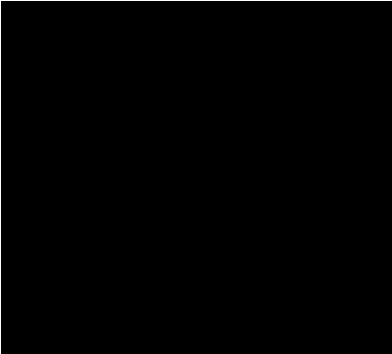
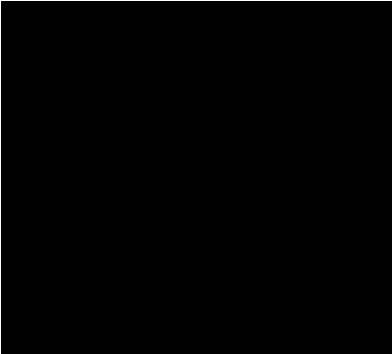
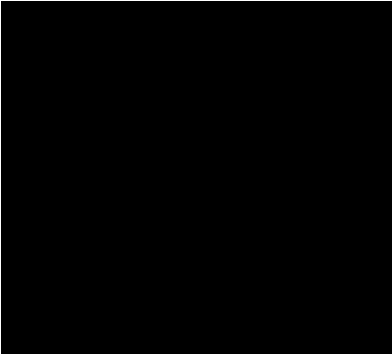
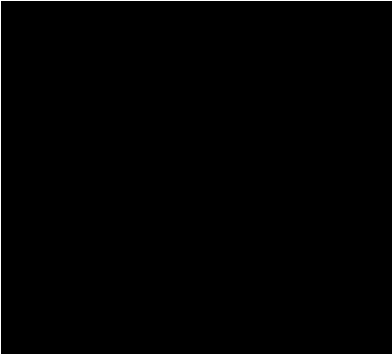
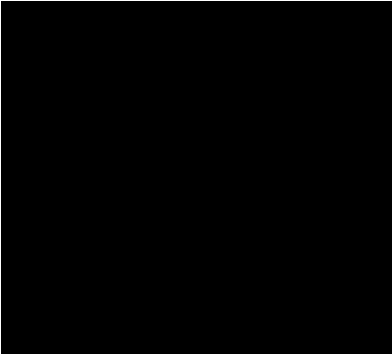
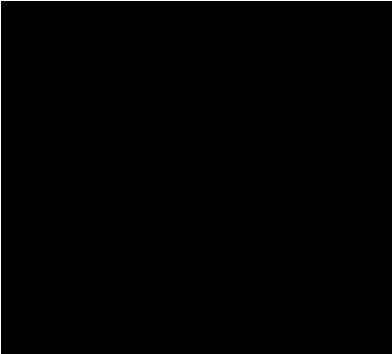


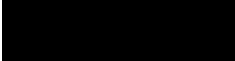





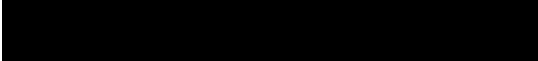
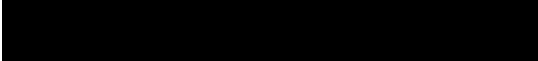
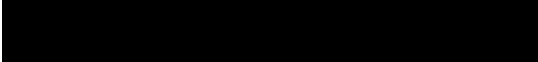


Telecommunications Universal Services Management Agency (TUSMA) Agreement

in relation to the delivery of certain public
interest services

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Date: 23 June 2011

Parties

- 1 **Telstra Corporation Limited** ABN 33 051 776 556 of Telstra Centre, 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)
 - 2 **Commonwealth of Australia (Commonwealth)** represented by and acting through the Department of Broadband, Communications and the Digital Economy, ABN 51 491 646 726 (**Department**)
-

1A Agreement

The parties agree to comply with the terms and conditions of this Agreement, which comprises the following documents:

- (a) Agreement Execution Document (being this document);
 - (b) Module A – Agreement Introduction and General Terms;
 - (c) Module B – Standard Telephone Service USO;
 - (d) Module C – Payphones USO;
 - (e) Module D – Voice-only Customer Migration;
 - (f) Module E – Emergency Call Service;
 - (g) Module F – Migration of Public Interest Services; and
 - (h) Module G – Dictionary.
-


1B Conditions Precedent

- (a) Other than this **clause 1B**, and **clauses 13, 18, 21, 22, 23 and 24**, this Agreement does not become binding unless and until:
 - (i) the NBN Definitive Agreements are executed by Telstra and NBN Co and all of the conditions precedent in the Implementation and Interpretation Deed have been either waived or satisfied in accordance with the terms of the Implementation and Interpretation Deed; or
 - (ii) the parties agree to waive the condition in **clause 1B(a)(i)**.
 - (b) If the Implementation and Interpretation Deed terminates before all of the conditions precedent in that document has been either waived or satisfied in accordance with the terms of that document then, unless the parties have agreed to waive the condition in **clause 1B(a)(i)**, this Agreement will terminate at the same time.
-

Execution

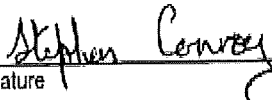
Executed as an agreement.

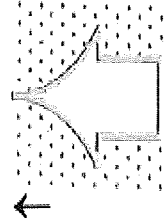
Signed for and on behalf of the Commonwealth of Australia by Senator the Hon. Stephen Michael Conroy, Minister for Broadband, Communications and the Digital Economy in the presence of:


Signature of witness

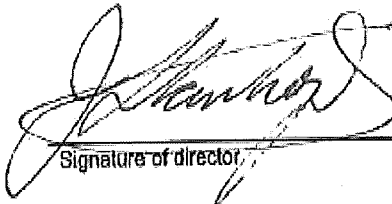
Shaun Drablich
Name of witness (print)




Signature



Executed by Telstra Corporation Limited in accordance with Section 127 of the Corporations Act 2001 in the presence of


Signature of director

John Stanhope
Name of director (print)




Signature of director/company secretary
(Please delete as applicable)

David Thodey
Name of director/company secretary (print)



Module A

Agreement Introduction and General Terms

Released under the FOI Act 1982 by the Department of Infrastructure,
Transport, Regional Development, Communications and the Arts

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression used in this Agreement:

- (a) which is defined in the Dictionary in **Module G (Dictionary)**, has the meaning given to it in the Dictionary;
- (b) which is defined in the Telco Act but is not defined in the Dictionary, has the meaning given to it in the Telco Act;
- (c) which is defined in the TCPSS Act but is not defined in the Dictionary or the Telco Act, has the meaning given to it in the TCPSS Act;
- (d) which is defined in the Corporations Act, but is not defined in the Dictionary, the Telco Act or the TCPSS Act, has the meaning given to it in the Corporations Act; and
- (e) which is defined in the GST Law, but is not defined in the Dictionary, the Telco Act, the TCPSS Act or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in **Module G (Dictionary)** sets out rules of interpretation for this Agreement.

2 TUSMA

- (a) The parties acknowledge that it is intended that, upon establishment of TUSMA:
 - (i) TUSMA will become responsible for administering this Agreement on behalf of the Commonwealth; and
 - (ii) the Department will cease to be responsible for administering this Agreement on behalf of the Commonwealth.
- (b) Unless expressly stated otherwise, a reference in this Agreement to:
 - (i) "TUSMA" includes a reference to:
 - (A) the chief executive officer of TUSMA;
 - (B) the Commonwealth; and
 - (C) while it is administering this Agreement on behalf of the Commonwealth, the Department on behalf of the Commonwealth.
 - (ii) functions of TUSMA includes a reference to any function, duty, obligation, power, authority or objective of TUSMA.

3 Commonwealth Funding of TUSMA

During the term of this Agreement, until such time as **Module B (Standard Telephone Service USO)** is terminated or otherwise ends, TUSMA (which, for this purpose, does not include a reference to the Commonwealth) will receive the following direct funding from the Commonwealth:

- (a) \$50,000,000 in the financial year ending 30 June 2013;
- (b) \$50,000,000 in the financial year ending 30 June 2014; and
- (c) \$100,000,000 in each subsequent financial year.

4 Term

- (a) Unless terminated earlier in accordance with this Agreement, the term of each of:

- (i) this **Module A (Agreement Introduction and General Terms)**; and
- (ii) **Module G (Dictionary)**,

commences on the Commencement Date and ends on the date that the term of the last continuing Module ends.

- (b) Unless terminated earlier in accordance with this Agreement, the term of each of:

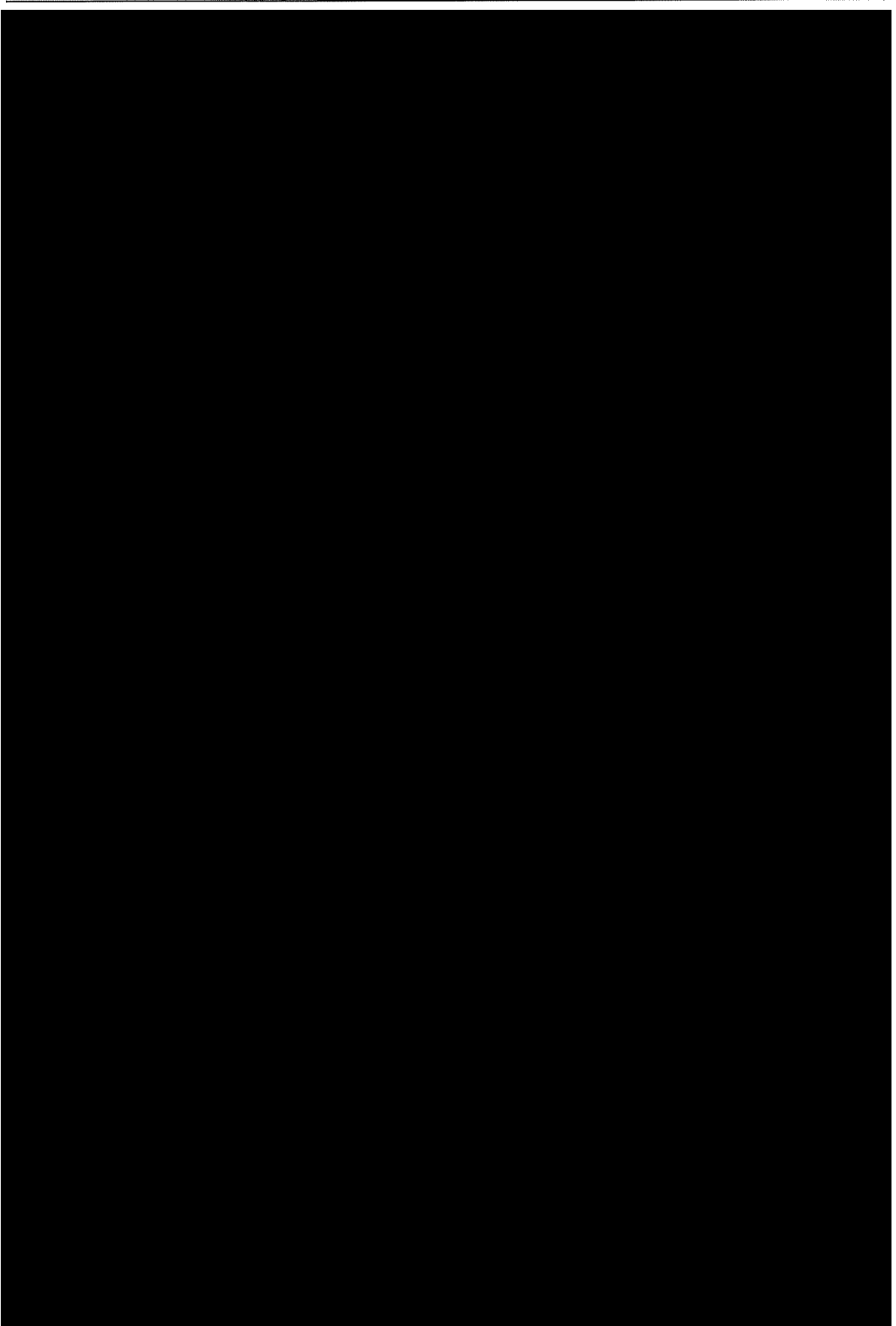
- (i) **Module B (Standard Telephone Service USO)**;
- (ii) **Module C (Payphones USO)**; and
- (iii) **Module E (Emergency Call Service)**,

commences on the Commencement Date and ends on 1 July 2032.

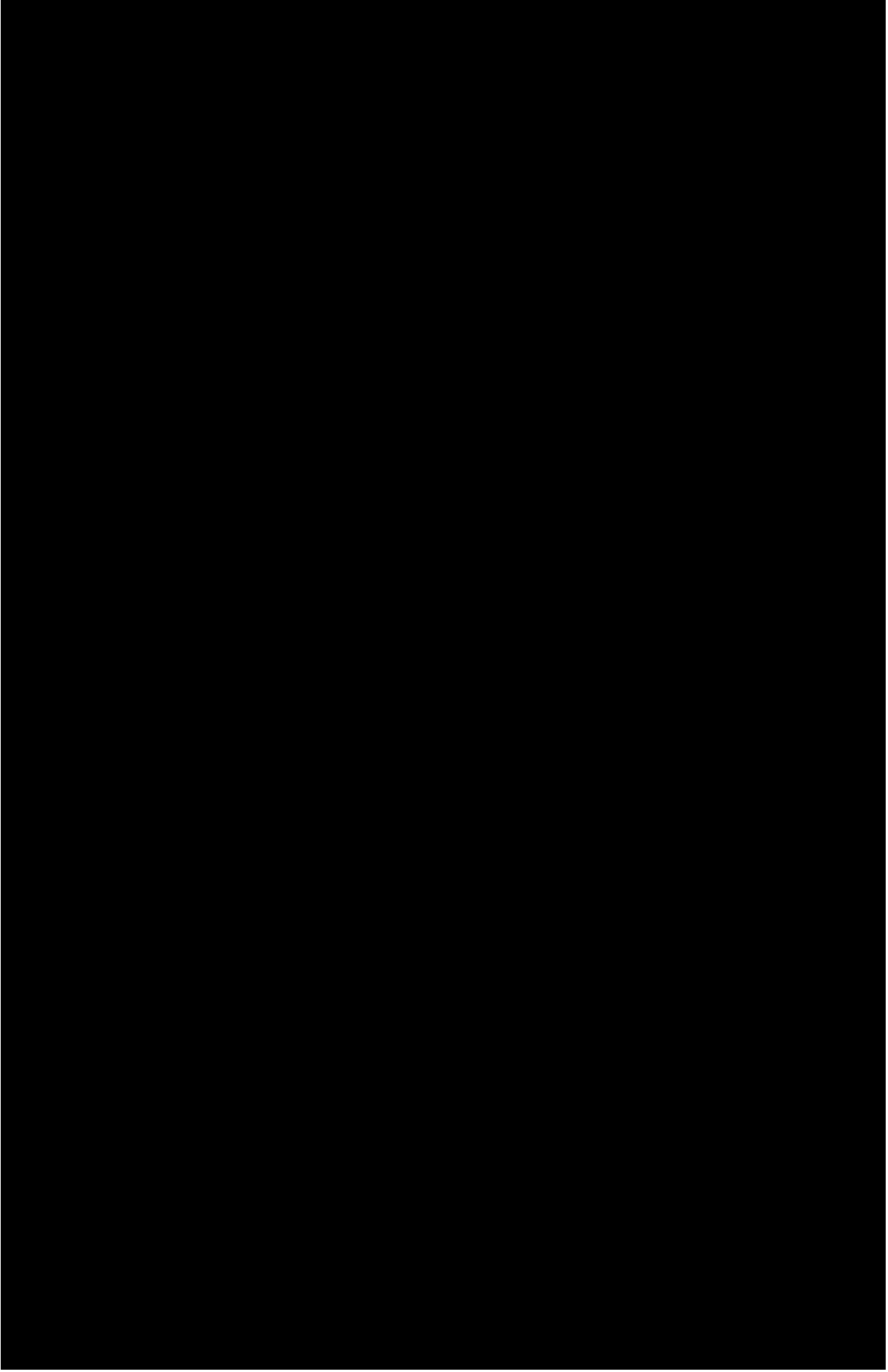
- (c) The term of **Module D (Voice-only Customer Migration)** commences on the Commencement Date and ends on the same date as the date the rollout of the NBN fibre network is complete, unless terminated earlier in accordance with this Agreement. For this purpose, the rollout of the NBN fibre network will be considered to be complete on the date that is 6 months after the Disconnection Date for the final Rollout Region for which NBN Co may give a Region Ready for Service Date notice under the Subscriber Agreement.

- (d) The term of **Module F (Migration of Public Interest Services)** commences on the Commencement Date and ends on 1 July 2017, unless terminated earlier in accordance with this Agreement.

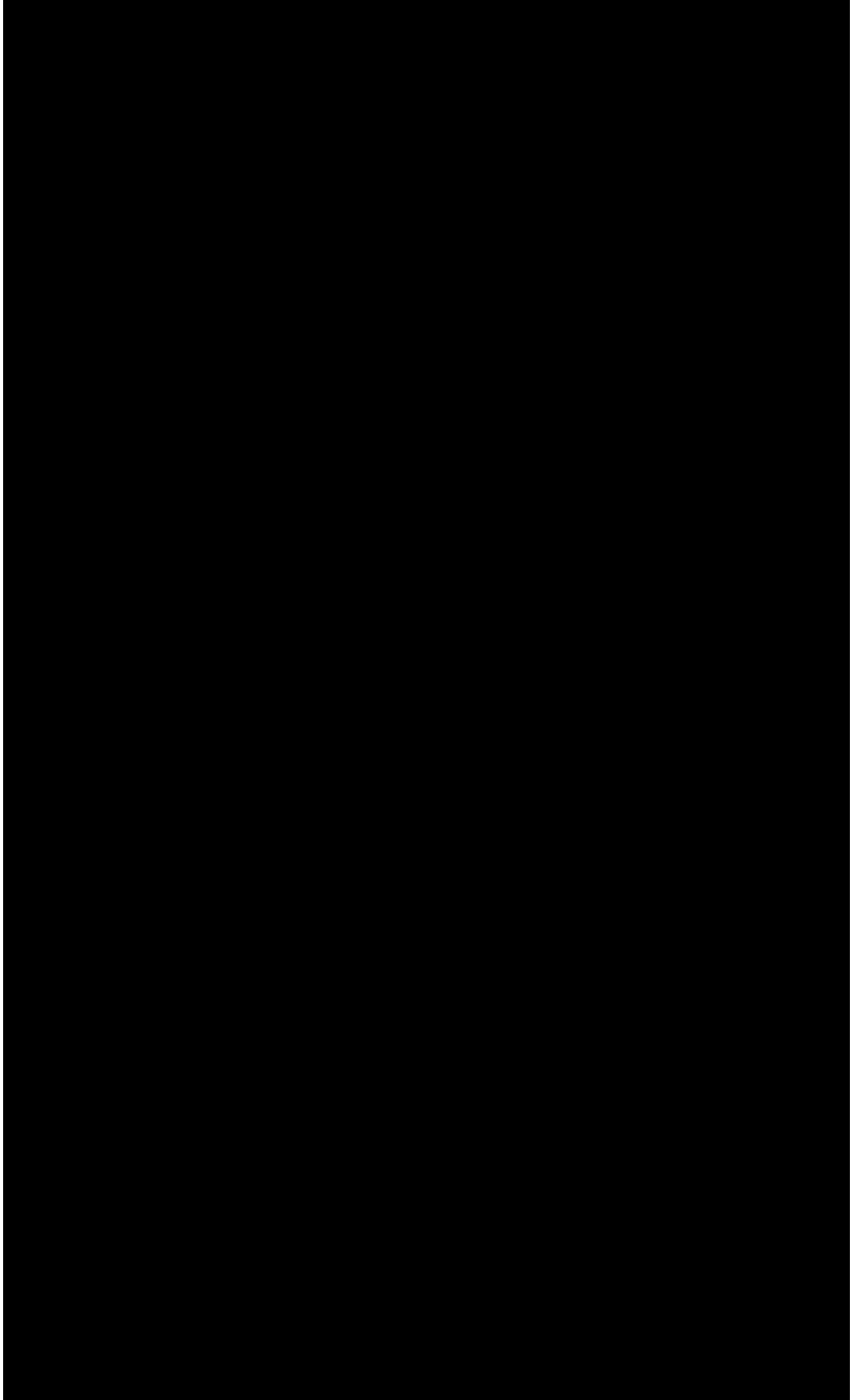
- (e) The term of this Agreement commences on the date that the first Module commences and ends on the date that the last remaining Module ends, unless terminated earlier in accordance with this Agreement.



