

AppJourney - The Future Journey

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**PROCURE IT FRAMEWORK
VERSION 3.2**

PART 2: CUSTOMER CONTRACT

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1. Recitals

PROCURE IT FRAMEWORK

- 1.1 The New South Wales Department of Finance, Services and Innovation administers the *Procure IT Framework*.
- 1.2 The Procure IT Framework sets out the standard terms used by NSW Government buyers for the acquisition of information and communications technology related products and services. Such standard terms are set out in:
 - (a) in respect of Panel Arrangements, the relevant Part 1 - Head Agreement;
 - (b) Part 2 - the Customer Contract, including its Schedules;
 - (c) Part 3 - the Dictionary;
 - (d) Part 4 - the Modules; and
 - (e) Part 5 - the Module Order Forms.
- 1.3 The NSW Procurement Board ('the Board') is established under section 164 of the *Public Works and Procurement Act 1912* (NSW) ('PWP Act'). The Board may pursuant to section 174(1) of the PWP Act, establish a scheme under which a Government Agency accredited by the Board may procure goods and services for that Government Agency or for other Government Agencies, subject to any terms and conditions of its accreditation.
- 1.4 The Board may issue directions and policies in relation to the NSW Government's procurement system under section 175 of the PWP Act. When engaging contractors under the Procure IT Framework, Government Agencies must comply with all such directions and policies of the Board that are applicable from time to time.
- 1.5 The Contract Authority is the head of a Government Agency, which may procure goods and services for that Government Agency or for other Government Agencies consistent with any applicable policies and directions of the Board, the terms of its accreditation (if any) by the Board, and the principles of probity and fairness.
- 1.6 The relevant Contract Authority is responsible for the administration of the Head Agreement on behalf of Eligible Customers and has authority to act on behalf of these entities in this respect.
- 1.7 The *Procure IT Framework* is designed so that Products and Services can be acquired:
 - (a) as a result of a panel arrangement where an entity acts as the Contract Authority and establishes a master purchasing arrangement where one or more Contractors agree to offer certain Products and/or Services to Eligible Customers at pre-agreed Prices and on pre agreed core terms and conditions, for a defined Term (**Panel Arrangement**); or
 - (b) using an alternate procurement process that does not involve a Panel Arrangement (**Non-Panel Arrangement**).

PANEL ARRANGEMENT

- 1.8 Where the *Procure IT Framework* is used for a Panel Arrangement, the Contract Authority will undertake a procurement process and the successful Contractors will sign the Head Agreement and go onto the panel. The Head Agreement requires that all Eligible Customers

who acquire Products and Services under the Panel Arrangement acquire the Products and Services using the form of Customer Contract that is set out in the *Procure IT Framework*.

- 1.9** The Head Agreement describes the relationship between the Contract Authority and the Contractor for the administration of the Panel Arrangement, including the Products and Services that can be acquired under the Panel Arrangement, how those Products and Services can be updated during the Term, the Pricing for the Products and Services, which entities are entitled to acquire Products and Services under the Panel Arrangement, which Approved Agents can be used by the Contractor to supply the Products and Services, the Term of the Panel Arrangement, the minimum insurance requirements and any Performance Guarantee that might apply to Customer Contracts entered into under the Head Agreement, as well as the general terms and conditions applicable to the relationship.

NON-PANEL ARRANGEMENT

- 1.10** Where there is no Panel Arrangement, a Customer may acquire Products or Services from the Contractor under a Customer Contract, and the terms and conditions of the Head Agreement are not to be used.

CUSTOMER CONTRACT

- 1.11** The Customer Contract describes the relationship between the Customer and the Contractor for the supply of the Products and Services that are described in the Customer Contract. Where the Customer Contract is made under a Head Agreement:
- (a) the Products and Services that can be acquired, the Prices at which they can be sold, and the degree to which the terms and conditions can be varied are limited by the terms of the Head Agreement; and
 - (b) the Customer is entitled to the benefits of any arrangements that have been made by the Contract Authority under the Head Agreement in respect to insurance and any Performance Guarantee.

- 1.12** The Parties agree to perform their obligations in accordance with the terms and conditions of this Customer Contract.

DICTIONARY

- 1.13** The *Procure IT Framework* includes the Dictionary, which defines key terms and concepts.

2. Scope of Contract

PRODUCTS AND SERVICES

- 2.1** Where the Customer Contract is made under a Head Agreement, the Contractor must supply Products and/or Services stated in the Order Documents in accordance with the Head Agreement and Customer Contract, at the Prices, which must not exceed the amounts set out in Annexure 3 to the Head Agreement.
- 2.2** Where the Customer Contract is not made under a Head Agreement, the Contractor must supply the Products and/or Services stated in the Order Documents in accordance with the Customer Contract.

PRICING

- 2.3** The Price payable by the Customer for the Products or Services is set out in Item 11 of the General Order Form. In relation to Panel Arrangements, the amounts set out in Annexure 3 to

the relevant Head Agreement are the maximum amounts payable by a Customer for the Products or Services acquired during the Term of such Head Agreement, subject to any increase made in accordance with any price variation mechanism stated in Annexure 3 to the Head Agreement. Nothing in this clause 2.3 prevents:

- (a) the Contractor from charging a Customer for any item, service, expense or other thing which is permitted to be charged for under a Customer Contract; or
- (b) the Contractor and the Customer agreeing Prices which will apply to a Customer Contract which are lower than the amounts stated in Annexure 3 to the Head Agreement.

CONTRACT PERIOD

- 2.4** The Customer Contract commences on the Commencement Date and will expire at the end of the Contract Period stated in Item 10 of the General Order Form. The Customer may extend the Contract Period on the same terms and conditions for the period stated in Item 10 in the General Order Form, by giving the Contractor written notice at least 30 days prior to the end of the Contract Period.

NOMINEE PURCHASER

- 2.5** If an Eligible Customer requires a Nominee Purchaser to enter into a Customer Contract on its behalf, the Contractor may not refuse to enter into that Customer Contract solely on the basis that the Customer Contract will be signed by the Nominee Purchaser as agent for the Eligible Customer and will not be signed by the Eligible Customer itself, provided that the Nominee Purchaser:
 - (a) provides its current registration number as given by the Contract Authority or Eligible Customer;
 - (b) provides its nominating Eligible Customer's Australian Business Number; and
 - (c) provides the Contractor with the written authorisation from the Contract Authority or Eligible Customer that confirms the Nominee Purchaser's rights to purchase Products and/or Services as agent for the Eligible Customer.

3. Formation of Customer Contract

FORMATION

- 3.1** A Customer Contract is entered into under a Head Agreement only where the Head Agreement is cross referenced in Item 7 of the General Order Form.
- 3.2** Where the Customer Contract is entered into (and there is either a Head Agreement or the Customer is not the Contract Authority), the Contractor and the Customer:
 - (a) agree that the Contract Authority may enforce the Customer Contract as agent for the Customer, even though the Contract Authority is not a party to the Customer Contract in its own right and in such circumstances, the applicable limitations and exclusions of liability in respect of the relevant claim will be those set out in clause 18 below, rather than those set out in clause 12 of the Head Agreement; and
 - (b) may seek to include any Additional Conditions that vary any of the terms and conditions of the Customer Contract including the Protected Clauses, provided that the Customer first obtains the written approval of the Secretary, New South Wales Department of Finance, Services and Innovation in accordance with the directions and policies of the Board that are applicable from time to time.

- 3.3** A Customer Contract between the Contractor and Customer is created upon
- (a) the Parties: completing and agreeing the Order Details and any Additional Conditions; and
 - (b) signing the General Order Form.
- 3.4** The Parties must, at a minimum, include in the Order Documents details of the Parties (stated in Item 1 and Item 4 of the General Order Form), Item 7 (if the Customer Contract is placed under a Head Agreement), the relevant Modules that are to be included in Item 8, the Contract Period in Item 10, the Products and Services (stated in Item 11 of the General Order Form or in the relevant Module Order Form), the Price (or such details as are required to calculate the Price including those stated in Item 11 of the General Order Form or in the relevant Module Order Form), delivery details (including those stated in Item 12 of the General Order Form), the Contract Specifications (as stated in Item 13 of the General Order Form) and any details from the Module Order Forms that are required to describe the Products or Services.
- 3.5** The Parties may use a shortened version of the General Order Form (in hard or electronic format) which omits Items that the Parties agree are not required for the Customer Contract, provided that:
- (a) the minimum Order Details stated in clause 3.4 are included in that form, as well as any other Order Details that the Parties may agree to include;
 - (b) the structure and form of the General Order Form is consistent with Schedule 1 (even if some Items are omitted. Where Items are omitted subsequent Items that are included must retain their current Item number or heading so that the references in the Procure IT Framework remain accurate);
 - (c) the document is readily identifiable as a General Order Form that comprises part of this Customer Contract and:
 - (i) uses the heading:

“General Order Form. Schedule 1 to the Customer Contract (which is Part 2 of the *Procure IT Framework*)”
 - (ii) and includes the phrase:

“This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.”

and
 - (d) the shortened document is signed by both Parties.
- 3.6** The Parties may use an electronic form of any Order Document, provided that an electronic form of the relevant Order Document is lawful and is executed by the parties by means of electronic communication in accordance with relevant Statutory Requirements.
- 3.7** To the extent that an Item in the Order Documents has not been completed or is omitted, that Item will be deemed not applicable.
- 3.8** The Customer Contract comprises:
- (a) any Modules that are stated as forming part of the Customer Contract in Item 8 of the General Order Form and the corresponding Module Order Forms;

- (b) any Schedules that are stated as forming part of the Customer Contract in Item 9 of the General Order Form other than Schedule 1 (General Order Form), Schedule 2 (Agreement Documents), Schedule 3 (Service Level Agreement) or Schedule 12 (PIPP);
 - (c) any Additional Conditions in Schedule 1 (if applicable);
 - (d) the other provisions of Schedule 1;
 - (e) these clauses 1 to 26;
 - (f) Part 3, the Dictionary;
 - (g) any PIPP agreed by the Parties based on Schedule 12 (PIPP);
 - (h) any Service Level Agreement agreed by the Parties based on Schedule 3 (Service Level Agreement);
 - (i) all other Order Documents;
 - (j) Annexure 3 to the Head Agreement (if applicable); and
 - (k) the Agreement Documents (if any).
- 3.9** To the extent that there is any conflict between any of the documents that comprise the Customer Contract, the conflict shall be resolved by giving priority to the documents in the order in which they appear in clause 3.8 (with an item higher in the list having priority over a lower item).
- 3.10** For clarity:
- (a) the terms and conditions of use of NSWBuy or any other electronic purchasing system used by the Customer are not part of the Customer Contract; and
 - (b) if the Customer uses any document that has any terms and conditions on it as the basis of a General Order Form (including a purchase order) then any terms and conditions that are on that document (whether pre-printed, automatically generated or otherwise) but are not in the form and structure of the General Order Form, are expressly excluded from the Customer Contract. Any Additional Conditions must be inserted as Item 43 (Additional Conditions) of a General Order Form.

COMPLIANCE WITH CONSUMER LAWS

- 3.11** To the extent that the provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**) apply to Deliverables supplied under this Customer Contract, then the provisions of this Customer Contract are subject to the provisions of the CCA.
- 3.12** To the extent that there is a failure to comply with a statutory guarantee under sections 54 to 59 in Schedule 2 of the CCA in respect of Deliverables comprising of goods, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:
- (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
 - (d) the payment of the cost of having the goods repaired.

3.13 To the extent that there is a failure to comply with a statutory guarantee in respect of the supply of Deliverables comprising of services under sections 60 to 62 in Schedule 2 of the CCA, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

4. Relationship

4.1 The Contractor agrees that it will not be taken to be and must not represent that it is the employee, partner, officer and/or agent of, the Customer.

5. Deliverable Specific Issues

DELIVERY

5.1 The Contractor must deliver any Deliverables to the Site between the hours stated in Item 12 of the General Order Form or as otherwise agreed in writing.

5.2 The Contract Price is inclusive of any additional or separate delivery costs, unless otherwise stated in the Order Documents including Item 11 of the General Order Form.

5.3 The Parties must perform their obligations in accordance with any Service Level Agreement. Either Party may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to a Service Level Agreement must be implemented as a Change Request in accordance with the procedures stated in Schedule 4 – Variation Procedures.

DOCUMENTATION

5.4 The Contractor must provide the User Documentation and any Bespoke User Documentation to the Customer in either hard copy or electronic format. If the User Documentation is provided in hard copy format:

- (a) the Contractor must make available, at no additional cost to the Customer, at least one copy of the User Documentation and such related material as the Contractor usually makes available free to its other customers, upon supply of the Product or Service to the Customer, or at the time(s) stated in the PIPP; and
- (b) additional copies of the User Documentation must, if requested by the Customer, be provided by the Contractor at the Price stated in Item 15 of the General Order Form, or if the Price is not stated in the Order Documents, at the Contractor's then current commercial price.

5.5 The Contractor must ensure that any User Documentation and Bespoke User Documentation:

- (a) is of a reasonable standard in terms of its presentation, accuracy and scope;
- (b) provides an explanation of functions, capacity and operations of the relevant Product, Service or Deliverable;
- (c) in the case of User Documentation only, is the most current and up-to-date version available; and

(d) is in the English language.

- 5.6** Where the Customer identifies any Defect in the User Documentation or Bespoke User Documentation within 30 days of the date of supply of the User Documentation or Bespoke User Documentation to the Customer, the Contractor must amend the defective User Documentation or Bespoke User Documentation and must promptly supply to the Customer the amended User Documentation or Bespoke User Documentation (or the relevant part) at no additional cost to the Customer.
- 5.7** The Contractor grants the Customer a right to use the User Documentation in connection with the authorised use of the Product or Service including for training purposes. Where the User Documentation is only provided in an electronic format the Customer may print ad hoc pages of the User Documentation. The Customer must not otherwise copy or adapt (including incorporating parts of the User Documentation into other Documents) without the Contractor's prior written consent (not to be unreasonably withheld).

NORMAL USE

- 5.8** Except where expressly specified in the Order Documents or any Additional Conditions, for the purposes of the CCA, the Deliverables provided under this Customer Contract are ordinarily supplied for the use in connection with processing internal data for business applications which:
- (a) do not require very high levels of availability or completely error free use;
 - (b) are not used for a Prescribed Use;
 - (c) are not for resale.

If the Parties agree that the Deliverables can be used for any other purpose that other purpose must be set out on the Order Documents.

PRODUCT SAFETY

- 5.9** If the Contractor determines that a Deliverable requires an engineering change that is classified by the supplier or manufacturer as being mandatory in order to ensure product safety then:
- (a) the Contractor will, at its own cost, provide a 'user installable part' which the Customer must promptly install; or
 - (b) the Customer will allow the Contractor to Install the engineering change, at the Contractor's own cost.
- 5.10** The Customer agrees that:
- (a) the Contractor may maintain such information (including Personal Information) as may be required to assist the Contractor in complying with its obligations under the CCA or other law in respect of product safety, including product recall; and
 - (b) it will promptly give the Contractor Notice in Writing of any information that the Contractor may need in order for the Contractor to provide any notice relating to product safety that it may be required to provide under the CCA or other law.

SYSTEM

- 5.11** If it is stated on the General Order Form that the Products and Services procured by the Customer pursuant to this Customer Contract comprise a System:

- (a) the Contractor must in an efficient and well-coordinated manner, and in accordance with the PIPP:
 - (i) develop suitable technical and functional specification documents for the proposed System;
 - (ii) design, develop and build the System; and
 - (iii) assist the Customer with Acceptance Testing the System,
 in accordance with this Customer Contract and the relevant Modules; and
- (b) final acceptance of the System under this Customer Contract will not occur until such time as the System as a whole, including all components, passes all Acceptance Tests, including such Acceptance Tests as are designed to ensure that the System is in accordance with the Contract Specifications.

6. Delivery Management

PROJECT MANAGEMENT

- 6.1** Where the Customer Contract is made under a Head Agreement, the Customer shall have the right to appoint a representative of the Contract Authority to act as the Customer's agent for the purpose of exercising any of the Customer's rights arising out of, or in connection with, the Customer Contract.
- 6.2** The following clauses 6.3 to 6.9 apply if and to the extent stated in the Order Documents.

MANAGEMENT COMMITTEE

- 6.3** If it is stated on the General Order Form that a management committee is to be established, the Parties must agree and establish a management committee and a process for the conduct of the management committee's business by the date stated in the Order Documents.
- 6.4** The management committee must consist of the Party's project managers or officers, or such other persons as stated in the Order Documents including Item 16 of the General Order Form.
- 6.5** All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Customer Contract.
- 6.6** The management committee must:
 - (a) review and monitor progress under the Customer Contract; and
 - (b) carry out any other functions stated in Item 16 of the General Order Form.
- 6.7** Unless agreed otherwise, the members of the management committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time.
- 6.8** At least 1 Business Day prior to a management committee meeting, the Contractor's project manager must submit to the Customer's project manager a report of progress under the Customer Contract including:
 - (a) details (including dates) of Deliverables and Milestones commenced, completed or accepted;

- (b) details of any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
 - (c) a review of any:
 - (i) minutes and actions from the last meeting;
 - (ii) issues log;
 - (iii) risk management plan, which must be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed otherwise in writing;
 - (iv) details of any outstanding invoices and any payments that are about to become due;
 - (d) draft updates of relevant parts of the Contract Specifications;
 - (e) any new Change Requests or Contract Variations (if applicable); and
 - (f) details of the progress of any draft Change Requests or Contract Variations (if applicable).
- 6.9** If the Customer disagrees with the details recorded in the report, then the Customer must, within 2 Business Days of receipt of the report, make a written endorsement on the report recording its version of the details. The amended report must be provided to the Contractor within 1 Business Day of the Customer updating the report.

PERFORMANCE REVIEWS

- 6.10** If it is stated in Item 17 of the General Order Form that the Parties must conduct a service and performance review of the Contractor's performance of the Customer Contract, then the Parties must conduct such reviews at the intervals and in accordance with the other requirements, including any obligations under any Service Level Agreement, stated in the Order Documents.
- 6.11** All reviews must be undertaken by representatives of both Parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review. Where the Customer Contract is made under a Head Agreement, either Party may request the involvement of the Contract Authority in any review.

SITE SPECIFICATIONS

- 6.12** Where it is stated in Item 18 of the General Order Form that a Site Specification is required, the Contractor must inspect the Site and provide the Customer with a Site Specification for the Customer's approval.
- 6.13** The Contractor must make any amendment to the Site Specification that is reasonably required by the Customer, providing such amendments are requested prior to the delivery of the Deliverables. Where the Contractor reasonably believes that the required amendment will materially affect the Contractor's ability to perform its obligations under the Customer Contract, it will notify the Customer and the Parties will discuss in good faith whether any Change Request is required to deal with such required amendment.

IMPLEMENTATION PLANNING STUDY

- 6.14** Where it is stated in Item 19 of the General Order Form that the Contractor must provide an implementation planning study, the Contractor must complete the implementation planning study in accordance with the requirements in Item 19 of the General Order Form.
- 6.15** Any implementation planning study must meet the objectives stated in Item 19 of the General Order Form which may include:
- (a) the Contractor's assessment of the scope and complexity of the project;
 - (b) the required Deliverables;
 - (c) the resources required (including any resources to be made available by the Customer); and
 - (d) the development of a PIPP or a Service Level Agreement.
- 6.16** The Contractor must deliver the implementation planning study to the Customer by the date stated in Item 19 of the General Order Form, and unless it is stated in the Order Documents that it is to undergo Acceptance Tests in accordance with clause 10.1(b), the AAD for the implementation planning study is determined in accordance with clause 10.1(a).

PROJECT SCHEDULE

- 6.17** The Parties must perform their obligations at the times and in the manner stated in the PIPP and Item 20 of the General Order Form.

CHANGE CONTROL

- 6.18** Either Party may recommend or request a change to the PIPP or any other part of the Customer Contract. Any change to the PIPP or any other part of the Customer Contract must be implemented as a Change Request in accordance with the variation procedures stated in Schedule 4 - Variation Procedures, subject to clauses 26.1 to 26.2.

STAGED IMPLEMENTATION

- 6.19** The Parties agree to perform the Customer Contract in accordance with the Stages stated in the PIPP (if any).
- 6.20** The Customer must give written notice to the Contractor within 10 Business Days (or such longer period stated in Item 20 of the General Order Form) of the end of each Stage as to whether it wishes the Contractor to commence the following Stage.
- 6.21** The Contractor must not commence any work on a subsequent Stage until it receives written notice from the Customer to proceed with the work in that Stage. The signing of the Customer Contract is deemed to be sufficient notification to proceed with work in Stage one.
- 6.22** Nothing in the Customer Contract shall be construed as obliging the Customer to give the written notice referred to in clause 6.21 in respect of any Stage.
- 6.23** The Customer's liability to the Contractor for not proceeding to a subsequent Stage shall be limited to those costs that have been stated in the Order Documents (if any).

EXTENSION OF TIME

- 6.24** Each Party must do all it reasonably can to promptly inform the other of anything that it becomes aware of which is likely to affect the cost, quality or timing of delivery of the Deliverables, and the Parties must then investigate how to avoid or minimise any adverse effect on the Customer Contract.
- 6.25** The Customer may consent to a request for extension of time provided that the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of any delay.
- 6.26** The Contractor may be entitled to a reasonable extension in time and to claim any loss, damage or expense (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) suffered by the Contractor that arise out, of or in connection with a delay which has occurred because of:
- (a) the Customer's failure to perform its obligations in accordance with the Customer Contract;
 - (b) the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer;
 - (c) any change to access to the Customer's Site (including denial or suspension of access under clause 7.3 unless the change to access is due to an adverse finding arising out of an investigation into the conduct of the Contractor or its Personnel or a breach of clause 7.2; or
 - (d) any change to any of the Customer's secrecy or security requirements provided that the Contractor will mitigate any expenses incurred or delay caused as a result of complying with such changed requirements.
- 6.27** The Contractor must submit a Change Request to the Customer in respect of the relevant extension of time or change to any amount payable by the Customer in accordance with Schedule 4— Variation Procedures within 5 Business Days of the Contractor becoming aware of the relevant delay under clause 6.26.

LIQUIDATED DAMAGES

- 6.28** Where the Parties have agreed in Item 21 of the General Order Form that liquidated damages will be payable for the late completion of an LD Obligation, clauses 6.29 to 6.34 apply.
- 6.29** Where the Contractor has not completed an LD Obligation by the Due Date, or if the Due Date has been varied by a Change Request or otherwise in accordance with the Customer Contract, such varied Due Date, the Contractor must pay liquidated damages stated in Item 21 of the General Order Form to the Customer unless the late completion of the LD Obligation is:
- (a) caused by a Force Majeure Event;
 - (b) caused by the Customer or its Personnel;
 - (c) caused by the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
 - (d) permitted because an extension of time for completion of the LD Obligation has been granted by the Customer in accordance with the Customer Contract.
- 6.30** The Customer must promptly give the Contractor Notice in Writing setting out the grounds on which the Customer claims that liquidated damages are payable.

- 6.31** Each Party acknowledges that the liquidated damages stated in Item 21 of the General Order Form are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 6.32 as a result of the Contractor not completing the LD Obligation by the Due Date.
- 6.32** The Contractor must pay any liquidated damages that are due from the Due Date until the earlier of:
- (a) the date that the Contractor successfully completes the LD Obligation in relation to which the liquidated damages have been applied; or
 - (b) the date on which the maximum number of days for which liquidated damages are payable as stated in Item 21 of the General Order Form have elapsed (the **Longstop Date**).
- 6.33** Liquidated damages paid under clause 6.32:
- (a) are the Customer's sole and exclusive financial remedy for the loss, damage and expense that the Customer suffers during the period in which liquidated damages are payable under clause 6.32 out of or in connection with the Contractor not completing the LD Obligation by the Due Date, subject only to the Customer's rights under clause 6.34; but
 - (b) do not relieve the Contractor from any other liability or from meeting any other obligation under the Customer Contract.
- 6.34** The Customer may, at any time during the period in which liquidated damages are payable under clause 6.32, issue a Notice in Writing of a Substantial Breach in respect of the Contractor not completing the LD Obligation by the Due Date specifying a period during which the Contractor is required to remedy that Substantial Breach, such period to be the greater of:
- (a) 10 Business Days;
 - (b) the period during which liquidated damages are payable for that Substantial Breach; or
 - (c) such longer period stated in the Notice in Writing,
 - (d) and if the Contractor has not remedied that failure to complete the LD Obligation (by completing the LD Obligation) by the end of such period, the Customer may terminate the Customer Contract immediately by Notice in Writing to the Contractor.
- 6.35** The Parties agree that where the Contractor has not successfully completed the LD Obligation in relation to which the liquidated damages have been applied by the Longstop Date, the payment of liquidated damages by the Contractor under clause 6.32 is without prejudice to the Customer's right to claim damages at large in respect of loss, damage or expense that arise after the Longstop Date out of or in connection with the Contractor not completing the LD Obligation by the Longstop Date.

CUSTOMER SUPPLIED ITEMS (CSI)

- 6.36** The Customer must provide and maintain the CSI at the times and in accordance with the requirements stated in the Order Documents including Item 22 of the General Order Form.
- 6.37** The Customer must enforce any agreement with a third party under which products or services of that third party are being provided to the Contractor as CSI (**Third Party CSI**), including support and maintenance contracts, to the extent that the relevant third party's failure to provide or resolve any issues with the Third Party CSI materially impacts the Contractor's ability to perform its obligations under the relevant Customer Contract.

6.38 The Contractor must:

- (a) not use any CSI other than for the purposes of the Customer Contract without the prior written consent of the Customer;
- (b) not part with possession of any CSI unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any CSI;
- (c) take all reasonable care of all CSI including accounting for, preserving, installing or handling the CSI in accordance with the Order Documents;
- (d) not modify any CSI without the prior written consent of the Customer;
- (e) promptly inform the Customer of any loss, destruction or damage to any CSI;
- (f) comply with any reasonable instruction of the Customer for preserving, forwarding or disposal of any damaged CSI; and
- (g) pay the costs, if any, stated in Item 22 of the General Order Form, for CSI.

6.39 If the CSI is no longer required for the purposes of the Customer Contract, it must be returned to the Customer or destroyed at the Customer's request as soon as practicable, unless other arrangements are agreed.

6.40 Provided the Contractor complies with its obligations under clauses 6.38(c) to 6.38(f), the Customer must repair or replace CSI within a reasonable time of becoming aware that the CSI does not comply with the requirements stated in the Order Documents.

CUSTOMER ASSISTANCE

6.41 During the Contract Period, the Customer must:

- (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings and other materials as specified in Item 22 of the General Order Form or as otherwise agreed in writing with the Contractor; and
- (b) answer reasonable queries made by the Contractor relating to the Customer's requirements in connection with the Customer Contract.

ESCROW

6.42 If stated in Item 23 of the General Order Form, the Contractor must arrange:

- (a) for itself, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement (or such other document reasonably acceptable to the Customer) in relation to the Escrow Materials; or
- (b) for the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.

6.43 Any escrow arrangements to which the Customer becomes a Party under clause 6.42 must endure for at least the period stated in Item 23 of the General Order Form unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in the Escrow Agreement.

6.44 The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under clauses 6.42.

BUSINESS CONTINGENCY

- 6.45** If stated in Item 24 of the General Order Form that a Business Contingency Plan is required, the Contractor must, within the time stated in Item 24 of the General Order Form or as otherwise agreed in writing, prepare a Business Contingency Plan for the approval of the Customer.
- 6.46** The Business Contingency Plan must include the details stated in Item 24 of the General Order Form or as otherwise agreed in writing. The Contractor must provide the Customer with a copy of the approved Business Contingency Plan within 30 days of the Commencement Date or such other period agreed by the Parties in writing.
- 6.47** The Business Contingency Plan must be reviewed, updated and tested by the Contractor at the intervals stated in Item 24 of the General Order Form.
- 6.48** If there is an interruption to the Customer's business that is contemplated by the Business Contingency Plan the Contractor must perform the obligations in the Business Contingency Plan. The Customer must provide the Contractor with any assistance reasonably required by the Contractor to create and perform the Business Contingency Plan.

7. Access

ACCESS TO CUSTOMER'S SITE

- 7.1** Without prejudice to the Contractor's obligations under clauses 6.12 and 6.13, the Customer must prepare and maintain the Site:
 - (a) to enable the supply of the Deliverables; and
 - (b) in accordance with the Site Specification that is approved under clauses 6.12 to 6.13, or as otherwise stated in Item 18 of the General Order Form.
- 7.2** Where the Customer provides the Contractor with access to the Customer's Site, the Contractor:
 - (a) must ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security; and
 - (b) is liable for any damage to the extent that such damage is caused by the negligent act or omission of its Personnel on the Customer's Site.
- 7.3** The Customer may temporarily deny or suspend access to the Customer's Site in its discretion.

CUSTOMER DATA

- 7.4** The Contractor does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in the Customer Contract and the relevant Modules.
- 7.5** The Contractor must not transfer, take or send Customer Data which is a State Record outside the jurisdiction of New South Wales, Australia, or transfer the possession of the Customer Data, without the Customer's prior written consent or as specified in Item 25A of the General Order Form.

- 7.6** If the Customer provides the Contractor with consent under clause 7.5, the Contractor must comply with any conditions imposed by the Customer in relation to the Customer Data the subject of the consent.
- 7.7** The Contractor must retain only the Customer Data that the Customer has agreed the Contractor may retain and must only retain that Customer Data for the period of time and in the volumes notified by the Customer from time to time, after which date the Contractor must destroy the Customer Data or return it to the Customer, at the Customer's election.
- 7.8** Where the Customer has agreed in writing that Customer Data may be used for testing purposes, the Contractor must not use any Customer Data for testing purposes unless that Customer Data has first been masked or de-identified in a manner approved by the Customer.
- 7.9** If stated in a Module Order Form, the Contractor must take and maintain back ups of Customer Data that is loaded into a Deliverable so that there is no loss of Customer Data in the event that any failure of any Deliverable causes damage to, or loss of, any Customer Data.

SECURITY

- 7.10** The Contractor must:
- (a) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised access, use, destruction, loss or alteration of Customer Data and the Customer's other Confidential Information; and
 - (b) notify and keep the Customer notified at all times of the Contractor's current safety and security procedures and safeguards in respect of Customer Data and keep the Customer notified of any amendments to such procedures and safeguards that are made from time to time.
- 7.11** Without prejudice to clause 7.10, the Contractor must comply, and must ensure that its Personnel comply, with the secrecy and security requirements of the Customer as stated in Item 25 of the General Order Form, or of which the Customer subsequently provides the Contractor by written notice.
- 7.12** Unless approved by the Customer's Chief Information Officer and expressly agreed in the General Order Form, if the Contractor becomes aware of an actual, alleged or suspected breach of the secrecy and security requirements referred to in clause 7.10 or 7.11 (**Security Issue**), it must:
- (a) immediately notify the Customer of the Security Issue;
 - (b) within 48 hours from the notification in clause 7.12(a) conduct an investigation into the Security Issue and notify the Customer of the Contractor's findings in respect of whether a secrecy or security breach has occurred, the nature of the breach, its consequences and plan to remedy; and
 - (c) if a secrecy or security breach has occurred, within 24 hours from the conclusion of the investigation in clause 7.12(b) remedy the security breach and notify the Customer of the remedy.

8. Personnel

PERSONNEL - GENERAL

- 8.1** Neither Party may, without the prior written consent of the other Party, engage, employ or induce or cause a third party to induce the other Party's Personnel engaged in the

performance of the Customer Contract to enter into a contract for service or a contract of employment with it.

- 8.2** The restriction in clause 8.1 shall apply during the Contract Period and for a period of six months after the end of the Contract Period.
- 8.3** A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 8.1.
- 8.4** The Parties agree that the restrictions in clauses 8.1 to 8.3 are necessary to protect the legitimate interests of each Party.
- 8.5** The Customer must make available its Personnel to work with the Contractor as stated in the Order Documents including Item 26 of the General Order Form. The Parties will identify such Personnel and their roles in the Order Documents.
- 8.6** The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Contractor have the requisite authority, qualifications, competencies, skills and experience to perform their tasks.
- 8.7** The Contractor must ensure a safe system of work for any of the Customer's Personnel who the Customer makes available to perform work under the control and direction of the Contractor at the Contractor's premises.

SPECIFIED PERSONNEL

- 8.8** The identity and roles of any Specified Personnel must be stated in Item 27 of the General Order Form.
- 8.9** If Specified Personnel are unable or not suitable in the reasonable opinion of the Customer to undertake the work assigned to them the Contractor must provide replacement Personnel acceptable (on reasonable grounds) to the Customer at no additional charge as soon as is practicable.

APPROVED AGENTS AND SUBCONTRACTORS

- 8.10** The Contractor may supply Deliverables to the Customer through Approved Agents.
- 8.11** If a Customer Contract is entered into between the Customer and an Approved Agent, the Contractor is deemed to have entered into a Customer Contract with the Customer.
- 8.12** The Contractor must ensure that its Approved Agents supply the Deliverables only in accordance with the terms of the Customer Contract under which the Approved Agent is to supply the Deliverables.
- 8.13** If requested in writing by the Customer, the Contractor must arrange for its Approved Agents to execute a Deed Poll substantially in the form of Schedule 6 – Deed Poll.
- 8.14** The Contractor must not subcontract the performance or supply of any Services under the Customer Contract without obtaining the prior written consent of the Customer which will not be unreasonably withheld or delayed and which may be given on such conditions as the Customer thinks fit.
- 8.15** Where the Customer believes that any Subcontractor is in breach of its obligations to the Contractor, or its performance of obligations or services is unsatisfactory, so that the Contractor is likely to be in breach of the Customer Contract as a result, the Customer may:

- (a) provide Notice in Writing to the Contractor setting out the details of its concerns;
- (b) require the Contractor to meet with the Customer within 3 Business Days of the Contractor's receipt of the Notice in Writing to discuss the concerns; and
- (c) if, following the discussions with the Contractor, the Customer is satisfied that the Contractor will be in breach of the Customer Contract as a result of the performance of the Subcontractor, the Customer may give Notice in Writing that it is withdrawing its consent to allow the Subcontractor to continue to work in connection with the Customer Contract and require the Contractor to procure that the Subcontractor promptly ceases performing any work in connection with the Customer Contract subject to any contrary requirements of the Customer in respect of effecting an orderly transition notified to the Contractor, and in such circumstances, the Contractor agrees that the Customer will have no liability whatsoever to the Contractor for any loss, damage or expense suffered by the Contractor arising out of any termination of, or the continuation of, the relevant subcontract.

8.16 The Contractor:

- (a) must ensure that each Subcontractor is aware of all the terms and conditions of the Customer Contract that are relevant to the Subcontractor's performance of its work;
- (b) is not relieved of its liabilities and obligations arising out of, or in connection with, a Customer Contract by subcontracting any work; and
- (c) must ensure that the Subcontractor ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 8.15(c).

8.17 If stated in Item 28 of the General Order Form, the Contractor must obtain from the Subcontractor a signed statutory declaration substantially in the form of Schedule 7 – Statutory Declaration – Subcontractor.

9. General Warranties

CONTRACTOR WARRANTIES

9.1 The Contractor warrants to the Customer that:

- (a) as at the Commencement Date, the Contractor is properly constituted and has the right and authority to enter into the Customer Contract;
- (b) to the best of its knowledge and belief there is no Conflict of Interest of the Contractor or its Personnel as at the Commencement Date, and during the Contract Period the Contractor will use its reasonable efforts not to permit a Conflict of Interest of the Contractor or its Personnel to arise in the performance of its obligations;
- (c) the information provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel, was to the best of the Contractor's knowledge and belief correct when it was provided to the Customer;
- (d) as at the Commencement Date, to the best of its knowledge and belief the Contractor has all the necessary licences, approvals and consents necessary to perform its obligations under the Customer Contract;
- (e) it will not maliciously or negligently introduce any Virus into the Customer's systems during the Contract Period;

- (f) that to the best of its knowledge and belief, the Contractor has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Customer the rights to use and/or own (if applicable) the Deliverables in accordance with the Customer Contract;
- (g) it will perform its obligations in accordance with:
 - (i) the Statutory Requirements,
 - (ii) any other laws that are stated in Item 30 of the General Order Form;
 - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iv) the codes, policies, guidelines and standards listed in Item 8 of the Head Agreement Details and Item 30 of the General Order Form;
- (h) it will maintain the quality standard accreditation stated in Item 29 of the General Order Form during the Contract Period; and
- (i) it is responsible for the acts and omissions of its Personnel as if they were its own acts and omissions.

9.2 All licences, approvals and consents obtained by the Contractor in relation to the Customer Contract must be obtained at the Contractor's cost.

9.3 If stated in the General Order Form that the Products and Services procured by the Customer pursuant to this Customer Contract comprise a System:

- (a) subject to clauses 3.11 to 3.13 (inclusive), any qualifications to the warranties provided by the Contractor under the Modules in respect of the Products and Services comprising the System are excluded; and
- (b) the Contractor warrants to the Customer that to the best of its knowledge and belief:
 - (i) the System will comply with the Contract Specifications and the Customer Contract;
 - (ii) the System will be properly installed in a professional and competent manner;
 - (iii) each Deliverable comprising the System will be compatible, interoperable and integrate properly with each other Deliverable comprising the System; and
 - (iv) the System will be compatible, interoperable and integrate properly with the Designated Environment.

CUSTOMER WARRANTIES

9.4 The Customer warrants to the Contractor that:

- (a) it has complied with all laws and policies, including procurement policies in awarding the Customer Contract to the Contractor;
- (b) it will provide the Contractor and its Personnel with a safe place to work;
- (c) it will supply any CSI in accordance with the requirements stated in the Order Documents;

- (d) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions;
- (e) it will not maliciously or negligently introduce any Virus into the Contractor's systems during the Contract Period;
- (f) that to the best of its knowledge and belief, the Customer has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Contractor and its Personnel the rights to use any CSI for the purpose of performing its obligations under the Customer Contract;
- (g) where there is more than one Eligible Customer being represented by the Customer, the Customer acts with full authority and as the sole representative of all the Eligible Customers; and
- (h) it will perform its obligations in accordance with:
 - (i) the Statutory Requirements,
 - (ii) any other laws that are stated in the Order Documents including Item 31 of the General Order Form;
 - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iv) the codes, policies, guidelines and standards listed in the Order Documents including Item 31 of the General Order Form.

MUTUAL WARRANTIES

9.5 Each Party warrants to the other Party that during the Contract Period it will:

- (a) co-operate with the other Party and its respective Personnel to ensure timely progress and fulfilment of the Customer Contract, provided that nothing in this clause 9.5 requires the disclosure of a Party's Confidential Information or granting of any Intellectual Property Rights;
- (b) act reasonably and in good faith with respect to matters that arise out of, or in connection with, the Customer Contract;
- (c) work together in a collaborative manner;
- (d) to the extent that is reasonably possible, perform its obligations so as to avoid hindering the performance of the other Party;
- (e) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other Party on a regular basis to ensure the other Party is fully informed of the progress of work required under the Customer Contract; and
- (f) perform its obligations and responsibilities by the dates stated in the Customer Contract.

10. Acceptance

ACCEPTANCE

10.1 The Actual Acceptance Date (AAD) for a Deliverable occurs:

- (a) unless it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Testing, 2 Business Days or such other period that is stated in Item 32 of the General Order Form following the delivery of the Deliverable as required in the Order Documents; or
- (b) where it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, on the sooner of:
 - (i) the date the Customer issues a certificate of acceptance; or
 - (ii) on the date the Customer issues a notice that it conditionally accepts the Deliverable in accordance with clauses 10.10(b) or 10.12(c); or
 - (iii) on the last day of the Acceptance Test Notification Period where acceptance is deemed to have occurred in accordance with clause 10.13.

ACCEPTANCE TESTING

- 10.2** Where it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, Acceptance Tests must be conducted in relation to the Deliverable and the following provisions in clauses 10.3 to 10.16 will apply.

CONDUCTING ACCEPTANCE TESTS

- 10.3** Acceptance Testing must be completed in accordance with the requirements of the Order Documents including Item 32 of the General Order Form, or if the details of the Acceptance Tests are not stated in the Order Documents, then at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree) the Parties must agree:
- (a) the identification of the Deliverables or part of the Deliverable to be tested;
 - (b) the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests;
 - (c) which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use;
 - (d) the methodology and process for conducting the Acceptance Tests;
 - (e) the scheduling of Acceptance Tests, including the Acceptance Test Period and the Acceptance Test Notification Period;
 - (f) the Acceptance Criteria. The Acceptance Criteria should only test whether the Deliverable meets the Contract Specifications and other requirements of the Customer Contract and should not include any other criteria unless the Parties otherwise agree in writing; and
 - (g) the Acceptance Test Data. The Customer is responsible for ensuring that the Acceptance Test Data is representative of the data that will be used by the Deliverable in the Customer's business or production environment.
 - (h) Where the details of the Acceptance Tests are not stated in the Order Documents, the Contractor shall, not less than 60 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree), notify the Customer that details of the Acceptance Tests (including those in (a) to (g) above have not yet been agreed and must be agreed at least 20 Business Days before the relevant Deliverable is

due to be delivered (or such other period as the Parties may agree). Any failure of the Parties to agree any matter relating to the Acceptance Tests will be dealt with in accordance with clause 24 below, and the 20 Business Days requirement referred to above will not apply.

10.4 To the extent that:

- (a) Acceptance Test Data is required for the Contractor to complete the Acceptance Tests; and
- (b) the provision of that Acceptance Test Data is specified as the Customer's responsibility in the Order Documents or the documents setting out the Acceptance Tests,

the Customer must provide that Acceptance Test Data to the Contractor:

- (c) at the times specified in the Order Documents or the documents that set out the Acceptance Tests; or
- (d) if no times are specified in those documents, at least 14 Business Days prior to the date on which the Acceptance Test Period for the applicable Acceptance Tests commences.

10.5 Where the Contractor is conducting the Acceptance Tests, the Customer's representative must be available during Business Hours on each day during the Acceptance Test Period to give any assistance and/or information reasonably requested by the Contractor.

10.6 Each Party must provide all reasonable cooperation and assistance to enable the performance of any Acceptance Tests.

10.7 The Parties are entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Tests.

10.8 The Party conducting the Acceptance Tests must provide the other Party within the Acceptance Test Notification Period a written test notification specifying:

- (a) a written summary of the Acceptance Tests;
- (b) the results achieved from those Acceptance Tests; and
- (c) a Defects List (if there are any Defects).

ACCEPTANCE TEST OUTCOMES

10.9 Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable meets the Contract Specifications and other requirements under the Customer Contract, the Customer must issue a certificate of acceptance to the Contractor within the Acceptance Test Notification Period.

10.10 Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable does not meet the Contract Specifications and other requirements under the Customer Contract then, if the Defects are only Minor the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:

- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
- (b) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer; or

- (c) accepts the Deliverable subject to an agreed reduction in the Contract Price.

10.11 Where the Customer conditionally accepts the Deliverable in accordance with clause 10.10(b) then:

- (a) the AAD occurs on the date that the Customer gives written notice that it conditionally accepts the Deliverable; and
- (b) the Customer may use the Deliverable in a business or production environment from the AAD.

10.12 Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable fails to meet the Contract Specifications and other requirements under the Customer Contract because the Defects are more than Minor Defects, then the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:

- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
- (b) requires that the Contractor remedy the Defects on the Defects List, in which case the Contractor must remedy the Defects on the Defects List at its own expense within a reasonable period of time, and re-submit the Deliverable to further Acceptance Testing using the process in clauses 10.2 to 10.16 (except that the Acceptance Testing is restricted to testing the items that were on the Defects List and any necessary regression testing), at the Contractor's expense;
- (c) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer;
- (d) accepts the Deliverable subject to an agreed reduction in the Contract Price; or
- (e) subject to the Customer having provided the Contractor with one opportunity to re-submit the Deliverable for further Acceptance Testing, the Customer may, without limiting any other remedy, reject the Deliverable and require the removal of the Deliverable and any materials associated with the rejected Deliverable and require the restoration of anything affected by the Deliverable to its pre Customer Contract state, at the Contractor's expense.

10.13 The Deliverables are deemed accepted if:

- (a) the Customer does not notify the Contractor within the Acceptance Test Notification Period that the Deliverable is rejected or conditionally accepted;
- (b) where the Customer is to perform the Acceptance Tests, the Customer fails to perform any Acceptance Test within the Acceptance Test Period for any reason, except for any delay resulting from any action of the Contractor unless otherwise agreed;
- (c) the Customer gives written notice that it waives the requirement for the Deliverable to pass the Acceptance Tests;
- (d) the Parties agree that the Deliverable is accepted based on an agreement to a reduction in the Contract Price; or
- (e) the Customer uses the Deliverable for its business purposes and/or in a production environment without the prior written consent of the Contractor.

- 10.14** Where the Acceptance Test relates to a Deliverable that is a Document, it is not a failure to provide the Document in accordance with the Contract Specifications and the other requirements of the Customer Contract where the Customer requests a change to:
- (a) any opinion expressed in the Document, provided that the opinion expressed in the Document is the professional opinion held by the Contractor;
 - (b) the style, formatting or layout of the Document, unless the style, formatting or layout is part of the Contract Specifications; or
 - (c) semantics.
- 10.15** The Warranty Period (if any) of a Deliverable commences on the AAD of that Deliverable.
- 10.16** In the event of power failure, air-conditioning failure or other cause outside the control of the Contractor:
- (a) the Customer must approve an extension of the Acceptance Test Period to accommodate any delays caused directly as a result of those circumstances; and
 - (b) the Contractor must ensure that the Deliverable is ready to resume or recommence Acceptance Tests when conditions are again satisfactory and stable.

11. Payment and Invoicing

PAYMENT

- 11.1** In consideration for the Contractor providing a Deliverable in accordance with the Customer Contract, the Customer must pay the Contractor the Contract Price in the amounts and at the times stated in the Order Documents (including the PIPP) and/or Item 14 of the General Order Form. If the time for payment is not stated in the Order Documents and/or Item 14 of the General Order Form, then the Contract Price is due:
- (a) on AAD for Products;
 - (b) monthly in arrears for Recurring Services, other than Services provided under Modules 2 and 5;
 - (c) annually in advance for Services provided under Modules 2 and/or 5.
- 11.2** The Prices are fixed for the Contract Period, unless otherwise stated in the Order Documents including Item 14 of the General Order Form.
- 11.3** A Customer may pay any amount due under the Customer Contract by credit/debit card or electronic facility stated in Item 33 of the General Order Form. The Contractor may only charge a fee for payment by credit/debit card where the fee is stated in Item 33 of the General Order Form.
- 11.4** Without prejudice to the Customer's other rights and remedies, if the Contractor refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Customer Contract, the Customer may withhold the payment associated with that failure until the Contractor performs the relevant obligation in accordance with the Customer Contract.
- 11.5** The Customer may retain a proportion of the payment for any Milestones in the amount and for the period stated in the PIPP for the due and proper performance and completion of the Contractor's delivery obligations under the Customer Contract incurred prior to the end of the Warranty Period or a period otherwise stated in the PIPP.

- 11.6** The Customer must upon the completion of the Contractor's delivery obligations in accordance with the Customer Contract (incurred prior to the end of the Warranty Period or a period otherwise nominated in the PIPP) pay to the Contractor any amount retained under clause 11.5.

INVOICING

- 11.7** The Parties agree that, subject to clauses 11.8 to 11.11, the Customer must pay the Contractor for the Deliverables within 30 days (or such other period agreed in the Order Documents including Item 14 and Item 20 of the General Order Form) of receipt of a Correctly Rendered Invoice. For the avoidance of doubt, no amount is payable by the Customer under a Customer Contract until a Correctly Rendered Invoice is received.
- 11.8** The Contractor must provide any further details in regard to an invoice that may be reasonably requested by the Customer.
- 11.9** The Contractor must send any invoices for any amount due to the person at the address stated in Item 14 of the General Order Form.
- 11.10** The making of a payment is not an acknowledgment that the Deliverables have been supplied or accepted in accordance with the Customer Contract.
- 11.11** If the Customer disputes an invoiced amount the Customer must:
- (a) provide the Contractor with written notice of the dispute, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and
 - (b) pay the undisputed portion of the invoice by the date that payment must be made under the Customer Contract.

12. Taxes

- 12.1** Subject to clauses 12.2 and 12.3, the Contractor is liable for all Taxes imposed or levied in connection with the Contractor's performance of its obligations under the Customer Contract.
- 12.2** The Customer must pay any GST that is payable in respect of any Taxable Supply made under the Customer Contract in addition to the amount payable (exclusive of GST) for the Taxable Supply. GST is payable at the same time as the amount payable for the Taxable Supply to which it relates.
- 12.3** If there is any abolition or reduction, increase or introduction of any Tax, the Price that is payable for the Deliverable, or any other cost or expense that is payable under the Customer Contract must be varied so that the Contractor's net dollar margin for the Deliverable, cost or expense remains the same.
- 12.4** Any reference in the Customer Contract to a cost or expense to be reimbursed by one Party to another Party includes any GST payable in connection with a Taxable Supply to which that cost or expense relates, less the amount of any input tax credit that the Party requiring the reimbursement is entitled to claim.

13. Intellectual Property Rights

OWNERSHIP

- 13.1** All Intellectual Property Rights in:

- (a) any Existing Material remain vested in the person that owns the Intellectual Property Rights at the Commencement Date (**Owner**); and
- (b) any adaptation, translation or derivative of that Existing Material, vests in, or, is hereby transferred or assigned to the Owner, immediately upon creation.

CONTRACTOR OWNED NEW MATERIAL

- 13.2** The provisions of clauses 13.3 to 13.5 apply to New Material, unless clause 13.11 applies.
- 13.3** All Intellectual Property Rights in any New Material vest in, or, are hereby transferred or assigned to, the Contractor, immediately upon creation.
- 13.4** On the AAD of a Deliverable that incorporates the relevant New Material, the Contractor grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable licence to use, copy, adapt, translate, reproduce and in any way exploit that New Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated, subject to the restrictions set out in clause 13.5.
- 13.5** The licence to New Material in clause 13.4:
- (a) does not permit the Customer to disclose the New Material to any other person, except as stated in clauses 13.5(c) to (e);
 - (b) does not permit the Customer to manufacture, sell, license, transfer, commercialise or otherwise exploit any of the New Material or any Existing Material except as stated in clauses 13.5(c) to (e);
 - (c) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge to any "Public Service agency" or other "government sector agency" (as defined in the *Government Sector Employment Act 2013* (NSW)), any NSW Government agency or statutory body representing the Crown (as referenced in section 13A of the *Interpretation Act 1987* (NSW)), any other public authority that is constituted by or under an Act of the State of New South Wales or that exercises public functions, and any "public health organisation" (as defined in the *Health Services Act 1997* (NSW));
 - (d) permits the Customer's subcontractors to access the New Material, without additional charge, for the internal purposes of the Customer provided that, unless otherwise required by the Contractor, the Customer's subcontractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract; and
 - (e) permits the Customer to sublicense any of the rights in clause 13.4, without additional charge, to a contractor that is providing outsource services to the Customer that include the operation of the New Material, provided that:
 - (i) the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; and
 - (ii) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract.

EXISTING MATERIAL

- 13.6** On the AAD of a Deliverable that incorporates the Contractor's Existing Material, the Contractor grants the Customer a non-exclusive licence:
- (a) if that Existing Material is Licensed Software; to that Existing Material on the terms and conditions of the licence of that Licensed Software under the relevant Module;
 - (b) if that Existing Material is an adaptation, translation or derivative of Licensed Software; to that Existing Material on the same terms and conditions as the licence for the Licensed Software stated in clause 13.7(a);
 - (c) if that Existing Material is a tool, object library or similar routine that is not included in the Existing Materials stated in clauses 13.7(a) or 13.7(b); to use, reproduce and adapt that Existing Material for the Customer's own internal use in connection with, or for the operation, modification, support and/or use of, that Deliverable;
 - (d) if that Existing Material is a Document Deliverable and any adaptation, translation or derivative of that Existing Material; to use that Existing Material for the Customer's internal use; and
 - (e) if that Existing Material is an Online Service, the right to use and access that Existing Material on the terms and conditions under the relevant Module.
- 13.7** On the AAD of a Deliverable that incorporates Existing Material that is owned by a third party, including third party software, the Customer is granted a non-exclusive licence to that third party Existing Material to:
- (a) use, reproduce and adapt that third party Existing Material on the terms and conditions, and for the fees, stated in Item 34 of the General Order Form; or
 - (b) if no terms and conditions or fees are stated in Item 34 of the General Order Form; to use, reproduce and adapt that third party Existing Material for the Customer's own internal use in connection with, or for the operation, modification, support and/or use of, that Deliverable.
- 13.8** Where the Contractor uses a methodology in providing any Deliverable, the Contractor grants the Customer a non-exclusive licence to use that methodology during the Contract Period solely for the purposes of receiving the benefit of the Services under the Customer Contract or assisting the Contractor to perform its obligations under the Customer Contract.
- 13.9** Unless expressly agreed otherwise in the General Order Form, the licenses granted under clauses 13.6(c), 13.6(d), 13.7 and 13.8 are perpetual and irrevocable to the extent required for the Customer to receive the benefit of the Products and the Services in accordance with the terms and conditions of the Customer Contract.
- 13.10** The Contractor may charge for any licence to use any of its Existing Material, such fees to be stated in Item 34 of the General Order Form.

CUSTOMER OWNED NEW MATERIAL

- 13.11** If it is stated on the General Order Form that this clause applies to some or all of the New Materials and subject to clauses 13.13 to 13.15, upon the AAD of the relevant Deliverable that incorporates the New Material:
- (a) any Intellectual Property Rights in the New Material vest in, or are hereby transferred or assigned by the Contractor to, the Customer; and

- (b) the Customer may, in its sole discretion and only if stated in the General Order Form, grant the Contractor a :
 - (i) non-exclusive, perpetual irrevocable, royalty free, transferable licence in respect of the Intellectual Property Rights in the New Material to use, copy, adapt, translate, manufacture and in any other way exploit the Intellectual Property Rights in the New Material; or
 - (ii) licence in respect of the Intellectual Property Rights in the New Material on such terms as are specified in the General Order Form.

CUSTOMER MATERIAL

- 13.12** The Customer grants the Contractor a non-exclusive, non-transferable licence for the Contract Period for the Contractor and its Personnel to use the Customer's Materials to the extent necessary for the Contractor to perform its obligations under the Customer Contract.

KNOW HOW ETC

- 13.13** Subject to the restrictions on the disclosure of Confidential Information:
- (a) the Contractor will retain all right, title and interest in and to all know-how, methodologies, processes, technologies, algorithms, development tools or forms, templates or output used in performing its obligations under the Customer Contract which are based on trade secrets or proprietary information of the Contractor; and
 - (b) the Contractor will be free to use the ideas, concepts, methodologies, processes and know-how that are used, developed or created in the course of performing the obligations under the Customer Contract and may be retained by the Contractor's Personnel in intangible form.

OPEN SOURCE LICENCE

- 13.14** The Contractor must not, without the prior written consent of the Customer:
- (a) develop or enhance any Deliverable using Open Source Software; or
 - (b) insert any Open Source Software into any Deliverable.
- 13.15** Where the Customer provides its consent in relation to the use of any Open Source Software under clause 13.14(a) the Contractor will ensure that the use of that Open Source Software will not:
- (a) result in an obligation to disclose, license or otherwise make available any part of the Customer's environment, data or Confidential Information to any third party; or
 - (b) diminish the Contractor's obligations under this Customer Contract.

14. Confidentiality

- 14.1** Except to the extent necessary to comply with any Statutory Requirement or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with the Customer Contract, unless the other Party gives its prior written consent.
- 14.2** Each Party may disclose the Confidential Information of the other Party:

- (a) to the Contract Authority;
- (b) Secretary, New South Wales Department of Finance, Services and Innovation and to that Department's Personnel;
- (c) to its Personnel where the disclosure is essential to enable them to carry out their duties in connection with the Customer Contract or any Head Agreement;
- (d) to its Personnel, Related Companies and their directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the Party's performance under, the Customer Contract or any Head Agreement in circumstances where such persons have a need to know (and only to the extent that each has a need to know and has been directed and agrees to keep confidential the Confidential Information on terms not inconsistent with this Customer Contract); or
- (e) if the receiving Party is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.

14.3 Each Party must ensure that any Confidential Information of the other Party is used solely for the purposes permitted under clause 14.2.

14.4 The Customer may at any time require the Contractor to arrange for its Subcontractors to execute without delay a Deed of Confidentiality between the Customer and the Subcontractor substantially in the form of Schedule 8 – Deed of Confidentiality.

15. Privacy

15.1 The Contractor must when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under this Customer Contract:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with the Customer Contract only for the purposes of performing its obligations under this Customer Contract;
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (c) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Customer, would be a breach of any Privacy Laws;
- (d) not disclose Personal Information to any other person without the prior written consent of the Customer or as expressly required by Statutory Requirements;
- (e) notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 15.1, whether by the Contractor, its Approved Agents or their Personnel, and comply with any reasonable direction from the Customer with respect to remedying that breach;
- (f) notify any individual that makes a complaint to the Contractor regarding the Contractor's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (g) comply with all reasonable directions of the Customer in relation to the care and protection of Personal Information held in connection with the Customer Contract or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably within the Contractor's

power to protect the Personal Information from misuse, interference and loss and from unauthorised access or use, modification or disclosure;

- (h) not allow, or permit access to, or transfer any Personal Information that belongs to the Customer, has been provided by the Customer or has been collected, accessed or used by the Contractor with the consent of the Customer, outside of Australia, unless it has first obtained the Customer's approval in writing or as specified in Item 25B of the General Order Form;
- (i) ensure that any of the Contractor's Personnel who are required to deal with the Personal Information for the purposes of the Customer Contract are made aware of the obligations of the Contractor under this clause 15.1; and
- (j) ensure that any agreement with any Approved Agent or Subcontractor who may be fulfilling a requirement in relation to the Customer Contract which includes the handling of Personal Information contains substantially the same or equivalent obligations to this clause 15.1 which are enforceable by the Contractor against the Approved Agent or the Subcontractor, as applicable.

16. Insurance

16.1 The Contractor must hold and maintain, or be an insured under, one or more insurance policies, that provide the following cover:

- (a) public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover;
- (b) product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover; and
- (c) workers' compensation insurance in accordance with applicable legislation.

The Contractor must maintain the coverage required under this clause 16.1 during the Contract Period.

16.2 Where the Customer Contract is entered into under a Head Agreement, the Contractor must also hold and maintain, or be an insured under, one or more insurance policies that have been agreed by the Contractor and the Contract Authority under the Head Agreement. Details of these insurances are stated in Item 7 of the General Order Form.

16.3 If the Customer Contract is for the provision of Services, the Contractor must hold and maintain, or be an insured under, one or more insurance policies that include professional indemnity or errors and omissions insurance that provide indemnity cover of at least the amount of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. The Contractor must maintain the coverage required under this clause 16.3 during the Contract Period and until the date that is 4 years from the last day of the Contract Period.

16.4 The insurance policies in clauses 16.1(a), 16.1(b) and 16.3 must include cover for the Contractor's liability for the acts and omissions of the Contractor's subcontractors to the same extent as if they were the acts and omissions of the Contractor.

16.5 All policies of insurance must be entered into with an insurer which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced, or for workers' compensation insurance the insurer (including any self-insurance) must be authorised by law.

- 16.6** The Contractor must within 30 days of the start of the Contract Period or of a request in writing from the Customer provide the Customer with a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all the insurance policies required by the Customer Contract are current and that the insurance has the required limits of cover. Where the Contractor is insured under a Related Company's insurance policy, the certificate of currency must also show that the insurance policy includes the Contractor as an insured.
- 16.7** The Contractor agrees to hold, maintain or be an insured under, any additional insurance stated in Item 36 of the General Order Form.
- 16.8** Where the Contractor does not wish to hold and maintain, or be an insured under, insurance required by clauses 16.1 to 16.5, or does not wish to enter into one or more of those insurance policies with an insurer of the type required by clause 16.5, the Contractor may make application to the Customer to be exempted from the provisions of clauses 16.1 to 16.6. Such application must be supported by such documentation as may be required by the Customer, (including the Contractor's financial records (limited to publicly available financial records where a Contractor or any of its Related Companies is publicly traded)). The Customer may accept, conditionally accept or reject the Contractor's application. The Customer must provide the Contractor with written notice within 30 days of receipt of the Contractor's application of the Customer determination under this clause 16.8, and in absence of receipt of such written notice, the Contractor's application is deemed accepted by the Customer.
- 16.9** Where the Customer Contract is entered into under a Head Agreement:
- (a) the Customer cannot grant the Contractor consent to be exempt from any insurance requirements required under the Head Agreement;
 - (b) if the Contractor has obtained the consent of the Contract Authority and the Secretary, New South Wales Department of Finance, Services and Innovation to be exempt from any insurance requirements under any Head Agreement, then the Customer must accept the Contractor's application for an application for any similar exemption under the Customer Contract.
- 16.10** The effecting of insurance does not limit or expand the liabilities or obligations of the Contractor under the other provisions of the Customer Contract.

17. Guarantees

PERFORMANCE GUARANTEES

- 17.1** Where the Customer Contract is entered into under a Head Agreement and the Contractor has provided a Performance Guarantee under that Head Agreement:
- (a) the Contractor agrees that the Customer has the benefit of that Performance Guarantee provided that the Customer is a Government Agency;
 - (b) where the Customer is an Eligible non-Government Body, the Eligible non-Government Body cannot take the benefit of the Performance Guarantee provided to the Contract Authority under that Head Agreement, but the Eligible non-Government Body may separately agree with the Contractor that the Contractor is to provide a Performance Guarantee for the benefit of the Eligible non-Government Body under the Customer Contract in accordance with clause 17.2.
- 17.2** Where:
- (a) the Customer Contract is not entered into under a Head Agreement; or

- (b) the Customer Contract is entered into under a Head Agreement but the Contractor has not provided a Performance Guarantee under that Head Agreement,

and it is agreed in Item 37 of the General Order Form (provided that in the case of (b) above, the Contractor will notify the Contract Authority that the relevant Customer has requested a Performance Guarantee and the Contract Authority has given its written approval that a Performance Guarantee be provided for that Customer), the Contractor must arrange for a guarantor approved in writing by the Customer to enter into an agreement with the Customer substantially in the form of the agreement stated in Schedule 9 – Performance Guarantee, or such other document reasonably acceptable to the Customer. Where the guarantor is not domiciled in Australia the Customer may not refuse to accept an alternative form of guarantee solely on the basis that the jurisdiction and law of the guarantee is the jurisdiction and law of the country of the guarantor. This Performance Guarantee must be provided to the Customer within 30 days of the Commencement Date, or such other period stated in Item 37 of the General Order Form.

- 17.3** Any Performance Guarantee that is issued in favour of a Customer that is a Government Agency and clause 17.2(b) applies, can only be enforced by the Contract Authority acting on behalf of the Customer.

