (b) of any waiver by or estoppel against any Agency in relation to any right or action which any Agency may have at any time against the MSP;
- (c) that the MSP has carried out its obligations under this agreement; or
- (d) of the value of any of the Services or the Agency Apparel delivered.

11 Taxes and GST

11.1 Taxes

The MSP is responsible for all Taxes arising from or relating to this agreement and must pay Taxes which are imposed on the MSP arising from or relating to this agreement, directly to the relevant Government Agency, except for any income tax or capital gains tax payable by an Agency.

11.2 Evidence of payment

Where the MSP pays Taxes imposed on an Agency under clause 11.1 (Taxes), the MSP must provide to that Agency within 3 Business Days of payment a written notification evidencing, to the satisfaction of that Agency, the full and timely payment of the relevant Taxes.

11.3 Indemnity

The MSP indemnifies each Agency against any costs or expenses that that Agency suffers or incurs as a result of the MSP failing to meet its obligations under clause 11.1 (Taxes).

11.4 GST

The parties agree that:

- (a) unless expressly stated otherwise, all amounts payable by an Agency to the MSP under this agreement are inclusive of GST;
- (b) if a supply under this agreement is subject to GST, and the consideration payable or to be provided for the supply is not inclusive of GST, then the party receiving the supply must pay to the party making the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate;
- (c) the additional amount is payable at the same time as the consideration for the supply is payable;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount; and
- (e) if a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

11.5 Withholding tax

If a law requires an Agency to deduct an amount in respect of Taxes from a payment under this agreement, then:

- (a) that Agency will deduct the amount for the Taxes; and
- (b) that Agency will pay an amount equal to the amount deducted to the relevant Government Agency as required by applicable law and give the original receipts to the MSP.

12 MSP Personnel

12.1 MSP Personnel

The MSP must ensure that the MSP Personnel are suitably qualified, experienced and competent for their role in providing the Services.

12.2 Removal of MSP Personnel

Where required by TfNSW, the MSP must remove and replace any particular MSP Personnel as reasonably requested by TfNSW.

12.3 Information about MSP Personnel

If requested to do so by TfNSW, the MSP must provide to TfNSW:

- (a) a list of any of the MSP Personnel; and
- (b) accurate information about the identity, qualifications, job history and character of each of the MSP Personnel.

12.4 Security

If requested by TfNSW, the MSP must, and must ensure that the relevant MSP Personnel:

- (a) submit to security checks; and
- (b) execute a deed of confidentiality in the form reasonably required by TfNSW.

12.5 No poaching

From the Commencement Date until 12 months after expiry of the Term, neither party may solicit for employment, or independent contract for the provision of services, any employee of the other party who is involved in the performance of that party's obligations under this agreement. Nothing in this clause prevents TfNSW from employing or contracting any person through a publicly advertised recruitment or procurement process.

12.6 MSP responsibility

The MSP must be responsible for (including financially), and manage, all MSP Personnel.

12.7 Compliance with Agency's policies

The MSP must ensure that the MSP Personnel, when on any Agency Premises and when accessing any Agency's facilities, computer systems and information, comply with all requirements and directions of each Agency in regard to conduct, behaviour, protection of privacy, use of IT systems, safety and security.

12.8 Criminal offences

- (a) The MSP must ensure that no MSP Personnel is involved in the provision of any Services under this agreement if he or she has had a conviction recorded against him or her in relation to an offence in any jurisdiction which carries a possible custodial sentence of more than one year during the ten years preceding the date he or she commenced providing the Services on behalf of the MSP, unless TfNSW has been notified of the relevant offence and has not objected to the person notwithstanding that offence.
- (b) TfNSW reserves the right to request a copy of each MSP Personnel's criminal record, and the MSP must supply these records if requested by TfNSW or remove any MSP Personnel from the provision of the Services if the MSP is unable to obtain a copy.

12.9 Transition after removal

Where MSP Personnel are removed by the MSP under clause 12.8(b) (Criminal offences), the MSP must ensure a seamless transition to the replacement MSP Personnel and ensure there is no adverse impact on the provision of the Services.

13 Business continuity and disaster recovery

13.1 Develop plan

On or before the Commencement Date, the MSP must develop a draft Business Continuity Plan and provide it to TfNSW for review. The draft Business Continuity Plan must detail how the MSP would continue to supply

the Services to each Agency if a Disaster Recovery Event occurs. The MSP must ensure that the draft Business Continuity Plan:

- (a) enables the Services to be provided in accordance with this agreement except as specifically agreed by TfNSW;
- (b) reflects best industry practice in relation to the planned continued provision of the Services to each Agency where there is a Disaster Recovery Event; and
- (c) defines relevant Disaster Recovery Events.

The MSP must make all changes reasonably required by TfNSW to the draft Business Continuity Plan to create the Business Continuity Plan during the Implementation Period and the Business Continuity Plan must be in a form agreed in writing by TfNSW before the end of the Implementation Period.

13.2 Update plan

The MSP must ensure at all times that the Business Continuity Plan is up-to-date and reflects the current Services.

13.3 Test plan

The MSP must test the Business Continuity Plan at least annually from the Commencement Date, and must liaise and co-operate with TfNSW over the extent and timing of those tests.

13.4 Disaster Recovery Event

On the occurrence of a Disaster Recovery Event, the MSP must immediately implement the Business Continuity Plan. The MSP must continue to provide the Services to the relevant Service Levels unless otherwise specified or allowed for in the Business Continuity Plan.

14 Subcontracting

14.1 Subcontracting

The MSP must not subcontract any of its obligations under this agreement without the prior written approval of TfNSW. TfNSW may give or withhold its approval in its absolute discretion and may impose conditions on its approval.

14.2 Responsibility for Subcontractors

The MSP is responsible for all acts and omissions of Subcontractors as if they were those of the MSP and the MSP indemnifies each Agency against all costs, expenses and liabilities incurred by any Agency in connection with the acts or omissions of any Subcontractors.

14.3 Subcontract conditions

With the exception of the Approved Subcontractors, if the MSP proposes to engage any Subcontractor, it must before engaging the Subcontractor:

- (a) notify TfNSW of the identity of the Subcontractor and provide TfNSW with details of the part of the Services to be subcontracted;

- (b) ensure that the agreement for the engagement with the Subcontractor includes and is consistent with all relevant terms of this agreement (including those in relation to warranties, a prohibition on further subcontracting, insurance, confidentiality, limitation of liability and intellectual property and security requirements);
- (c) the MSP must provide TfNSW with a copy of the proposed agreement for the engagement of the Subcontractor; and
- (d) the MSP must contract as prime contractor to TfNSW.

14.4 No relationship

Neither the approval by TfNSW of a Subcontractor under clause 14.1 (Subcontracting) nor the engagement by the MSP of a Subcontractor will:

- (a) create a contractual relationship between TfNSW and the Subcontractor; or
- (b) relieve the MSP from liability for the performance of any obligations under this agreement.

15 Change request

15.1 Change request

TfNSW may request a change to the scope or description of any Services as set out in Statement of Work or to the Service Levels (a “**Change**”) by issuing a notice in writing to the MSP.

15.2 Change request by TfNSW

If a Change is requested by TfNSW, the MSP must provide to TfNSW within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause 15.3 (Requirements for Change Proposal).

15.3 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change; and
- (b) specify all changes to the relevant Charges, the relevant timeframes and any other conditions which the MSP reasonably requires in order to perform the Change and must detail reasons for those changes.

Any adjustment to the Charges must be based on the MSP’s actual direct costs as a result of the Change, including a reasonable profit allowance.

15.4 Acceptance or rejection of a Change Proposal

TfNSW may accept or reject a Change Proposal in writing at any time within 20 Business Days of receiving the Change Proposal. Where TfNSW accepts in writing a Change Proposal, the parties will execute a Change Notice on those terms and this agreement will be varied accordingly, with effect from the date of execution of the Change Notice.

15.5 No application to Authorised Orders

The parties acknowledge that changes to Authorised Orders are dealt with in clause 7 (Authorised Orders) and are not the subject of this clause 15 (Change request).

15.6 Effect on Authorised Orders placed

Any Change Proposal accepted in writing by TfNSW will only apply to Authorised Orders placed with the MSP on a date after the Change Proposal has been accepted in writing by TfNSW unless the accepted Change Proposal specifically states otherwise.

16 Title and risk

16.1 Protection of title

The MSP must not:

- (a) create, permit or allow any pledge, lien, mortgage, charge, or other encumbrance over any Agency Apparel; or
- (b) exercise or claim a lien or any similar right over any Agency Apparel or any materials created for or on behalf of any Agency by the MSP, any Subcontractor, any Approved Apparel Supplier or any other third party.

16.2 Passing of title and risk

Each Agency holds title in its Agency Apparel. The risk in Agency Apparel supplied under an Authorised Order remains with the MSP until the Agency Apparel is delivered to the relevant Agency, to the address for delivery specified in the Authorised Order.

17 Intellectual Property Rights

17.1 Existing Intellectual Property Rights

Subject to clause 17.2 (New Intellectual Property Rights), all Intellectual Property Rights of the parties and each Agency existing before the Commencement Date will be retained by the relevant party or Agency. All existing Intellectual Property Rights of each Agency continue to be owned by that Agency.

17.2 New Intellectual Property Rights

The MSP assigns or will procure the assignment to each relevant Agency, on creation, of:

- (a) all Intellectual Property Rights in all modifications made to Agency IP by the MSP or the MSP Personnel; and
- (b) all other Intellectual Property Rights created by the MSP or the MSP Personnel in the performance of the Services and supply of the Agency Apparel.

Where the MSP is not the owner of the Intellectual Property Rights referred to in clauses 17.2(a) and 17.2(b) the MSP will obtain such consents as are

necessary to assign those Intellectual Property Rights to each relevant Agency.

17.3 Agency Apparel

All Intellectual Property Rights in Agency Apparel vests in each relevant Agency.

17.4 MSP licence

The MSP grants to each Agency a, perpetual, royalty-free, non-exclusive, irrevocable licence:

- (a) to Use the MSP IP to the extent necessary to receive the full use and benefit of the Services;
- (b) sub-licence any of the rights granted under clause 17.4(a) to any person, but only in relation to the use or benefit of the Services;
- (c) to Use the MSP IP which is incorporated in any Agency Apparel in any manner, anywhere in the world, for any purpose; and
- (d) sub-licence any of the rights granted under clause 17.4(c) to any person, but only in relation to the use or exploitation of the Agency Apparel.

17.5 Agency licence

TfNSW will procure that each Agency grants to the MSP, and to the extent necessary any relevant MSP Personnel, for the Term, a royalty-free, non-exclusive, non-transferable licence to Use the Agency IP only to the extent necessary to provide the Services and in accordance with each Agency's directions from time to time.

17.6 Confidentiality

Nothing in clause 17.4 (MSP licence) and 17.5 (Agency licence) removes or limits the obligations of confidentiality under clause 18 (Confidentiality and privacy).

17.7 Indemnity

The MSP must (either directly itself or by procuring sub-contractors to do so):

- (a) at TfNSW's request and sole option:
 - (i) defend at no cost to each Agency, all Infringement Claims; or
 - (ii) provide, at no cost to each Agency, all reasonable assistance required by any Agency to defend any Infringement Claim;
- (b) indemnify each Agency against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that any Agency may sustain or incur as a result of an Infringement Claim; and

- (c) satisfy any settlement of or judgement given in an Infringement Claim.

17.8 Other remedies

Without limiting any other rights each Agency may have, if, as a result of any Infringement Claim, any Agency is prevented from using the MSP IP, the MSP must, at TfNSW's option and at the MSP's cost:

- (a) promptly procure for each Agency the right to use the MSP IP on reasonable commercial terms as contemplated under this agreement free of any claim or liability for infringement;
- (b) promptly procure replacement Agency Apparel which complies with the relevant Specifications; and
- (c) promptly modify the Agency Apparel so that they cease to infringe those rights (while still complying with the applicable Specifications).

18 Confidentiality and privacy

18.1 Disclosure of Confidential Information

A party who receives Confidential Information (“**Recipient**”) must not disclose the Confidential Information supplied by the other party (“**Discloser**”) to any person except:

- (a) its Representatives who require the Confidential Information for the purposes of this agreement; or
- (b) to enable the Recipient to obtain professional advice in relation to this agreement; or
- (c) with the consent of the Discloser; or
- (d) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange;
- (e) if the Recipient is required to do so in connection with legal proceedings relating to this agreement or another agreement between the parties; or
- (f) in the case of TfNSW as Recipient to each other Agency.

18.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information under clause 18.1(a) or 18.1(c) (Disclosure of Confidential Information) then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 18.1 (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the

non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and

- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

18.3 Use of Confidential Information

The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this agreement or any other agreement between the parties.

18.4 Return of Confidential Information

On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy (at TfNSW's option) all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:

- (a) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this agreement or another agreement between the parties; or
- (b) the Recipient is otherwise entitled to retain the Confidential Information.

18.5 No disclosure of the terms of this agreement

- (a) Subject to clause 18.5(b), except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this agreement to any person other than its Representatives on a confidential basis.
- (b) TfNSW may disclose the contents of this agreement to other NSW Government authorities or agencies and otherwise as necessary to comply with any law, regulation or NSW Government policy.