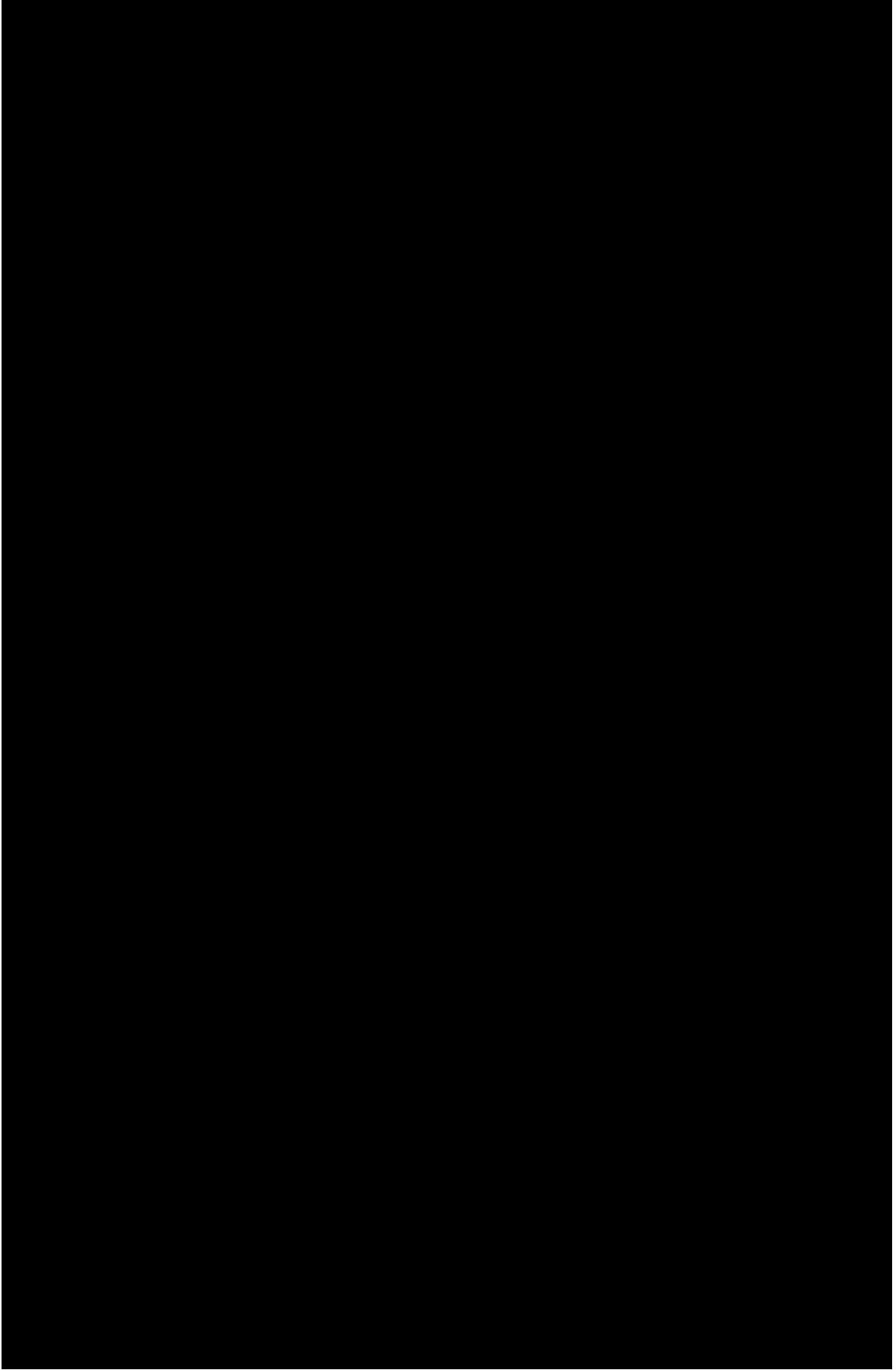
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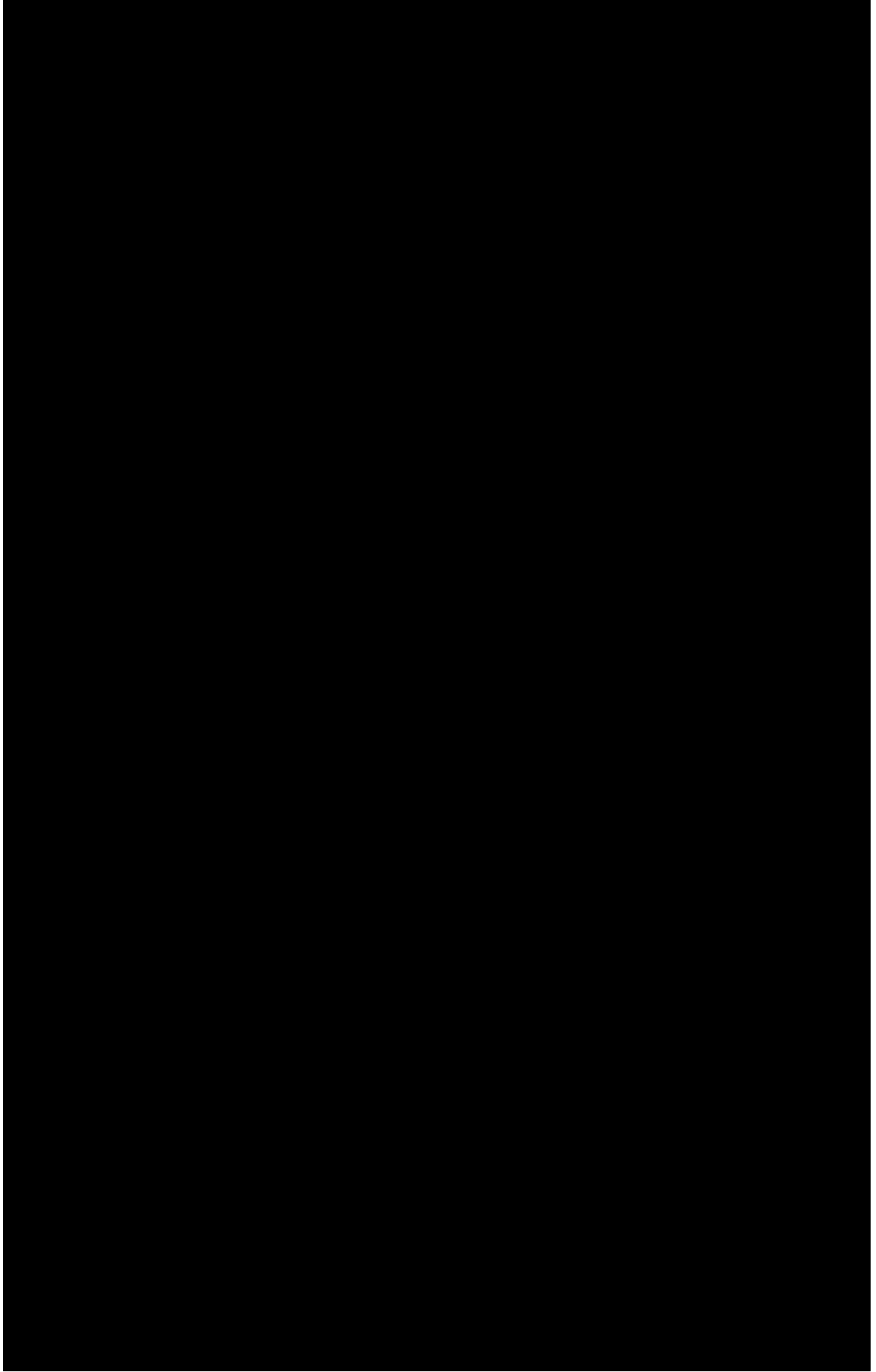
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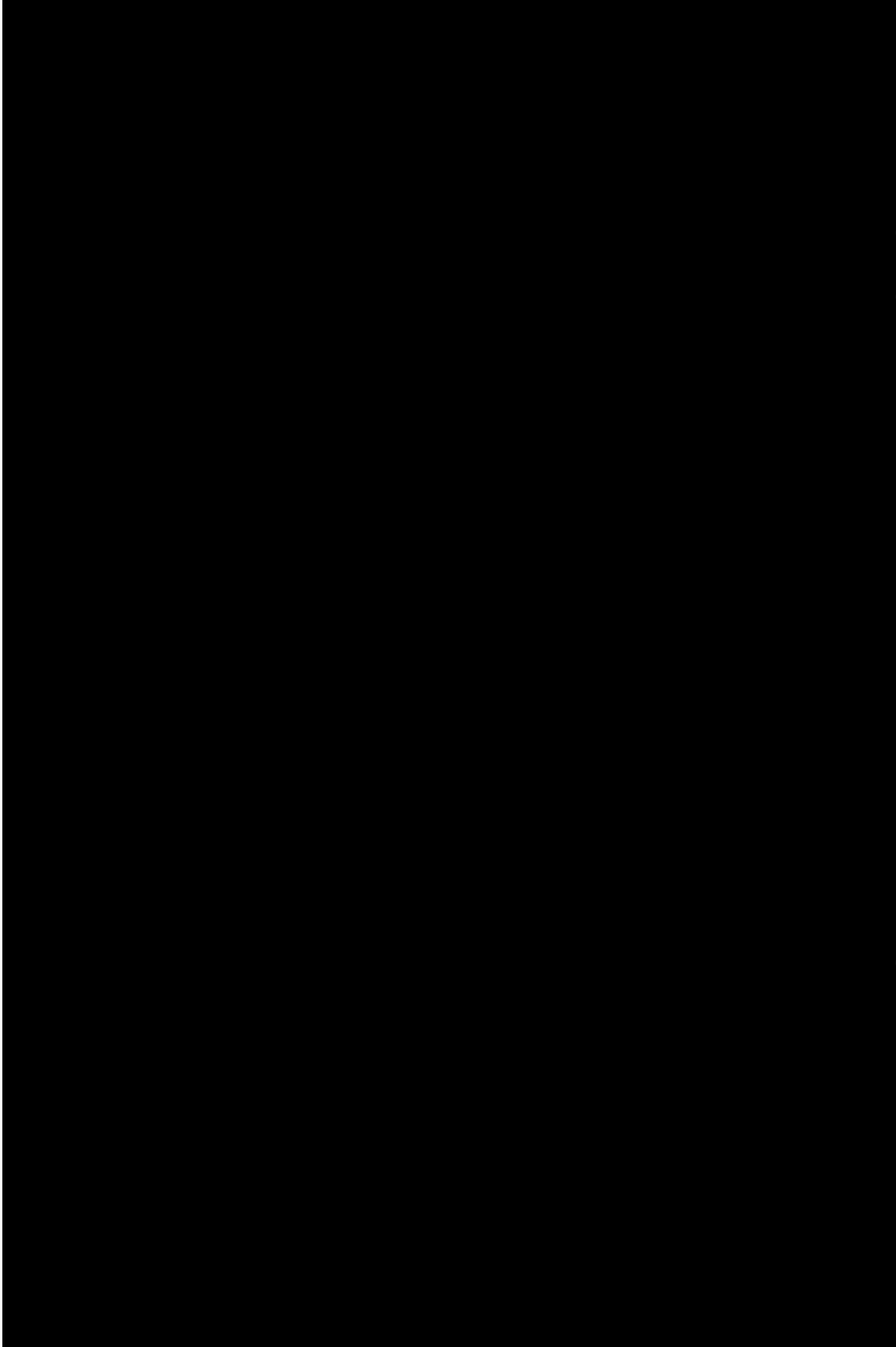
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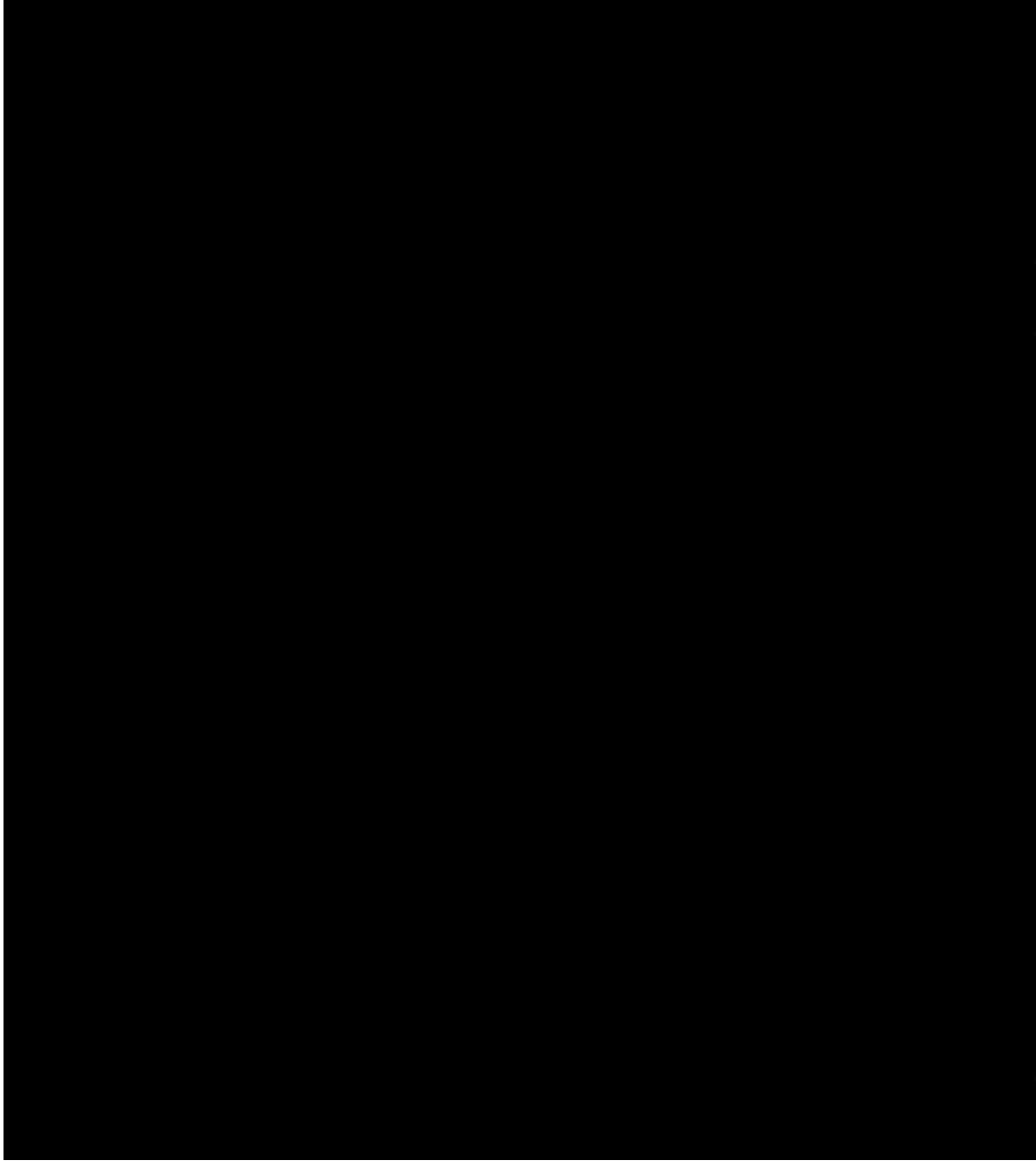
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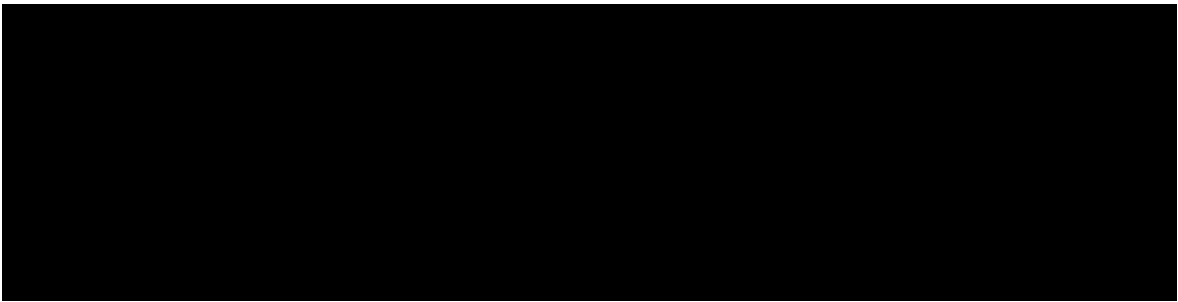
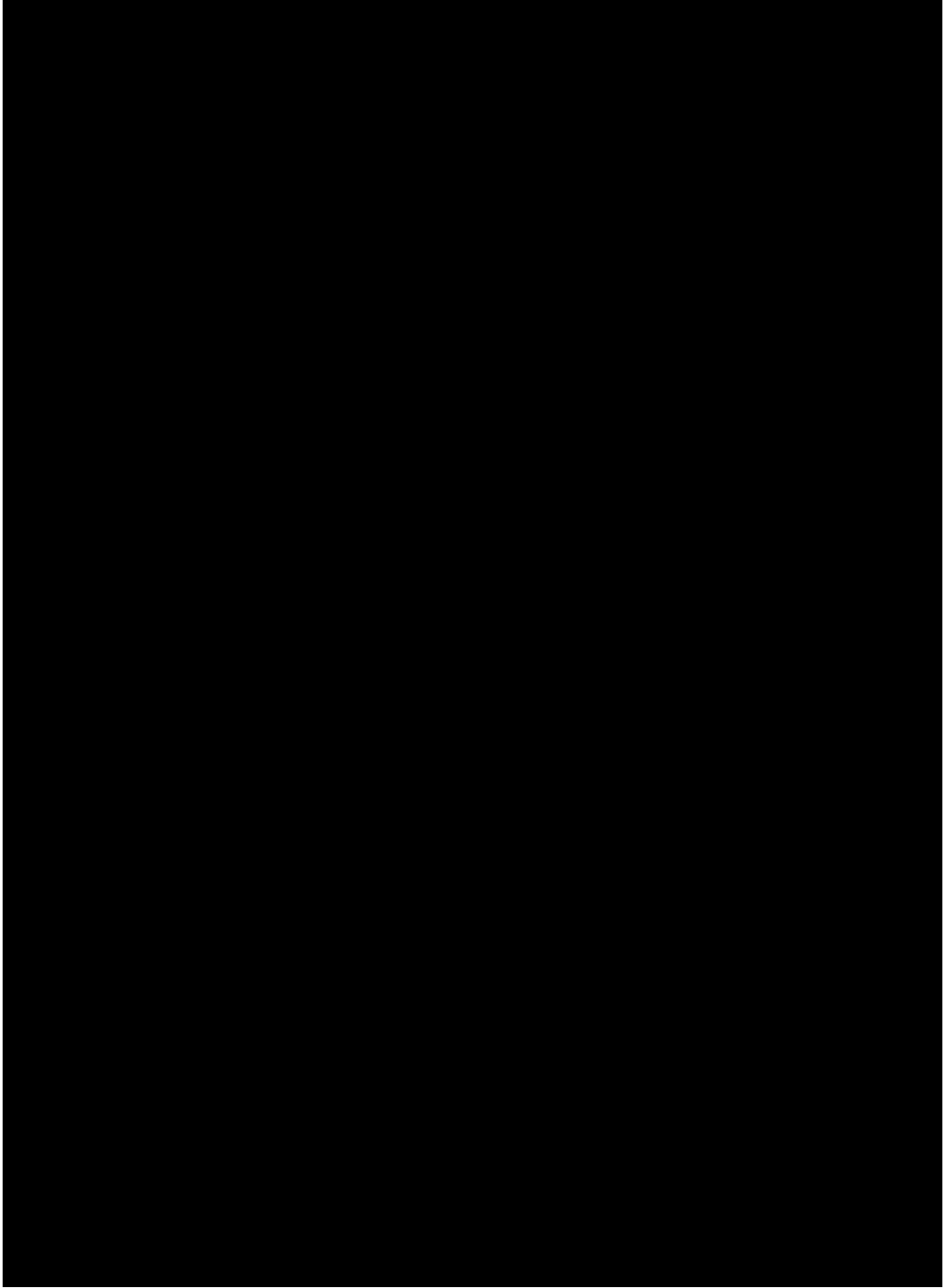
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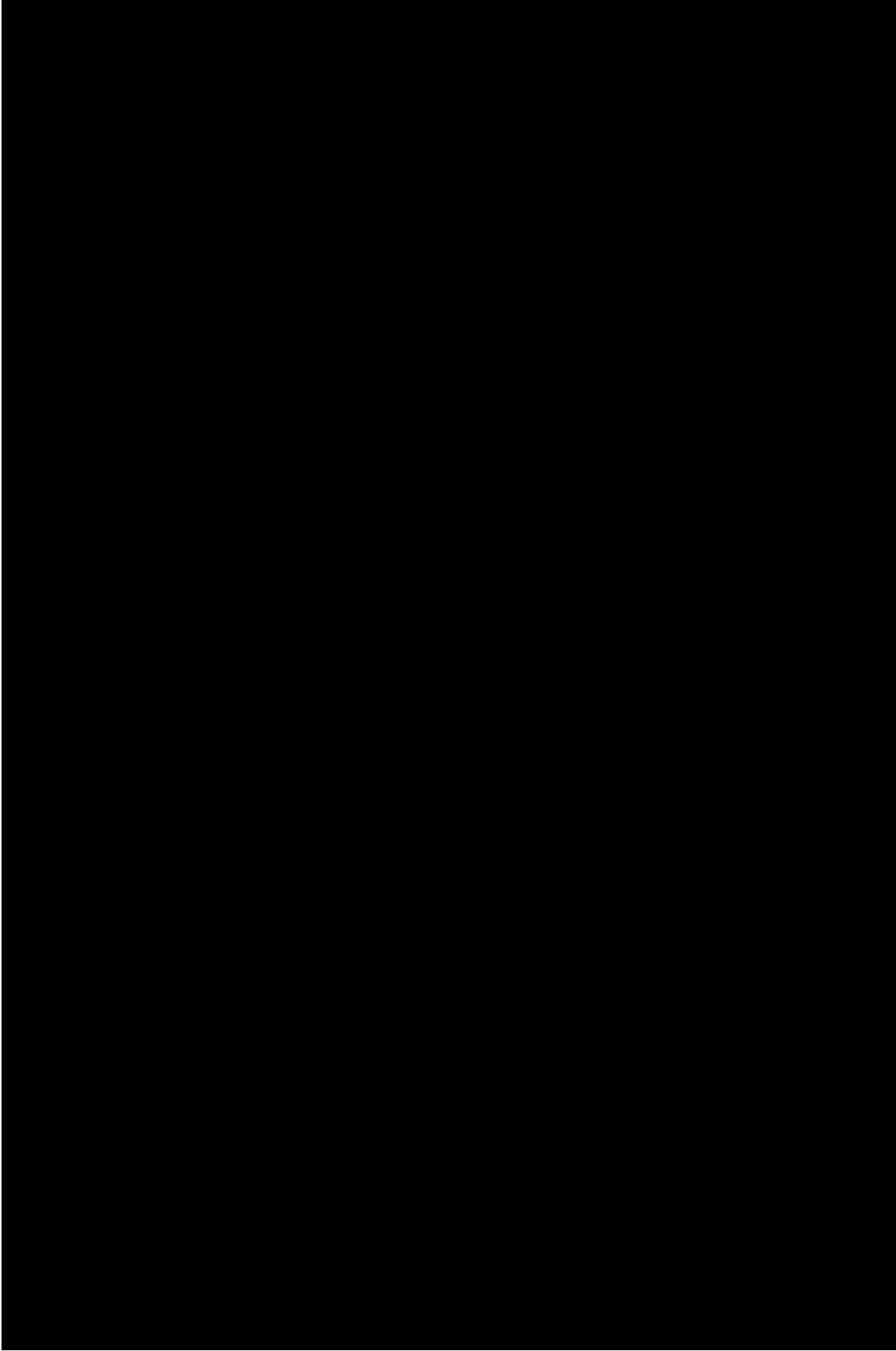
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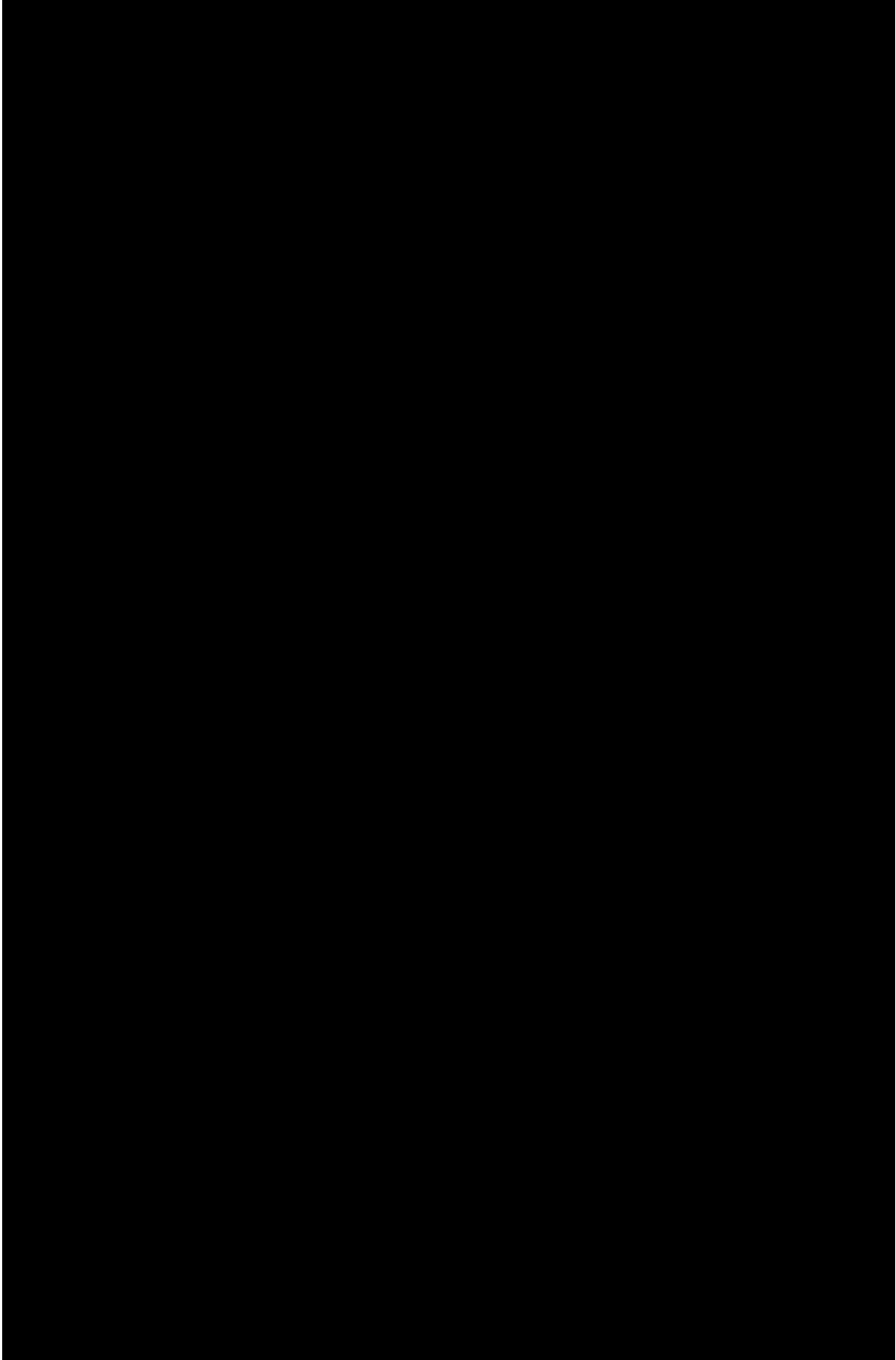
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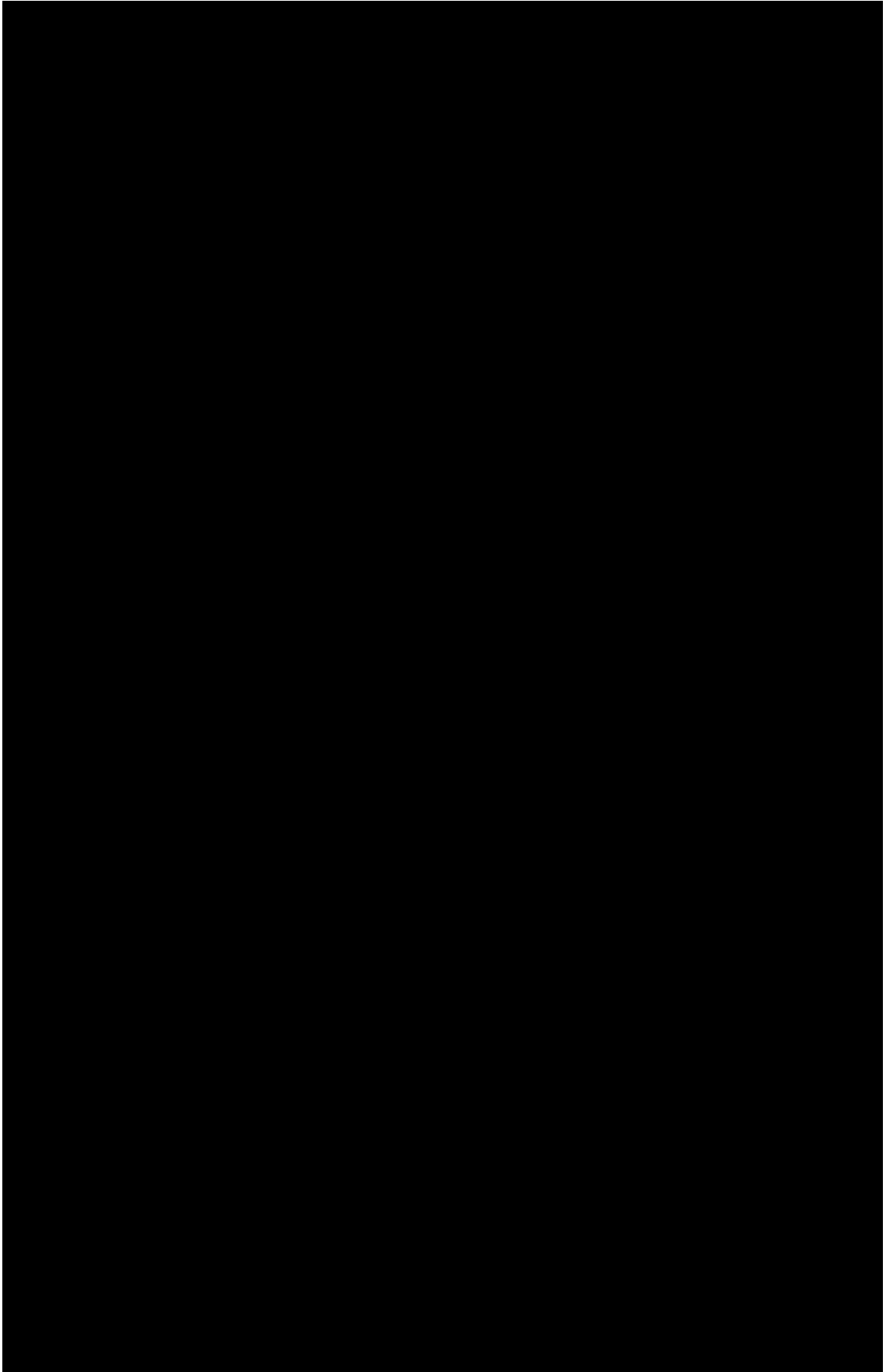