FINANCIAL SECURITY

- 17.4** Where it is agreed in Item 38 of the General Order Form, the Contractor must provide a Financial Security in the amount stated in Item 38 of the General Order Form substantially in the form of the agreement stated in Schedule 10 – Financial Security, or in the standard form that is usually provided by the issuing entity. The Contractor must, following such a request, ensure that the Financial Security is provided within 14 days of the Commencement Date, or such other period as agreed in Item 38 of the General Order Form.
- 17.5** The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under the Customer Contract.
- 17.6** The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Customer.
- 17.7** If the Contractor fails to properly perform and complete its obligations under the Customer Contract, and the Customer suffers loss, damage or expense arising from, or in connection with, such failure by the Contractor, the Customer may deduct its loss, damage or expense (in so far as those losses, damages and expenses may be payable by the Contractor taking into account the terms and conditions of the Customer Contract, including the provisions of clause 18) from the Financial Security.
- 17.8** The Contractor agrees that the Customer will have no liability for any loss, damage or expense suffered or incurred by the Contractor where the Customer exercises its rights in accordance with clause 17.7 in good faith.
- 17.9** Upon performance of part of the Customer Contract in accordance with its terms, the Contractor may request the Customer to consent to the discharge of the Financial Security provided under the Customer Contract and the substitution of another Financial Security in substantially the same form but for a lesser maximum aggregate sum. The Customer must not unreasonably withhold its consent to the substitution where the part performance of the Customer Contract has proportionately reduced the risk for which the Financial Security was originally provided.
- 17.10** The Financial Security will end on the sooner of:
- (a) the date when payment is made by the Issuer up to the maximum amount required under the Financial Security;

- (b) one year from the date that the last Deliverable under the Customer Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Customer Contract;
- (c) the date the Customer and Contractor agree in writing to release the Issuer; or
- (d) the date the Customer notifies the Issuer that the Financial Security is no longer required.

17.11 The Customer must reimburse the Contractor for any reasonable costs it incurs, including the fees payable to the Issuer, in connection with providing the Financial Security. These costs and fees must be reimbursed to the Contractor within 30 days of the Contractor providing a Correctly Rendered Invoice for the costs and fees.

18. Liability

18.1 To the extent permitted by law, and subject to clauses 3.12, 3.13, and 18.2 to 18.7, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out of, or in connection with, the Customer Contract shall not exceed in aggregate for all claims that arise out of, or in connection with, the Customer Contract, the greater of:

- (a) \$100,000; or
- (b) in respect of claims that arise from:
 - (i) a Non-Recurring Service or Product; two times the Contract Value for the Non-Recurring Service or Product;
 - (ii) a Short Term Recurring Service; the Contract Value for the Short Term Recurring Service;
 - (iii) a Recurring Service other than a Short Term Recurring Service;
 - (A) if the claim arose after the Recurring Service had been provided for 12 months; the amount paid or unpaid but due and outstanding, for the Recurring Service for the 12 months prior to the date that the claim first arose; or
 - (B) if the claim arose prior to the Contractor providing 12 months of Recurring Services; the amount that is 12 times the average monthly amount that was paid or unpaid but due and outstanding for the Recurring Service prior to the date on which the claim first arose; or
 - (iv) a System, two times the Contract Value for the Non-Recurring Service or Product comprising the System.

18.2 In all cases, any refund of monies, payment of liquidated damages, or payment of any fees, rebates, credits, damages, losses, expenses, (including third party costs incurred and paid by the Contractor if a third party is engaged by the Customer to remedy a breach by the Contractor in accordance with the Customer Contract), liabilities or any other amounts that are stated as being payable by the Contractor in respect of any breach of the Customer Contract or under an indemnity, are included in determining whether the limitation of liability has been reached.

18.3 If the Customer Contract is for the supply of any Deliverables:

- (a) where the Contract Price under the Customer Contract is greater than \$20,000,000; or
 - (b) where the Customer Contract is for Deliverables that are to be used for a Prescribed Use,
- the Parties must discuss and agree an alternative cap of liability in Item 39 of the General Order Form.
- 18.4** Notwithstanding any other clause in the Customer Contract, neither Party is liable to the other Party for any Consequential Loss (including under an indemnity).
- 18.5** Notwithstanding any other clause in the Customer Contract, the Contractor has no financial cap on its legal liability where that liability arises from:
- (a) bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
 - (b) loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
 - (c) breach of the Contractor's obligation of confidence under or pursuant to clause 14;
 - (d) the Contractor's indemnity in respect of breach of privacy obligations as stated in clause 19.1(a); or
 - (e) the Contractor's indemnity for IP Claims as stated in clause 19.1(c).
- 18.6** The liability of a Party (**Party A**) for any loss, damage or expense incurred by another Party (**Party B**) will be reduced proportionately to the extent that:
- (a) any negligent or malicious act or omission of Party B or its Personnel; or
 - (b) any failure by Party B or its Personnel to comply with its obligations and responsibilities under the Customer Contract,
- contributed to the loss, damage or expense, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.
- 18.7** The Parties must use their reasonable efforts to mitigate any loss, damage or expense arising out of, or in connection with, the Customer Contract.

19. Indemnities

CONTRACTOR INDEMNITY

- 19.1** The Contractor must indemnify and hold harmless the Customer, its officers and employees against any loss or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) to the extent it:
- (a) arises out of or in connection with the Contractor's breach of any privacy obligations under or pursuant to clause 15.1;
 - (b) is the result of a claim against the Customer, its officers or employees made by a third party arising out of or in connection with a malicious or negligent act or omission of the Contractor, its directors, officers, employees, agents and subcontractors in the performance of the Contractor's obligations to the Customer under the Customer Contract; or

- (c) is the result of a claim against the Customer, its officers or employees made by a third party that the use of the Deliverable in accordance with the Customer Contract infringes any Intellectual Property Rights, including the Moral Rights, of the third party claimant, that are enforceable in Australia (**IP Claim**).

- 19.2** The Customer must promptly, and in any event within 5 Business Days of being notified of a claim for which it is seeking an indemnity under clause 19.1(b) or 19.1(c), provide the Contractor with Notice in Writing of the details of the claim. The Customer must (unless there is any government policy that prohibits the Contractor from handling the process for the settlement of the claim) permit the Contractor, at the Contractor's expense, to handle the process for the settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c) (including selecting solicitors and counsel), subject to the Contractor agreeing to comply at all times with the government policy relevant to the conduct of the litigation.
- 19.3** If the Customer does not permit the Contractor to handle the process for the settlement of such claim under clause 19.2 and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c), then the Customer must promptly and fully defend the claim (whilst complying with government policy), and not settle the claim without the Contractor's prior written consent, such consent not to be unreasonably withheld. The Customer must keep the Contractor fully informed throughout the period of the claim, including providing copies of all relevant documents.
- 19.4** The Customer must, upon the Contractor confirming its obligations under the indemnity in clause 19.1, provide the Contractor with reasonable assistance in defending, settling or otherwise conducting the negotiations or litigation, at the Contractor's expense, including providing all relevant documents, permitting its Personnel to testify for the Contractor if requested by the Contractor and using any defence that might be available to the person being indemnified.
- 19.5** Notwithstanding clause 19.1(c), the Contractor is not required to indemnify the Customer, its officers and employees to the extent that an IP Claim is caused by:
- (a) any open source software that forms part of the Deliverable;
 - (b) the combination, operation or use of a Deliverable with any other product, equipment business method, software or data (unless such combination, operation or use is approved by the Contractor or in accordance with the Contract Specifications);
 - (c) any modification of a Deliverable by any person other than the Contractor or its Personnel unless such modification is approved by the Contractor;
 - (d) the Contractor following the designs, specifications or instructions provided by the Customer or other person on the Customer's behalf; or
 - (e) the continued use of a Deliverable after the Contractor has provided the Customer a new software version, patch or correction, or a replacement part or other correction, that would have overcome the infringement.
- 19.6** Without prejudice to the Customer's rights under clause 19.1(c), if there is an IP Claim then the Contractor may, with the consent of the Customer, at the Contractor's expense, either:
- (a) obtain for the Customer the right to the continued use of the Deliverable in accordance with the Customer Contract;
 - (b) replace or modify the Deliverable so that the alleged infringement ceases and the replaced or modified Deliverable provides the Customer with substantially similar functionality and performance as required in the Contract Specifications; or

- (c) if, in the opinion of the Contractor, neither clause 19.6(a) nor 19.6(b) is reasonably commercially available and the Customer is not subject to the benefits of the legislation in clause 19.9, the Contractor may terminate the Customer Contract on 30 days' Notice in Writing and will be liable for all loss, damage or expense suffered by the Customer in connection with such termination.

19.7 Notwithstanding clause 19.1, the Contractor is not required to indemnify the Customer under clause 19.1(b) or 19.1(c) (as applicable), its officers and employees:

- (a) if the third party making a claim under clause 19.1(b) or the IP Claim (as applicable) is the Contract Authority or any other Eligible Customer who is obtaining the benefit of, or being provided with, the Product, Service or Deliverable under the Customer Contract; or
- (b) where the third party claim under clause 19.1(b) or the IP Claim arises from, or in connection with, the supply of any Product, Service or Deliverable (or the supply of any item based on any Product, Service or Deliverable) to the third party, whether the supply was made by the Customer or any person who has, directly or indirectly, acquired the Product, Service or Deliverable or item based on the Product, Service or Deliverable from the Customer.

19.8 The Contractor's liability in respect of the indemnity provided under:

- (a) clause 19.1(a), is subject to clauses 18.4, 18.6 and 18.7;
- (b) clause 19.1(b), is subject to clauses 18.1 to 18.7;
- (c) clause 19.1(c), is subject to clauses 18.4, 18.6 and 18.7.

19.9 For the purposes of clause 19.1(c) an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), sections 96 and 100 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

20. Conflict of Interest

20.1 The Contractor must:

- (a) provide the Customer with Notice in Writing upon becoming aware of the existence or possibility of a Conflict of Interest that arises in the performance of its obligations under the Customer Contract; and
- (b) comply with any direction given by Customer in relation to managing that Conflict of Interest.

21. Performance Management

REPORTING

21.1 The Contractor must provide to the Customer the reports stated in the Order Documents including Item 40 of the General Order Form in the time frame and format agreed in the Order Documents or as reasonably required by the Customer.

22. Government Policy

- 22.1** If there is a Head Agreement and the Contractor was required to provide a competitive quote prior to entering into this Customer Contract, the Contractor must, during the Contract Period, comply with the NSW Government policy known as the "Small and Medium Enterprises ('SME') Policy Framework" in respect of such competitive quote. The Contractor acknowledges that it has read clause 16 of the Head Agreement which sets out the requirements of the Contractor imposed by the "Small and Medium Enterprises ('SME') Policy Framework " and agrees to comply with those requirements in respect of the competitive quote.
- 22.2** If there is no Head Agreement and the Customer Contract is a standalone Customer Contract then if the Contractor was required to provide a competitive quote prior to entering into this Customer Contract the Contractor must, during the Contract Period, comply with the NSW Government policy known as "Small and Medium Enterprises ('SME') Policy Framework " in respect of the competitive quote. The Contractor acknowledges that it has read the "Small and Medium Enterprises ('SME') Policy Framework at <http://www.procurepoint.nsw.gov.au/procurement-reform/about-nsw-procurement-reform/small-and-medium-enterprises-policy-framework> which sets out the requirements of the Contractor imposed by the Small and Medium Enterprises ('SME') Policy Framework.
- 22.3** The Contractor must comply with the New South Wales Department of Finance, Services and Innovation Statement of Business Ethics (<http://www.services.nsw.gov.au/about-us/business-ethics>).

23. Contract Administration

REPRESENTATIVES

- 23.1** Each Party may nominate an employee who is its Authorised Representative in Item 3 or Item 6 of the General Order Form.
- 23.2** Each Party warrants to the other Party that its Authorised Representative has the authority to provide such consents and approvals as are required for the purposes of this Customer Contract and to issue instructions and directions as necessary for the purposes of this Customer Contract, on behalf of that Party.

NOTICE OF CHANGE IN CONTROL

- 23.3** The Contractor must promptly provide the Customer with Notice in Writing of any Change in Control, other than a Change in Control that is a solvent re-organisation with shares being transferred between Related Companies.

RECORD KEEPING AND AUDIT

- 23.4** The Contractor must keep financial records and other information relevant to the performance of the Customer Contract including as are required to allow the Customer to determine the Contractor's compliance with this Customer Contract and the accuracy of its invoices.
- 23.5** Subject to clause 23.11, no more than once in any calendar year, the Customer may conduct an audit to enable the Customer to confirm the Contractor's compliance with this Customer Contract by giving the Contractor at least 5 Business Days' prior written notice. Clauses 23.6 to 23.8 apply to an audit conducted by the Customer.
- 23.6** The Contractor must give the Customer and its Personnel (including internal and external auditors and advisers) full access at all reasonable times and on reasonable notice:

(a) to data in the possession or control of the Contractor or any of its Subcontractors (other than any data or information containing the Contractor's or its Subcontractor's costs and margins or of a financially sensitive nature); and

(b) to the Contractor's Personnel,

for the purposes of obtaining information in connection with an audit under clauses 23.5 and 23.6.

23.7 For the purpose of complying with clause 23.6, the Contractor must promptly and efficiently give the Customer and their Personnel any assistance they reasonably require.

23.8 The Customer and its Personnel must comply with the Contractor's reasonable security requirements.

23.9 Without limiting the rights of the Customer, if an audit shows that the Contractor has breached or is in breach of this Customer Contract, the Contractor must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Customer.

23.10 If an audit shows that the Contractor has overcharged the Customer in any invoice, the Contractor must promptly refund any amounts that the Contractor has overcharged the Customer, and adjust all of the current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount.

23.11 The Contractor and Customer may agree an alternative audit mechanism to that provided in clauses 23.5 to 23.8, such mechanism to be specified in Item 40A of the General Order Form or otherwise as agreed in writing. Any alternate audit mechanism agreed to under this clause 23.11 must address compliance with the Contractor's Customer Data, security and privacy obligations and such other of the Contractor's obligations required by the Customer and reasonably agreed by the Contractor.

NOTICES

23.12 Any Notice in Writing must be sent to the receiving Party's Service Address addressed to the Party's nominee for receipt of notices, or if no such position is nominated, it must be addressed to the Authorised Representative of such Party.

23.13 Any Notice in Writing is regarded as given and received:

- (a) if sent by mail; 3 Business Days after it is posted;
- (b) if sent by fax; at 9.00 am on the Business Day following the day when the addressee actually receives it in full and in legible form; and
- (c) if sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

24. Dispute Resolution

24.1 The Parties agree to resolve any dispute between them that arises during the Contract Period out of, or in connection with, the Customer Contract in accordance with clause 24.

24.2 If a dispute arises out of, or in connection with, the Customer Contract during the Contract Period, then, subject to clause 24.13, the aggrieved Party must submit a Notice in Writing to the other Party of the issue, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of

the Customer Contract which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Issue Notice**). The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue. If the Party submitting the Issue Notice is the Contractor, then where the Customer Contract is made under a Head Agreement, the Contractor must send a copy of the Issue Notice to the Contract Authority.

- 24.3** If a Party submits an Issue Notice under clause 24.2, each Party must nominate in writing, within 7 days, a senior executive who will attempt to resolve the dispute. The nominated senior executives will promptly meet at a time and place that is mutually convenient with the objective of resolving the issue. The nominated senior executives may invite other Personnel to attend the mutually convenient conference subject to a list of additional invited Personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.
- 24.4** If the Parties are able to agree upon a resolution to the dispute, the terms of the agreement are to be documented and signed by both nominated senior executives. Such an agreement will be binding on both Parties.
- 24.5** Each Party will bear its own costs under clauses 24.2 to 24.4.
- 24.6** If the dispute is not resolved within 21 days of the date that the Issue Notice was received by the other Party, either Party may then refer the dispute to expert determination in accordance with clauses 24.7 to 24.8.
- 24.7** The Party that requires that the dispute is resolved by expert determination must submit a Notice in Writing to the other Party specifying the issue to be decided by expert determination, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Referral Notice**).
- 24.8** If the dispute is to be resolved by expert determination the Parties will be bound by the provisions and procedures contained in Schedule 11 – Dispute Resolution Procedures, unless agreed otherwise in writing.
- 24.9** If a Referral Notice has not been submitted within 20 Business Days of becoming entitled under clause 24.6 then the issue is barred from expert determination or any other action or proceedings, subject to clause 24.13. The Customer and the Contractor may, in writing, agree to extend this 20 Business Days period for the purposes of continuing to negotiate a resolution of a particular dispute for up to another 20 Business Days.
- 24.10** Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under the Customer Contract during the period of the attempt to resolve the dispute .
- 24.11** Unless the Parties otherwise agree in writing, clauses 24.7 to 24.8 do not apply to any dispute:
- (a) for which either Party's claim exceeds \$250,000 or the amount stated in Item 41 of the General Order Form;(b) that involves a party claiming that a statutory guarantee under the CCA is involved in the dispute; or
 - (c) which relates to an issue of the type stated in Item 41 of the General Order Form.

In this case if the dispute is not resolved within 15 Business Days of the date that the Issue Notice was received by the other Party, either Party may commence any other form of resolution, including court proceedings.

- 24.12** The amount specified in Item 41 of the General Order Form shall include the total amount being claimed by both Parties including the amount of any cross claim but excludes any set offs, interest and legal costs. If the Parties are unable to agree on the total amount being claimed each Party shall submit a claim to the other Party detailing the nature of the claim, the relevant term of the Customer Contract which has been breached and how it calculated the amount of its claim. Where only one Party is submitting a claim the other Party shall be entitled to submit its estimate of the amount of the claim to the other Party. If the calculations of each Party differ from one another the amount in dispute for the purposes of Item 41 of the General Order Form shall be calculated by totalling the value of all the claims or estimated amount of the claims together and dividing that amount by the total number of claims and estimated claims.
- 24.13** The provisions of clauses 24.2 to 24.12 do not apply where a party seeks urgent interlocutory relief or where a Party has terminated the Customer Contract for a Substantial Breach or Fundamental Breach of the Agreement.

25. Termination

- 25.1** If the Customer Contract is made under a Head Agreement then termination or expiry of the Head Agreement does not affect the Customer Contract, unless the context necessarily requires it.

TERMINATION FOR CAUSE BY THE CUSTOMER

- 25.2** The Customer may terminate the Customer Contract immediately by providing the Contractor Notice in Writing if:
- (a) the Contractor suffers an Insolvency Event; or
 - (b) the Contractor has committed a Substantial Breach and the Contractor has not either:
 - (i) rectified that Substantial Breach within 14 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing specifying the details of the breach; or
 - (ii) proposed steps that are reasonably acceptable to the Customer that it will take to remedy the Substantial Breach and a timeframe within which the Contractor will take them which are reasonably acceptable to the Customer.
 - (c) the Contractor fails to comply with the New South Wales Department of Finance, Services and Innovation (DFSI) Statement of Business Ethics (<http://www.services.nsw.gov.au/about-us/business-ethics>) including failure to:
 - (i) comply with applicable NSW Government Code of Practice and DFSI's procurement policies and procedures,
 - (ii) provide accurate and reliable advice and information when required,
 - (iii) declare actual or perceived conflicts of interest as soon as the Contractor becomes aware of the conflict,
 - (iv) act ethically, fairly and honestly in all dealings with DFSI, the Contract Authority or the Customer,
 - (v) take all reasonable measures to prevent the disclosure of Confidential Information of DFSI, the Contract Authority and the Customer,

- (vi) assist DFSI, the Contract Authority or the Customer to prevent unethical practices in the business relationship,

or engaging in any form of collusive or unethical practices, including offering staff of DFSI, the Contract Authority or the Customer inducements or incentives designed to improperly influence the conduct of their duties.

TERMINATION FOR CONVENIENCE BY THE CUSTOMER

- 25.3** The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice in Writing. The Contractor must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Customer Contract under this clause 25.3.
- 25.4** If the Customer exercises its right under clause 25.3, the Customer must:
- (a) if Item 42 of the General Order Form does not state an amount that is payable on termination, indemnify the Contractor against any losses, damages or expenses, which are reasonably and properly incurred by the Contractor to the extent that those losses, damages or expenses were incurred as a direct result of the termination of the Customer Contract in accordance with clause 25.3; or
 - (b) pay any amount that is stated in Item 42 of the General Order Form.
- 25.5** Once the Customer has paid the amounts in clause 25.4 no further compensation is payable for any termination under clause 25.3.

TERMINATION FOR CAUSE BY THE CONTRACTOR

- 25.6** The Contractor may terminate the Customer Contract immediately by providing the Customer Notice in Writing if the Customer has:
- (a) not paid any amount that has not been disputed by the Customer in accordance with clause 11.11 by the date that payment was due to be made; and
 - (i) the Contractor has provided written notice of this failure; and
 - (ii) the Customer has failed to pay that undisputed amount within 28 days of receipt of the written notice of failure;
 - (b) committed a Fundamental Breach of the Customer Contract and the Customer has not rectified that Fundamental Breach within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Contractor specifying the details of the breach;
 - (c) committed, in respect of its:
 - (i) privacy obligations under the Customer Contract:
 - (A) more than one Unremedied Breach; or
 - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;
 - (ii) obligations of confidentiality under the Customer Contract:

- (A) more than one Unremedied Breach; or
- (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach; or
- (iii) obligations as to the Contractor's Intellectual Property Rights under the Customer Contract:
 - (A) more than one Unremedied Breach; or
 - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;

where, for the purposes of this clause 25.6(c), "**Unremedied Breach**" means a breach which is capable of remedy and which has not been rectified within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Contractor specifying the details of the breach; or

- (d) suffered an Insolvency Event.

CONSEQUENCES OF TERMINATION

- 25.7** In the event of termination under clause 25.2, the Customer may obtain from any other source a reasonably similar alternative to the Deliverables in which case the Contractor shall, subject to clause 18, be liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Deliverable and the similar alternative) or suffered by the Customer.
- 25.8** If the Customer Contract:
- (a) is terminated by the Customer for cause or it expires, then the Customer may provide the Contractor with written notice requiring the Contractor at its expense to remove Deliverables or to dismantle or remove work from the Customer's premises by a date stated in that notice;
 - (b) is terminated by the Contractor for cause, then the Contractor may provide the Customer with written notice requiring the Customer to return any Deliverables that have not been paid for in full, and the Customer must return those Deliverables at its expense by the date stated in that notice; and
 - (c) such termination or expiry is without prejudice to any right of action or remedy that has accrued or may accrue to either Party.
- 25.9** On termination of this Customer Contract for any reason:
- (a) subject to any obligations arising out of any applicable State security classification or Statutory Requirements or specified in the Order Documents, a Party may retain for quality assurance and risk management purposes any notes and other records created or received in providing the Product or performing the Service provided that any retained notes or records are subject to the confidentiality obligations in accordance with clause 14;
 - (b) at the Customer's request made within 60 days following termination, the Contractor must provide the Customer with a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by the Contractor. Where it is specifically agreed that the Contractor may satisfy this clause by providing access to a copy of the data, the Contractor must first

advise the Customer by 30 days' notice in writing to both the Agency Head and Chief Information Officer of the Customer that such data will be available for download for a specified period (being no less than 60 days in duration) and on expiry of such period, such data will then be deleted;

- (c) the Contractor must delete Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification that the Customer Data has been deleted;
- (d) the Contractor must cease providing the Products and Services; and
- (e) the Contractor must comply with any other reasonable direction issued by the Customer where permitted by the Customer Contract.

26. General

VARIATION

- 26.1** Subject to any other rights given under this Customer Contract to vary its terms and the following provisions of clause 26.2, neither a Change Request nor a Contract Variation shall be valid unless agreed in writing and signed by both the Customer and the Contractor.
- 26.2** Where required under directions and policies issued by the Board from time to time, the Customer must obtain the written approval of the Secretary, New South Wales Department of Finance, Services and Innovation prior to agreeing to a variation of any term or condition of the Procure IT Framework, including a variation to any of the Protected Clauses. In such circumstances, the Contractor must obtain a copy of such written approval from the Customer before entering into the relevant Change Request that varies such term or condition, including a Protected Clause.

ASSIGNMENT AND NOVATION

- 26.3** The Contractor must not assign in whole or in part or novate the Customer Contract without obtaining the prior written consent of the Customer, which consent may be withheld in its discretion.
- 26.4** The Contractor acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take over the Customer Contract before determining whether or not to give consent to an assignment or novation.
- 26.5** The Customer, at its own cost, may assign or novate, the Customer Contract, where by operation of statute the Customer is reconstituted into a new legal entity, to that new legal entity. If the assignment or novation changes the scope of the obligations or Deliverables to be provided by a Contractor under a Customer Contract, a Change Request (or Contract Variation, if applicable) must be effected, which will include a variation to the Price to reflect any increased costs that are incurred by the Contractor, or increased benefits that are gained by the Customer (as newly defined), as a result.
- 26.6** The Customer may, at its own cost, assign or novate the Customer Contract to any other Eligible Customer with the prior written consent of the Contractor, such consent not to be unreasonably delayed or withheld.

WAIVER

- 26.7** A waiver in respect of a breach of a provision of the Customer Contract by a Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce any provision of the Customer Contract will not be interpreted as a waiver of that provision.

MATERIAL ADVERSE EVENTS

- 26.8** The Contractor must provide the Customer with Notice in Writing immediately upon becoming aware of the existence or possibility of a Material Adverse Event.

FORCE MAJEURE EVENTS

- 26.9** A Party is excused from performing its obligations to the extent it is prevented by a Force Majeure Event, except a Force Majeure Event which requires a Party to take steps pursuant to a Business Contingency Plan. The Contractor must immediately notify the Customer of the occurrence of the Force Majeure Event when the Contractor becomes aware of it or when the Contractor ought reasonably to be aware of it.
- 26.10** Each Party must make all reasonable efforts to minimise the effects of the Force Majeure Event. If the affected Party is prevented from performing its obligations under the Customer Contract by the Force Majeure Event for 60 days or such other period agreed in writing, then the other Party may in its discretion immediately terminate the Customer Contract by giving Notice in Writing of termination to the other Party.
- 26.11** Where the Customer Contract is terminated by the Customer in accordance with clause 26.10:
- (a) the Contractor is entitled to payment for work performed in accordance with the Customer Contract up to the date of termination; and
 - (b) the Parties must otherwise bear their own costs and will be under no further liability to perform the Customer Contract.

GOVERNMENT INFORMATION

- 26.12** The Contractor acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Customer Contract on its nominated website established for GIPA Act disclosures. The Contractor irrevocably consents to the Customer acting in accordance with this clause.
- 26.13** To the extent that section 121 of the GIPA Act applies, the Contractor must, upon receipt of a written request by the Customer, provide the Customer with immediate access to the following information contained in records held by the Contractor:
- (a) information that relates directly to the performance of Services by the Contractor;
 - (b) information collected by the Contractor from members of the public to whom it provides, or offers to supply, Services; and
 - (c) information received by the Contractor from the Customer to enable it to provide Services.
- 26.14** For the purposes of clause 26.13, information does not include:
- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - (b) information that the Contractor is prohibited from disclosing to the Customer by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (c) information that, if disclosed to the Customer, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Customer, whether at present or in the future.

26.15 The Contractor will provide copies of any of the information in clause 26.13, as requested by the Customer, at the Contractor's own expense and in such medium as the Customer may reasonably require.

26.16 Without limiting or otherwise restricting clauses 26.12 to 26.15, the Contractor:

- (a) authorises the Customer to make information concerning the Contractor available to other Government Agencies. Such information may include any information provided by the Contractor to the Customer and any information relating to the Contractor's performance under this Customer Contract;
- (b) acknowledges that information about the Contractor from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any Officers of the Contractor or a Related Company may be taken into account by Government Agencies considering whether to offer the Contractor future opportunities for working with Government Agencies;
- (c) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
- (d) releases and indemnifies the Customer and the State of New South Wales from and against any claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

SEVERABILITY

26.17 If any part of the Customer Contract is void or voidable, then that part is severed from the Customer Contract without affecting the continued operation of the remainder of the Customer Contract.

ENTIRE AGREEMENT

26.18 To the extent permitted by law:

- (a) the Customer Contract constitutes the entire understanding and agreement between the Contractor and the Customer in relation to its subject matter. Any prior representation, arrangement, agreement or undertaking given or received by either Party is superseded and shall have no effect;
- (b) the warranties stated in the Customer Contract are the sole warranties provided by the Parties; and
- (c) neither Party makes any other warranty, including any implied warranties of merchantability and of fitness for a particular purpose.

RIGHTS ARE CUMULATIVE

26.19 Subject to clause 6.33, the rights and remedies provided under the Customer Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

SURVIVAL

26.20 The provisions of clauses 3.11 to 3.13, 6.42 to 6.44, 8.1 to 8.4, 13.4 to 13.8, 13.9, 13.11, 13.13, 13.15, 14.1 to 14.3, 15, 16.3, 18, 19, 25.7, 25.8, 26.20 and 26.22, and any other clause which naturally should survive termination or expiry of the Customer Contract, shall survive termination or expiry of the Customer Contract.

COUNTERPARTS

- 26.21** If there are a number of counterparts of the Customer Contract, the counterparts taken together constitute one and the same instrument.

APPLICABLE LAW

- 26.22** The laws of New South Wales govern the Customer Contract and the Parties submit to the exclusive jurisdiction of the courts of New South Wales.

SIGNED AS AN AGREEMENT

Signed for and on behalf of
Sydney Trains (ABN 38 284 779 682)

By [insert name of Customer's Representative], but not so as to incur personal liability

[Redacted signature area]

[Redacted signature area]

Date

In the presence of:

Signature of Customer's witness

[Redacted signature area]

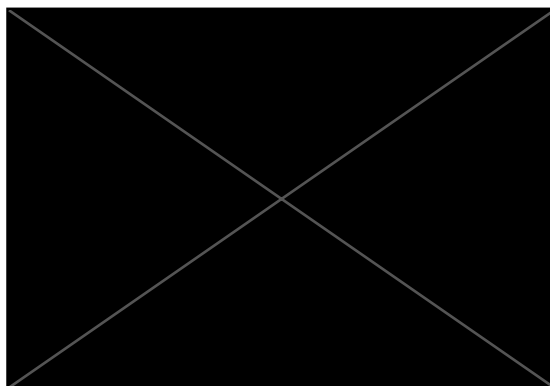
[Redacted signature area]

Print Name

[Redacted signature area]

Date

Signed by AppJourney Pty Ltd (ABN 80 162 174) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



..

Schedule 1: General Order Form

PROCURE IT VERSION 3.2

[Use instruction: If the order is a straight forward and/or low value order for hardware, software or services where the maximum value of the order can be calculated with certainty (i.e. the maximum amount payable is set out in the "Total Amount Payable" box in Item 11), then the Parties may use a shortened version of the General Order Form and any Module Order Form.]

*The shortened version of the General Order Form **must**:*

- *Include all the Items that are set out in clause 3.4 of the Customer Contract. (i.e. Items 1, 4, 7 (if there is a Head Agreement), 8, 10, 11, 12 and 13);*
- *Include any other Items (if any) that the Parties agree;*
- *Be in the same form and structure (even if some Items are omitted);*
- *Ensure that the Items that remain have the same number or heading as the number or heading in this pro forma General Order Form;*
- *Include the following as a title:*

"General Order Form. Schedule 1 to the Customer Contract"
- *Include the following text above the signature box:*

"This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of the Customer Contract as if repeated in full in this General Order Form."
- *Be signed by both Parties;*
- *Cross reference and include the relevant Order Details from any Module Order Form and any details from the Module Order Forms that are required to describe the Products or Services.*

CUSTOMER

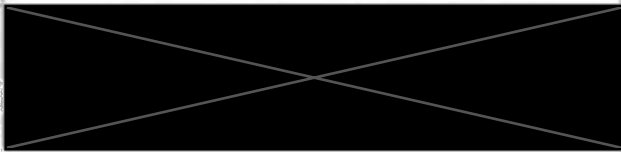
Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's full legal name:	Sydney Trains (ABN 38 284 779 682)

Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's service/delivery address:	

Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Customer's Authorised Representative:	 or any other Personnel of the Customer as notified by the Customer to the Contractor in writing from time to time.

CONTRACTOR

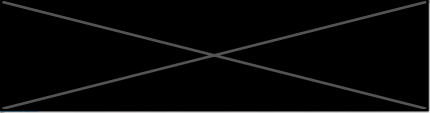
Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's full legal name:	AppJourney Pty Ltd (ABN 80 162 912 174)

Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's service/delivery address:	

Item 6 Contractor's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Contractor's Authorised Representative:	 or any other Personnel of the Contractor, as notified by the Contractor to the Customer in writing from time to time.

Item 7 Head Agreement

This Item 7 must be completed when the Customer Contract is entered into under a Head Agreement.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.1)	
Specify the Head Agreement number:	There is no Head Agreement.
Specify the Head Agreement title:	There is no Head Agreement.
Specify the Term of the Head Agreement: Start Date: End Date: If the Term of the Head Agreement has expired the Customer must obtain the Contract Authority's approval to enter into a further Customer Contract, and this approval should be attached to this General Order Form.	There is no Head Agreement.
Insurance (clause 16.2)	
Specify the insurances required under the Head Agreement:	There is no Head Agreement.
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	There is no Head Agreement.
The default insurance requirement under the Head Agreement is product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	There is no Head Agreement.
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement. If so, the default insurance requirement is for a limit of cover of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover.	There is no Head Agreement.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any higher limit that is required by the Head Agreement:	
Workers' compensation insurance in accordance with applicable legislation:	There is no Head Agreement.
Specify any other type of insurance required under the Head Agreement and the specified amount:	There is no Head Agreement.
Performance Guarantee (clause 17.1)	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	There is no Head Agreement.

Item 8 Modules that form part of the Customer Contract

Formation (clause 3.8(a))

Indicate, by marking with an X, the Modules that apply

Module 1 – Hardware Acquisition and Installation	☐	Module 11 – Telecommunications as a Service	☐
Module 2 – Hardware Maintenance and Support Services	☐	Module 12 – Managed Services	☐
Module 3 – Licensed Software	☒	Module 13 – Systems Integration	☐
Module 4 – Development Services	☒	Module 13A – Major Project Systems Integration Services	☐
Module 5 – Software Support Services	☒		
Module 6 – Contractor Services	☐		
Module 7 – Professional Services	☒		
Module 8 – Training Services	☒		
Module 9 – Data Migration	☐		
Module 10 – As a Service	☐		

Item 9 Schedules that form part of the Customer Contract in addition to the General Order Form

Formation (clause 3.8(b))

Indicate, by marking with an X, the Schedules that apply

Schedule 1 – General Order Form	Applies	Schedule 7 – Statutory Declaration - Subcontractor	☒
Schedule 2 – Agreement Documents	☒	Schedule 8 – Deed of Confidentiality	☒
Schedule 3 – Service Level Agreement	☒	Schedule 9 – Performance Guarantee	☐
Schedule 4 – Variation Procedures	☒	Schedule 10 – Financial Security	☐
Schedule 5 – Escrow Deed	☐	Schedule 11 – Dispute Resolution Procedures	☒
Schedule 6 – Deed Poll – Approved Agents	☐	Schedule 12 – Project Implementation and Payment Plan	☒

Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contract Period (Clause 2.4)	
Specify the Commencement Date if it is not the date when the Customer and the Contractor sign the Customer Contract:	The Commencement Date is 22 April 2019.
Specify the end of the Contract Period:	2 years after the Commencement Date
Specify any period of extension of the Contract Period in days/weeks/years:	At least 90 days prior to the expiry of the Contract Period, the Customer may, in its sole and absolute discretion, notify the Contractor of the Customer's intention to exercise its option to extend the Contract Period for a further period of 2 years (Option). The Customer may exercise the Option 3 times, such that the total period of extension shall not exceed 6 years. The exercise of an Option to extend the Contract Period has the effect of extending this Customer Contract and after the end of the current Contract Period, does not create a new Customer Contract or constitute entry into a new Customer Contract.

Item 11 Common Details

Formation (clause 3.4)			
Product and/or Service	Price per Unit	Quantity	Extended Price
The Contract Price, inclusive of its breakdown, payment milestones and timing of payments, is specified in Schedule 12 - PIPP to this Customer Contract.			
	Sub-Total:		
	Delivery Charges:		
	Any Other Charges:		
	GST:		
This is the Contract Price (plus GST)	Total Amount:		

Item 12 Delivery Address

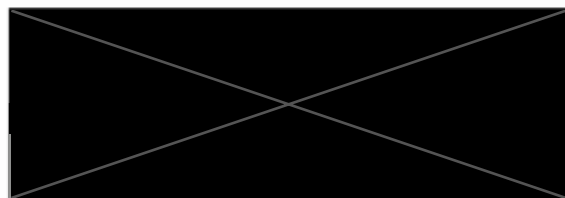
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Delivery (clause 5.1)	
Specify the address of the Site where delivery is to be made:	Delivery, if necessary, is to be made to the Customer at locations agreed in writing between the parties.
Specify any delivery instructions:	Delivery instructions, if necessary, are to be agreed, in writing between the parties.
Specify the hours during which delivery may be made to the Site:	Delivery hours, if necessary, are to be agreed, in writing between the parties.

Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
If the Contract Specifications are the User Documentation leave this Item blank. If the Contract Specifications comprise other documents, list those documents in order of priority:	The Contract Specifications are the PIPP, Agreement Documents and User Documentation. The order of priority is per clause 3.8.
System (clauses 5.11 and 9.3)	
Specify whether the Products and Services comprise a System.	No.

Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clauses 11.1 and 11.2)	
Invoicing (clauses 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	All invoices are to be sent to Transport Shared Services, Accounts Payable via email to:  The Contractor must ensure that 1. All invoices and supporting documents are sent in a 'PDF' file format; 2. Only one 'PDF' file should be enclosed in each email; 3. Any supporting documents must be contained within the same enclosed 'PDF' file as the invoice with the invoice being the first page and all supporting documents to follow. A valid Purchase Order number and /or a business contact name must be quoted on all invoices. If the Contractor transacts with the Customer via the Ariba Network then invoices must be submitted by the Contractor to Customer via the Ariba Network.
Specify address to which invoices should be sent:	All original invoices must be submitted via email to:  OR via ordinary mail to:  Email is the preferred method of submitting an invoice.
Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment. If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.	The Customer must pay the Contractor within thirty (30) days from receipt of a correctly rendered invoice.



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one occasion then consider using a PIPP under Item 20.	Refer to the PIPP.
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	Refer to the PIPP.

Item 15 User Documentation

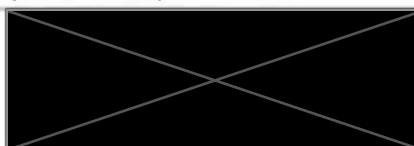
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
User Documentation (clause 5.4(b))	
Specify the Price of any additional copies of the User Documentation:	Not applicable.

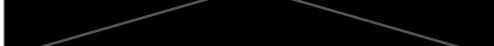
[User instruction: Items 16 to 43 are likely to be needed for large value orders and/or complex purchases such as software development, systems integration, web services, managed services, telecommunications services etc.

If the Parties require one or more of the Items 16 to 43 for any other type of purchase, then these can be added to the General Order Form].

Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Management Committee (clause 6.4)	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	The Customer's Authorised Representative specified in Item 6, or any other Personnel of the Contractor, as notified by the Contractor to the Customer in writing from time to time.
Management Committee (clause 6.6)	
Specify the function to be performed by the management committee:	The management committee will review the Contractor's performance against the Customer Contract at a frequency reasonably determined by the Customer.
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	Name: Position: Tel: Email:



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	For escalation Name:  Position:  Tel:  Email: 
Management Committee (clause 6.8)	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	The Customer may request a progress report from the Contractor at any time during the Contract Period. Any such request should be made by the Customer to the Contractor in writing. If the Contractor receives a request from the Customer for a progress report under this Item 16, the Contractor's project manager must, within 5 Business Days of the date of the Customer's request, submit to the Customer's project manager: 1. a report of progress as required under clause 6.8; 2. the latest progress reports listed in Item 40; and 3. any other information reasonably requested by the Customer, provided the Customer has requested such information in writing from the Contractor at least 5 Business Days in advance of a management committee meeting. All progress reports must comply with the key performance indicators outlined in Schedule 3.
Specify any other details:	Not applicable

Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Reviews (clause 6.10)	
Specify if a service and performance review/s of the Contractor's performance of the Customer Contract is to apply:	Yes. The management committee will review the Contractor's performance against the Customer Contract, including the key performance indicators and Service Levels set out in Schedule 3.
Specify any specific time intervals for service and performance reviews:	When a Deliverable is being performed pursuant to a Deliverable Order Notice issued under the PIPP, performance reviews will be held once every month until the date on which the hardware installation and / or software configuration has been completed by the Contractor or as otherwise reasonably required by the Customer. In all other cases, a performance review will be held once every 3 months unless otherwise directed by the Customer.

Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Site Specifications (clause 6.12)	
Specify: • Site location; and • whether a Site Specification is required.	Not applicable.
Access to Customer's Site (clause 7.1(b))	
Specify any other requirements in relation to the Site access:	No Site access is to be provided, unless otherwise agreed in writing between the Parties.
Specify any requirements for the preparation and maintenance of the Site:	Not applicable.

Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Implementation Planning Study (clauses 6.14 to 6.16)	
Specify if the Contractor must provide an implementation planning study:	If required by and per the PIPP.
Specify the implementation planning study objectives and time for provision of study:	If required by and per the PIPP.
Date for delivery of the implementation planning study to the Customer:	If required by and per the PIPP.
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	If required by and per the PIPP.

Item 20 Project Implementation and Payment Plan (PIPP) and Staged Implementation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Project Schedule (clause 6.17)	
Invoicing (clause 11.7)	
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	The PIPP is set out in Schedule 12 - PIPP.
Staged Implementation (clause 6.20)	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the PIPP together with the period during which	If required by and per the PIPP.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
the Customer must give written notice to move to the next Stage (if greater than 10 Business Days):	

Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Liquidated Damages (clauses 6.28 to 6.34)	
Specify if Liquidated Damages (LDs) will apply:	As set out in the PIPP.
Specify the Milestones which are LD Obligations:	As set out in the PIPP.
Specify the Due Date for completion of each LD Obligation:	As set out in the PIPP.
Specify the calculation and amount of LDs for each LD obligation:	As set out in the PIPP.
Specify the maximum number of days LDs are to be paid for each LD obligation:	As set out in the PIPP.

Item 22 Customer Supplied Items (CSI) and Customer Assistance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Supplied Items (CSI) (clause 6.36)	
Specify each CSI to be provided by the Customer: CSI may be: - office access, desks etc (specify location, standards, times of access); - Hardware or software (specify equipment, capacity, versions of software and dates of availability); - VPN access or other remote access (specify capacity and hours available). [Note: details of any Customer Personnel should be specified in Item 26].	If required by and per the PIPP.
Specify if any CSI must be covered by support and maintenance contracts including the period of cover, the Contractor's rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor:	If required by and per the PIPP.
Specify the times when each CSI is to be provided:	If required by and per the PIPP.
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	If required by and per the PIPP.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	If required by and per the PIPP.
If so, specify the verification check process for each CSI: Include: • a process to manage satisfactory and unsatisfactory verification checks; • a process to manage 'reissued' CSI's; • a process to manage repeat CSI verification checks; • a process to manage 'draft' or 'incomplete' and 'updated' CSI's; • a process to manage rejected CSI's; • a process to manage previously satisfactory CSI which becomes defective; • a list of required verification check forms and/or registers and a corresponding data entry process; • a list of Customer and Contractor nominee/s for responsibility to undertake verification checks:	If required by and per the PIPP.
Specify any amount payable by the Contractor to the Customer for any item of CSI:	If required by and per the PIPP.
Customer Assistance (clause 6.41)	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	If required by and per the PIPP.

Item 23 Escrow

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Escrow (clause 6.42)	
Specify if an escrow arrangement is required:	No.
Specify the parties to the escrow arrangement:	Not applicable.
Specify the time for the escrow arrangement to endure:	Not applicable.

Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Contingency (clauses 6.45 to 6.47)	
Specify if a Business Contingency Plan is required:	Yes.
Specify when the Business Contingency Plan is required:	The Contractor must provide the Customer with a copy of the approved Business Contingency Plan within 90 days of the Commencement Date or such other period agreed by the Parties in writing (where such agreement is not to be unreasonably withheld or delayed) to enable the Contractor to have sufficient time to provide a Business Contingency Plan which meets the Customer's requirements.
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	As agreed in writing.
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	To be reviewed annually.
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	Within 30 days of any material changes being made to the Business Contingency Plan or per the written direction of the Customer.

Item 25A Transfer of Records outside NSW - Customer Data

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Data (clause 7.5)	
Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract. If yes, Customer to state whether consent is provided to transfer State Records outside the jurisdiction of New South Wales. If consent is granted, Customer to specify: - the jurisdiction(s) for which consent is granted - the conditions on which such consent is granted. [Note: Clause 7.5 of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]	State Records will not be transferred to the Contractor's possession under the Customer Contract. The Customer does not consent to the transfer of State Records outside the jurisdiction of New South Wales.

Item 25B Transfer of Records outside NSW – Personal Information

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Privacy (clause 15) Customer to specify whether consent is provided to transfer Personal Information outside the jurisdiction of New South Wales. If consent is granted, Customer to specify: - the jurisdiction(s) for which consent is granted - the conditions on which such consent is granted. [Note: Clause 15.1(h) of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]	The Customer does not consent to Personal Information being transferred outside the jurisdiction of New South Wales.

Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Access to Customer's Site (clause 7.11) Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.	1) The Contractor must comply with, and must ensure that each of the Contractor's Personnel comply with: - the Customer's policies and procedures as made available on the Customer's intranet and as amended or supplemented by the Customer, and such other Customer policies and procedures advised to the Contractor from time to time including in relation to confidentiality and system security. As at the date of this Customer Contract those policies include: - NSW Government Digital Information Security Policy dated April 2015 ; - NSW Government Cloud Policy dated August 2015 ; - Transport for NSW Information Security Policy dated 8 May 2015; - Transport for NSW Privacy Policy dated 27 October 2014; and - Transport for NSW Acceptable Use of Technology Standard dated 10 August 2015. - the Customer's site access sign-in process specified by the Customer including when accessing a Site; - the Customer's site access sign-out process when leaving a Site; and - all other reasonable requirements and directions of the Customer in regard to conduct, behaviour, protection of privacy, use of systems, safety and security (including submitting to security checks as required and complying with any obligation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	imposed on any person by law). 2) Where requested by the Customer, the Contractor must ensure that the Contractor Personnel execute a deed of confidentiality in the form required by the Customer.
Timeframes for response to a Security Issue Specify whether Customer agrees to any alternate timeframe for: - Notification of actual, alleged or suspected security breach (clause 7.12(a)) [Note: default is immediate notification] - Investigation of Security Issue (clause 7.12(b)) [Note: default is within 48 hours from notification] - Remedy the Security Breach (clause 7.12(c)). [Note: the default is within 24 hours from conclusion of investigation]. Any alternate timeframes agreed to in this General Order Form must: - be approved by the Customer's Chief Information Officer; and - comply with the NSW Government Digital Information Security Policy, NSW Government Information Security Event Reporting Protocol, NSW Government Cloud Policy and all other applicable NSW Government policies; - comply with applicable security standards; and - comply with the Customer's Information Security Management System and other Customer security and policy requirements.	The Customer may in its sole discretion, accept a request from the Contractor (acting reasonably) for an alternate timeframe for: - the notification of an actual, alleged or suspected security breach (clause 7.12(a)); - the investigation of the Security Issue (clause 7.12(b)); and - the remedying of the Security Breach (clause 7.12(c)).

Item 26 Customer's Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Personnel General (clause 8.5) Specify the Customer's Personnel who will be available to work with the Contractor and their roles and responsibilities: Also specify the times and duration of their involvement as well as their authority levels:	Role: Project Manager as nominated by the Customer from time to time. Responsibilities: Manages and controls the projects through the project management life cycle. Time and duration of involvement: Available on Business Days during Contract Period.

Item 27 Specified Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specified Personnel (clause 8.8)	
Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:	As set out in the PIPP.

Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Agents and Subcontractors (clause 8.17)	
Specify which subcontractors are required to provide a Statutory Declaration - Subcontractor, substantially in the form of Schedule 7:	The Contractor must obtain from any Subcontractor a signed statutory declaration substantially in the form of Schedule 7 - Statutory Declaration - Subcontractor.

Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(h))	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	Not applicable

Item 30 Contractor's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(g))	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	The Contractor must, to the extent directly relevant to the performance of its obligations to the Customer under this Customer Contract: (a) comply with all applicable Laws, including any relevant mandatory Approvals, when carrying out, providing or supplying the Services; and (b) ensure that the Contractor and its Personnel are aware of, and comply with, the policies, codes and standards referenced in the box immediately below (for the avoidance of doubt, any reference to "NSW government sector employees" or "Sydney Trains employees" in the policies, codes and standards is to be read as a reference to the Contractor's employees and Personnel). Approval means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any Authority having any jurisdiction in connection with the Contractor's activities or under any applicable Law, which must be obtained or satisfied to carry out, provide, supply or use the Services.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes the Asset Standards Authority and Office of the National Rail Safety Regulator). Laws means the common law and any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by any Authority that is directly relevant to the performance of the Contractor's obligations under this Customer Contract.
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	The Contractor must comply with the most recent version of the following policies, codes and standards, as updated from time to time, to the extent they relate directly to the performance of the Contractor's obligations under this Customer Contract: - the policies, codes and standards that appear on the website: http://www.transport.nsw.gov.au/sydneytrains/contractors/; - the policies, codes and standards that appear on the Railsafe website at https://railsafe.org.au/, including but not limited to: - the policy entitled "Health and Safety Policy"; and - the applicable specifications on the safety and environment specifications page, available at: https://railsafe.org.au/safety-and-environment-specifications ; - the New South Wales Government Code of Practice for Procurement (January 2005); - in relation to work, health and safety management, the Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (September 2013); and - the Customer's policies, standards and procedures as listed in Item 25 or as updated or as notified to the Contractor from time to time.

Item 31 Customer's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Warranties (clause 9.4(h))	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	Not applicable.
Specify any codes, policies, guidelines or standards the Customer is to comply with:	Not applicable.

Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Part 3 Dictionary (clauses 1.2 to 1.5)	
Acceptance Test Notification Period is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period: If no period is specified, the period is 2 Business Days:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Acceptance Test Data is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Acceptance Test Period is the period for the performance of any Acceptance Tests for any Deliverable. Specify this period: If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Acceptance (clause 10.1)	
For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing: If not, the Deliverable will be Accepted under clause 10.1(a)	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date for a Deliverable occurs: If no period is specified, then the period is 2 Business Days.	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Conducting Acceptance Tests (clause 10.3)	
For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Specify the identification of the Deliverables or part of the Deliverables to be tested:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources	As per the regime set out in the PIPP unless the parties agree otherwise in writing.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
must be ready for use:	
Specify the methodology and process for conducting Acceptance Tests:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
Specify the Acceptance Test Data required:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	As per the regime set out in the PIPP unless the parties agree otherwise in writing.

Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clause 11.3)	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	Not applicable.
Specify any fee that is applicable for payment by credit/debit card	Not applicable.

Item 34 Intellectual Property

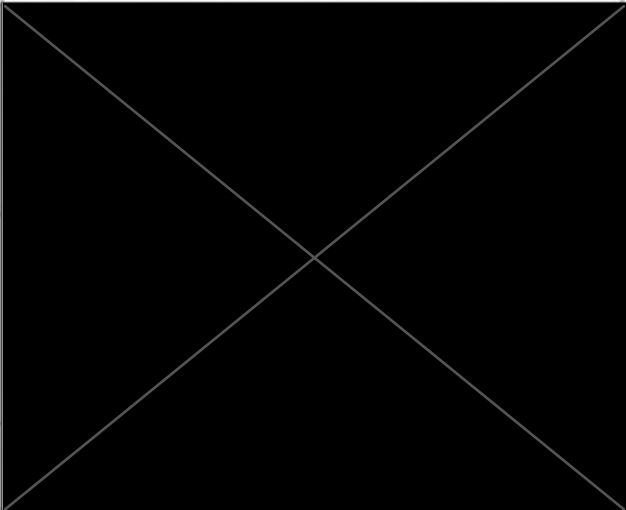
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Existing Material (clauses 13.7, 13.9 and 13.10)	
Specify any terms and condition applicable for granting a licence for Existing Material owned by a third party:	Per Additional Conditions clause 1.2(e).
If a perpetual and irrevocable licence to use certain Existing Material cannot be provided (for example because it is licensed under subscription for a defined period), specify: - the duration of the licence to use that Existing Material and/or - the terms on which the licence may be revoked.	Not applicable.
Specify any fees to be charged for any licence to use any of Contractor's Existing Materials:	Not applicable.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Owned New Material (clause 13.11)	
Specify whether clause 13.11 applies ie. whether the Customer owns any New Material. If so, specify: • which items of New Material are Customer Owned New Material; and • whether the Contractor is granted any licence by the Customer to use the Customer Owned New Material, and if so, what licence terms apply to the Contractor's use of the Customer Owned New Material. If clause 13.11 does not apply, state "Not applicable".	Per Additional Conditions 1.3.

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.4)	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8- Deed of Confidentiality:	If the Customer gives prior written consent to the Contractor to engage a Subcontractor under clause 8.14 of the Customer Contract, then the Contractor must ensure that that Subcontractor executes a Deed of Confidentiality substantially in the form of Schedule 8 - Deed of Confidentiality before performing any Services or receiving any Confidential Information of the Customer.

Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Insurance (clause 16.7)	
Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]	
Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if any higher limit of cover that is required by the Customer Contract:]	
If Services are being provided under the Customer Contract the default level of indemnity of professional indemnity	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
insurance for the total aggregate liability for all claims for the period of cover is \$1,000,000 [Only specify is a higher limit that is required by the Customer Contract:]	
Specify any additional insurance that the Contractor is to hold, including the type of insurance, the term of the insurance and the amount of the insurance:	Workers compensation in accordance with law.

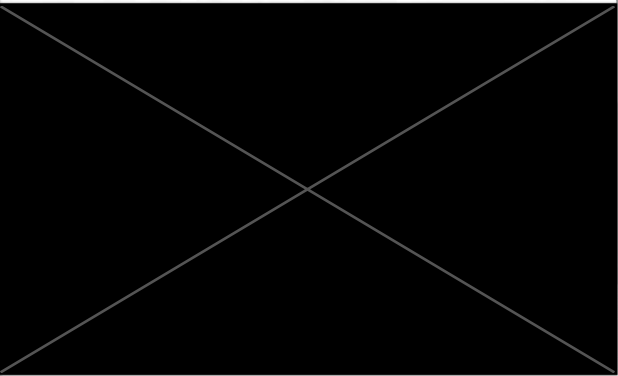
Item 37 Performance Guarantee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Guarantee (clause 17.2)	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	Not applicable.
Specify the date by which the Performance Guarantee must be provided to the Customer. If no date is specified the Contractor must provide the Performance Guarantee to the Customer within 30 days of the Commencement Date.	Not applicable.

Item 38 Financial Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Financial Security (clause 17.4)	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial Security:	Not required.
Specify the date by which the Financial Security must be provided to the Customer: If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	Not required.

Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Limitation of Liability (clause 18) If the Parties cannot agree the amount that is legally payable under the Customer Contract for the: • Non-Recurring Service or Product; and/or • Short Term Recurring Service (as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price). Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service. (See the definition of Contract Value in Part 3)	
If Services are being provided under any of the following Modules: • Module 6 – Contractor Services; • Module 7 – Professional Services; or • Module 8 – Training Services, specify whether the Parties regard the relevant Services as being: • the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring Services for the purpose of the limitation of liability; or • provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability. (See definition of Non-Recurring Services and Recurring Services in Part 3)	The relevant Services to be provided under Module 7 are Non-Recurring Services, but are subject to the limitations in the preceding box.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the alternative cap of liability (clause 18.3):	See the preceding boxes in Item 39.

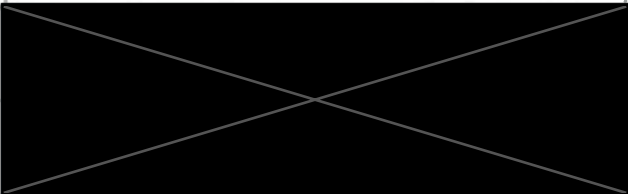
Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Reporting (clause 21.1)	
Specify the reports required, (if any), the time for provision and the agreed format:	The Contractor will provide the Customer with performance management reports as reasonably required by the Customer. The performance management reports must: 1. provide an analysis of the performance of the Contractor in meeting the key performance indicators (KPIs) and Service Levels set out in Schedule 3; 2. propose an action plan to remedy all non-compliances with the KPIs and Services Levels set out in Schedule 3, including a time frame within which the Contractor will rectify the non-compliance; and 3. evidence all steps taken by the Contractor to improve its processes following non-compliance to ensure all KPIs and Service Levels set out in Schedule 3 are complied with for the duration of the Contract Period (including relation to prior non-compliances and KPIs and Service Levels set out in Schedule 3, if they have not been previously addressed to the reasonable satisfaction of the Customer).

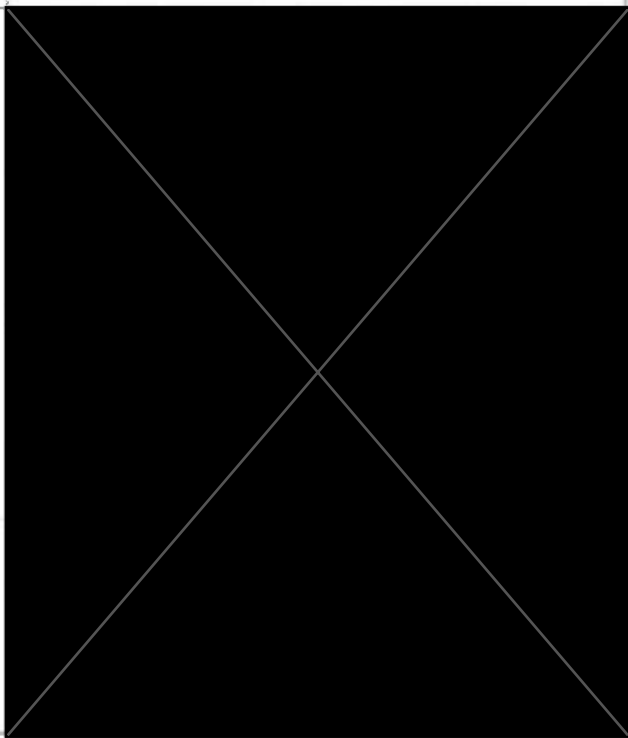
Item 40A Audit

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Alternative Audit Mechanism (clause 23.11)	
If the default audit provisions of clause 23.5-23.8 are to apply, state "Not Applicable". If an alternative audit mechanism is agreed by the Customer and Contractor, specify the terms of such alternate audit including the Contractor's obligations to be audited. Note: Any alternate audit mechanism must address compliance with the Contractor's Customer Data, security and privacy obligations and such other obligations required by the Customer and reasonably agreed by the Contractor.	Not applicable.

Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Dispute Resolution (clause 24)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7-24.8.	
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Termination for Convenience by the Customer (clause 25.4)	
Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3, and if so, specify that amount:	

Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any Additional Conditions: Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the consent of the Contract Authority and the Secretary of the New South Wales Department of Finance, Services and Innovation where an Additional Condition varies any term or condition of the Procure IT Framework	Additional Conditions are provided in Schedule 2 Annexure A - Additional Conditions .

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
including a Protected Clause.	

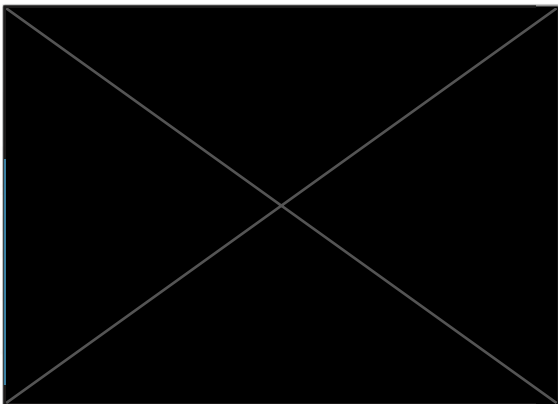
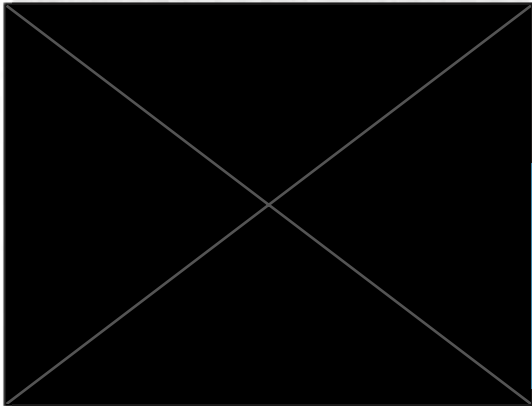
This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 as if repeated in full in this General Order Form.