18.6 Access to Information

- (a) This clause 18.6 only applies to the extent that the MSP is required to provide goods or services to the public on behalf of an Agency.
- (b) Within 3 days of receiving a written request by an Agency the MSP must provide that Agency with immediate access to information referred to in section 121(1) of the *Government Information (Public Access) Act 2009* (NSW) (but excluding information referred to in section 121(2) of the *Government Information (Public Access) Act 2009* (NSW)) contained in records held by the MSP at the MSP's expense and in such medium as that Agency may reasonably require. This is an essential term of this agreement.

- (c) The relevant Agency will consult with the MSP before releasing any information obtained from the MSP where required under section 54 of the *Government Information (Public Access) Act 2009* (NSW).

18.7 Disclosure of details of Agency contracts with the private sector

- (a) The MSP acknowledges that an Agency may be required to publish certain information concerning this agreement in accordance with sections 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW).
- (b) If the MSP reasonably believes that any part of this agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the MSP should immediately advise TfNSW in writing, identifying the provisions and providing reasons so that TfNSW may consider seeking to exempt those provisions from publication.

18.8 Publicity

The MSP may only make press or other announcements or releases about this agreement and the transactions related to it:

- (a) with the express, prior written approval of TfNSW; or
- (b) as required to be made by law or the rules of a stock exchange provided that the MSP gives TfNSW as much prior notice as is reasonably practicable and the opportunity to review and comment on the form and text of the disclosure before the disclosure is made.

18.9 Compliance with privacy requirements

The MSP must and must ensure that all MSP Personnel:

- (a) comply with each Agency's privacy policy (and each specific privacy policy of each Agency in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by the relevant Agency or by third parties) as notified in writing to the MSP from time to time as if it were bound by that policy;
- (b) comply with the *Privacy Act 1988* (Cwlth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- (c) comply with all directions by each Agency:
 - (i) relating to the means by which that Agency complies with the *Privacy and Personal Information Protection Act 1998* (NSW), that Agency's privacy policy, and all other applicable laws, codes and privacy policies; and
 - (ii) co-operate with each Agency in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

18.10 Provide information

At an Agency's request, the MSP will promptly provide all reasonable assistance to enable that Agency to comply with its obligations under this agreement and at law, including providing details of any person (for example, a related body corporate or any other private sector entity in which the MSP has an interest) that:

- (a) will be involved in performing any of the MSP's obligations under this agreement; or
- (b) will receive a benefit under this agreement.

This clause survives the termination of this agreement for any reason whatsoever.

19 Representatives, reporting and audits

19.1 Responsibilities

The TfNSW Representative and the MSP Representative will be responsible for the co-ordination and management between the parties of this agreement, including ensuring the performance by the parties of their respective roles and responsibilities.

19.2 Responsibilities of MSP Representative

- (a) The MSP Representative will be responsible for the operational co-ordination and management of the provision of the Services.
- (b) Matters within the knowledge of the MSP Representative will be deemed to be within the knowledge of the MSP.
- (c) Directions given by an Agency to the MSP Representative will be deemed as directions given to the MSP.

19.3 Role of TfNSW Representative

The MSP must address all enquiries and correspondence to the TfNSW Representative. TfNSW is not bound by any authorisations, representations and statements not made in writing and made by any person other than the TfNSW Representative.

19.4 Delegation by Representatives

The TfNSW Representative and the MSP Representative may delegate part of their operational responsibilities to other Representatives in order to operate more efficiently and effectively.

19.5 Reports

The MSP must provide to TfNSW the reports with the content and in the frequency and form (electronic or physical), as set out in the Contract Details, the Statement of Work and as notified by TfNSW to the MSP from time to time.

19.6 Review meetings

The MSP Representative must attend meetings with the TfNSW Representative at a place and time to be notified to the MSP by TfNSW on the frequency set out in the Contract Details to:

- (a) review the performance of the MSP and the MSP Personnel in relation to this agreement and the Charges incurred up to that date, including any faults in the provision of any of the Services over the previous review period and any actions undertaken by the MSP to resolve the relevant faults; and
- (b) discuss any other issues in relation to the Services or this agreement.

19.7 Records and inspection

The MSP must, and must ensure all MSP Personnel:

- (a) keep and maintain all necessary Records during the Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by each Agency, a regulator, any external auditor or advisor or any of their authorised representatives, during Business Hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit each Agency to inspect or appoint a third party to inspect the MSP Premises to confirm compliance with this agreement; and
- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the MSP's sole cost.

19.8 Annual audit

- (a) Each year, on dates nominated by TfNSW, TfNSW may conduct itself, or appoint a third party to conduct, an audit of the MSP's performance and compliance with this agreement.
- (b) If the auditor's report arising out of an audit identifies any areas as falling below the Service Levels or otherwise breaches this agreement, the MSP must rectify those failings promptly.

19.9 Costs of audit

The auditor's costs incurred by TfNSW in the audit under clause 19.8 (Annual audit) will be paid by TfNSW. However, where the auditor determines that the performance by the MSP falls below the Service Levels or identifies breaches of this agreement by the MSP, all the costs of TfNSW (including third party auditor fees) in respect of that audit will be paid by the MSP.

19.10 Costs

Unless expressly provided otherwise in this clause 19 (Representatives, reporting and audits), TfNSW and the MSP will each pay their own costs and

expenses in connection with this clause 19 (Representatives, reporting and audits).

20 Warranties and representations

20.1 General representations and warranties

The MSP represents and warrants to each Agency on the Commencement Date and at all times during the Term, that:

- (a) it has full capacity and authority to enter into and to perform this agreement;
- (b) this agreement is duly authorised by it;
- (c) there are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it before any court or administrative body or arbitral tribunal that might affect its ability to meet and carry out its obligation under this agreement;
- (d) once duly approved this agreement will constitute a legal, valid and binding obligation on it;
- (e) it is lawfully entitled to use the MSP Premises to provide the Services in accordance with this agreement;
- (f) it has all necessary licences, permits and consents to enter into and to perform this agreement;
- (g) it has all necessary rights to use and provide the MSP IT System (including any necessary Intellectual Property Rights) in order to provide the Services;
- (h) it has conducted its own due diligence of the Statement of Work and Charges; and
- (i) the representations given by the MSP in the Proposal, and during the following discussions, evaluations and negotiations are true and accurate.

20.2 Specific representations and warranties

The MSP represents and warrants to each Agency on the Commencement Date and at all times during the Term, that:

- (a) the Services:
 - (i) will be performed with due care and skill and in accordance with Good Industry Practice;
 - (ii) will meet or exceed the Service Levels;
 - (iii) will, and any materials used to provide the Services will:
 - (A) be fit for the purpose for which they are supplied and used; and

- (B) comply with any applicable specifications or requirements;
- (iv) will be supplied in accordance with:
 - (A) all applicable laws and regulations; and
 - (B) the Statement of Work;
- (b) the Agency Apparel:
 - (i) will meet the Specifications;
 - (ii) will be free from defects and omissions in material, design or workmanship; and
 - (iii) will comply with all laws that are related in any way to the Agency Apparel;
- (c) the MSP and the MSP Personnel will not infringe the Intellectual Property Rights or Moral Rights of any person in providing the Services, the Agency Apparel or otherwise performing this agreement;
- (d) the Services, the Agency Apparel and their use will not:
 - (i) result in a breach of any law or mandatory code of conduct;
 - (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
 - (iii) constitute a misuse of any person's confidential information; or
 - (iv) result in the MSP or any Related Bodies Corporate of the MSP breaching any obligation that it owes to any person;
- (e) the MSP will not coerce, induce or encourage breach by the MSP's drivers or any Approved Apparel Supplier's drivers of any applicable road transport laws;
- (f) the MSP will provide truthful and accurate information to TfNSW in relation to the Services, any of the MSP's or any of the Approved Apparel Supplier's vehicles or a vehicle's load;
- (g) the MSP's and the Approved Apparel Suppliers' drivers will not and are not encouraged to:
 - (i) exceed permitted driving hours;
 - (ii) fail to have minimum rest periods; or
 - (iii) exceed the speed limits,

that are specified in any applicable State, Territory or Commonwealth legislation or road rules, including road safety legislation and occupational and work health and safety legislation;

- (h) the load carried as part of the Services:
 - (i) does not exceed the MSP's or any Approved Apparel Supplier's vehicle dimension limits;
 - (ii) does not cause vehicle mass limits to be exceeded; and
 - (iii) are appropriately secured;
- (i) the MSP and the Approved Apparel Suppliers comply with an industry code of practice in relation to chain of responsibility legislation;
- (j) the MSP and the Approved Apparel Suppliers have in place a driver fatigue management plan and the MSP and the Approved Apparel Suppliers have assessed and taken all available measures to eliminate causes of driver fatigue in respect of any of their drivers;
- (k) the provision of Services by the MSP comply in all respects with the *Work Health and Safety Act 2011* (NSW) and accompanying regulations (and any similar legislation in other States and Territories); and
- (l) the Service Levels can be met without breach of any legislative requirement, including any heavy vehicle fatigue legislation, and such legislative requirements have been taken into account when scheduling the Services.

20.3 Failure of Services to satisfy the warranties

Without limiting any other rights each Agency may have under this agreement, if at any time TfNSW reasonably believes that any Services do not satisfy the requirements in clause 20.2 (Specific representations and warranties), TfNSW may request the replacement of the Services and the MSP will promptly replace the Services with complying Services at its own cost ("**Replacement Direction**").

20.4 Failure to comply with a Replacement Direction

If the MSP fails to comply with the Replacement Direction within 3 days of receipt of the Replacement Direction, TfNSW may at its discretion:

- (a) obtain Replacement Services or require the MSP to provide Replacement Services, at the MSP's cost; or
- (b) terminate this agreement under clause 29.1 (Termination by TfNSW for cause).

20.5 Acceptance of non-complying Services

If TfNSW elects to accept any non-complying Services, then, on agreement of the parties, the applicable Charges will be reduced by TfNSW's reasonable

estimate of the amount of any loss or damage suffered by each Agency, or any cost saving to the MSP, whichever is the greater.

20.6 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 20 (Warranties and representations), the MSP must give written notice to TfNSW detailing that matter and its likely impact on the MSP's ability to comply with this clause 20 (Warranties and representations).

21 Policies

21.1 General

The MSP must comply, and ensure that all MSP Personnel comply with all occupational and work health and safety policies and procedures and all other office policies and procedures (for example, non-harassment, non-discrimination policies) notified to them by each Agency from time to time.

21.2 Agency policies

The MSP must, and must ensure that all MSP Personnel, comply with:

- (a) each Agency's applicable code of conduct and ethics and do not engage in corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW);
- (b) all occupational and work health, safety and rehabilitation laws and requirements; and
- (c) all industrial relations laws and requirements.

21.3 Notify of hazards

Where relevant to the supply of the Services, the MSP must notify each Agency of any health and safety hazards (including anything which might cause death or injury to any person) at the MSP Premises of which the MSP becomes aware. The MSP must draw these hazards to the attention of those members of the Agency Personnel who are at the MSP Premises, and must instruct them in connection with any necessary associated safety measures relevant to the MSP Premises.

22 Liability and Indemnity

22.1 TfNSW's liability

Subject to clause 22.3 (No limitation):

- (a) the aggregate liability of TfNSW to the MSP under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action, is limited to an amount equal to the aggregate of the applicable Charges paid or payable by TfNSW for Services performed under this agreement; and
- (b) TfNSW will not be liable to the MSP under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

22.2 MSP's liability

Subject to clause 22.3 (No limitation):

- (a) the aggregate liability of the MSP to TfNSW under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the aggregate of the MSP Liability Cap; and
- (b) the MSP will not be liable to TfNSW under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

22.3 No limitation

Nothing in this agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of clause 18 (Confidentiality and privacy);
- (d) the MSP's liability under clause 17 (Intellectual Property Rights);
- (e) liability of either party for unlawful or illegal acts or conduct; or
- (f) TfNSW's liability to pay such of the Charges as are due and payable.

22.4 Consequential Loss Definition

(a) Subject to clause 22.4(b), Consequential Loss:

- (i) means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach; and
 - (ii) includes loss of profit or loss of anticipated savings.
- (b) Consequential Loss does not include:
- (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement Services;
 - (iv) legal fees on a full indemnity basis.

22.5 Civil Liability Act

The parties agree that:

- (a) all rights, obligations and liabilities under or in connection with this agreement are to apply unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities; and
- (b) this clause applies even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)).

22.6 MSP's indemnity

- (a) To the fullest extent permitted by law, the MSP agrees to indemnify and hold each Agency harmless in relation to any and all claims arising out of or in connection with breach by the MSP or the MSP Personnel of this agreement.
- (b) The MSP indemnifies each Agency from and against all actions, claims, costs, losses, expenses and damages (including the costs of defending or settling any action or claim) in respect of:
 - (i) loss of, loss of use of, or damage to property of any Agency;
 - (ii) claims made by third parties against any Agency; and
 - (iii) personal injury (including death) or illness to any person or loss of, loss of use of, or damage to any property or claim for breach of confidence or privacy or misuse of personal information,

arising out of or by reason of anything done or omitted to be done by the MSP or the MSP Personnel in the performance of the Services.

23 Insurance

23.1 Insurance

Before the Commencement Date, the MSP must obtain on terms reasonably approved by TfNSW and thereafter maintain the policies of insurance listed in the Contract Details on the terms, for the risks identified, and for the periods of time set out in Attachment 2.