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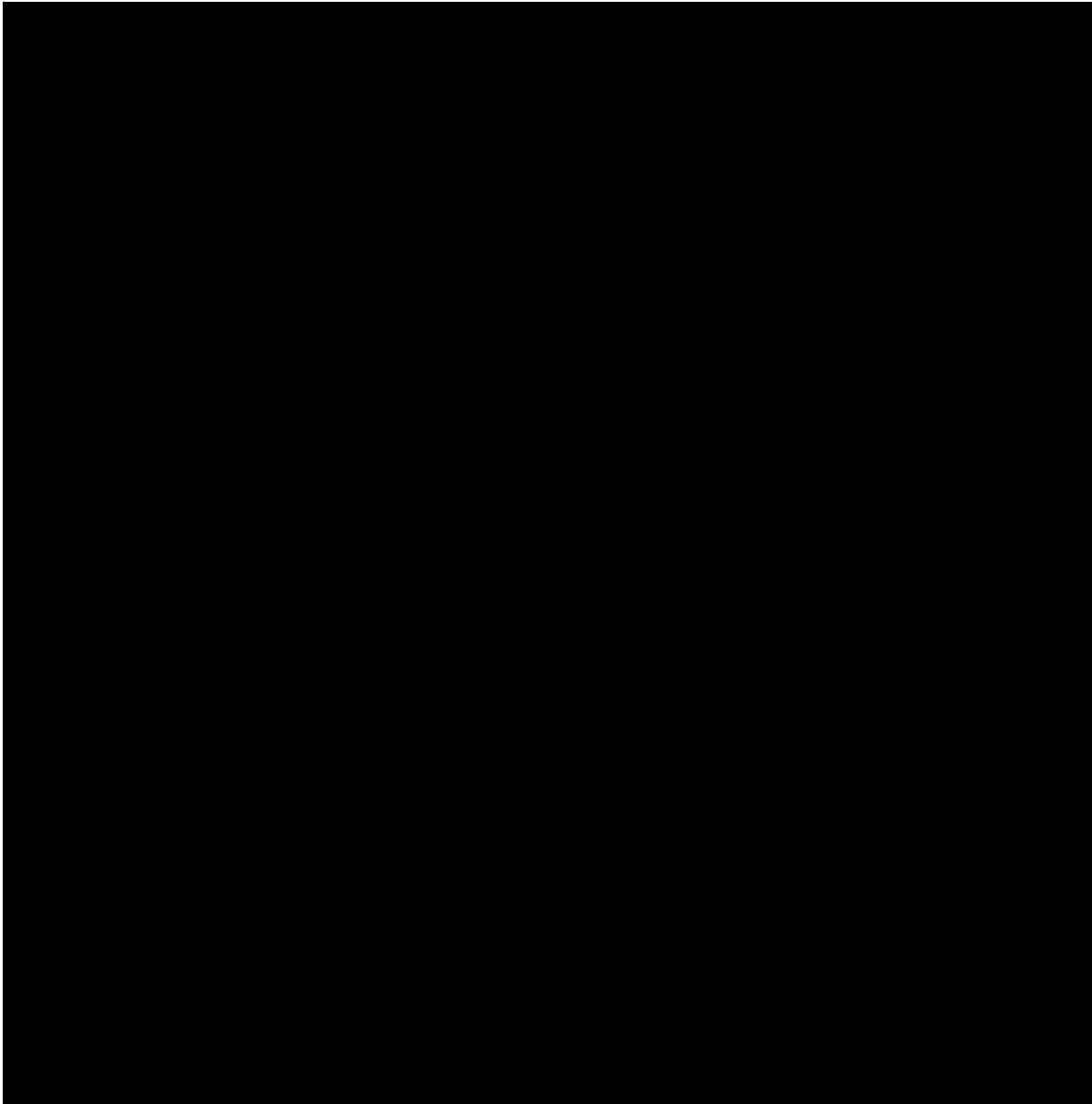
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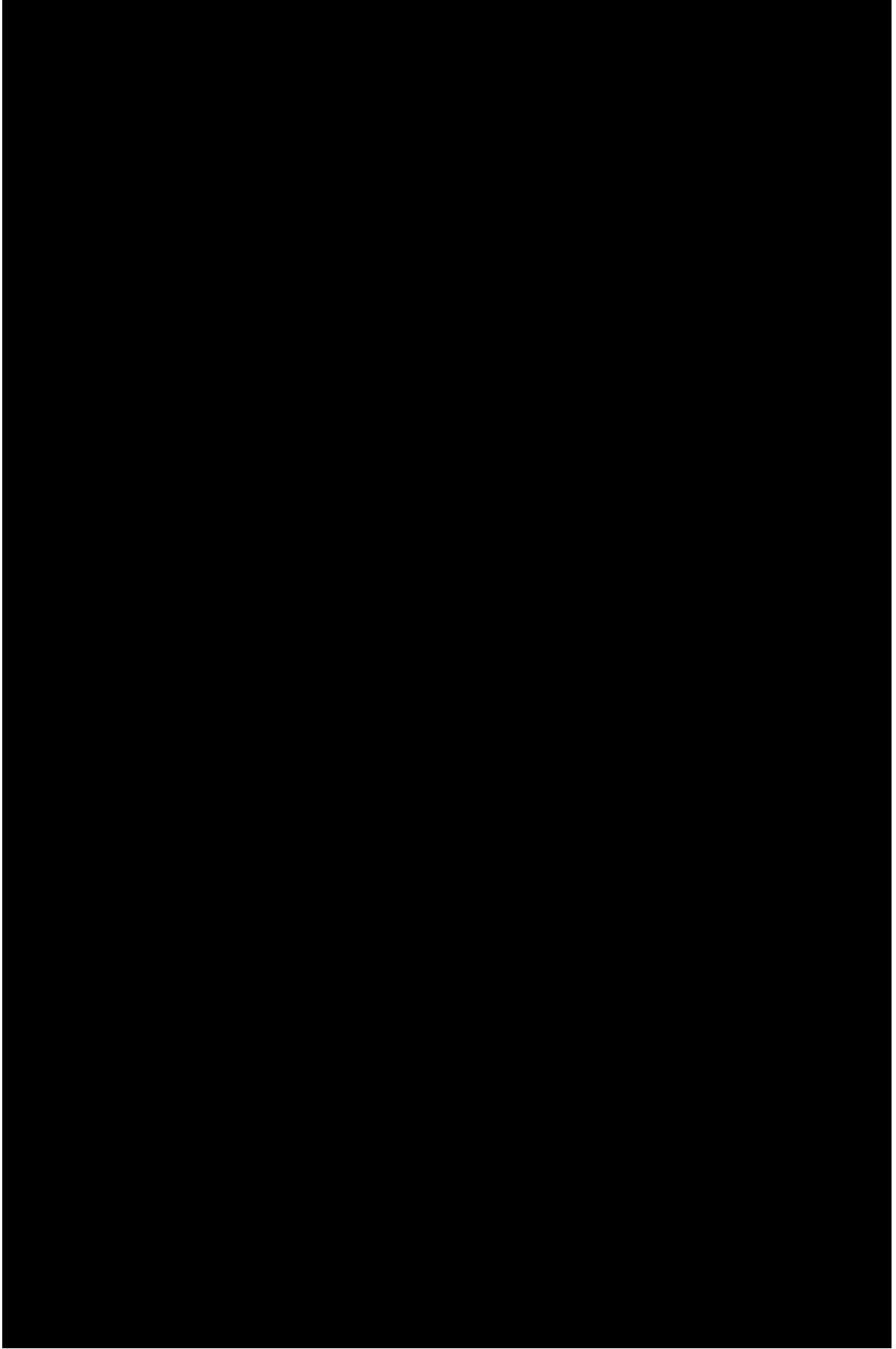
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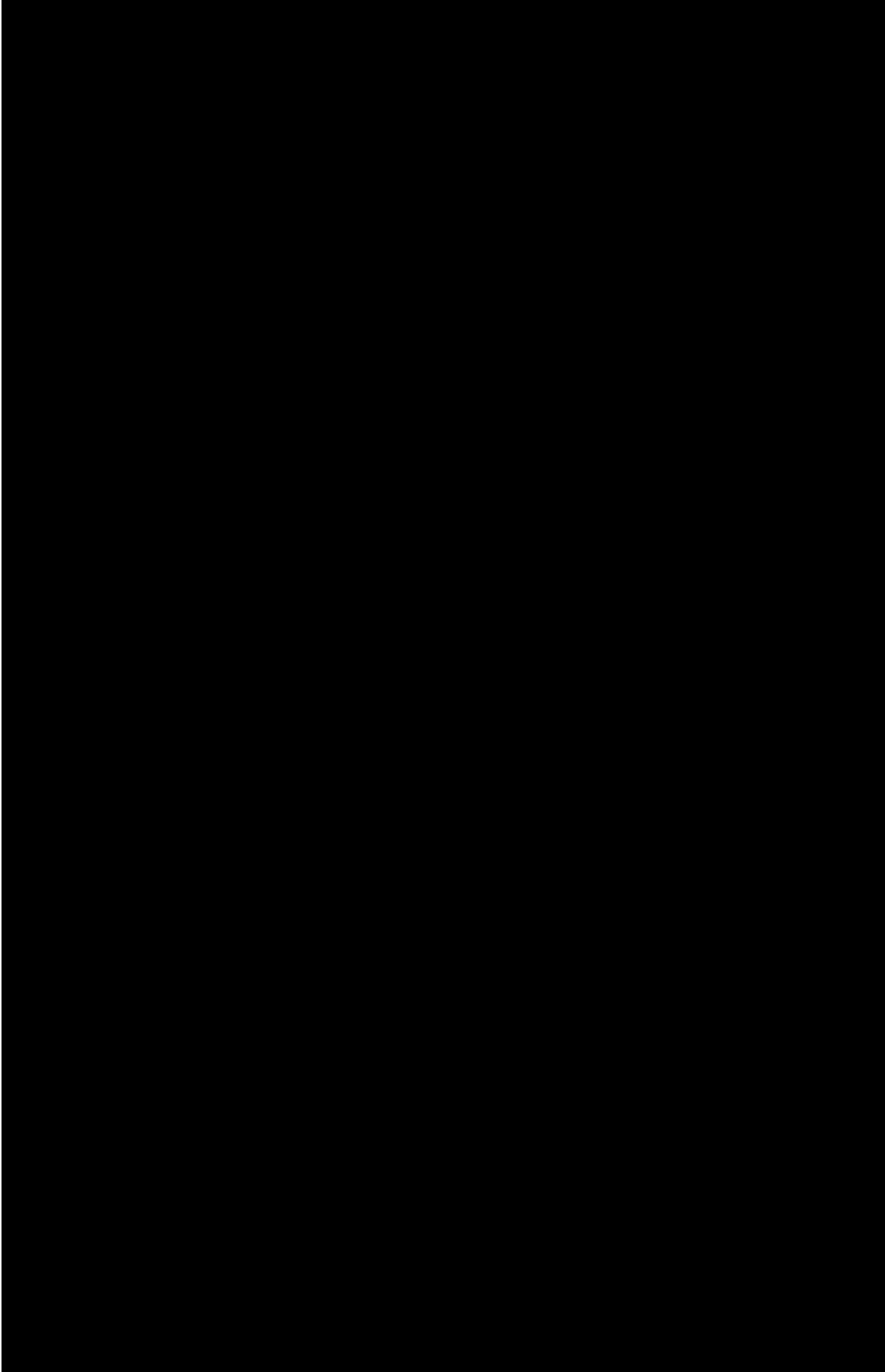
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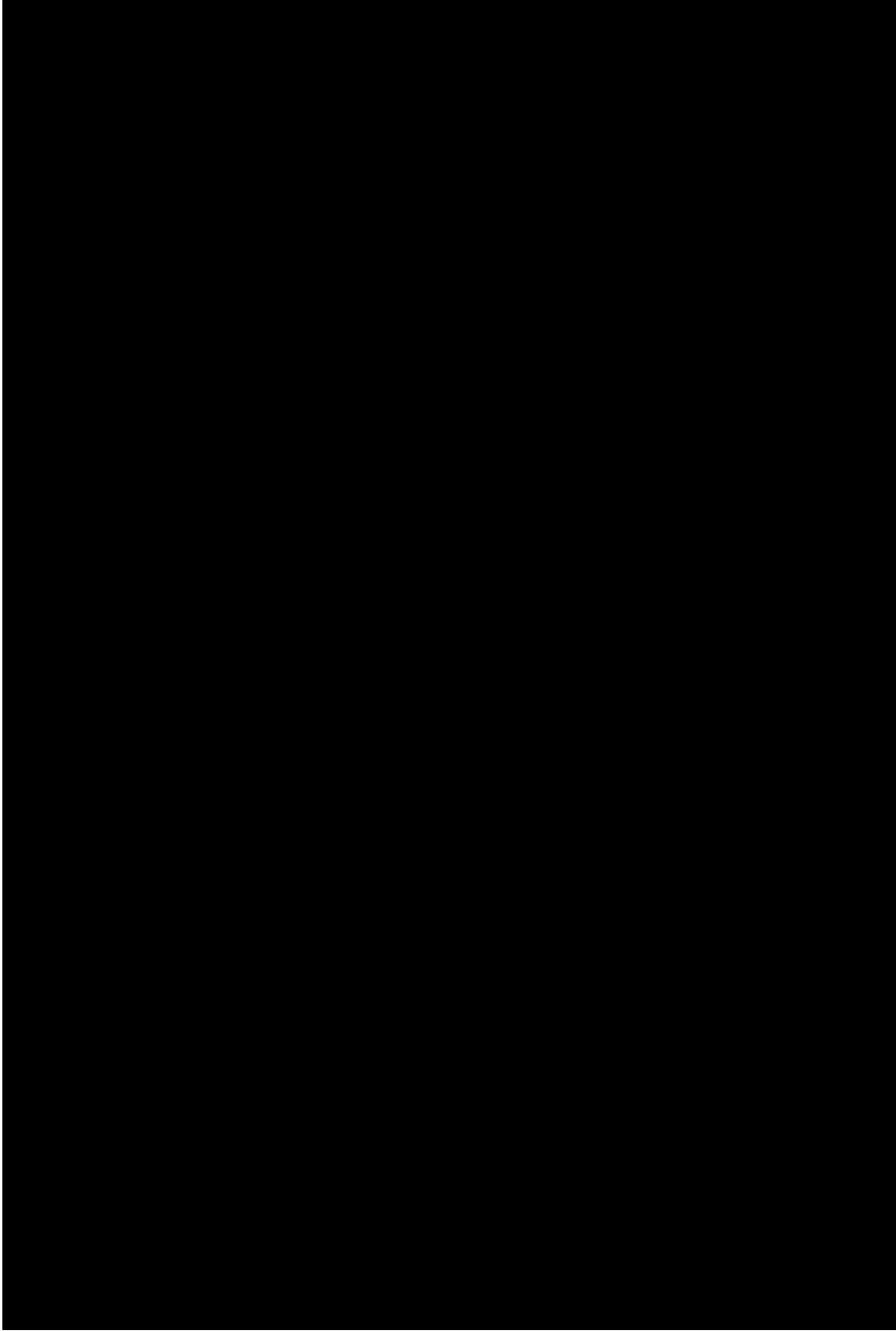
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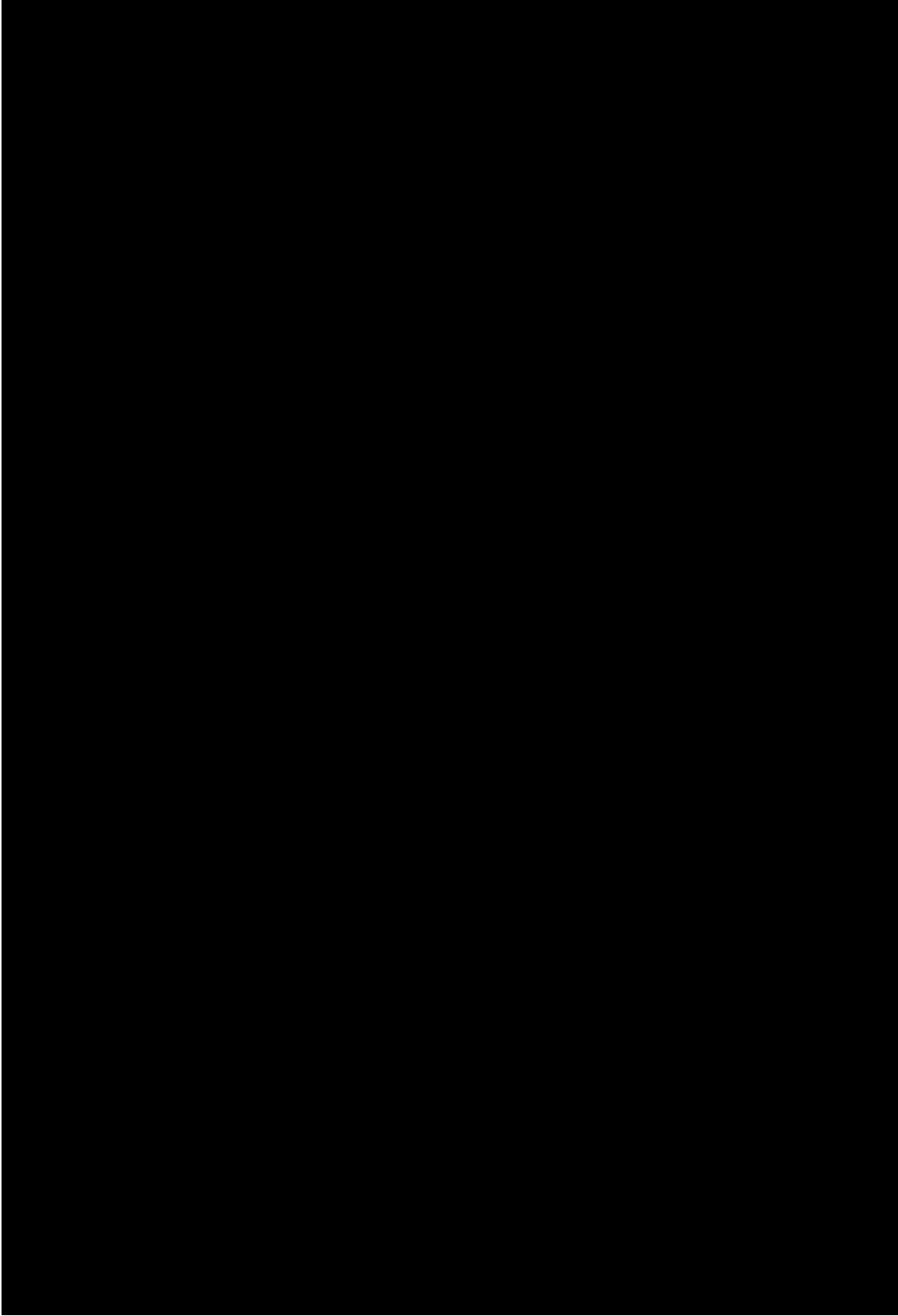
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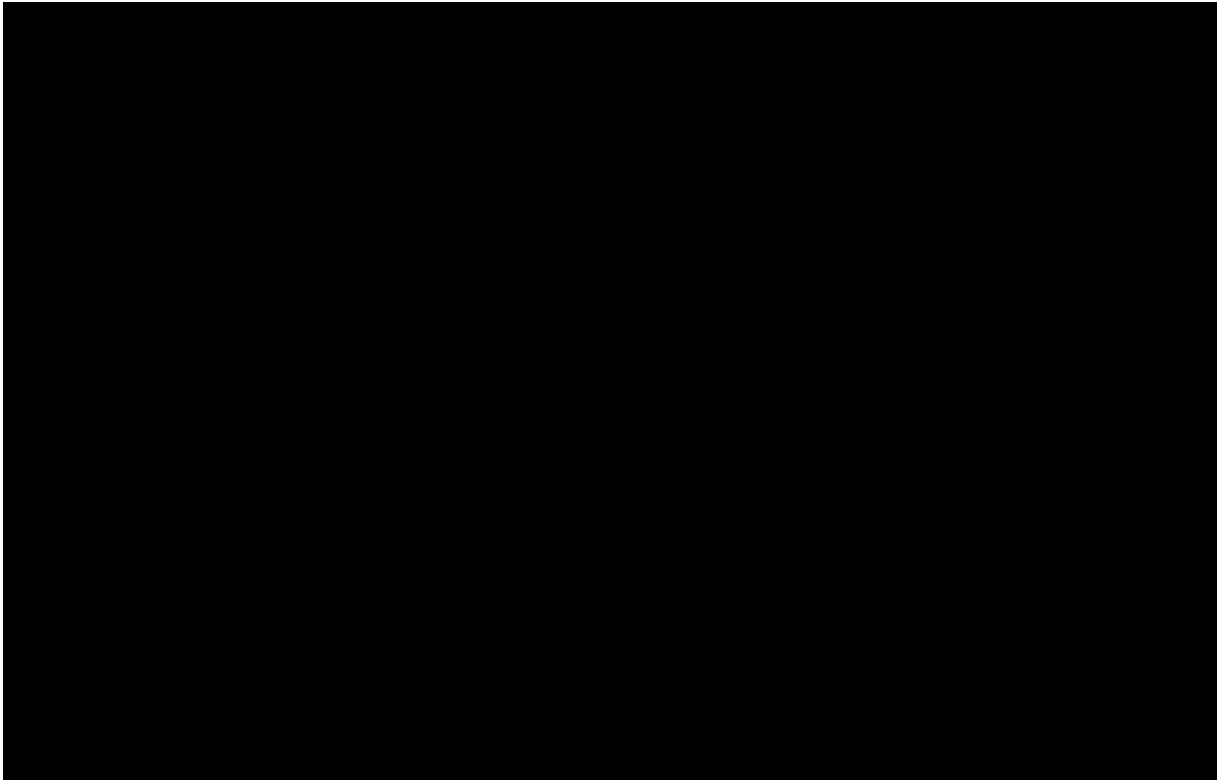
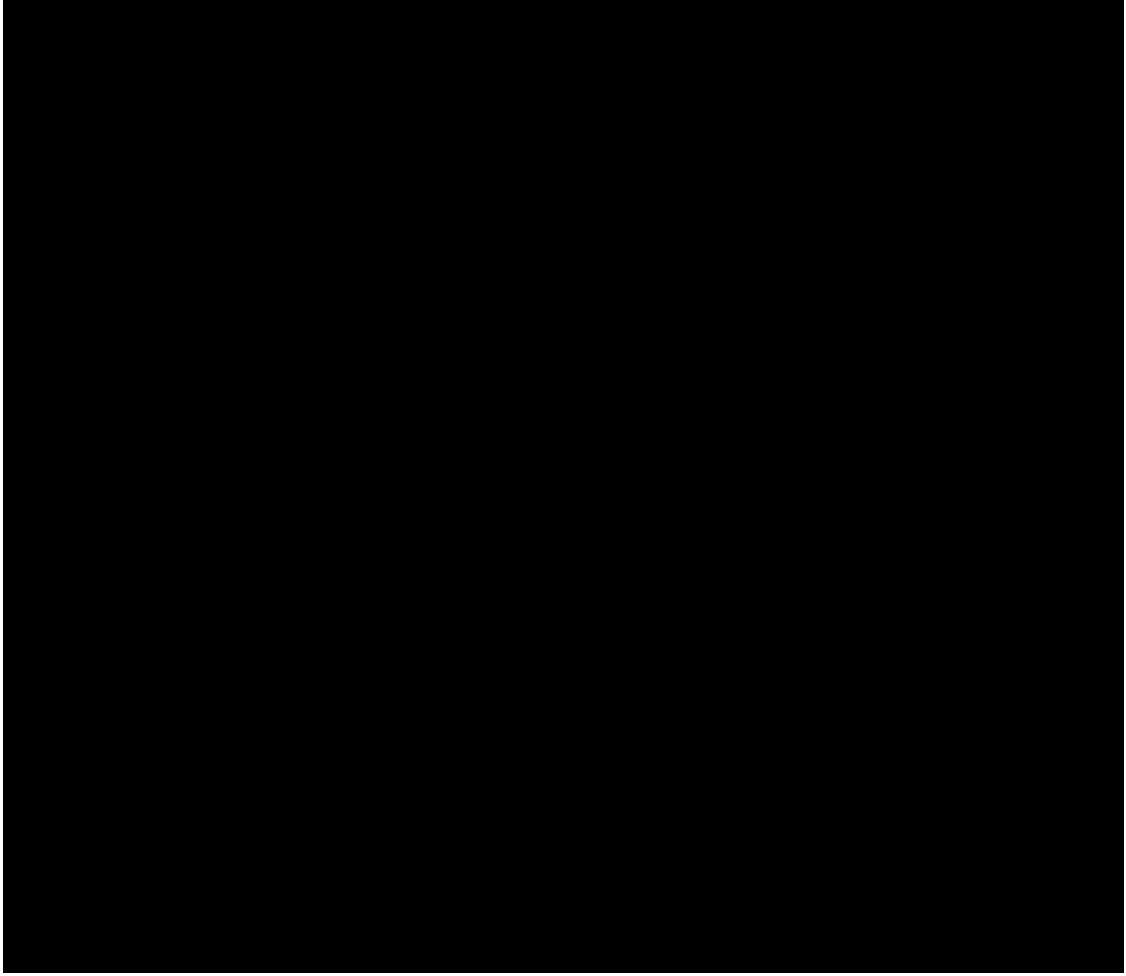
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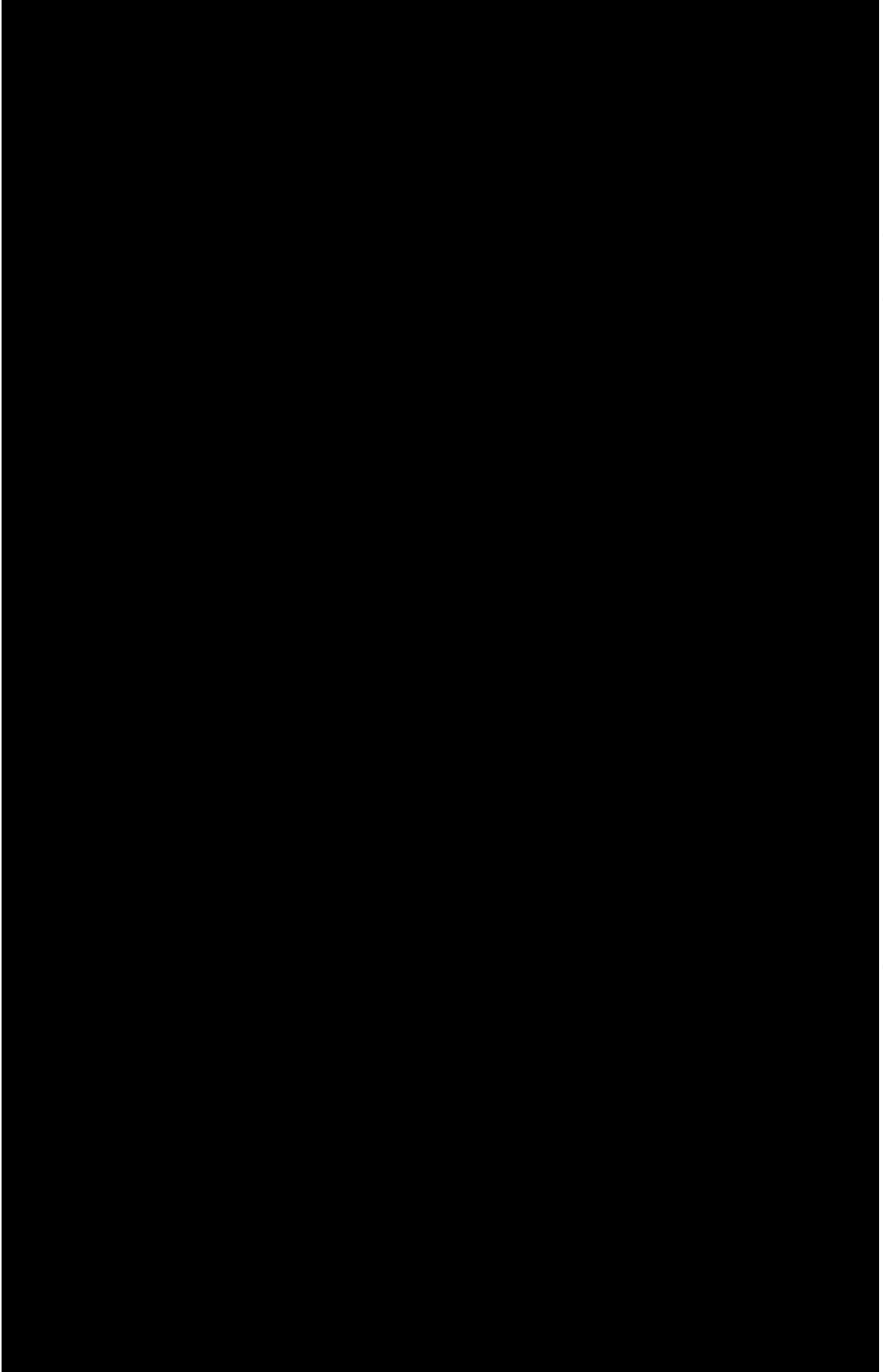