SIGNED AS AN AGREEMENT

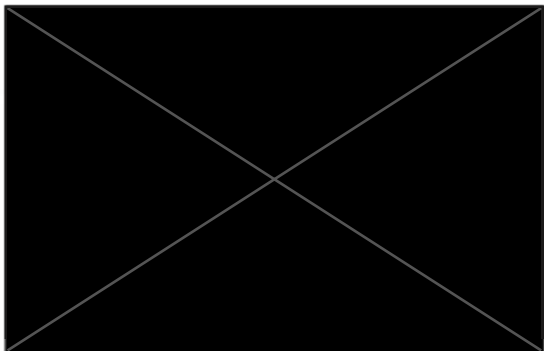
Signed for and on behalf of Sydney Trains (ABN 38 284 779 682)

By but not so as to incur personal liability

In the presence of:



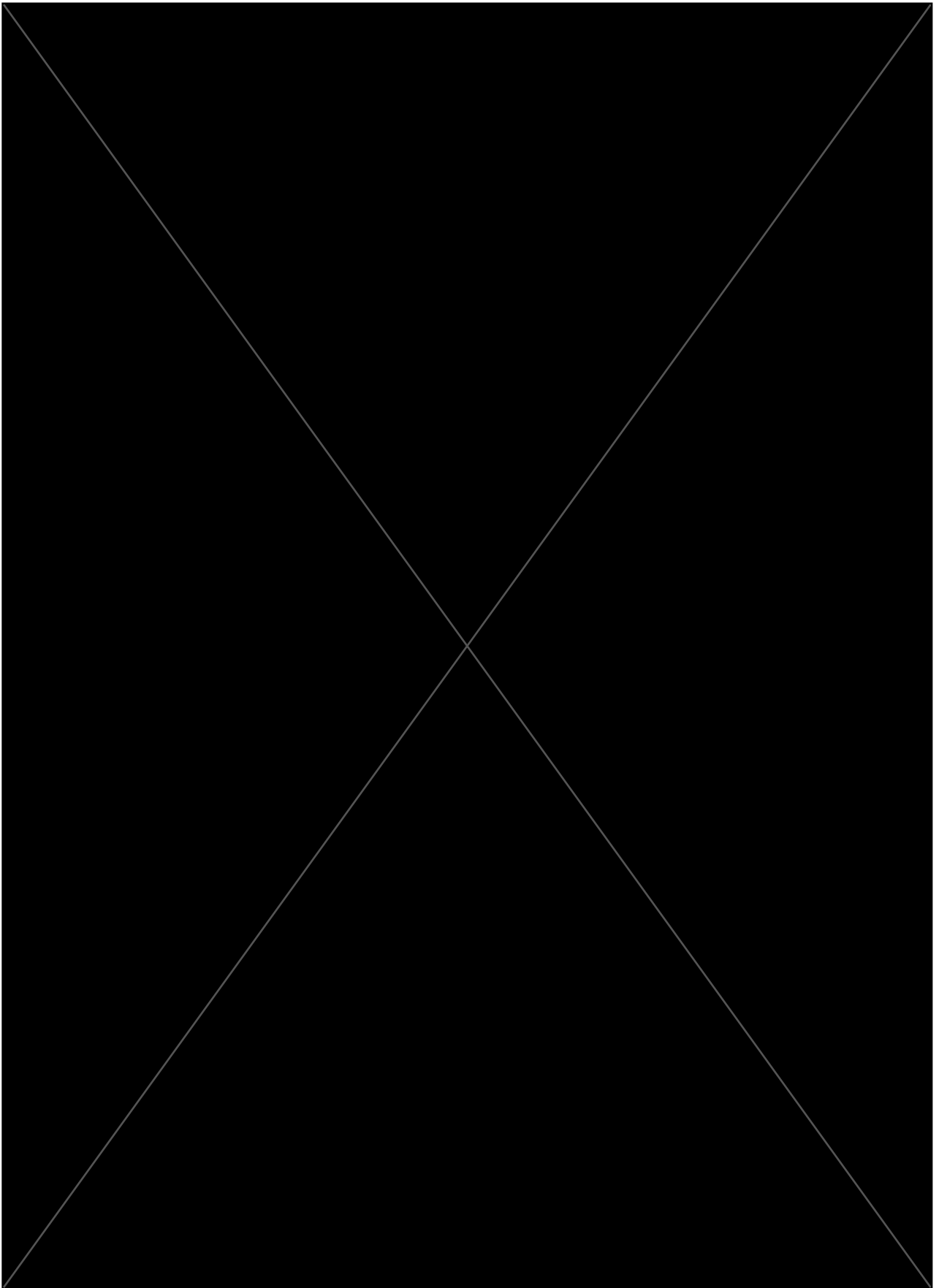
Signed by AppJourney Pty Ltd (ABN 80 162 174) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

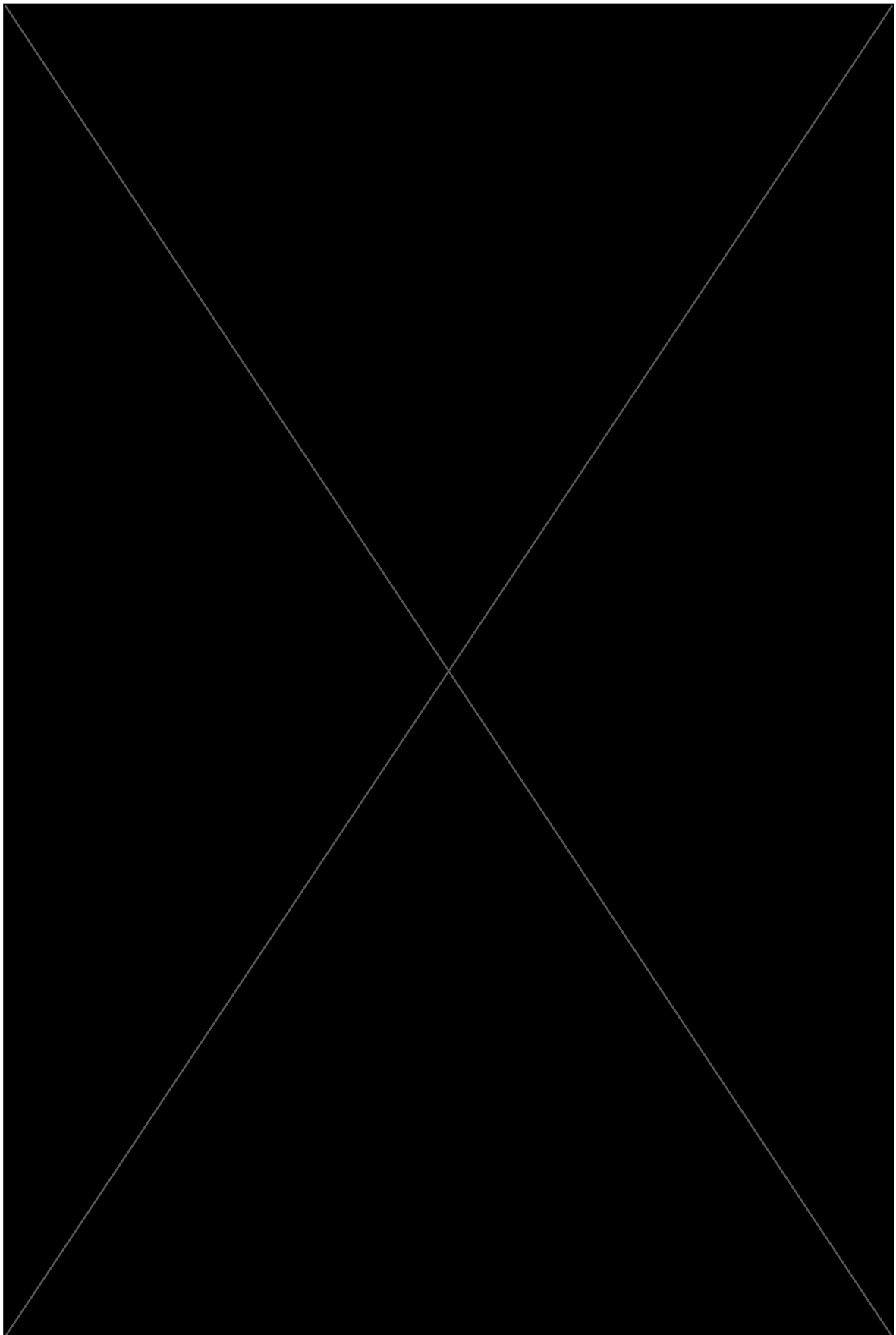


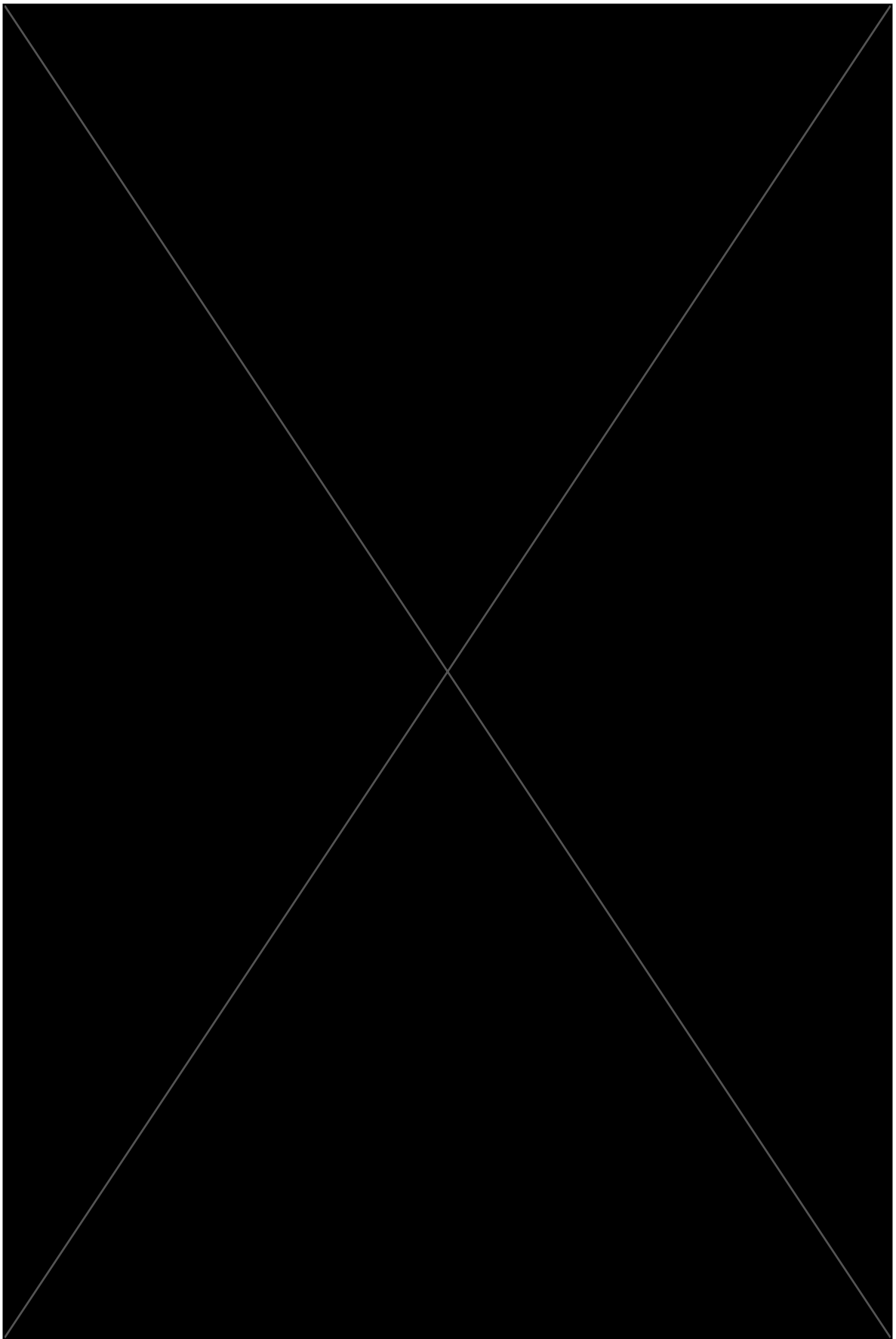
Schedule 2: Agreement Documents

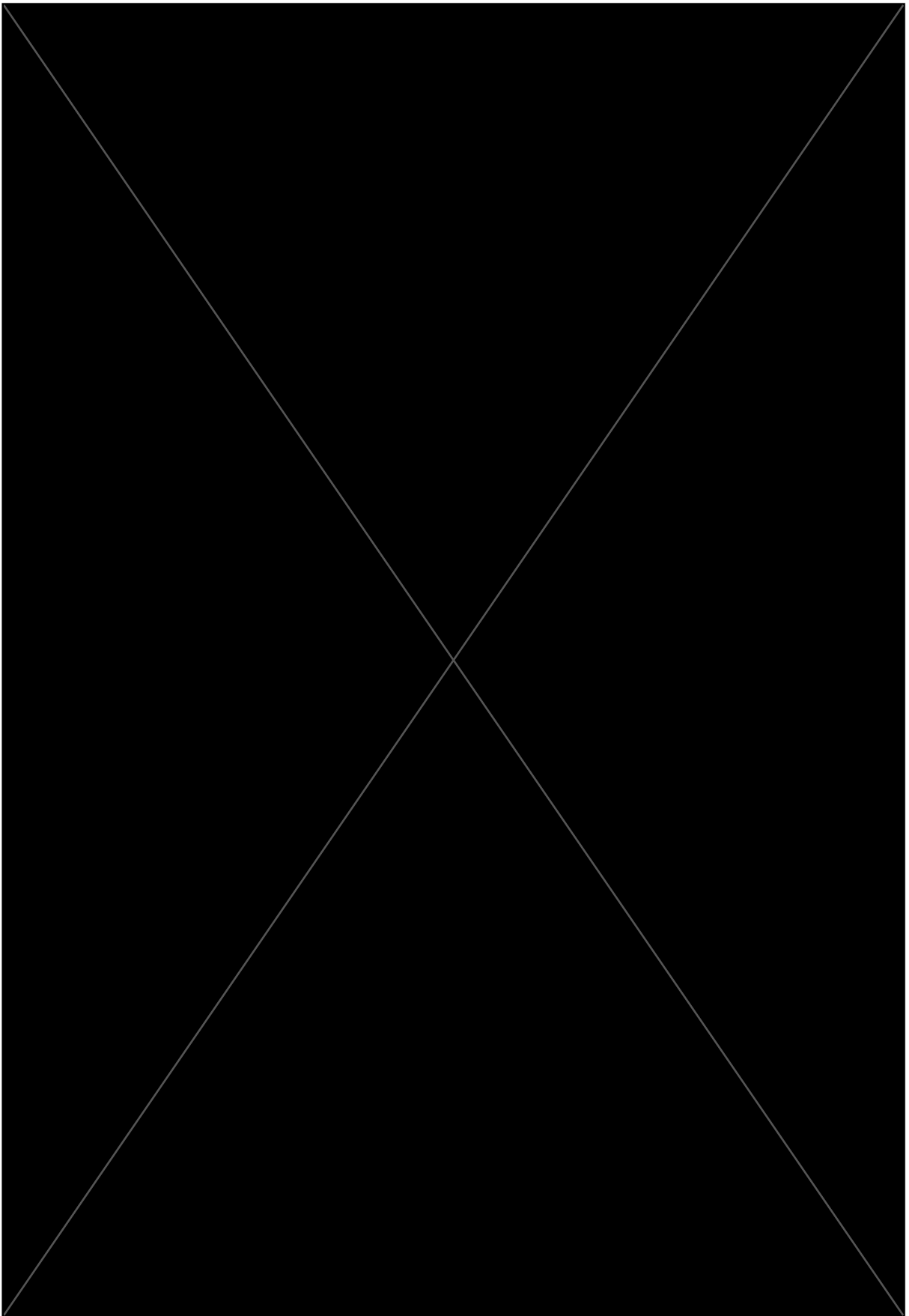
Itemise all documentation (including any supplemental terms and conditions agreed to by the Customer, accepted tenders, offers or quotes from the Contractor, and any letter of acceptance or award issued by the Customer) between the Customer and the Contractor. All such documentation must be itemised in this Schedule 2 and listed below in descending date order (i.e. the latest document is listed first.)

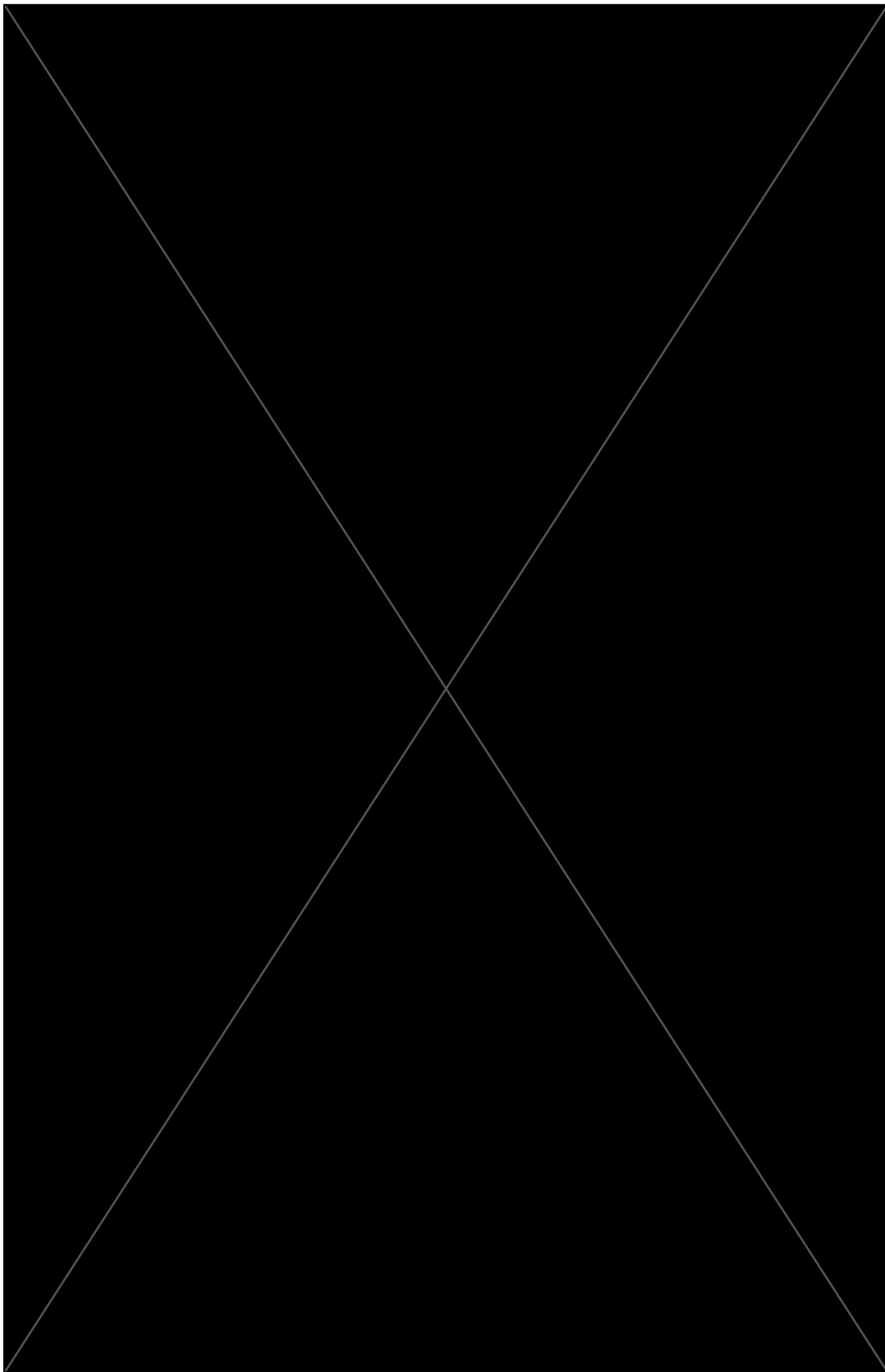
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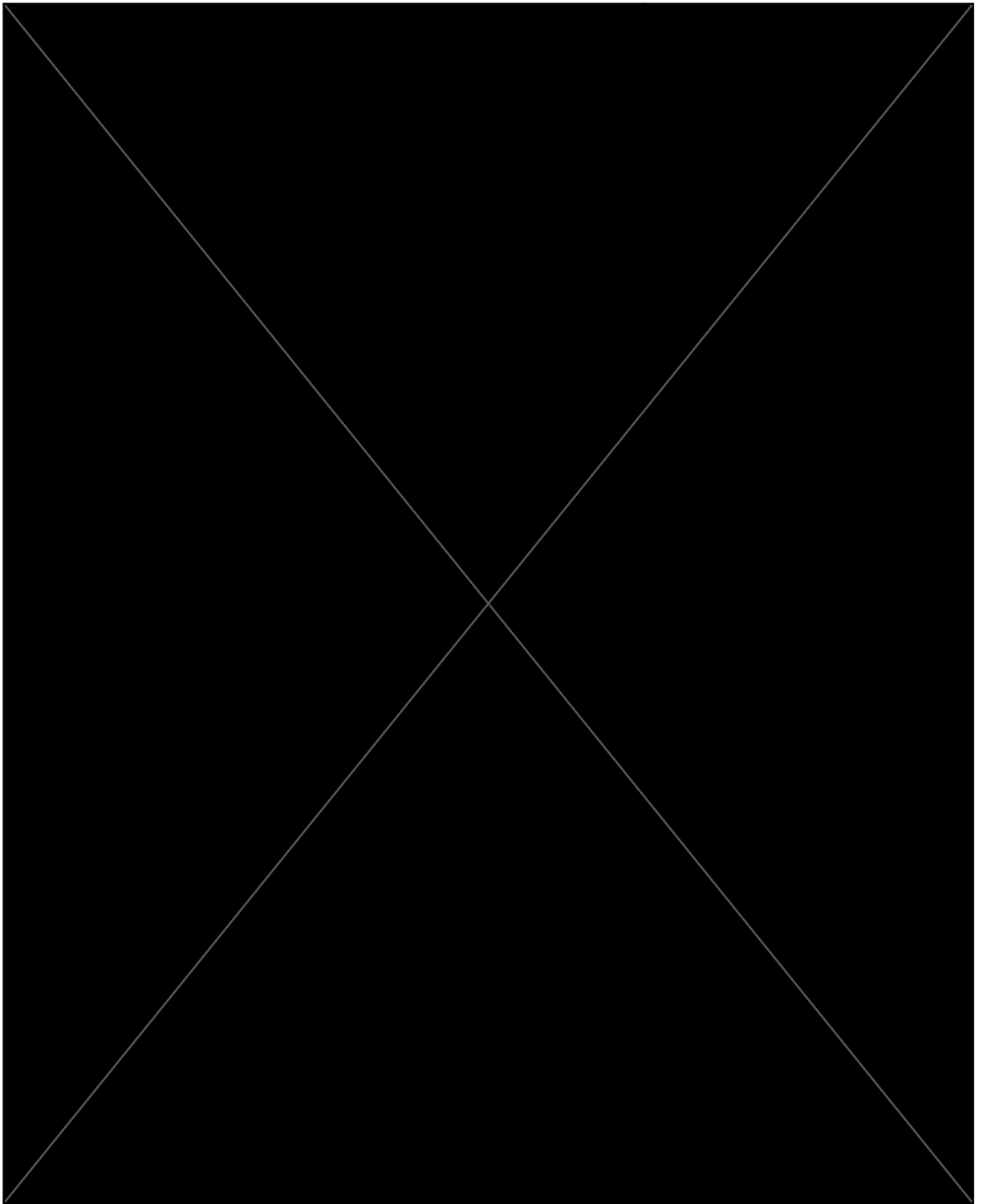


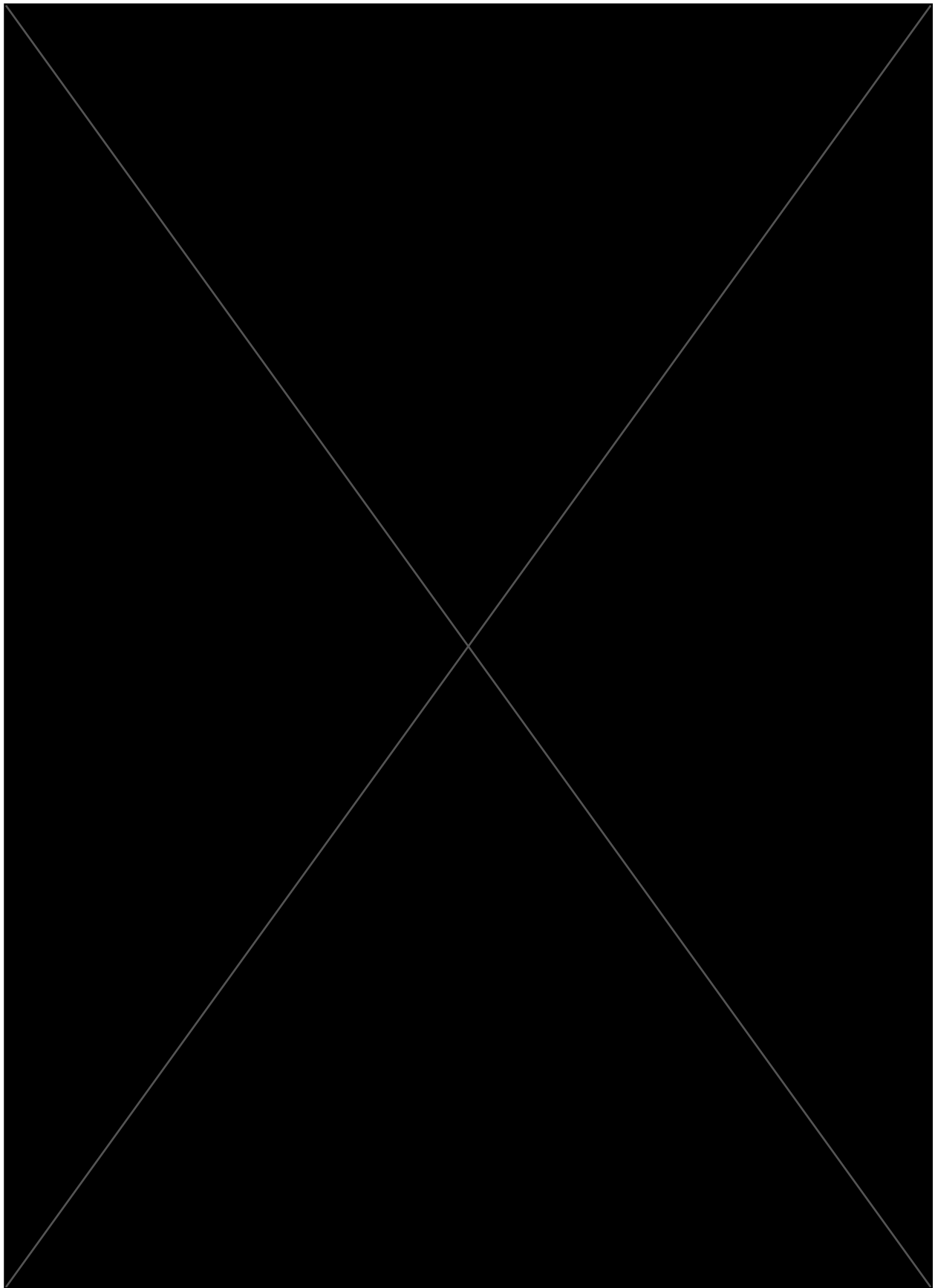


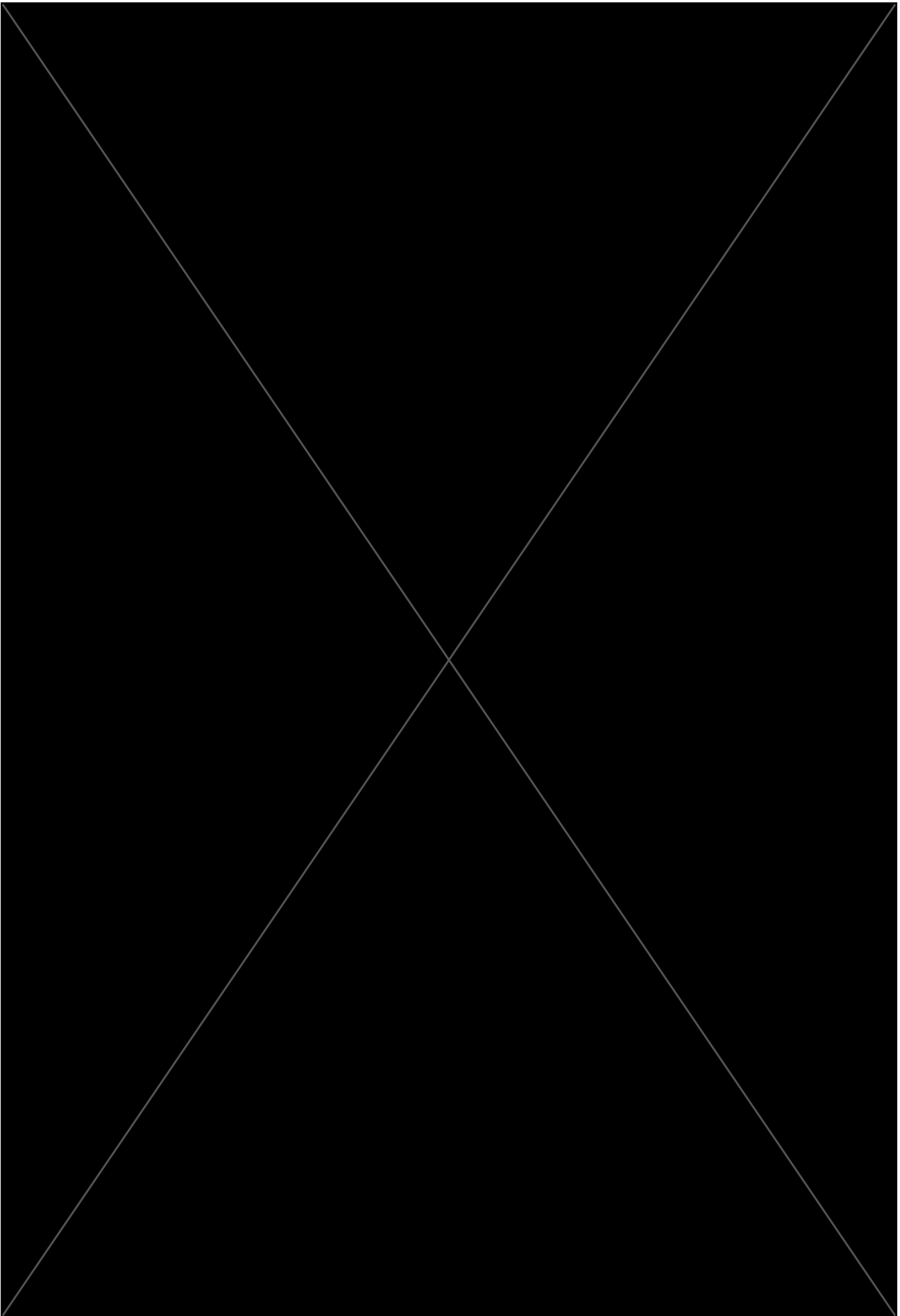


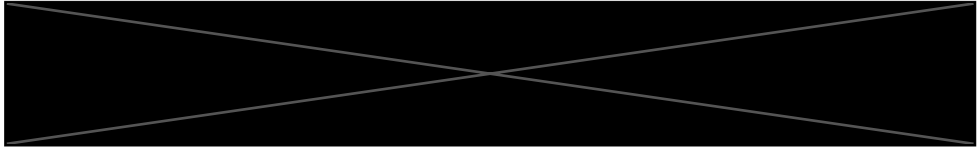












Appendix 1A - Deed of Novation

Dated the Effective Date

Parties **AppJourney Pty Ltd (ABN 80 162 912 174) ("Retiring Party")**
 Sydney Trains (ABN 38 284 779 682) ("Continuing Party")
 [REDACTED] ("Substitute Party")

Recitals

- A. The Retiring Party and the Continuing Party are parties to the Contract.
- B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C. The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears, and in this deed:

Contract means the agreement between the Retiring Party and the Continuing Party entitled **[insert description]** and dated in or about **[insert]**

Contract Guarantees means the guarantees (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

Effective Date means the date on which the last party to execute this deed executes this deed.

GST means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth).

Liability means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

Related Entity means:

- (a) in respect of the Continuing Party, any 'public transport agency', including Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988 (NSW)*, and any entity controlled by any of them; and
- (b) in respect of the other parties, has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

3. Novation

3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

- (a) The Substitute Party:

- (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract, in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, Claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

4. Insurance

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party (or, if applicable, the benefit of cover is extended to the Substitute Party) as required by the Contract; and
- (c) the Substitute Party must take the necessary steps to ensure that, for all insurances required to be effected by the Substitute Party under the terms of the Contract, the Continuing Party is named (or, if applicable, the benefit of cover is extended to the Continuing Party) as required by the Contract.

5. Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

6. Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

7. Representations and warranties

7.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

7.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

7.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

8. Duties, Costs and Expenses

8.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

8.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

8.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;

- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

9. General

9.1 Governing law

This deed is governed by and must be construed according to the laws applying in New South Wales.

9.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.2(a).

9.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

9.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

9.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

9.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

9.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

9.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Executed as a deed.

Signed, sealed and delivered by AppJourney Pty Ltd (ABN 80 162 912 174)

[Redacted signature area]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

[Redacted signature area]

[Redacted signature area]

Signature of Sole Director/ Sole Secretary

[Redacted signature area]

[Redacted signature area]

Print name

[Redacted signature area]

[Redacted signature area]

Date

Executed for and on behalf of Sydney Trains (ABN 38 284 779 682) by an authorised delegate in the presence of:

[Redacted signature area]

Signature of Witness

Signature of Authorised Delegate

[Redacted signature area]

[Redacted signature area]

Full name of Witness (print)

Full name of Authorised Delegate (print)

[Redacted signature area]

[Redacted signature area]

Date

Date

Signed, sealed and delivered by [Insert Substitute Party name] (ABN [Insert])

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

Appendix 1B Form of Statutory Declaration

Statutory Declaration		Oaths Act (NSW) Ninth Schedule
I, of do solemnly and sincerely declare that: 1. I am the representative of: ("the Contractor") in the Office Bearer capacity of: 2. The Contractor has a contract with [.....]: ("the Contract") 3. I personally know the facts which I have set out in this declaration. 4. All employees who have at any time been engaged by the Contractor for work done under the Contract: a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation, with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below: Employee: Amount unpaid or not accrued: 5. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor. 6. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration): (a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and (b) that all their employees and subcontractors, as at the date of the making of such a declaration: i) have been paid all remuneration and benefits due and payable to them by; or ii) had accrued to their account all benefits to which they are entitled from; the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and (c) of details of any amounts due and payable or benefits due to be received or accrued described in 6(b) above which have not been paid, received or accrued,		

*Identification document relied on
(may be original or certified copy)*

Signature of person before whom the declaration is made

Before me:

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title of the person before whom the declaration is made)*

** The declaration must be made before one of the following persons:*

- where the declaration is sworn within the State of New South Wales:

- (i) a justice of the peace of the State of New South Wales;*
- (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or*
- (iii) a notary public.*

- where the declaration is sworn in a place outside the State of New South Wales:

- (i) a notary public; or*
- (ii) any person having authority to administer an oath in that place.*

Appendix 1C Subcontractor's Statement

SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND

REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:

(Business name)

of

.....

(Address of Subcontractor)

has entered into a contract with

ABN:.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier

.....

(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive,

(Note 4)

subject of the payment claim dated:/...../.....

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as

applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box.

(Note 6)

- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....

(Note 7)

- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

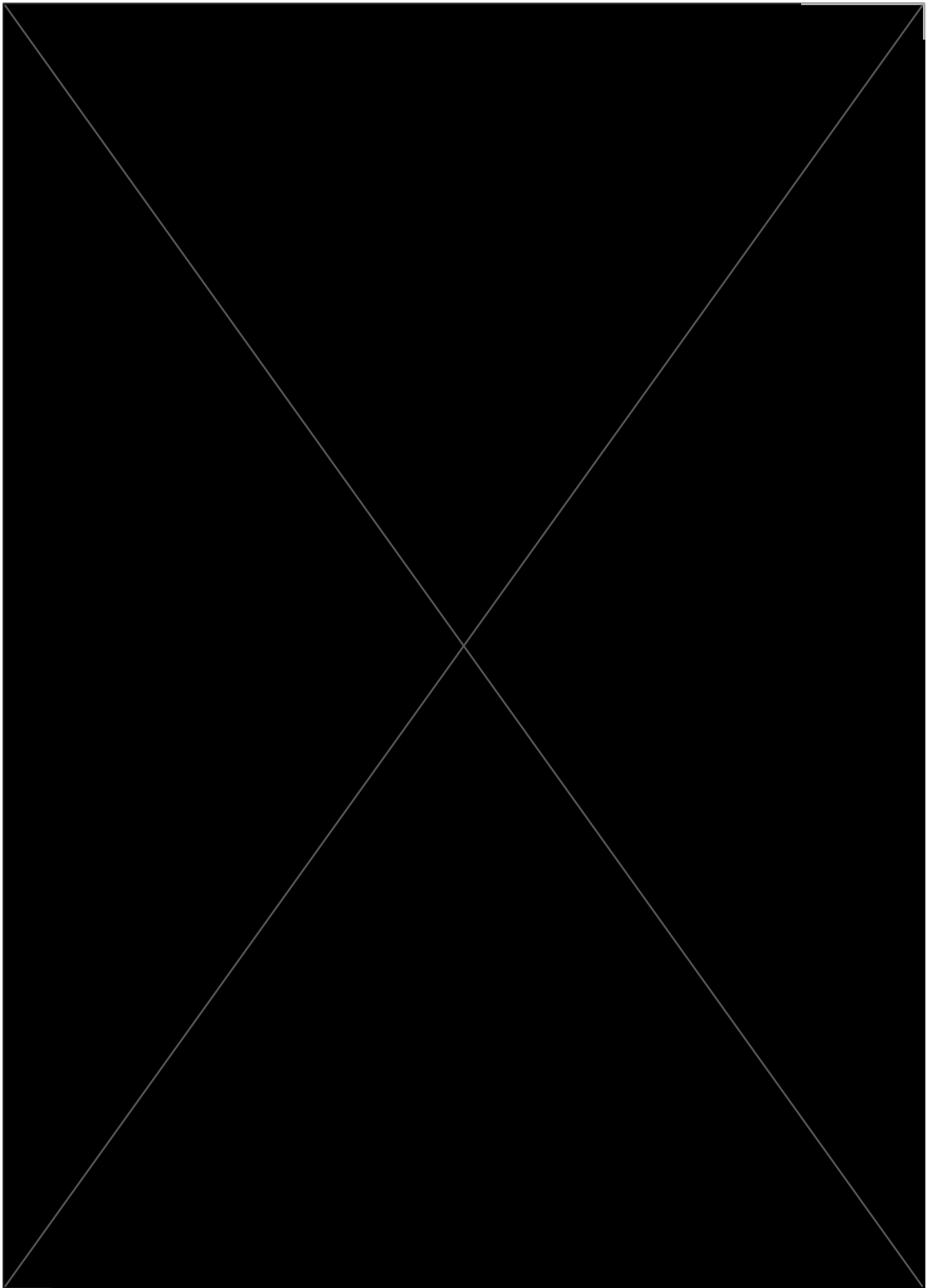
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

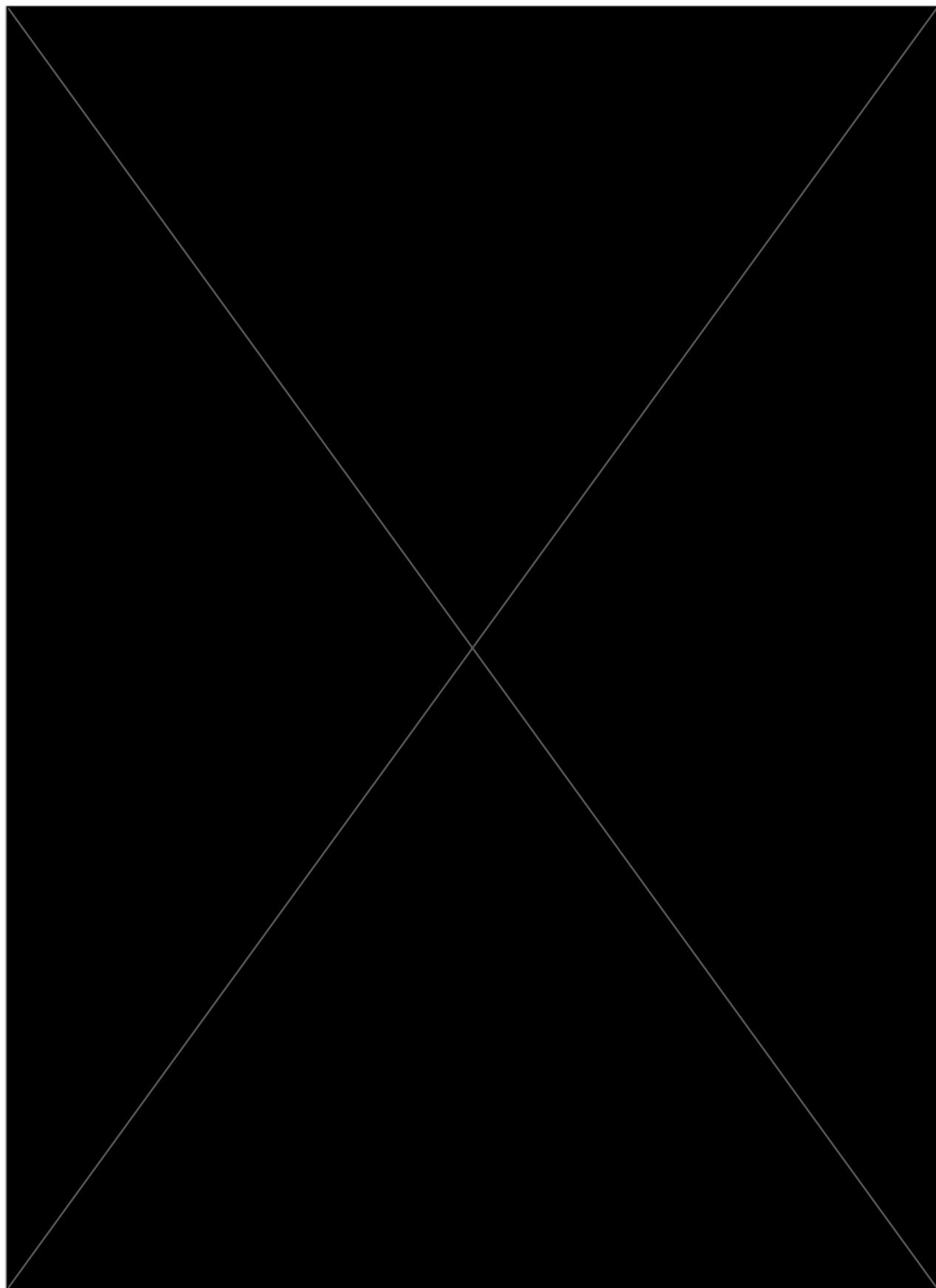
(Note 10)

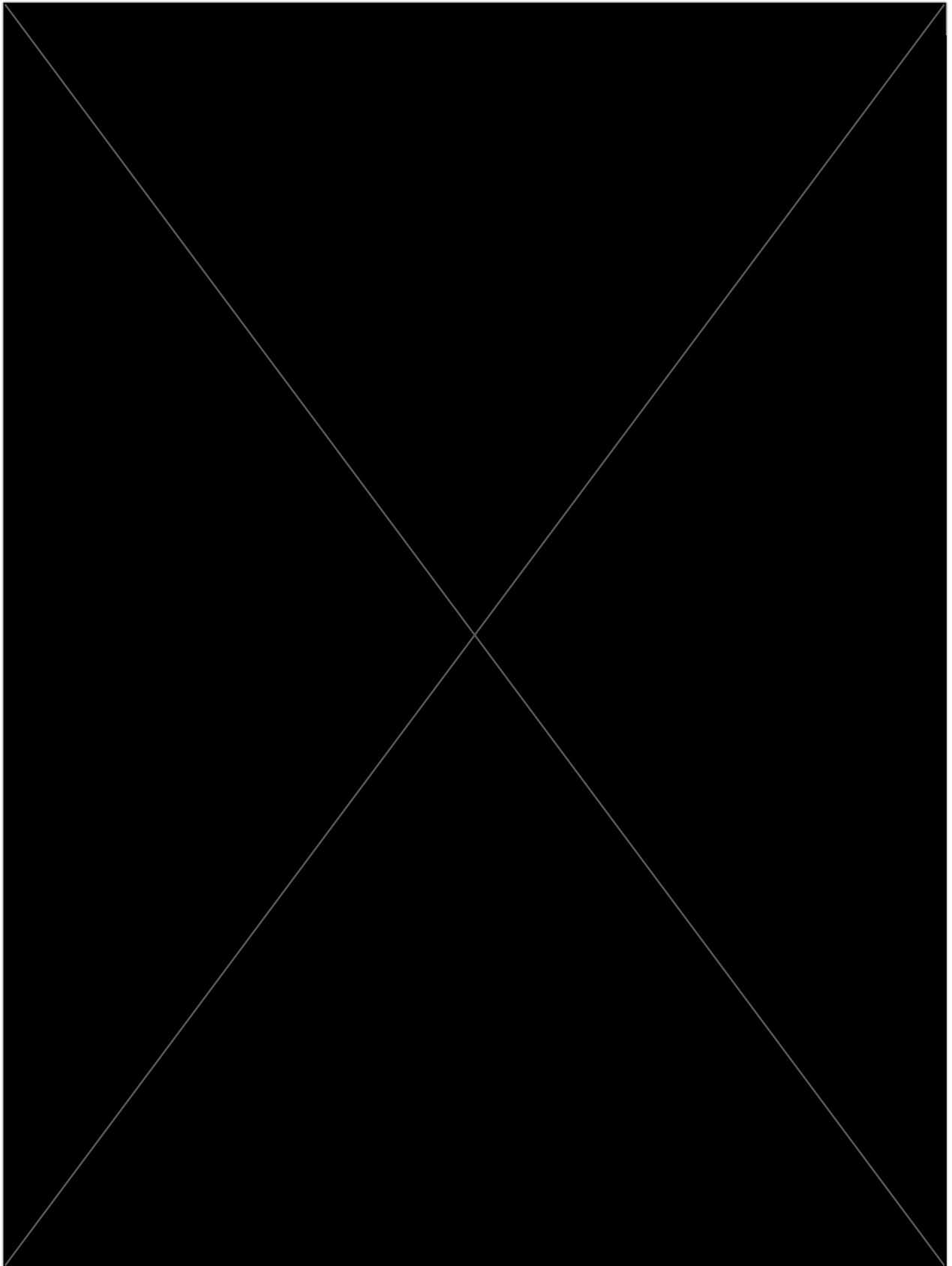
- (f) Signature Full name.....

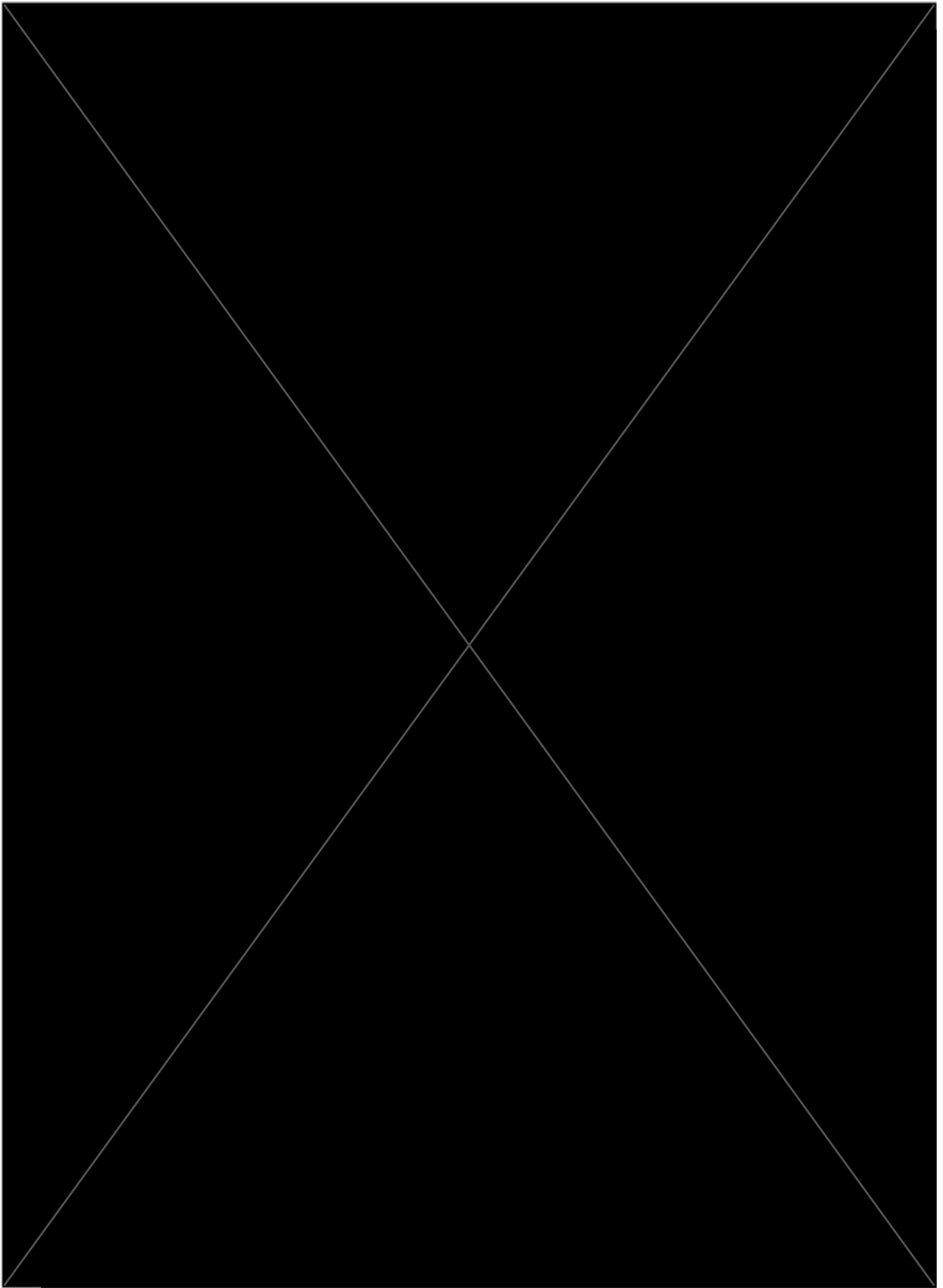
- (g) Position/Title Date/...../.....

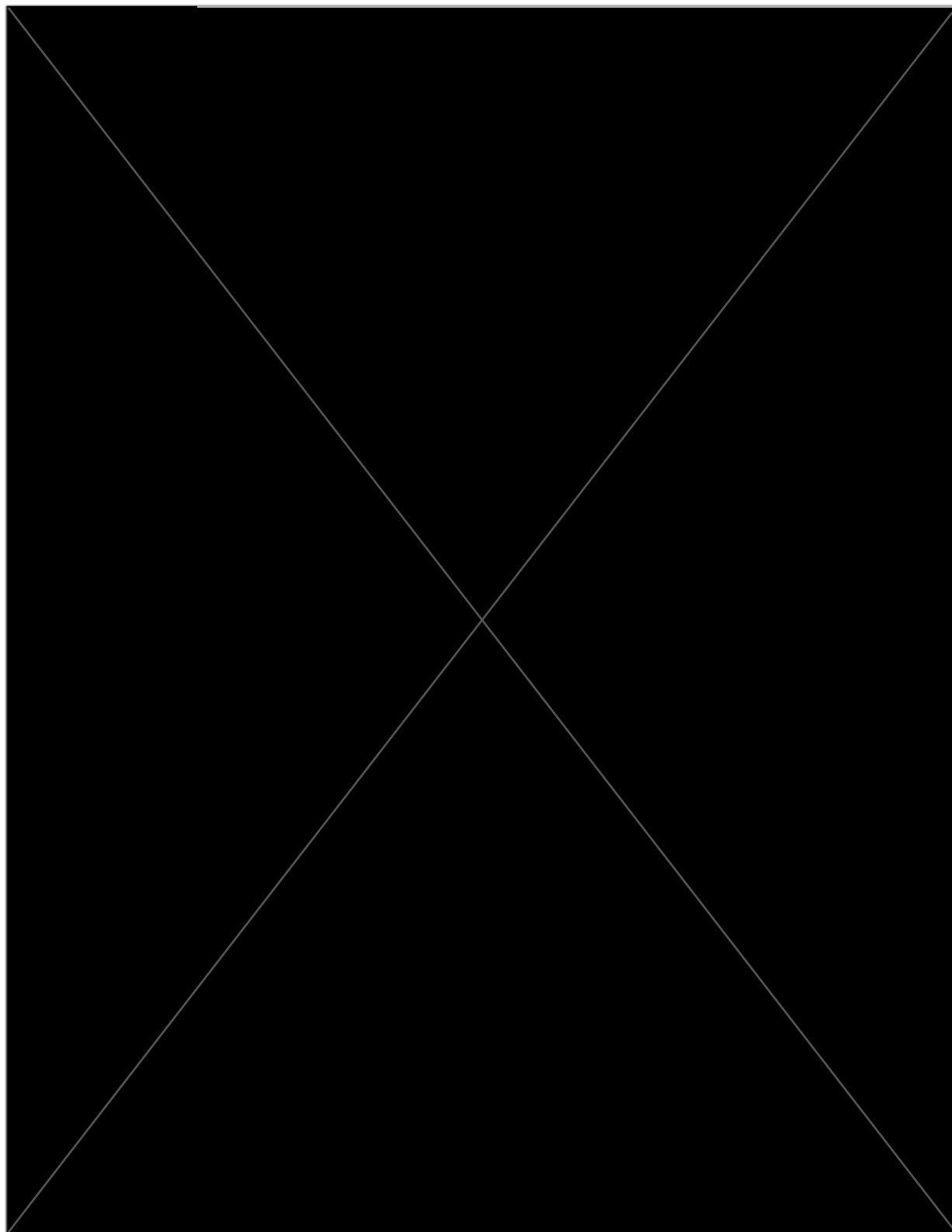
NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