23.2 Evidence of insurance

On request by TfNSW, the MSP must provide certificates of currency proving that the policies of insurance required under this agreement have been effected and are current. A certificate of currency provided under this section must be issued by the insurance company providing insurance and must contain all details reasonably requested by TfNSW, including a summary of all risks covered and any exclusions.

23.3 MSP notification

The MSP must notify TfNSW within 2 Business Days of any event which affects or may affect the MSP's compliance with this clause 23 (Insurance),

including any cancellation of a policy or reduction of limit of coverage below that required by this agreement.

23.4 Notification of relevant insurance claims

Within 5 Business Days of the MSP becoming aware of any claims against any of its insurances in connection with the Services or which may impact upon the provision of the Services, it must:

- (a) notify TfNSW in writing of the claim; and
- (b) give TfNSW any further information regarding the claim as TfNSW may require.

23.5 MSP must co-operate

The MSP must co-operate with and provide reasonable assistance to an Agency if that Agency makes any claim under any insurance policies referred to in clause 23.1 (Insurance).

24 Step-in and diversion rights

24.1 Right to step-in

If the MSP:

- (a) commits a material breach of this agreement; or
- (b) fails to comply with this agreement in such a way as to cause, or be likely to cause, significant disruption to an Agency's businesses,

that Agency may appoint its own management team and/or a third party supplier to perform any or all elements of the Services at either the MSP Premises or at other premises selected by that Agency.

24.2 No obligation to pay

While an Agency or any third party supplier is providing any element of the Services pursuant to clause 24.1 (Right to step-in), no Agency will be obliged to pay the Charges in respect of that element of the Service and the MSP will have no claim against any Agency for an Agency providing the Services itself or having a third party do so.

24.3 Expiry of step-in and diversion rights

The parties agree to transition the Services back to the MSP in an orderly manner following resolution to the satisfaction of TfNSW of the event giving rise to the step-in or diversion right.

24.4 Without prejudice to other rights

This clause 24 (rights will be without prejudice to any rights and remedies of each Agency including, but not limited to, any right of damages, or termination of the Services (or any part of them) under this agreement.

25 Disputes

25.1 Reasonable endeavours to settle

If a Dispute arises the parties undertake in good faith to use all reasonable endeavours to settle the Dispute expeditiously.

25.2 Dispute notice

Any party claiming that a Dispute has arisen may give a written notice to the other party.

25.3 Negotiation

If a Dispute is notified under clause 25.2 (Dispute notice) each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under clause 25.2 (Dispute notice).

25.4 Alternative dispute resolution

If the Dispute is not resolved within the period referred to in clause 25.3 (Negotiation), the parties' representatives will within a further 5 Business Days seek to agree on:

- (a) a process to resolve the Dispute, for example through mediation, conciliation or other such similar forms of alternative dispute resolution;
- (b) the procedure and timetable for any exchange of documents and other information in relation to the Dispute;
- (c) procedural rules and timetable for the conduct of the selected mode of proceedings;
- (d) a procedure for selection and compensation of any neutral person (who may or may not be employed by a party); and
- (e) whether the parties should seek the assistance of a dispute resolution organisation such as the Australian Commercial Dispute Centre.

25.5 Further resolution process

If the representatives are unable to agree on a process for resolving the Dispute in the period referred to in clause 25.4 (Alternative dispute resolution) or the Dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing on a particular process, then:

- (a) if the amount of the Dispute is less than \$200,000, either party may refer the Dispute to expert determination in accordance with clause 25.6 (Expert determination) unless TfNSW has notified the MSP that in its reasonable opinion, the Dispute is not appropriate for resolution by expert determination; or
- (b) if the amount of the Dispute is \$200,000 or more or TfNSW has notified the MSP that in its reasonable opinion, the Dispute is not

suitable for expert determination, then either party will be free to commence court proceedings relating to the Dispute.

25.6 Expert determination

If either party refers the dispute to expert determination pursuant to clause 25.5(a) (Further resolution process), the expert determination is to be carried out as follows:

- (a) within 5 Business Days after the date of the notice under clause 25.5(a) (Further resolution process), the parties must exchange written lists of proposed experts from whom the expert is to be chosen in order of preference;
- (b) a person that appears on both lists under clause 25.6(a) will be appointed as the expert to determine the dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 25.5(a) (Further resolution process) will be appointed;
- (c) if no person appears on both lists, the parties must request the President of the NSW Chapter of the Institute of Arbitrators and Mediators of Australia to nominate a person to act as the expert;
- (d) TfNSW and the MSP must enter into an agreement with the expert on such reasonable terms as the expert may require provided that the expert must be instructed that the expert:
 - (i) is to act as an expert and not as an arbitrator;
 - (ii) is to proceed in the way, and determine the rules for the conduct of the expert determination, as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) is to take into consideration those documents and that information and other material which the parties give to the expert and which in the expert's opinion are relevant to the determination of the dispute;
 - (iv) need not, but may obtain or refer to any other documents, information or material;
 - (v) must determine the dispute and give written reasons for the decision within one month after being appointed; and
 - (vi) must determine what proportion of the costs of the expert determination is to be paid by each party;
- (e) the determination of the expert must be given to the parties in writing and will be final and binding upon the parties, in the absence of manifest error; and

- (f) the parties must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert unless the expert determines otherwise.

25.7 Right to terminate

This clause 25 (Disputes) does not affect either party's rights to terminate this agreement under clause 29 (Termination) or pursuant to any other rights of termination contained in this agreement.

25.8 Interlocutory relief

This clause 25 (Disputes) does not affect either party's right to commence court proceedings seeking interlocutory relief.

25.9 Parties to continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this agreement.

26 Conflict of Interest

In the event that the MSP finds itself in a position of conflict of interest in relation to the provision of the Services and the provision of services to a third party, then the MSP shall immediately notify TfNSW of this conflict of interest and TfNSW and the MSP shall immediately resolve the conflict of interest to TfNSW's satisfaction (acting reasonably).

27 Exit Plan

27.1 Exit Plan

As soon as reasonably practicable and in any event, before the end of the Implementation Period, the MSP must develop, in consultation with TfNSW, a draft Exit Plan for the orderly transition of the supply of Services to TfNSW or any replacement supplier nominated by TfNSW on termination or expiry of the agreement (in whole or in part). The MSP must provide the draft Exit Plan to TfNSW for approval and must make any changes to it reasonably requested by TfNSW to create the Exit Plan.

27.2 Scope of Exit Plan

- (a) The Exit Plan must deal with the relationships, responsibilities and obligations of the parties on any termination or expiry of this agreement (in whole or in part), to facilitate a smooth and orderly transition of the supply of Services to TfNSW or TfNSW's nominated replacement supplier.
- (b) The Exit Plan will provide for the MSP to provide during the Termination Period all reasonable and necessary transition assistance to TfNSW to allow the orderly transition of the supply of the Services to TfNSW or TfNSW's nominated replacement supplier ("**Termination Services**").
- (c) The Exit Plan must set out the systems, procedures and processes to allow this orderly hand-over and transition.

- (d) The Exit Plan must set out in detail all Termination Services to be provided by the MSP.
- (e) The parties will agree any other necessary provisions to facilitate a smooth and orderly transition from the MSP to TfNSW or TfNSW's nominated replacement supplier in good faith and as soon as practicable to minimise any impact on each Agency's business.

27.3 Termination costs

No Agency will be obliged to pay any charge, cost, fee or expense not set out in the Exit Plan or incurred in carrying out the Exit Plan unless previously agreed in writing.

27.4 Update Exit Plan

The MSP must keep up-to-date the Exit Plan to reflect the current Services and the manner in which the Services are supplied. The MSP and TfNSW will formally review the Exit Plan annually and at intervals reasonably requested by TfNSW.

27.5 Charges

Subject to this clause 27 (Exit Plan), TfNSW will pay the applicable Charges during the Termination Period in respect of Services provided by the MSP.

28 Force Majeure

28.1 Notice of a Force Majeure Event

A party does not breach this agreement and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice within 3 days of the affected party becoming aware of the Force Majeure Event which:

- (a) sets out details of the Force Majeure Event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

Failure of an Approved Subcontractor to perform the Services will not be a Force Majeure in respect of the MSP.

28.2 Obligations of affected party

A party affected by a Force Majeure Event must:

- (a) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and

- (b) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.

29 Termination

29.1 Termination by TfNSW for cause

TfNSW may terminate this agreement in full or, at TfNSW's option, as it relates to any particular Service immediately by notice to the MSP if:

- (a) **(Breach of agreement)** the MSP breaches this agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the MSP fails to remedy the breach within 10 Business Days, or such longer time as TfNSW states, of receiving notice from TfNSW requiring the breach to be remedied;
- (b) **(Recurring breach)** the MSP:
 - (i) breaches this agreement on 3 separate occasions within a 3 month period; and
 - (ii) has been issued with a notice from TfNSW stating that any further breach of this agreement will give TfNSW the right under this clause 29.1(b) to terminate this agreement; and
 - (iii) commits a further breach of any provision of this agreement;
- (c) **(Insolvency)** the MSP becomes Insolvent;
- (d) **(Wrongful assignment)** the MSP assigns or purports to assign its rights otherwise than as permitted by this agreement;
- (e) **(Change of Control)** the MSP undergoes a Change of Control;
- (f) **(Disposal of assets)** the MSP disposes of all or a substantial part of its assets to a third party not being a Related Body Corporate of the MSP;
- (g) **(Service Levels)** the MSP commits any breach described in clause 8.2(b) (Failure to meet Service Levels);
- (h) **(Implementation Services)** the MSP commits any breach described in clause 3.2 (Failure to complete Implementation Services); or
- (i) **(Other)** the termination is provided for in another part of this agreement.

29.2 Termination by MSP for cause

The MSP may only terminate this agreement if TfNSW has failed to pay an amount due to the MSP under this agreement which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the MSP proposes to

exercise its rights under this clause 29.2 if the payment is not made. Apart from this clause 29.2, the MSP has no other right to terminate this agreement or otherwise withhold the Services.

29.3 Termination by TfNSW for convenience

TfNSW may terminate this agreement in full, in part or as it relates to any particular Service by giving not less than 60 days' written notice to the MSP provided that TfNSW must pay the amounts required under clause 30.4 (Early termination charges).

29.4 Force Majeure

If a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days, or if TfNSW reasonably considers the Force Majeure Event will not cease within that period, TfNSW may immediately terminate this agreement or a Service on notice to the MSP.

29.5 Continuation

Where TfNSW exercises its rights under this clause 29 (Termination) only in relation to one or more Services, the MSP must continue to perform this agreement in respect of any other Services which have not been terminated. Any partial termination will lead to a pro-rata reduction in the Charges for the remaining Services and the parties will agree in good faith all required consequential amendments.

30 Events following termination or expiry

30.1 Obligations on expiry or termination

On expiry or termination of this agreement for any reason, without limiting any other rights any Agency may have, the MSP must pay to the relevant Agency:

- (a) any fees paid by any Agency to the MSP in advance for Services not yet supplied under this agreement; and
- (b) any Service Credits accrued up to the date of termination.

30.2 Consequences of expiry or termination for any reason

Upon expiry or termination of this agreement for any reason the MSP must:

- (a) immediately provide TfNSW or the relevant Agency with all:
 - (i) Agency Confidential Information and Agency Materials; and
 - (ii) other property of each Agency in the MSP's possession, custody or control (including those in any MSP Personnel's possession, custody or control) and, if requested, the MSP will provide a statutory declaration stating that it has complied with this clause;
- (b) fulfil its obligations to deliver all Agency Apparel that is the subject of any Authorised Orders placed with the MSP prior to the date of expiry or termination which have not been delivered and the relevant

Agency will be obliged to pay the applicable Charges for such Authorised Orders in accordance with this agreement;

- (c) perform all its obligations set out in the Exit Plan; and
- (d) provide the Termination Services as may be required by TfNSW.

30.3 Partial termination obligations

If this agreement is terminated only in part, the obligations of the MSP under this clause 30 (Events following termination or expiry) will, in respect of that termination, apply only to the extent necessary or desirable to ensure the orderly transition to TfNSW or TfNSW's nominated replacement supplier of those Services which are the subject of the partial termination.

30.4 Early termination charges

If TfNSW terminates one or more Services for convenience pursuant to clause 29.3 (Termination by TfNSW for convenience), then if the MSP is able to demonstrate to TfNSW's reasonable satisfaction that prior to receiving notice of termination the MSP has incurred or irrevocably committed with a third party to incur costs for the purposes of providing Services and the MSP has not at the time of termination become entitled to charge for those Services, then TfNSW must reimburse the MSP for those costs which the MSP incurs. The MSP must take all reasonable steps to mitigate the costs referred to in this clause 30.4 and TfNSW will not be required to pay costs to the extent that they could have been avoided or reduced by taking such steps. The MSP must provide TfNSW with evidence reasonably satisfactory to TfNSW to substantiate any claim under this clause 30.4 .

30.5 Survival

Clauses 10 (Charges, invoices and payments), 11 (Taxes and GST), 12.5 (No poaching), 17 (Intellectual Property Rights), 18 (Confidentiality and privacy), 22 (Liability and Indemnity), 23 (Insurance), 25 (Disputes), and 33 (Local jobs first – SMEPP compliance and reporting) survive the termination or expiry of this agreement, as do any rights and remedies accrued before termination or expiry.