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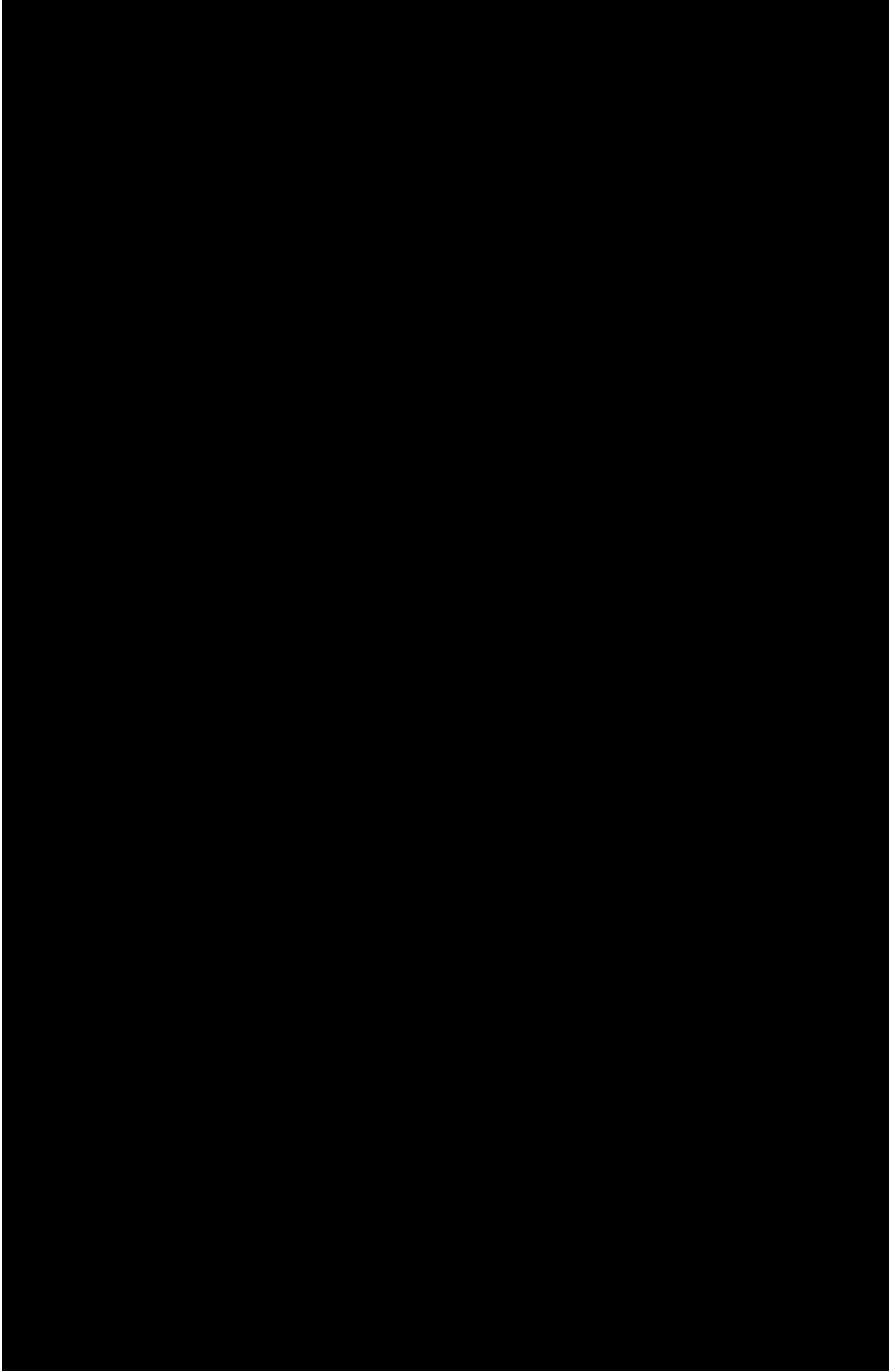
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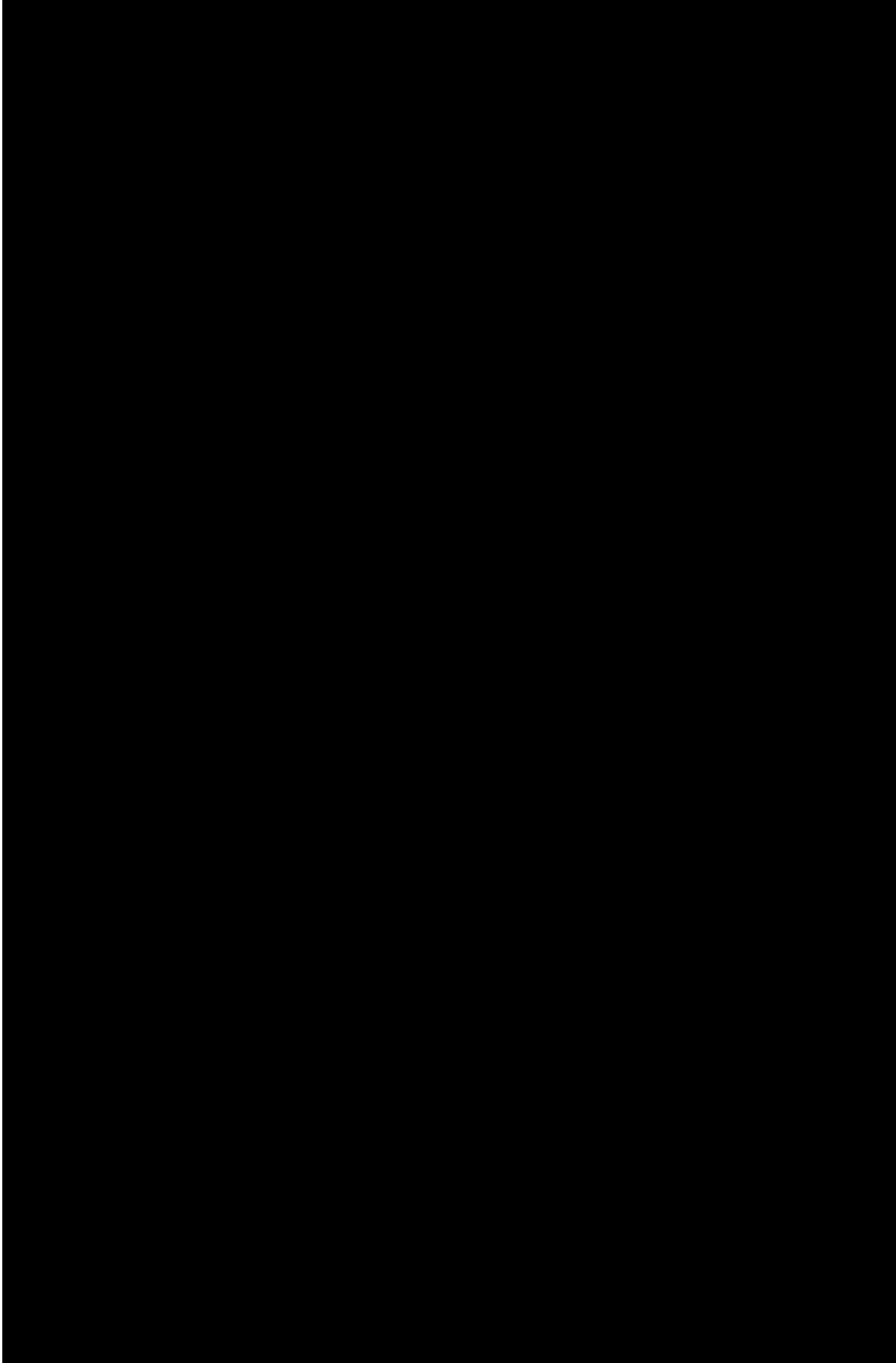
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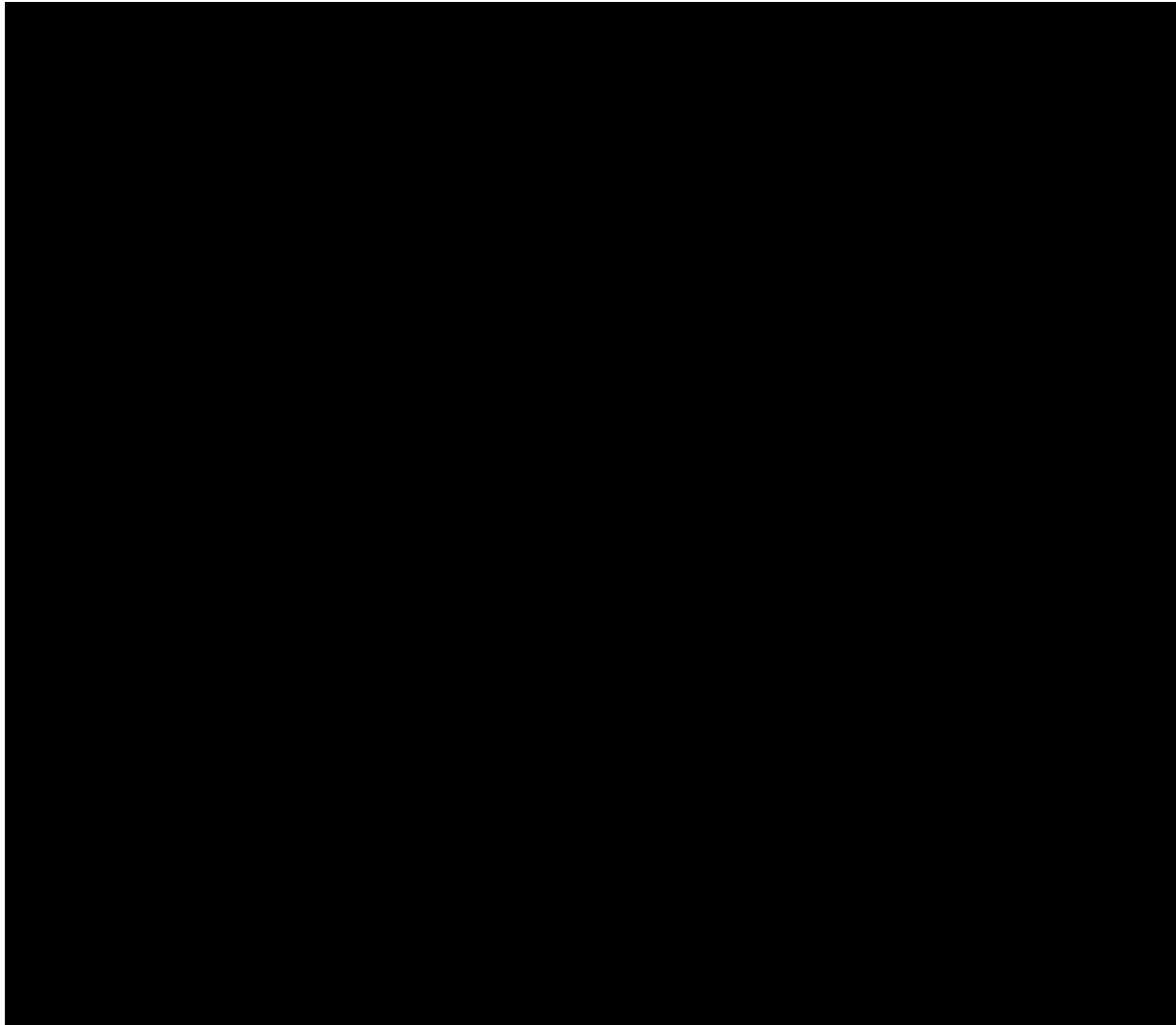
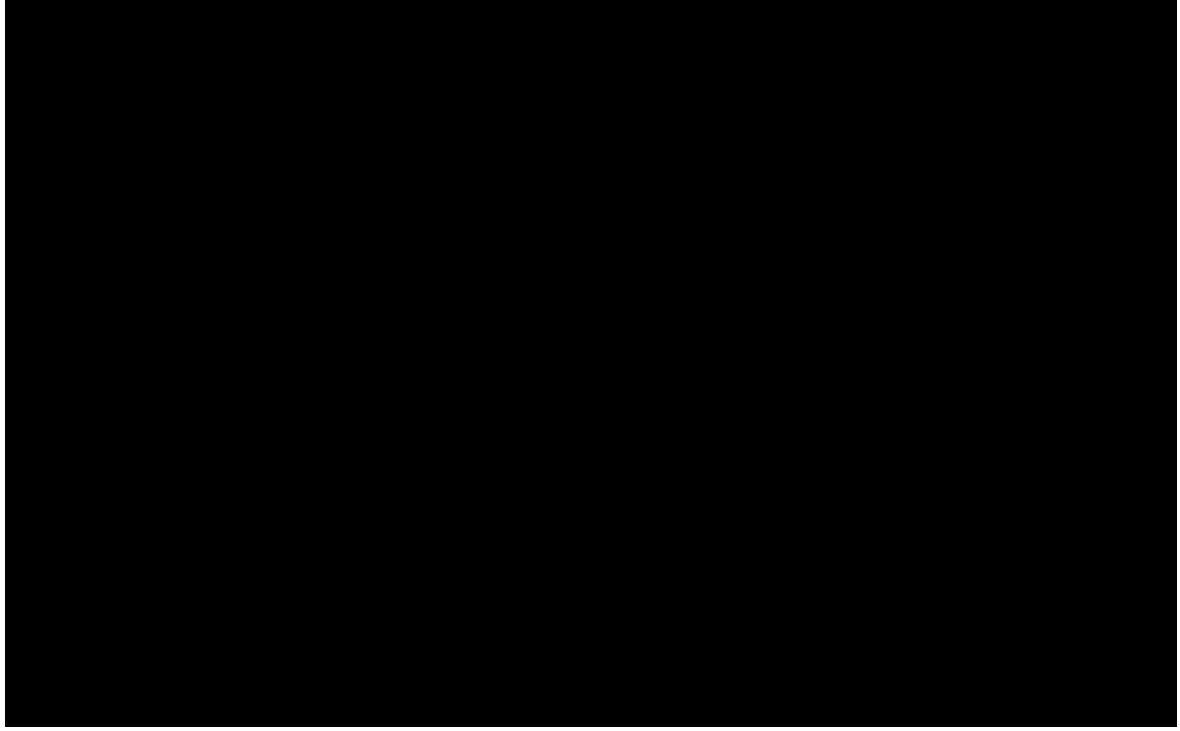
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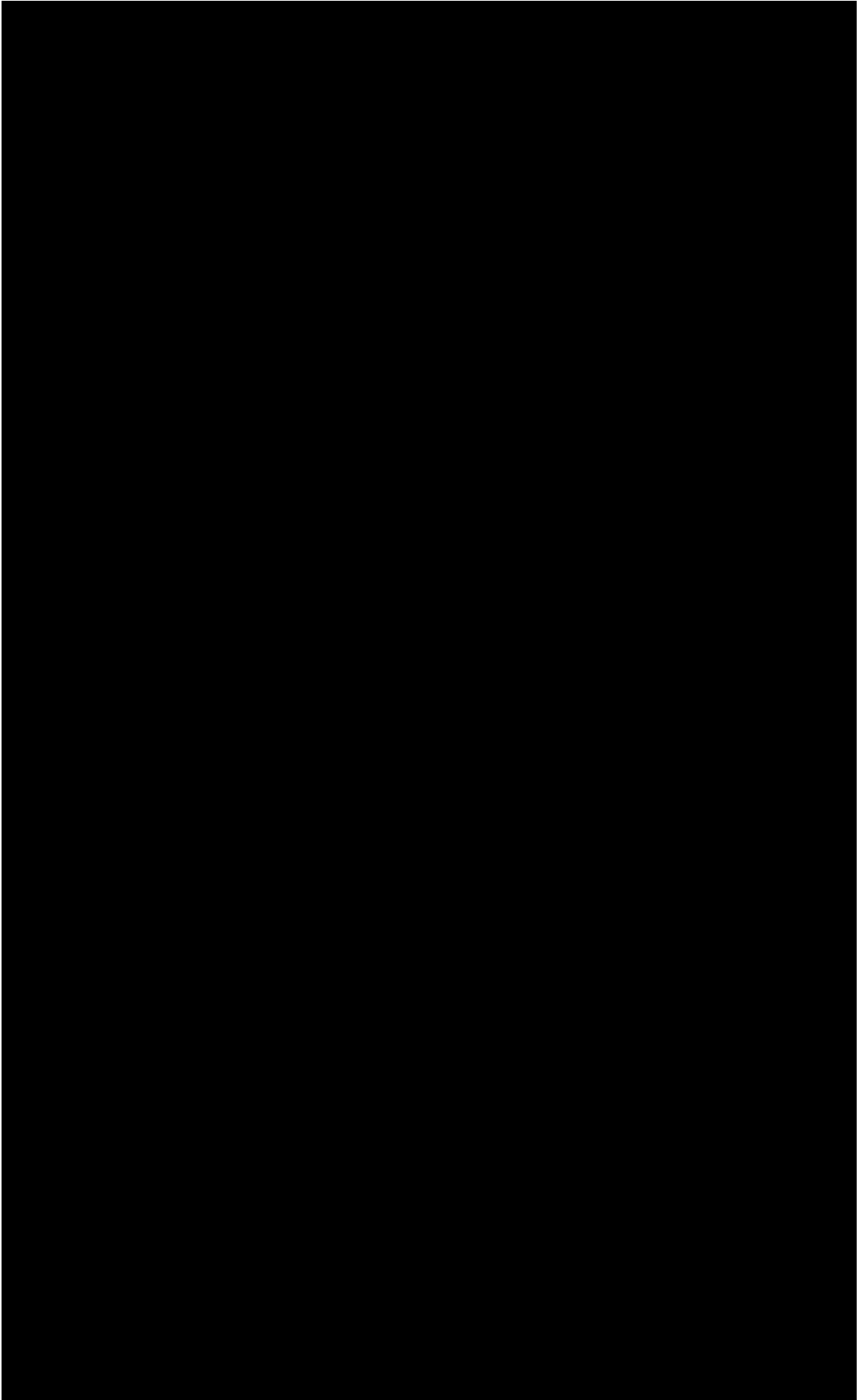
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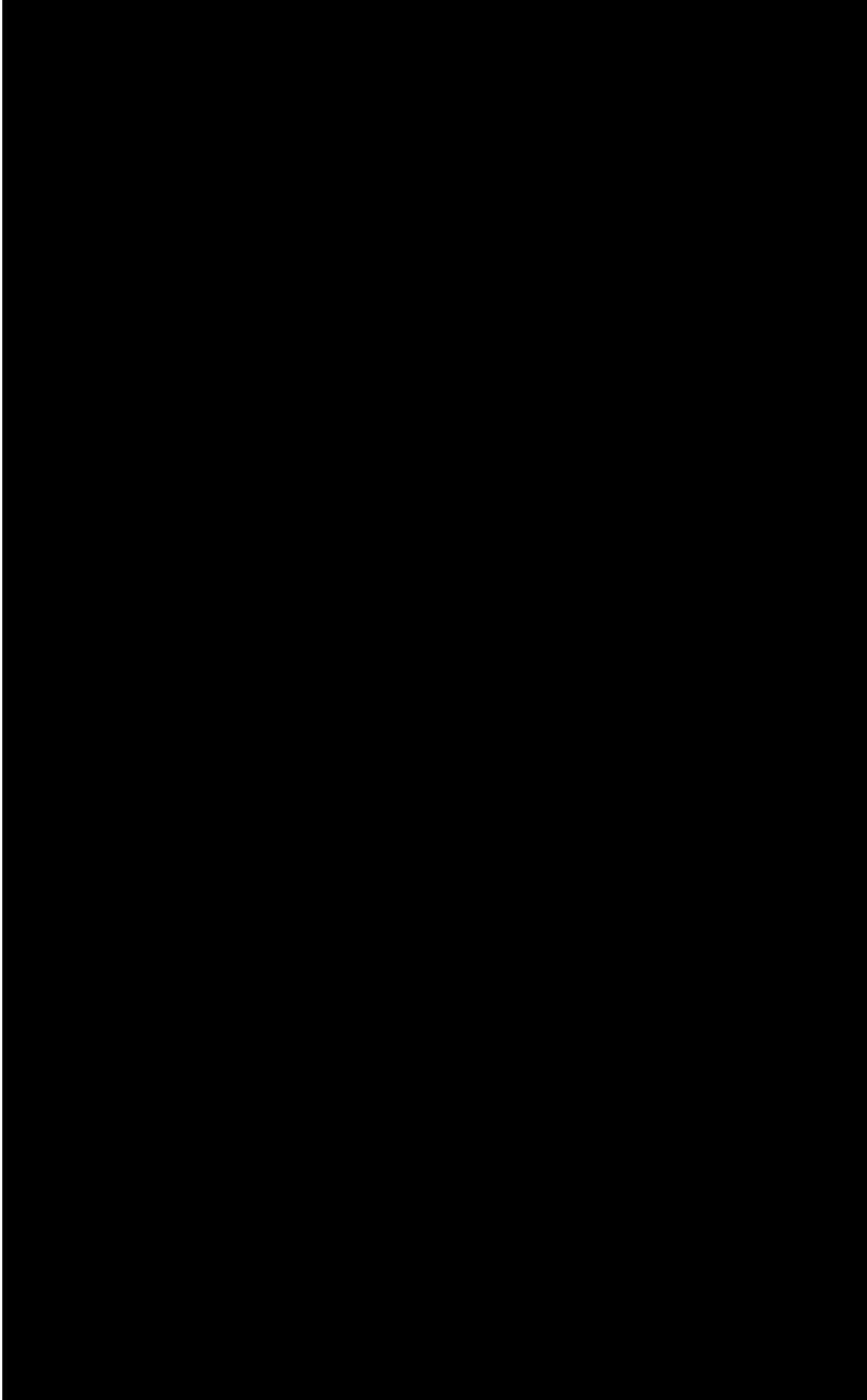
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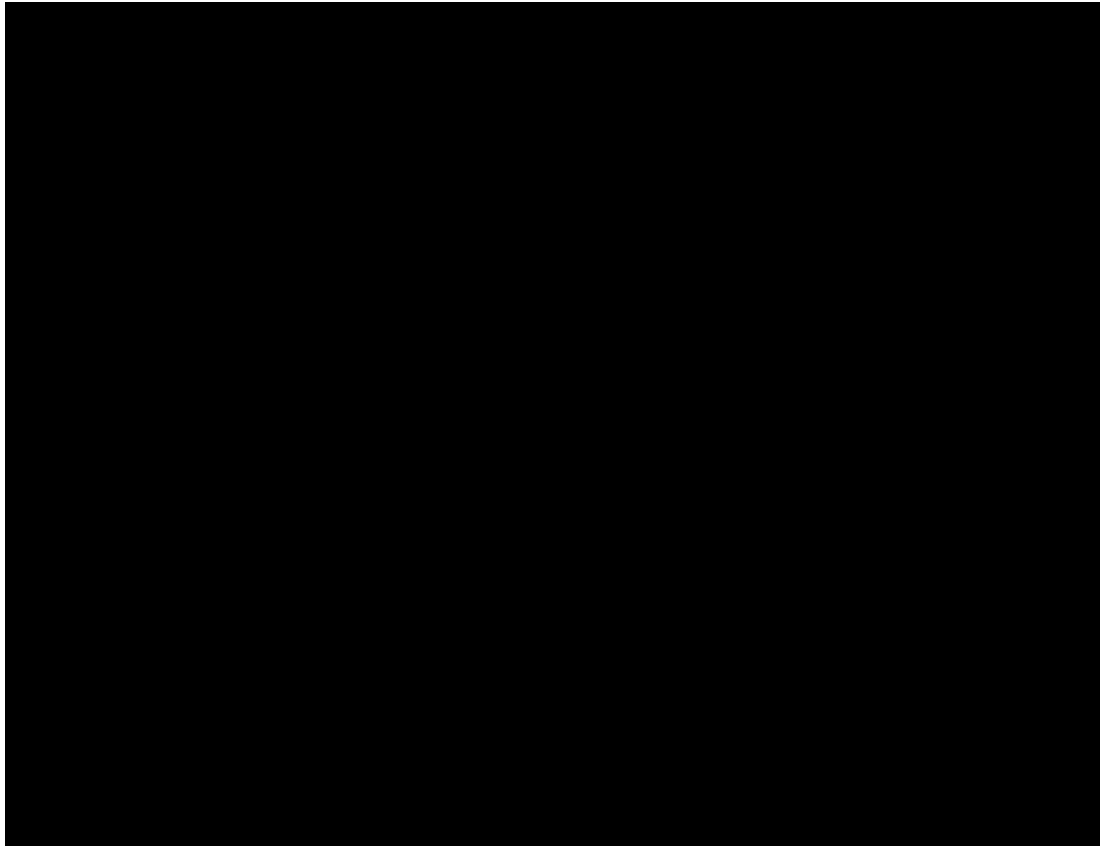
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10 Warranties and reporting