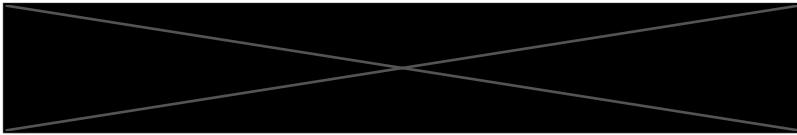


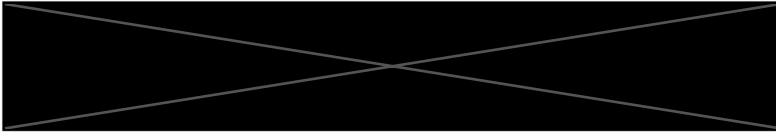


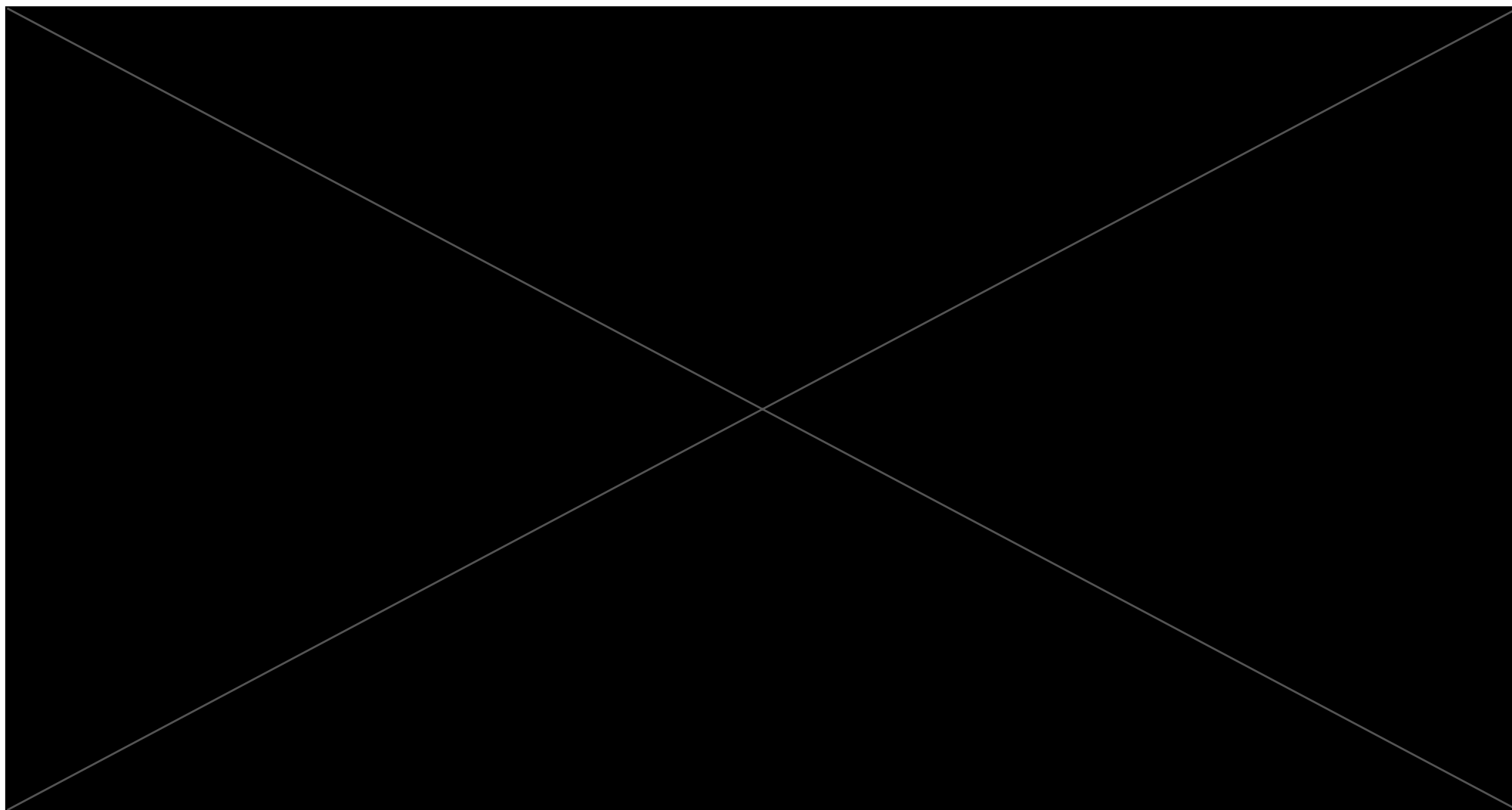


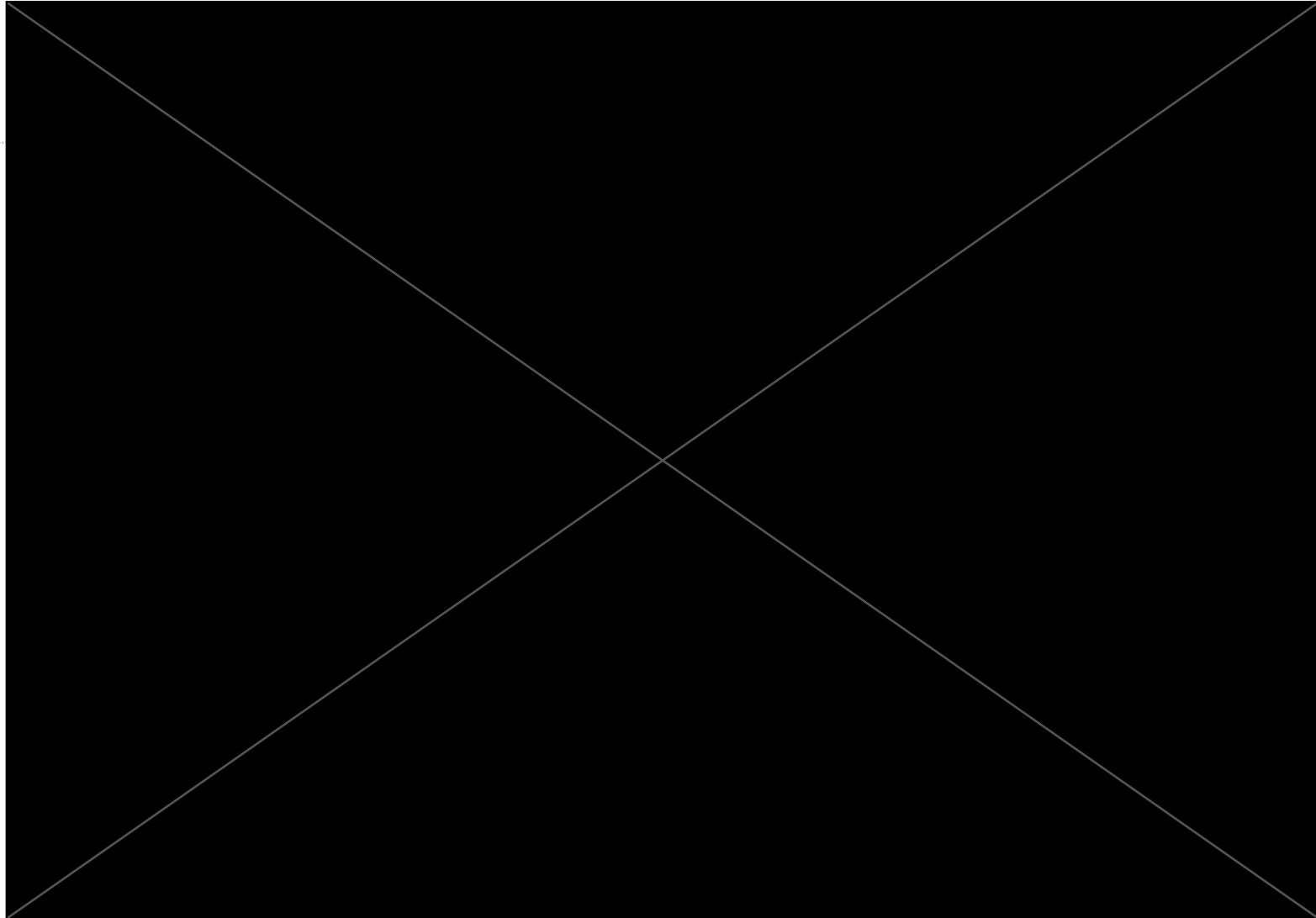


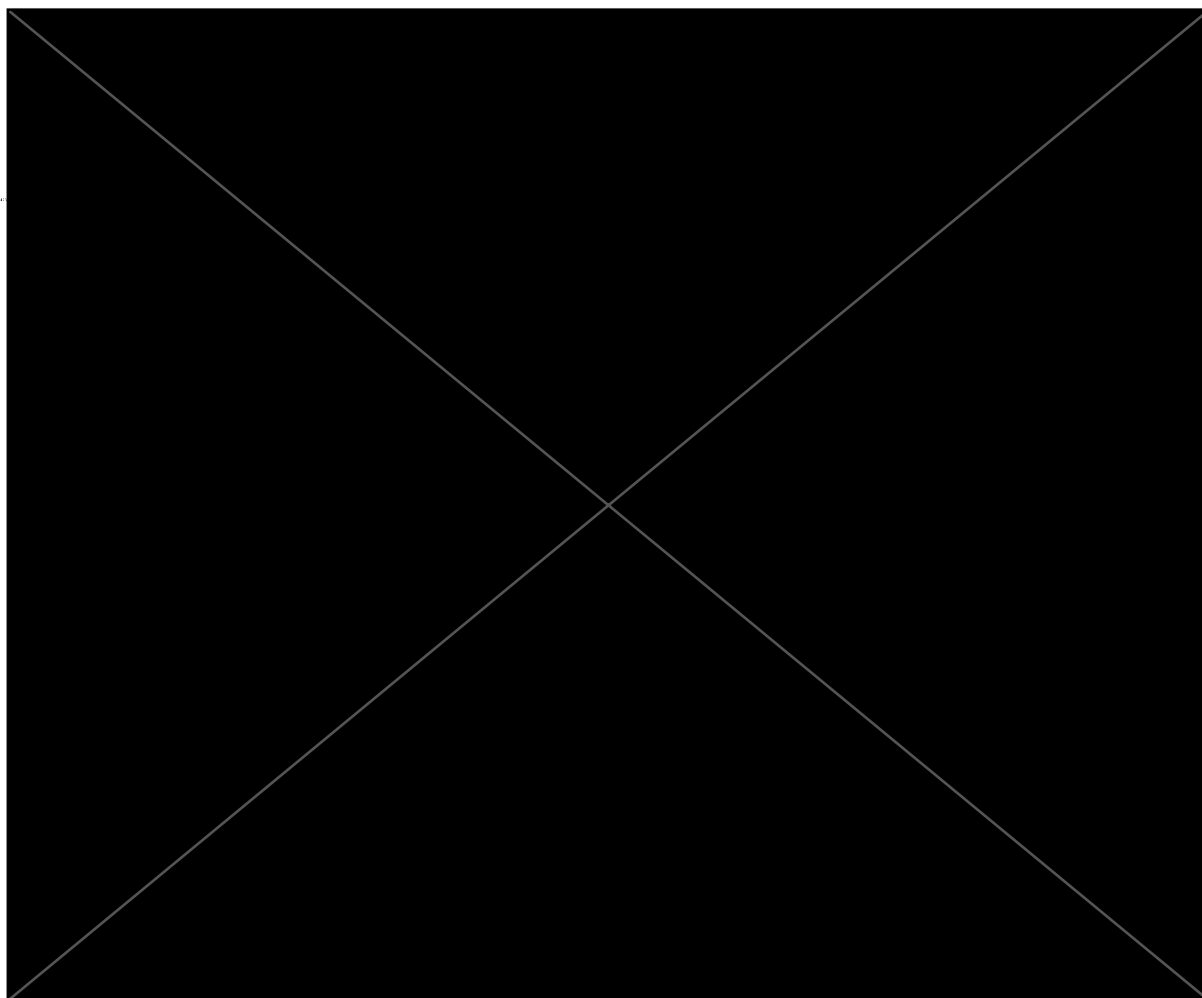


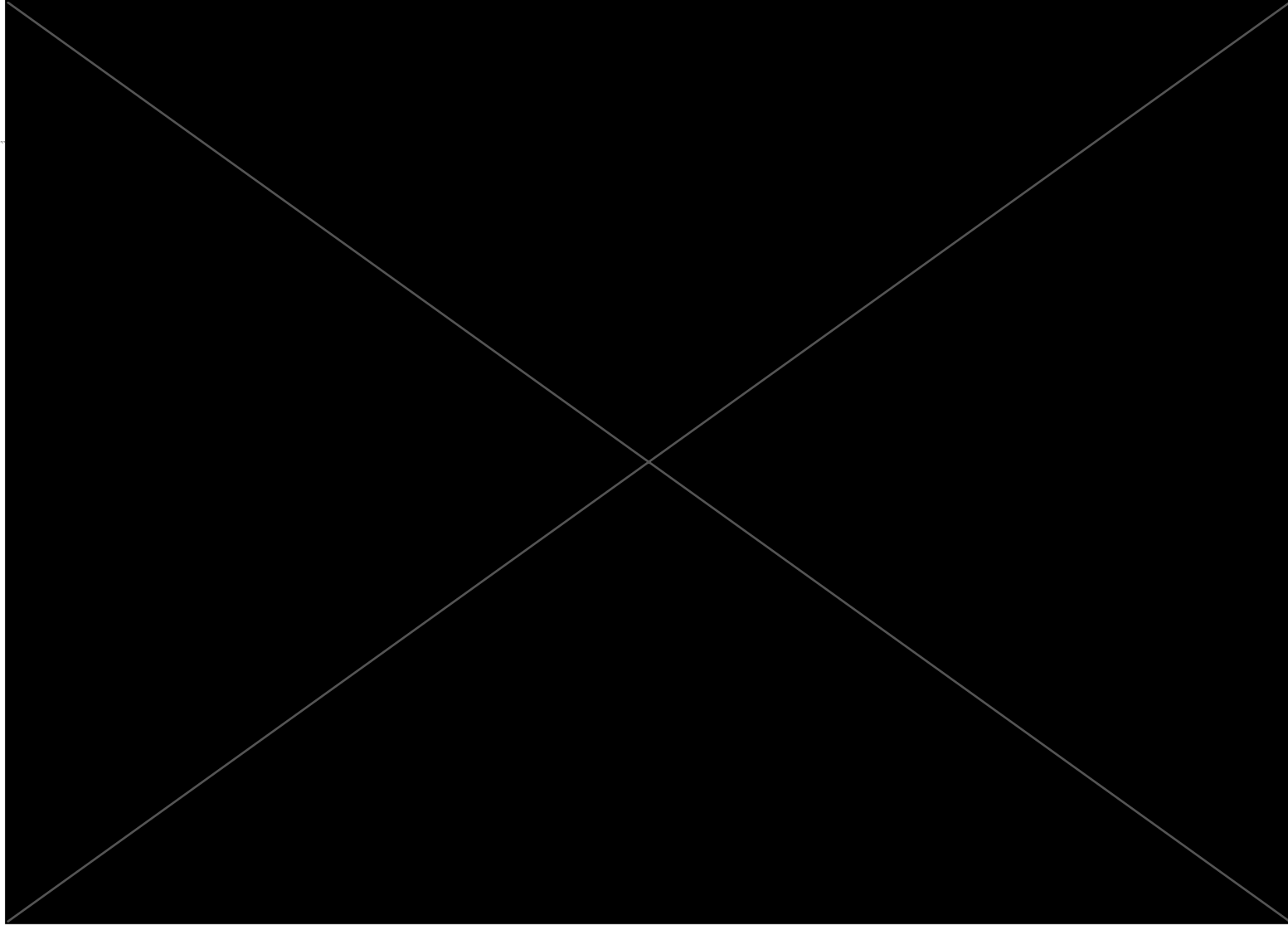


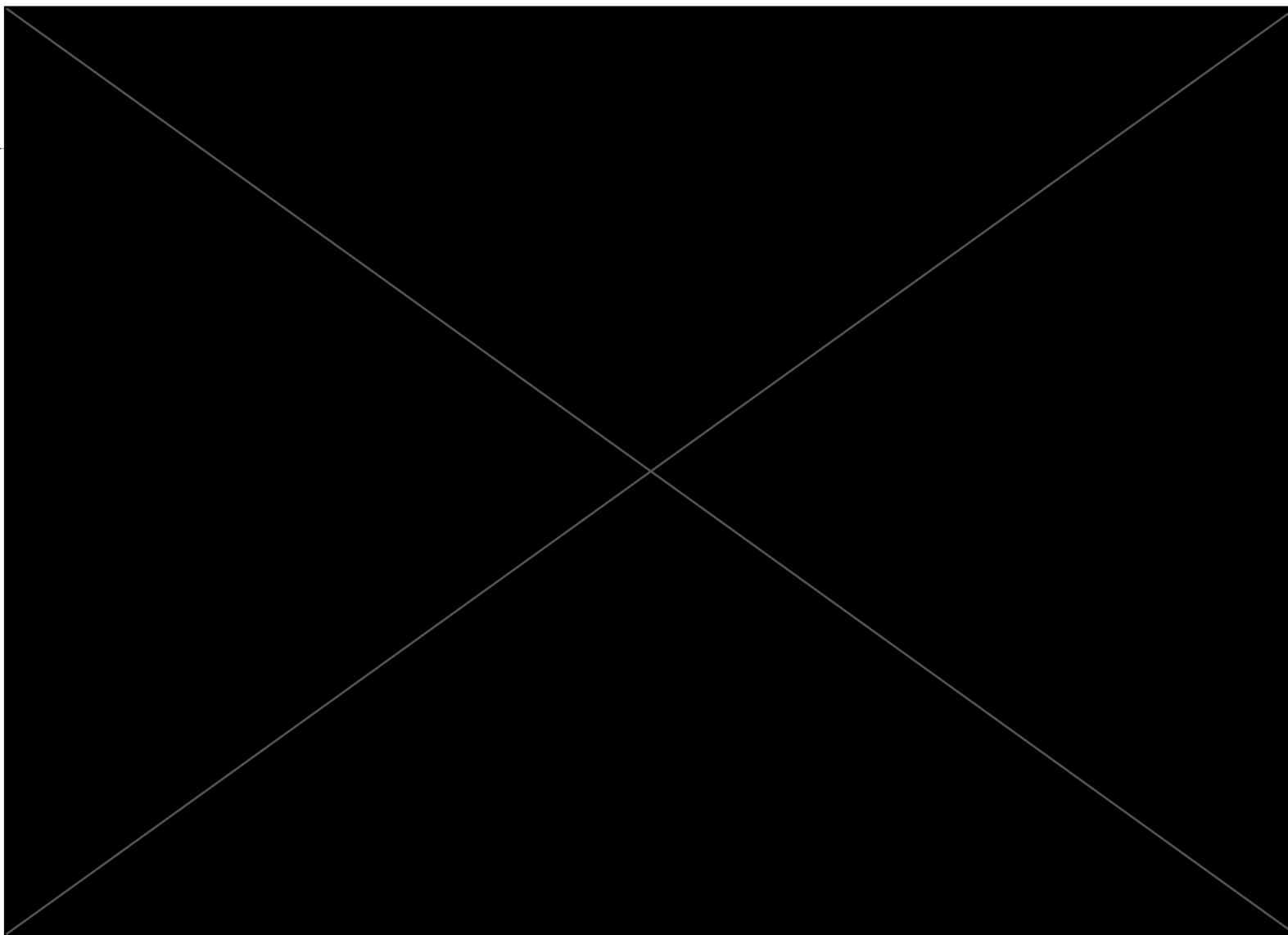


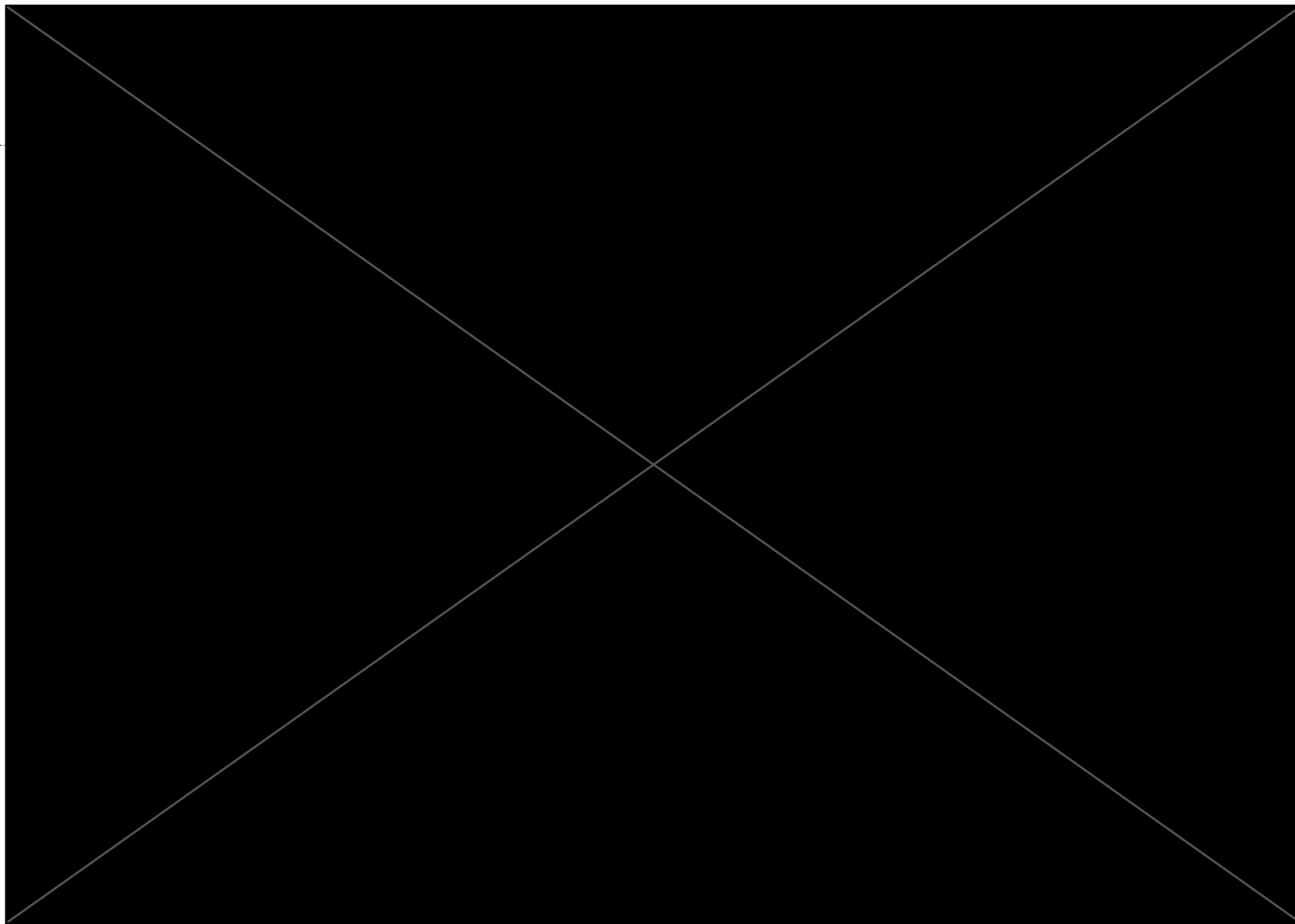


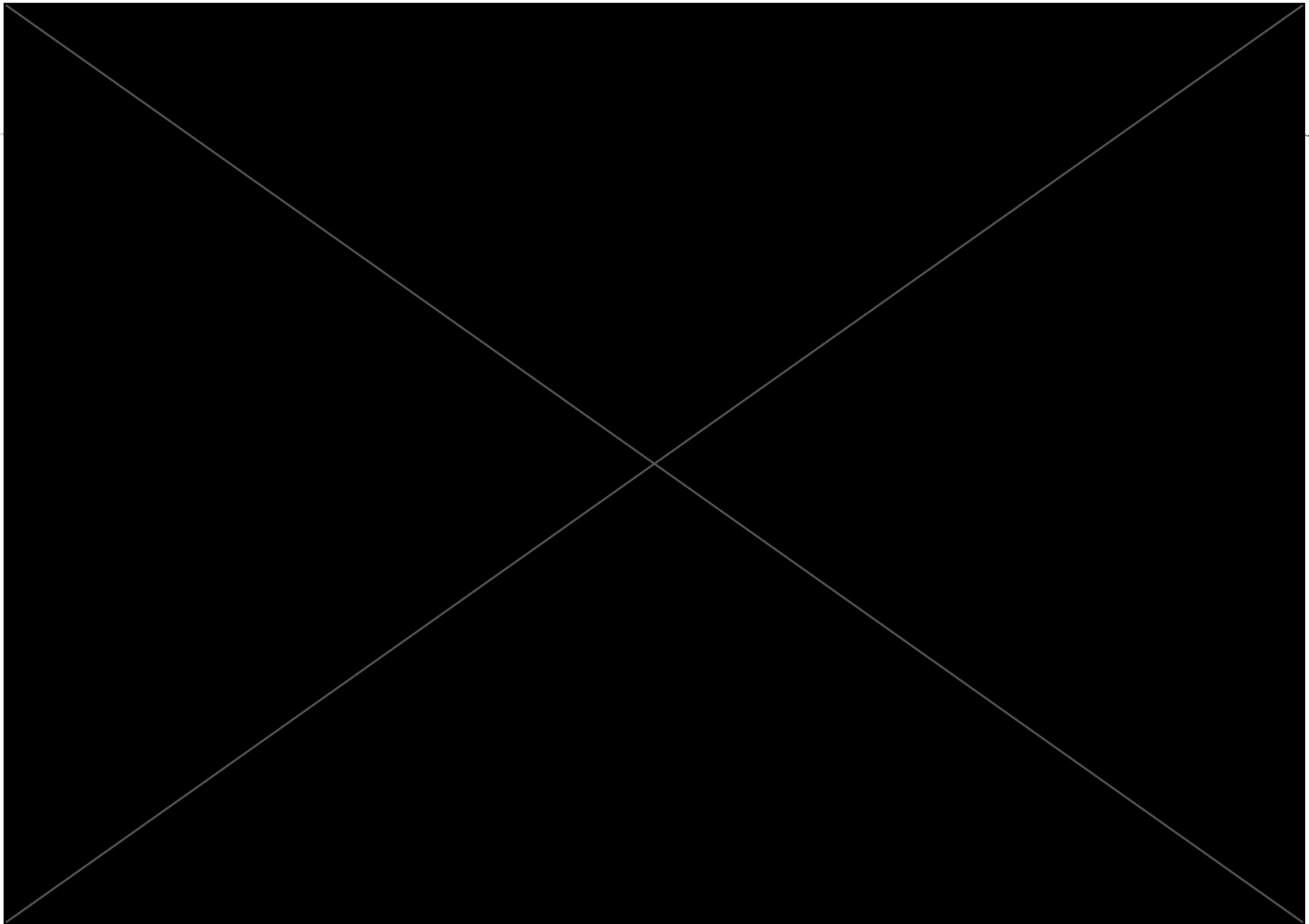


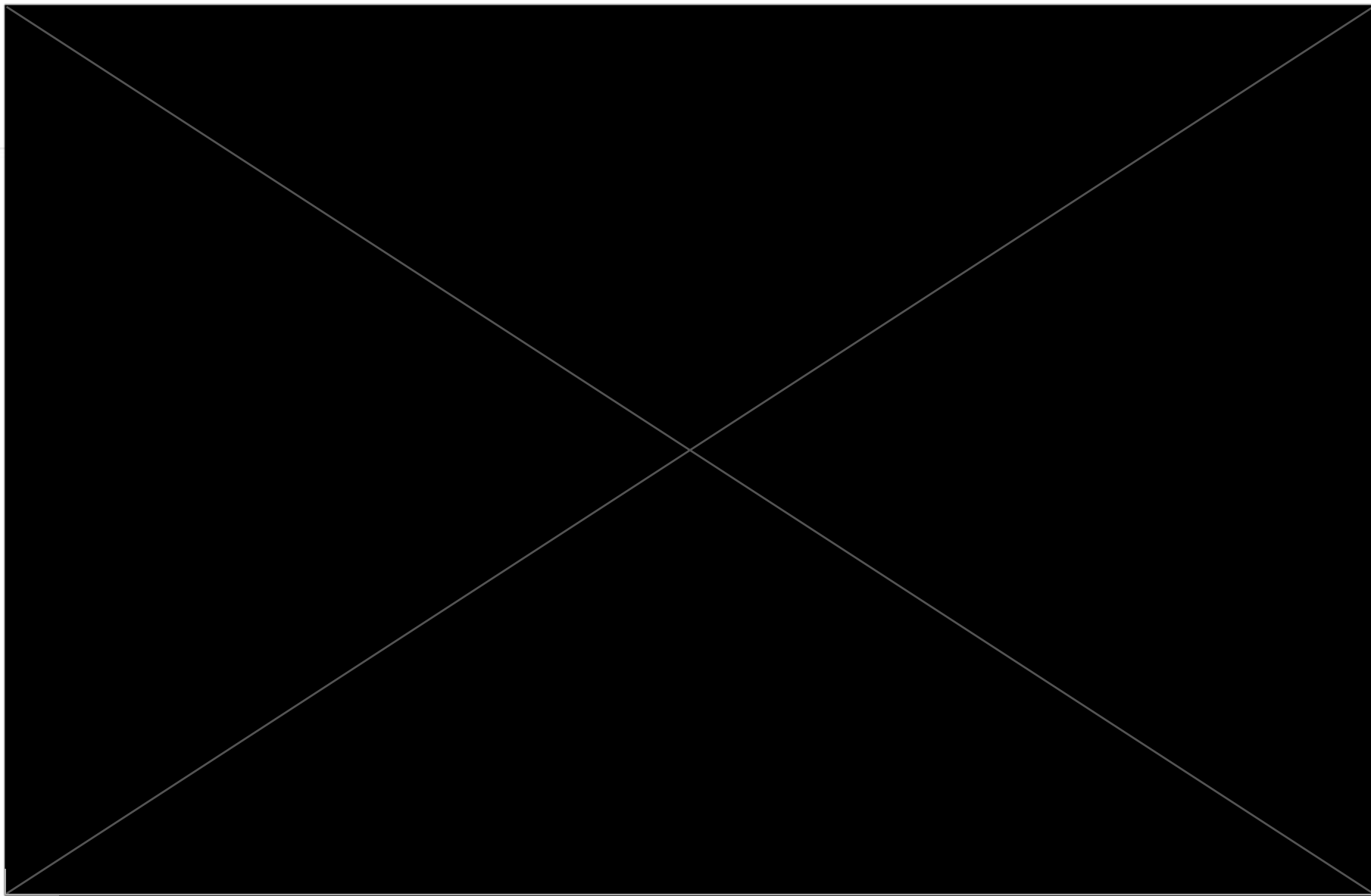


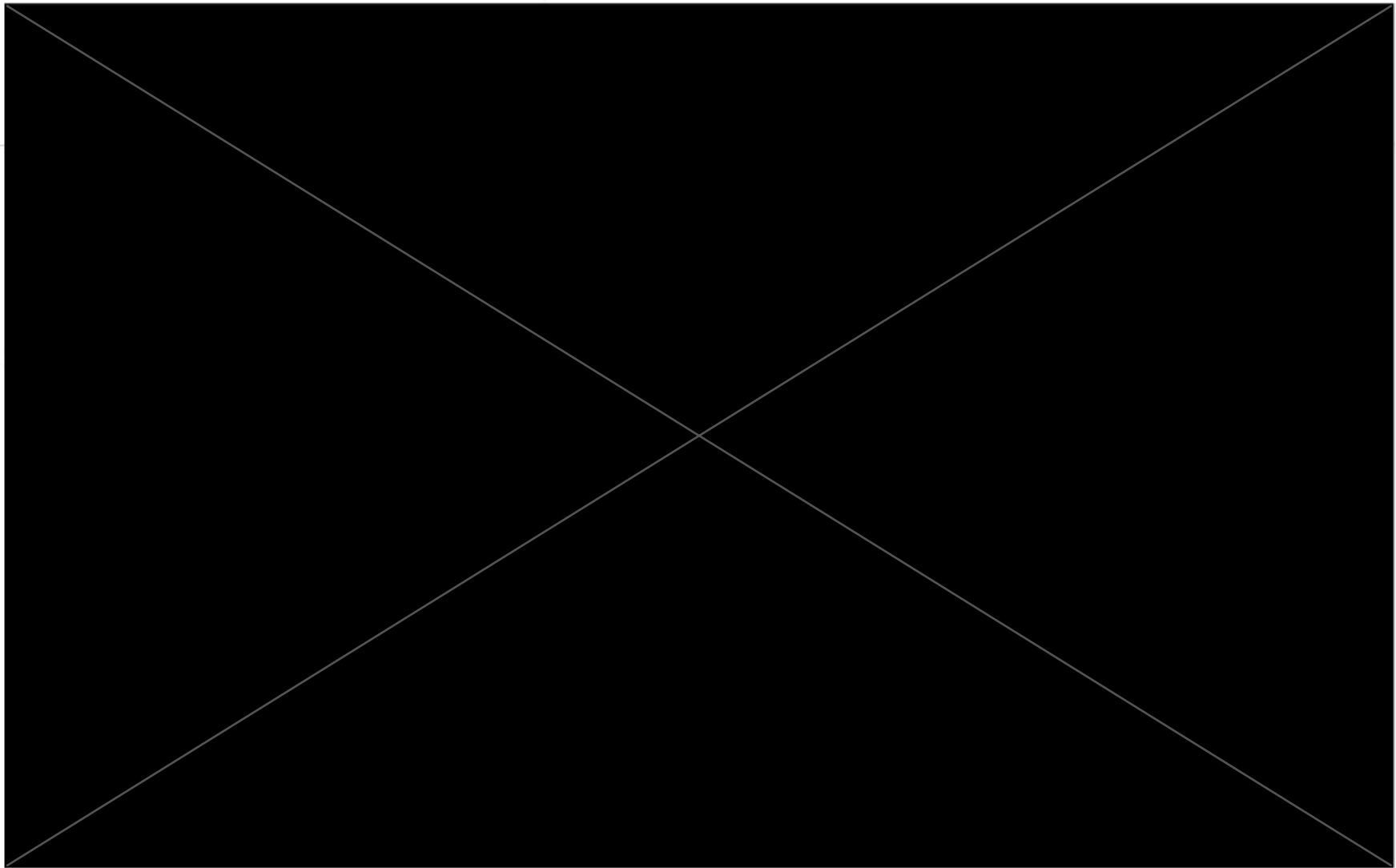


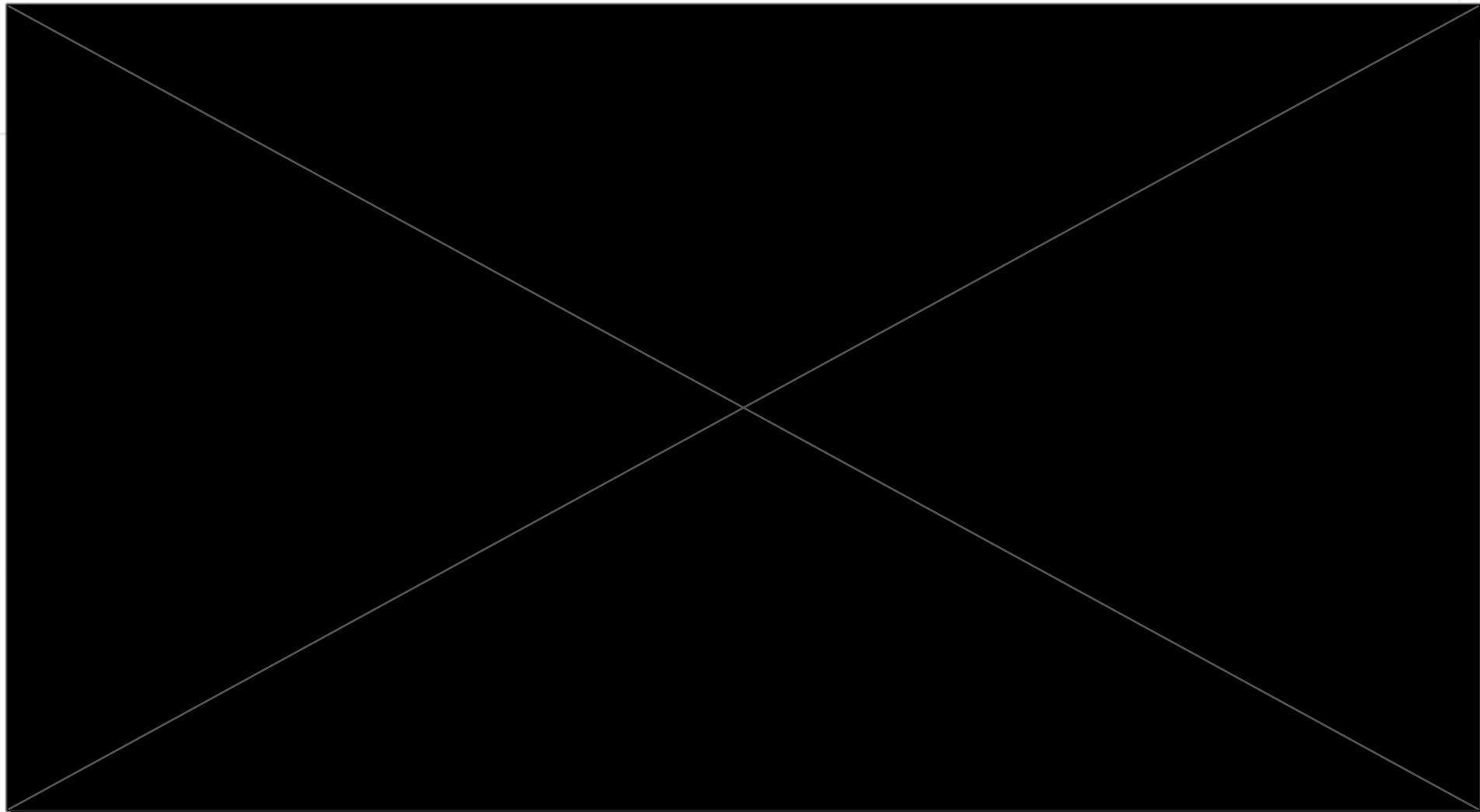


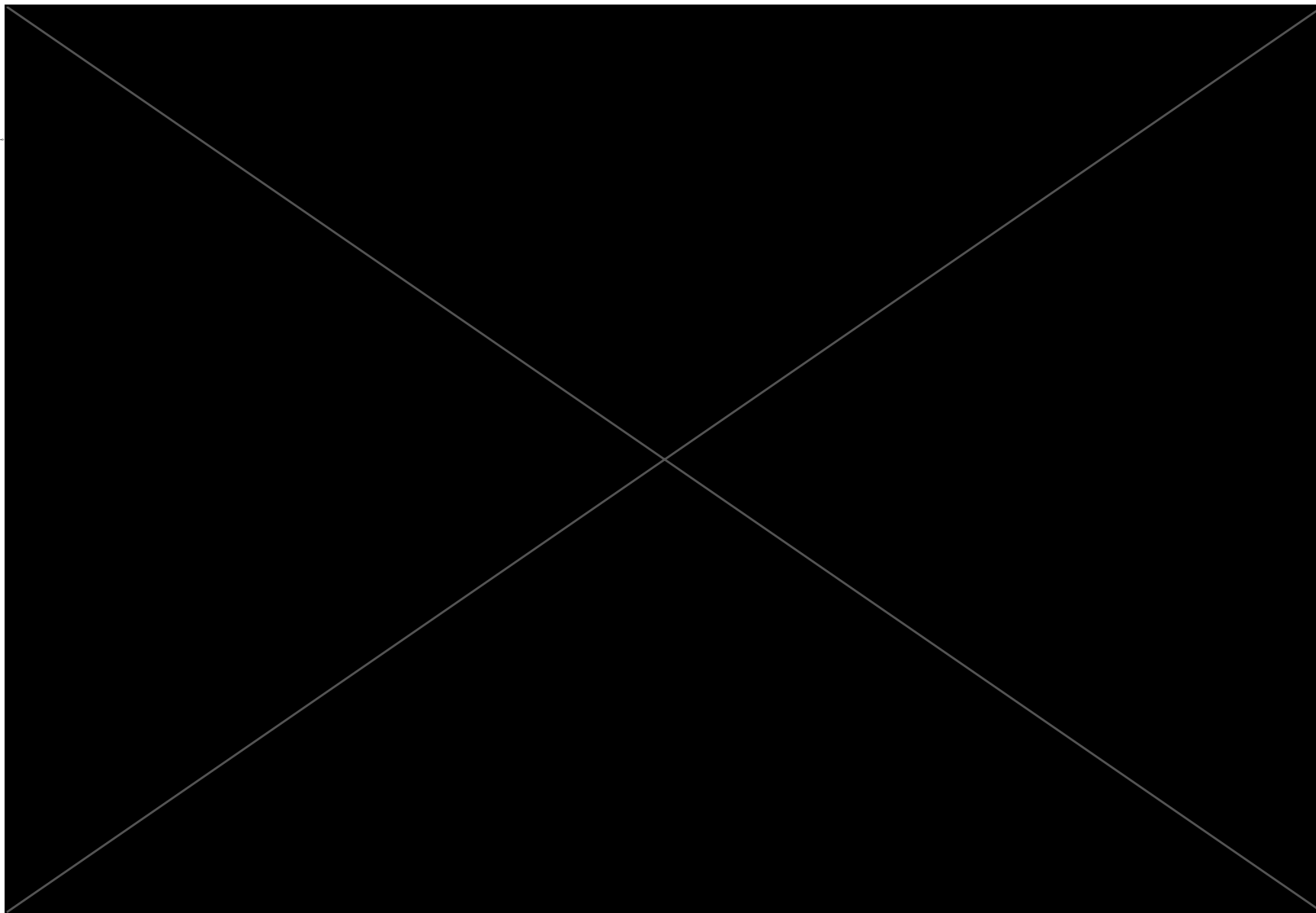


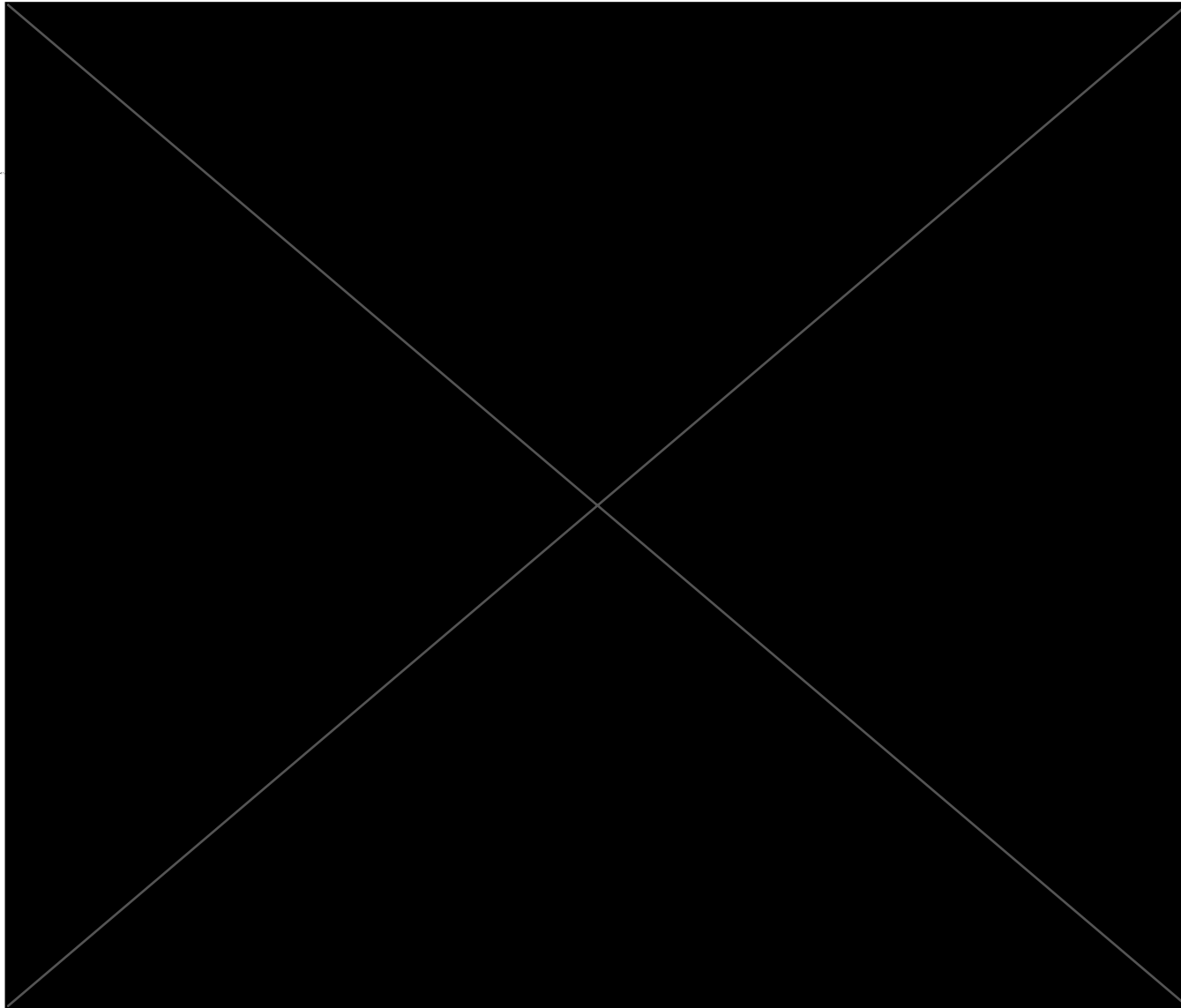


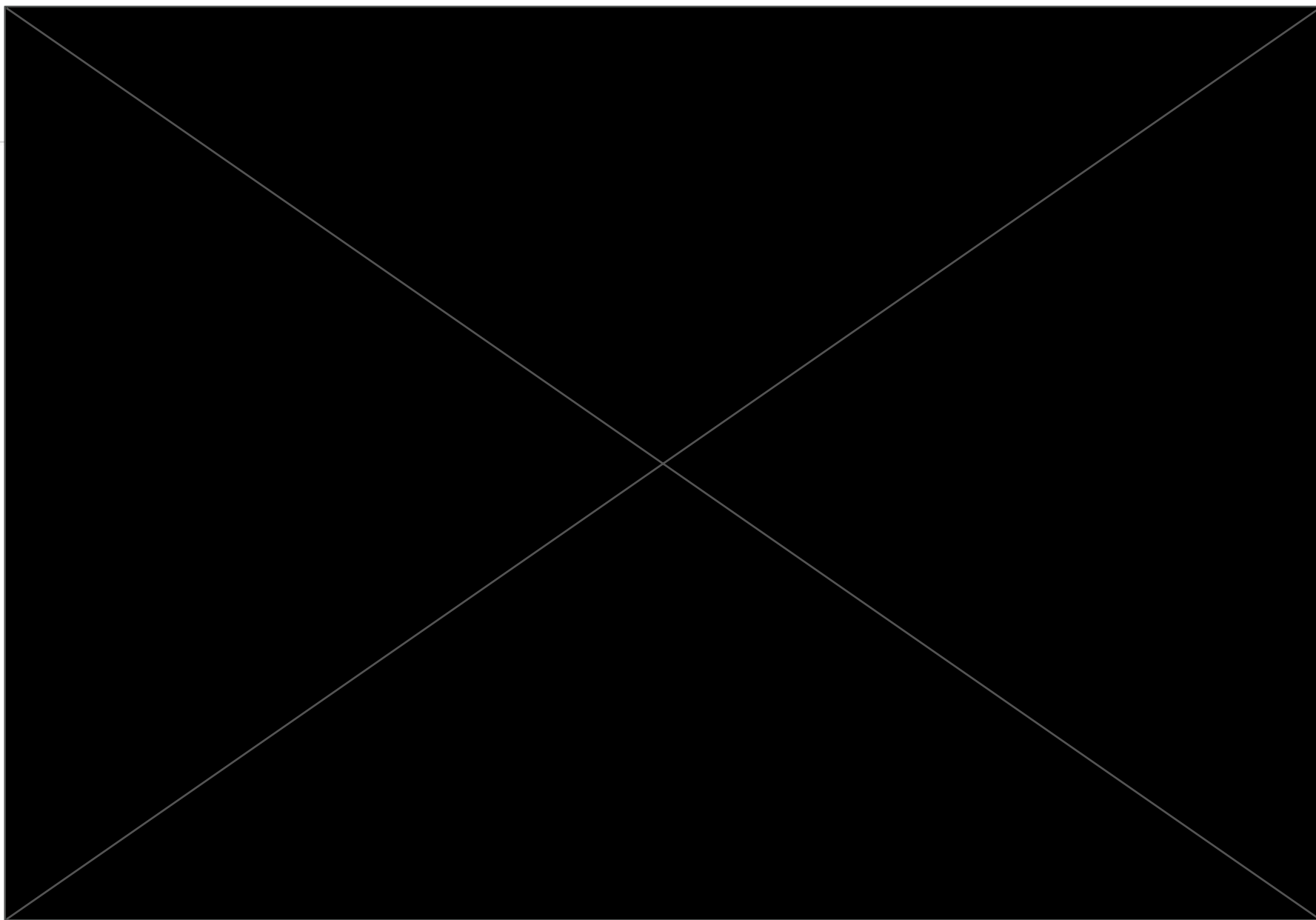


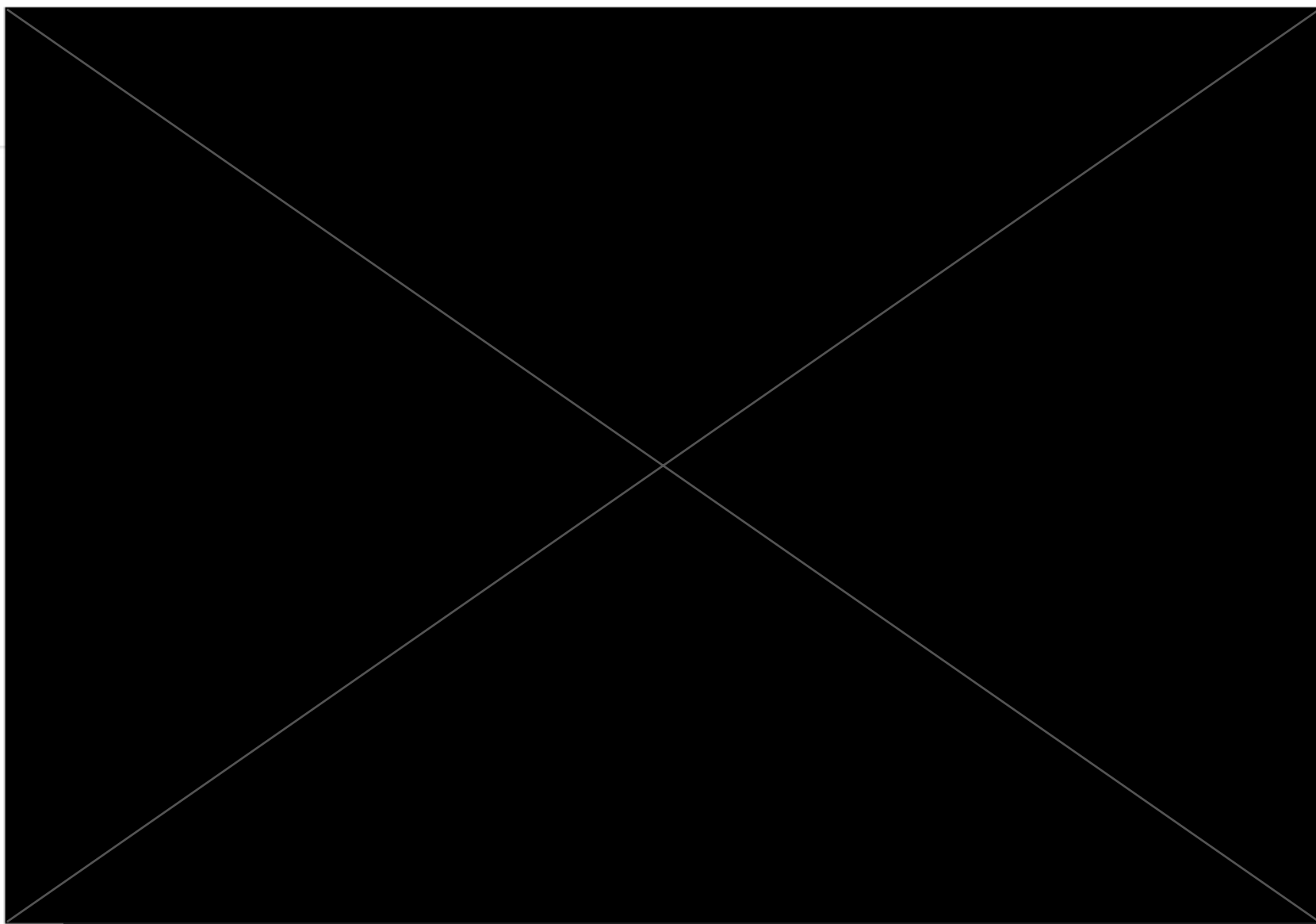












Schedule 4: Variation Procedures

1. Procedures

- 1.1 Each request or recommendation for a change to the PIPP or any part of the Customer Contract must be submitted in a form substantially similar to the Change Request form attached to this Schedule.
- 1.2 For each draft Change Request submitted:
 - (a) the Customer must allocate it with a sequential number; and
 - (b) the draft Change Request must be logged and its progress documented by recording its status from time to time by the Contractor as follows:
 - (i) requested;
 - (ii) under evaluation;
 - (iii) awaiting authorisation;
 - (iv) cancelled;
 - (v) pending
 - (vi) approved/authorised;
 - (vii) expired;
 - (viii) in progress;
 - (ix) applied;
 - (x) delivered;
 - (xi) accepted.
- 1.3 The Party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):
 - (a) request further information; or
 - (b) provide written notification to the other Party of its approval or rejection of the Change Request.
- 1.4 If the Customer submits a draft Change Request to the Contractor, and the Contractor believes that there is more than 1 Business Day's work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request the Contractor may request that the Customer pays for the work involved to evaluate the draft Change Request. The Customer may then either revise the draft Change Request to require less than 1 Business Day's work to evaluate it, or agree to pay for the Contractor's work to evaluate the Change Request in an amount agreed by the Parties, or in absence of agreement, at the Contractor's then current commercial rates.

- 1.5 If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary any terms or conditions of the Customer Contract, including a Protected Clause and the Customer approves of the Change Request, the Customer must submit the Change Request to the Contract Authority and the Secretary of the New South Wales Department of Finance, Services and Innovation, for approval immediately after it has notified the Contractor that it approves the Change Request.

2. Status

- 2.1 A Change Request is binding on the Parties only when both Parties have signed it. Once signed by both parties the Change Request updates the Customer Contract in accordance with the terms of the Change Request. The Contractor must not implement any draft Change Request until the Customer has signed the Change Request form.

3. Change Request Form

CHANGE REQUEST BRIEF DETAILS

Change Request Number		<i>Insert Change Request Number (supplied by the Customer)</i>
Date of Change Request		<i>Insert date of draft Change Request</i>
Originator of need for Change Request		<i>Customer or Contractor</i>
Proposed Implementation Date of Change		<i>Insert proposed date of implementation</i>
Date of expiry of validity of Change Request		<i>Insert validity expiry date. The Change Request is invalid after this date.</i>
Contractor's estimated time and cost of evaluation		<i>Insert estimated time and cost of evaluation</i>
Amount agreed to be paid to the Contractor for evaluating the draft Change Request, if any (This applies only if the Customer is the Party that originated the need for a Change Request; and the Contractor estimates the cost of evaluating and drafting the Change Request exceeds 2 Business Days)		<i>Insert amount to be paid to the Contractor for evaluating the draft Change Request</i>

CHANGE REQUEST HISTORY LOG

Change Request Version History			
Date	Issue Version	Status/Reason for New Issue	Author
<i>Insert date</i>	<i>Insert version</i>	<i>Insert status/reason</i>	<i>Insert author</i>

DETAILS OF CHANGE REQUEST

Summary

[Insert a summary of the changes, if required]

SCOPE

[Insert changes to the scope of Products to be provided and/or any Services, including any extensions to the Contract Period.]

EFFECT OF CHANGE ON CONTRACT SPECIFICATION

[Insert any changes to the Contract Specification]

EFFECT OF CHANGE ON PROJECT TIMETABLE

[Insert changes to the project timetable]

New PIPP (annexed)

[Annex new PIPP if required]

EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

[Insert new charges and the timing of payment into the new PIPP]

CHANGES TO CSI

[Insert any changes to the CSI]

CHANGES TO CUSTOMER PERSONNEL

[Insert any changes to the Customer's Personnel]

CHANGES TO CUSTOMER ASSISTANCE

[Insert any changes to the Customer's Assistance]

PLAN FOR IMPLEMENTING THE CHANGE

[insert the plan for implementing the change – if any.]

THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

[Insert the responsibilities of the respective Parties for implementing the change – if any.]

Responsibilities of the Contractor

[Insert the responsibilities of the Contractor for implementing the change – if any.]

Responsibilities of the Customer

[insert the responsibilities of the Customer for implementing the change – if any.]

EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE

[Insert if there will be any effect on the Acceptance Testing of any Deliverable – or alternatively insert None.]

EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

[Insert if there will be any effect on performance of any Deliverable – or alternatively insert None.]

EFFECT ON USERS OF THE SYSTEM/SOLUTION

[Insert if there will be any effect on users of the system/solution – or alternatively insert None.]

EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES

Changes will be required to the following documents:

[Add any other documents which may be affected.]

EFFECT ON TRAINING

Insert if there will an effect on training or alternatively insert None.]

ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

[insert if there are any other matters.]

ASSUMPTIONS

The plan for implementing the changes outlined in this Change Request is based on the assumptions listed below:

[Insert any assumptions. If none then this section will be deleted].

If the assumptions are or become untrue, the Parties will address the effect of this through a subsequent Change Request.

LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

[Insert a list of the documents that form part of this Change Request]

CUSTOMER CONTRACT CLAUSES, SCHEDULES AFFECTED BY THE PROPOSAL ARE AS FOLLOWS:

[Insert amendments to clauses in the Customer Contract, relevant Schedules including Service Level Agreement]

Note that variations to any of the terms and conditions of the Procure IT Framework including the Protected Clauses require the Customer to obtain the prior written approval of the Contract Authority and the Secretary, New South Wales Department of Finance, Services and Innovation approval in accordance with directions and policies issued by the Board from time to time. (clause 26.2))

AUTHORISATION

The Contractor must not commence work on the Change Request until is signed by both Parties. Once signed by both Parties, the Customer Contract is updated by this Change Request and any provisions of the Customer Contract that conflict with this Change Request are superseded.

SIGNED AS AN AGREEMENT

Signed for and on behalf of [insert name of Customer]

By [insert name of Customer's Representative] but not so as to incur personal liability

Signature of Customer Representative

Print name

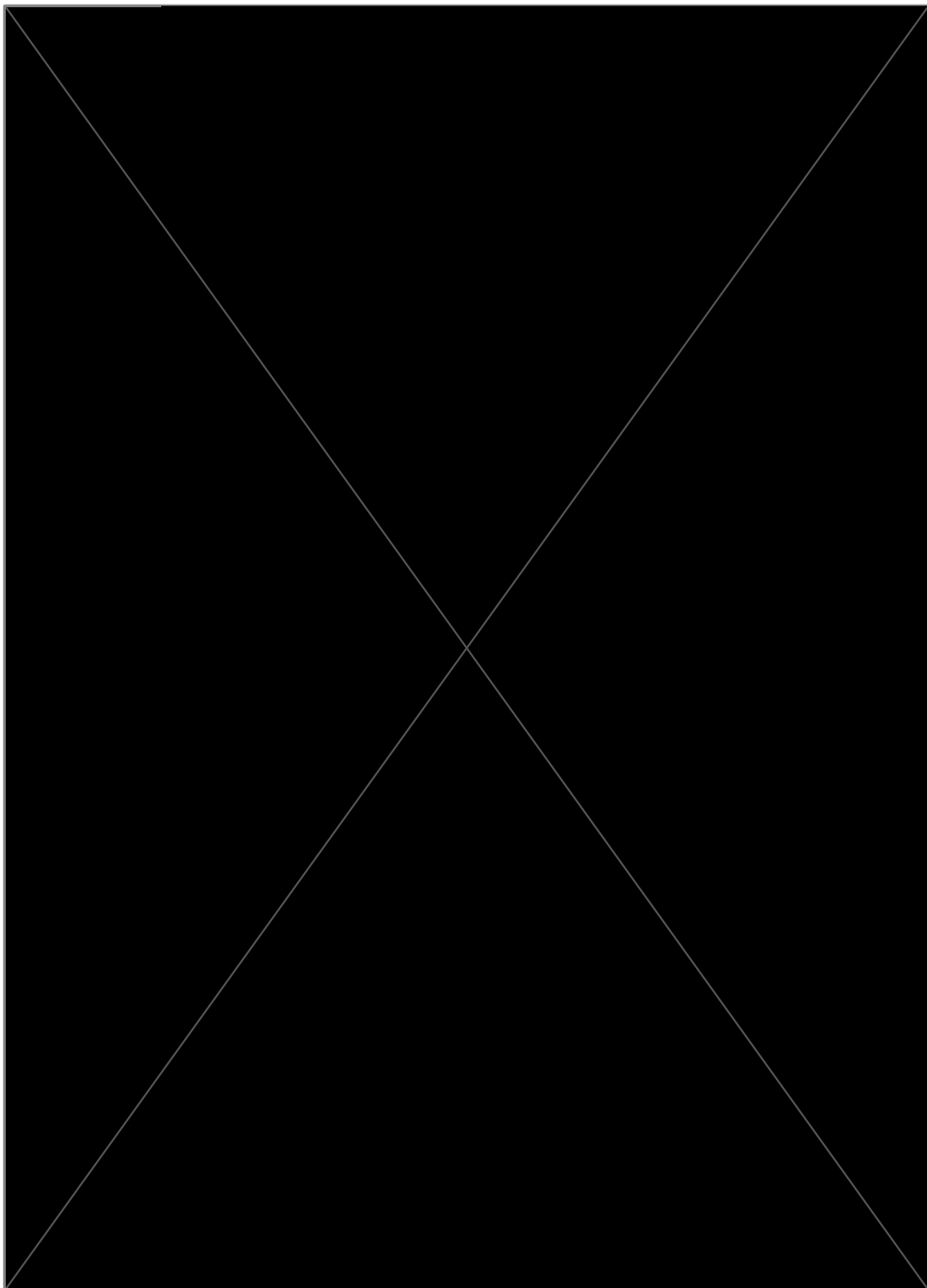
Date

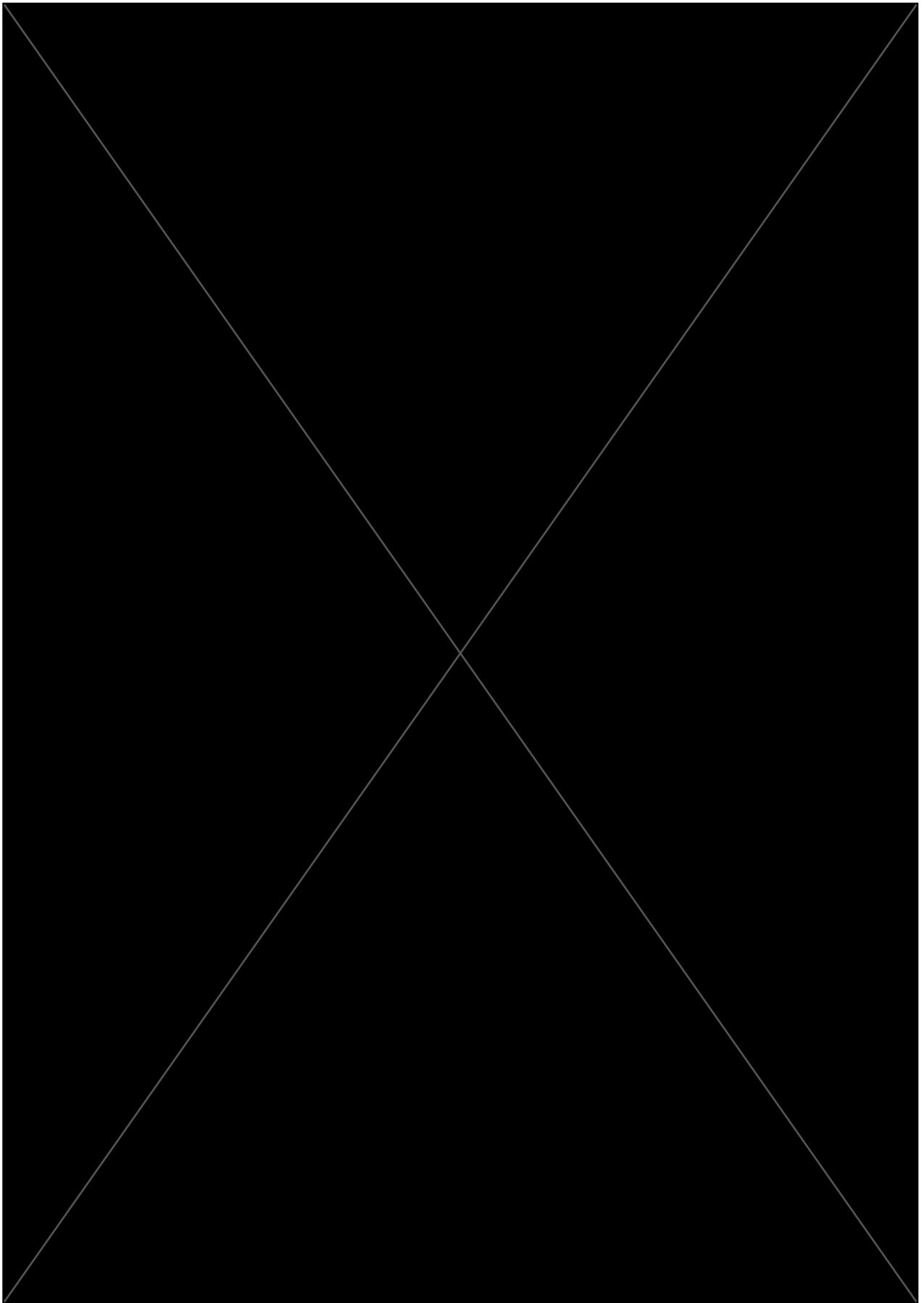
Signed for and on behalf of [insert Contractor's name and ACN/ABN]