31 Notices

31.1 Form

Unless stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing.

31.2 Important contractual notices

A notice under clause 15 (Change request), clause 25 (Disputes), clause 29.1 (Termination by TfNSW for cause), clause 29.4 (Force Majeure) or clause 32.1 (Assignment or novation by TfNSW) or any other notice claiming or relating to a breach, repudiation, purported termination or variation of this agreement must be:

- (a) approved on behalf of the party giving notice; and

- (b) delivered to or sent by prepaid registered post (airmail if posted to or from a place outside Australia) to the TfNSW Representative or the MSP Representative (as the case may be) or other address requested by the recipient.

31.3 Other notices and communications

A notice, consent, request or any other communication under this agreement other than one referred to in clause 31.2 (Important contractual notices) must be:

- (a) left at the address of the addressee, or
- (b) sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
- (c) sent by facsimile to the facsimile number of the addressee specified in the Contract Details or notified by the receiving party; or
- (d) sent by email to the email address specified in the Contract Details or as notified by the receiving party.

31.4 Time of receipt

A notice, consent, request or any other communication is deemed to be received:

- (a) if by delivery, when it is delivered;
- (b) if posted, the earlier of the date of receipt and 3 Business Days after posting if within Australia or 7, if posted to or from a place outside Australia;
- (c) if a facsimile, the earlier of the time the addressee receives and the next Business Day after the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) if an email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

32 Assignment, Novation & Piggybacking

32.1 Assignment or novation by TfNSW

TfNSW may assign any of its rights under this agreement, or may novate its rights and obligations under this agreement:

- (a) without the consent of the MSP to any department, to any other body created by or under a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of TfNSW or to any public sector agency within the meaning given to that term in the *Public Sector Employment and Management Act 2002* (NSW); or

- (b) with the consent of the MSP, which must not be unreasonably withheld or delayed, to any other person.

The MSP must execute all documents necessary to give effect to any novation or assignment permitted under this clause 32.1 (Assignment or novation by TfNSW).

32.2 Assignment or novation by the MSP

The MSP must not assign its rights under this agreement or purport to novate its rights and obligations under this agreement without the prior written consent of TfNSW.

32.3 Piggybacking by other NSW Agencies

- (a) If a public sector agency (as defined in the *Public Sector Employment and Management Act 2002* (NSW)) (other than an Agency) requests the MSP to provide services to it similar to the Services then the MSP agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms of this agreement having regard to any necessary changes (including scope and service levels).
- (b) The MSP acknowledges that from time to time, TfNSW may require Services to be provided under this agreement for the benefit of another public sector agency (as defined in the *Public Sector Employment and Management Act 2002* (NSW)) (other than an Agency which is dealt with in clause 32.3(a)). Where such request is made the parties will negotiate in good faith:
 - (i) any decrease to the Charges to reflect the increase in volume of the additional Services to be provided to those public sector agencies; and
 - (ii) any other terms relevant to the on-provision of the Services to the other public sector agencies by TfNSW (if applicable).

33 Local jobs first – SMEPP compliance and reporting

33.1 TfNSW reliance

The MSP acknowledges that TfNSW relied on the MSP's SMEPP when entering this agreement. The MSP agrees to comply with the requirements and commitments provided for in its SMEPP.

33.2 Reporting

TfNSW may establish mechanisms to monitor compliance by the MSP with its commitments under the SMEPP and the MSP agrees to take all steps required on its part to assist in the monitoring of compliance by the MSP with the SMEPP.

33.3 Essential term

Any material non-compliance by the MSP with its SMEPP commitments is a breach of an essential term of this agreement.

33.4 Failure may be considered in other assessments

TfNSW may take into consideration any non-compliance by the MSP with its SMEPP when evaluating subsequent tenders submitted by the MSP and may report any non-compliance to other government agencies.

33.5 Definitions

SMEPP means the ANZ Small & Medium Enterprise Participation Plan provided by the MSP under LJFP, a copy of which is provided at Attachment 5.

LJFP means the Local Jobs First Plan published by NSW Procurement (a division of the NSW Department of Services, Technology and Administration).

34 Benefits held on trust

The MSP acknowledges that this agreement is also for the benefit of each Agency and agrees that TfNSW may enforce the provisions of this agreement on behalf of each Agency and that these benefits are held on trust by TfNSW for the benefit of each Agency.

35 Personal Property Securities Act

- (a) Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cwlth) (**PPSA**).
- (b) The MSP grants each Agency a security interest in that Agency's Agency Apparel to which that Agency retains title under this agreement, being a purchase money security interest in that Agency Apparel and their proceeds.
- (c) The MSP must promptly sign any documents and provide all information reasonably required by any Agency to register a financing statement or financing change statement on the Personal Property Securities Register (**PPS Register**) or that any Agency may require in connection with such registrations.
- (d) The MSP waives its rights to receive a verification statement in accordance with section 157 of the PPSA.
- (e) To the extent permitted by law (including under the PPSA), the following provisions of the PPSA will be excluded: section 95 (to the extent that it requires the secured party to give notice to the grantor), sections 96, 118, 121(4), 125, 130 (to the extent it requires the secured party to give a notice to the grantor), 132(3)(d), 132(4), 135, 142, 143, and any other provision of the PPSA notified by an Agency to the MSP from time to time.
- (f) Where any Agency has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.

36 General

36.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

36.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

36.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

36.4 Remedies cumulative

The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

36.5 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, approved by the party or parties to be bound.

36.6 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

36.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

36.8 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation and execution of this agreement and other related documentation except for stamp duty.

36.9 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

36.10 Governing law and jurisdiction

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

36.11 Severability

If any part or provision of this agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement will continue to operate.

36.12 Further assurance

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and approved):

- (a) to bind the party and any other person intended to be bound under this agreement; and
- (b) to give effect to the intentions of the parties and the transactions contemplated by this agreement, including execution and delivery of documents and other instruments.

36.13 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

Apparel Management Service Agreement

Schedule A – Dictionary

A1 Definitions

A1.1 Definitions

Agency means TfNSW and each public transport agency notified in writing by TfNSW to the MSP from time to time.

Agency Apparel means the apparel and related items belonging to an Agency or ordered by an Agency or Agency Personnel, to be managed and distributed by the MSP.

Agency Confidential Information means all Information disclosed (including inadvertently) by any Agency or any of their Representatives in connection with this agreement, all Information disclosed by a third party which any Agency is required to keep confidential and all Information created by the MSP in the course of providing the Services or in respect of Intellectual Property Rights owned by any Agency including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of an Agency or a third party to whom an Agency owes an obligation of confidentiality;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

Agency IP means Intellectual Property Rights owned by or licensed to an Agency and made available to the MSP or the MSP Personnel for the purposes of the performance by the MSP of its obligations under this agreement.

Agency IT Systems means the information technology systems of each Agency interfacing with the MSP IT System.

Agency Materials means all Agency Apparel, software, documentation and other materials owned by or produced for any Agency and made available by or on behalf of an Agency to the MSP for the purposes of the performance by the MSP of its obligations under this agreement.

Agency Personnel means employees, officers, contractors or subcontractors of each Agency.

Agency Premises means any premises owned or occupied by an Agency used in connection with this agreement.

Agency Representative means a person notified in writing by an Agency to the MSP from time to time as an "Agency Representative"..

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST Exclusive Market Value of that consideration as reasonably determined by the party making the supply.

Apparel Supply Contract means a contract for the supply of Agency Apparel.

Approved Apparel Supplier means a supplier of Agency Apparel as engaged by an Agency or the MSP in accordance with the Statement of Work.

Approved Subcontractors means a person for whom TfNSW has given written approval, who has executed an Approved Subcontractor Deed Poll under clause 6.1(c) (Selection of Approved Subcontractors) (where applicable) and who has not been removed under clause 12.2 (Removal of MSP Personnel).

Authorised Order means an Order that has been approved by an Authorised Personnel.

Authorised Personnel means a person who is authorised by an Agency to approve Orders, as notified in writing by that Agency to the MSP from time to time.

Business Continuity Plan means the plan for the continued supply of the Services by the MSP to each Agency in the event of a Disaster Recovery Event.

Business Days means a day other than a Saturday, Sunday, public holiday in Sydney or 24 or 31 December.

Business Hours means the hours of 7.30am to 5pm inclusive on Business Days.

Change as defined in clause 15.1 (Change request).

Change of Control occurs, in respect of an entity when:

- (a) a person who did not have Control of the entity at the Commencement Date acquires Control of the entity; or
- (b) a person who did have Control of the entity at the Commencement Date ceases to have Control of the entity.

Change Notice means a notice executed by the parties setting out an agreed Change and the variations to this agreement relating to that Change.

Change Proposal means a proposal issued by the MSP detailing the variations which would be applicable to implement a Change.

Charges means the charges set out in Schedule D (Charges).

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Commencement Date means the date of this agreement, which is identified in the Contract Details as the Commencement Date.

Confidential Information in relation to each Agency means Agency Confidential Information and in relation to the MSP means the MSP Confidential Information.

Consequential Loss has the meaning given in clause 22.4 (Consequential Loss Definition).

Contract Details means the contract details set out at the front of this agreement.

Contractor Statement means the statement set out in Attachment 1.

Control of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cwlth).

Disaster Recovery Event means an event or disaster (including industrial action) outside the MSP's control, interrupting the MSP's supply of the Services as defined in the Business Continuity Plan.

Discloser as defined in clause 18.1 (Disclosure of Confidential Information).

Dispute includes any dispute, controversy, difference or claim arising out of or in connection with this agreement or the subject matter of this agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Distribution Centre means the MSP's facility used for the purposes of receiving Agency Apparel from Approved Apparel Suppliers and consolidating deliveries of Agency Apparel to Agency Premises.

Excluded Information means Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of this agreement or an obligation of confidence owed to the Discloser; or
- (b) the Recipient can prove was already known to it at the time of disclosure by the Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Recipient acquires from a source other than the Discloser where such source is entitled to disclose the Information.

Exit Plan means the plan for the orderly transition of the supply of the Services from the MSP to TfNSW or a replacement supplier in the event of expiry or termination of this agreement, as agreed between the parties in accordance with clause 27.1 (Exit Plan), or if no Exit Plan is in existence, then on terms set out in clause 27.2 (Scope of Exit Plan).

Force Majeure Event means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (e) a labour dispute other than a labour dispute that only involves the party's personnel.

Further Term means the period identified in the Contract Details as the Further Term.

General Terms means the general terms set out in clauses 1 to 36 of this agreement.

Good Industry Practice means the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced professional providing services similar to the Services and seeking to comply with its contractual and legal obligations.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), as amended from time to time.

GST Exclusive Market Value has the meaning given to it in the GST Act.

Implementation Period means the period commencing on the Commencement Date and ending on the date that is 4 months after the Commencement Date.

Implementation Services means the services set out in:

- (a) clauses 4 (Data exchange), 13 (Business continuity and disaster recovery) and 27 (Exit Plan) of this agreement; and
- (b) items B1 (Transition Arrangements), B2 (Procedures Manual), B3.1 (Specifications for Agency Apparel), B3.2 (Annual procurement plan), B7.1 (Inventory management system), B7.6 (Stock returns and exchanges), B8.1 (Online web-based ordering system), B11 (Fitting and tailoring of Agency Apparel), B14 (Customer Service), B15.1 (Security Plan) and B16.1 (Interim reporting requirements) of Schedule B (Statement of Work).

Information means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Services or this agreement;
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clause 20.2(c) (Specific representations and warranties) or 20.2(d) (Specific representations and warranties).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or

- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Initial Term means the period identified in the Contract Details as the Initial Term.

Input Tax Credit has the meaning it has in the GST Act.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

Interface Requirements means the specifications for import, retention and export of data to and from the Agency IT Systems as set out in the Statement of Work.

Key Performance Indicators means the key performance indicators set out in Schedule C (Service Levels).

Minimum Standards means the minimum standards, qualifications and other requirements for Approved Subcontractors and Approved Apparel Suppliers (such as insurance) as set out in this agreement and the Statement of Work.

Moral Rights means any moral rights including the rights described in Article 6bis of the *Berne Convention for the Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being “droit moral” or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cwlth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

MSP Confidential Information means all Information, other than Agency Confidential Information, disclosed to TfNSW by the MSP or any Representative of the MSP for or in connection with this agreement including:

- (a) information which, either orally or in writing, is designated or indicated as being the property or confidential information of the MSP;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets and information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

MSP IP means Intellectual Property Rights owned by or licensed to the MSP or the MSP Personnel for the provision of the Services to each Agency.

MSP IT System means the MSP's information technology system which interfaces with the Agency IT Systems in connection with the provision of the Services.

MSP Liability Cap means the MSP liability cap set out in the Contract Details.

MSP Personnel means employees, officers, partners, agents, Approved Subcontractors and other subcontractors (including employees of the Approved Subcontractors and other subcontractors) of the MSP.

MSP Premises means any premises used by the MSP to provide the Services, including any premises where an item of Agency Apparel is located before that item of Agency Apparel is delivered to an Agency.

MSP Representative mean the person identified in the Contract Details as the MSP Representative, as varied by notice to TfNSW from time to time.

Order means an order from an Agency or Agency Personnel for the order and/or distribution of Agency Apparel.

Ordering System means the ordering system described in the Statement of Work.