10.1 General warranties

- (a) Telstra represents and warrants to TUSMA that:
 - (i) Telstra is duly registered and incorporated;
 - (ii) the Agreement constitutes a valid and legally binding obligation on Telstra in accordance with its terms;
 - (iii) the execution, delivery and performance of the Agreement by Telstra does not:
 - (A) breach any law or any agreement which is binding on Telstra; or
 - (B) violate Telstra's constitution or any law applying to Telstra or the listing requirements or business rules of any stock exchange on which Telstra is listed;
 - (iv) Telstra has taken all corporate and other actions required to enter into the Agreement and to authorise the execution and delivery of the Agreement and the satisfaction of Telstra's obligations under the Agreement;
 - (v) Telstra has the requisite power and authority to enter into the Agreement and to carry out the obligations contemplated by the Agreement;

- (vi) Telstra has disclosed to TUSMA in writing any claim, litigation, proceeding, arbitration, investigation or material controversy that is pending or has been threatened or is contemplated which may have a material adverse effect on Telstra's ability to enter into the Agreement or carry out the services supplied under a Module;
- (vii) Telstra is not in default in the payment of any material sum or in the satisfaction of any material obligation in respect of any financial liability and no event has occurred which with the giving of notice, lapse of time or other condition could constitute a default in respect of any financial liability;
- (viii) as at the date of execution of this Agreement Telstra does not have a judicial decision against it (not including decisions under appeal) relating to employee entitlements which it has not paid by the due date for payment; and
- (ix) it will notify TUSMA of any judicial decision of the type caught by **clause 10.1(a)(viii)** should the judicial decision be handed down on or before the date that TUSMA executes the Agreement.

10.2 Performance of services

- (a) Telstra represents and warrants to TUSMA that it will provide all of the services set out in each Module, and that it will provide those services in accordance with the requirements of the relevant Module.
- (b) Without limiting any specific provisions of this Agreement, but subject to **clauses 10.2(c)** and **10.2(d)**, Telstra represents and warrants to TUSMA that:
 - (i) it will comply with the time frame for the performance of the services supplied under a Module as set out in the relevant Module or as otherwise agreed;
 - (ii) it will maintain all licences necessary to perform the services supplied under a Module;
 - (iii) the performance of the services under a Module, will not breach an obligation owed to another person; and
 - (iv) the performance of the services under a Module (excluding **Module F (Migration of Public Interest Services)**), will not infringe any Intellectual Property rights or moral rights of another person.
- (c) **Clause 10.2(b)** does not apply:
 - (i) in relation to services under **Module B (Standard Telephone Service USO)**, to the extent that those services relate to or affect Service Addresses for which Telstra is the primary universal service provider for the STS USO;
 - (ii) in relation to services under **Module C (Payphones USO)**, while Telstra is the primary universal service provider for the Payphones USO; and
 - (iii) in relation to services under **Module E (Emergency Call Service)**, while Telstra is the Emergency Call Person.

- (d) **Clause 10.2(b)** will apply at all times in relation to services under **Module D (Voice-only Customer Migration)** and **Module F (Migration of Public Interest Services)**.
- (e) Telstra is fully responsible for the performance of its obligations under this Agreement, even though Telstra may have subcontracted any of them under a subcontract or otherwise. Telstra will remain liable to TUSMA for the acts, defaults and neglects of any subcontractor, or any employee or agent of a subcontractor, as fully as if they were Telstra's acts, defaults or neglects.

10.3 Reporting

- (a) Telstra will report on its performance of the services under a Module (including in respect of its performance against the performance standards and performance benchmarks referred to in the Modules) in accordance with applicable regulation, other agreed criteria, and any other reasonable requirements of TUSMA on a quarterly or other agreed basis in a format agreed by the parties in this Agreement.
- (b) The parties agree that:
 - (i) to the extent reasonably possible, reporting under this Agreement will be consistent with Telstra's regulatory reporting obligations;
 - (ii) subject to **clause 10.3(b)(iii)**, Telstra will not be required to report on an individual service basis or more frequently than quarterly; and
 - (iii) TUSMA will have the right to require the provision by Telstra of separate reports or additional information where it considers it necessary to investigate any possible non-compliance by Telstra with this Agreement or to satisfy a Ministerial request.

11 Dispute resolution

11.1 Expert determination

- (a) The parties agree that certain types of disputes can be resolved through independent expert determination. The types of disputes that the parties agree will be subject to expert determination are disputes relating to:
 - (i) the matters referred to in **clause 5.5(b)** (10 year review);
 - (ii) the matters referred to in **clause 6(f)** (amount of anticipated reduction in Telstra's Costs under a cost savings proposal);
 - (iii) the matters referred to in **clause 7.2(g)** (amount of payment adjustment);
 - (iv) the matters referred to in **clause 9.5(d)** (Telstra's Costs in providing Transition Services);
 - (v) the matters referred to in **clause 9A(c)** (Permanent Cessation of Rollout);
 - (vi) the matters referred to in **clause 26.2(f)** (business rules for Exceptional Copper Events in **clause 26(a)(v)**);
 - (vii) the matters referred to in **clauses 32.2(c)(i)(B), 32.3(d) and 32.4(g)** (payphone migration);

- (viii) the matters referred to in **clause 34.2(b)** (Customer Management Fee and Priority Assistance Customer Management Fee);
 - (ix) the matters referred to in **clause 34.3(b)** (rate card for Reasonable Connection Costs);
 - (x) the matters referred to in **clause 40(d)** (amounts to be paid under **Module D (Voice-only Customer Migration)**);
 - (xi) the matters referred to in **clause 45.1(c)** (Telstra's Costs and revenues of performing the Emergency Call Service);
 - (xii) the matters referred to in **clause 46(c)** (estimate of Telstra's Costs for upgrade to E000 platforms);
 - (xiii) the matters referred to in **clause 46(f)** (amount to be reimbursed to Telstra for upgrade to E000 platforms); and
 - (xiv) any technical issues concerning the provision of services under a Module.
- (b) If a party wishes to refer a matter for expert determination in accordance with the terms of this Agreement, that party must give notice to the other party.
 - (c) If a notice is given by a party under **clause 11.1(b)**, the provisions of this **clause 11.1** will apply. However, nothing in this **clause 11.1** will prevent either party from seeking urgent interlocutory relief.
 - (d) Expert determinations will be made by a panel of three independent experts, to be determined as follows:
 - (i) within 14 days after a notice is given under **clause 11.1(b)**, each party must nominate one expert and must give the other party written notice of its nominated expert together with written evidence that its nominated expert has accepted the appointment;
 - (ii) the parties must jointly instruct their nominated experts to appoint the third expert and to give each party written notice of the third expert they appoint, together with evidence that the third expert has accepted the appointment; and
 - (iii) if the nominated experts are unable to agree the appointment of a third expert, the parties must jointly request The Institute of Arbitrators & Mediators Australia to nominate the third expert, in which case the parties must jointly appoint the third expert nominated by The Institute of Arbitrators & Mediators Australia.
 - (e) In addition to any other terms of reference which the parties agree to provide to the expert panel in relation to the matters in dispute, panel members must have regard to the terms of this Agreement and must not make a decision or determination which is inconsistent with the terms of this Agreement.
 - (f) In respect of expert determinations made under this **clause 11.1**, unless otherwise agreed by the parties:
 - (i) determinations will be final and binding on the parties;
 - (ii) proceedings will be conducted in accordance with The Institute of Arbitrators & Mediators Australia's Expert Determination Rules (in which case the

expert panel will be treated as if it were “the Expert” for the purpose of those rules), but only to the extent they are not inconsistent with this **clause 11.1**;

- (iii) either party may be represented or accompanied by its legal and other advisers;
- (iv) the experts must be suitably qualified with appropriate expertise, practical experience and industry knowledge;
- (v) the experts will not be bound by the rules of evidence and may receive any information in such manner as the experts thinks fit;
- (vi) the experts shall make their determination on the matters in dispute:
 - (A) on the basis of information received from the parties and the expert's own expertise;
 - (B) in accordance with the law and the terms of this Agreement;
 - (C) as expeditiously as possible after receipt of the parties' submissions or any subsequent conference with the parties; and
 - (D) in writing with reasons;
- (vii) decisions (including the final determination) of the expert panel (including as “the Expert” under the The Institute of Arbitrators & Mediators Australia's Expert Determination Rules) will be made as follows:
 - (A) by unanimous agreement; or
 - (B) if unanimous agreement cannot be reached, by majority; or
 - (C) if majority agreement cannot be reached, by the decision of the expert that was not appointed by a party under **clause 11.1(d)(i)**;
- (viii) if the expert panel considers that additional terms of reference are needed, it must request the parties to submit (either alone or together) additional terms of reference. If the parties make separate submissions, the panel must adopt the terms of reference that are common to those submissions and must notify the parties of the other terms of reference in those submissions that it has determined it will have regard to;
- (ix) the process in Schedule B of the Institute of Arbitrators & Mediators Australia's Expert Determination Rules will not apply but, in any event, the process by which the proceedings are to be conducted by the expert panel must provide that:
 - (A) the parties are given an equal opportunity to make submissions to the expert panel; and
 - (B) a determination will not be made unless each party has been given the opportunity to make at least one submission to the expert panel; and
- (x) the parties must equally share the professional fees of the independent experts.

11.2 Internal escalation

- (a) The parties must, acting in good faith, attempt to resolve all other disputes through a process of escalation which requires (at a minimum):
 - (i) two levels of escalation within the senior management group of each party; and
 - (ii) representatives of both parties in each level of escalation working together collaboratively to resolve the relevant dispute within a reasonable timeframe.
- (b) Failing resolution of the dispute through the escalation process, the parties may agree to attempt to resolve the dispute through mediation, or have the dispute determined through binding arbitration or expert determination.
- (c) The parties may not commence legal proceedings (other than to seek urgent interlocutory relief) until the escalation process has been completed in relation to a dispute.
- (d) The parties must continue to perform their respective obligations under this Agreement while the dispute is being resolved.