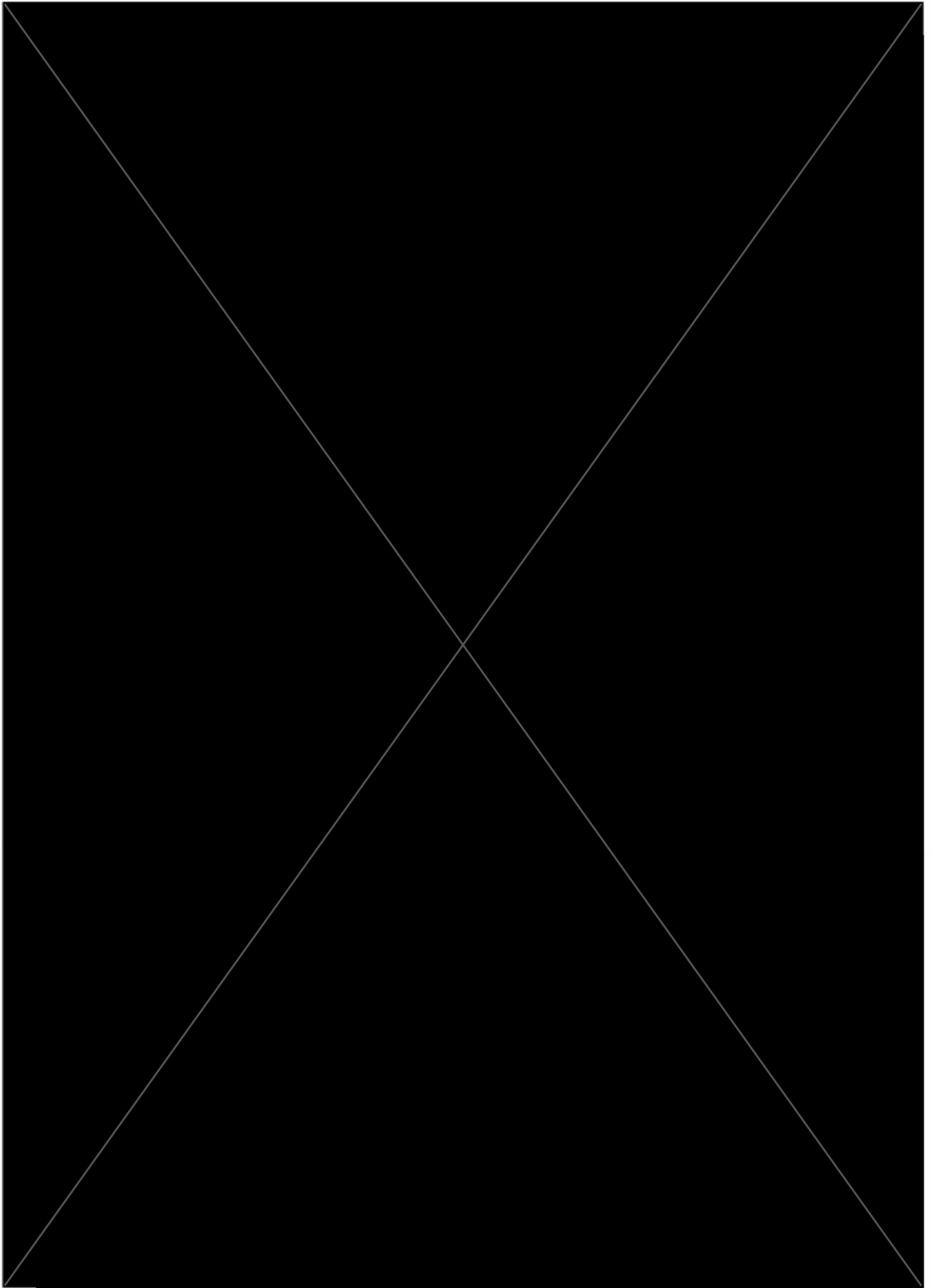
Signature of Authorised Signatory

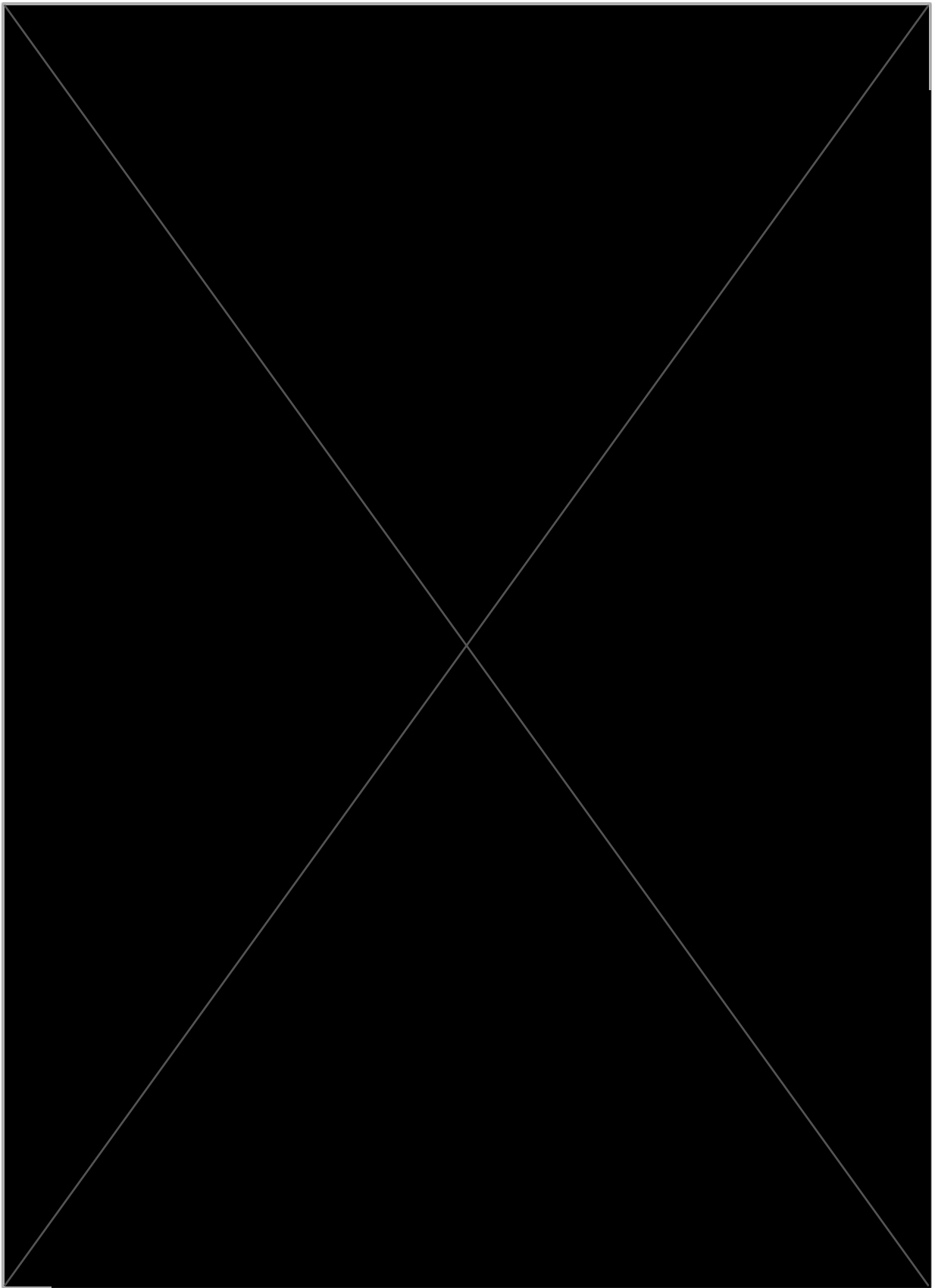
Print name

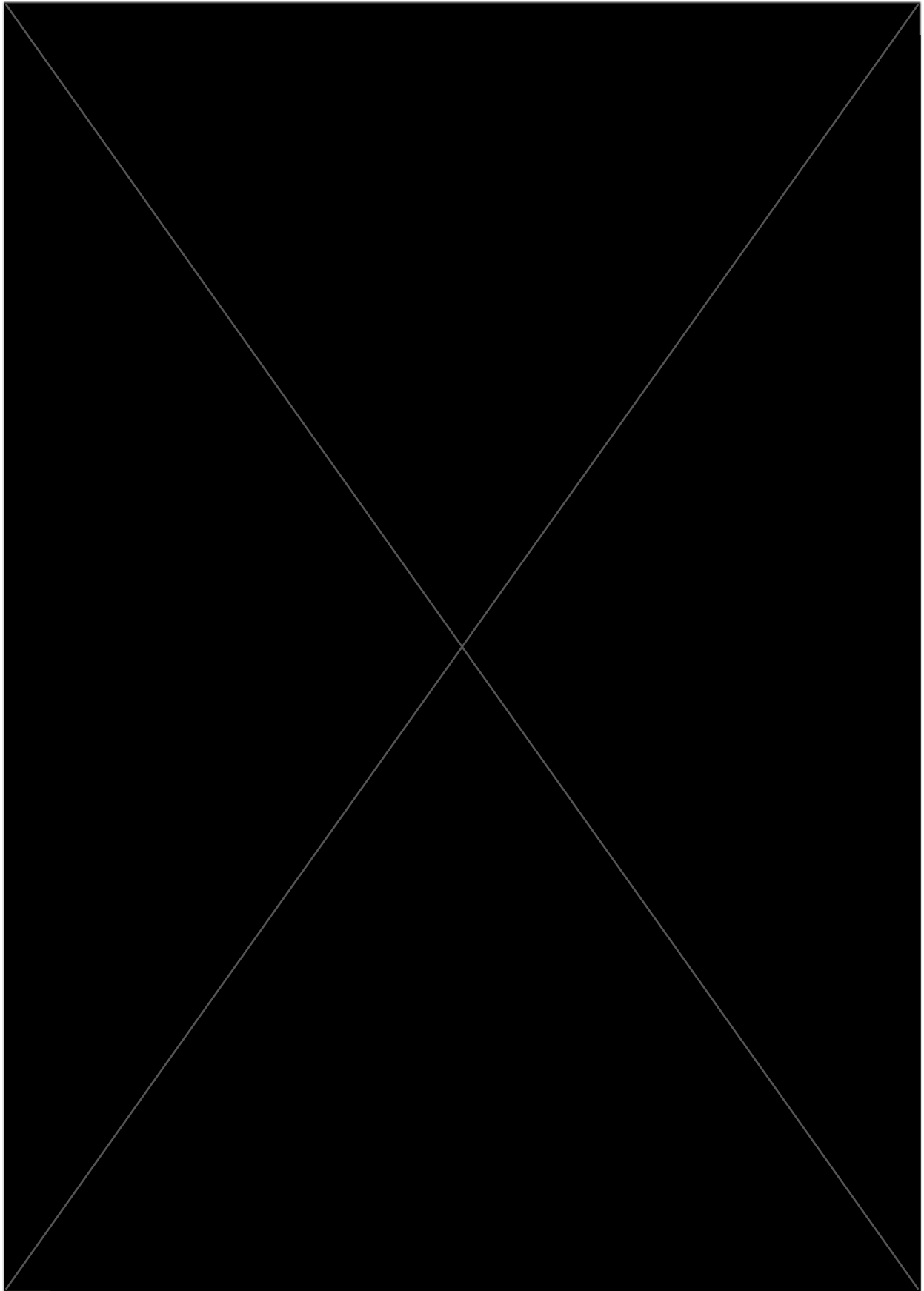
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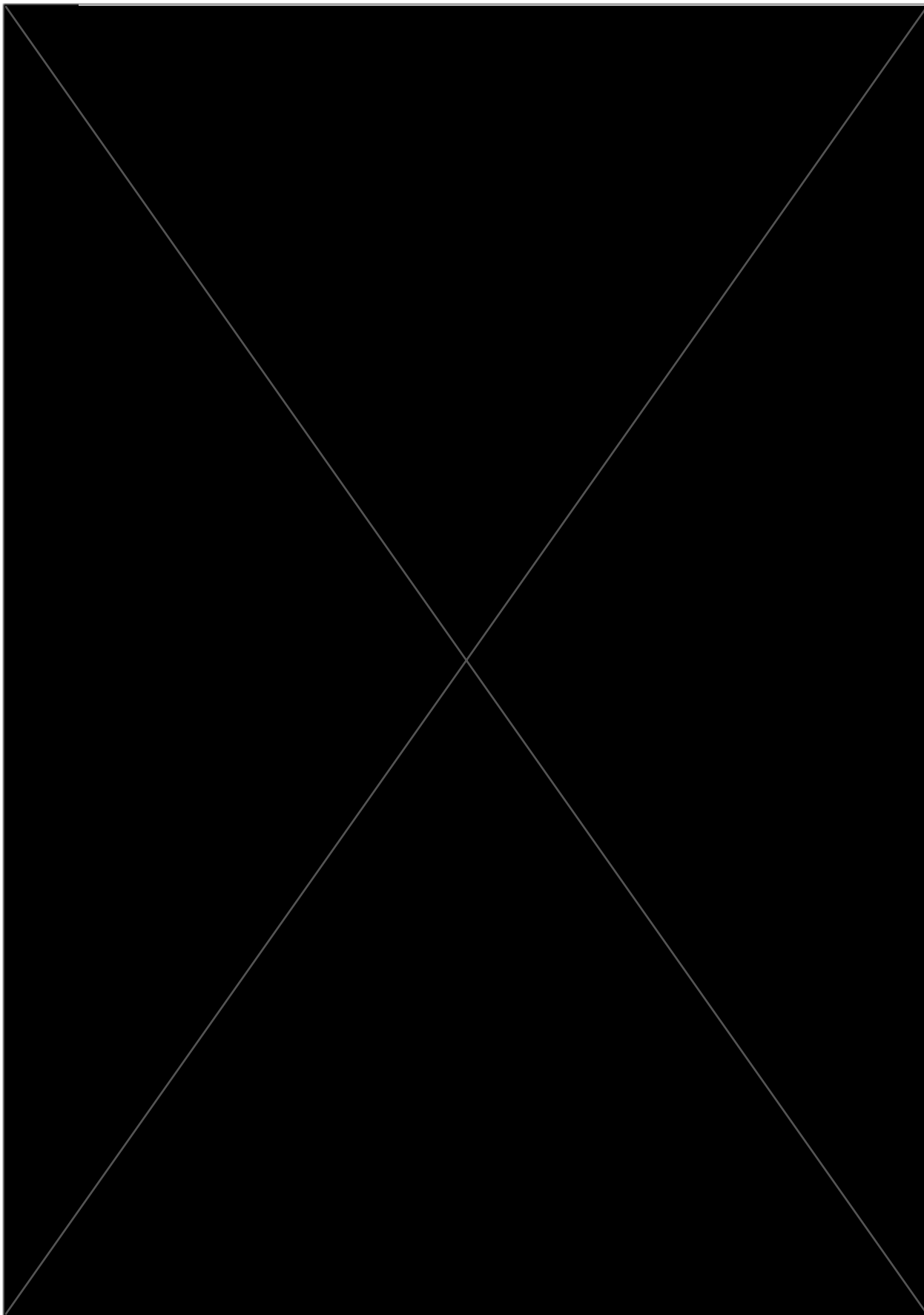


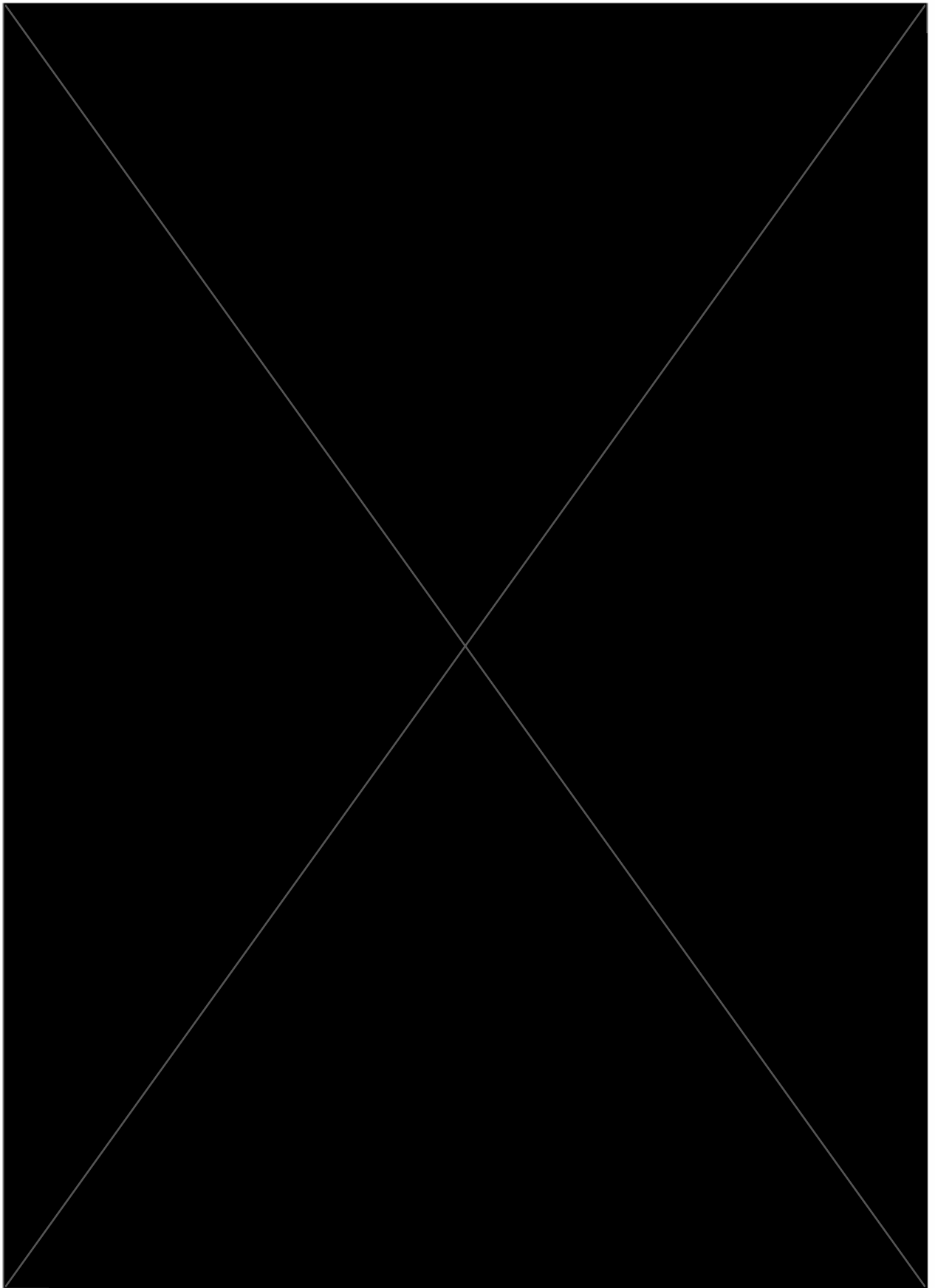


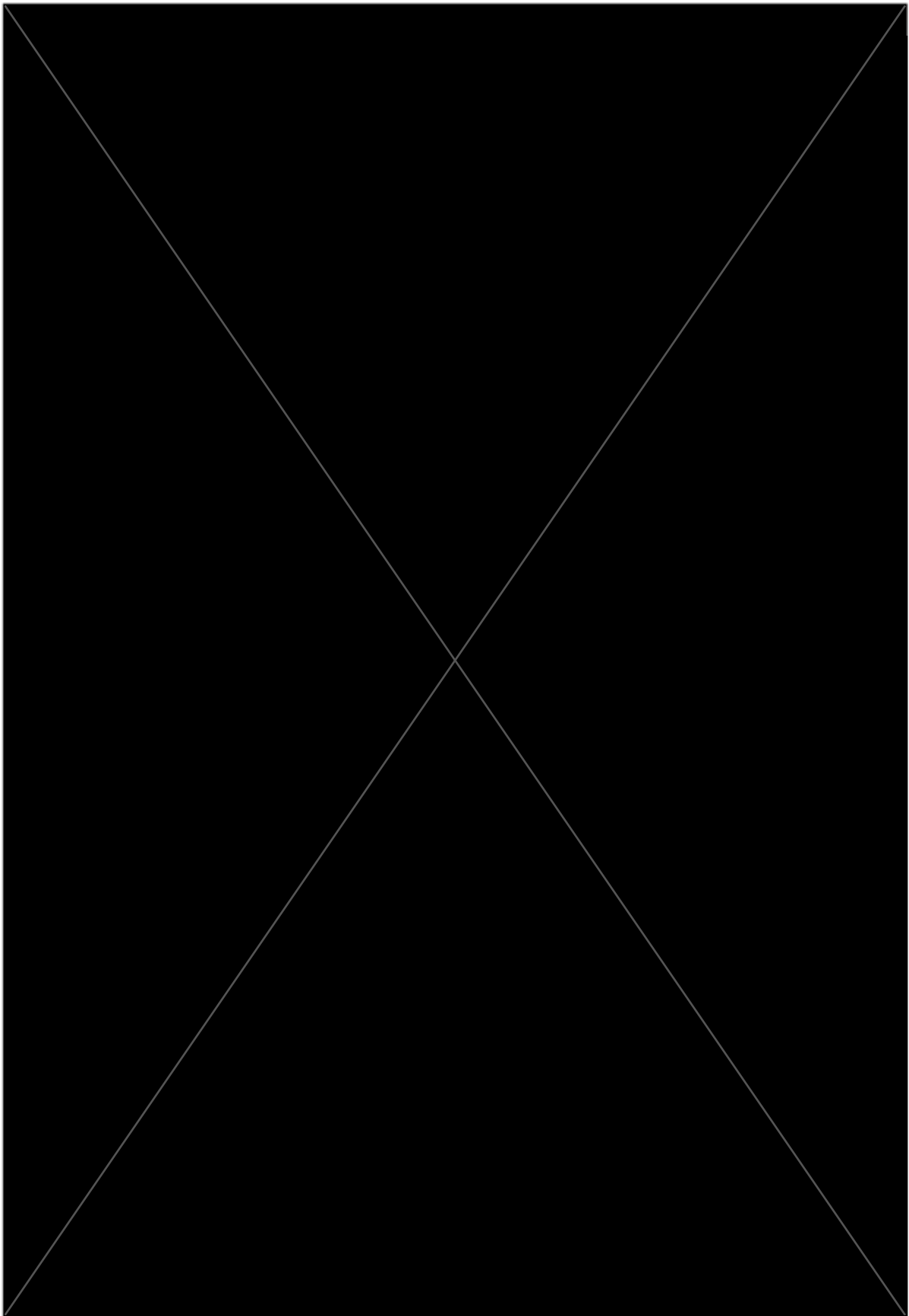


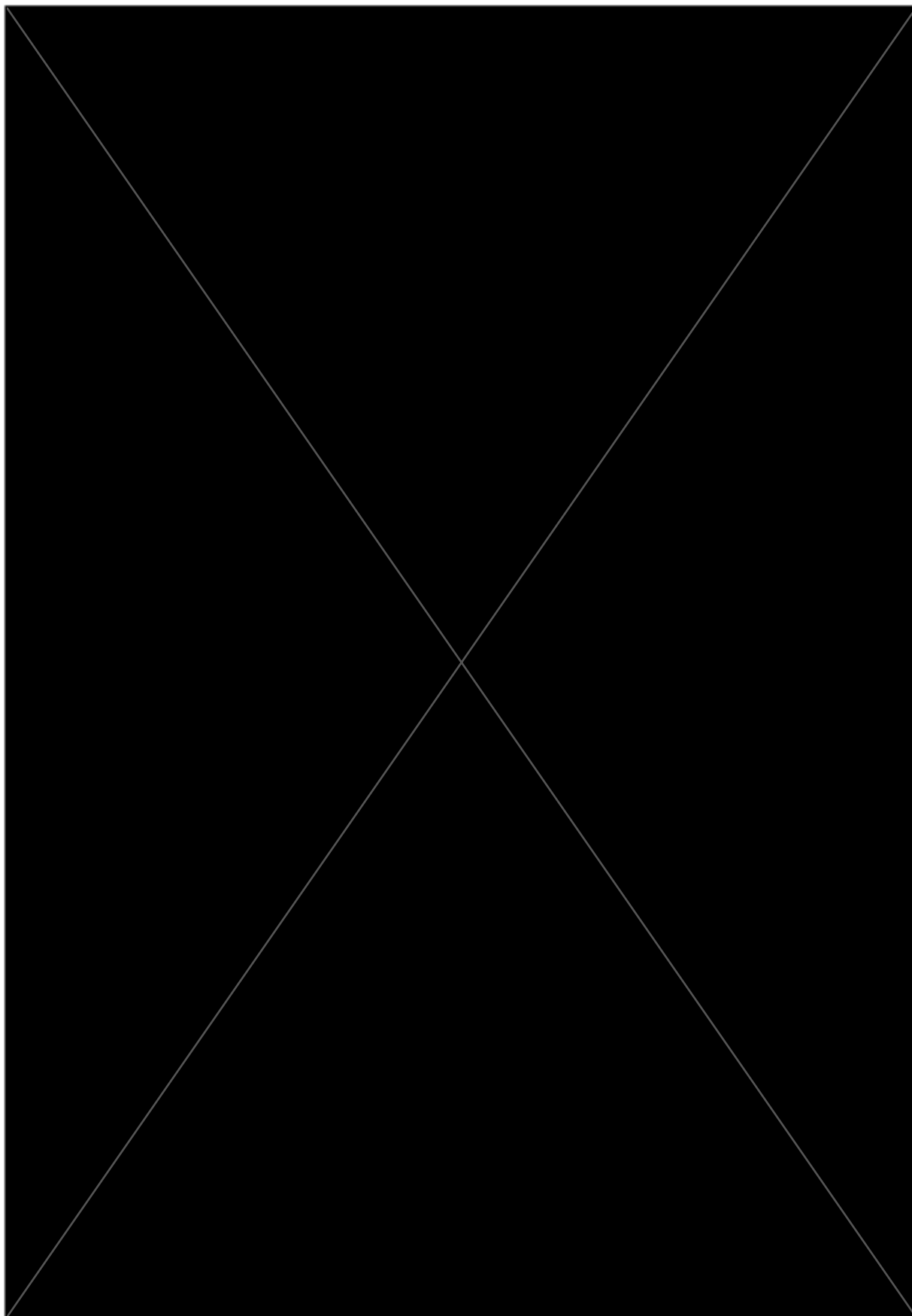


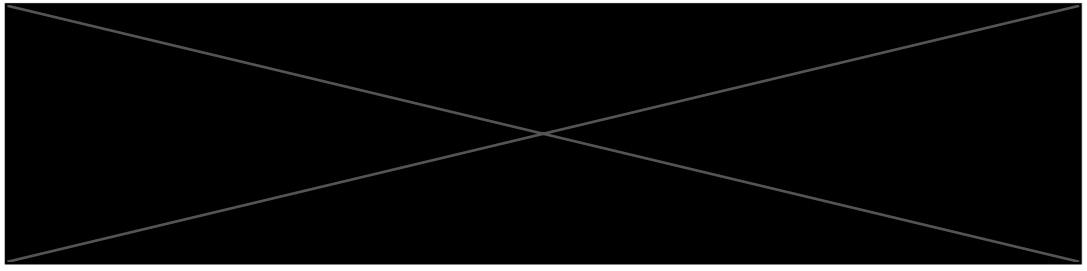


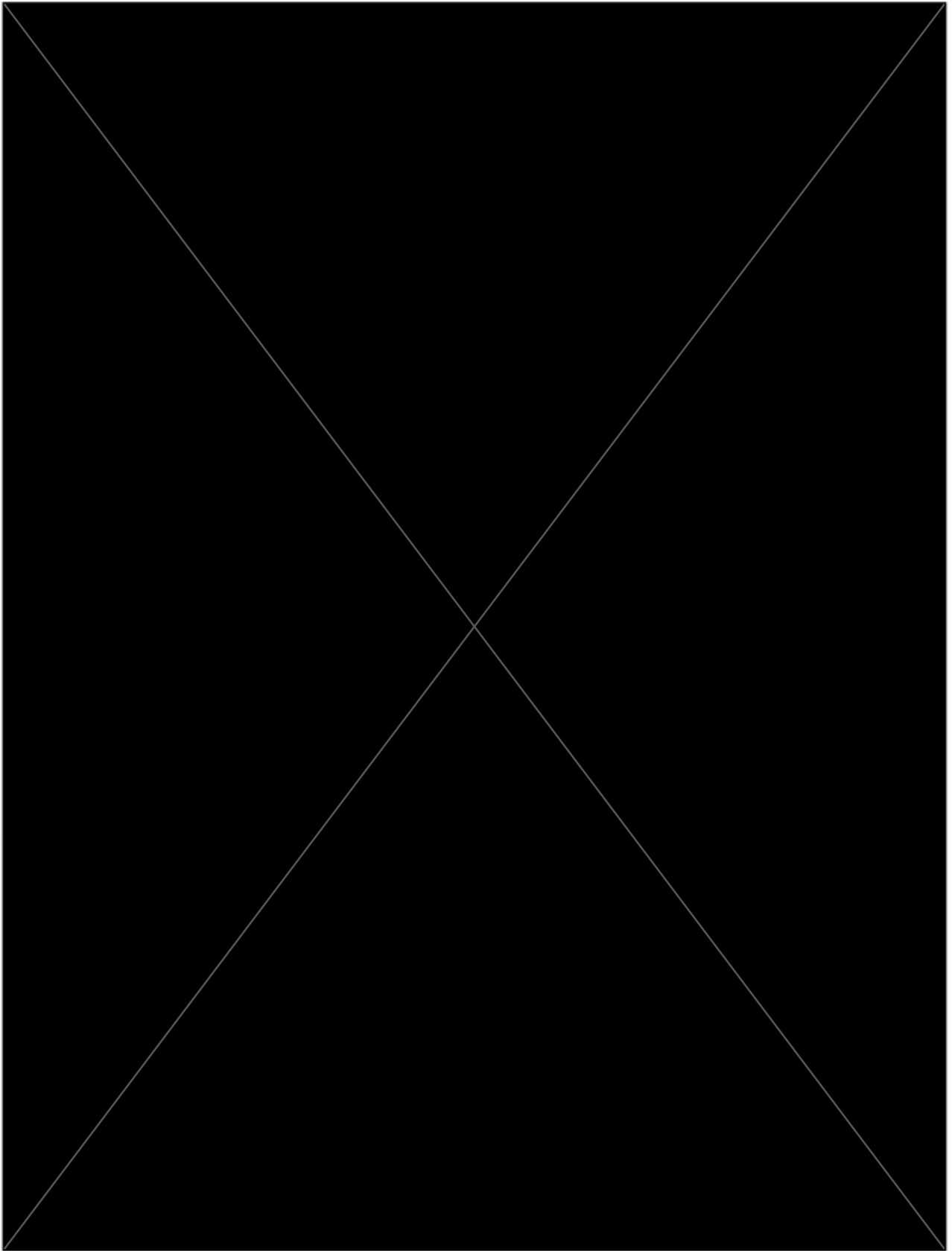


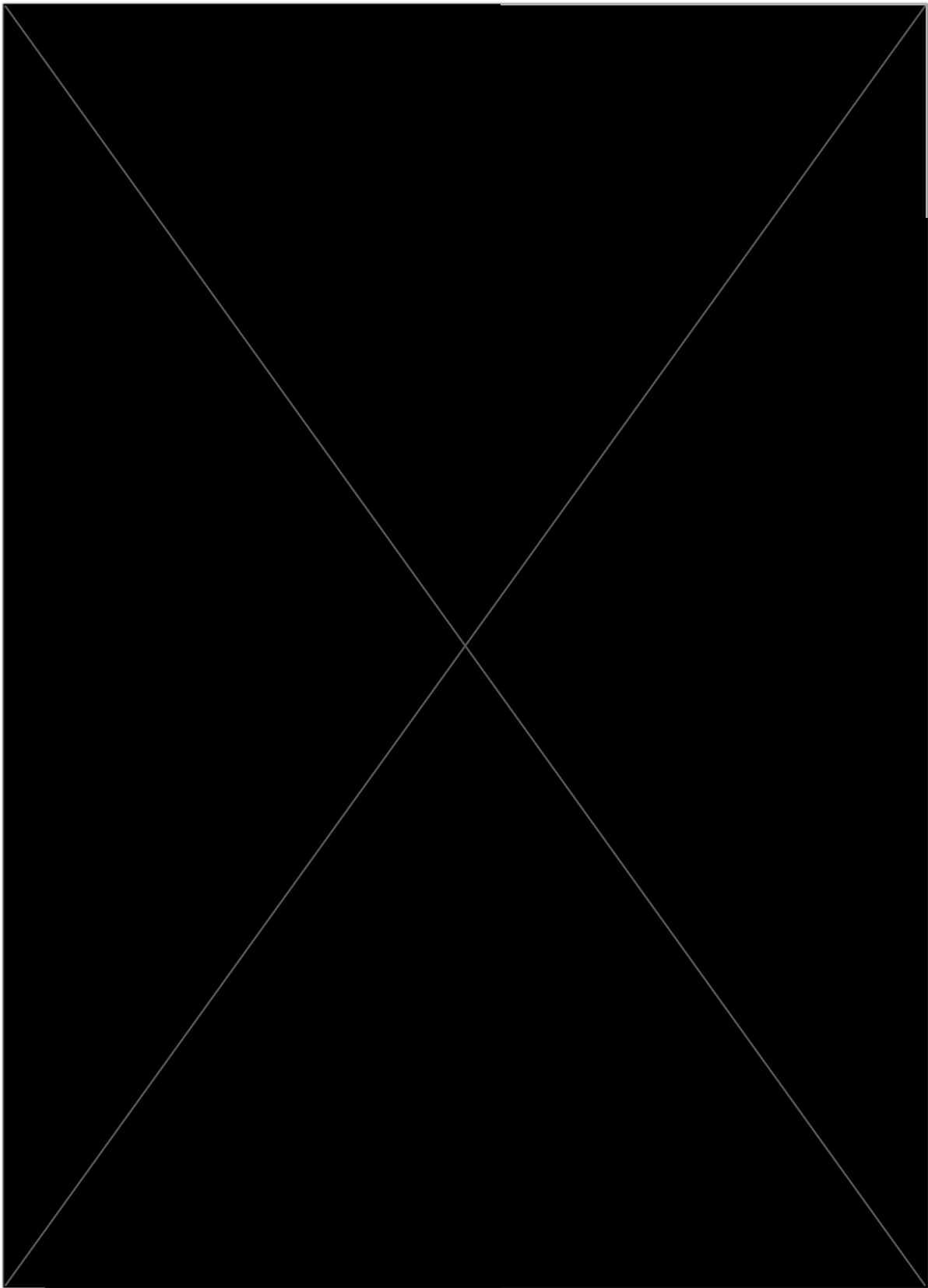


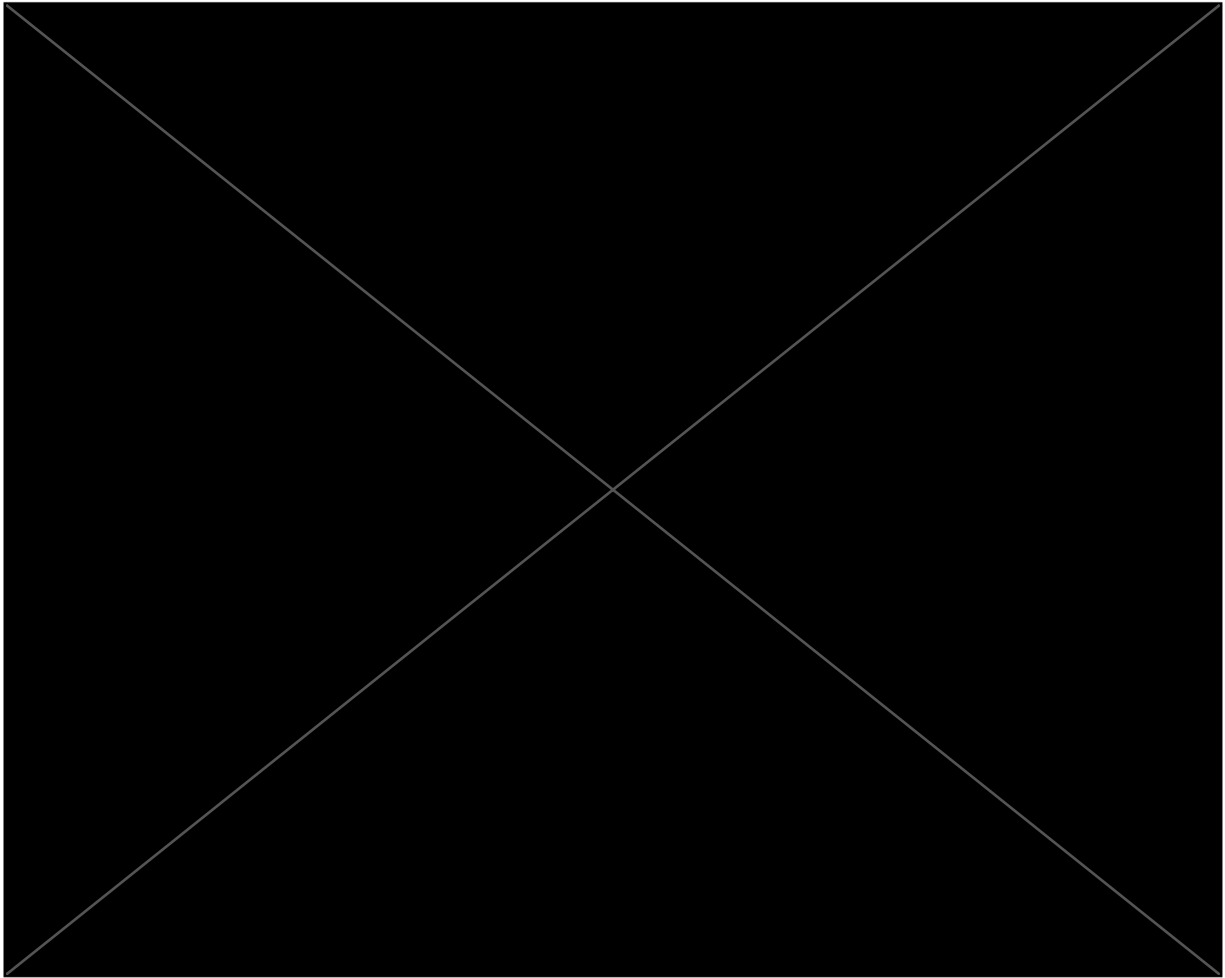


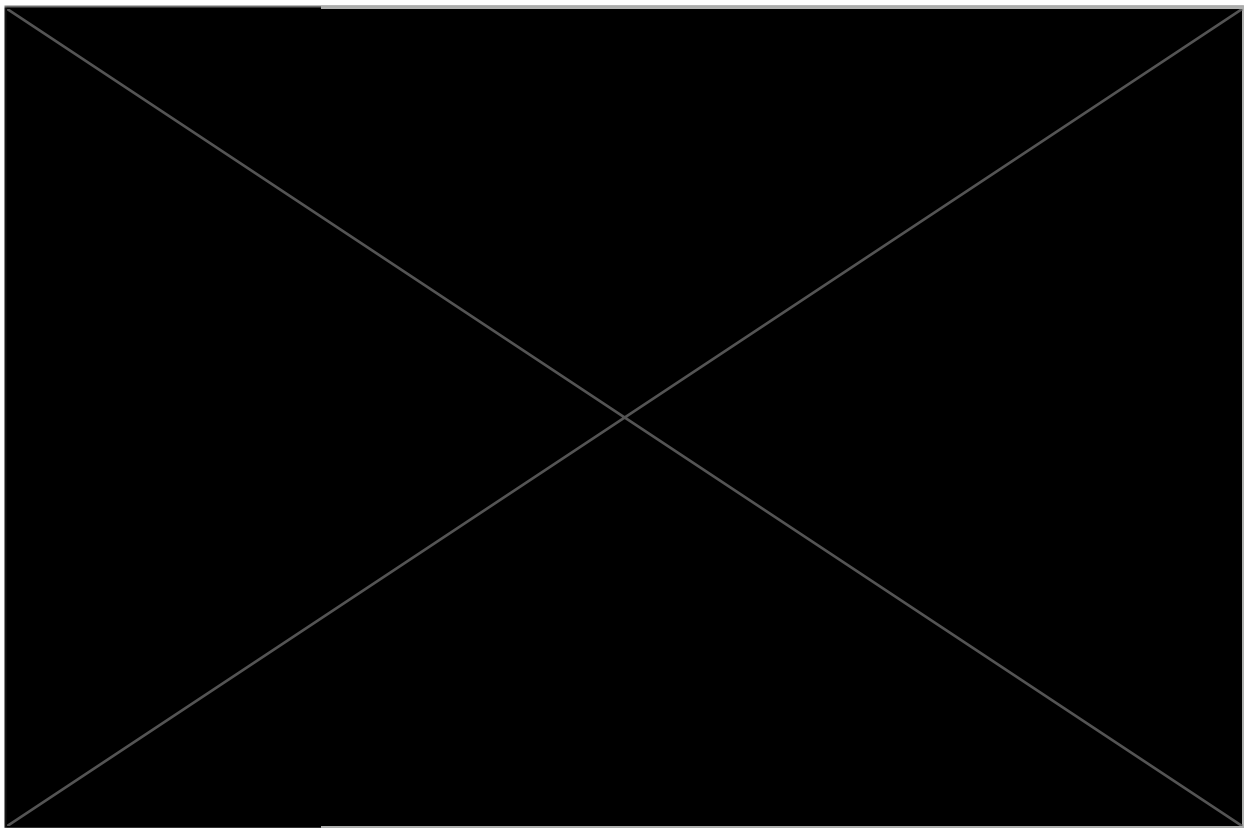


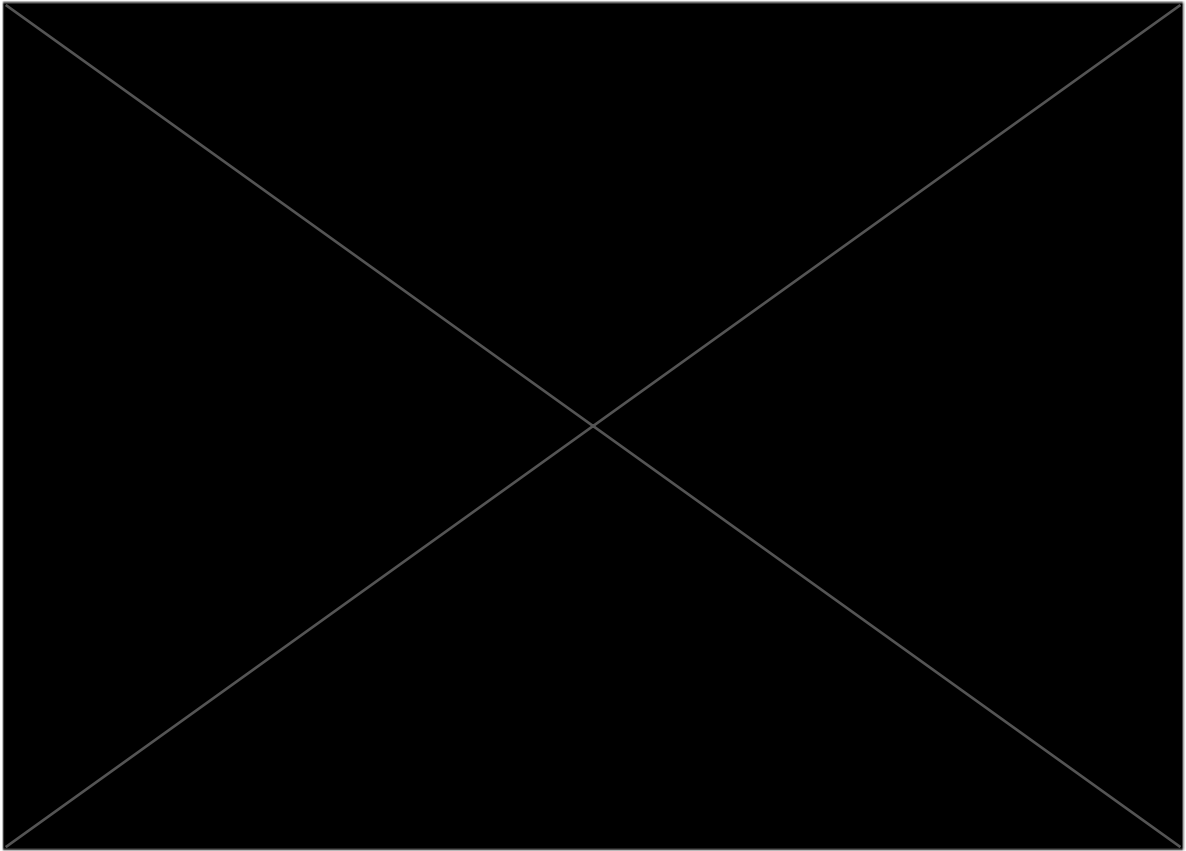












Schedule 6: Deed Poll – Approved Agents

This Deed Poll is made on [insert date] by [insert full legal name of Approved Agent and ACN/ABN] (**Approved Agent**) in favour of [insert full legal name of Contract Authority] (**Contract Authority**)

1. Definitions

- 1.1 **Customer** means [insert full legal name of the Customer].
- 1.2 **Customer Contract** means the agreement dated [insert date] signed by the Customer and the Approved Agent as agent for the supply of the Products and/or Services under that agreement.

By this Deed:

1. The Approved Agent warrants to the Customer that it is the lawful agent of the Contractor to provide the Products and/or Services under the Customer Contract.

Signed, sealed and delivered by [insert full legal name of Approved Agent and ACN/ABN]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

	
Signature Director	Signature of Director/Secretary
	
Print name	Print name
	
Date	Date

Schedule 7: Statutory Declaration – Subcontractor

Oaths Act (NSW), 1900 Eighth Schedule

I,, do solemnly and sincerely declare that

1. [insert full Subcontractor company name and its ACN/ABN] (**Subcontractor**) has been selected as subcontractor to, [insert name of the Contractor and its ACN/ABN] (**Contractor**) under an agreement between the [insert name of Customer] (**Customer**) and the Contractor dated [insert date of Customer Contract].
2. The Subcontractor will offer to enter into an agreement with the Contractor in connection with the Customer Contract on terms that are not inconsistent with the terms of the Customer Contract in so far as those terms are relevant to the Subcontractor.
3. As at the date of this Statutory Declaration there are no reasons of which I am aware that would prevent the Subcontractor's agreement with the Contractor from being performed in a manner that would allow the satisfactory and timely performance of that subcontract.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at: on
[place] [date]

.....
[signature of declarant]

in the presence of an authorised witness, who states:

I,, a
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [**please cross out any text that does not apply*]

1. *I saw the face of the person *OR* *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months *OR* *I have confirmed the person's identity using an identification document and the document I relied on was
[describe identification document relied on].

.....
[signature of authorised witness]

.....
[date]

Schedule 8: Deed of Confidentiality

Deed of Agreement dated the

day of

20

Between [insert name of the Customer (**Customer**)

And [insert name and address of Subcontractor] (**Subcontractor**)

RECITALS

- (A) In the course of the Subcontractor assisting in the supply by the Contractor of certain Deliverables for the Customer under a subcontract agreement between the Subcontractor and the Contractor, the Subcontractor will have access to, and may become aware of, Confidential Information belonging to, or in the possession of, the Customer.
- (B) Improper use or disclosure of the Confidential Information would severely damage the Customer's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the Customer.
- (C) The Customer requires, and the Subcontractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer's Confidential Information is kept confidential.
- (D) This Deed sets out the terms on which the Subcontractor will have access to the Confidential Information.

WHAT IS AGREED

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

2. Interpretation

DEFINITIONS

- 2.1 In the interpretation of this Deed unless a contrary intention appears the following expressions will have the following meanings:

Agreement means the Customer Contract entered into under the *Procure IT Framework* between the Contractor and the Customer under which the Contractor will supply Deliverables to the Customer dated [insert date].

Business Day means any day that is not a Saturday, Sunday or a public holiday in New South Wales.

Confidential Information means information that:

- (a) is by its nature confidential; or
- (b) is communicated by the Customer to the Subcontractor as confidential; or
- (c) the Subcontractor knows or ought to know is confidential; or
- (d) relates to:
 - (i) the Products and Services;
 - (ii) the financial, the corporate and the commercial information of the Customer;
 - (iii) the affairs of a third party (provided the information is non-public); and
 - (iv) the strategies, practices and procedures of the State and any information in the Subcontractor's possession relating to the State public service,but excludes any information which the Subcontractor can establish was:
 - (v) in the public domain, unless it came into the public domain due to a breach of confidentiality by the Subcontractor or another person;
 - (vi) independently developed by the Subcontractor; or
 - (vii) in the possession of the Subcontractor without breach of confidentiality by the confidant or other person.

Contractor means [insert name of Contractor].

Deliverables means any product or service and any associated material offered for supply or provided by the Contractor in accordance in the Agreement.

Express Purpose means the Subcontractor performing the obligations under its subcontract agreement with the Contractor.

Intellectual Property Rights means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep confidential information confidential, moral rights, business names, company names or domain names.

Notice means notice in writing given in accordance with this Deed.

State means the State of New South Wales.

GENERAL

- 2.2 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply

- 2.3 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced ,and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.4 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.5 A singular word includes the plural, and vice versa.
- 2.6 A word which suggests one gender includes the other gender.
- 2.7 The words "include(s)" and "including" are not words of limitation.
- 2.8 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

- 3.1 The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 3.2 The Customer may grant or withhold its consent in its discretion.
- 3.3 If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 3.4 If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.⁵²
- 3.5 Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its directors, officers, employees and contractors;
 - (b) to the Contractor and its directors, officers, employees and the Contractor's other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,
 - (c) each referred to as **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.
- 3.6 Despite clause 3.1, the Subcontractor may disclose the Confidential Information:

- (a) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
 - (b) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 3.7 Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.8 The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
- 3.9 If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

4. Restriction on use

- 4.1 The Subcontractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Customer use the Confidential Information for any purpose other than the Express Purpose.
- 4.2 The Subcontractor must, unless otherwise authorised by the prior written consent of the Customer:
 - (a) treat as confidential and secret all of the Confidential Information which the Subcontractor has already acquired or will acquire from the Customer;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
 - (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

- 5.1 This Deed will survive the termination or expiry of the Agreement for a period of 6 years.

6. Rights of the Customer

PRODUCTION OF DOCUMENTS

- 6.1 The Customer may demand the delivery up to the Customer of all documents in the possession or control of the Subcontractor containing the Confidential Information.
- 6.2 The Subcontractor must immediately comply with a demand under this clause 6.
- 6.3 If the Customer makes a demand under this clause 6, and documents containing the Confidential Information are beyond the Subcontractor's possession or control, then the Subcontractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
- 6.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

LEGAL PROCEEDINGS

- 6.5 The Customer may take legal proceedings against the Subcontractor or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Indemnity and release

- 7.1 The Subcontractor is liable for, and agrees to indemnify and keep indemnified the Customer in respect of, any claim, damage, loss, liability, cost, expense, or payment which the Customer suffers or incurs as a result of:
 - (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
 - (b) the disclosure or use of the Confidential Information by the Subcontractor or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9. Waiver

- 9.1 No waiver by the Customer of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2 None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Customer unless by its express consent in writing.

10. Remedies cumulative

CUMULATIVE

- 10.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

OTHER INSTRUMENTS

- 10.2 Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.

11. Variations and amendments

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

12. Applicable law

This Deed will be governed and construed in accordance with the laws of the State.

13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post, email or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.
- 13.4 If delivery of a notice is made by email, the notice will be taken to have been received when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending). 5

EXECUTED AS A DEED

Signed, sealed and delivered by [insert name of Customer]

By [insert name of Customer Representative] but not so as to incur personal liability

In the presence of: [insert name of witness]

Signature of Customer

Print name

Date

Signature of Witness

Print name

Date

Signed, sealed and delivered by [insert Subcontractor's name and ACN/ABN]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

Signature Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Schedule 9: Performance Guarantee

Deed dated the

day of

20

Between *[insert full legal name of the Customer]* (Customer)

And *[insert full legal name and any ACN/ABN of the Guarantor]* (Guarantor)

Purpose *[insert full legal name and ACN/ABN of the Contractor]* (Contractor) has agreed to offer to supply Products and Services to the Customer under a contract dated *[insert date of Customer Contract]* (Customer Contract).

DEFINITIONS

Business Day means any weekday that is not a public holiday in New South Wales.

Contract Authority means *[insert legal name of Contract Authority]*.

Head Agreement means *[insert date and parties to the Head Agreement]*.

Insolvency Event means where the Contractor:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent with the meaning of section 95A of the *Corporations Act 2001* (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act 2001* (Cth);
- (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act 2001* (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a mortgagee enter into possession of any property of that Party;
- (g) has a controller within the meaning of the section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
- (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Notice in Writing means a notice signed by a party's authorised representative or his/her delegate or agent.

BY THIS DEED

By this Deed, the Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Customer Contract on the following terms and conditions:

1. If the Contractor (unless relieved from the performance of the Customer Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Customer Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Customer Contract.
2. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee, and:
 - (a) where the Customer Contract is made under a Head Agreement, the Contract Authority (acting as agent of the Customer); or
 - (b) in all other cases, the Customer,may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor. *[amend this clause as applicable]*
3. The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Contractor and Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
4. The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.
5. The obligations and liabilities of the Guarantor under this Deed of Guarantee will not exceed:
 - (a) the obligations and liabilities of the Contractor under the Customer Contract; and
 - (b) \$ [insert dollar amount].
6. Where the Contractor has failed to perform under the Customer Contract, the obligations of the Guarantor will continue even though the Contractor has been the subject of an Insolvency Event.
7. The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Customer Contract have been performed, observed and discharged.
8. A notice under this Deed of Guarantee must be a Notice in Writing.
9. The address for services of Notices in Writing under this Deed of Guarantee for a party is, in the case of the:

Guarantor

Physical address

Postal address

Email address

Fax number

Contractor

Physical address

Postal address

Email address

Fax number

Customer

Physical address

Postal address

Email address

Fax number

Or such other address as a party may notify to the other party in writing from time to time.

10. A Notice in Writing is deemed to be received if:
 - (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at 9.00 am the next Business Day); or
 - (e) sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).
11. The laws of New South Wales govern this Deed of Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

EXECUTED BY THE PARTIES AS A DEED AT THE DATE STATED BELOW

Signed, sealed and delivered by *[insert name of the Customer]*.

By *[insert name of Customer representative]*

In the presence of: *[insert name of witness not a party to this Deed]*

Signature of Customer representative

Print Name

Date

Signature of Customer's Witness

Print Name

Date

Signed, sealed and delivered by *[insert Contractor's name and ACN/ABN]*

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

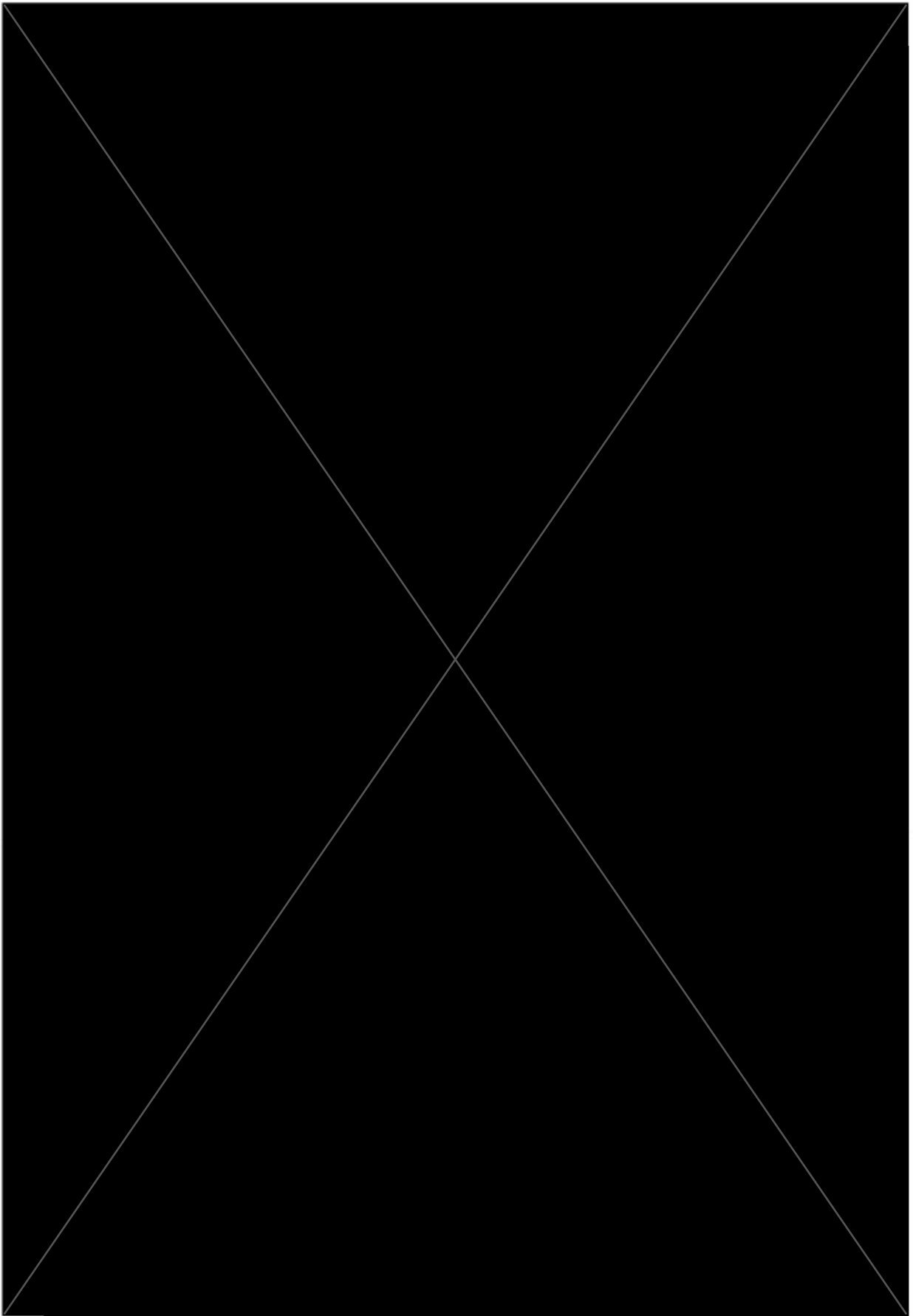
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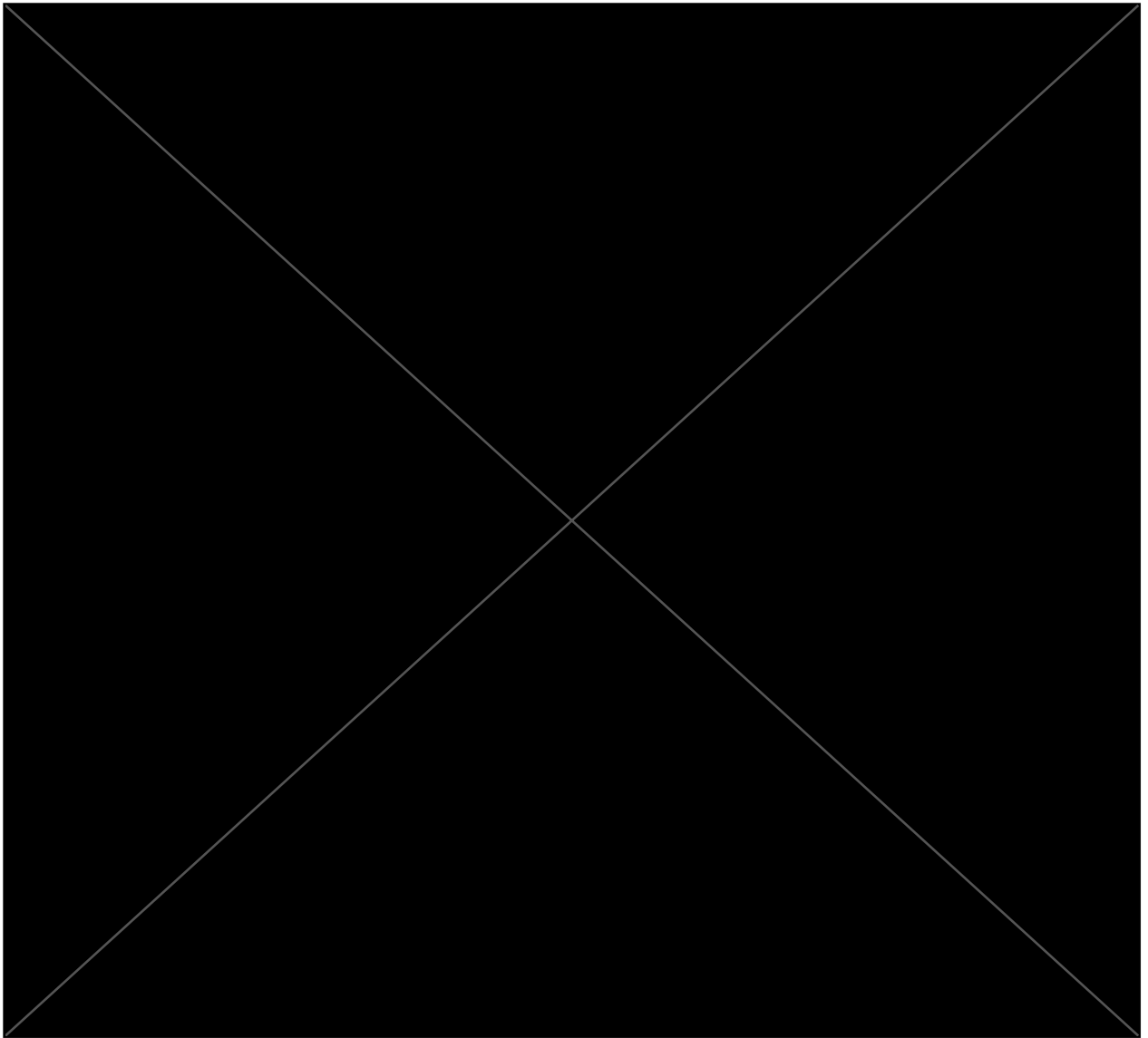
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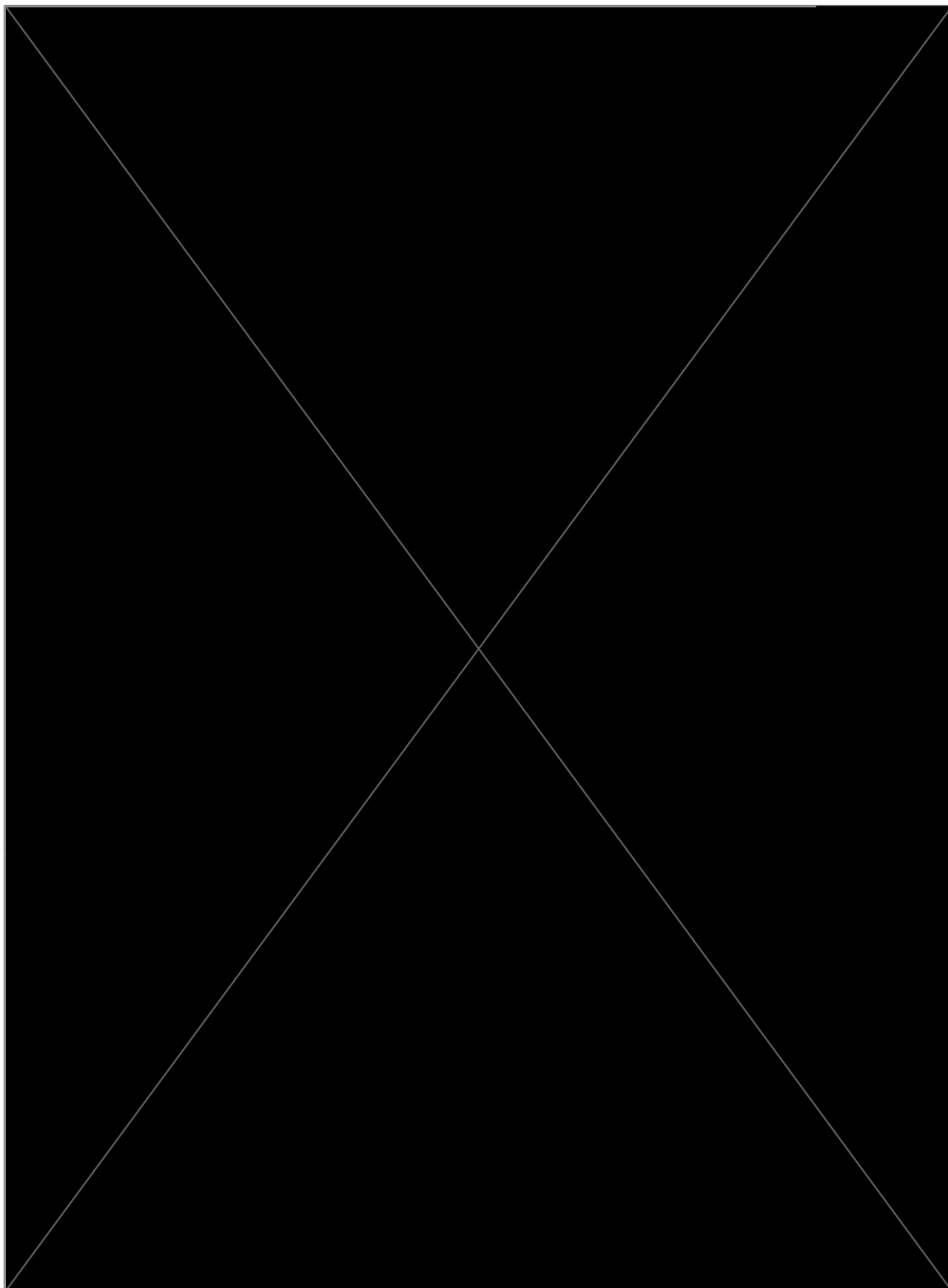
Signature of Director/Secretary

Print name

Date







Schedule 11: Dispute Resolution Procedures

1. Expert Determination

- 1.1 If a Referral Notice is submitted under clause 24.7 of the Customer Contract, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Disputes Centre of NSW.
- 1.2 The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the technology that is the subject matter of the dispute, unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
 - (b) a person who has been connected with this Customer Contract or has a conflict of interest, as the case maybe; or
 - (c) a person who the Parties have not been able to agree on.
- 1.3 The expert may appoint any person that the expert believes will be able to provide the specialists skills that are necessary to make a determination, including an Australian legal practitioner. The expert must consult with both Parties prior to appointing such person.
- 1.4 When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for the determination set out in this Schedule; and
 - (d) any other matter which is relevant to the engagement.

2. Submissions

- 2.1 The procedure for submissions to the expert is as follows:
- (a) The Party that has referred the issue to expert determination must make a submission in respect of the issue, within 30 Business Days after the date of the letter of engagement referred to in clause 1.4.
 - (b) The other Party must respond within 30 Business Days after receiving a copy of that submission. That response may include cross-claims.
 - (c) The Party referred to in clause 2.1(a) may reply to the response, but must do so within 20 Business Days after receiving the response, and must not raise new matters.
 - (d) The other Party may comment on the reply, but must do so within 20 Business Days after receiving the reply, and must not raise new matters.

- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2.1, unless the Customer and the Contractor agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

- 3.1 The expert must arrange at least one conference with both Parties. The request must be in writing, setting out the matters to be discussed.
- 3.2 Each Party is entitled to be represented at any preliminary conference before the expert by its legal representatives and other authorised representatives, with information and knowledge of the issues.
- 3.3 The expert is not bound by the rules of evidence and may receive information in any manner the expert sees fit, but must observe the requirements of procedural fairness. Consultation between the expert and a Party must only take place in the presence of the other Party, unless a Party fails to attend a conference or meeting which has been convened by the expert and of which prior notice has been given. Any Party providing information to the expert must provide that information to the other Party.
- 3.4 The Parties agree that such a conference is considered not to be a hearing that would give anything under this Schedule the character of arbitration.
- 3.5 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off or counter-claim.

4. Questions to be determined by the Expert

- 4.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - (a) is there an event, act or omission that gives the claimant a right to compensation under the Customer Contract:
 - (i) for damages for breach of the Customer Contract, or
 - (ii) otherwise in law?
 - if so:
 - (iii) what is the event, act or omission?
 - (iv) on what date did the event, act or omission occur?
 - (v) what is the legal right which gives rise to the liability to compensation?

- (vi) is that right extinguished, barred or reduced by any provision of the Customer Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?

in the light of the answers to clause 4.1:

- (vii) What compensation, if any, is due from one Party to the other and when did it fall due?
- (viii) What interest, if any, is due when the expert determines that compensation?