Privacy Laws means each Agency's privacy policy, as amended from time to time, the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cwlth) and any other Commonwealth or New South Wales legislation or regulations that affects the collection, storage or use of personal information after the Commencement Date.

Procedures Manual as defined in item B2.1(a) of Schedule B (Statement of Work).

Proposal means the MSP's proposal dated 15 March 2013 in response to TfNSW's request for proposals dated 11 February 2013 for the appointment of an apparel management service provider.

Receiver includes a receiver or receiver and manager.

Recipient as defined in clause 18.1 (Disclosure of Confidential Information).

Records means records and documentation relating to this agreement (including Services, Service Levels, Service Credits and/or Charges).

Related Bodies Corporate has the meaning it has in the Corporations Act.

Replacement Services means the replacement services to replace the Services.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

Security Requirement means the security requirements set out in the Statement of Work.

Service Credits means an amount calculated in accordance with Schedule C (Service Levels) in respect of the failure by the MSP to meet one or more Service Levels in accordance with that Schedule.

Service Levels means the minimum performance levels set out in Schedule C (Service Levels).

Services means the services of procuring, managing and co-ordinating the provision of Agency Apparel for each Agency including as described in the Statement of Work.

Services Commencement Date means the date following the date of completion of all Implementation Services by the MSP in accordance with clause 3 (Implementation Services) or as otherwise agreed in writing by TfNSW.

Special Measure Apparel means apparel which is:

- (a) smaller than the smallest available size for that apparel; and
- (b) larger than the largest size available for that apparel.

Specifications for each item of Agency Apparel means the functional and technical specifications for that item of Agency Apparel as set out in the Statement of Work or an Authorised Order (as applicable).

Statement of Work or **SOW** means the Statement of Work set out in Schedule B (Statement of Work).

Subcontractor means subcontractors of the MSP including Approved Subcontractors.

Tax Invoice has the meaning given to it in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of an Agency, but excluding GST.

Term means the period commencing from the Commencement Date and ending on the date that this agreement is terminated or expires.

Termination Period means the period commencing on the earlier of expiry of this agreement and the date on which notice is given to terminate this agreement and ending on the date on which TfNSW notifies the MSP that the Termination Services are complete.

Termination Services means the termination transition services to be provided by the MSP on termination as defined and set out in the Exit Plan.

TfNSW Representative means the person identified in the Contract Details as the TfNSW Representative, as varied by notice to the MSP from time to time.

Use means to load, run, execute, display, distribute, copy, modify, perform or access.

A1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variation or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to, this agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;

- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

A1.3 Headings

Headings are included for convenience only and are not to affect the interpretation of this agreement.

Apparel Management Service Agreement

Schedule B – Statement of Work

B1 Transition arrangements

- (a) The parties must before the end of the Implementation Period agree a detailed transition in plan in writing which sets out arrangements for the commencement of the Services ("**Transition In Plan**").
- (b) The Transition In Plan must include, as a minimum:
 - (i) key activities, durations, milestones and dependencies;
 - (ii) resource requirements, including MSP resources, TfNSW resources and other resources related to the supply of the Services;
 - (iii) arrangements for the development of the Procedures Manual;
 - (iv) arrangements for the integration of systems and/or implementation of interfaces required for end to end management and delivery of the Services;
 - (v) arrangements for the transfer of the Agency Materials, work in progress and other items;
 - (vi) arrangements for liaison with Agency Personnel, MSP Personnel and Approved Apparel Suppliers, including information and training sessions in relation to the delivery of the Services; and
 - (vii) a risk management plan which identifies key risks, likelihood, impact and management arrangements, including persons responsible for managing the risk and the timeframe.

B2 Procedures Manual

B2.1 Preparation of the Procedures Manual

- (a) The MSP must prepare a draft procedures manual within 20 Business Days of the Commencement Date ("**Procedures Manual**").
- (b) The Procedures Manual must establish, document and maintain standard operating procedures for all activities which the MSP is required to perform under this agreement, including:
 - (i) procurement procedures;
 - (ii) receiving and processing Orders, fulfilling Authorised Orders and delivery and recovery, where appropriate, of Agency Apparel in a timely manner;
 - (iii) detailed freight and mail procedures for the delivery of Agency Apparel, including packing and dispatching;
 - (iv) maintaining accurate inventory records, receipt of Agency Apparel, management of back orders, management of returns, management of dispatch of requested Agency Apparel;

- (v) managing, recording, reporting and invoicing; and
 - (vi) complying with the Security Requirements and the Privacy Laws,
- as required by TfNSW.
- (c) TfNSW may request reasonable changes to the draft Procedures Manual. The MSP must provide TfNSW with the final Procedures Manual incorporating any reasonable changes requested by TfNSW and approved by TfNSW within 3 months of the Commencement Date.
 - (d) The MSP must update the Procedures Manual from time to time as requested by TfNSW to ensure it reflects current Agency business processes and requirements.

B3 Specifications for Agency Apparel and procurement plan

B3.1 Specifications for Agency Apparel

- (a) The MSP must within 1 month after the Commencement Date and in conjunction with each Agency, develop a plan documenting the specifications for each item of Agency Apparel, including product quality standards ("**Quality Plan**") to be approved by the relevant Agency in writing. The Quality Plan may be varied by agreement in writing by the relevant Agency.
- (b) As part of developing the Agency Apparel specifications and the Quality Plan, the MSP may source new items of apparel suitable for use as Agency Apparel and provide samples as requested by the relevant Agency for approval by that Agency.
- (c) The ultimate decision regarding finalisation of any specifications for Agency Apparel rests with the relevant Agency.

B3.2 Annual procurement plan

- (a) The MSP must within 1 month after the Commencement Date provide each Agency with an annual procurement plan for the remainder of the calendar year detailing its proposed tendering schedule and procurement process for the supply of Agency Apparel for that calendar year ("**Procurement Plan**"). The MSP must provide each Agency with further Procurement Plans at least 3 months before the commencement of each subsequent calendar year.
- (b) The Procurement Plan must also include:
 - (i) all current arrangements including with existing Approved Apparel Suppliers;
 - (ii) the quality of Agency Apparel and the services provided by the Approved Apparel Suppliers in the current calendar year and if the items of Agency Apparel provided by the Approved Apparel Suppliers are scheduled for market testing; and
 - (iii) how the MSP will ensure that each Agency continues to receive the best value for money in the procurement of Agency Apparel.

B3.3 Procurement process

- (a) The MSP must ensure that Agency Apparel is procured in accordance with the NSW Procurement Guidelines (including the NSW Code of Practice for Procurement) and related Agency procurement frameworks from time to time. Any procurement process proposed by the MSP in its annual Procurement Plan:
 - (i) may only be undertaken with the prior written consent and approval of the relevant Agency;
 - (ii) if required by the relevant Agency, must involve Agency Personnel;
 - (iii) must be undertaken using the relevant Agency's documents or documents approved by the relevant Agency; and
 - (iv) must be in accordance with the relevant Agency's directions.
- (b) The MSP is not entitled to recover from any Agency any charge or expenses additional to the Charges for the performance of the procurement process or the preparation of the MSP's annual Procurement Plan.

B3.4 Minimum Standards for Approved Apparel Suppliers

The MSP must ensure that any Approved Apparel Supplier engaged, or to be engaged by an Agency or the MSP as an outcome of a procurement process approved by the relevant Agency:

- (a) maintains and holds current appropriate insurance coverage no less than that required by the relevant Agency;
- (b) has a current Agency licence agreement, where applicable, for the use and production of any Agency IP; and
- (c) abides by all relevant laws, regulations, codes and all applicable policies of each Agency.

B3.5 Supply of Agency Apparel by the MSP

An Agency may, at its sole discretion, allow the MSP to tender to supply selected items of Agency Apparel on whatever conditions the relevant Agency considers appropriate, including:

- (a) the relevant Agency having a member on all assessment panels and reserving the right of veto;
- (b) the MSP providing the relevant Agency with a transparent pricing structure; and
- (c) the MSP using separate entities in the tendering process and in the provision of the Services.

B4. Contracts with Approved Apparel Suppliers

B4.1 Contract management

The MSP must:

- (a) perform all necessary contract management activities to ensure that the performance of Approved Apparel Suppliers is in accordance with their respective Apparel Supply Contracts including allocating an

experienced account manager to be responsible for the day to day running and coordination of all contracted services; and

- (b) report to TfNSW in relation to the comparative performance of individual Approved Apparel Suppliers, including on the quality of the Agency Apparel supplied and delivery performance.

B4.2 Selection of Approved Apparel Suppliers

TfNSW acknowledges that the MSP may engage third party Approved Apparel Suppliers in addition to those Approved Apparel Suppliers existing before the Commencement Date. Before appointing a third party Approved Apparel Supplier, the MSP must ensure that:

- (a) it obtains the relevant Agency's written approval for that third party to become an Approved Apparel Supplier;
- (b) the third party meets the Minimum Standards; and
- (c) the third party executes an Approved Apparel Supplier Deed Poll in the form set out at Attachment 4.

B4.3 Probity in selection

The MSP must ensure that the engagement of third party Approved Apparel Suppliers is conducted:

- (a) ethically, fairly and to the highest standards of probity;
- (b) so as to maximise value for money for each Agency; and
- (c) in accordance with any requirements notified by each Agency.
- (d)

B4.4 Withdrawal of approval

An Agency may withdraw its approval of Approved Apparel Suppliers at any time, in which case the MSP must immediately cease using that Approved Apparel Supplier and propose an alternative provider to that Agency as soon as possible.

B4.5 No agency

- (a) If requested in writing by an Agency, the MSP will enter into contracts with Approved Apparel Suppliers as principal in the performance of the Services.
- (b) If the MSP has entered into an Apparel Supply Contract with an Approved Apparel Supplier:
 - (i) TfNSW or an Agency nominated by TfNSW must also be a party to the Apparel Supply Contract; or
 - (ii) the Apparel Supply Contract must contain a provision allowing the contract to be assigned or novated to TfNSW or an Agency nominated by TfNSW upon request by TfNSW for any reason without the consent of the Approved Apparel Supplier.
- (c) If item B4.5(a) applies, then the MSP:
 - (i) is not authorised, and must not represent that it has any authority to act as any Agency's agent or bind any Agency; and

- (ii) must indemnify each Agency against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that an Agency may sustain or incur as a result of a breach of item B4.5(b)(i).

B5 Distribution Centre

B5.1 Distribution Centre facilities

- (a) The MSP must provide, manage and operate a fully operational, secure, clean, dry and pest-free facility located in New South Wales ("**Distribution Centre**") for the purposes of this agreement, including receiving Agency Apparel from Approved Apparel Suppliers and consolidating deliveries of Agency Apparel to Agency locations around New South Wales during the Term.
- (b) The MSP must ensure that the Distribution Centre:
 - (i) has established and sufficient facilities and processes to receive Agency Apparel from Approved Apparel Suppliers, which may be delivered in different packing, including by skid, pallet, box or other form of packing;
 - (ii) is approved by TfNSW as an intruder resistant area including having:
 - (A) adequate and substantial locks on all access doors with an appropriate key system; and
 - (B) individual sector control in respect of the areas where Agency Apparel is located to any other alarms that may exist within a larger facility;
 - (iii) provides item serial and batch number tracking and the ability to track items of Agency Apparel through the system from the time of receipt at the Distribution Centre;
 - (iv) ensures maximised pallet space utilisation provided that no pallets are stored directly on top of each other;
 - (v) provides a secure storage area to the satisfaction of TfNSW to temporarily store Agency Apparel received from Approved Apparel Suppliers before it is delivered to Agency locations, that is kept locked and has entry restricted to MSP Personnel;
 - (vi) provides secure storage to the satisfaction of TfNSW for items designed by an Agency to be "attractive" and/or "accountable". The following apparel has been currently identified as being:
 - (A) "attractive": shoulder flashes (epaulettes); and
 - (B) "accountable": Agency badges, Agency insignia and NSW government logo and Agency logos;
 - (vii) tracks Orders at any time from the submission of the Order to the delivery at the specified Agency location; and

- (viii) is available for all Business Days between Business Hours for the purpose of picking, packing, dispatch, delivery and receipt of Agency Apparel.
- (c) TfNSW may, at its sole discretion, conduct spot audits of the Distribution Centre to ensure that appropriate levels of building security are being maintained and the MSP must grant (or ensure the grant of) access as requested by TfNSW for this purpose.
- (d) The MSP is responsible for the management and administration of all pallets and will bear all costs related to the use of pallets.
- (e) The MSP must seek the written approval of TfNSW (which must not be unreasonably withheld) prior to storing another customer's stock in the Distribution Centre, and if approved, the MSP must clearly identify and separate Agency Apparel from the other customer's stock.

B5.2 Holding of Agency Apparel by the MSP

- (a) The MSP must hold items of Agency Apparel at the Distribution Centre until the items are delivered to the specified Agency location in accordance with the Service Levels.
- (b) The MSP must account for all:
 - (i) Agency Apparel stock ordered;
 - (ii) Agency Apparel dispatched from the Distribution Centre; and
 - (iii) items of Agency Apparel returned by an Agency or Agency Personnel.
- (c) The MSP must:
 - (i) hold or have access to sufficient quantities of Agency Apparel stock (either in the Distribution Centre or at Approved Apparel Supplier locations) to ensure efficient supply of Agency Apparel to the Agencies is achieved in accordance with the Service Levels; and
 - (ii) work with Approved Apparel Suppliers (including conducting quarterly reviews of usage rates of individual Agency Apparel stock items) to agree to the maximum and minimum Agency Apparel stock levels to be maintained by the Approved Apparel Suppliers to ensure sufficient supply of Agency Apparel to the Agencies in accordance with the Service Levels.
- (d) The MSP is not entitled to recover from any Agency any charge or expenses additional to the Charges for the performance of its obligations under this clause.