12 GST

12.1 Interpretation

Words or expressions used in this clause which are defined in the GST Law have the same meaning in this clause.

12.2 GST inclusive amounts

For the purposes of this Agreement any consideration to be paid or provided for a supply made under or in connection with this Agreement (unless specifically described in this Agreement as GST inclusive), is exclusive of GST.

12.3 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

12.4 Tax invoices

TUSMA need not make a payment for a taxable supply made under or in connection with this Agreement in respect of a taxable supply until Telstra has given TUSMA a tax invoice for the supply to which the payment relates.

12.5 Adjustment note

Telstra must give TUSMA an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this Agreement within seven days after the date Telstra becomes aware of the adjustment event.

13 Confidential Information and Intellectual Property

13.1 Confidential Information not to be disclosed

- (a) Subject to **clause 13.3**, a party to this Agreement must not, without the prior written consent of the other party, use or disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the use or disclosure of the Confidential Information, a party may impose such conditions as it thinks fit and the other party agrees to comply with these conditions.

13.2 Written undertakings

- (a) A party may at any time require the other party to arrange for:
 - (i) its advisers; or
 - (ii) any other third party, other than a TUSMA employee, to whom information may be disclosed pursuant to **clause 13.3(a)** or **13.3(e)**to give such written undertakings as may be reasonably required in relation to their access to, and use of, Confidential Information.
- (b) If the other party receives a request under **clause 13.2(a)** it agrees to arrange promptly for all such undertakings to be given.

13.3 Exceptions to obligations

The obligations of the parties under this **clause 13** will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
- (c) is disclosed by TUSMA to the responsible Minister;
- (d) is disclosed by TUSMA in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by TUSMA within TUSMA's organisation, or with another Commonwealth agency, where this serves TUSMA's legitimate interests;
- (f) is authorised or required by law, including under this Agreement, under a licence, under the rules of the Australian Stock Exchange or otherwise, to be disclosed;
- (g) is disclosed by Telstra to any government agency (Commonwealth or State) responsible for tax or duty under any law or any order, or in connection with any review (formal or informal) or audit by such a government agency, or which is disclosed by Telstra to such a government agency as part of any application for advice or a ruling from a responsible government agency or any return or other filing made under any tax or duty law; or
- (h) is in the public domain otherwise than due to a breach of this **clause 13**.

13.4 Obligations on disclosure

Where a party discloses Confidential Information to another person:

- (a) pursuant to **clauses 13.3(a), 13.3(b), or 13.3(e)**, the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to **clauses 13.3(c), 13.3(d) and 13.3(g)**, the disclosing party must notify the receiving party that the information is Confidential Information.

13.5 Additional confidential information

- (a) The parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- (b) Where the parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of, this Agreement, on the date by which both parties have signed this documentation.

13.6 Period of confidentiality

The obligations under this **clause 13** continue, notwithstanding the expiry or termination of this Agreement.

13.7 No reduction in privacy obligations

Nothing in this **clause 13** derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Agreement, in relation to the protection of personal information.

13.8 Confidentiality of provisions

The provisions of this Agreement, unless otherwise agreed by the parties, are not considered by the parties to be confidential.

13.9 IP licence

Unless otherwise agreed and subject to **clause 48(c)**, Telstra grants to TUSMA, or will obtain for TUSMA's benefit, a perpetual, irrevocable, non-exclusive, royalty free licence in Australia to use any Intellectual Property in the Telstra Materials that are provided to TUSMA under the Agreement for the sole purpose of allowing TUSMA to obtain the benefit of the services provided to TUSMA under the Agreement.

14 Protection of Personal Information

14.1 Application of the clause

- (a) This **clause 14** applies only where Telstra deals with personal information when, and for the purpose of, providing services under a Module of this Agreement.

- (b) If there is a material change in any principle or code referred to in **clause 14.2** which makes compliance with this **clause 14** more onerous for Telstra and, but for this **clause 14**, Telstra would not otherwise be required to comply with, then:
 - (i) Telstra may request that TUSMA agree to amend this **clause 14** so that the material change does not impose additional obligations on Telstra;
 - (ii) TUSMA will consider Telstra's request in good faith; and
 - (iii) if TUSMA agrees to Telstra's request, the parties will amend this **clause 14** in accordance with **clause 24.2**.

14.2 Obligations

Telstra acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the relevant services under a Module:

- (a) to use or to disclose personal information obtained during the course of providing those services only for the purposes for which it is collected and for fulfilling its obligations under this Agreement;
- (b) not to do any act or engage in any practice that would breach an 'Information Privacy Principles' (IPPs) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose personal information Telstra holds, that complaints about acts or practices of Telstra may be investigated by the Privacy Commissioner who has power to award compensation against Telstra in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing), a 'National Privacy Principles' (NPPs) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to Telstra, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or
 - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a party to this Agreement;
- (g) to immediately notify the agency if Telstra becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this **clause 14**, whether by Telstra or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this **clause 14**; and

- (i) to ensure that any employee of Telstra who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of Telstra set out in this **clause 14**.

14.3 Subcontracts

Telstra agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as Telstra has under this **clause 14**, including the requirement in relation to subcontracts.

14.4 Definitions

In this **clause 14**, the terms 'agency', 'approved privacy code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'personal information', also has the meaning it has in section 6 of the Privacy Act being:

"information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion"

15 Compliance with laws and policies

15.1 General

Without limiting specific provisions of this Agreement, Telstra must, in relation to its performance of services under a Module:

- (a) comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) and must not enter into a subcontract under this Agreement with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace as an employer currently not complying with the Act;
- (b) ensure that funds provided under this Agreement, including subcontracts, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism, including "terrorist organisations" as defined in Division 102 of the *Commonwealth Criminal Code Act 1995* (Cth) and listed in regulations made under the act and regulations made under the *Charter of the UN Act 1945* (Cth);
- (c) observe the same standards and obligations that are imposed on Commonwealth personnel under the *Occupational Health and Safety Act 1991* (Cth);
- (d) comply with the obligations imposed under the Lobbying Code of Conduct (Cth), if applicable;
- (e) comply with all relevant legislation of the Commonwealth, or of any State, Territory or local authority including:
 - (i) the *Crimes Act 1914* (Cth);
 - (ii) the *Disability Discrimination Act 1992* (Cth);
 - (iii) the *Racial Discrimination Act 1975* (Cth);

- (iv) the *Sex Discrimination Act 1984* (Cth);
 - (v) the *Age Discrimination Act 2004* (Cth) and the *Age Discrimination (Consequential Provisions) Act 2004* (Cth);
 - (vi) any obligations it has under the *Occupational Health and Safety Act 1991* (Cth); and
 - (vii) the *Fair Work Act 2009*; and
- (f) comply with all applicable workers compensation laws.

15.2 Workplace relations

Without limiting specific provisions of this Agreement, Telstra must undertake to provide TUSMA with details of all court and industrial tribunal findings, orders and penalties made against Telstra and their subcontractors relevant to the provision of the services under a Module during its term (and any extension of its term). The details must include information about what action was taken or is proposed to be taken in relation to each finding, order or penalty.

15.3 Genuine dispute resolution

Telstra must provide genuine dispute resolution procedures in its enterprise agreements made under the *Fair Work Act 2009* after the commencement of the fair work principles equivalent to those in Schedule 6.1 of the *Fair Work Regulations 2009*.

15.4 Access to documents

- (a) In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- (b) Telstra acknowledges that this Agreement is a Commonwealth contract.
- (c) Where TUSMA has received a request for access to a document created by, or in the possession of, Telstra or any subcontractor that relates to the performance of this Agreement (and not to the entry into this Agreement), TUSMA may at any time by written notice require Telstra to provide the document to TUSMA and Telstra must, at no additional cost to TUSMA, promptly comply with the notice.
- (d) Telstra must include in any subcontract relating to the performance of this Agreement provisions that will enable Telstra to comply with its obligations under this **clause 15.4**.

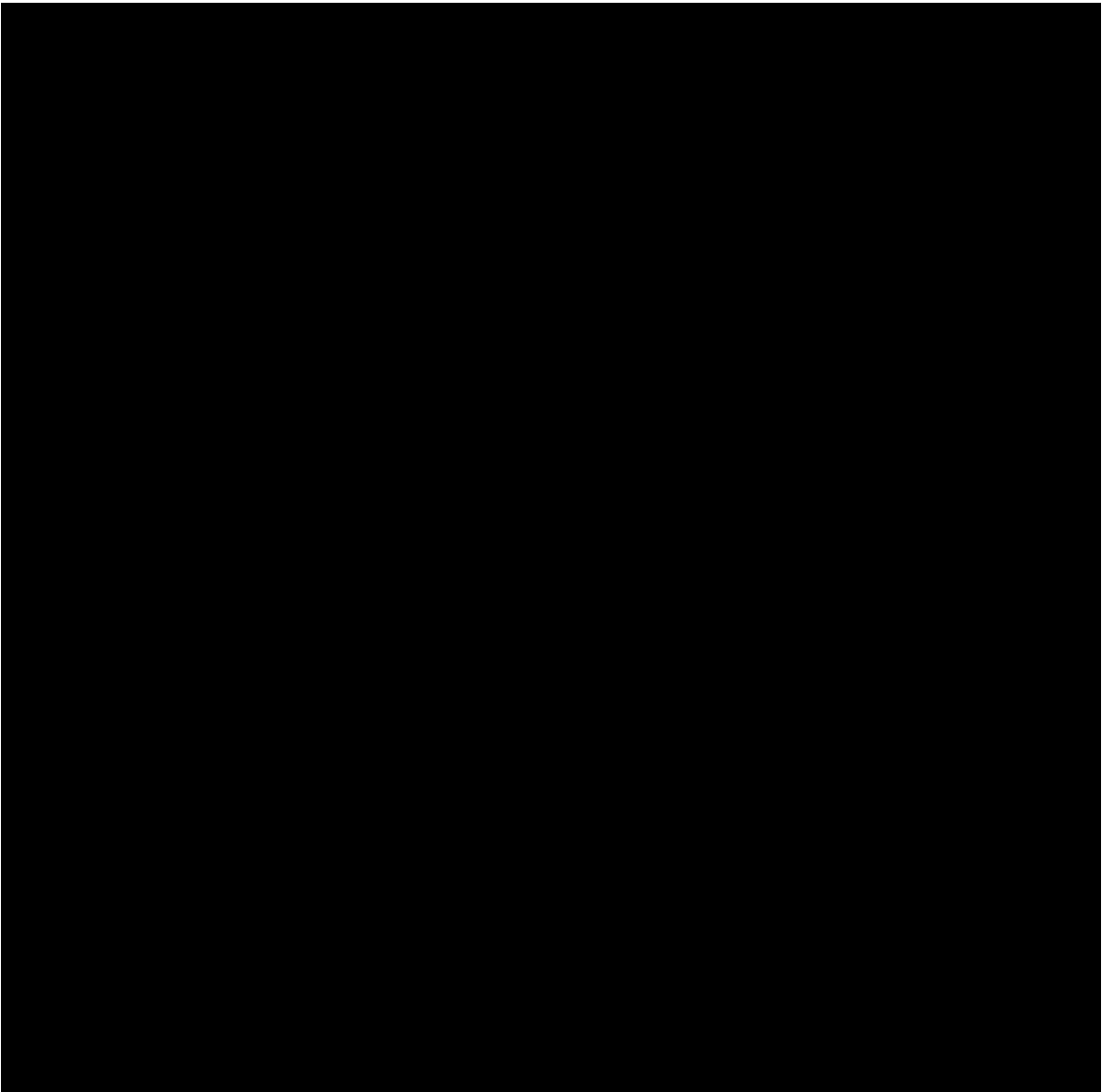
16 Security and fraud

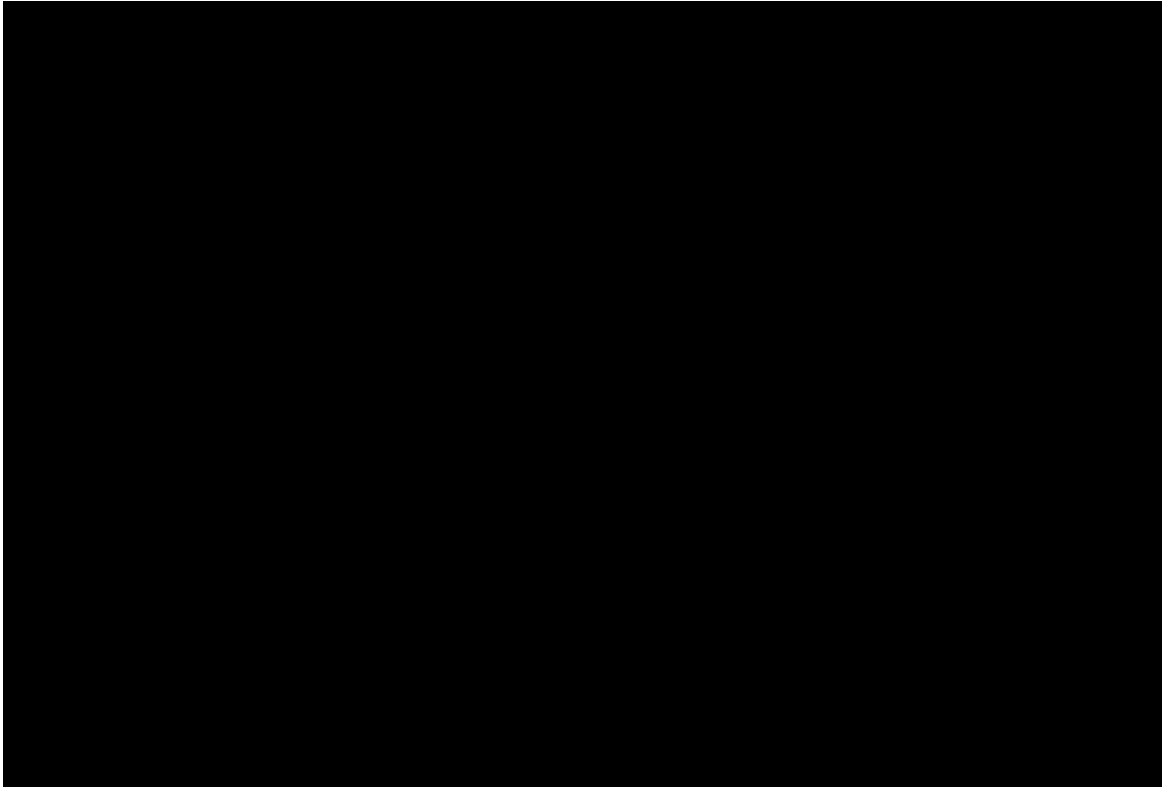
Without derogating from Telstra's obligations in this Agreement, Telstra must comply with the requirements of:

- (a) TUSMA's security policies, including without limitation, TUSMA's Protective Security Policy that requires Telstra to:
 - (i) obtain the appropriate security clearances for Telstra's personnel requiring access to security classified information;
 - (ii) require Telstra and Telstra Personnel to wear a security or identification pass while on TUSMA's premises;

- (iii) ensure Telstra's premises and facilities are suitable for the storage and handling of security classified information up to and including the nominated level if required to keep security classified information on its premises; and
 - (iv) have systems able to meet designated information security standards relevant to these activities if Telstra electronically processes, stores, transmits or disposes of security classified information;
- (b) the Commonwealth Protective Security Manual or any replacement manual, in force from time to time, and issued by the Attorney-General's Department; and
- (c) the Commonwealth Fraud Control Guidelines or any replacement guidelines, in force from time to time, and issued by the Minister for Home Affairs under regulation 16A of the *Financial Management and Accountability Regulations 1997* (Cth),

which will be provided to Telstra if required.





18 Conflict of interest

18.1 Warranty that there is no conflict of interest

Telstra warrants that at the date of signing this Agreement no conflict with the interests of TUSMA exists or is likely to arise in the performance of services under a Module.

18.2 Notification of a conflict of interest

If, during the performance of services under a Module a conflict of interest arises, or appears to have arisen, Telstra agrees to:

- (a) notify TUSMA immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as TUSMA may reasonably require to resolve or otherwise deal with the conflict.

18.3 Obligation

Telstra agrees that it will not, and will use its best endeavours to ensure that any officer, employee, agent or subcontractor of Telstra does not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict Telstra in providing services under a Module to TUSMA fairly and independently.

18.4 NBN Definitive Agreements

For the purposes of this clause, TUSMA acknowledges and agrees that a conflict with the interests of TUSMA does not exist by reason of any action that is taken by Telstra in relation to an NBN Definitive Agreement, including:

- (a) entering into a NBN Definitive Agreement;
- (b) giving effect to a NBN Definitive Agreement; and
- (c) taking action to enforce a NBN Definitive Agreement.

19 Books and records

19.1 Telstra to keep books and records

Telstra must:

- (a) keep and must require its subcontractors to keep adequate books and records in sufficient detail to enable the amounts payable by TUSMA under this Agreement to be determined; and
- (b) retain for a period of seven years after termination or expiration of this Agreement all books and records relating to the services to be performed under a Module.

19.2 Examination of books and records

TUSMA and its representatives may, at reasonable times, review (including examine and copy) material in the possession of Telstra which is relevant to the services to be performed under a Module (including Telstra's books and records) and Telstra must fully assist in those reviews.

19.3 Answering questions and providing assistance

Telstra must give full and accurate answers to any questions TUSMA or its representative may have concerning books or records relating to this Agreement and provide all assistance reasonably requested by TUSMA in respect of any inquiry into or concerning the performance of the services under a Module or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to TUSMA), any request for information directed to TUSMA, and any inquiry conducted by Parliament or any Parliamentary committee.

19.4 Survival

This clause applies for the term of this Agreement and for a period of seven years from the termination or expiry of this Agreement.

20 Audit and access

20.1 Types of audits

Audits under **clause 20.2** may be conducted of:

- (a) Telstra's practices and procedures as they relate to this Agreement including security procedures;
- (b) the manner in which Telstra performs its obligations under this Agreement;
- (c) the compliance of Telstra's invoices and reports with its obligations under this Agreement;
- (d) Telstra's compliance with all its obligations under this Agreement;

- (e) Telstra's compliance with its confidentiality, privacy, security and Commonwealth policy obligations under this Agreement; and
- (f) any other matters determined by TUSMA to be relevant to the performance of Telstra's obligations under this Agreement.

20.2 Audits

- (a) Telstra must participate in audits of this Agreement at the frequency and in relation to the matters specified by TUSMA (including on an ad hoc basis if requested by TUSMA), for the purpose of ensuring that this Agreement is being properly performed and administered. TUSMA may appoint an independent person to assist in the audits. Audits may consider all aspects of Telstra's performance including but not limited to any performance indicators, benchmarks or targets.
- (b) Telstra must participate promptly and cooperatively in any audits conducted by TUSMA or its nominee.
- (c) Except for those circumstances in which notice is not practicable or appropriate (e.g. caused by a regulatory request with shorter notice or investigation of theft or breach of this Agreement), and without limiting any other right, recourse or remedy of TUSMA, TUSMA must give Telstra reasonable notice of an audit and where reasonably practicable an indication of which documents and/or class of documents the auditor may require.
- (d) Subject to any express provisions in this Agreement to the contrary each party must bear its own costs of any audits.
- (e) Subject to **clauses 20.2(a)** and **20.2(b)** the requirement for, and participation in, audits does not in any way reduce Telstra's responsibility to perform its obligations in accordance with this Agreement.
- (f) TUSMA must use reasonable endeavours to ensure that audits performed pursuant to **clause 20.2(a)** do not unreasonably delay or disrupt in any material respect Telstra's performance of its obligations under this Agreement.
- (g) Telstra must promptly take, at no additional cost to TUSMA, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way Telstra has under this Agreement:
 - (i) supplied any goods or services; or
 - (ii) calculated fees, or any other amounts or charges billed to TUSMA.

20.3 Access to Telstra's premises and records

- (a) For the purposes of **clause 20.2** and this **clause 20.3**, Telstra must, and must ensure that its subcontractors grant TUSMA and its nominees or the Auditor-General access as required by TUSMA, to Telstra's premises and data, records, accounts and other financial material or material (including TUSMA's property) relevant to the performance of this Agreement, however and wherever stored or located, under Telstra's or its subcontractor's custody, possession or control for inspection and/or copying.
- (b) In the case of documents or records stored on a medium other than in writing, Telstra must make available on request at no additional cost to TUSMA such reasonable facilities as may be necessary to enable a legible reproduction to be created.

- (c) Subject to **clause 20.2(c)** and without limiting any other provision of this Agreement, the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions and/or powers respectively, may, at reasonable times:
- (i) access the premises of Telstra;
 - (ii) require the provision by Telstra, its employees, agents or subcontractors, of records and other information which are related to this Agreement; and
 - (iii) access, inspect and copy documentation and records or any other matter relevant to Telstra's obligations or performance of this Agreement, however stored, in the custody or under the control of Telstra, its employees, agents or subcontractors.
- (d) Telstra must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this **clause 20.3** with respect to the subcontractor's premises, data, records, accounts, financial material and information and those of its employees, agents or subcontractors.
- (e) This **clause 20.3** applies for the term of this Agreement and for a period of seven years from the date of its expiration or termination.
- (f) In the exercise of the general rights granted by **clause 20.3**, TUSMA must use reasonable endeavours not to unreasonably interfere with Telstra's performance under this Agreement in any material respect.
- (g) If in exercising the rights granted under **clause 20.1**, **clause 20.2** or **clause 20.3** TUSMA unreasonably interferes with Telstra's performance of its obligations under this Agreement in a material respect and that interference substantially delays Telstra in performing its obligations it may request an extension of time to perform its obligations.
- (h) TUSMA must not unreasonably refuse a request pursuant to **clause 20.3(g)** where Telstra substantiates the request, within a reasonable time, to the satisfaction of TUSMA, provided that:
- (i) Telstra advised TUSMA of the delay within 15 days of the exercise of the rights and the delay occurring;
 - (ii) the delay could not have been reasonably contemplated or allowed for by Telstra before entering this Agreement; and
 - (iii) Telstra has taken or takes all reasonable steps to minimise any delay.
- (i) In no circumstances shall any extension of time pursuant to **clause 20.3(h)** exceed the amount of any delay directly arising from the exercise of the rights.
- (j) In no circumstances shall Telstra be entitled to any delay costs or other costs or expenses of whatever nature relating in any way to the exercise of any rights under **clause 20.1**, **clause 20.2** or **clause 20.3** other than to the extent expressly provided for under **clause 20.3(l)**.
- (k) Without limiting any of its other obligations under this Agreement Telstra must, at its cost, ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to this Agreement or its performance are maintained in such a form and

manner as to facilitate access and inspection under **clause 20.1**, **clause 20.2** or **clause 20.3**.

- (l) If Telstra reasonably believes that the exercise of the rights granted under **clause 20.1**, **clause 20.2** or **clause 20.3** will cause Telstra to incur direct expenses which, having regard to the value of this Agreement, are substantial and materially exceed those which it would otherwise have to incur but for this **clause 20 (excessive direct expenses)**, it may give notice of those excessive direct expenses to TUSMA. If Telstra substantiates that its direct expenses in complying with this **clause 20** are excessive TUSMA and Telstra shall negotiate an appropriate reimbursement, but in no circumstances shall any reimbursement be greater than the direct expenses incurred.