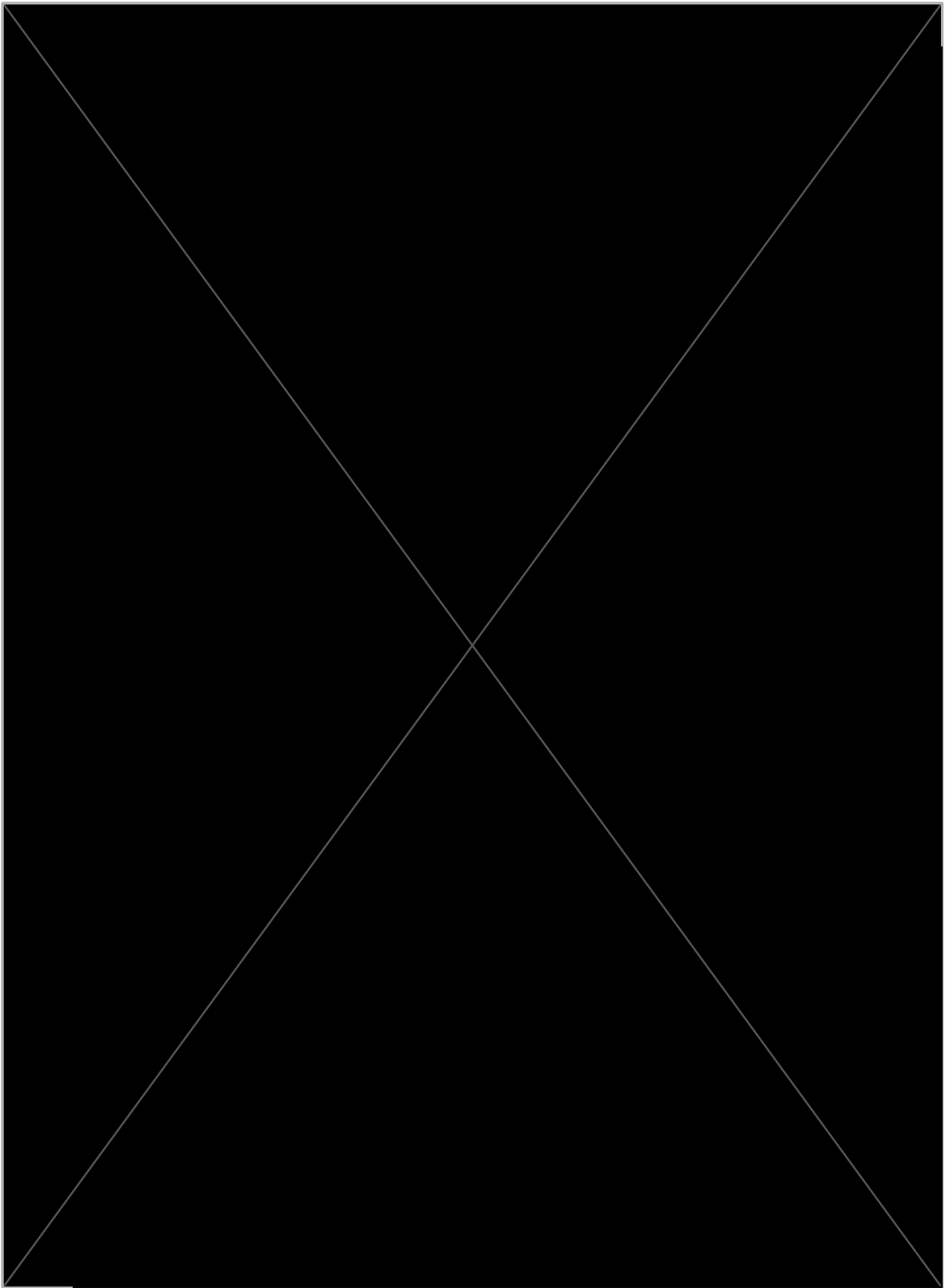
- 4.2 The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.
- 4.3 The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 for the determination, and bear their own expenses.
- 4.4 If the expert determines that one Party must pay the other an amount exceeding the amount specified in General Order Form (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 4.5 Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Customer Contract:
 - (a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

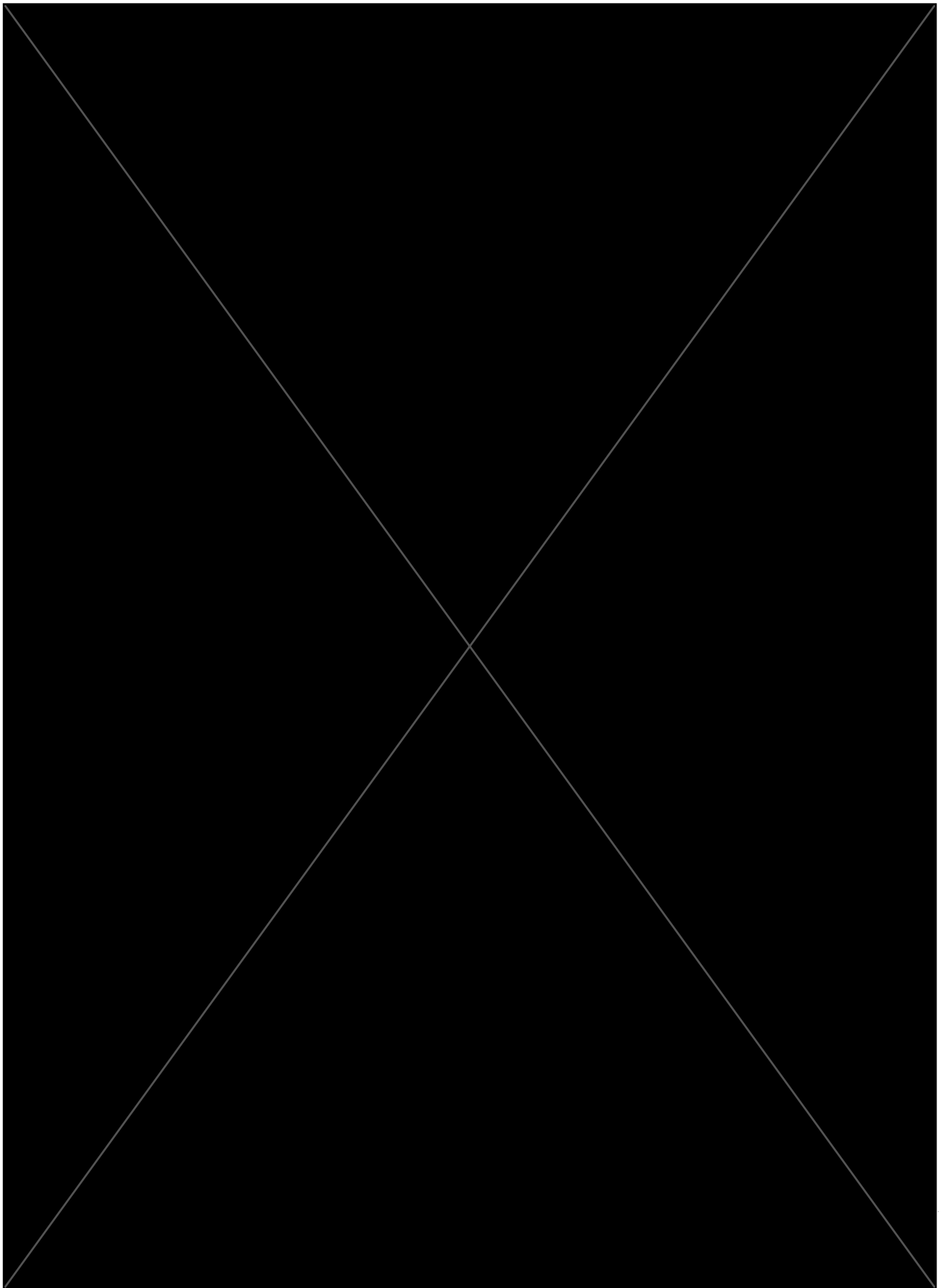
5. Role of Expert

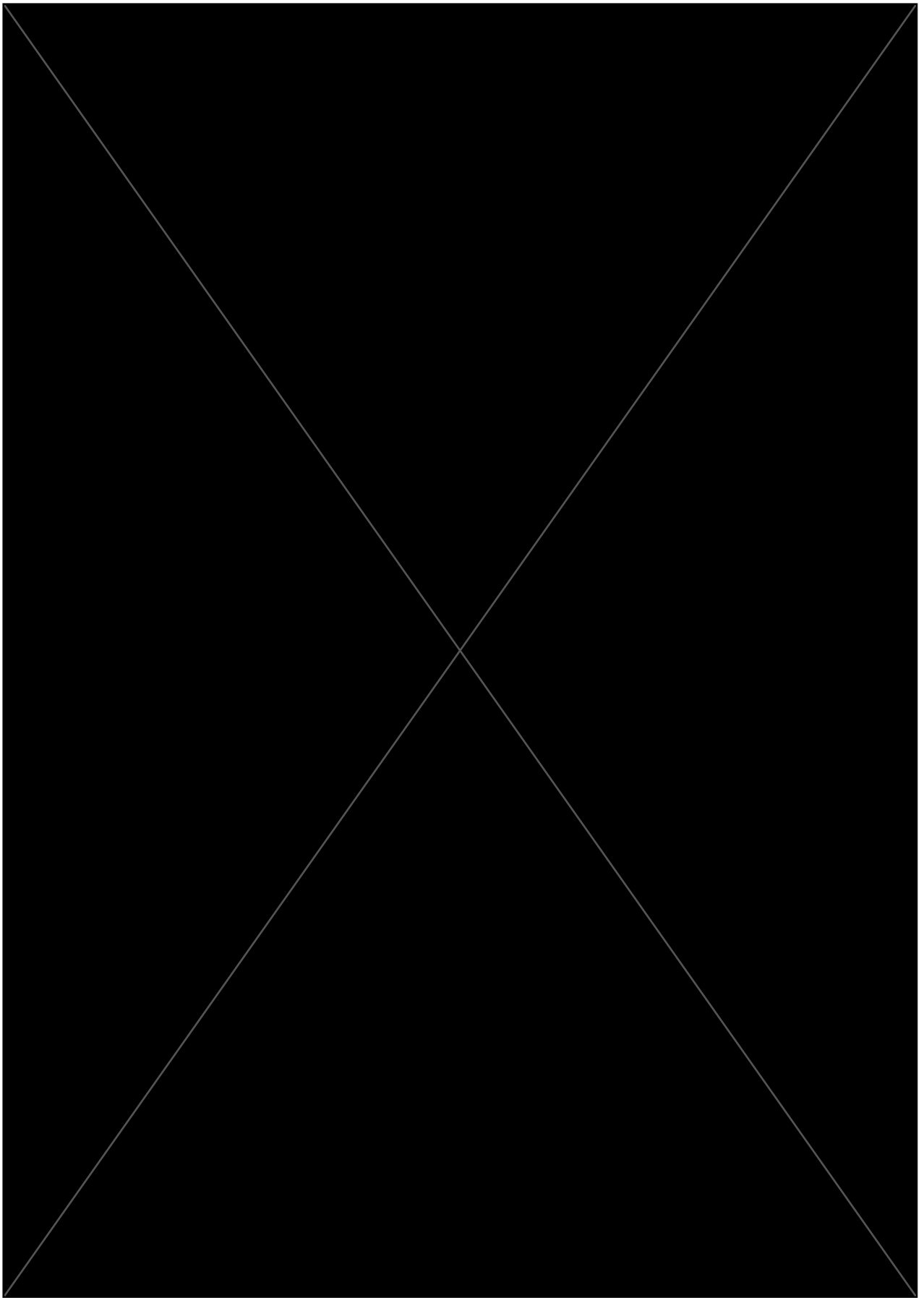
- 5.1 The expert must:
 - (a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
 - (b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
 - (c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
 - (d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
 - (e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d).
- 5.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.

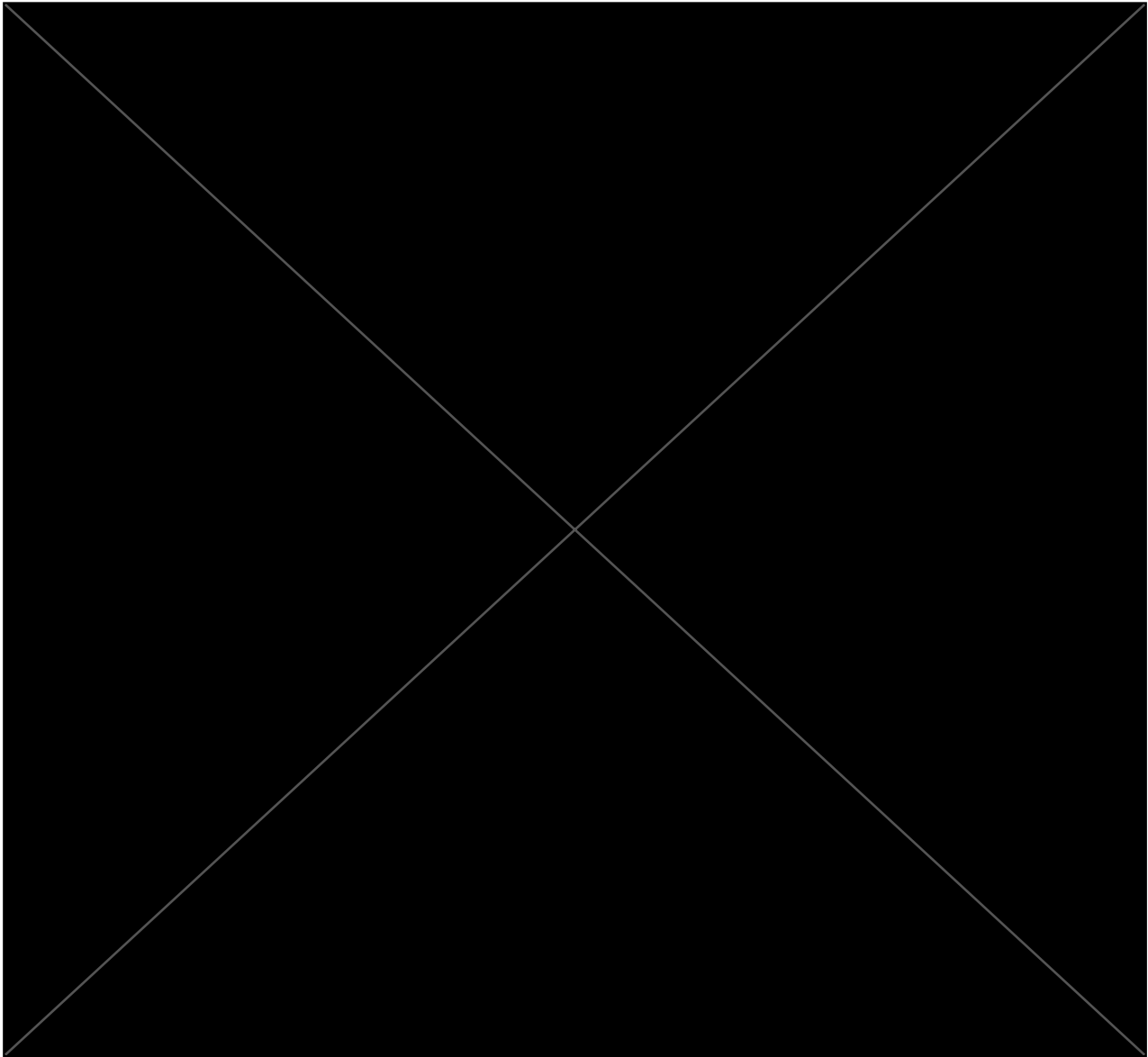
6. Confidentiality

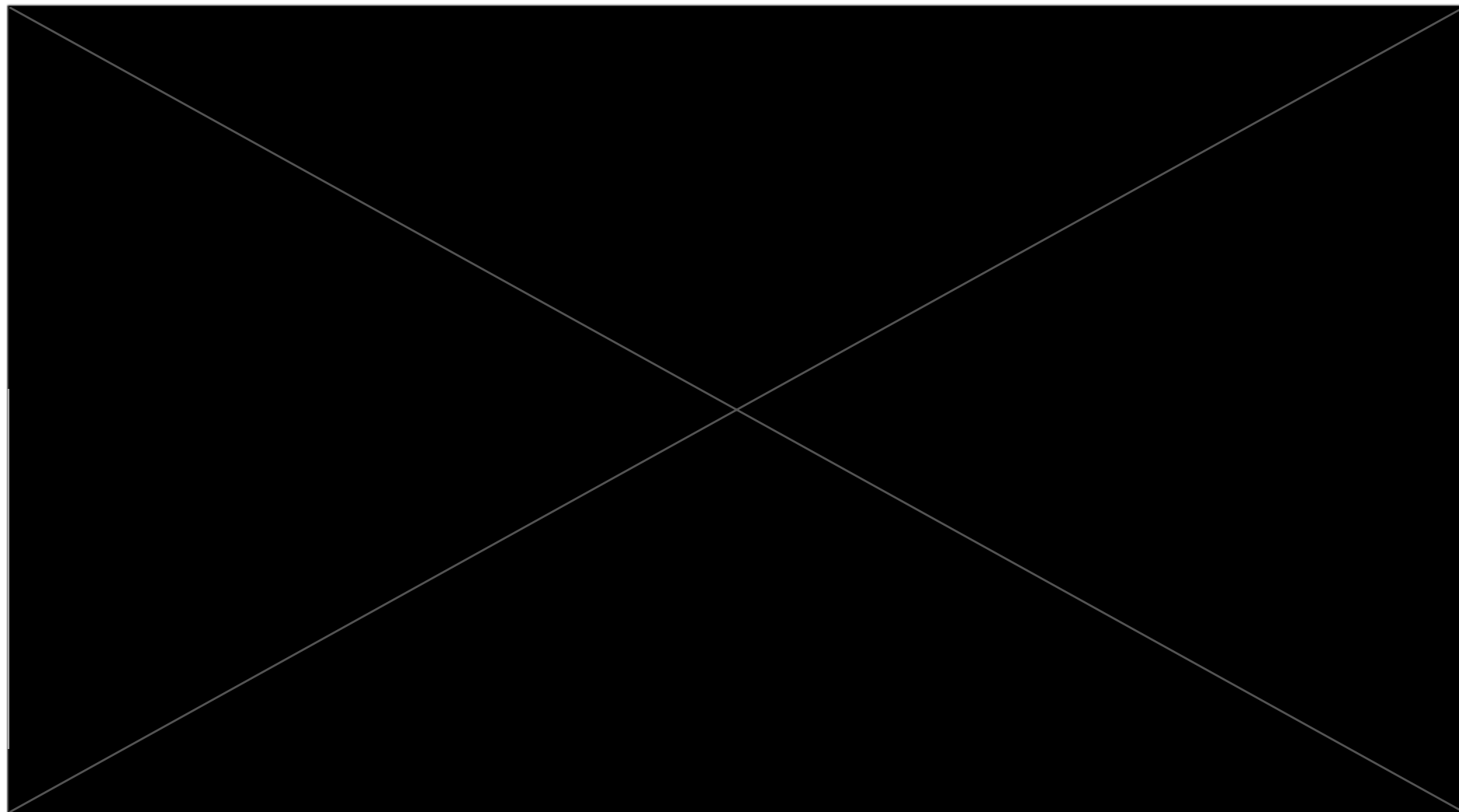
- 6.1 Each Party involved in the expert determination process, including the expert, the Parties, their advisors and representatives shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of the expert determination process, the expert's determination, or any information received or obtained, in the course of the expert determination process, including the existence of that information, except to the extent:
- (a) the Parties have otherwise agreed in writing;
 - (b) the information is already in the public domain;
 - (c) disclosure is required to a Party's insurers, auditors, accountants or other professional advisers;
 - (d) disclosure is required for the purposes of any legal proceedings relating to the dispute or the expert's determination; or
 - (e) disclosure is otherwise required by law.

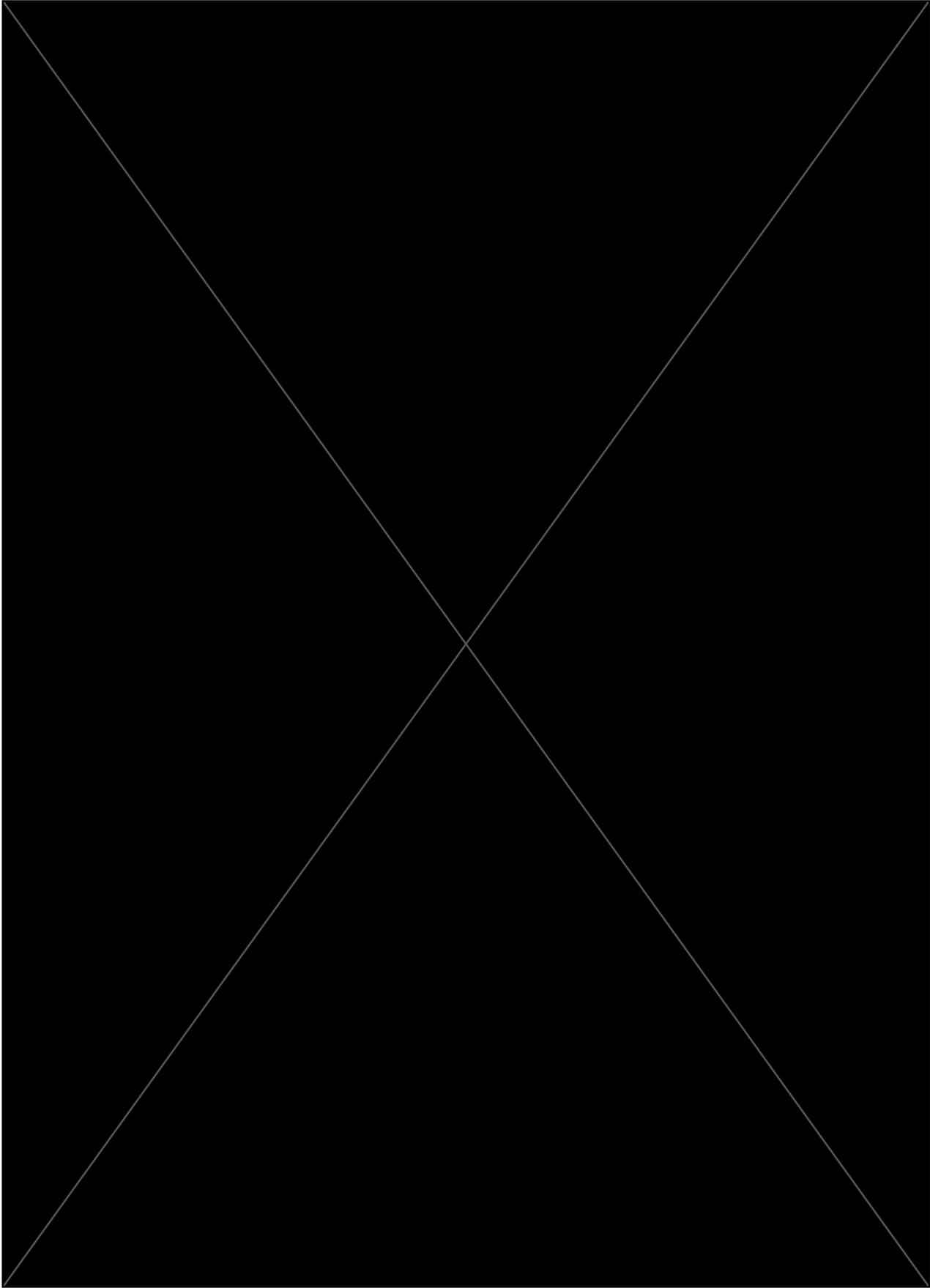


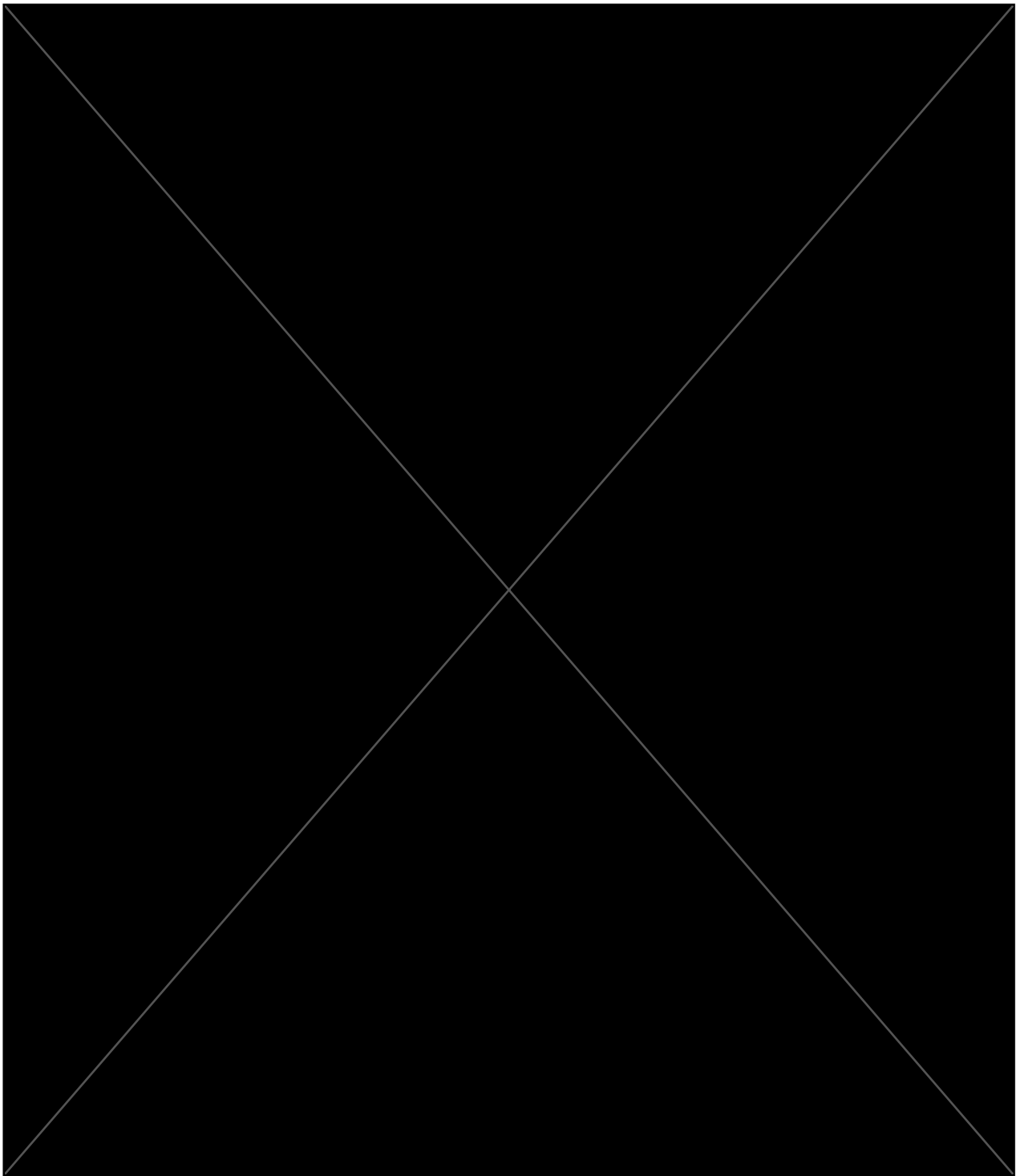


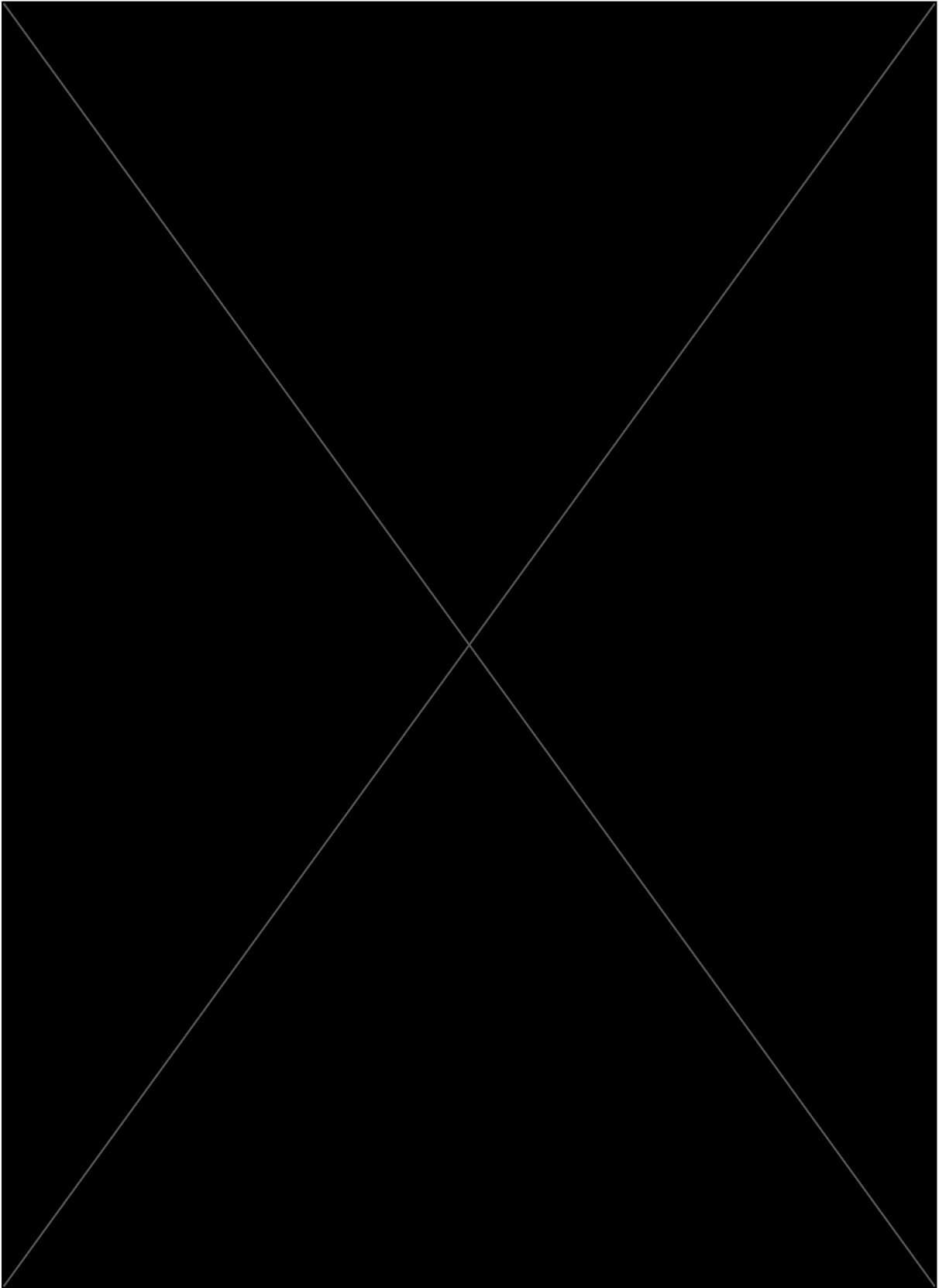


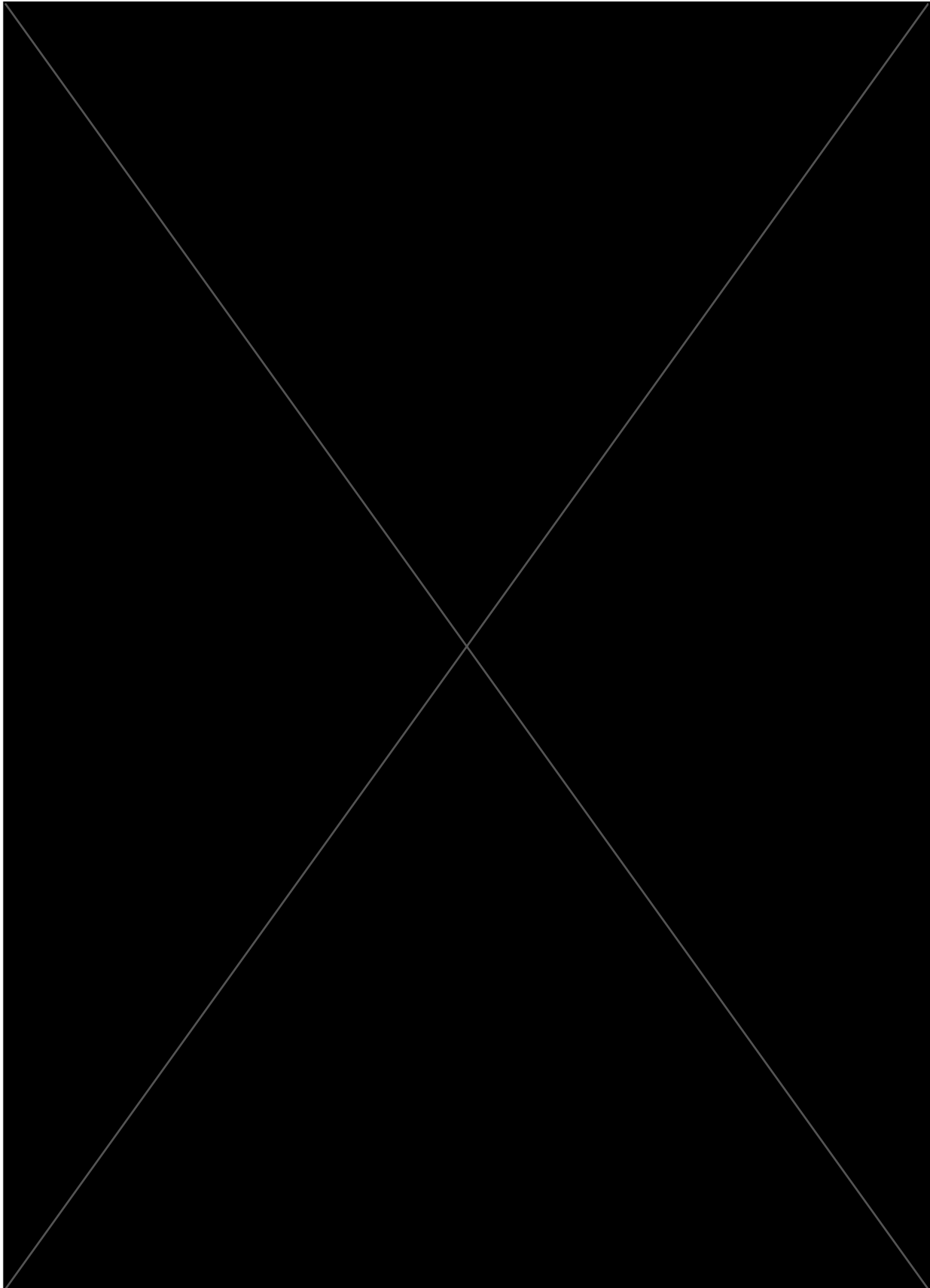


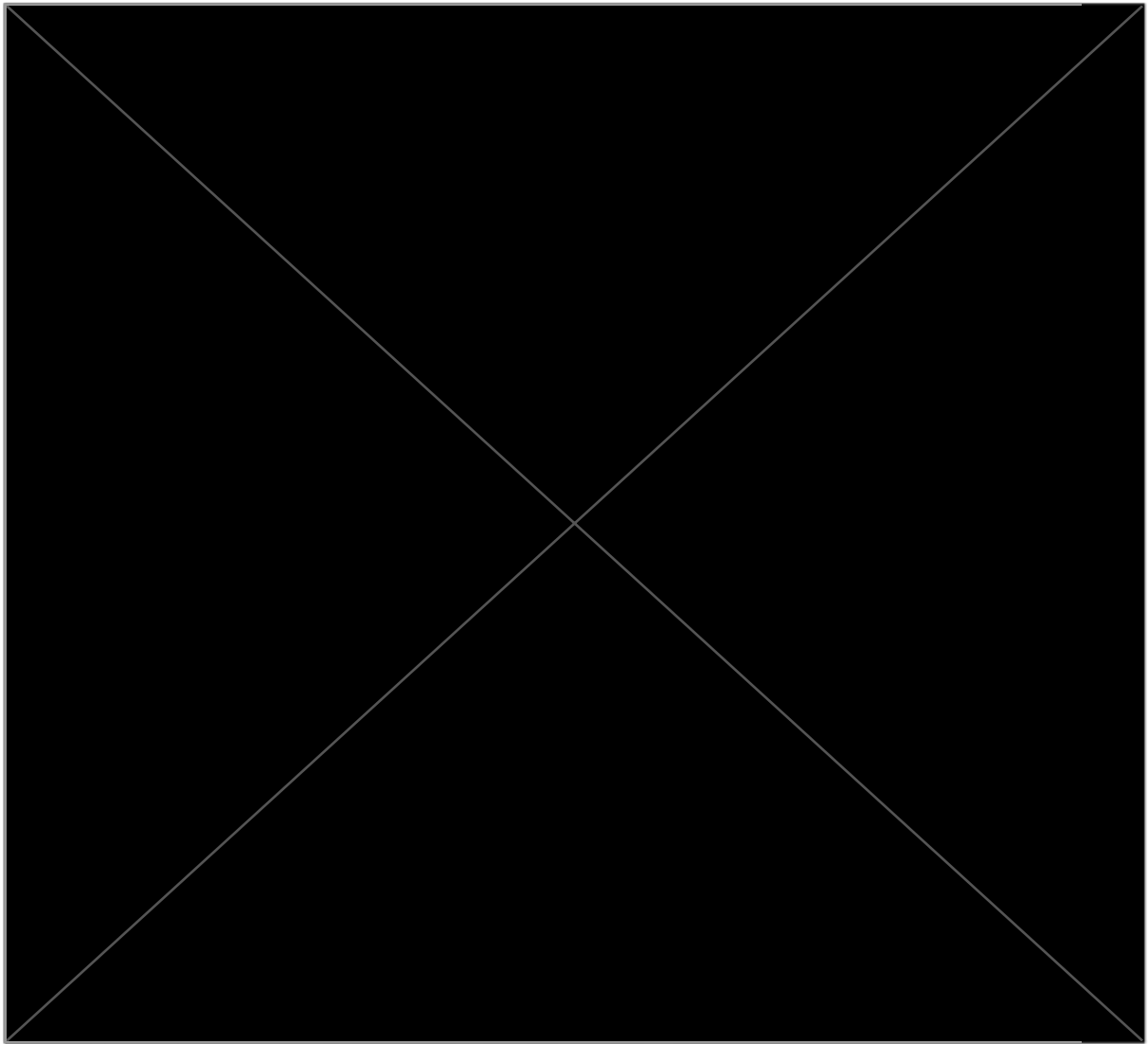


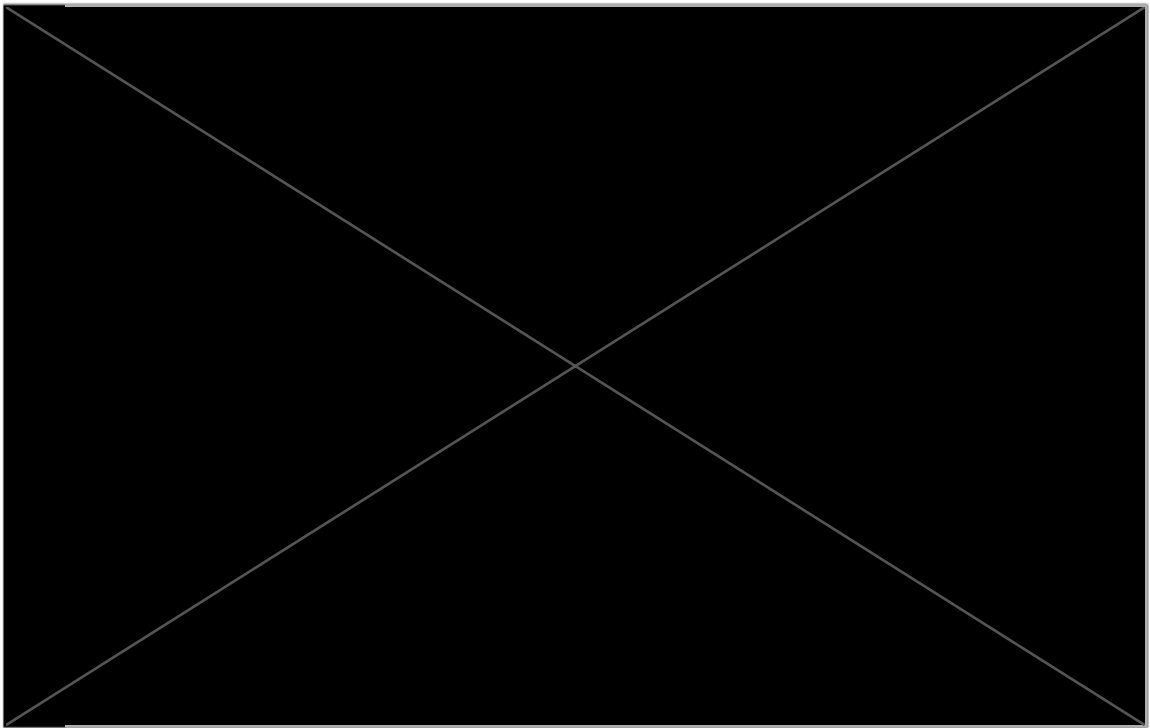


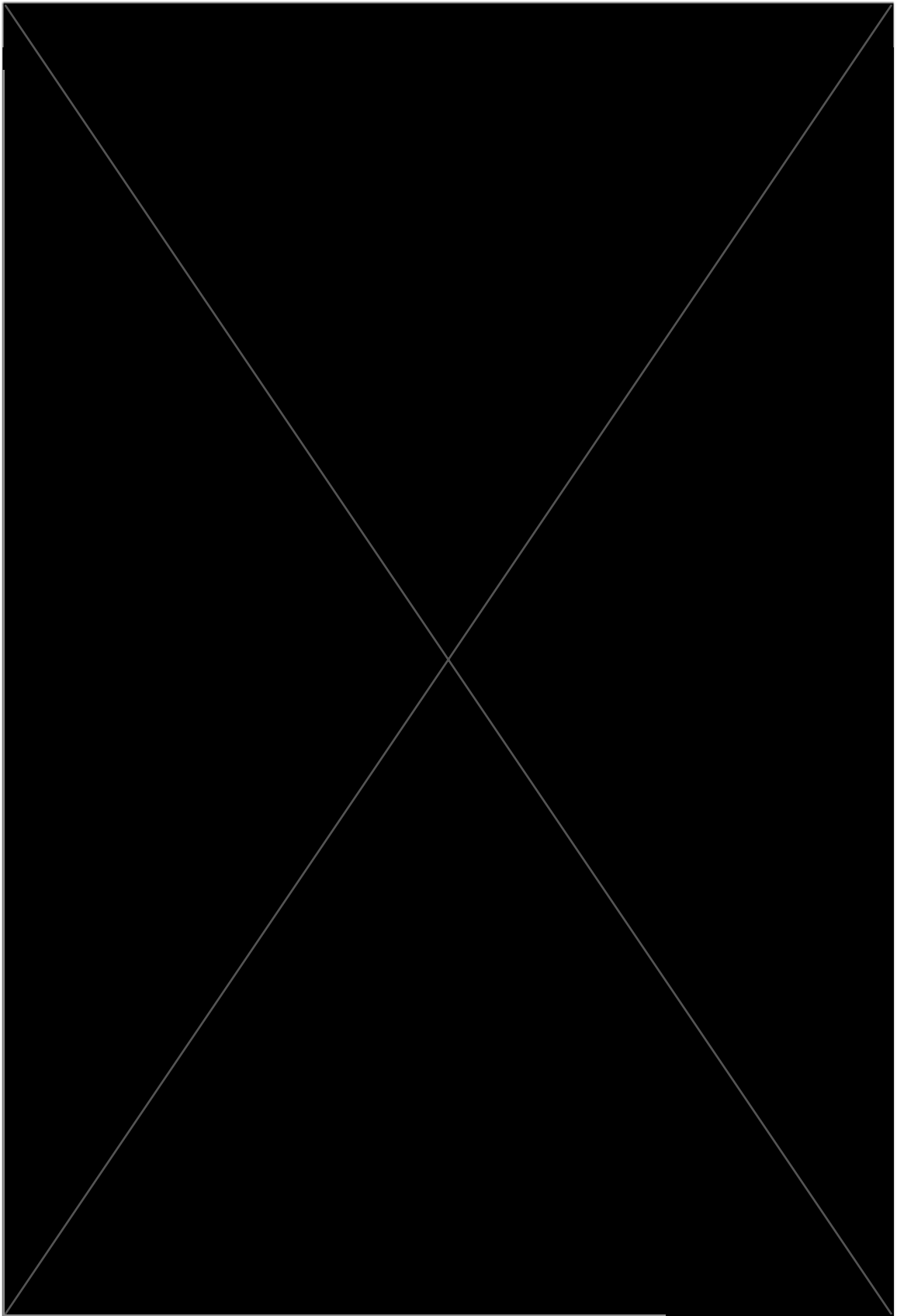


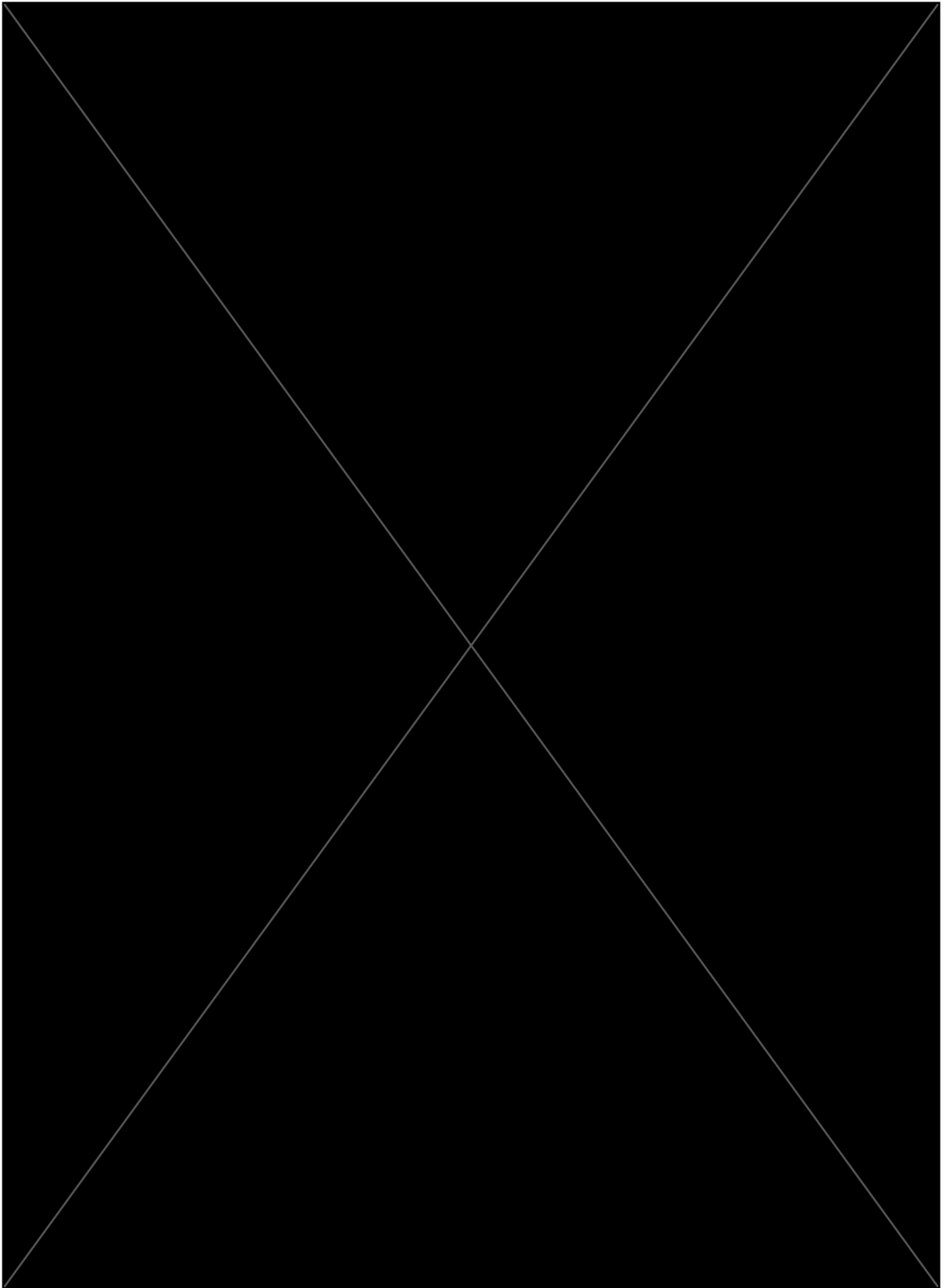


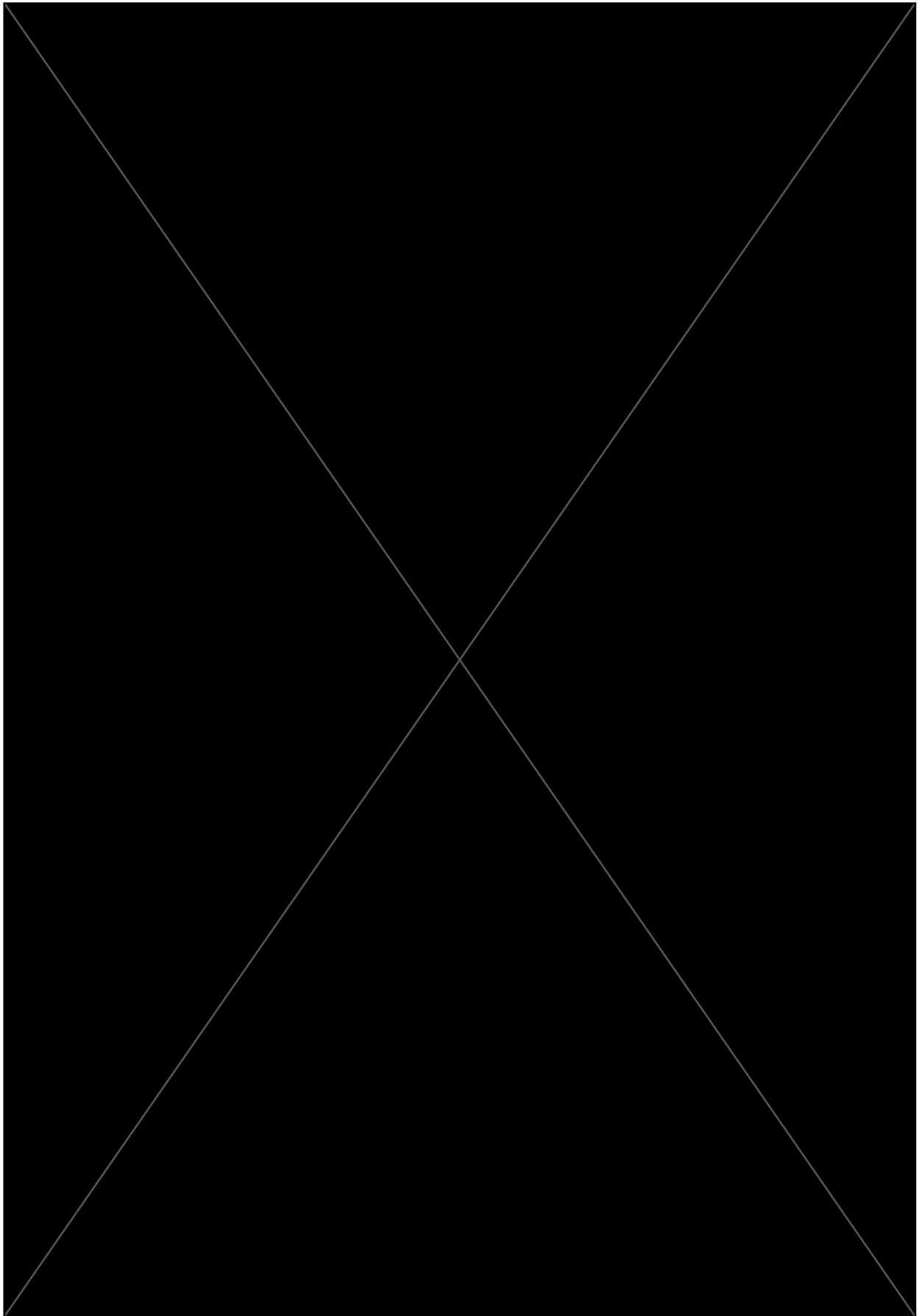


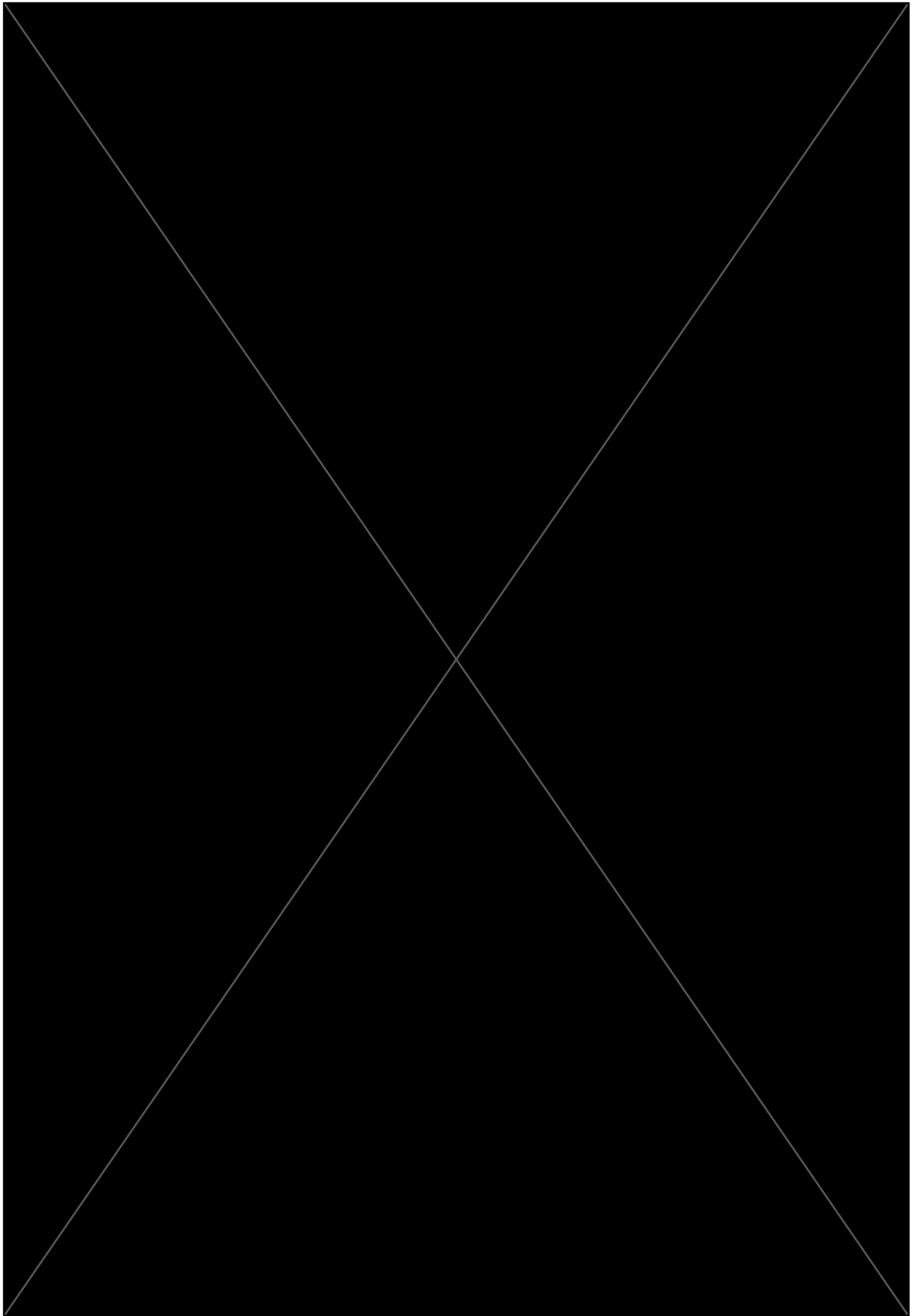


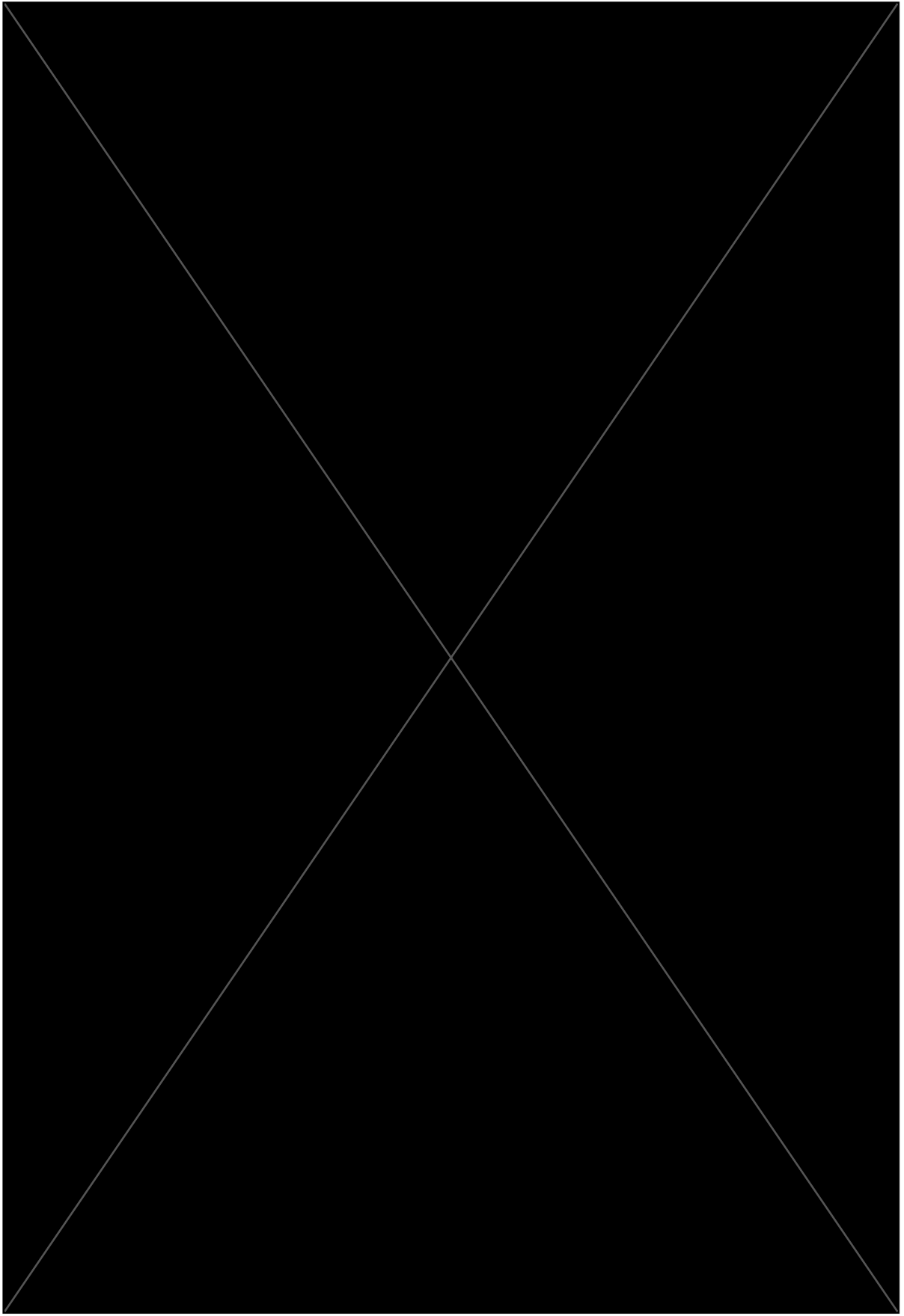


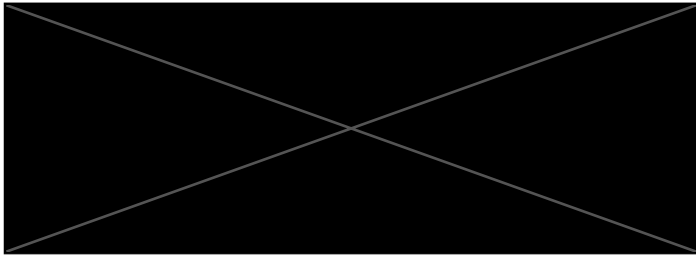












PROCURE IT FRAMEWORK

VERSION 3.2

PART 3: DICTIONARY

DICTIONARY

1

PART 3: DICTIONARY

1. AGREED TERMS & INTERPRETATION

AGREED TERMS

- 1.1 Acceptance Criteria** means the criteria to be applied in the performance of any Acceptance Test.
- 1.2 Acceptance Test Notification Period** means a period of 3 Business Days from the end of the Acceptance Test Period, or such other period stated in Item 32 of the General Order Form or agreed in writing, within which the Party conducting an Acceptance Test must provide the other Party with written notice of the results of the Acceptance Test.
- 1.3 Acceptance Test Data** means the data that is provided by the Customer, and agreed by the Contractor in Item 32 of the General Order Form, that reflects the data the Customer will use in the relevant Deliverable, that is to be used for Acceptance Testing.
- 1.4 Acceptance Test Period** means the period for the performance of any Acceptance Tests for any Deliverable which is a period of 10 Business Days from the delivery of the Deliverable to the Customer, or such other period stated in Item 32 of the General Order Form or agreed between the Parties in writing.
- 1.5 Acceptance Tests** means any acceptance tests stated in Item 32 of the General Order Form or agreed in writing.
- 1.6 Actual Acceptance Date** or **AAD** means the actual acceptance date for a Deliverable, being the date calculated in accordance with clause 10.1 of the Customer Contract.
- 1.7 Additional Conditions** means any terms or conditions which vary, or are additional to, the terms and conditions set out in the Customer Contract, which are stated in Item 43 of the General Order Form and which, subject to directions and policies issued by the Board from time to time, require the prior written approval of the Secretary, New South Wales Department of Finance, Services and Innovation as set out in clause 3.2(b) of the Customer Contract.
- 1.8 Agency** means:
- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, State or Territory legislation, or an instrument made under that legislation (including a local authority);
 - (b) a body established by the Governor-General, a State Governor, or by a Minister of state of the Commonwealth, a State or a Territory; or
 - (c) an incorporated company over which the Commonwealth, a State or a Territory exercises control.
- 1.9 Agreement Documents** means the documentation listed in Schedule 2 to the Customer Contract.
- 1.10 Annexure** means a document that is incorporated into, and forms part of, the Head Agreement.
- 1.11 Approved Agent** means any entity that is authorised in writing by the Contractor to act as the Contractor's legal agent for the purpose of supplying Products and/or Services to the Customer under a Customer Contract, and whose identity is:

- (a) stated in the Head Agreement Details or otherwise approved by the Contract Authority; or
 - (b) where there is no Head Agreement, approved by the Customer,

but excludes the directors, officers or employees of the Approved Agent.
- 1.12 Authorised Representative** means a person who has authority to act on behalf of a Party in accordance with the Head Agreement (Part 1) or the Customer Contract (as applicable).
- 1.13 Bespoke User Documentation** means documents created for the Customer as a Deliverable under a Customer Contract that describe the features and functions of a Product or Service that has been created, modified or adapted for the Customer under a Customer Contract, in a hard copy, electronic or online format as stated in the Contract Specifications.
- 1.14 Board** means the New South Wales Procurement Board established under section 164 of the PWP Act.
- 1.15 Business Contingency Plan** means a plan detailing the nature and scope of the business contingency services to be provided by the Contractor to overcome interruptions to the Customer's business, including as applicable, information about time-frames, scheduling, service levels, methodologies, systems, processes or programs for the implementation of such services and any other requirement, as stated in Item 24 of the General Order Form.
- 1.16 Business Day** means any day that is not Saturday, Sunday or a public holiday in New South Wales.
- 1.17 Business Hours** means 9.00am to 5.00pm on a Business Day.
- 1.18 CCA** means the Competition and Consumer Act 2010 (Cth).
- 1.19 Change in Control** means a circumstance in which control is or may be exercised over the Contractor:
 - (a) by virtue of the change of a direct holding of at least fifteen percent of the voting shares in the Contractor or a holding company of the Contractor; or
 - (b) by any other means whatsoever.
- 1.20 Change Request** means a change requested by either Party which, if signed by the Parties, will result in a variation to any part of the Customer Contract.
- 1.21 Commencement Date** means:
 - (a) the Commencement Date stated in Item 10 of the General Order Form; or
 - (b) if no Commencement Date is stated in the General Order Form, the date the Customer Contract is signed by the Customer and the Contractor.
- 1.22 Confidential Information** means information that:
 - (a) is by its nature confidential;
 - (b) is communicated by the disclosing party to the confidant as confidential;
 - (c) the confidant knows or ought to know is confidential; or
 - (d) relates to:

- (i) the Customer Data;
- (ii) the Products and Services;
- (iii) the financial, corporate and commercial information of any Party;
- (iv) the affairs of a third party (provided the information is non-public); or
- (v) the strategies, practices and procedures of the State and any information in the Contractor's possession relating to a Government Agency,

but excludes any information which the confidant can establish was:

- (vi) in the public domain, unless it came into the public domain due to a breach of confidentiality by the confidant or another person;
- (vii) independently developed by the confidant; or
- (viii) in the possession of the confidant without breach of confidentiality by the confidant or other person.