B6 Replenishment and receipt of Agency Apparel

The MSP must:

- (a) monitor levels of Agency Apparel stock held by either the MSP at the Distribution Centre or by the Approved Apparel Suppliers at the Approved Apparel Supplier locations and order points in accordance with the Service Levels;

- (b) ensure that the MSP has sufficient resources (and that they are provided in a timely manner) to respond to Agency Apparel back orders;
- (c) design and implement a delivery pre-alert system for all Approved Apparel Suppliers delivering to the Distribution Centre, which provides each Agency with access and visibility to all Agency Apparel being delivered by Approved Apparel Suppliers to the Distribution Centre;
- (d) receive all deliveries of Agency Apparel, and check that the delivered consignments are complete in accordance with the relevant Authorised Order and in good condition;
- (e) advise the relevant Agency of any problems with delivered Agency Apparel including, pre-alert noncompliance, shortage of or damaged Agency Apparel, and the MSP must notify the Approved Apparel Suppliers of these problems. The MSP must not reject Agency Apparel without authorisation from the relevant Agency. If the MSP rejects Agency Apparel without authorisation from the relevant Agency, the MSP will be deemed to have accepted the Agency Apparel, and will be responsible for any related losses;
- (f) record all noncompliant deliveries of Agency Apparel; and
- (g) capture and record, accurate and timely, Agency Apparel unit pricing for the generation of inventory value reporting. The MSP must ensure that accurate and complete inventory values are reported to each Agency.

B7 Inventory management

B7.1 Inventory management system

The MSP must:

- (a) provide a secure online web-based electronic inventory management system that provides access for authorised users to monitor and review Agency Apparel codes, inventory levels and all inventory transactions in real time within 20 Business Days of the Commencement Date;
- (b) ensure that the electronic inventory management system provides as a minimum the following:
 - (i) accurate electronic recording of all issues, exchanges and returns of Agency Apparel by Agency Personnel, to the satisfaction of each Agency;
 - (ii) the ability to maintain an accurate history of all items issued and returned for an individual Agency Personnel member;
 - (iii) accurate electronic recording of Agency Apparel stock held by the MSP, including location of all stock;
 - (iv) accurate management of Approved Apparel Suppliers and accurate electronic recording of Agency Apparel stock held by the Approved Apparel Suppliers;
 - (v) accurate electronic recording of all Agency Apparel items received into and dispatched from the Distribution Centre;

- (vi) accurate electronic recording of procurement action undertaken on behalf of each Agency;
 - (vii) provision of daily Agency Apparel movement schedules in an electronic format, to the satisfaction of each Agency;
 - (viii) submission of timely and accurate monthly Approved Apparel Supplier movements (including non-compliant deliveries) and costs to each Agency; and
 - (ix) submission of timely and accurate accounts and supporting statistical information to each Agency for the purposes of meeting each Agency's reporting requirements.
- (c) provide on-going inventory management, including but not limited to monitoring, forecasting and predicting of Agency Apparel stock levels, stock obsolescence and reporting;
 - (d) implement a rolling stock cycle count program on an annual basis with the initial program to be agreed by both parties within 30 days after the Commencement Date;
 - (e) conduct stock takes of all Agency Apparel as requested by each Agency from time to time. A detailed report is to be provided to the relevant Agency 5 Business Days following the date of the stock take; and
 - (f) provide the ability to quarantine and segregate, in part or full, specific Agency Apparel as requested by each Agency.

B7.2 Inventory re-order points

- (a) The MSP is responsible for advising each Agency, electronically and within one 1 Business Day, that an Agency Apparel item equals or is less than its re-order point.
- (b) Each Agency shall provide the MSP with a list of current re-order points for each Agency Apparel item and the MSP will be responsible for agreeing with each Agency any changes to current re-order points from time to time.

B7.3 Personal protective equipment

- (a) Each Agency will provide to the MSP a report indicating the level of personal protective equipment stock held at the relevant Agency Premises monthly or as reasonably requested by the MSP from time to time as part of the MSP ensuring that there are always appropriate amounts of personal protective equipment stock held at the relevant Agency Premises.
- (b) If the level of personal protective equipment stock held at the relevant Agency Premises equals or is less than its re-order point (as agreed by the relevant Agency from time to time) then the MSP will be responsible for the delivery to the relevant Agency Premises of such amount of personal protective equipment as agreed by the relevant Agency from time to time.

B7.4 Destruction of obsolete stock

- (a) The MSP must ensure that the destruction or disposal of obsolete Agency Apparel (including Agency Apparel that has been returned and has been identified as unsuitable for reissue to Agency Personnel)

is authorised by the relevant Agency in writing and conducted appropriately, in accordance with the relevant Agency's requirements. The MSP must pay to the relevant Agency the replacement cost of any Agency Apparel destroyed or disposed of without the prior written consent of the relevant Agency;

- (b) The MSP must seek the relevant Agency's approval for the destruction or disposal of any obsolete Agency Apparel on a monthly basis, unless the relevant Agency approves otherwise.

B7.5 Stock losses

- (a) The MSP is responsible for the integrity of the Agency Apparel and accounting records for Agency Apparel held by the MSP and is accountable to each Agency for discrepancies in Agency Apparel information and data in accordance with the applicable Service Levels.
- (b) The MSP must advise each Agency as soon as possible, and within 48 hours after the event:
 - (i) if any Agency Apparel is stolen, altered, damaged, destroyed or if a stocktake reveals any stock discrepancy; and
 - (ii) of anything which may affect the Agency Apparel or the relevant Agency's rights to the Agency Apparel.
- (c) The MSP will be liable to make good all loss of or damage to Agency Apparel, whether occurring during receiving, storing, picking, packing or dispatch.
- (d) Within 5 Business Days of discovering a stock discrepancy, the MSP must thoroughly investigate the stock discrepancy to identify the cause of, and responsibility for, the discrepancy.
- (e) Following the investigations, the MSP must immediately take all corrective steps to prevent similar stock discrepancies occurring in the future.
- (f) If a stocktake shows that there is a stock discrepancy and such discrepancy is not the fault of the relevant Agency then the MSP must reimburse the relevant Agency for the cost of replacing the missing Agency Apparel.

B7.6 Stock returns and exchanges

The MSP is required to design and implement a stock return and exchange process and procedure in consultation with TfNSW within 20 Business Days of the Commencement Date.

B8 Order management

B8.1 Online web-based ordering system

The MSP must, before the end of the Implementation Period:

- (a) provide an operational online web-based ordering system for the lodgement of Orders by the Agencies and Agency Personnel for new

and replacement items of Agency Apparel. The system must allow Orders to be placed on-line via a portal on each Agency's internet and intranet sites;

- (b) set up and maintain an on-line product catalogue for Agency Apparel;
- (c) ensure that the on-line web-based ordering system and product catalogue provides as a minimum:
 - (i) the ability for each Agency and Agency Personnel to select items of Agency Apparel using an online catalogue 'shopping cart' system;
 - (ii) an electronic approval mechanism allowing any Agency Personnel member to place an Order, however, the Order must not be sent to the MSP to pick, pack and deliver the relevant Agency Apparel, until that Order has become an Authorised Order;
 - (iii) prior to an Order being approved to become an Authorised Order verification of the entitlement of Agency Personnel to Agency Apparel in strict accordance with each Agency's approved entitlement list, which may be varied from time to time by each Agency, provided that Agency Personnel may order Agency Apparel in excess of their applicable approved entitlements if that Agency Personnel submits a direct prepayment to the MSP for such excess Agency Apparel at the time of Order;
 - (iv) electronic notification to the Agency Personnel placing the Order advising of the process and progress of their Order, with the minimum notification being receipt and approval of Order to be an Authorised Order, placement of the Authorised Order with the MSP, notification of expected delivery timeframe and dispatch of the Authorised Order (including courier tracking identification and any delays);
 - (v) a system that is Secure Sockets Layer ("**SSL**") certified and secures transactions using Hyper Text Transfer Protocol ("**HTTP**") over SSL and a SSL server certificate from a certificate authority which is pre-loaded into Microsoft Internet Explorer; and
 - (vi) availability to the system at least 99% of the time during Business Hours.

B8.2 Ordering system functions

The ordering system must be:

- (a) secure;
- (b) able to provide a complete auditable record of all transactions in accordance with item B8.5 (Records);
- (c) able to generate online reports as required by each Agency;
- (d) able to accurately record details of all Orders and Authorised Orders and maintain these records to enable accurate tracking and invoicing;
- (e) able to handle cash sale order transactions;

- (f) able to generate, print and or email Order confirmation direct from the ordering system; and
- (g) flexible to allow adjustment of incorrect Orders and Authorised Orders where simple mistakes can be captured and adjusted.

B8.3 Lodgement of Orders

The MSP must:

- (a) also permit Orders to be placed via telephone, email, facsimile or in person as required (provided that a secondary approval process is also established between the MSP and each Agency to ensure that the Order is correctly authorised as an Authorised Order); and
- (b) permit lodgement of Orders via the online web-based ordering system 24/7 and all other methods during Business Hours.

B8.4 Authorised Orders

The Supply must process and effect an Authorised Order once it is placed with the MSP. The MSP must ensure that Agency Apparel is only supplied under Authorised Orders.

B8.5 Records

The MSP's records of each Authorised Order must allow accurate tracking of all Authorised Orders and will be required to include the following information:

- (a) cost centre;
- (b) name of the person placing the Authorised Order;
- (c) email address;
- (d) contact phone number;
- (e) order number;
- (f) customer reference number;
- (g) delivery address;
- (h) description of the Agency Apparel ordered, including inventory item number;
- (i) quantity ordered;
- (j) quantity shipped;
- (k) delivery date;
- (l) dispatch method; and
- (m) payment method as applicable.

B9 Issues, exchanges and returns

B9.1 Issues of Agency Apparel

The MSP must:

- (a) arrange for the issue (both to individual Agency Personnel and in bulk) of new and replacement Agency Apparel in accordance with Authorised Orders to those Agency Personnel entitled to one or more of the following:

- (i) an initial issue of Agency Apparel;
 - (ii) a later ad-hoc issue based on fair wear and tear entitlements; and
 - (iii) special purpose or extraordinary issues;
- (b) maintain an accurate electronic record of all authorisations, including but not limited to, the ordering of Agency Apparel and the issuing of Agency Apparel, as determined by each Agency;
 - (c) prior to an Order being approved to become an Authorised Order verify the entitlement of Agency Personnel to Agency Apparel in strict accordance with each Agency's approved entitlement list, which may be varied from time to time by each Agency, provided that Agency Personnel may order Agency Apparel in excess of their applicable approved entitlements if that Agency Personnel submits a direct prepayment to the MSP for such excess Agency Apparel at the time of Order; and
 - (d) ensure that no specifically branded or identifiable Agency Apparel are sold or issued to any other person, other than entitled Agency Personnel without the express written authority and approval of the relevant Agency.

B9.2 Exchanges

The MSP must:

- (a) exchange Agency Apparel items for entitled Agency Personnel. when the item being replaced has been damaged or has worn to the extent that it is unsuitable for further use, in line with Agency instructions, as issued from time to time; and
- (b) receive and record all Agency Apparel items exchanged, in line with each Agency's guidelines in the form of an apparel returns register.

B9.3 Returns and classifications

The MSP must:

- (a) classify items of Agency Apparel received from Agency Personnel as either "exchanged" or "returned";
- (b) determine the suitability of returned items of Agency Apparel for further use in accordance with each Agency's instructions from time to time. Used items involved with close body contact that may constitute a work, health or safety risk are generally not re-issued (including shirts and trousers). For items that may be re-issued, the MSP will provide a refurbishment service.
- (c) classify and separate unserviceable Agency Apparel stock for disposal. The items must be disposed of in accordance with item B7.4(a) (Destruction of obsolete stock);
- (d) in consultation with each Agency, consider options to reduce, reuse and recycle returned Agency Apparel (including in the design of garments to allow for multi-use or to allow for re-distribution to developing communities);
- (e) refer Agency Apparel returned, which in the opinion of the MSP has been subject to unfair wear or tear damage, to the relevant Agency;

- (f) assess and accept the return of Agency Apparel with manufacturing faults and replace the defective item with a new one, and then liaise with the relevant Approved Apparel Supplier in claiming all due credits or replacements for faulty items;
- (g) accept the return of an item of Agency Apparel where an incorrect size has been ordered or issued and replace with an appropriate exchange item, provided the item is returned within a reasonable time and has not been worn or used (other than for the purposes of trying the item on); and
- (h) receive and record all Agency Apparel items returned to the MSP, in line with each Agency's guidelines, in the form of an apparel returns register.