20.4 No restriction

Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of TUSMA under this Agreement are in addition to any other power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

21 Notices

21.1 Giving of notices

- (a) A party giving notice or notifying under this Agreement must do so in writing or electronically:
- (i) directed to the recipient's address for notices; and
 - (ii) hand delivered or sent, by pre-paid post, facsimile or electronically to that address.
- (b) The parties' addresses and facsimile numbers for notices are specified as follows:

Telstra

Address: Level 38 – Telstra Centre
242 Exhibition Street
Melbourne Victoria 3000
Fax number: +61 3 9650 9306
Attention: Group General Counsel

Commonwealth

Address: Level 1, 44 Sydney Avenue
Forrest ACT 2603
Fax number: +61 2 6271 1377
Attention: Brian Kelleher
Assistant Secretary, USO Branch
NBN Implementation Division

- (c) A party may vary its address for notices from time to time by notice in writing to the other party.

21.2 Receipt of notice

A notice given in accordance with **clause 21.1** is taken to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid post, two Business Days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within one Business Day after the transmission, the recipient informs the sender that it has not received the entire notice; or
- (d) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

22 Waiver

- (a) If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- (b) A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- (c) In this **clause 22**, 'rights' means rights or remedies provided by this Agreement or at law.

23 Relationship

- (a) Telstra must not represent itself, and must ensure that its officers, employees, contractors and agents do not represent themselves, as being an officer, employee, partner or agent of TUSMA, or as otherwise able to bind or represent TUSMA.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

24 Miscellaneous

24.1 Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.

24.2 Variation

No agreement or understanding varying or extending this Agreement shall be legally binding upon either party unless in writing and signed by both parties.

24.3 Assignment

- (a) Subject to **clause 24.3(b)**, a party cannot assign its obligations, and agrees not to assign its rights, under this Agreement without, in either case, obtaining prior approval in writing from the other party.
- (b) TUSMA may assign its rights under this Agreement to any Commonwealth authority or Commonwealth company (as defined in the *Commonwealth Authorities and Companies Legislation 1997* (Cth)) without obtaining Telstra's prior approval unless the assignee is NBN Co.

24.4 Novation

Telstra agrees not to consult with any other person (other than its advisers) for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting TUSMA.

24.5 Governing law and jurisdiction

This Agreement is governed by the laws in the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

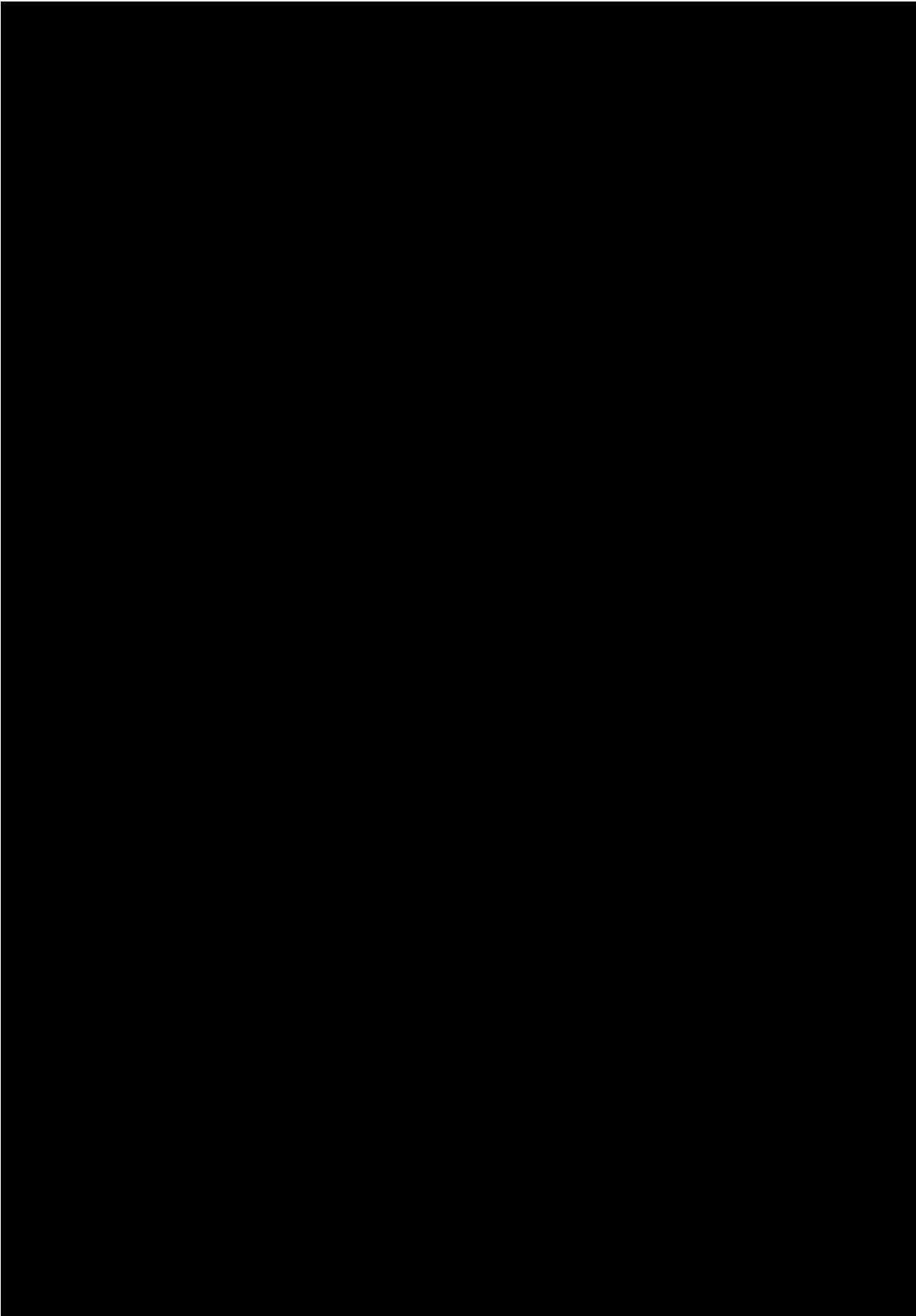
24.6 Severability

If any part of this Agreement is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Agreement shall not be affected and shall be read as if that part had been severed.

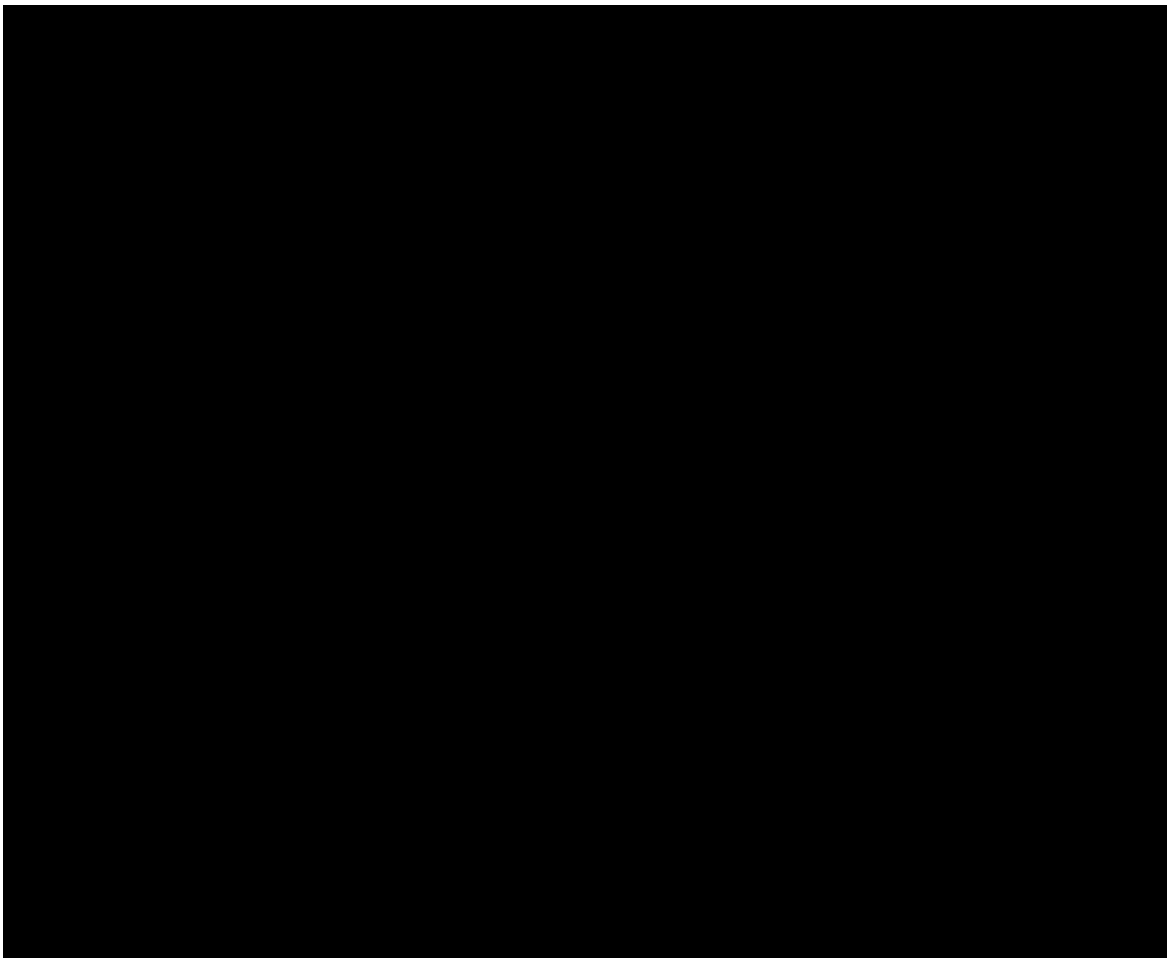
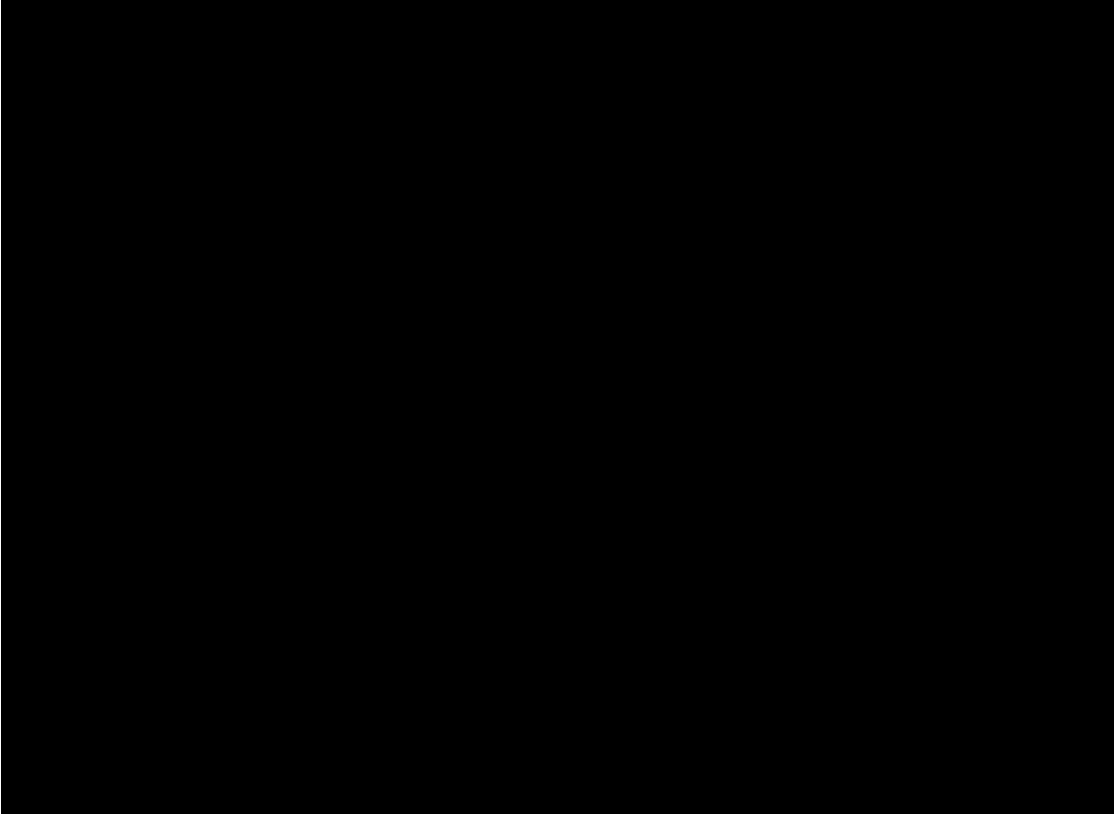
Module B

Standard Telephone Service USO

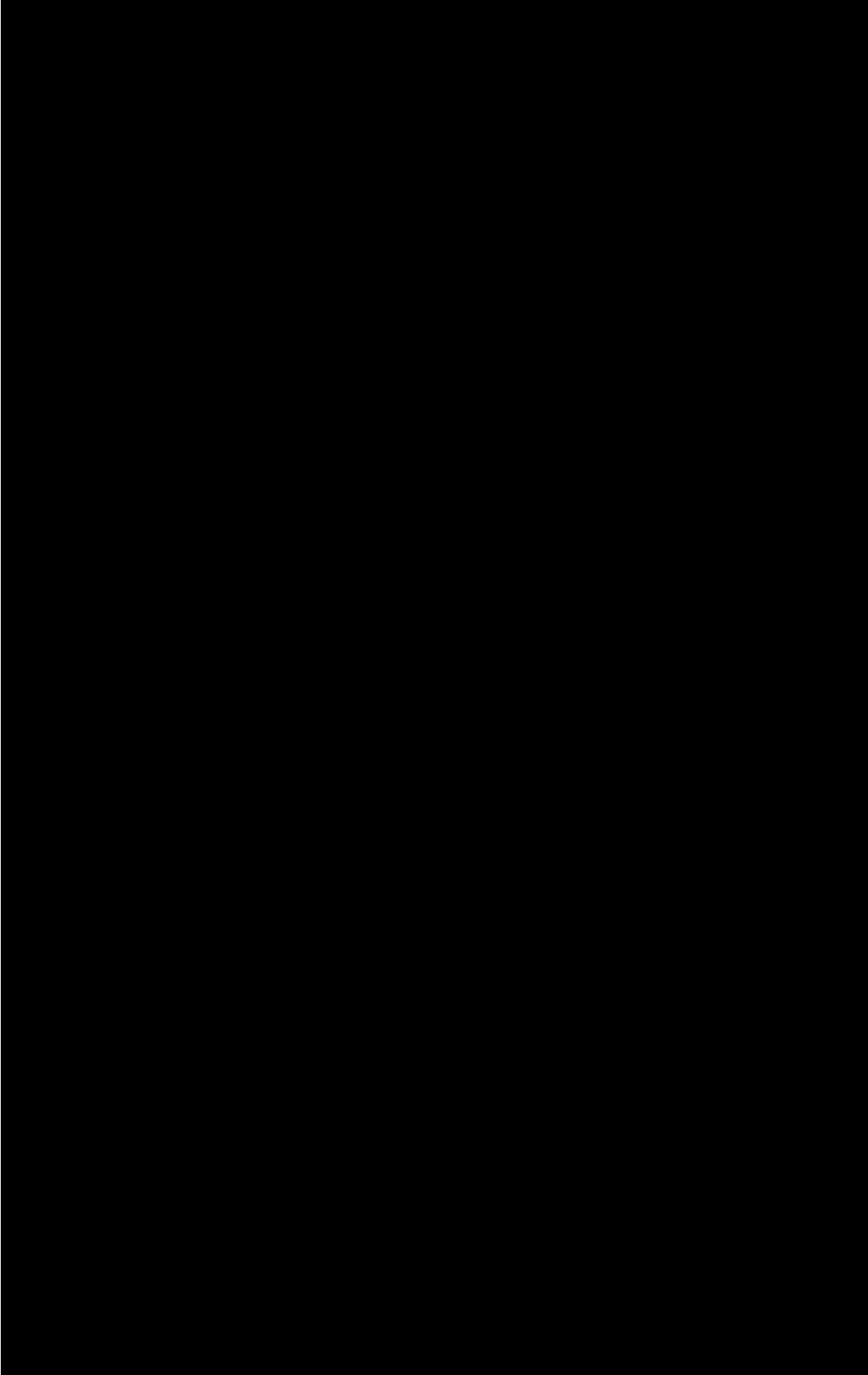
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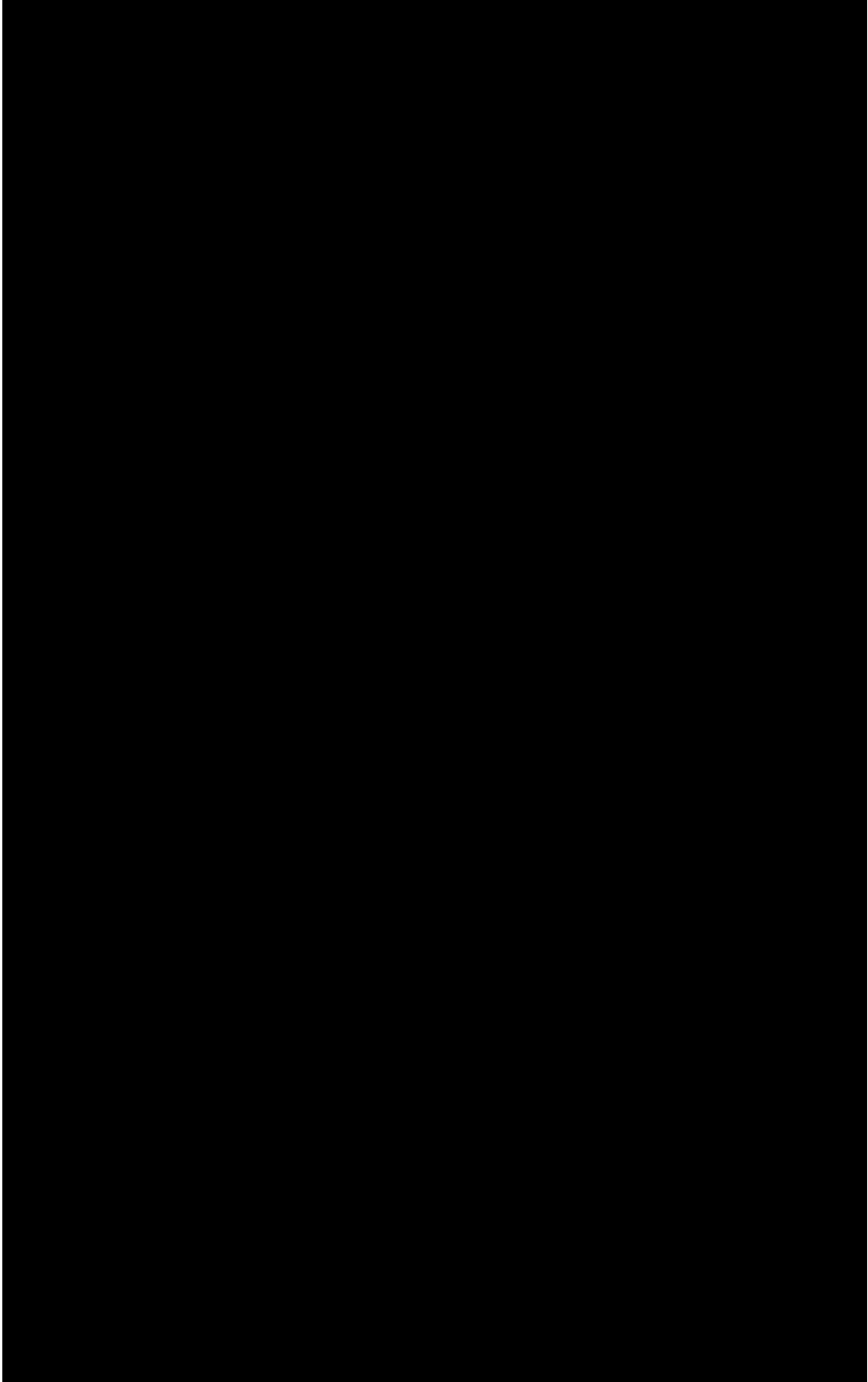
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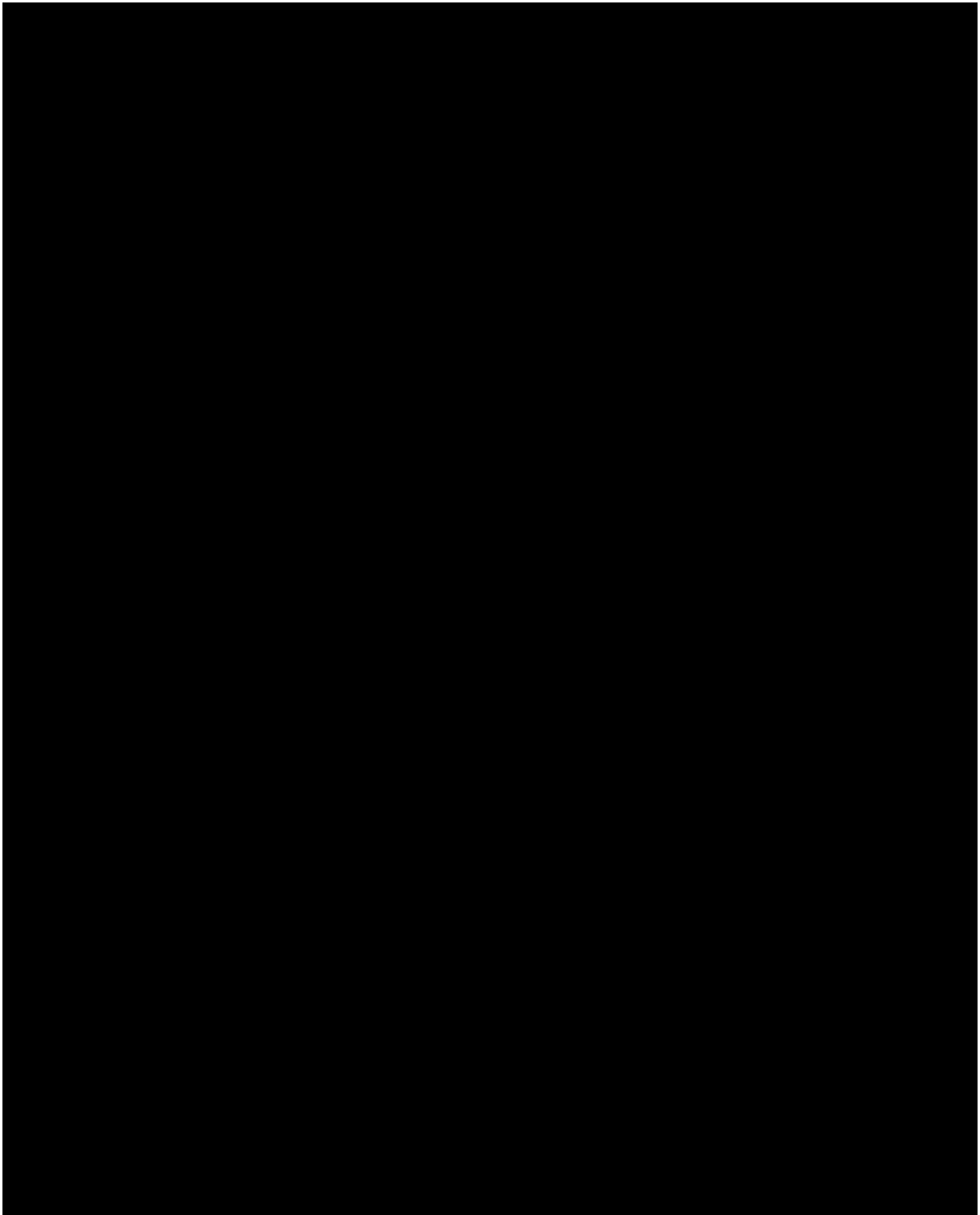
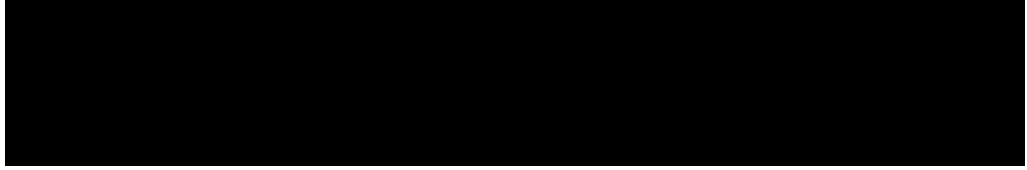
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Module C

Payphones USO

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28 Scope of service

28.1 Services to be performed

- (a) During the term of this Module, Telstra will, in accordance with the requirements and instruments identified in **clause 28.1(b)** (each as amended or enacted from time to time) and as set out in **clauses 28.2 and 28.3**:
 - (i) supply, install and maintain the USO Payphones; and
 - (ii) supply Payphone Carriage Services to each USO Payphone,
as required to fulfil the Payphones USO and as otherwise set out in this Module.
- (b) The requirements and instruments referred to in **clause 28.1(a)** are:
 - (i) the requirements of the Payphones USO as set out in the TCPSS Act;
 - (ii) any determination made under section 12EF, section 12EG or section 12EH of the TCPSS Act;
 - (iii) any performance standards and benchmarks included in a determination made by the Minister under section 12ED or section 12EE of the TCPSS Act;
 - (iv) to the extent that it is consistent with **clauses 28.1(b)(i) to (b)(iii)** (inclusive), the SMP; and
 - (v) any other requirements which apply by law in relation to the fulfilment of the Payphones USO.
- (c) The parties agree that the USO Payphones may be Connected to the Telstra copper network or Alternative Infrastructure.