1.23 Conflict of Interest means the Contractor engaging in any activity, or obtaining any interest, whether pecuniary or non-pecuniary, which is likely to, has the potential to, or could be perceived to, restrict the Contractor from performing its obligations under the relevant Part in an objective manner.

1.24 Consequential Loss means any loss, damage or expense recoverable at law:

- (a) other than a loss, damage or expense that would be suffered or incurred by any person in a similar situation to the person suffering or incurring the loss, damage or expense; or
- (b) which is a loss of:
 - (i) opportunity or goodwill;
 - (ii) profits, anticipated savings or business;
 - (iii) data; or
 - (iv) value of any equipment,

and any costs or expenses incurred in connection with the foregoing.

1.25 Contract Authority means the head of a Government Agency which may procure goods and services for that Government Agency or for other Government Agencies consistent with any applicable policies and directions of the Board and the terms of its accreditation (if any) by the Board, and described in Item 2 of the Head Agreement Details.

1.26 Contract Period means the period of the Customer Contract stated in Item 10 of the General Order Form, including any period or periods of extension of the Customer Contract made in accordance with clause 2.4 of the Customer Contract.

1.27 Contract Price means the total of all Prices payable by the Customer to the Contractor for the Deliverables supplied under the Customer Contract as stated in Item 11 of the General Order Form.

1.28 Contract Specifications means the totality of any technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable provided by the Contractor under the Customer Contract being only:

- (a) any specifications stated in the Customer Contract in Item 13 of the General Order Form; or
- (b) if no specifications are set out in the Customer Contract, the User Documentation.

1.29 Contract Value means:

- (a) the amount that is the maximum amount that the Customer is legally required to pay to the Contractor for the relevant:
 - (i) Non-Recurring Service and/or Product; or
 - (ii) Short Term Recurring Service,
 under the Customer Contract, calculated at the Commencement Date; or
- (b) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is an Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the greater of:
 - (i) the Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service; or
 - (ii) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
- (c) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is no Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the aggregate of:
 - (i) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
 - (ii) the average amount paid by the Customer in each month of the Contract Period for the relevant Non-Recurring Service or Product or Short Term Recurring Service prior to the date on which the claim first arises multiplied by the number of remaining months of the Contract Period during which the relevant Non-Recurring Service and/or Product or the Short Term Recurring Services were to be provided, as set out in the Order Documents.

1.30 Contract Variation means a variation to the terms and conditions of the Customer Contract that requires the consent of the Secretary, New South Wales Department of Finance, Services and Innovation in accordance with clause 26.2 of the Customer Contract.

1.31 Contractor means the person or body corporate named in Item 3 of the Head Agreement Details and/or Item 4 of the General Order Form that enters into the relevant Part. For the purpose of a Customer Contract, Contractor includes any Approved Agent who enters into the Customer Contract. Contractor does not include any of the Contractor's Personnel (other than an Approved Agent).

1.32 Contractor Information means information relating to:

- (a) the Head Agreement and any Customer Contract formed under the Head Agreement subject to the exclusions stated in Item 5 of the Head Agreement Details;
- (b) the Contractor's performance under the Head Agreement or a Customer Contract;
- (c) the financial position or reputation of the Contractor; and/or
- (d) the shareholdings in the Contractor, or the corporate structure, directorship or shareholdings of the Contractor,

but excluding any of the Contractor's Confidential Information or Intellectual Property Rights.

1.33 Correctly Rendered Invoice means an invoice that is rendered in the form of a Tax Invoice where:

- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
- (b) the invoice is set out as an itemised account which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
- (c) the invoice is accompanied by documentary evidence that signifies that acceptance (where appropriate) has occurred in accordance with the Customer Contract; and
- (d) the invoice is addressed to the officer stated in Item 6 of the General Order Form to receive invoices.

1.34 Customer means the person or body corporate named in Item 1 of the General Order Form that enters into a Customer Contract with the Contractor. Customer does not include any of the Customer's Personnel.

1.35 Customer Contract means those Parts, terms and conditions and other documents listed in clause 3.8 of Part 2.

1.36 Customer Data means all data and information relating to the Customer or any other Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any other Government Agency, including Personal Information, in whatever form that information may exist and whether entered into, stored in, generated by, retrieved, printed, processed or produced as part of any Services.

1.37 Customer Supplied Item or CSI means the items set out in Item 22 of the General Order Form to be supplied by the Customer under a Customer Contract.

1.38 Cyberterrorism means an assault on any electronic communications network.

1.39 Defect means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet the Contract Specifications and other requirements under the Customer Contract.

1.40 Defects List means a written notice stating details of the actual results of any Acceptance Test, and for any alleged Defect(s) a statement as to whether the alleged Defect is Minor. The Defects List is not required to include the cause of the Defect.

1.41 Deliverable means any Product, Service or output from any Service that is required to be provided to the Customer under the Customer Contract, and if applicable, includes the System.

- 1.42 Designated Environment** means the hardware platform / operating system combination of the Customer as described in the relevant Module Order Form.
- 1.43 Document** includes:
- (a) any paper or other material on which there is writing;
 - (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and/or
 - (d) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software.
- 1.44 Due Date** means the date by which an LD Obligation must be met, as stated in Item 21 of the General Order Form.
- 1.45 Eligible Customer** means any Government Agency or Eligible non-Government Body.
- 1.46 Eligible non-Government Body** means a public body being eligible to buy under a specific Head Agreement, including the following bodies (as identified under the Public Works and Procurement Regulation 2014 clause 6:
- (a) a private hospital;
 - (b) a local council or other local authority;
 - (c) a charity or other community non-profit organisation;
 - (d) a private school or a college;
 - (e) a university;
 - (f) a public authority of the Commonwealth, any other State or Territory;
 - (g) a public authority or of any other jurisdiction (but only if it carries on activities in this State); or
 - (h) any contractor to a public authority (but only in respect of things done as such a contractor).
- 1.47 Escrow Agreement** means an agreement under which an independent third party receives the source code or object code of certain software from the Contractor for delivery to the Customer or the Contractor upon the fulfilment of pre-specified conditions and is substantially in the form of Schedule 5 to the Customer Contract unless otherwise agreed by the Parties.
- 1.48 Escrow Materials** means:
- (a) the source code, object code of any software Deliverable and all other relevant software programs owned by the Contractor;
 - (b) documentation;
 - (c) drawings and plans; and
 - (d) a list of any relevant third party software programs,

sufficient to enable a competent programmer skilled in the use of the software included in the Deliverable (and any necessary development tools used to create the Deliverable) to keep the Deliverables in good order and repair, that are stated in Item 23 of the General Order Form.

- 1.49 Estimated Contract Price** means the Parties' estimate of the amount payable under the Customer Contract for the relevant:
- (a) Non-Recurring Service or Product; or
 - (b) Short Term Recurring Service,
- as stated in Item 39 of the General Order Form.
- 1.50 Existing Material** means any Licensed Software or any other Material that is developed:
- (a) prior to the Commencement Date; or
 - (b) independently of the Customer Contract,
- and that is incorporated into a Deliverable under the Customer Contract.
- 1.51 Financial Security** means the security in Item 38 of the General Order Form which is in substantially the form of Schedule 10 to the Customer Contract.
- 1.52 Force Majeure Event** means a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time and includes:
- (a) natural events like fire, flood, or earthquake;
 - (b) national emergency;
 - (c) terrorist acts (including Cyberterrorism) and acts of vandalism; or
 - (d) war.
- 1.53 Fundamental Breach** means a breach of the Customer Contract by the Customer which prevents the Contractor from carrying out its obligations under the Customer Contract.
- 1.54 General Order Form** means Schedule 1 to the Customer Contract and includes the Order Details that are relevant to that Customer Contract.
- 1.55 GIPA Act** means the Government Information (Public Access) Act 2009 (NSW).
- 1.56 Government Agency** means any of the following:
- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013 (NSW)*);
 - (b) a NSW Government agency;
 - (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation); or
 - (d) any State owned corporation prescribed by regulations under the PWP Act.
- 1.57 GST** has the same meaning as in the GST Law.

- 1.58 GST Law** means any law imposing or relating to a GST and includes the *A New Tax System (Goods & Service Tax) Act 1999* (Cth) and any regulation pursuant to such Act.
- 1.59 Hardware** means the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices.
- 1.60 Head Agreement** means an agreement between the Contract Authority and the Contractor, comprising those Parts, terms and conditions and other documents listed in clause 4.2 of Part 1.
- 1.61 Head Agreement Details** means those details stated in Annexure 1 to Part 1.
- 1.62 Head Agreement Documents** means the documentation listed in Annexure 2 to Part 1.
- 1.63 Insolvency Event** means where a Party:
- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - (b) is insolvent with the meaning of section 95A of the *Corporations Act 2001* (Cth);
 - (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act 2001* (Cth);
 - (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act 2001* (Cth);
 - (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
 - (f) has a mortgagee entitled to, or enter into, possession of any property of that Party;
 - (g) has a controller within the meaning of the section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
 - (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.
- 1.64 Install** means to set up Hardware so that the manufacturer's installation tests can be completed successfully.
- 1.65 Intellectual Property Rights** means all intellectual property rights including:
- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade names and other protected rights, or related rights, existing worldwide; and
 - (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in paragraph (a),
- but does not include the right to keep confidential information confidential, Moral Rights, business names, company names or domain names.

- 1.66 LD Obligation** means an obligation that is stated in Item 21 of the General Order Form as being an obligation for which the late completion by the Contractor may require the payment of liquidated damages in accordance with clauses 6.28 to 6.35 of the Customer Contract.
- 1.67 Licensed Software** means standard off-the-shelf software provided by the Contractor to the Customer and includes any updates or new releases of that software that may be provided to the Customer from time to time in accordance with the Customer Contract.
- 1.68 Material** means any Document or other thing in which Intellectual Property Rights subsist.
- 1.69 Material Adverse Event** means any matter that:
- (a) substantially and adversely affects the Contractor's ability to perform any of its material obligations under the relevant Part, which may result from:
 - (i) any material litigation or proceeding against the Contractor;
 - (ii) the existence of any material breach or default of any agreement, or of any order or award that is binding on the Contractor;
 - (iii) matters relating to the commercial, technical or financial capacity of the Contractor or in the knowledge of the Contractor, any Approved Agent, Subcontractor or subcontractor proposed to be engaged in respect of this agreement; or
 - (iv) any obligation under another contract the compliance with which may place the Contractor in material breach of the relevant Part; or
 - (b) the Contractor knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Contract Authority or the Customer as a result of the Contract Authority and/or the Customer's association with the Contractor or Subcontractor.
- 1.70 Milestone** means the groups of tasks relating to and including the provision of Deliverables to be performed or provided by the Contractor under the Customer Contract.
- 1.71 Minor** means, unless otherwise agreed in the Order Documents:
- (a) in respect of a Deliverable that is not a Document, a Defect that would not prevent the Deliverable from being used in a production environment even though there may be some insubstantial inconvenience to users of the Deliverable, provided that the Defect does not compromise security; and
 - (b) in respect of a Deliverable that is a Document, errors that are limited to errors in formatting, style, spelling or grammar or minor errors of fact or interpretation that do not detract from the usefulness or intent of the document.
- 1.72 Module** means a document that describes the additional terms and conditions that are specific to a particular Product or Service or method of acquisition of a Product or Service. The Modules applicable to the Customer Contract are stated in item 8 of the General Order Form and contained in Part 4.
- 1.73 Module Order Form** means a document that includes the Order Details that are relevant to a particular Module. The Module Order Forms are contained in Part 5.
- 1.74 Moral Rights** means a person's moral rights as defined in the *Copyright Act 1968* (Cth).
- 1.75 New Material** means any Material that is:

- (a) newly created by or on behalf of the Contractor during the performance of its obligations under the Customer Contract;
- (b) incorporated into a Deliverable; and
- (c) delivered to the Customer in accordance with the requirements of the Customer Contract,

except for any Material that is Existing Material or any adaptation, translation or derivative of that Existing Material.

1.76 Nominee Purchaser means a contractor to a Customer that is authorised to enter into the Customer Contract as the Customer's agent.

1.77 Non-Panel Arrangement has the meaning given to such term in clause 1.7(b).

1.78 Non-Recurring Services means Services which are provided by the Contractor under any of the following Modules:

- (a) Module 4 – Development Services; and
- (b) Module 13 – Systems Integration Services; and
- (c) Module 9 – Data Migration

and, if agreed by the Parties in Item 39 of the General Order Form:

- (d) Module 6 – Contractor Services;
- (e) Module 7 – Professional Services; and
- (f) Module 8 - Training Services.

1.79 Notice in Writing means a notice signed by a Party's authorised representative or his/her delegate or agent which must not be an email or a document scanned and sent by email.

1.80 Officer has the same meaning as detailed in section 9 of the *Corporations Act 2001 (Cth)*.

1.81 Online Service means cloud computing services and related Products and Services as described in the Module 10 (As a Service) Order Form and further defined in the Contract Specifications.

1.82 Open Source Software means software available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>.

1.83 Order Details means the details of the Customer Contract specific to the transaction contemplated by the Customer Contract which are included in the Order Documents and agreed by the Customer and the Contractor.

1.84 Order Documents means the General Order Form and the documents that are stated on the General Order Form as being incorporated into the Customer Contract, which may include:

- (a) any Schedule to the Customer Contract;
- (b) any document referred to in, or based on, any Schedule to the Customer Contract; and

- (c) one or more Modules and their relevant Module Order Forms.
- 1.85 Panel Arrangement** has the meaning given to such term in clause 1.7(a).
- 1.86 Part** means each pro forma document that is designated as a Part of the Procure IT Framework, being:
 - (a) Part 1: the Head Agreement, including its Annexures;
 - (b) Part 2: the Customer Contract, including its Schedules;
 - (c) Part 3: the Dictionary;
 - (d) Part 4: the Modules; and
 - (e) Part 5: the Module Order Forms.
- 1.87 Parties** means:
 - (a) in relation to the Head Agreement: the Contract Authority and the Contractor; and
 - (b) in relation to the Customer Contract: the Customer and the Contractor.
- 1.88 Performance Criteria** means the criteria applicable to the performance of the Contractor including the:
 - (a) quality of Products or Services offered or delivered;
 - (b) competitiveness of the Products or Services and pricing;
 - (c) Contractor's sales and marketing performance;
 - (d) Contractor's financial stability;
 - (e) Contractor's management and suitability of its Personnel;
 - (f) Contractor's administration of the Head Agreement, any Customer Contracts and risk;
 - (g) Contractor's management of environmental issues;
 - (h) Contractor's Occupational, Health, Safety and Rehabilitation (OHS&R) Management;
 - (i) Contractor's industrial relations performance; and
 - (j) claims on insurance and other financial assurances made in respect of the Contractor's business or the Head Agreement and any Customer Contracts.
- 1.89 Performance Guarantee** means a document substantially in the form of Annexure 5 to the Head Agreement or Schedule 9 to the Customer Contract (as applicable).
- 1.90 Personal Information** means information or an opinion about an identified individual (ie. a natural person), or an individual who is reasonably identifiable:
 - (a) whether the information or opinion is true or not; and
 - (b) whether the information or opinion is recorded in a material form or not.
- 1.91 Personnel** means an entity's directors, officers, employees, agents and subcontractors, and:

- (a) for the Contractor, includes its Approved Agents and their Personnel; and
- (b) for the Customer, includes any Nominee Purchaser and its Personnel, but excludes the Contractor and its Personnel.

1.92 Prescribed Use is limited to the use of a Product or Service in a business environment where the direct result of a failure of the Product or Service being supplied results in a serious risk of significant loss of life or personal injury or substantial damage to buildings or other tangible property in the following business environment:

- (a) planning, construction, maintenance or operation of an air traffic control system;
- (b) planning, construction, maintenance or operation of a mass transit system (e.g. aircraft/trains/ferries/roads);
- (c) planning, construction, maintenance or operation of a nuclear facility; or
- (d) planning, construction, maintenance or operation of facilities or programs in respect of biological or chemical environments, including quarantine.

1.93 Price means an itemised Price (including a rate for a unit), payable in Australian dollars by a Customer for a Product or Service under the Customer Contract in Item 11 of the General Order Form. Price includes GST and any other Tax.

1.94 Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the Customer or the Contractor or any other recipient of Personal Information) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that the Customer or any Personal Information or the Contractor is subject to the laws of that jurisdiction),
 affecting privacy or Personal Information, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

1.95 Procure IT Framework means the suite of pro forma documents issued by the New South Wales Department of Finance, Services and Innovation that provide the framework for the procurement of information and communications technology related goods and services by Government Agencies.

1.96 Product means Hardware and Licensed Software only.

1.97 Project Implementation and Payment Plan or PIPP means a document that includes Order Details relating to the implementation of a project and associated payment arrangements

which is included in a Customer Contract if stated in Item 20 of the General Order Form. An example template of a PIPP is set out in Schedule 12 to the Customer Contract.

1.98 Protected Clauses means the following clauses of the Customer Contract:

- (a) Additional Conditions (clause 3.2 (b));
- (b) Formation (part of clause) and Compliance with Consumer Laws (clauses 3.7 to 3.11);
- (c) Product Safety (clauses 5.9 to 5.10);
- (d) Intellectual Property Rights (clause 13);
- (e) Privacy (clause 15);
- (f) Insurance (clause 16)
- (g) Liability (clause 18);
- (h) Indemnities (clause 19);
- (i) Conflict of Interest (clause 20);
- (j) Notice of Change in Control (clause 23.3);
- (k) Dispute Resolution (clause 24 and Schedule 11 – Dispute Resolution Procedures);
- (l) Termination (clause 25);
- (m) Assignment and Novation (clauses 26.3 to 26.6); and
- (n) Applicable Law (clause 26.22).

1.99 PWP Act means the Public Works and Procurement Act 1912 (NSW).

1.100 Recurring Services means Services which are provided by the Contractor under any of the following Modules:

- (a) Module 2 – Hardware Maintenance and Support Services;
- (b) Module 5 – Software Support Services;
- (c) Module 11– Telecommunications as a Service;
- (d) Module 12– Managed Services; and
- (e) Module 10 - As a Service,

and, unless agreed otherwise by the Parties in Item 39 of the General Order Form:

- (f) Module 6 – Contractor Services;
- (g) Module 7 – Professional Services; and
- (h) Module 8 - Training Services.

1.101 Related Company means an entity owned by, controlling, controlled by, or under common control with, directly or indirectly, a Party. For this purpose, one entity “controls” another entity

if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract). A Related Company includes a "related body corporate" as that expression is defined in the *Corporations Act 2001* (Cth).

1.102 Reseller means any entity which provides Products or Services but is not:

- (a) the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service; or
- (b) a Related Company of the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service.

1.103 Schedule means a schedule to the Customer Contract.

1.104 Service means any item or thing to be provided under a Customer Contract that is not a Product.

1.105 Service Address means:

- (a) in the case of the Contract Authority, the address set out in the Head Agreement;
- (b) in the case of the Contractor:
 - (i) the address set out in the Head Agreement or such other address of which the Contactor gives Notice in Writing to the Contract Authority; or
 - (ii) in relation to a Customer Contract at its address set out in Item 5 of the General Order Form or such other address of which the Contactor gives Notice in Writing to the Customer; or
- (c) in the case of the Customer: the address set out in Item 2 of the General Order Form or the address of which the Customer gives Notice in Writing to the Contractor.

1.106 Service Credit means the service credits awarded against the Contractor for a failure to meet the Service Levels, as specified in a Service Level Agreement.

1.107 Service Level Agreement or **SLA** means the document or clauses that set out the performance expectations of the Parties and defines the benchmarks for measuring the performance of the Services. An example template of an SLA is set out in Schedule 3 to the Customer Contract.

1.108 Service Levels means the minimum performance levels to be achieved by the Deliverable, as specified in a Service Level Agreement.

1.109 Short Term Recurring Services means Recurring Services that are stated to be provided for a period of 12 months or less in the Order Documents.

1.110 Site means the Customer's offices or other Customer-controlled locations stated in Item 18 of the General Order Form to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.

1.111 Site Specification means the document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverable(s).

- 1.112 Specified Personnel** means the key personnel of the Contractor who are required to undertake the provision of the Deliverables or part of the work constituting the Deliverables, as stated in Item 27 of the General Order Form.
- 1.113 Stage** means one or more Milestones that are identified as a stage in the PIPP.
- 1.114 State** means the State of New South Wales.
- 1.115 State Record** has the meaning given in section 3 of the *State Records Act 1998* (NSW).
- 1.116 Statutory Requirements** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction relating to the performance of the Party's obligations under the relevant Part and includes industry codes of conduct, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales.
- 1.117 Subcontractor** means a third party to which the Contractor has subcontracted the performance or supply of any Services.
- 1.118 Substantial Breach** means:
- (a) a breach of the Customer Contract by the Contractor which deprives the Customer of substantially all of the benefit of the Customer Contract; or
 - (b) the following breaches by the Contractor of the Customer Contract:
 - (i) a delay by the Contractor in performing its obligations under the Customer Contract which continues beyond the extension of time granted under clauses 6.26 and 6.27;
 - (ii) failing to provide suitable replacement personnel as required under clause 8.9 where such failure prevents the Contractor from performing fundamental obligations under the Customer Contract;
 - (iii) breaching any warranty under clause 9.1;
 - (iv) where Acceptance Tests are required in order for the Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to pass Acceptance Tests which results in rejection of the Deliverable by the Customer under clause 10.12(e);
 - (v) where Acceptance Tests are not required in order for a Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to deliver the Deliverable by the date required in the Customer Contract;
 - (vi) failing to effect and maintain insurance policies as required under clauses 16.1, 16.2, 16.3 or 16.7 (other than to the extent that the Contractor received an exemption under clause 16.8);
 - (vii) failing to provide a Performance Guarantee as required under clause 17.2;
 - (viii) failing to provide a Financial Security as required under clause 17.4; or
 - (ix) the existence of a Conflict of Interest which in the Customer's reasonable opinion prevents the full and proper performance of the Contract by the

Contractor and the Contractor has not complied with clause 20.1(b) within a reasonable period.

- 1.119 System** means the system described in the Contract Specifications, comprising the Products and Services procured by the Customer pursuant to the Customer Contract.
- 1.120 Tax** means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in connection with the Contractor's performance of its obligations under the relevant Part, but excludes GST and any tax based on the net income of the Contractor.
- 1.121 Tax Invoice** has the same meaning as provided for in the GST Law.
- 1.122 Taxable Supply** has the same meaning as provided for in the GST Law.
- 1.123 Term** means the term of the Head Agreement, set out in Item 6 of the Head Agreement Details and any extension of the Term in accordance with clause 2.1 of the Head Agreement.
- 1.124 User Documentation** means the Contractor's standard off the shelf documents that describe the features and functions of a Product or Service, in a hard copy, electronic or online format that are provided by the Contractor to the Customer. User Documentation excludes any Document that is designed by the Contractor to be training materials.
- 1.125 Virus** means a computer program, code, device, product or component that is designed to or may in the ordinary course of its operation, prevent, inhibit or impair the performance of a Deliverable in accordance with the relevant Contract Specifications, but does not include any code, mechanism or device that is included in software by the Contractor for the purpose of managing the licensed use of software.
- 1.126 Warranty Period** means:
- (a) in relation to Hardware, 365 days from AAD;
 - (b) in relation to Licensed Software, 90 days from AAD; and
 - (c) in relation to Services where there is an Acceptance Test process, 30 days from AAD.
- 1.127 Workaround** means a fix or alternative procedure to temporarily address a Defect.

INTERPRETATION

- 1.128** The following rules also apply in interpreting any Part, except where the context makes it clear that a rule is not intended to apply.
- (a) A reference to:
 - (i) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) monetary references are references to Australian currency;
 - (iii) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as varied, assigned or novated;
 - (iv) a reference to a "Part [number]" is a reference to that specific Part only; e.g. "Part 3" is a reference to Part 3 only. A reference to "Part" without a number is

a reference to the Part in which the reference to that Part appears e.g. if the phrase "clause 3 in this Part" appears in a clause in the Customer Contract, then this is a reference to clause 3 in the Customer Contract only;

- (v) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity; and
- (vi) anything (including a right, obligation or concept) includes each part of it.
- (b) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) If an agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.
- (d) A singular word includes the plural, and vice versa.
- (e) The words "include(s)" and "including" are not words of limitation.
- (f) When a Party exercises its "discretion", the party may exercise its discretion in any way it chooses, provided only that it acts in good faith. There is no obligation to act reasonably where the word "discretion" is used.
- (g) Where there is an obligation that requires the completion of a particular Order Document, including a PIPP or Service Level Agreement, but the particular Order Document is not incorporated into the Customer Contract because it is not stated in the General Order Form that the particular Order Document is included in the Customer Contract, then that obligation does not form part of the relevant Customer Contract.
- (h) The Parties may undertake business by the electronic exchange of information and the provisions of each Part will be interpreted to give effect to undertaking business in this manner. To the extent permitted by law, any Part or any Order Document, including the General Order Form may be in electronic format.
- (i) Where there is a shortened version of the General Order Form, Module Order Form or other Order Document, and the Order Details (details placed under an Item number) have been numbered differently in the shortened version of the Order Document to the Item numbering in the pro forma template of the relevant Order Document, then the references to the Item number in the relevant Part of the Procure IT Framework shall be interpreted as a reference to the relevant Item in the shortened version of the relevant Order Document notwithstanding the actual Item number used in the shortened version of relevant Order Document, e.g. if in a shortened General Order Form the Order Details relating to Credit/Debit Cards are included under Item number 16 in the shortened General Order Form, then the reference to "Item 33" in clause 11.3 of the Customer Contract shall be interpreted as a reference to Item number 16 in the shortened General Order Form.

1.129 Headings are for the purpose of convenient reference only, and do not affect interpretation of the document in which they appear.

PROCURE IT VERSION 3.2

MODULE ORDER FORM

MODULE 3 – LICENSED SOFTWARE

1

MODULE ORDER FORM
MODULE 3 – LICENSED SOFTWARE

Box 1 Approved Purpose

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.1) Specify what purpose is the Licensed Software used for. If no other purpose is specified in this Box the Approved Purpose is the internal processing of the Customer's own data.	

Box 2 Class of Licence

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.2) Specify the specific rights that are granted by the Contractor to the Customer to use the Licensed Software. The Class of Licence defines the Price, e.g. If the Licensed Software is licensed for X "Named Users", the Class of Licence must define what a "Named User" is. Examples of the types of issues that are included in the Class of Licence include: (a) the Licence Period; (b) number and type of user; (c) number, type or capacity of Hardware; or (d) any other licence restriction/right. Also specify whether the Customer is granted the right to transfer the Licensed Software to an outsourcer in accordance with clause 2.17. [Note: If this Box is not completed then the Contractor grants the Customer the default rights to use the Licensed Software and User Documentation as	

described in clauses 2.2 and 2.9 of Module 3.]

2

Box 3 Designated Equipment

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.3)	
Specify the Hardware platform/operating system combination upon which the Licensed Software is installed. [Note: Specify the type and version number of the operating system and capacity/model of the Hardware, especially if the Class of Licence is based on type or size of capacity of the Hardware.]	Refer to the PIPP.

MODULE ORDER FORM
MODULE 3 - LICENSED SOFTWARE

Box 4 Third Party Components

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.14)	
Third Party Components Specify if the details of any software components, plug-ins and other programs are owned by third parties. This should include name and version number of each Third Party Component. Specify if the Third Party Components are supplied by the Contractor: (a) as part of the Licensed Software; or (b) as a Reseller (in which case Box 11 must be completed) [Note: See clause 2.7 for details.] [Note: Open Source Software is not included within the definition of Third Party Component.]	Not applicable.

Box 5 Extension of Period to Notice to Renew Licence

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Licence Period (clause 2.6(a))	
If the Licence is not perpetual, then specify the number of days written notice prior to the end of each current Licence Period that the Contractor must give of the Price, payment arrangements and/or terms for any extended Licence Period or new Licence Period that is to commence immediately after the end of the current Licence Period. If no period is specified in this Box, the period is 30 days.	

Box 6 Installation

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Installation (clause 3.1)	
Specify if the Contractor is responsible to install the Licensed Software.	
If the Contractor is responsible for installation of the Licensed Software:	
(a) specify the details of the Installation and the date of installation; and	
(b) specify the Price for the installation, and when the Price is due.	
Installation (clause 3.3)	
Specify the date by which the access codes must be made available, if applicable. If a date is not specified, the access codes must be provided promptly following the date the Parties enter into the Customer Contract.	

Box 7 First Release

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
First Release (clause 3.9) Specify if the Licensed Software or any New Release will be a First Release. If so, specify the any additional terms and conditions that apply to the First Release. If this Box is not completed, the Licensed Software and each New Release is deemed not to be a First Release.	

Box 8 Right to Receive Updates and/or New Releases

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Updates and New Release (clause 4.1) Specify if the Contractor provides the Customer the rights to receive: (a) Updates; and (b) New Releases, as part of the Licence (as opposed to part of a separate Software Support Service under Module 5).	
Updates and New Release (clause 4.4(c)) Specify the increased Licence Price when the Customer accepts the Update or New Release. If an increased Price is not specified, the Licence Price must not be increased for any Update or New Release provided during the Licence Period.	

Box 9 Warranties for Open Source Code

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Open Source Software (clause 5.2(b))	
If the software is Open Source Software: (a) specify the Open Source Licence that governs the use of the Open Source Software; and (b) specify whether the Open Source Software is provided with the warranties that the Contractor provides in respect of Licensed Software, or whether the Contractor provides the Open Source Software without any warranty (to the extent permitted by law).	Per Additional Condition 1.4.

Box 10 Ancillary Services

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Training (clause 6.1)	
Specify if training services are to be provided.	Not applicable.
If so, specify details, dates and the Prices of the training services, and when payment is due.	Not applicable.
Other Services (clause 6.2)	
Specify the details, times, Prices for ad hoc issue resolution or support service for the Licensed Software, and when payment is due. [Note: If Software Support Services are being provided for the Licensed Software under Module 5, do not complete this Box.]	Not applicable.

Box 11 Business Models of the Reseller

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Reseller Provision of Licensed Software (clause 7.1)	
Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller? If yes: (a) specify if the Licensed Software is supplied by the Contractor who is acting as Reseller as Facilitator. [Note: Reseller as Facilitator means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 7.1(a).] OR (b) specify if the Licensed Software is supplied by the Contractor who is acting as Reseller with Pass Through Warranties. [Note: Reseller with Pass Through Warranties means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 7.1(b).]	No
	No.

Box 12 Value Added Services

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Acquisition through a Reseller (clause 7.3)	
Specify if the details of any value added services the Contractor is to provide, the Prices and when payment is due.	Not applicable

Box 13 Customer Maintains Records

Details to be included from Module 3	Order Details agreed by the Contractor and the Customer
Records (clause 10.1(a))	
Specify if and, if so, how the Customer must maintain records as to the locations of all copies of the Licensed Software and the usage of the Licensed Software.	The Customer is not required to maintain records as to the locations of all copies of the Licensed Software and the usage of the Licensed Software.
Records (clause 10.1(b))	
Specify the frequency with which the Customer provides copies of the records under clause 10.1(a). If this Box is not completed the Customer must provide copies of the records every six months.	Not applicable.

Module 3 – Licensed Software

Version 3,2

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[Use Guidelines

This Module should be used when the Customer is buying and/or installing both proprietary and open source software which is to be used either without modification or some minor modification to suit the Customer's business requirements. There are a variety of different types of software licences. Some are based on the number of machines on which the licensed programme can be run or based on the number of users that can use the programme.

Licences may be able to be sublicensed to outsourcers. If software is to be adapted or customized for the Customer's use Module 4 should be used.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.]

Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 3** form part of the Customer Contract and apply when the Parties state that the Licensed Software Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 Approved Purpose** means to use the Licensed Software for a purpose described in the Module Order Form and in absence of a purpose being stated on the Module Order Form, for the internal processing of the Customer's own data.
- 1.2 Class** means specific rights that are granted by the Contractor to the Customer to use the Licensed Software that are stated in the Module Order Form, and may include the Licence Period, number and type of Permitted Users, number, type or capacity of any Hardware on which the Licensed Software may be used, or other attribute which defines the Customer's right to use the Licensed Software.
- 1.3 Designated Equipment** means the Hardware platform/operating system combination stated in the Module Order Form upon which the Licensed Software is installed.
- 1.4 Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Licensed Software and Services provided under this Module, as stated in clause 9.
- 1.5 First Release** means a licence that is for a release (as denoted by the integer to the left of the decimal point in the release number e.g. release version 3.0) of the Licensed Software, which although is generally available for supply to all of the Contractor's customers in the Australian market, that release has not been licensed (or the New Release has not been made available) to any other customer in the Australian market at the time the licence is granted to the Customer for that release of the Licensed Software or New Release.
- 1.6 Licence** means the licence granted by the Contractor to the Customer in respect of the Licensed Software under this Module 3 to the Customer Contract.
- 1.7 Licence Period** means the period that the Licence is granted and is:
 - (a) stated in the Class of Licence; or
 - (b) in absence of a Class of Licence, perpetual.
- 1.8 New Release** means software which has been produced primarily to extend, alter or improve the Licensed Software by providing additional functionality or performance enhancement (whether or not Defects in that Licensed Software are also corrected) while still retaining the original designation of the Licensed Software. New Release does not include any software that is generally licensed by the Contractor to its customers as a different product.
- 1.9 Open Source Licence** means a licence that governs the use of Open Source Software.
- 1.10 Permitted User** means each person the Customer has permitted to use the Licensed Software for the Approved Purpose, in accordance with the Customer Contract.
- 1.11 Reseller as Facilitator** means a Reseller who uses the business model described in clause 7.1(a) to facilitate the supply of the Licensed Software to the Customer.
- 1.12 Reseller with Pass Through Warranties** means a Reseller who uses the business model describe in clause 7.1(b) to supply Licensed Software to the Customer.

- 1.13 Software Support Services** means the Services the Contractor agrees to provide for the Licensed Software under Module 5 when the Parties agree that Module 5 forms part of the Customer Contract.
- 1.14 Third Party Component** means software components, plug-ins and other programs that are owned by third parties and are stated on the Module Order Form as being Third Party Components. The term **Third Party Component** does not include Open Source Software.
- 1.15 Update** means software which has been produced primarily to overcome Defects in, or to improve the operation of, the relevant part of the Licensed Software without significantly altering the Contract Specifications whether or not that Licensed Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

INTERPRETATION

- 1.16** Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

2. Licence Terms

CLASS OF LICENCE

- 2.1** The Contractor grants to the Customer a non-exclusive Licence to use the Licensed Software on the Designated Equipment on the terms of the Class of Licence stated in the Module Order Form.
- 2.2** If there is no Class of Licence stated in the Module Order Form, the Contractor grants the Customer a non-exclusive Licence to:
- (a) install the Licensed Software on the Designated Equipment in accordance with the User Documentation;
 - (b) if the General Order Form states that the Licensed Software is to undergo Acceptance Tests; to carry out Acceptance Tests in respect of the Licensed Software;
 - (c) run (but not modify or adapt) the Licensed Software from the AAD on the Designated Equipment and use the Licensed Software solely for the Approved Purpose for the Licence Period;
 - (d) use, adapt and/or reproduce the Licensed Software to the extent permitted under the *Copyright Act 1968* (Cth) ("**the Act**"), including rights granted under sections 47B(3) and sections 47C, 47D, 47E or 47F of the Act;
 - (e) allow the use of the Licensed Software and User Documentation by the Customer's contractors solely for the Approved Purpose for the Licence Period, provided that:
 - (i) the use of the Licensed Software and User Documentation is restricted to the same Class of usage granted to the Customer. For clarity, any usage by such persons must be included within the Class of Licence (by way of example, if the Class of Licence is based on the number of users then the number of contractor's users is included in the number of users acquired by the Customer); and
 - (ii) unless otherwise required by the Contractor, the Customer's contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the Licensed Software in the same manner as stated in the Customer Contract; and

- (f) make such number of copies of the Licensed Software as are reasonably required for operational use, backup, archive and security.

SUBSTITUTION, CHANGE AND TRANSFER

- 2.3** If the Licence restricts the use of the Licensed Software to specific Designated Equipment, the Customer may:

- (a) transfer the Licensed Software to alternative equipment of substantially the same purpose, capacity and performance standards; and
- (b) install and run the Licensed Software on any back-up Hardware while the Designated Equipment is for any reason temporarily inoperable,

with the Contractor's prior written consent, such consent not to be unreasonably withheld. Any transfer, change or substitution may be documented using a Change Request.

- 2.4** If the Customer requires the Contractor to assist with the transfer of the Licensed Software to other equipment, then a Change Request must be agreed by the Parties.

LICENCE PERIOD

- 2.5** Unless earlier terminated in accordance with the Customer Contract or otherwise surrendered by the Customer, the Licence remains in force for the duration of the Licence Period.

- 2.6** Where the Licence Period is not perpetual then:

- (a) at least 30 days or as otherwise agreed in the Module Order Form prior to the end of each Licence Period, the Contractor may at the Contractor's sole discretion either provide the Customer with written notice of the Price and the payment arrangements that will apply for the Licence for the Licensed Software for an extended Licence Period or provide a new Customer Contract, including a new General Order Form and Module Order Form with the Price and payment arrangements that will apply to the new Licence;
- (b) where the Customer has been given an option to extend the Licence in accordance with clause 2.6(a), the Customer may elect not to extend the Licence or elect not to enter into a new Licence by providing the Contractor with written notice, such notice to be received at least 15 days prior to the date when the current Licence Period expires;
- (c) if the Contractor does not receive written notice under clause 2.6(b), then the Licence Period must be extended for the extended Licence Period and the Customer must pay the Price using the terms and conditions and the payment arrangements, all as stated in the notice given under clause 2.6(a); and
- (d) the procedures in clause 2.6 will apply at the end of each Licence Period.

THIRD PARTY COMPONENTS

- 2.7** If Third Party Components are associated with the Licensed Software then:

- (a) the Contractor is acting as a Reseller for the Third Party Components and the provisions of clause 7 apply; or
- (b) if stated on the Module Order Form, the Third Party Components are licensed as part of the Licensed Software, in which case they will be deemed to be part of the Licensed Software and the provisions of the Customer Contract, including the warranties and indemnities in this Module 3 and in the Customer Contract will apply to the Third Party Components to the same extent as they apply to Licensed Software.

INTELLECTUAL PROPERTY RIGHTS

- 2.8** The Customer acknowledges that ownership in the Licensed Software does not pass to the Customer and the Customer must use the Licensed Software only in accordance with the Customer Contract.
- 2.9** Unless stated otherwise in the Class of Licence, the Customer must not itself, nor permit any other person to:
- (a) copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation or derivative of the Licensed Software or the User Documentation, unless expressly permitted by law;
 - (b) disclose or sub-license, lease, rent, loan, assign or otherwise transfer the Licensed Software or User Documentation to any third person (other than as permitted under clauses 2.2(e), 2.14 and 2.17);
 - (c) reverse engineer, reverse compile, de-compile or disassemble the object code of any part of the Licensed Software, or otherwise attempt to derive the source code of the Licensed Software, except to the extent permitted by law; or
 - (d) do anything that would prejudice the Contractor's right, title or interest in the Licensed Software. For clarity, use in accordance with this Customer Contract is not prejudicial to the Contractor's rights, title or interest in the Licensed Software.
- 2.10** All Intellectual Property Rights, including adaptations, translations and derivative works in the Licensed Software or other material provided under this Customer Contract are the exclusive property of the Contractor (or the Contractor's licensor, if applicable), and must vest in or must be transferred to the Contractor immediately upon creation, as the case may be.
- 2.11** At the request of the Contractor, the Customer must assign or transfer the Intellectual Property Rights (and must procure the granting of consent for the unfettered use of Moral Rights) to any adaptations, translations or derivative works of the Licensed Software or other materials provided under this Customer Contract to the Contractor or its designee and must sign (or procure any person to sign) any document reasonably required to assign or transfer any such Intellectual Property Rights to the Contractor or its designee, and/or consent to the unfettered use of any Moral Rights, (at the Contractor's cost).
- 2.12** The Customer must not remove, alter, obscure or deface any:
- (a) trade mark, service mark, get up, logo or branding, proprietary or restricted use legend; or
 - (b) any disclaimer, warning, instruction or advisory notice,
- on the Licensed Software, User Documentation, on any other materials provided under the Customer Contract or on any packaging.

PERMITTED USERS

- 2.13** The Customer is liable for the acts and omissions of all Permitted Users to the same extent as if they were the acts or omissions of the Customer.

MACHINERY OF GOVERNMENT CHANGES

- 2.14** The Licence granted to the Customer under this Module is non-transferable, subject only to the Customer having a right to transfer the Licence to another Eligible Customer as part of a machinery of government change implemented by law and in accordance with clause 2.17.

- 2.15** If a Licence is transferred in accordance with clause 2.14, the Contractor:
- (a) must immediately notify the Customer of any proposed reductions in costs which may occur; and
 - (b) may notify the Customer of any proposed additional fees for any additional:
 - (i) overall usage arising from the machinery of government change, to the extent that such usage is greater than any limits on usage specified in the Customer Contract; and
 - (ii) costs directly incurred as a result of the provision of additional overall Services.

- 2.16** The Contractor agrees to negotiate with the Customer in good faith to vary or consolidate the Customer Contract to:
- (a) adjust the Price as a result of the notification of the matters raised in clause 2.15; and/or
 - (b) comply with any specific requirements of the Departments, Government Agencies and Eligible non-Government Bodies to which the Customer Contract is transferred following the machinery of government change.

Any agreement that arises from this clause must be documented via a Change Request.

TRANSFER TO OUTSOURCER

- 2.17** The Customer may sublicense any of the rights granted under the Licence without additional charge, (on one or more occasions) on a limited time basis to a contractor that is providing outsource services to the Customer that includes the operation of the Licensed Software, provided that:
- (a) the Licensed Software is used solely for use of the Customer as is permitted under this Customer Contract, is limited to the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement;
 - (b) the contractor's use of the Licensed Software is included within the Class of Licence (e.g. if the Class of Licence is based on the number of users, then the number of the contractor's users is included within the number of users acquired by the Customer); and
 - (c) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the Licensed Software in the same manner as stated in the Customer Contract.

TERMINATION

- 2.18** The Customer may terminate the Licence for convenience at any time during the Licence Period by providing the Contractor with 30 days Notice in Writing. If the Licence is terminated under this clause the Customer must immediately pay any installments of the Price that have not been paid, and the Customer is not entitled to a refund of any Price that has been paid.
- 2.19** Where the Customer wishes to terminate the Licence and:
- (a) convert to a different Class of Licence that is offered by the Contractor in respect of the Licensed Software on the Designated Equipment; and

- (b) the Price agreed for the new Licence is equal to or greater than the Price that applies to the terminated Licence,

the Parties must follow the procedure set out in clause 26 of the Customer Contract to vary the Customer Contract and the Contractor must allow the Customer to set-off against the Price of the new Licence the Price that has been received by the Contractor for the current Licence.

OBLIGATIONS UPON TERMINATION OR EXPIRY

2.20 The Customer, after termination or expiry of the Licence:

- (a) subject to clause 2.20(b), must destroy (and provide such evidence of such destruction as the Contractor may reasonably require) or return to the Contractor all copies of the Licensed Software that are in its possession or control; and
- (b) may retain a copy of the Licensed Software and its related User Documentation where it is reasonably required by the Customer to comply with any Statutory Requirement relating to record keeping and retention. Such copies may only be used by the Customer to comply with those Statutory Requirements and the Customer must not use, and must not permit to be used, such Licensed Software and related User Documentation for any other purpose. Such copy may not be used to process any data that is not in the Licensed Software on the last day of the Licence Period.

EXPORT

2.21 Export laws and regulations of Australia and the United States may apply to the Licensed Software and User Documentation under this Module. The Customer agrees:

- (a) that such export laws govern the use of the Licensed Software and User Documentation (including technical data related to them) and any other Deliverables provided under this Customer Contract;
- (b) to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations); and
- (c) that no data, information, Licensed Software and User Documentation, Deliverable and/or materials resulting from this Customer Contract (or any direct product of any of them) will be:
 - (i) exported, directly or indirectly, in breach of these export laws; or
 - (ii) used for any purpose prohibited by these export laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

3. Supply of Licensed Software

INSTALLATION

- 3.1 Where the Module Order Form specifies that the Contractor is to install (or grant access to) the Licensed Software, the Contractor must install (or grant access to) the Licensed Software by the date stated in the Module Order Form.
- 3.2 Unless the Module Order Form specifies that the Contractor is responsible for installing the Licensed Software, the Customer is responsible for downloading (if applicable) and/or installing the Licensed Software on the Designated Equipment. The Customer must perform the installation in accordance with any instructions in the User Documentation or other instructions provided by the Contractor, and provided it does so the act of installing the

Licensed Software will not invalidate any warranty provided by the Contractor under the Customer Contract or any applicable statutory guarantee.

- 3.3** Where the Contractor makes the Licensed Software and User Documentation available for download from a website, the Contractor must provide the Customer with the relevant access codes promptly following the date the Parties enter into the Customer Contract, or such other time stated in the Module Order Form.
- 3.4** If the Customer requests installation to be postponed or to be made in advance of the date nominated in the Module Order Form, the Contractor must use its reasonable efforts to re-schedule installation accordingly. The Customer is responsible for any costs incurred by Contractor in re-scheduling the installation, such costs to be calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates.
- 3.5** If the Contractor provides (or provides access to) any:
- (a) software or documentation for which the Contractor is acting as a Reseller as Facilitator under clause 7.1(a); or
 - (b) software that is subject to an Open Source Licence,
- the Contractor provides this software as a convenience only and without liability.

USER DOCUMENTATION

- 3.6** At the time of delivery of (or the grant of access to) the Licensed Software, the Contractor must provide the Customer with the User Documentation in the quantities that are stated in the General Order Form.
- 3.7** The Contractor must from time to time and in any event as soon as practicable give the Customer access to copies of any amended, revised or supplementary User Documentation during the Licence Period. This information must be provided:
- (a) without additional charge, if the Contractor provides such information to its other customers generally without charge; or
 - (b) in all other cases, at the Contractor's then current fees.

BACK UP

- 3.8** Unless the Contractor has an obligation under another Module to take back ups of data that is loaded into a Deliverable, the Customer must take and maintain adequate backups of any data that is loaded into any Deliverable so that there is no loss of data in the event that any failure of any Deliverable causes damage to, or loss of, any data.

FIRST RELEASE

- 3.9** If the Licensed Software is a First Release:
- (a) this must be stated and agreed on the Module Order Form; and
 - (b) the Parties may agree additional terms and conditions or services that are required for that First Release, such agreement to be documented in the Order Documents.

4. Updates and New Releases

- 4.1** To the extent that it is stated on the Module Order Form that the Contractor provides the Customer the right to receive Updates and/or New Releases for Licensed Software as part of the Licence, and not as part of a separate agreement for Software Support Services or other arrangement, then the provisions of clauses 4.2 to 4.4 apply to the Customer Contract.
- 4.2** The Contractor must, at no additional charge to the Customer, make available to the Customer any Updates and New Releases for the Licensed Software if and when the Contractor makes these generally available to its other customers during the Licence Period at no additional charge.
- 4.3** The Customer must notify the Contractor within 90 days from the date that the Update or New release is made available to Customer if the Customer decides not to use the Update or New Release. The Customer must accept and use any Update that the Contractor advises addresses a security issue.
- 4.4** If the Customer accepts the Update or New Release:
- (a) if requested by the Customer, the Contractor must install the Update or New Release, coordinating and scheduling such installation with the Customer. The Customer must pay the Contractor the costs for such installation at the Contractor's then current time and materials rates, unless agreed otherwise. This arrangement may be documented by way of a Change Request;
 - (b) if the Customer installs the Update or New Release, the Customer must do so in accordance with any instructions provided by the Contractor, and the Customer is responsible for all testing, including testing for interoperability with other software programs;
 - (c) the Licence Price must not be increased, unless agreed otherwise on a Module Order Form;
 - (d) the Contract Specifications of the Licensed Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Contract Specifications; and
 - (e) following installation of the Update or New Release, the Customer must destroy or return to the Contractor all copies of the original Licensed Software or otherwise deal with all such copies in accordance with the Contractor's directions, provided that the Customer may retain a copy of the superseded Licensed Software and its related User Documentation where:
 - (i) it is necessary to create an effective back up of the Licensed Software; or
 - (ii) it is reasonably required by the Customer to comply with any Statutory Requirement relating to record keeping and retention. Such copies may only be used by the Customer to comply with those Statutory Requirements.

The Customer must not use, and must not permit to be used, such superseded Licensed Software and related User Documentation to be used for any other purpose. Such copy may not be used to process any data.

- 4.5** Subject to clause 4.3, if the Customer decides not to use the Update or New Release then the Customer acknowledges and agrees that:
- (a) subsequent Updates or New Releases may not operate with the Licensed Software; and

- (b) the Licensed Software may have its usefulness reduced over time;
- (c) the Contractor may not be able to remedy any Defects in the Licensed Software; and
- (d) the Contractor is not responsible for any Defect in the Licensed Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the latest version of the Licensed Software been used.

For clarity, nothing in this clause reduces the Contractor's obligations under clauses 8 and 9.

- 4.6** The Contractor must not provide a New Release that is a First Release without notifying the Customer that a New Release is a First Release. If a New Release is a First Release, the Parties may agree additional terms and conditions or services that are required for that First Release, such agreement to be documented on a Change Request.

5. Open Source Software

- 5.1** Nothing in this Customer Contract overrides the terms of any Open Source Licence. Any Open Source Software is available only under the terms of the relevant Open Source Licence.

- 5.2** To the extent that Open Source Software is associated with any Licensed Software:

- (a) the Open Source Software is supplied and licensed under the Open Source Licence and not under Module 3;
- (b) if stated on the Module Order Form and subject to clause 5.2(c), any Open Source Software that is incorporated into the Licensed Software is deemed to be part of the Licensed Software solely for the purpose of the warranty under clauses 8 and 9 under this Module, and/or any statutory guarantee under the CCA;
- (c) it is agreed by the Parties that the Contractor excludes any warranty or indemnity whatsoever in respect of the Intellectual Property Rights in any Open Source Software to the maximum extent permitted by law;
- (d) the Customer must remove any of the Contractor's trademarks, service marks, logos, get up or other branding from any Open Source Software if:
 - (i) the Customer creates any new software that is a work based on the Open Source Software; or
 - (ii) the Customer seeks to distribute any Open Source Software that has been provided to it with Contractor's trademarks, service marks, logos, get up or other branding; and
- (e) the Customer warrants to the Contractor that it will comply with the terms of the Open Source Licence.

6. Ancillary Services

TRAINING

- 6.1** Where stated on the Module Order Form, the Contractor must provide the training for the Prices stated in the Module Order Form.

OTHER SERVICES

- 6.2** Where stated on the Module Order Form, the Contractor must:
- (a) provide the necessary services to install the Licensed Software; and
 - (b) provide any ad hoc issue resolution or support service for the Licensed Software as part of the Licence and not as part as Software Support Services,
- at the times and for the Prices set out in the Module Order Form.

- 6.3** The Parties may agree that other services are to be provided by the Contractor during the Contract Period. The details of those Services, including the scope of the Services and the Prices that are payable for them, must be set out in the Order Documents or if the Services are requested after the Commencement Date, on a Change Request and the Variation Procedures in Schedule 4 – Variation Procedures will apply.

7. Reseller Provision of Licensed Software

- 7.1** Where it is specified on the Order Documents that the Licensed Software is to be supplied via a Contractor that is a Reseller, the provisions of this clause 7 apply, and the Customer and the Contractor must agree on the Module Order Form which of the business models, Reseller as Facilitator or Reseller with Pass Through Warranties, applies to the supply of the Licensed Software:

- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Licensed Software by the original Intellectual Property Rights owner or its authorised distributor to the Customer, in which case:

- (i) the Contractor will procure that the original Intellectual Property Rights owner or its authorised distributor enters into a contract directly with the Customer for the supply of the Licensed Software (and/or any Updates and New Releases), and the provisions of the Customer Contract that relate to the supply of the Licensed Software, including provisions in this Customer Contract relating to Intellectual Property Rights and the features, capabilities, performance or other characteristics of the Licensed Software and the other provisions of this Module (other than clause 6) do not apply. The terms of the contract between the original Intellectual Property Rights owner or its authorised distributor and the Customer for the supply of the Licensed Software will be:

- (A) attached to the Customer Contract;
- (B) available for the Customer to accept online from a website nominated by the Contractor (including the website of the original Intellectual Property Rights owner or authorised distributor); or
- (C) in the form of a shrinkwrap licence or licence document that is provided with the Licensed Software (a copy of which is available in advance of delivery, upon request from the Customer),

and such contract will be deemed to have been reviewed by the Customer and entered into by the Customer and the original Intellectual Property Rights owner or authorised distributor (as stated in the contract) on the date when the Customer enters into the Customer Contract;

- (ii) the Contractor will co-ordinate and manage the provision of the original Intellectual Property Rights owner's or distributor's (as applicable) warranty service, if any, that is to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Contractor; and

- (iii) the Customer must pay the Contract Price for the Licensed Software to the Contractor, and the Contractor must pay the amount agreed between the Contractor and the original Intellectual Property Rights owner or its authorised distributor for the Licensed Software; or

(b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Licensed Software to the Customer on the terms and conditions of the Customer Contract, except that:

- (i) clause 19.1(c) of the Customer Contract does not apply;
- (ii) clauses 5, 8 and 9 of this Module do not apply;
- (iii) the warranties or guarantees that are provided under this Module are limited to any warranties and guarantees that cannot be excluded by law and any warranties that are provided by the original Intellectual Property Rights owner or its authorised distributor permits the Contractor to assign to the Contractor's customers; and
- (iv) the Contractor must use best efforts to ensure that:
 - (A) all benefits of the warranty to the Customer for that Licensed Software are utilised to the benefit of the Customer; and
 - (B) all benefits of any original Intellectual Property Rights owner or its authorised distributor warranty services for that Licensed Software are utilised to the benefit of the Customer.

7.2 The Customer warrants to the Contractor that the Customer and all of the Customer's Permitted Users will comply with the terms of any contract between the Customer and the original Intellectual Property Rights owner or its authorised distributor (as applicable).

7.3 The Contractor must provide any value added services that are set out in the Order Documents.

8. Specific Warranties

SCOPE

8.1 The Contractor warrants that the Licensed Software will meet the requirements of the Contract Specifications in all material respects when operating on the Designated Equipment during the Warranty Period, subject to the Exceptions.

8.2 Owing to the nature of the subject matter, the Contractor expressly excludes any warranty that:

- (a) the Licensed Software will be error free;
- (b) the Licensed Software will operate without interruption;
- (c) it will correct all program errors;
- (d) the Licensed Software will be compatible with any hardware, software or data not supplied by the Contractor (except for the Designated System); and
- (e) any Licensed Software or User Documentation will meet the Customer's requirements.

- 8.3** If an unmodified version of the Licensed Software fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor must, at its option, promptly remedy those Defects, implement a Workaround or replace the Licensed Software, at its own expense, or provide a refund of the Price paid for the Licence. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.
- 8.4** The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect, including installing patches and Workarounds.

9. Exceptions

- 9.1** The Contractor is not liable for any breach of the Customer Contract which arises as a result of:
- (a) modifications to the Licensed Software that were effected or attempted by a person other than the Contractor or its authorised representative;
 - (b) any act, error, fault, neglect, misuse or omission of the Customer;
 - (c) damage caused by the operation of the Licensed Software other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the original Intellectual Property Rights owner, authorised distributor or the Contractor;
 - (d) any Virus, denial of service attack or other malicious act that adversely affects the Licensed Software, except to the extent that;
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specification;
 - (e) improper use or mismanagement by the Customer; or
 - (f) a Force Majeure Event.
- 9.2** Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

10. Audit

RECORDS

- 10.1** The Customer must:
- (a) if and to the extent stated on the Module Order Form maintain records of:
 - (i) the location of all copies of the Licensed Software; and

- (ii) the usage of the Licensed Software as measured against the Class of Licence;
- (b) provide copies of the records kept under this clause to the Contractor every six months, or such other frequency stated on the Module Order Form; and
- (c) ensure that, prior to the disposal of any media or other storage device, any Licensed Software contained on it has been erased or destroyed.

AUDIT AND VERIFICATION

10.2 The Customer must, upon reasonable written notice from the Contractor, allow the Contractor to make investigations in any reasonable manner to verify the Customer's compliance with the Licence.

10.3 The costs of the review in clause 10.2 must be borne by the Contractor unless the review shows that the Customer has not used the Licensed Software in accordance with the Customer Contract and as a result has underpaid the Contractor. If this occurs then the costs of the review must be paid in accordance with the sliding scale below:

Proportion of reviewer's fees to be borne	Difference between Licence fee paid and payable
\$0	95% of payable Licence fee was paid
50% of audit and other costs	75-95% of payable Licence fee paid
75% of audit and other costs	50-75% of payable Licence fee paid
100% of audit and other costs	less than 50% of payable Licence fee paid

10.4 If the review shows that the Customer has not used the Licensed Software in accordance with the Customer Contract and as a result has underpaid the Contractor then, in addition to any costs that payable under clause 10.3, the Customer must pay to the Contractor the unpaid licence fees and fees for in respect of Software Support Services that would have been payable had the correct licence been acquired at the time that it was acquired.

PROCURE IT VERSION 3.2

MODULE ORDER FORM

MODULE 4 – DEVELOPMENT SERVICES

1

MODULE ORDER FORM
MODULE 4 – DEVELOPMENT SERVICES

Box 1 Designated Operating Environment

Details to be included from Module 4	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.2) Specify the Hardware platform/operating system combination upon which the Software Solution is installed. [Note: Specify the type and version number of the operating system and capacity/model of the Hardware.]	Refer to the PIPP.

Box 2 Software Solution

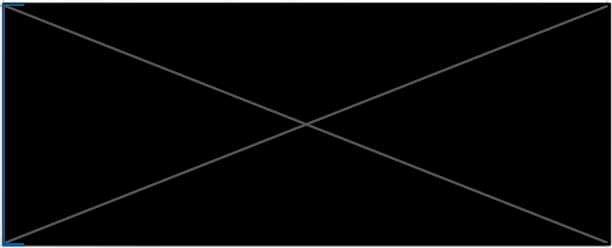
Details to be included from Module 4	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.8) Specify the software to be implemented. Select one or more of the following: (a) configuration of Licensed Software which does not involve making changes to the source code of the Licensed Software; (b) adaptations, translations or derivatives of the Licensed Software which are created by making changes to the source code of Licensed Software; (c) configuration of Third Party Software which does not involve making changes to the source code of the Third Party Software; (d) adaptations, translations or derivatives of the Third Party Software which are created by making changes to the source code of Third Party Software; (e) creation of new software, including software applications and APIs; and	X

(f) other. [Note: The term Software Solution expressly excludes the Licensed Software.]	
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Box 3 Details of the Third Party Software

Details to be included from Module 4	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.10)	
Specify if the details of any software components, plug-ins and other programs are owned by third parties. This should include name and version number of each Third Party Software.	Not applicable.

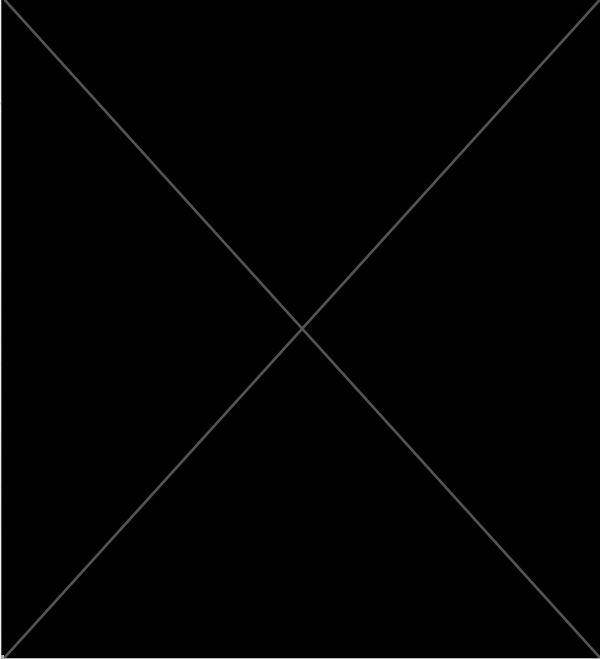
Box 4 New Materials in Escrow

Details to be included from Module 4	Order Details agreed by the Contractor and the Customer
Source Code (clause 4.2)	
If ownership in New Materials is to be retained by the Contractor, specify if the source code for the New Material is not to be placed in escrow. If this Box is not completed, the source code for the New Material is to be placed in escrow.	

Box 5 Ancillary Services

Details to be included from Module 4	Order Details agreed by the Contractor and the Customer
Installation (clause 6.2)	
Specify the details of any installation services, the date, Price and when payment is due.	Not applicable.
Training (clause 6.3)	
Specify the details of any training services, the date, the Price and when payment is due.	Not applicable.
Other Services (clause 6.4)	
Specify the details, times, Prices for other services, and when payment is due.	Not applicable.

Box 6 Quality Assurance Arrangements

Details to be included from Module 4	Order Details agreed by the Contractor and the Customer
Scope (clause 7.4(b))	
Specify if the Contractor has established quality assurance arrangements for the provision of the Development Services.	
Specify the details of the established quality assurance arrangements for the provision of the Development Services.	

3

MODULE ORDER FORM
MODULE 4 - DEVELOPMENT SERVICES

Module 4 – Development Services

Version 3.2

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[Use Guidelines]

This Module should be used for software development (also known as application development, software design, enterprise application development or platform development) where a software product is created using computer programming for the specific requirements of the Customer. It involves the conception of the required software and may include research, new development, prototyping, modification, reuse, re-engineering, maintenance or any other activities that result in the creation of a software product.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.]

Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 4** form part of the Customer Contract when the Parties state that the Development Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 Data Dictionary** means a reference tool that describes each data item that may include field names, number of characters, data type, number of decimal places, or a description of the purpose of each field of data.
- 1.2 Designated Operating Environment** means the Hardware platform/operating system combination stated in the Module Order Form upon which the Software Solution is to be installed.
- 1.3 Design Specification** means the specification to be provided in accordance with clauses 3.5 to 3.6.
- 1.4 Development Services** means the Services provided under this Module 4.
- 1.5 Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Licensed Software and Services provided under this Module, as stated in clause 8.
- 1.6 New Release** means software which has been produced primarily to extend, alter or improve the relevant part of Software Solution by providing additional functionality or performance enhancement (whether or not Defects in that Software Solution are also corrected) while still retaining the original designated purpose of that part of the Software Solution.
- 1.7 Quality Assurance** means a set of processes and procedures used to ensure that the Software Solution meets specified criteria with respect to quality.
- 1.8 Software Solution** means the software to be implemented, developed or created by the Contractor for the Customer and may include:
 - (a) configuration of Licensed Software which does not involve making changes to the source code of the Licensed Software;
 - (b) adaptations, translations or derivatives of the Licensed Software which are created by making changes to the source code of Licensed Software;
 - (c) configuration of Third Party Software which does not involve making changes to the source code of the Third Party Software;
 - (d) adaptations, translations or derivatives of the Third Party Software which are created by making changes to the source code of Third Party Software; and
 - (e) creation of new software, including software applications and APIs,as specified in the Module Order Form. The term Software Solution expressly excludes the Licensed Software.
- 1.9 Software Support Services** means the Services the Contractor agrees to provide for the Software Solution under Module 5 of the Customer Contract.

1.10 Third Party Software means software components, plug-ins and other programs that are owned by third parties and are stated on the Module Order Form as being Third Party Software.

1.11 User means a person who is authorised to use the Supported Software.

INTERPRETATION

1.12 Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

2. Relationship with Other Modules

2.1 Where the Software Solution includes the configuration or adaptation, translation or creation of derivatives of Licensed Software, the Licensed Software will be provided under Module 3.

2.2 Where the Software Solution includes the configuration or adaptation, translation or creation of derivatives of Third Party Software the Customer may supply the Third Party Software as a Customer Supplied Item. In this case, the Customer must ensure that the Third Party Software:

- (a) is subject to a support and maintenance agreement that entitles the Contractor direct access to the provider of the support and maintenance service; and
- (b) does not have any New Release implemented prior to the end of the Warranty Period of the Software Solution, without the Contractor's prior written consent.

2.3 Where the Software Solution is to be the subject of Software Support Services, the Software Support Services will be provided under Module 5.

3. Design

SCOPING

3.1 The Development Services must be provided during the Contract Period. If no Contract Period is stated in the General Order Form, then the Development Services will be provided from the Commencement Date until either Party cancels the Development Services by providing 30 days Notice in Writing.

3.2 If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the implementation, development or creation of any software. Within 7 days of receipt of the draft PIPP the Customer must:

- (a) approve the PIPP; or
- (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.

Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

3.3 The PIPP for the Development Services may include:

- (a) assessment and definition of the:

- (i) Customer's existing system or the Designated Operating Environment, if necessary;
 - (ii) Customer's goals, requirements and expectations in respect of the Software Solution which shall include a statement of:
 - (A) the Contractor's understanding of the Customer's and/or User's experience and requirements in relation to the Software Solution;
 - (B) the objectives to be met by the Contractor; and
 - (C) the scope of the Software Solution;
 - (iii) required Deliverables;
 - (iv) resources required (including any resources to be made available by the Customer); and
 - (v) complexity of the project;
- (b) a feasibility study in which the Contractor makes the determination (and includes any appropriate recommendations) as to whether the Development Services proposals are capable of meeting Customer and/or User's needs and expectations taking into account budgetary, operational, technical and time considerations;
- (c) development of a strategy for the creation of the Software Solution that is appropriate for the Customer's needs and its User population covering all appropriate planning and timetabling issues associated with the Development Services including:
- (i) identification of the Services to be performed;
 - (ii) identification and procurement of necessary Products;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) Staging of the project;
 - (v) development of a Milestones and payment schedule; and
 - (vi) implementation of the Services;
- (d) the provision of Licensed Software and/or Third Party Software;
- (e) development of a Design Specification for the Software Solution which shall be subject to Acceptance Testing in accordance with clause 10 of the Customer Contract;
- (f) development of the Software Solution (including prototyping if applicable) in accordance with the methodology in clause 4.1;
- (g) development of any Bespoke User Documentation;
- (h) identification of the Deliverables that are to be subject to Acceptance Testing in accordance with clause 10 of the Customer Contract;
- (i) provision of training and/or training Materials;
- (j) provision of warranty services during the Warranty Period; and
- (k) provision of Software Support Services.

DESIGN PROCESS

- 3.4** The Contractor must prepare a Design Specification for the Software Solution by the date specified in the PIPP.
- 3.5** Unless otherwise agreed, the Contractor must create a Design Specification for the Software Solution that:
- (a) is based on, and is consistent with, the Contract Specifications; and
 - (b) will enable the Software Solution to be installed in the Designated Operating Environment.
- 3.6** The Design Specification must provide a detailed technical explanation of how the Software Solution will provide the functions specified in the Contract Specifications, including, as applicable, details of processes, visual displays, screen layouts, system flowcharts, user interfaces, data flow diagrams, estimates of transaction and data volumes, prototypes and any associated Data Dictionary.
- 3.7** Where the Software Solution includes Licensed Software or is based on Third Party Software, nothing in this Module requires the Contractor to provide any explanation or documentation relating to:
- (a) the Licensed Software that the Contractor does not make generally available to its customers; and
 - (b) any Third Party Software.
- 3.8** The Contractor must keep the Customer informed at all stages while the Design Specification is being prepared so that the Customer will have a reasonable knowledge of the content of the Design Specification by the time the Design Specification is delivered by the Contractor for Acceptance Testing.
- 3.9** If the Customer has any objection to the Design Specification provided by the Contractor it must notify the Contractor within the Acceptance Testing Period of any alterations it reasonably requires. The Contractor must not unreasonably refuse to amend the Design Specification to take account of the Customer's reasonable requirements.
- 3.10** The Design Specification will, when accepted by the Customer become part of the Contract Specifications.
- 3.11** The Contractor acknowledges that the Customer is relying on the Contractor's expertise in preparing the Design Specification.

4. Development**DEVELOPMENT PROCESS**

- 4.1** The Contractor's methodology for the development of the Software Solution must as a minimum:
- (a) identify and control software components of, and changes to, the New Materials in the Software Solution to maintain the integrity and traceability of the New Materials in the Software Solution at all stages of the development;
 - (b) ensure concurrent control, development and supply of documentation relating to the New Materials in the Software Solution;

- (c) control the issue of development revisions of the New Materials in the Software Solution and associated documentation;
- (d) identify the extent of the performance of the Contractor in accordance with the Contract Specifications;
- (e) ensure that the New Materials in the Software Solution are developed and documented in a way which would enable future modification without further reference to the Contractor;
- (f) reference and document procedures for corrective action in respect of the Software Solution and associated documentation prior to Acceptance Testing, including:
 - (i) adoption of a system to report problems and deficiencies;
 - (ii) examination of problem and deficiency reports to determine their causes, and to prepare corrective measures;
 - (iii) analysis of deficiency trends, to ensure the Software Solution conforms to the Contract Specifications;
 - (iv) review of corrective measures, to determine their effectiveness; and
 - (v) provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance;
- (g) include a Quality Assurance and reporting program that is carried out through each stage of the design and development of the New Materials in the Software Solution and involves continually monitoring and assessing the quality of the New Materials in the Software Solution against criteria set out in the Contract Specifications; and
- (h) adhere to any other requirements specified in the Customer Contract.

SOURCE CODE

- 4.2 Where ownership of any New Materials is to be retained by the Contractor, the Contractor agrees to enter into an Escrow Agreement for the New Material, at the request and expense of the Customer, unless it is stated in the Module Order Form that the source code for the New Material is not to be placed in escrow.
- 4.3 Where the Contractor is required to enter into an Escrow Agreement for New Materials, the Contractor must deliver the Escrow Materials for the New Materials to the Escrow Agent:
 - (a) within 7 days of the date when the Software Solution passes its final Acceptance Test; and/or
 - (b) at such other times as are stated in the PIPP.
- 4.4 The Contractor agrees to inform the Customer as to the purpose and use of the software tools, object libraries or similar routines owned by the Contractor or any other party, in the production of the Software Solution.
- 4.5 If the tools, object libraries or similar routines are required to maintain or enhance the Software Solution, the Contractor must grant a licence for those tools, object libraries or similar routines in accordance with clause 13 of the Customer Contract.

5. Acceptance Tests and Use

- 5.1 It is acknowledged and agreed by the Customer that the Contractor is relying on the Customer undertaking Acceptance Tests in accordance with clause 10 of the Customer Contract before using any part of the Software Solution for its business purposes and/or in a production environment.
- 5.2 It is acknowledged and agreed by the Customer that if the Customer uses the Software Solution for its business purposes and/or in a production environment before the Software Solution has passed its Acceptance Tests in accordance with clause 10.9 of the Customer Contract (as opposed to where the Software Solution is merely deemed to have passed its Acceptance Tests under clause 10.13) the Customer is taking a significant risk in using untested software, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Software Solution.

6. Ancillary Services

DATA MIGRATION

- 6.1 The Contractor must provide data migration services, if specified in the Order Documents.

INSTALLATION

- 6.2 The Contractor must provide Installation services, if specified in the Module Order Form.

TRAINING

- 6.3 The Contractor must provide training to enable the Customer including its Personnel, to operate the Software Solution on the Designated Operating Environment, if specified in the Module Order Form.

OTHER SERVICES

- 6.4 The Parties may agree that other Services may be provided by the Contractor during the Contract Period. The details of those Services, including the scope of the Services and the Prices that are payable for them, must be set out in the Order Documents or if the Services are requested after the Commencement Date, on a Change Request and the Variation Procedures in Schedule 4 – Variation Procedures will apply.

7. Specific Warranties

SCOPE

- 7.1 Where the Development Services are provided on a fixed price basis:
- (a) the Contractor warrants that the Software Solution (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects for the Warranty Period, subject to the Exceptions; and
 - (b) if an unmodified version of the Software Solution (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor must, at its option, promptly remedy those Defects, implement a Workaround or replace the relevant part of the Software Solution, at its own expense. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.

- 7.2** Owing to the nature of the subject matter, but subject to clauses 7.1, 7.3, 7.4 and 8, the Contractor expressly excludes any warranty that:
- (a) the Software Solution will be error free;
 - (b) the Software Solution will operate without interruption;
 - (c) the Software Solution will correct all program errors;
 - (d) the Software Solution will be compatible with any Hardware, software or data not supplied by the Contractor (except for the Designated Operating Environment or as specified in the Contract Specification); and
 - (e) the Software Solution will meet the Customer's requirements.
- 7.3** The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect, including installing patches and Workarounds.
- 7.4** The Contractor warrants from the Commencement Date until the end of the Warranty Period in relation to the Development Services that:
- (a) the Contractor will provide the Development Services in accordance with the requirements of the Contract Specifications and with due care and skill;
 - (b) where specified in the Module Order Form, the Contractor has established Quality Assurance arrangements for the provision of the Development Services and will comply with and maintain those quality assurance arrangements during the Contract Period; and
 - (c) it will comply with all licensing terms and conditions regulating the use of any Third Party Components that are provided to it by the Customer when using the Third Party Components in the Development Services.

8. Exceptions

- 8.1** The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
 - (b) modifications to the Software Solution that were effected or attempted by a person other than the Contractor or its authorised representative;
 - (c) any act, error, fault, neglect, misuse or omission of the Customer;
 - (d) damage caused by the operation of the Software Solution other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the original IP owner, authorised distributor or the Contractor;
 - (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages

are caused solely by a failure to meet that obligation in the Contract Specification;

- (f) improper use or mismanagement by the Customer; or
- (g) a Force Majeure Event.

8.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

PROCURE IT VERSION 3.2

MODULE ORDER FORM

MODULE 5 – SOFTWARE SUPPORT SERVICES

1

MODULE ORDER FORM
MODULE 5 – SOFTWARE SUPPORT SERVICES

Box 1 Designated Equipment

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.1) Specify the Hardware platform/operating system combination upon which the Supported Software is installed. [Note: Specify the type and version number of the operating system and capacity/model of the Hardware.]	Refer to the PIPP.

Box 2 Developed Software

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.2) Specify which of the following categories of software to which each of the items of Developed Software applies: (a) an adaptation, translation or derivative of the Licensed Software; or (b) software that has been newly created by the Contractor under Module 4, or any other Module; or [Note: For example "Payroll application developed under Module 4".] (c) other software, including software that is already owned by or licensed to the Customer or Open Source Software. [Note: The definition of Developed Software does not include Licensed Software.]	

Box 3 Installed on Contractor Equipment

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.6)	
Specify if the Supported Software is to be installed on equipment which is owned or controlled by the Contractor.	

Box 4 Prices of Software Support Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Agreed Terms (clause 1.13)	
Specify the fees payable for supplying the Software Support Services, and when they are due. [E.g. This may be on a monthly, quarterly or yearly basis or any other term that is agreed by parties.]	Fees are payable as set out in the PIPP.

Box 5 Period of Software Support Services

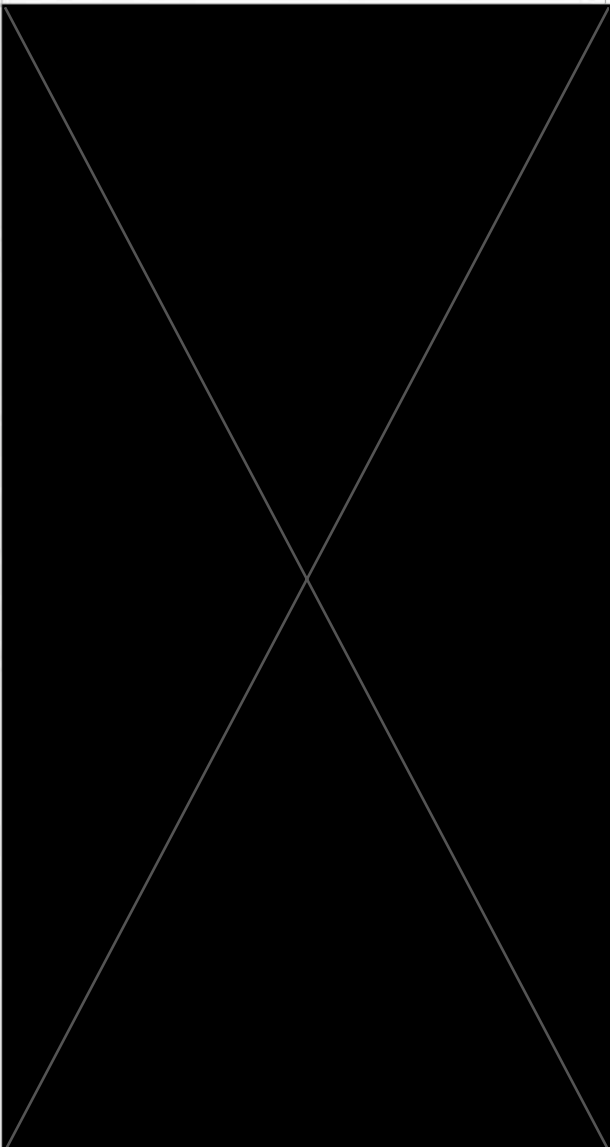
Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Support Period (clause 2.2)	
Specify the Contract Period during which the Software Support Services will be provided.	In accordance with the Contract Period and any options to extend exercised under the provisions of the General Order Form.
If this Box is not completed and the Contract Period is not specified on the General Order Form, the Software Support Services will be deemed to start on the AAD of the relevant Supported Software, and continue until terminated by either Party giving the other 30 days Notice in Writing.	

Box 6 Extension of Contract Notification

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Support Period (clause 2.3)	
Specify (a) the number of days written notice prior to the end of each current Contract Period that the Contractor must give of the Price;	a) In accordance with the Contract Period and any options to extend exercised under the provisions of the General Order Form. b) Refer to the PIPP. c) In accordance with the Contract Period

(b) payment arrangements; and (c) whether the Contract Period will be extended under this Customer Contract, or whether a new Customer Contract will be entered into, after the end of the current Contract Period. If no period is specified in this Box, the period is 30 days.	and any options to extend exercised under the provisions of the General Order Form.
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Box 7 Details of Software Support Services

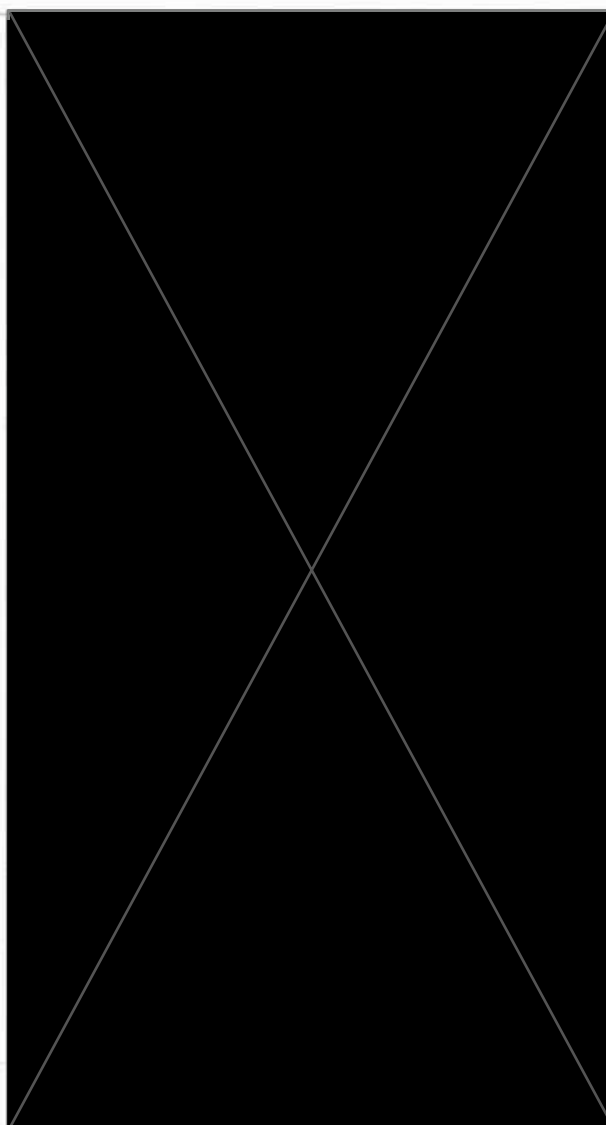
Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Scope (clause 3.1) Specify the details of Software Support Services, including: (a) the Contract Period [Note: the default period is 12 months from AAD]; (b) the Supported Software that is to be the subject of the Software Support Services, being: (i) Licensed Software; and (ii) details of any Developed Software; (c) whether the Licensed Software is a First Release, or whether the First Release of New Release of any Licensed Software will be provided as part of the Software Support Services; (d) the details relating to any of the following Services that the Contractor is to provide: (i) Help Desk Services, including the hours of operation; and (ii) whether the Customer is entitled to receive Updates and/or New Releases if and when they become available from the Contractor during the Contract Period, for:	

- (A) the Licensed Software; and
- (B) any Developed Software; and
- (iii) any ancillary services;
- (e) any applicable Service Levels;
- (f) the particulars of any access to the Site and the Supported Software, including VPN access to the Supported Software required by the Contractor to effectively perform the Software Support Services; and
- (g) the Price and any expenses or other charges that apply for each Service.

[Note: Each of the items above should be fully detailed in this Box.

The version numbers of each item of Support Software should be included.

If the Software Support Services are described in another document, such as the Contractor's Software Support policies, this document should be cross-referenced in this Box.]



Box 8 Period of Support for each Release

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Updates and New Releases (clause 3.20(b))	
Specify the period for which the Contractor will continue to offer standard support for each release.	The Contractor must provide Software Support Services for each installed release of the Supported Software, for the Contract Period (which for the avoidance of doubt includes any extension period). The Contractor acknowledges that the Customer is not required to accept any Update or New Release in order to receive Software Support

	Services for the installed release of the Supported Software. Where the Contractor has made available an Update or New Release of the Supported Software and the Customer will not use the Update or New Release and instead will continue using the currently installed version of the Supported Software, the Contractor must ensure that the Customer is able to install a later Update and/or New Release without having to install any preceding Updates or New Releases.
If this Box is not completed the period is 18 months from the date of general release of the New Release.	

Box 9 Transition out Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Scope (clause 3.14)	
Specify if transition out services are to be provided.	Not applicable.
Specify the details of the transition out services, dates, Price for such transition out services, and when payment is due.	Not applicable.

Box 10 Business Models of the Reseller

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Reseller Provision of Software Support Services (clause 4.1)	
Are any of the Deliverables being provided by the Contractor in the capacity as a Reseller? If yes: (a) specify if the Software Support Services are supplied by the Contractor who is acting as Reseller as Facilitator. [Note: Reseller as Facilitator means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 4.1(a).] OR	No. The Contractor is not a Reseller for the purposes of this Customer Contract.

(b) specify if the Software Support Services are supplied by the Contractor who is acting as Reseller with Pass Through Warranties. [Note: Reseller with Pass Through Warranties means the Contractor is acting in a particular role and has a particular set of responsibilities described in clause 4.1(b).]	
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Box 11 Value Added Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Acquisition through a Reseller (clause 4.3)	
Specify if the details of any value added services the Contractor is to provide, the Prices and when payment is due.	Not applicable.

Box 12 Ancillary Services

Details to be included from Module 5	Order Details agreed by the Contractor and the Customer
Ancillary Services (clause 5.1)	
Specify if other services are to be provided during the Contract Period.	Not applicable.
Specify the details of these other services, the Prices and when payment is due. [E.g. Ancillary services may include the consulting services needed to implement Updates or New Releases or training services.]	Not applicable.

Module 5 – Software Support Services

Version 3.2

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[Use Guidelines

This Module should be used for software maintenance and support services which involve long term (as opposed to incident based) support contracts. It includes remote troubleshooting and support provided via the telephone and online channels, as well as installation assistance and basic usability assistance. In some cases, software support services may include new product installation services, installation of product updates, migrations for major releases of software and other types of on site services.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.]

1. Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 5** form part of the Customer Contract when the Parties state that the Software Support Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 Designated Equipment** means the Hardware platform/operating system combination stated in the Module Order Form upon which the Supported Software is installed.
- 1.2 Developed Software** means software other than Licensed Software that is:
- (a) an adaptation, translation or derivative of the Licensed Software;
 - (b) software that has been newly created by the Contractor under Module 4, or any other Module; or
 - (c) other software, including software that is already owned by or licensed to the Customer or Open Source Software,
- that is stated in the Module Order Form.
- 1.3 Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 7.
- 1.4 First Release** means a licence that is for a release (as denoted by the integer to the left of the decimal point in the release number e.g. release version 3.0) of the Licensed Software which is not generally available for supply to all of the Contractor's customers, but is to be licensed (or the New Release is to be made available) to the Customer in advance of general release to the market.
- 1.5 Help Desk Services** means any Services stated in clause 3.15.
- 1.6 Installed on Contractor Equipment** means where the Supported Software is to be installed on equipment (including in a virtual environment) and that equipment is owned or controlled by the Contractor, and is stated as being Installed on Contractor Equipment on the Module Order Form.
- 1.7 New Release** means software which has been produced primarily to extend, alter or improve the relevant part of Supported Software by providing additional functionality or performance enhancement (whether or not Defects in that Supported Software are also corrected) while still retaining the original designated purpose of that part of the Supported Software. New Release does not include any software that is generally licensed by the Contractor to its customers as a different product.
- 1.8 Problem Log** means a brief description of a Defect in a chronological record.
- 1.9 Reseller as Facilitator** means a Reseller who uses the business model described in clause 4.1(a) to facilitate the supply of the Software Support Services to the Customer.
- 1.10 Reseller with Pass Through Warranties** means a Reseller who uses the business model described in clause 4.1(b) to supply Software Support Services to the Customer.

- 1.11 Software Support Services** means the Services stated in the Module Order Form in respect of the Licensed Software and/or Developed Software and may consist of Help Desk Services, Updates, New Releases and/or ancillary services, all as set out on the Module Order Form.
- 1.12 Supported Software** means the software stated in the Module Order Form that is the subject of the Software Support Services and may include:
- (a) Licensed Software; and/or
 - (b) Developed Software.
- 1.13 Support Service Price** means the fees payable to the Contractor for supplying the Software Support Services stated in the Module Order Form, which may be on a monthly, quarterly or yearly basis or any other term that is stated in the Order Documents.
- 1.14 Technical Specifications** means the specifications relating to the performance and availability of the Supported Software, the technical requirements of any device that accesses the Supported Software and any other technical issues that relate to the Supported Software or the Customer Contract.
- 1.15 Update** means software which has been produced primarily to overcome Defects in, or to improve the operation of, the relevant part of the Supported Software without significantly altering the Contract Specifications whether or not that Supported Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

INTERPRETATION

- 1.16** Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

2. Support Period

- 2.1** Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Software Support Services must be provided for a Contract Period of 12 months commencing upon the AAD of the relevant Supported Software, unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2** If no Contract Period is stated in the General Order Form or the Module Order Form, then the Software Support Services will be provided from the AAD of the relevant part of the Supported Software until either party cancels the Software Support Services by providing 30 days prior Notice in Writing to the other.
- 2.3** At least 30 days, or as otherwise agreed in the Module Order Form, prior to the end of each Contract Period, the Contractor may at the Contractor's sole discretion either provide the Customer with written notice of the Price and the payment arrangements that will apply for the Software Support Services for the Supported Software for an extended period of the Contract Period or provide a new Customer Contract, including a new General Order Form and Module Order Form with the Price and payment arrangements that will apply for a new agreement for Software Support Services.
- 2.4** Where the Customer has been given an option to extend the Contract Period in accordance with clause 2.3, the Customer may elect not to extend the Contract Period or elect not to enter into a new agreement, by providing the Contractor with written notice, such notice to be received at least 15 days prior to the date when the current Contract Period expires.
- 2.5** If the Contractor does not receive written notice under clause 2.4, then the Contract Period must be extended for the extended Contract Period and the Customer must pay the Price using terms and conditions and the payment arrangements, all as stated in the notice given under clause 2.3.

- 2.6** The Price for the Software Support Services for which the Contract Period exceeds 1 year may be varied annually upon 30 days written notice by the Contractor. If the Customer does not accept the proposed variation the Customer may terminate the Software Support Services by giving the Contractor 14 days Notice in Writing.
- 2.7** The procedures in clauses 2.3 to 2.6 will apply at the end of each Contract Period.

3. Scope of Support Services

SCOPE

- 3.1** The Parties will set out on the Module Order Form the details of the Software Support Services, including:
- (a) the Contract Period;
 - (b) the Supported Software that is to be the subject of the Software Support Services, being:
 - (i) Licensed Software; and
 - (ii) details of any Developed Software;
 - (c) whether the Licensed Software is a First Release, or whether the First Release of New Release of any Licensed Software will be provided as part of the Software Support Services;
 - (d) the details relating to any of the following Services that the Contractor is to provide:
 - (i) Help Desk Services, including the hours of operation;
 - (ii) whether the Customer is entitled to receive Updates and/or New Releases if and when they become available from the Contractor during the Contract Period, for:
 - (A) the Licensed Software; and
 - (B) any Developed Software; and
 - (iii) any ancillary services;
 - (e) any applicable Service Levels;
 - (f) the particulars of any access to the Site and the Supported Software, including VPN access to the Supported Software required by the Contractor to effectively perform the Software Support Services; and
 - (g) the Price and any expenses or other charges that apply for each Service.
- 3.2** If no Service Level Agreement is set out or referred to in the Order Documents, then if requested by the Customer, the Parties will use reasonable efforts to promptly negotiate Service Levels applicable to the Software Support Services, which may include committed response and resolution times and availability measures, and service credits that may be imposed where the Contractor fails to meet the Service Levels.
- 3.3** The Customer must provide access to the Site and the Supported Software, on-site storage of parts and equipment or other resources that may be needed in connection with the Services.

- 3.4** Nothing in this Module reduces the Contractor's obligation to correct Defects during a Warranty Period as specified in another Module, including Modules 3 and 4.
- 3.5** The Contractor agrees that the Software Support Services must as a minimum ensure that:
- (a) the relevant Supported Software conform to and perform in accordance with the Contract Specifications;
 - (b) the relevant Supported Software performs in accordance with any Service Levels; and
 - (c) the User Documentation for the Supported Software is provided and maintained in accordance with the Customer Contract.
- 3.6** If the Customer identifies and notifies the Contractor of a Defect in the Supported Software during the Contract Period, the Contractor will as soon as possible and, where relevant, within the Service Levels, remedy the Defect.
- 3.7** To remedy the Defect, the Contractor shall, before the response times and/or resolution times referred to in the Service Levels have expired, take such measures as are appropriate in all the circumstances (including providing a Workaround) to enable the Customer to continue to productively use the Supported Software.
- 3.8** On receipt of notice of a Defect by the Customer under clause 3.6, the Contractor must assign an identification number to the Defect, which will be used by the Parties to identify the Defect.
- 3.9** The Contractor must maintain an accurate Problem Log for the period of the Software Support Services of all reported Defects and provide the Customer with a call tracking number for problem identification and follow-up.
- 3.10** If the Contractor does not achieve the required minimum Service Levels, then the Customer shall be entitled to any performance rebates stated in the Service Level Agreement.
- 3.11** The Customer may conduct a review of the Service Levels on an annual basis or as otherwise agreed by the Parties in writing during the Customer Contract. The Contractor must not unreasonably refuse to agree to a Change Request to the Service Levels.
- 3.12** The Customer acknowledges that the inclusion of any Service Levels after the Customer Contract has been signed, or a variation to the Service Levels during the Contract Period, may result in an increase to the Price.
- 3.13** The Customer must if practicable during the Contract Period for the Support Services provide the Contractor with:
- (a) access to the Customer's premises during normal working hours or as otherwise agreed as is necessary for the Contractor to supply the Software Support Services; and
 - (b) information, in the Customer's possession or control that the Contractor reasonably requires to supply Software Support Services.
- 3.14** Where it is stated on a Module Order Form that transition out services are to be provided, on termination and/or expiry of the Support Services, the Contractor must render any reasonable assistance to the Customer to the extent necessary to effect an orderly assumption by a replacement contractor of the performance of the Contractor's obligations under the Customer Contract. The Customer must pay any Price stated on the Module Order Form for such transition out services.

HELP DESK

- 3.15** If Help Desk Services are stated in the Order Documents, the Contractor must, during the Contract Period, provide Help Desk Services during the times of operation and in accordance

with the Contract Specifications and any other requirements of the Customer Contract, including any Service Level, all as set out in the Order Documents.

UPDATES AND NEW RELEASES

- 3.16** The provisions of clauses 3.17 to 3.23 apply where it is stated that the Customer has the right to receive Updates and/or New Releases for:
- (a) the Licensed Software; and/or
 - (b) the Developed Software.
- 3.17** The Contractor must, at no additional charge to the Customer, make available to the Customer any Updates and New Releases for the relevant part of the Supported Software that the Contractor generally makes available to other of its customers during the Contract Period at no additional charge. These Updates and/or New Releases must be made available to the Customer if and when the Update or New Release becomes generally available to those other customers.
- 3.18** The Customer must provide written notice to the Contractor within 30 days from the date the Update or New Release is made available to the Customer if the Customer will not use the Update or New Release. The Customer must accept and use any Update that the Contractor advises addresses a security issue.
- 3.19** If the Customer accepts the Update or New Release:
- (a) the Contractor, if requested by the Customer, must install the Update or New Release, coordinating and scheduling such installation with the Customer. The Customer must pay the Contractor the costs for such installation at the Contractor's then current time and materials rates, unless agreed otherwise. This arrangement may be documented by way of a Change Request;
 - (b) if the Customer installs the Update or New Release, the Customer must do so in accordance with any instructions provided by the Contractor, and the Customer is responsible for all testing, including testing for interoperability with other software programs;
 - (c) the Contract Specifications of the Supported Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Contract Specifications;
 - (d) the Customer must upon request return to the Contractor all copies of the original Supported Software or the part that has been superseded by the Update or New Release or otherwise deal with all such copies in accordance with the Contractor's directions.
- 3.20** Subject to clause 3.18, if the Customer decides not to use the Update or New Release then the Customer acknowledges and agrees that:
- (a) subsequent Updates or New Releases may not operate with the Supported Software; and
 - (b) the Contractor may cease to provide Software Support Services for that release of the Supported Software from the date that is 18 months (or such other period stated in the Order Documents) from the date of general release of a New Release, and thereafter:
 - (i) the Supported Software may have its usefulness reduced over time;
 - (ii) the Contractor may not be able to remedy any Defects in the Supported Software; and

- (iii) the Contractor is not responsible for any Defect in the Supported Software, nor any incident, outage or breach of any Service Level, which would not have occurred had the latest version of the Supported Software been used.

3.21 Where the Supported Software is Installed on Contractor Equipment and is provided from a common code base then the Customer acknowledges and agrees that:

- (a) the Supported Software is provided on a shared service basis to the Customer and other customers and the Contractor may from time to time, without the prior consent of Customer:
 - (i) at the Contractor's own cost, implement any change, addition, deletion, error correction, patch, Updates and/or New Releases and those changes, additions, deletions, error corrections, patches, Updates or New Releases may add or delete the functions, features, performance or other characteristics of the Supported Software, and when such changes, additions, deletions, error corrections, patches, Updates or New Releases are implemented the Contract Specifications of the Supported Software shall be amended accordingly; and
 - (ii) amend the Technical Specifications;
- (b) the Contractor must provide prior notice (including via email) of major changes or New Releases to the relevant part of the Supported Software, and such notice may be given by posting the information on the Contractor's website; and
- (c) the Contractor does not warrant or guarantee that any change, addition, deletion, error correction, patch, Update or New Release will be compatible with any data entered by the Customer or any person permitted to enter data by the Customer, third party application, other software or interface that connects to or interfaces with the Supported Software that has been made by or on behalf of Customer. The Contractor will not be liable for any loss, damage or expense which Customer may incur as the result of any change, addition, deletion, error correction, patch, Update or New Release in any circumstances.

ASSISTANCE

3.22 The Customer must provide reasonable assistance in remedying any Defect, including installing any Workarounds supplied by the Contractor and running any diagnostic tests. Where the Contractor requires remote access to the Supported Software to provide Software Support Services the Customer must provide that access, subject to the Contractor complying with the Customer security and privacy policies set out in Item 8 of the Head Agreement Details and Item 30 of the General Order Form. If the Customer does not permit such access then Customer must pay any additional costs incurred by the Contractor in attending the Customer's Site to provide the Software Support Services.

FIRST RELEASE

3.23 If the Licensed Software or a New Release is a First Release, the Parties may agree additional terms and conditions or services that are required for that First Release, such agreement to be documented in the Order Documents or on a Change Request, as applicable.

4. Reseller Provision of Software Support Services

4.1 Where it is specified on the Module Order Form that the Software Support Services is to be supplied via a Contractor that is a Reseller, the provisions of this clause 4 apply, and the Customer and the Contractor must agree on the Module Order Form which of the business models, Reseller as Facilitator or Reseller with Pass Through Warranties, applies to the supply of the Software Support Services:

- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Software Support Services by the original Intellectual Property Rights owner or its authorised distributor to the Customer, in which case:
 - (i) the Contractor will procure that the original Intellectual Property Rights owner or its authorised distributor enters into a contract directly with the Customer for the supply of the Software Support Services, and the provisions of the Customer Contract that relate to the supply of the Software Support Services, including provisions in this Customer Contract relating to Intellectual Property Rights and the features, capabilities, performance or other characteristics of the Software Support Services and the other provisions of this Module (other than clause 5) do not apply. The terms of the contract between the original Intellectual Property Rights owner or its authorised distributor and the Customer for the supply of the Software Support Services will be:
 - (A) attached to the Customer Contract;
 - (B) available for the Customer to accept online from a website nominated by the Contractor (including the website of the original Intellectual Property Rights owner or authorised distributor); or
 - (C) in the form of a shrinkwrap agreement that is provided with the relevant part of the Supported Software (a copy of which is available in advance of delivery, upon request from the Customer),

and such contract will be deemed to have been reviewed by the Customer and entered into by the Customer and the original Intellectual Property Rights owner or authorised distributor (as stated in the contract) on the date when the Customer enters into the Customer Contract;
 - (ii) the Contractor will co-ordinate and manage the provision of the original Intellectual Property Rights owner's or distributor's (as applicable) Software Support Service, if any, that is to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Contractor; and
 - (iii) the Customer must pay the Contract Price for the Software Support Services to the Contractor, and the Contractor must pay the amount agreed between the Contractor and the original Intellectual Property Rights owner or its authorised distributor for the relevant part of the Supported Software; or
- (b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Software Support Services to the Customer on the terms and conditions of the Customer Contract, except that:
 - (i) clause 19.1(c) of the Customer Contract does not apply;
 - (ii) clauses 3, 6 and 7 of this Module do not apply;
 - (iii) the warranties or guarantees that are provided under this Module are limited to any warranties and guarantees that cannot be excluded by law and any

warranties that the original Intellectual Property Rights owner or its authorised distributor permits the Contractor to assign to the Contractor's customers; and

- (iv) the Contractor must use best efforts to ensure that:
 - (A) all benefits of the warranty to the Customer in respect of any Licensed Software are utilised to the benefit of the Customer; and
 - (B) all benefits of any original Intellectual Property Rights owner or its authorised distributor warranty services in respect of any Licensed Software are utilised to the benefit of the Customer.

- 4.2 The Customer warrants to the Contractor that the Customer will comply with the terms of any contract between the Customer and the original Intellectual Property Rights owner or its authorised distributor (as applicable).
- 4.3 The Contractor must provide any value added services that are set out in the Order Documents.

5. Ancillary Services

- 5.1 The Parties may agree that other services, including implementation of Updates or New Releases and training are to be provided by the Contractor during the Contract Period. The details of those Services, including the scope of the Services and the Prices that are payable for them, must be set out in the Module Order Form or if the Services are requested after the Commencement Date, on a Change Request and the Variation Procedures in Schedule 4 – Variation Procedures will apply.

6. Specific Warranties

SCOPE

- 6.1 The Contractor warrants that, subject to any Exception:
 - (a) when providing the Software Support Services, it must:
 - (i) use appropriate materials of high quality;
 - (ii) employ appropriate techniques and standards; and
 - (iii) exercise due care, skill and attention;
 - (b) perform the Software Support Services in accordance with any Service Levels agreed in a Service Level Agreement, or if no Service Levels are agreed, it will perform Software Support Services in a reasonable time taking into account the impact of the Defect on the Customer's operations;
 - (c) the specific Personnel that perform the Software Support Services are appropriately qualified and experienced Personnel, and have reasonable knowledge of the Supported Software; and
 - (d) the Software Support Services shall ensure the Supported Software conforms in all material respects to the Contract Specifications and other requirements of this Customer Contract including any Service Level Agreement.

7. Exceptions

7.1 The Contractor is not liable for any breach of the Customer Contract which arises as result of:

- (a) modifications to the Supported Software that were effected or attempted by a person other than the Contractor or its authorised representative;
- (b) equipment maintenance not provided by the Contractor or its authorised representative;
- (c) software other than the Supported Software;
- (d) the act, error, fault, neglect, misuse or omission of the Customer;
- (e) the operation of the Supported Software other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the original Intellectual Property Rights owner or the Contractor;
- (f) any Virus, denial of service attack or other malicious act that adversely affects the Supported Software, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
- (g) improper use or mismanagement by the Customer; or
- (h) a Force Majeure Event.

7.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out of, or in connection with, identifying and attempting to remedy that item.

PROCURE IT VERSION 3.2
MODULE ORDER FORM
MODULE 7 – PROFESSIONAL SERVICES

Box 1 Details of Professional Services

Details to be included from Module 7	Order Details agreed by the Contractor and the Customer
Scope (clause 3.1) Specify the Professional Services (other than Training Services) which are to be provided, including: (a) the Contract Period; (b) the details of the Professional Services that the Contractor is to provide; (c) the details of any Specified Personnel; (d) the details of any Deliverables and their Contract Specifications; (e) the location of where the Professional Services are to be provided; (f) whether any Deliverable must undergo Acceptance Tests; (g) the Price, expenses and any other charges that apply in respect of the Professional Services; and (h) how the Prices, expenses and charges will be paid, including any payment Milestones and whether the Professional Services are provided on a time and materials basis or some other basis. [Note: These details can be put on a PIPP instead of being including on this Module Order Form. If the details are put on a PIPP, insert "Details of the Professional Services (other than Training Services) are set out in the PIPP".]	(a) As set out in the PIPP. (b) As set out in the PIPP. (c) As set out in the PIPP. (d) As set out in the PIPP. (e) As instructed by the Customer in writing. (f) The Professional Services (other than the Training Services) will not undergo an Acceptance Test. The acceptance criteria are as set out in the PIPP. (g) As set out in the PIPP. (h) As set out in the PIPP.

Box 2 Requirement for a PIPP

Details to be included from Module 7	Order Details agreed by the Contractor and the Customer
Project Implementation and payment Plan (PIPP) (clause 3.2)	
Specify if the Contractor is required to provide a PIPP, if no PIPP is attached to this Customer Contract at the Commencement Date. [If this Box is not completed, the Contractor is not required to provide a PIPP.]	A PIPP was attached to the Customer Contract at the Commencement Date.

Module 7 – Professional Services

Version 3.2

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[Use Guidelines]

This Module should be used when the Customer is buying the services of personnel with IT related skills where the Contractor's services are not subject to day to day supervision by the Customer.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.]

1. Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 7** form part of the Customer Contract when the Parties state that the Professional Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 7.
- 1.2 **Professional Services** means the Services that are set out on the Module Order Form that are to be supplied by the Contractor to the Customer under this Module, which may include any information, communications or technology related service, including:
 - (a) strategy advice;
 - (b) development, enhancement or support of software (not otherwise provided for under Modules 4 or 5);
 - (c) writing reports;
 - (d) reviews or quality assurance activities;
 - (e) change management services;
 - (f) project management services;
 - (g) knowledge transfer services; and
 - (h) other information, communications or technology related services agreed by the Parties which are provided under the direction and control of the Customer.

The term Professional Services does not include services provided under the direction, control and supervision of the Customer. These services are Contractor Services and are subject to Module 6 Contractor Services.

The term Professional Services does not include training services. These services are subject to Module 8 Training Services.

INTERPRETATION

- 1.3 Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

2. Professional Services Period

- 2.1 Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Professional Services must be provided for the Contract Period unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2 If no Contract Period is specified in the Order Documents and the Professional Services are provided on a time and materials basis, then the Professional Services will be provided from

the Commencement Date until either Party cancels the Professional Services by providing 30 days prior Notice in Writing to the other.

3. Scope of Professional Services

SCOPE

- 3.1 The Parties will set out in the Module Order Form or a PIPP the details of the Professional Services which may include:
- (a) the Contract Period;
 - (b) the details of the Professional Services that the Contractor is to provide;
 - (c) the details of any Specified Personnel;
 - (d) the details of any Deliverables and their Contract Specifications;
 - (e) the location of where the Professional Services are to be provided;
 - (f) whether any Deliverable must undergo Acceptance Tests;
 - (g) the Price, expenses and any other charges that apply in respect of the Professional Services; and
 - (h) how the Prices, expenses and charges will be paid, including any payment Milestones and whether the Professional Services are provided on a time and materials basis, fixed price or some other basis.

PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 3.2 If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, and it is stated on the Module Order Form that a PIPP is required, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the Professional Services. Within 5 Business Days of receipt of the draft PIPP the Customer must:
- (a) approve the PIPP; or
 - (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.
- 3.3 Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

REPORTING

- 3.4 The Contractor must monitor the progress of the Professional Services and provide the Customer with status reports at monthly intervals, or such other intervals as is agreed by the Parties which, at a minimum, include the following issues:
- (a) the issues and risks that the Contractor recommends be pro-actively addressed to avoid delays;
 - (b) any actions that the Parties need to take, or decisions that need to be made, to ensure the provision of the Professional Services in accordance with the requirements of the Customer Contract, including any PIPP;
 - (c) the progress of the work against any project plan;

- (d) the amounts charged, and amount of work in progress against the budget;
- (e) whether it is anticipated that the budget is likely to be exceeded, and if so the reasons; and
- (f) any other issues that the Parties agree should be included in the reports.

CUSTOMER DIRECTIONS

- 3.5 The Contractor must comply with all reasonable directions of the Customer as may be given to the Contractor from time to time in respect of the delivery of the Professional Services, provided that such directions are consistent with the requirements of the Customer Contract. Where such direction:
- (a) causes the Contractor's costs to increase, the Customer must pay for any increase in the Contractor's costs at the Contractor's time and materials rates (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) plus any expenses; and
 - (b) causes the Contractor not to be able to meet any timetable for delivery, then the timetable must be extended to the extent that it is reasonable given the nature of the direction and the impact on the Professional Services.
- 3.6 Nothing in clause 3.5 affects the Contractor's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the Customer's reasonable directions or otherwise to comply with the Contractor's obligations under the Customer Contract.
- 3.7 Subject to otherwise complying with its obligations under the Customer Contract, the Contractor must exercise its independent discretion as to the most appropriate and efficient manner of providing the Professional Services and satisfying the Contractor's obligations under this Customer Contract.

EMPLOYEE RELATIONSHIP

- 3.8 The Contractor undertakes to comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement.
- 3.9 The Contractor acknowledges and agrees that:
- (a) it is solely responsible for the obligations in clause 3.8; and
 - (b) neither it, nor its Personnel have, pursuant to this Customer Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

4. Acceptance Tests and Use

- 4.1 Where the Professional Services are for the creation of a specific Deliverable for which the Parties have agreed that the Deliverable is to undergo Acceptance Tests then:
- (a) the Customer must not use any part of the Deliverable for its business purposes and/or in a production environment without first undertaking Acceptance Tests in accordance with clause 10 of the Customer Contract; and
 - (b) it is acknowledged and agreed by the Customer that if the Customer uses the Deliverable for its business purposes and/or in a production environment before the Deliverable has passed its Acceptance Tests in accordance with clause 10.9 of the

Customer Contract (as opposed to where the Deliverable is merely deemed to have passed its Acceptance Tests under clause 10.13 of the Customer Contract) the Customer is taking a significant risk in using untested Deliverables, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Deliverable.

5. Restraint

- 5.1 The Customer must not, without the prior written consent of the Contractor, whether on its own behalf or on behalf of any other person and in any capacity:
- (a) encourage any of individual who has performed any Professional Services to:
 - (i) stop working for or providing services to the Contractor; or
 - (ii) work for or provide services to the Customer, any Agency or Department or any other person; or
 - (b) employ, contract, or enter into any arrangement, to receive the benefit of the services of the individual who has performed any Professional Services,
- for the following restraint periods:
- (c) during the period that the individual performed the Professional Services and a period of 12 months thereafter;
 - (d) during the period that the individual performed the Professional Services and a period of 9 months thereafter;
 - (e) during the period that the individual performed the Professional Services and a period of 6 months thereafter;
 - (f) during the period that the individual performed the Professional Services and a period of 3 months thereafter; and
 - (g) during the period that the individual performed the Professional Services.
- 5.2 Clause 5.1 is to be construed and have effect as the number of separate restraints that arise by separately combining each of the subclauses in 5.1(a) and (b) above with the restraint periods listed in each of the subclauses in (c) to (g) above. Each of the covenants that result from a combination of the restraints in subclauses 5.1(a) and (b) with the restraint periods in subclauses (c) to (g), constitute and are to be construed as having effect as separate, distinct, severable and independent provisions from the other covenants, but cumulative in overall effect. If any of the covenants or parts of the covenants resulting from the operation of this clause, are unenforceable they will be severed from the remaining enforceable covenant or part thereof.
- 5.3 The Customer agrees that the remedy of damages may be inadequate to protect the interests of the Contractor from a breach of the Customer's obligations under this clause 5 and the Contractor is entitled to seek and obtain injunctive relief, or any other remedy, in any court.
- 5.4 A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 5.1.
- 5.5 The Parties agree that the restrictions in clauses 5.1 to 5.4 are necessary to protect the legitimate interests of the Contractor.

6. Specific Warranties

SCOPE

- 6.1 Where the Professional Services are provided on a fixed price basis:
- (a) the Contractor warrants that any Deliverable (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects during the Warranty Period, subject to the Exceptions; and
 - (b) if an unmodified version of the Deliverable (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor may, at its option, promptly remedy those Defects, implement a Workaround, or replace the relevant part of the Deliverable, at its own expense, or refund the Price payable for the deficient Deliverable. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.
- 6.2 Owing to the nature of the subject matter, but subject to clauses 6.1, 6.3, 6.4 and 7, the Contractor expressly excludes any warranty that:
- (c) any Deliverable will be error free;
 - (d) any Deliverable will operate without interruption;
 - (e) it will correct all program errors;
 - (f) any Deliverable will be compatible with any Hardware, software or data not supplied by the Contractor (except as specified in the Contract Specification); and
 - (g) any Deliverable will meet the Customer's requirements.
- 6.3 The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect, including installing patches and Workarounds.
- 6.4 The Contractor warrants that, subject to the Exceptions, from the Commencement Date until the end of the Warranty Period in relation to the Professional Services that the Contractor will provide the Professional Services in accordance with the requirements of the Contract Specifications in all material respects and with due care and skill.

7. Exceptions

- 7.1 The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
 - (b) modifications to any Deliverable that were effected or attempted by a person other than the Contractor or its authorised representative, other than where such modifications were recommended by the Contractor;
 - (c) any act, error, fault, neglect, misuse or omission of the Customer;
 - (d) damage caused by the operation of the Deliverable other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the original Intellectual Property Rights owner, authorised distributor or the Contractor;

- (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
 - (f) improper use or mismanagement by the Customer; or
 - (g) a Force Majeure Event.
- 7.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

PROCURE IT VERSION 3.2

MODULE ORDER FORM

MODULE 8 – TRAINING SERVICES

Box 1 Details of Training Services

Details to be included from Module 8	Order Details agreed by the Contractor and the Customer
Scope (clause 3.1) Specify the Training Services which are to be provided, including: (a) the Contract Period; (b) whether the training is: (i) User training - training to be provided to users of Deliverables to enable them to develop the requisite skills to use Deliverables; (ii) "Train-the-Trainer" training – training to be provided to the Customer's nominated trainers who will provide user training in the future; and (iii) Awareness training – training to be provided to the Customer's Personnel who are affected by the Deliverables and therefore need to be aware of: (A) how the Deliverables work; (B) their roles, if any; and (C) how they benefit from the changes; (c) a description of the Training Services, including the: (i) name of the course;	

- (ii) course content overview;
- (iii) any pre-requisites for course attendees;
- (iv) number of attendees per course;
- (v) the cancellation arrangements for non-attendance at any training course, including notice arrangements, arrangements for substitutions and cancellation fees; and
- (vi) how the Training Services will be delivered;
- (vii) whether the Training Services will be provided at the Customer's premises;
- (viii) the items that the Party that is providing the premises for the Training Services is responsible for providing and ensuring that they are set up and/or otherwise made available for the training, including:
 - (A) the venue, furniture, projectors, flip charts, pens, pencils and other presentation equipment for the trainer and the attendees;
 - (B) refreshments and catering for the trainer and the attendees;
 - (C) any Hardware, software and technical infrastructure needed for the trainer and each attendee; and

(D) who is to pay the costs associated with any of these items;

- (d) the details of any the presentation materials and any handouts for the attendees, and who is to provide them;
- (e) where “Train-the-Trainer” services are to be provided, the qualifications and competencies that each of the Customer’s trainers must have in order to deliver a training course using the training materials; and
- (f) where the Contractor is providing training materials, the licence that the Contractor provides to the Customer relating to the use of the training materials and the Price and payment arrangements for that licence.

[Note: If this item within the Box is not completed then:

- (i) the Contractor grants the Customer and its Personnel a non-exclusive, licence to permit each attendee of the training course to use the training materials for the benefit of the Customer;
- (ii) where “Train-the-Trainer” services are to be provided, the Contractor also grants the Customer a non-exclusive licence to:

(A) allow the Customer’s Personnel who have the agreed qualifications and competencies to train other Customer Personnel, to

copy and use the "trainer version" of the training materials to train other Customer Personnel during the Contract Period; and

(B) allow the Customer to copy the "student version" of the training materials and provide a copy of the student version of the training materials to each Customer Personnel who attend such training courses during the Contract Period]

- (g) the Price, expenses and any other charges that apply in respect of the Training Services; and
- (h) how the Prices, expenses and charges will be paid.

[Note: These details can be put on a PIPP instead of being including on this Module Order Form. If the details are put on a PIPP, insert "Details of the Training Services are set out in the PIPP".]

Box 2 Requirement for a PIPP

Details to be included from Module 8	Order Details agreed by the Contractor and the Customer
Project Implementation and Payment Plan (PIPP) (clause 3.3)	
Specify if the Contractor is required to provide a PIPP, if no PIPP is attached to this Customer Contract at the Commencement Date. [If this Box is not completed, the Contractor is not required to provide a PIPP.]	A PIPP is attached to the Customer Contract at the Commencement Date.

Module 8 – Training Services

Version 3.2

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[Use Guidelines]

This Module should be used when the Customer is buying the training services, including user training, train the trainer training and awareness training. This type of training is often associated with IT projects.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.]

1. Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 8** form part of the Customer Contract when the Parties state that the Training Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 7.
- 1.2 **Training Services** means the services described in clause 3.1.

INTERPRETATION

- 1.3 Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.

2. Training Services Period

- 2.1 Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Training Services must be provided for the Contract Period unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2 If no Contract Period is specified in the Order Documents and the Training Services are provided on a time and materials basis, then the Training Services will be provided from the Commencement Date until either Party cancels the Training Services by providing 30 days prior Notice in Writing to the other.

3. Scope of Training Services

SCOPE

- 3.1 The Parties will set out in the Module Order Form or a PIPP the details of the Training Services, which may include:
 - (a) the Contract Period;
 - (b) whether the training is:
 - (i) User training - training to be provided to users of Deliverables to enable them to develop the requisite skills to use Deliverables;
 - (ii) "Train-the-Trainer" training – training to be provided to the Customer's nominated trainers who will provide user training in the future; and
 - (iii) Awareness training – training to be provided to the Customer's Personnel who are affected by the Deliverables and therefore need to be aware of:
 - (A) how the Deliverables work;
 - (B) their roles, if any; and

- (C) how they benefit from the changes;
- (c) a description of the Training Service, including the
 - (i) name of the course;
 - (ii) course content overview;
 - (iii) any pre-requisites for course attendees;
 - (iv) number of attendees per course;
 - (v) the cancellation arrangements for non-attendance at any training course, including notice arrangements, arrangements for substitutions and cancellation fees; and
 - (vi) how the Training Services will be delivered;
- (d) whether the Training Services will be provided at the Customer's premises;
- (e) the items that the Party that is providing the premises for the Training Services is responsible for providing and ensuring that they are set up and/or otherwise made available for the training, including:
 - (i) the venue, furniture, projectors, flip charts, pens, pencils and other presentation equipment for the trainer and the attendees;
 - (ii) refreshments and catering for the trainer and the attendees;
 - (iii) any Hardware, software and technical infrastructure needed for the trainer and each attendee; and
 - (iv) who is to pay the costs associated with any of these items;
- (f) the details of any the presentation materials and any handouts for the attendees, and who is to provide them;
- (g) where "Train-the-Trainer" services are to be provided, the qualifications and competencies that each of the Customer's trainers must have in order to deliver a training course using the training materials; and
- (h) where the Contractor is providing training materials, the licence that the Contractor provides to the Customer relating to the use of the training materials and the Price and payment arrangements for that licence. If the Parties do not include a licence to use the training materials in the Order Documents:
 - (i) the Contractor grants the Customer and its Personnel a non-exclusive licence to permit each attendee of the training course to use the training materials for the benefit of the Customer;
 - (ii) where "Train-the-Trainer" services are to be provided, the Contractor also grants the Customer a non-exclusive licence to:
 - (A) allow the Customer's Personnel who have the agreed qualifications and competencies to train other Customer Personnel, to copy and use the "trainer version" of the training materials to train other Customer Personnel during the Contract Period; and
 - (B) allow the Customer to copy the "student version" of the training materials and provide a copy of the student version of the training

materials to each Customer Personnel who attend such training courses during the Contract Period; and

- (iii) the Customer is not granted any other right to use or exploit the training materials, including any right to reproduce or adapt any training materials;
- (i) the Price, expenses and any other charges that apply in respect of the Training Services; and
- (j) how the Prices, expenses and charges will be paid.

3.2 For the purposes of this Module 8, it is agreed by the Parties that clause 5.4 of the Customer Contract is subject to clause 3.1(h).

PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

3.3 If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, and it is stated on the Module Order Form that a PIPP is required, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the Training Services. Within 5 Business Days of receipt of the draft PIPP the Customer must:

- (a) approve the PIPP; or
- (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.

3.4 Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

REPORTING

3.5 The Contractor must monitor the progress of the Training Services and provide the Customer with status reports at monthly intervals, or such other intervals as is agreed by the Parties which, at a minimum, include the following issues:

- (a) the issues and risks that the Contractor recommends be pro-actively addressed to avoid delays;
- (b) any actions that the Parties need to take, or decisions that need to be made, to ensure the provision of the Training Services in accordance with the requirements of the Customer Contract, including any PIPP;
- (c) the progress of the work against any project plan;
- (d) the amounts charged, and amount of work in progress against the budget;
- (e) whether it is anticipated that the budget is likely to be exceeded, and if so the reasons; and
- (f) any other issues that the Parties agree should be included in the reports.

CUSTOMER DIRECTIONS

3.6 The Contractor must comply with all reasonable directions of the Customer as may be given to the Contractor from time to time in respect of the delivery of the Training Services, provided that such directions are consistent with the requirements of the Customer Contract. Where such direction:

- (a) causes the Contractor's costs to increase, the Customer must pay for any increase in the Contractor's costs at the Contractor's time and materials rates (calculated using

the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) plus any expenses; and

- (b) causes the Contractor not to be able to meet any timetable for delivery, then the timetable must be extended to the extent that it is reasonable given the nature of the direction and the impact on the Training Services.

3.7 Nothing in clause 3.5 affects the Contractor's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the Customer's reasonable directions or otherwise to comply with the Contractor's obligations under the Customer Contract.

3.8 Subject to otherwise complying with its obligations under the Customer Contract, the Contractor must exercise its independent discretion as to the most appropriate and efficient manner of providing the Training Services and satisfying the Contractor's obligations under this Customer Contract.

EMPLOYEE RELATIONSHIP

3.9 The Contractor undertakes to comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement.

3.10 The Contractor acknowledges and agrees that:

- (a) it is solely responsible for the obligations in clause 3.8; and
- (b) neither it, nor its Personnel have, pursuant to this Customer Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

4. Acceptance Tests and Use

4.1 Where the Training Services are for the creation of a specific Deliverable for which the Parties have agreed that the Deliverable is to undergo Acceptance Tests then:

- (a) the Customer must not use any part of the Deliverable for its business purposes and/or in a production environment without first undertaking Acceptance Tests in accordance with clause 10 of the Customer Contract; and
- (b) it is acknowledged and agreed by the Customer that if the Customer uses the Deliverable for its business purposes and/or in a production environment before the Deliverable has passed its Acceptance Tests in accordance with clause 10.9 of the Customer Contract (as opposed to where the Deliverable is merely deemed to have passed its Acceptance Tests under clause 10.13) the Customer is taking a significant risk in using untested Deliverables, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Deliverable.

5. Restraint

5.1 The Customer must not, without the prior written consent of the Contractor, whether on its own behalf or on behalf of any other person and in any capacity:

- (a) encourage any of individual who has performed any Training Services, to:
 - (i) stop working for or providing services to the Contractor; or

- (ii) work for or provide services to the Customer, any Agency or Department or any other person; or
- (b) employ, contract, or enter into any arrangement, to receive the benefit of the services of the individual who has performed any Training Services,

for the following restraint periods:

- (c) during the period that the individual performed the Training Services and a period of 12 months thereafter;
 - (d) during the period that the individual performed the Training Services and a period of 9 months thereafter;
 - (e) during the period that the individual performed the Training Services and a period of 6 months thereafter;
 - (f) during the period that the individual performed the Training Services and a period of 3 months thereafter; and
 - (g) during the period that the individual performed the Training Services.
- 5.2** Clause 5.1 is to be construed and have effect as the number of separate restraints that arise by separately combining each of the subclauses in 5.1(a) and (b) above with the restraint periods listed in each of the subclauses in (c) to (g) above. Each of the covenants that result from a combination of the restraints in subclauses 5.1(a) and (b) with the restraint periods in subclauses (c) to (g), constitute and are to be construed as having effect as separate, distinct, severable and independent provisions from the other covenants, but cumulative in overall effect. If any of the covenants or parts of the covenants resulting from the operation of this clause, are unenforceable they will be severed from the remaining enforceable covenant or part thereof.
- 5.3** The Customer agrees that the remedy of damages may be inadequate to protect the interests of the Contractor from a breach of the Customer's obligations under this clause 5 and the Contractor is entitled to seek and obtain injunctive relief, or any other remedy, in any court.
- 5.4** A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 5.1.
- 5.5** The Parties agree that the restrictions in clauses 5.1 to 5.4 are necessary to protect the legitimate interests of the Contractor.

6. Specific Warranties

SCOPE

- 6.1** Where the Training Services are provided on a fixed Price basis:
- (a) the Contractor warrants that any Deliverable (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects during the Warranty Period, subject to the Exceptions; and
 - (b) if an unmodified version of the Deliverable (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor may, at its option, promptly remedy those Defects, implement a Workaround, or replace the relevant part of the Deliverable, at its own expense, or refund the Price payable for the deficient Deliverable. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.

- 6.2** Owing to the nature of the subject matter, but subject to clauses 6.1, 6.3, 6.4 and 7, the Contractor expressly excludes any warranty that:
- (a) any Deliverable will be error free;
 - (b) any person will learn or understand any information or training materials provided by the Contractor; and
 - (c) any Deliverable will meet the Customer's requirements.
- 6.3** The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect.
- 6.4** The Contractor warrants that, subject to the Exceptions, from the Commencement Date until the end of the Warranty Period in relation to the Training Services that the Contractor will provide the Training Services in accordance with the requirements of the Contract Specifications in all material respects and with due care and skill.

7. Exceptions

- 7.1** The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
 - (b) modifications to any Deliverable that were effected or attempted by a person other than the Contractor or its authorised representative, other than where such modifications were recommended by the Contractor;
 - (c) any act, error, fault, neglect, misuse or omission of the Customer;
 - (d) damage caused by the operation of the Deliverable other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the original Intellectual Property Rights owner, authorised distributor or the Contractor;
 - (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specifications;
 - (f) improper use or mismanagement by the Customer; or
 - (g) a Force Majeure Event.
- 7.2** Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.