B10 Distribution

B10.1 Distribution

The MSP must:

- (a) ensure efficient and accurate picking and packing of Authorised Orders;
- (b) provide secure and appropriate packaging for the distribution of Agency Apparel to ensure that Agency Apparel is not damaged in transit;
- (c) include a delivery docket in each Authorised Order containing, as a minimum, the following information:
 - (i) order date;
 - (ii) order number
 - (iii) delivery address;
 - (iv) Agency Apparel supplied;
 - (v) quantity shipped;
 - (vi) order contact name and number; and
 - (vii) item(s) and quantity on back order.
- (d) provide comprehensive labelling of dispatched orders for Agency Apparel. Packages must be clearly labelled with the name of the recipient and the full address, including section and floor in office buildings. Where there is more than one package in a consignment, each package will be clearly marked as 1 of x etc. where x is the total number of packages in the consignment;
- (e) accurately record each consignment;
- (f) provide distribution optimisation by aggregating orders and minimising the number of envelopes or boxes used for each Authorised Order;
- (g) provide timely and cost effective recovery as necessary of Agency Apparel from each Agency and Agency Personnel;
- (h) implement procedures whereby urgent and priority deadlines can be met effectively;

- (i) provide for a communication covering note/letter to be added to the items being distributed from time to time if requested by the relevant Agency. This document is to be provided by the relevant Agency;
- (j) deliver within Business Hours on Business Days unless otherwise specifically arranged;
- (k) develop or provide a freight management system that provides the most cost effective freight mode by consignment by consolidating consignments and selecting the most economical freight service based on consignment size, service level and destination (frequency to be agreed with each Agency); and
- (l) have a procedure in place to supply transport essential personal protective equipment within 24 hours of receipt of Authorised Orders in emergency and unforeseen situations.

B10.2 Distribution methods

The MSP must, at TfNSW's request from time to time, use the mail or courier provider nominated by TfNSW in writing.

B10.3 Locations of delivery

The MSP must deliver or distribute the orders to the Agency location(s) in New South Wales specified in the Authorised Order.

B10.4 Delivery time frames

The MSP must:

- (a) subject to items B10.4(b), B10.4(c), B10.4(d) and B10.4(e) deliver all Authorised Orders as soon as practicable, but no later than 10 Business Days following receipt of the Authorised Order;
- (b) deliver all Authorised Orders of Agency Apparel that is classified as Special Measure Apparel within 4 to 6 weeks after the later of fitting and measurement of the Agency Personnel and receipt of the Authorised Order. The MSP must inform Agency Personnel in respect of any expected delay in the delivery of Special Measure Apparel.
- (a) deliver Authorised Orders in relation to bulk issues of Agency Apparel on the required delivery date;
- (b) deliver Authorised Orders in emergency situations or due to special requirements as soon as practicable upon receipt of the Authorised Order by the MSP, or on the same day of receipt of the Authorised Order, in accordance with the relevant Agency's instructions given to the MSP; and
- (c) deliver within Business Hours on Business Days for all Authorised Orders except for in emergency situations or due to special requirements when deliveries can be made outside Business Hours.

B10.5 Delivery by Approved Apparel Suppliers

The MSP must manage Approved Apparel Suppliers to achieve the delivery time frames set out in item B10.4 (Delivery time frames).

B10.6 Delivery security

- (a) Delivery is to be secure at all times - meaning that the delivery vehicle is locked while deliveries are being made, whether into a nominated

area within Agency locations or premises or when the vehicle is unattended.

- (b) A signature record is required for the delivery receipt of each Authorised Order.

B11 Fitting and tailoring of Agency Apparel

- (a) The MSP must implement tailoring and fitting services for Agency Personnel with respect to the ordering of Agency Apparel in consultation with TfNSW before the end of the Implementation Period.
- (b) The fitting and tailoring services:
 - (i) may be decentralised or outsourced or sub-contracted to a third party Approved Subcontractor;
 - (ii) must be conducted by appropriately trained persons (being employed or engaged by the MSP or the relevant third party Approved Subcontractor or other persons approved by TfNSW), who will assist Agency Personnel with the selection and fitting of Agency Apparel by measuring Agency Personnel to ensure the best possible fit from standard apparel sizes and providing a tailoring service if the standard sizes do not achieve an appropriate fit or by such other method as approved in writing by TfNSW from time to time; and
 - (iii) may be provided at either Agency locations (including but not limited to key metropolitan and regional offices) or the Distribution Centre, at the relevant Agency's discretion.
- (c) In relation to bulk issues of Agency Apparel, the relevant Agency will provide the MSP with at least 2 months' notice of the commencement of the bulk issue and at least 10 Business Days' notice of the nominated fitting date and time. On the day of the fitting and measuring, the relevant Agency Personnel will be measured accordingly and their measurements held by the MSP.
- (d) In relation to bulk issues of Agency Apparel, any necessary fitting and tailoring services must be undertaken during the specified times requested by the relevant Agency.
- (e) The MSP (or relevant third party Approved Subcontractor) must, with the exception of emergency and unforeseen situations (in which the MSP should have provisions to supply the relevant Agency personal protective equipment apparel within 24 hours of ordering), complete all minor alterations and repairs within 3 Business Days of receipt of an Authorised Order or fitting (whichever is the later). Major alterations must be completed within 5 Business Days of receipt of an Authorised Order or fitting (whichever is the later).
- (f) The minor alterations and repairs referred to in item B11(e) include:
 - (i) measure for an individual garment;
 - (ii) full measure;
 - (iii) alteration of pants - lengthen/shorten;
 - (iv) alteration of pants - take in/take out;

- (v) sewing of insignia onto apparel items;
 - (vi) removal of insignia from apparel items;
 - (vii) basic repairs (e.g. torn trouser pocket);
 - (viii) replacement of a broken zipper with a metal zipper; and
 - (ix) any other alterations or repairs agreed as being minor alterations or repairs by the MSP and TfNSW.
- (g) The major alterations and repairs referred to in item B11(e) include:
- (i) alteration of dresses - take in/shorten;
 - (ii) alteration to shirts; and
 - (iii) any other alterations or repairs agreed as being major alterations or repairs by the MSP and TfNSW.
- (h) The MSP must ensure that adequate resources are available to complete the fitting and tailoring services when they are required by each Agency.

B12 MSP IT System requirements and Interface Requirements

B12.1 MSP IT System

- (a) The MSP must ensure that the MSP IT System, including the electronic inventory system outlined at item B7 (Inventory management), the electronic online catalogue and ordering system outlined at item B8 (Order management) and entitlement management outlined at item B9 (Issues, exchanges and returns), supports and is integrated with SAP and Ariba platforms.
- (b) The MSP is not entitled to recover from any Agency any charge or expenses additional to the Charges for the performance of its obligations under this clause.

B12.2 Interface Requirements

- (a) The MSP must ensure that the MSP IT System complies with the Interface Requirements during the Term. The MSP acknowledges that it is a fundamental requirement of this agreement that the MSP IT System meets the Interface Requirements, and TfNSW has relied on representations by the MSP that the MSP IT System meets, or will be modified to meet, the Interface Requirements prior to the end of the Implementation Period.
- (b) The MSP must ensure there is no degradation in terms of quality or performance of the Agency IT Systems resulting from or in connection with interfacing with the MSP IT System. The MSP must ensure that no viruses or harmful code are introduced to any Agency IT System through the MSP IT System.
- (c) The MSP is not entitled to recover from any Agency any charge or expenses additional to the Charges for the performance of its obligations under this clause.

B13 Support and technical assistance

B13.1 Support and technical assistance

The MSP must:

- (a) as a minimum, provide the following support and technical assistance in relation to the electronic inventory system outlined at item B7 (Inventory management) and the electronic online catalogue and ordering system outlined at item B8 (Order management):
 - (i) the initial and ongoing upload of information to the systems;
 - (ii) the creation and maintenance of user accounts for existing and new Agency Personnel for the online ordering system;
 - (iii) telephone support to users of the systems during Business Hours;
 - (iv) training for Agency Personnel (initial session then on an “as required” basis);
 - (v) the initial and subsequent dissemination of user IDs and passwords to all relevant Agency Personnel; and
 - (vi) the provision of updates on any changes to the systems;
- (b) upload information provided by each Agency to the MSP IT System and the electronic online catalogue and ordering system outlined at item B8 (Order management);
- (c) provide a call centre and help desk to manage the following:
 - (i) operation of a dedicated phone line;
 - (ii) operation of a dedicated facsimile line;
 - (iii) data entry of Orders or Authorised Orders received by telephone, mail, email or facsimile;
 - (iv) Order enquires including but not limited to, Authorised Order delivery status, Authorised Order changes or amendments and delivery errors;
 - (v) urgent Orders; and
 - (vi) processing of Agency Apparel returns.
- (d) ensure that all Authorised Orders received into the call centre or help desk are processed within 1 Business Hour;
- (e) develop and execute phone enquiry scripts, in consultation with each Agency, to meet the information needs of Agency Personnel;
- (f) provide detailed call centre monthly reporting;
- (g) redirect non Agency Apparel related enquiries to the appropriate Agency representative or unit; and
- (h) operate the call centre and help desk on Business Days between 8.30am and 5pm (AEST).

B14 Customer service

- (a) The MSP must, within 3 months of the Commencement Date and in conjunction with TfNSW develop a plan documenting its customer service processes and requirements ("**Customer Service Plan**") to be approved by TfNSW in writing. The Customer Service Plan may be varied by agreement in writing by TfNSW.
- (b) The MSP must:
 - (i) acknowledge all complaints, whether received in person, by phone, by letter, by email or by fax, in writing and provide a date for the expected response, by the close of business on the day of receipt if received before 3pm on a Business Day or if received not on a Business Day or after 3pm on a Business Day then, no later than by the start of the next Business Day;
 - (ii) be courteous and respectful in all dealings;
 - (iii) return all calls by close of business on the same day if received before 3pm on a Business Day. In the instance of a message being left not on a Business Day or after 3pm on a Business Day the call must be returned at the start of the next Business Day;
 - (iv) acknowledge incoming emails either with a response action or if a complex enquiry, provide an estimated time of response by close of business on the same day as received if received before 3pm on a Business Day. In the instance of the email being received not on a Business Day or after 3pm on a Business Day the response must be returned at the start of the next Business Day;
 - (v) provide and or process information in a timely manner;
 - (vi) continuously try to improve responsiveness and Services; and
 - (vii) satisfy Authorised Orders promptly and efficiently.

B15 Security Requirements

B15.1 Security Plan

The MSP must, within 3 months of the Commencement Date and in conjunction with TfNSW develop a plan documenting its security processes and requirements ("**Security Plan**") to be approved by TfNSW in writing. The Security Plan may be varied by agreement in writing by TfNSW.

B15.2 Hardcopy information

- (a) The MSP must store all paper records, generated as a result of, or in relation to this agreement, in locked storage cabinets in the Distribution Centre when not in use.
- (b) The MSP must dispose of all paper records, generated as a result of, or in relation to this agreement, using a commercial cross-cut shredder.
- (c) If the MSP is requested to store any information that has been classified by an Agency as being higher than "Commercial In

Confidence", the relevant Agency will provide alternate storage and disposal options to the MSP.

- (d) The MSP must put in place appropriate security measures to the satisfaction of each Agency to prevent the risk of theft of Agency Apparel, including from the Distribution Centre and vehicles used for delivery.

B15.3 Information security

The MSP will be required to provide and maintain comprehensive information technology systems to protect the integrity of Agency Confidential Information and personal information contained within the MSP IT System. As a minimum, the following security measures are to be maintained:

- (a) twin password protection gateways per user, with passwords to be changed on a regular basis;
- (b) all Information in the MSP IT System, including the MSP's online catalogue systems outlined at item B8 (Order management) must have VPN encryption;
- (c) a back up system to the MSP IT System with minimum 20 day rolling back up, with back-up processes to be undertaken outside of Business Hours, with back up tapes to be secured offsite (as approved by TfNSW) and the Agency Confidential Information and personal information held within the MSP IT System to be backed up at least 2 times per day;
- (d) access to the online catalogue outlined at item B8 (Order management) will be limited by user ID and password protection. TfNSW has discretion to allow or disallow access to users at any time, without notification or justification to the MSP; and
- (e) virus protection must be used by the MSP, to the satisfaction of TfNSW and automatically updated every 24 hours.

Without limiting this obligation, the MSP must keep the Agency Confidential Information and personal information no less secure than its MSP Confidential Information and personal information.

B16 Reporting

B16.1 Interim reporting requirements

The MSP must provide to TfNSW:

- (a) weekly reports for 3 months after the Commencement Date with details of the Transition In Plan, problems arising and recommendations to address these; and
- (b) a summary report 3 months after the Commencement Date identifying how procurement, distribution, inventory and order management and call centre procedures, policies and systems should be altered to improve the efficiency of the Services.

B16.2 Ongoing reporting requirements

The MSP must provide to each Agency:

- (a) online access to a daily inventory and stock movement schedule, which is to be accessible by Agency Representatives and their nominees, for each item of Agency Apparel held by the MSP and the Approved Apparel Suppliers and include as a minimum the following:
 - (i) Agency Apparel code;
 - (ii) description;
 - (iii) unit of issue;
 - (iv) version identification;
 - (v) quantity on hand;
 - (vi) quantity on back order;
 - (vii) quantity in quarantine;
 - (viii) quantity dispatched (month to date);
 - (ix) monthly quantity dispatched - last 12 months ;
 - (x) total quantity dispatched — last 6 months;
 - (xi) average monthly quantity dispatched — last 6 months;
 - (xii) total quantity dispatched — last 12 months;
 - (xiii) average monthly quantity dispatched — last 12 months; and
 - (xiv) quantity on order with each Approved Apparel Supplier;
- (b) a weekly stock and usage report, which is to be received by each Agency no later than 12 noon on the first Business Day of every week for each item of Agency Apparel held by the MSP or Approved Apparel Suppliers and include as a minimum the following:
 - (i) Agency Apparel code;
 - (ii) description;
 - (iii) unit of issue and to whom;
 - (iv) minimum stock holding figure;
 - (v) maximum stock holding figure;
 - (vi) quantity on back order;
 - (vii) outstanding purchase order quantity; and
 - (viii) monthly usage figures for the last 12 months (by Agency or sub-group);
- (c) a monthly report, which is to be received by each Agency no later than 10 Business Days after the end of each month on the MSP's performance and include as a minimum the following:
 - (i) an executive summary and details of strategic considerations, continuous improvement, performance management and risk management;
 - (ii) details of the number of Agency and Agency Personnel Authorised Orders placed and the number of Agency Apparel

- lines received from Approved Apparel Suppliers by each Agency and Agency Personnel for the month being invoiced, and financial year to date, by month, reflected against specific Agency business units as notified by each Agency;
- (iii) the total value of Authorised Orders for the month being invoiced and financial year to date, by month, reflected against specific Agency business units as notified by each Agency;
 - (iv) the total number of stock returns and the reasons for the returns for the month being invoiced and financial year to date, by month, reflected against specific Agency business units as notified by each Agency;
 - (v) the number of fittings and measuring sessions invoiced for the month and financial year to date, by month;
 - (vi) an inventory availability report;
 - (vii) details of Approved Apparel Supplier movements and costs to each Agency;
 - (viii) ad hoc reports as required by each Agency from time to time; and
 - (ix) information relating to any key performance indicators or Service Levels.
- (d) a monthly call centre report, which is to be received by each Agency no later than 10 Business Days after the end of each month and include as a minimum the following:
- (i) calls presented;
 - (ii) calls handled;
 - (iii) average speed to answer;
 - (iv) average handle time;
 - (v) number of hold calls;
 - (vi) average on hold time;
 - (vii) average on hold per day;
 - (viii) calls abandoned;
 - (ix) average time to abandon;
 - (x) average abandoned per day;
 - (xi) reason for call; and
 - (xii) manual Order processing;
- (e) a monthly Distribution Centre activity report which is to be received by each Agency no later than 10 Business Days after the end of each month and include as a minimum the following:
- (i) number of Authorised Orders dispatched;
 - (ii) number of line items dispatched;
 - (iii) number of back ordered order lines;

- (iv) average number of orders dispatched per week;
 - (v) average number of lines dispatched per week;
 - (vi) number of line items received;
 - (vii) number of line items received — non compliant;
 - (viii) number of storage pallets;
 - (ix) number of storage shelves;
 - (x) number of storage adjustments;
 - (xi) number of stock lines;
 - (xii) number of manual stock adjustments;
 - (xiii) number of stock lines in quarantine;
 - (xiv) number of inventory write offs;
 - (xv) number of stock returns;
 - (xvi) number of Orders received online;
 - (xvii) number of Orders received other (phone, fax etc);
 - (xviii) average Authorised Order value;
 - (xix) average lines per Authorised Order; and
 - (xx) average freight cost per Authorised Order;
- (f) a suite of online web-based customer service reports which are to be prepared in consultation with each Agency and include as a minimum the following:
- (i) sales order enquiry report;
 - (ii) product back order report;
 - (iii) stock enquiry report; and
 - (iv) consignment track and trace enquiry report;
- (g) a monthly Delivery In Full On Time (DIFOT) report, which is to be received by each Agency no later than 10 Business Days after the end of each month, with content as required by each Agency;
- (h) a monthly summary report of all monies collected on behalf of each Agency to be included with the accompanying payments; and
- (i) ad hoc reports as required by each Agency from time to time.

B16.3 Slow moving inventory

The MSP must provide a bi-annual slow moving inventory report to each Agency in accordance with the timeframes required by each Agency.

B16.4 Survey and site visits

For the purposes of preparing the reports required under this Statement of Work, in addition to any Confidential Information provided by an Agency to the MSP and uploaded to the MSP IT System and the electronic online catalogue and ordering system outlined at item B8 (Order management), the MSP must also obtain information via survey (preferably electronic) or site visits to Agency locations by the MSP as agreed by each Agency from time to time.

B16.5 Report format

All reports specified in this Statement of Work must be provided in an agreed electronic format.

B17 Occupational and work health and safety

The MSP must:

- (a) implement all necessary and reasonable measures to ensure the health, safety and welfare of all persons engaged in works under this agreement and visitors to the Distribution Centre. Whenever work is performed on Agency locations the MSP must comply with the relevant Agency's safety procedures and instructions; and
 - (b) promptly report to TfNSW and the relevant Agency any accident in respect of a person engaged in work under this agreement or any incident with significant accident potential.
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B18 Quality assurance

B18.1 Quality systems

The MSP is required to:

- (a) have a Quality Management System ("QMS") in place for the management and operation of the Distribution Centre, the quality of the Agency Apparel being supplied by the Approved Apparel Suppliers, the performance of the Agency Apparel supplied by the Approved Apparel Suppliers and delivery performance of the Approved Apparel Suppliers and the MSP (such as DIFOT);
- (b) plan, establish, document and maintain a QMS which conforms with the requirements of this agreement and will provide each Agency with access to the MSP's QMS for monitoring and quality auditing;
- (c) use quality systems to achieve compliance with the requirements of this agreement;
- (d) manage the quality of the Agency Apparel being supplied by the Approved Apparel Suppliers, the performance of the Agency Apparel supplied by the Approved Apparel Suppliers and delivery performance of the Approved Apparel Suppliers and the MSP (such as DIFOT); and
- (e) document such compliance as required by each Agency.

B18.2 Risk Management

The MSP will implement appropriate procedures to identify, evaluate and manage the risks associated with the performance of the work under this agreement and individual tasks allocated to the MSP by each Agency. In addition to the risks associated with the MSP's operations, the analysis shall take into account the risks to each Agency associated with the performance or non-performance of the Services. Risk management reports shall be provided by the MSP to each Agency as requested by each Agency.

B19 Privacy Requirements

The MSP must in performing the Services comply with the *Privacy and Personal Information Protection Act 1998* (NSW), including the Information Protection Principles for the appropriate collection, retention and security, access, accuracy, use and disclosure under the Act.

B20 Performance management

- (a) The MSP must:
- (i) make the appropriate arrangements for the measurement and reporting of performance against the Service Levels and Key Performance Indicators; and
 - (ii) maintain a record and supporting documentation sufficient to meet the reasonable requests of each Agency from time to time for information concerning the MSP's performance of the Services.
- (b) Where performance of the Services exceeds or fails the Service Levels or key performance indicators, Service Credits may be applied in accordance with the agreement.
- (c) The MSP must also ensure that any required service level agreements and key performance indicators with any Approved Apparel Supplier are monitored and any performance issues notified to TfNSW and the relevant Agency.

B21 Continuous Improvement

The MSP must:

- (a) keep TfNSW informed of advances in warehousing and distribution technology, methods and techniques to ensure that improvement opportunities and best practice methods can be utilised, where appropriate; and
- (b) participate, as required, in round table planning and process improvement discussions with all Approved Apparel Suppliers involved in the end to end supply chain of Agency Apparel.

Apparel Management Service Agreement

Schedule C – Service Levels

The following Service Levels and Key Performance Indicators ("KPIs") are applicable to the Services under this agreement

No	Key Performance Indicators	MSP Responsibilities	Measure	Service Level	Continuous Improvement Goal	Service Credit
1	Invoice Management	<p>MSP must provide a monthly consolidated invoice for all Agency Apparel delivered in that calendar month, supported by a report:</p> <ol style="list-style-type: none"> 1. confirming and validating each Order from Approved Apparel Suppliers; 2. showing all delivery charges; and 3. detailing payments made for pre-paid items. <p>The report must be received by the relevant Agency no later than the 6th Business Day of each month.</p>	<p>MSP will “pass” if invoicing is:</p> <ol style="list-style-type: none"> 1. on time; and 2. accurate and complete; and 3. Approved Apparel Suppliers are paid on time. 	96%	98%	5% of management fee for the relevant quarter.
2	Supplier Performance Management	<p>MSP must provide a report on Orders “delivered in-full and on-time” (DIFOT) by Approved Apparel Suppliers. Proof-of-delivery (POD) of all Orders must be available for all deliveries. Incorrect Orders will be reissued in 2 Business Days.</p>	DIFOT	90%	95%	5% of management fee for the relevant quarter.
3	Supply Continuity	<p>MSP must:</p> <ol style="list-style-type: none"> 1. Report on backorders by Approved Apparel Suppliers; and 2. resolve any supply problems within five Business Days; and 3. provide alternative supply channels for core Agency Apparel lines. 	<ol style="list-style-type: none"> 1. Backorder value as % of total 2. Supply continuity 	90%	95%	5% of management fee for the relevant quarter.

4	Garment Quality Management	MSP must provide a report on Agency Apparel tested and accepted/rejected based on quality standards by Approved Apparel Suppliers based on volume (number of items). Items failing quality management to be replaced within 5 Business Days.	MSP will “pass” if 1. quality meets Service Level; and 2. replacements are made within 5 Business Days.	90%	95%	5% of management fee for the relevant quarter.
5	Relationship Management	The MSP must: 1. provide the following reports upon request by each Agency: (a) standard activity reports within 3 Business Days of the request; (b) ad hoc report within 24 hours of the request; and (c) all agreed reports available electronically; 2. schedule formal meetings between TfNSW and the MSP Representative quarterly; and 3. ensure that all formal meetings include industry update briefings, recommendations for the improvement of quality and service for each Agency, recommendations for the improvement of management systems, other proactive recommendations and reports on all entries into the issues management system.	MSP will “pass” if 1. Reports are: (a) on time; and (b) accurate and complete; 2. TfNSW rating (percentage) 3. MSP will “pass” if meeting include all requirements.	80%	90%	5% of management fee for the relevant quarter.
6	CS System Management	MSP must provide an IT system to record and maintain a database of all Agency Personnel, including fitting, entitlement, allocation and history, allow placement of orders online, verify receipt and consolidate to Agency Premises.	MSP will “pass” if system is available during Business Hours.	99%	100%	10% of management fee for the relevant quarter.

7	Customer Service Management	MSP must respond to all enquiries within 4 Business Hours and resolve any issues within 1 Business Day. Customer satisfaction determined by annual survey and ongoing feedback.	MSP will “pass” if there are less than three complaints a month.	98%	100%	10% of management fee for the relevant quarter.
8	DC Performance Management	Orders are placed with suppliers, checked into Distribution Centre, quality and accuracy of Order tested, consolidated and dispatched to meet the relevant Agency's DIFOT levels. E.g. In the event of poor supplier performance, the Distribution Centre timeframe is reduced.	DIFOT	90%	95%	5% of management fee for the relevant quarter.

Further KPIs may be included by TfNSW.

Attachment 1 – Contractor Statement

Found at: http://www.osr.nsw.gov.au/sites/default/files/file_manager/opt011.pdf

Attachment 2 – Insurance Policy Requirements

Types of insurances	Period of insurance	Insurance cover is to include the following	State if required
Broadform Public Liability and Product Liability	Annually for the duration of the contract plus the duration of any warranty or maintenance periods.	<ul style="list-style-type: none"> (a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; (c) lists TfNSW as an additional named insured; and (d) includes a cross liability clause as defined in clause 3 of the Definitions and Notes below. 	Required if selected in the Contract Details
Motor Vehicle Comprehensive or Third Party Property Damage	Annually for the duration of the contract.	<ul style="list-style-type: none"> (a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) covers motor vehicles owned or used by the Contractor or its subcontractors directly or indirectly engaged in performance of the Services; and (c) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;. 	Required if selected in the Contract Details
Professional Indemnity	From time contract is awarded to completion of the contract plus 6 years following completion of the contract The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the commencement date of the contract	<ul style="list-style-type: none"> (a) Is an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) a description of the risk covered by the policy; (c) one automatic restatement per period of insurance; and (d) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below. 	Required if selected in the Contract Details
Workers Compensation	Annually.	As per relevant Workers Compensation legislation.	Required if selected in the Contract Details
Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Service Provider.	Annually for the duration of the contract	<ul style="list-style-type: none"> (a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; and (c) lists the Service Provider and all subcontractors for their respective rights, interests and liabilities as named insureds. 	Required if selected in the Contract Details

Personal Accident & Illness	Minimum of 104 weeks		Required if selected in the Contract Details
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Definitions & Notes	
1	<p>Approved Insurer means</p> <p>(a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;</p> <p>(b) Lloyds Underwriters;</p> <p>(c) A Treasury Managed Fund insurance scheme with the NSW State Government; or</p> <p>(d) The Comcover insurance scheme for the Australian Federal Government.</p> <p>Note that where the insurance risk is insured by a insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).</p>
2	Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3	A Cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy
4	References in this Insurance Schedule to the "contractor" and the "contract" are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg "Service Provider" and "Agreement" or as the case may be).

Attachment 3 – Approved Subcontractor Deed Poll

To be developed between the parties and included here.

Attachment 4 – Approved Apparel Supplier Deed Poll

To be developed between the parties and included here.