28.2 While Telstra is the primary universal service provider

For so long as Telstra is the primary universal service provider for the Payphones USO Telstra must comply with the requirements and instruments identified in **clause 28.1**.

28.3 If TUSMA assumes statutory functions

- (a) If TUSMA assumes statutory functions relating to the fulfilment of the Payphones USO, the services Telstra is required to supply under this Module (including any applicable performance standards and performance benchmarks and specific requirements (such as provision of specified information) relating to the Payphones USO) will change as and to the full extent necessary to ensure that such services are consistent with, and will enable TUSMA to perform, those functions.
- (b) The performance standards, performance benchmarks and specific requirements that will apply if TUSMA assumes statutory functions relating to the fulfilment of the Payphones USO will include any performance standards, performance benchmarks and requirements that TUSMA must ensure compliance with in fulfilling its statutory functions relating to the Payphones USO and any performance standards, performance benchmarks and requirements specified in determinations made under the TCPSS Act which relate to the Payphones USO.

28.1 Variation in Agreement

If the services to be performed by Telstra from time to time under this Module change because:

- (a) any of the requirements or determinations identified in **clause 28.1(b)** change, or a requirement or determination of the kind identified in **clause 28.1(b)** is made; or
- (b) it is necessary to ensure that the services performed under this Module are consistent with, and will enable TUSMA to perform, its statutory functions relating to the fulfilment of the Payphones USO,

that change will constitute a change in the scope of the services to be performed under this Module and the parties will agree any amendments to this Agreement (if any) which are necessary to ensure that the services that Telstra is required to supply under this Module:

- (c) are consistent with, and will enable Telstra to comply with, the requirements of this **clause 28**; and
- (d) are consistent with, and will enable TUSMA to perform, its statutory functions relating to the fulfilment of the Payphones USO.

29 Payphone list

- (a) On or within 5 days of the Commencement Date, Telstra will provide to TUSMA and to the ACMA a list of all Telstra Operated Payphones as at the date the list is provided (**Payphone List**).
- (b) The Payphones List must be:
 - (i) provided to TUSMA in a format reasonably specified by TUSMA; and
 - (ii) consistent with any register of Telstra payphones that is required to be maintained by Telstra or the ACMA pursuant to a determination made under section 12EF of the TCPSS Act from time to time.
- (c) The Payphone List will be amended and updated during the term of this Module in accordance with the terms of this Module at the time that the register referred to in **clause 29(b)(ii)** is required to be amended and updated.

30 New payphones

- (a) If during the term of this Module Telstra installs a new Telstra Operated Payphone, Telstra will notify TUSMA of the details of that payphone and that payphone will be added to the Payphone List and will be a USO Payphone, and Telstra will not remove that payphone without complying with **clause 31(a)**.
- (b) If during the term of this Module, the ACMA determines in accordance with the TCPSS Act or a determination made under the TCPSS Act that a new payphone is required to satisfy the Payphones USO, that payphone will be installed by Telstra and will become a USO Payphone and will be added to the Payphone List, and Telstra will not remove that payphone without complying with **clause 31(a)**.

- (c) If a new USO Payphone is added to the Payphone List under **clause 30(a) or 30(b)**, whether there is a payment adjustment will be determined in accordance with **clause 33.2**.

31 Removal of USO Payphones

- (a) During the term of this Module, Telstra may remove any USO Payphone (including any associated cabinet and infrastructure) provided that:
 - (i) it notifies TUSMA in writing of its intention to remove the payphone;
 - (ii) the payphone's removal is permitted under the TCPSS Act and any determination made under the TCPSS Act;
 - (iii) Telstra complies with the requirements regarding public consultation and notification regarding the removal of the payphone set out in the SMP, the TCPSS Act and any determination made under the TCPSS Act; and
 - (iv) following Telstra complying with the obligations in **clause 31(a)(iii)**, the ACMA does not determine in accordance with the TCPSS Act or a determination made under the TCPSS Act that the payphone should remain.
- (b) If a payphone is removed in accordance with **clause 31(a)**:
 - (i) it will be removed from the Payphone List and will cease to be a USO Payphone; and
 - (ii) whether there is a payment adjustment will be determined in accordance with **clause 33.2**.
- (c) In any circumstances where the ACMA determines in accordance with the TCPSS Act or a determination made under the TCPSS Act that a payphone may not be removed, the payphone will continue to be a USO Payphone and will remain on the Payphone List, and Telstra will not remove that payphone without complying with **clause 31(a)**.
- (d) In any circumstances where Telstra has removed a payphone and the ACMA subsequently determines that the payphone must be reinstated, the payphone will be reinstated by Telstra, will be reinstated as a USO Payphone and will be reinstated on the Payphone List, and Telstra will not remove that payphone without complying with **clause 31.1(a)**.

32 Migration of payphones

32.1 Temporary Special Services Disconnection

Telstra will notify TUSMA of the Temporary Special Services Disconnection Date applicable to payphones as soon as practicable after that date is determined in accordance with the Subscriber Agreement.

32.2 Migration of USO Payphones to efficient Alternative Infrastructure

- (a) At any time prior to the date that is 6 months before the conclusion of the Payphones Special Services Period for a Rollout Region, TUSMA may request that Telstra provide it with an estimate of its Costs in undertaking the migration of any

USO Payphone located in that Rollout Region (and which is still Connected to the Telstra copper network at that date) from the Telstra copper network to:

- (i) an Alternative Infrastructure specified by TUSMA; or
 - (ii) any Alternative Infrastructure which Telstra determines to be an efficient alternative to the Telstra copper network.
- (b) Telstra must provide an estimate requested under **clause 32.2(a)** to TUSMA within 14 days of receipt of the request.
- (c) If an estimate provided by Telstra under **clause 32.2(b)** relates to migration of a USO Payphone to Alternative Infrastructure other than the NBN fibre network, no later than 14 days after receiving an estimate from Telstra under **clause 32.2(b)**, TUSMA must notify Telstra in respect of each USO Payphone included in the estimate whether:
- (i) TUSMA requires Telstra to migrate the USO Payphone to the relevant Alternative Infrastructure and that either:
 - (A) TUSMA accepts the estimate; or
 - (B) TUSMA disagrees with the estimate, in which case TUSMA must refer the matter as a dispute to be resolved by expert determination under **clause 11.1**; or
 - (ii) TUSMA does not require Telstra to migrate the USO Payphone and that either:
 - (A) TUSMA will provide a payphone in substitution for the USO Payphone, in which case **clause 32.2(f)** will apply; or
 - (B) TUSMA will not provide a payphone in substitution for the USO Payphone, in which case the requirements in **clause 31** will apply and, if Telstra migrates the USO Payphone to an Alternative Infrastructure, TUSMA will not be required to compensate Telstra for any Costs incurred by Telstra in undertaking the migration unless **clause 32.3** applies.
- (d) If an estimate provided by Telstra under **clause 32.2(b)** relates to Migration of a USO Payphone to the NBN fibre network, TUSMA must notify Telstra within the time specified in **clause 32.2(c)** whether it will provide a payphone in substitution for the USO Payphone, in which case **clause 32.2(f)** will apply, but is not otherwise required to give the notice in response to the estimate provided by Telstra under **clause 32.2(b)**.
- (e) If TUSMA fails within the time required by **clause 32.2(c)** to give notice under **clauses 32.2(c)(i) or (ii)** in respect of a USO Payphone, TUSMA will be deemed not to require Telstra to migrate that payphone in accordance with the estimate provided by Telstra.
- (f) If TUSMA notifies Telstra under **clause 32.2(c)(ii)(A) or 32.2(d)** that it will provide a payphone in substitution for a USO Payphone:
- (i) the requirements in **clause 31** will not apply;
 - (ii) the existing payphone will cease to be a USO Payphone once removed;

- (iii) the existing payphone will be removed from the Payphone List and **clause 33.2(b)** will apply to determine whether there will be a payment adjustment;
 - (iv) if Telstra migrates the existing payphone to an Alternative Infrastructure, TUSMA will not be required to compensate Telstra for any Costs incurred by Telstra in undertaking the migration unless **clause 32.3** applies; and
 - (v) the substitute payphone will not be a USO Payphone and will not be added to the Payphone List and neither party will have any obligations under this Agreement in relation to it.
- (g) If TUSMA notifies Telstra under **clause 32.2(c)(i)** that it requires Telstra to migrate a USO Payphone to the relevant Alternative Infrastructure, subject to **clause 32.4**, TUSMA will ensure that the migration of that payphone to the relevant Alternative Infrastructure will occur at no cost to Telstra.

32.3 Migration of USO Payphones to the NBN fibre network

- (a) If a USO Payphone is still Connected to the Telstra copper network at the date that is 3 months before the conclusion of the Payphones Special Services Period for the Rollout Region in which it is located, subject to **clause 32.4**, TUSMA will ensure that Migration of that payphone will occur at no cost to Telstra.
- (b) To avoid doubt, **clause 32.3(a)** may apply to any USO Payphone that complies with the requirements of that clause and in respect of which:
 - (i) TUSMA has not requested an estimate within the time prescribed by **clause 32.2(a)**;
 - (ii) TUSMA has given a notice to Telstra under **clause 32.2(c)(ii)(B)**; or
 - (iii) TUSMA has given a notice to Telstra under **clause 32.2(c)(i)(A) or 32.2(d)** but the ACMA determines the payphone must not be removed.
- (c) If TUSMA is required under **clause 32.3(a)** to compensate Telstra for its Costs in undertaking the Migration of a USO Payphone, then before undertaking the Migration, unless **clause 32.3(e)** applies, Telstra must provide TUSMA with an estimate of those Costs.
- (d) If TUSMA does not agree with an estimate provided by Telstra under **clause 32.3(c)**, TUSMA must within 14 days after receiving that estimate notify a dispute, in which case **clause 11.1** will apply. If TUSMA fails to give notice within the time required under this **clause 32.3(d)**, TUSMA is deemed to have accepted Telstra's estimate for the Migration.
- (e) If Telstra has already provided TUSMA with an estimate under **clause 32.2(b)** of Telstra's Costs in undertaking Migration of a USO Payphone and:
 - (i) that estimate was provided less than 9 months before the date referred to in **clause 32.3(a)**, that estimate will be deemed to have been provided in accordance with **clause 32.3(c)** on the date referred to in **clause 32.3(a)**; or
 - (ii) that estimate was provided more than 9 months before the date referred to in **clause 32.3(a)**, Telstra will, at its option or if TUSMA requests it to, provide TUSMA with a revised estimate in accordance with **clause 32.3(c)**. If Telstra elects not provide a revised estimate to TUSMA and TUSMA does not request that it provide such estimate, the estimate provided under

clause 32.2(b) will be deemed to have been provided in accordance with **clause 32.3(c)** on the date referred to in **clause 32.3(a)**.

- (f) If a USO Payphone has been removed from the Payphone List in accordance with **clause 32.2(f)(iii)**, but the ACMA determines that the payphone must not be removed, it will be reinstated on the Payphone List once it has been Migrated.

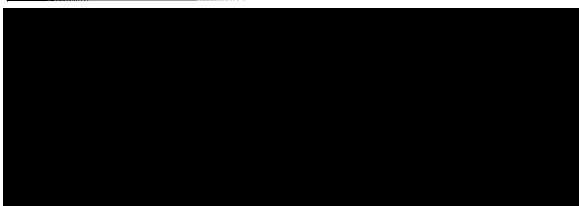
32.4 Payment

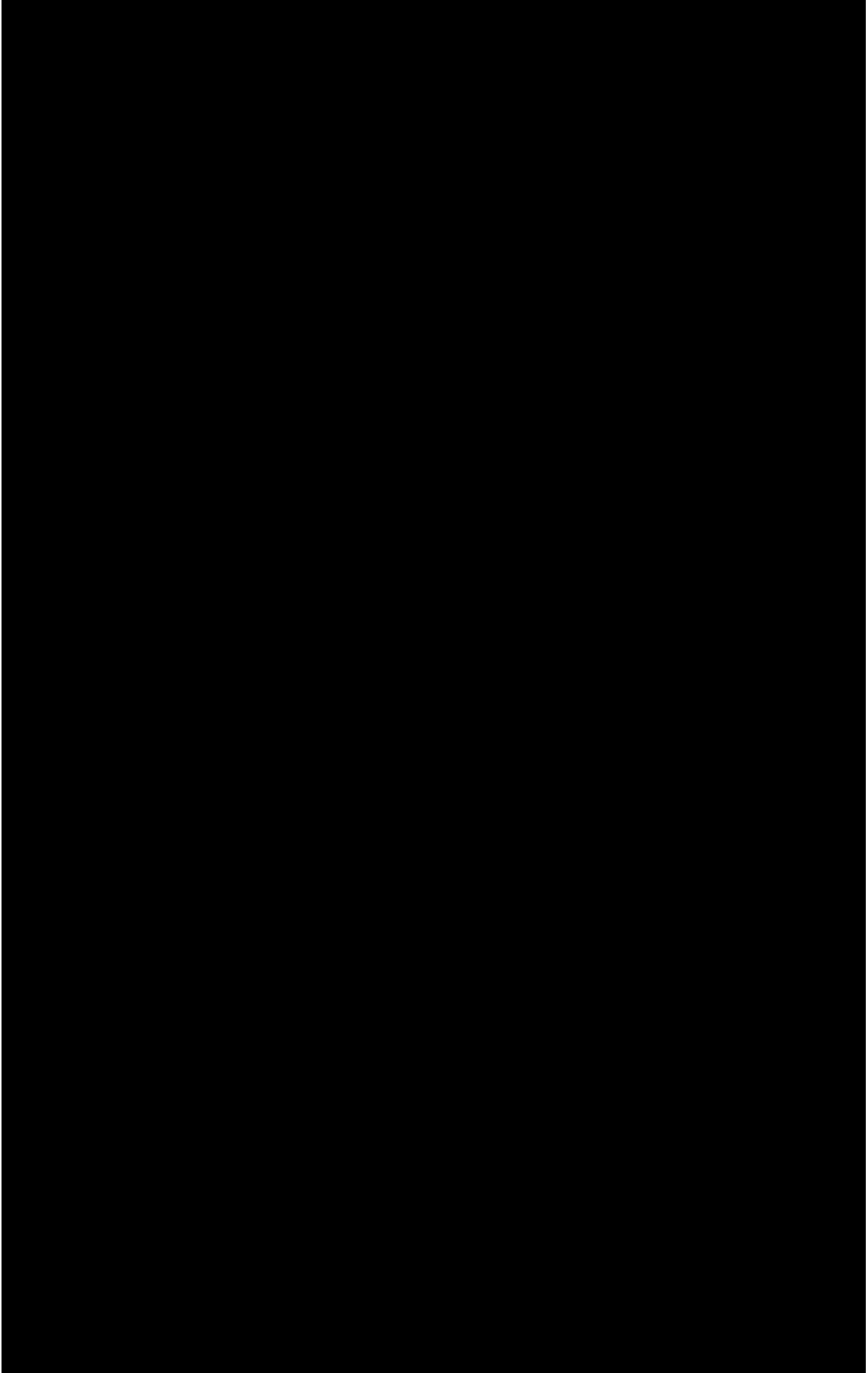
If TUSMA:

- (a) has agreed under **clause 32.2(c)(i)** to compensate Telstra for its Costs in undertaking a migration of a USO Payphone to an Alternative Infrastructure; or
- (b) is required under **clause 32.3** to compensate Telstra for its Costs in undertaking a Migration of a USO Payphone,

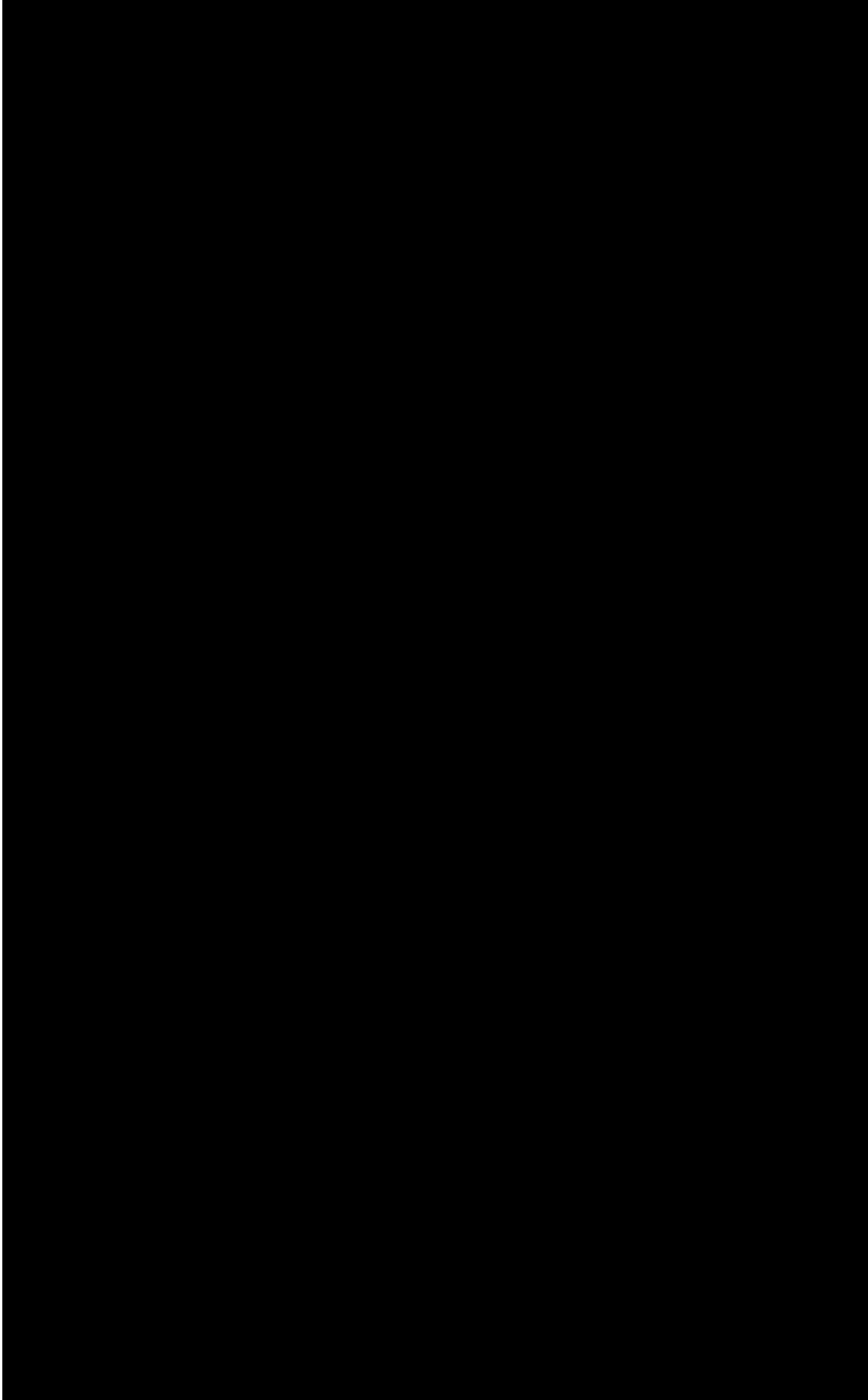
then:

- (c) Telstra must undertake the migration as cost effectively as possible;
- (d) to claim reimbursement from TUSMA for its Costs in undertaking the migration, within 21 days after the end of the calendar quarter in which the migration is undertaken, Telstra must provide a claim for reimbursement to TUSMA which provides details of Telstra's Costs, including a breakdown of all costs and receipts to evidence their incurrence;
- (e) TUSMA may audit any claim for reimbursement received from Telstra. If TUSMA notifies Telstra that it intends to audit a claim, the audit will be undertaken (and Telstra will cooperate with TUSMA in relation to that audit) in accordance with **clause 20**;
- (f) on the date that is 30 days after the commencement of each calendar quarter during the term of this Module, with the first payment being due 30 days after 1 October 2012, TUSMA will, subject to **clause 32.4(h)**, reimburse to Telstra the Costs (if any) for which Telstra is entitled to reimbursement under this **clause 32** and for which Telstra has submitted a claim for reimbursement in the previous calendar quarter in accordance with **clause 32.4(d)**;
- (g) if the parties disagree regarding any aspect of a claim by Telstra for reimbursement under this **clause 32**, either party may refer the matter of expert determination in accordance with **clause 11.1**; and
- (h) TUSMA is not required to pay or reimburse Telstra for any Costs incurred by Telstra in undertaking a migration under this **clause 32**:
- (i) unless Telstra has provided the information required under **clause 32.4(d)** to support a claim for reimbursement of those Costs; and
- (ii) until those Costs are agreed or, if applicable, determined by expert determination.

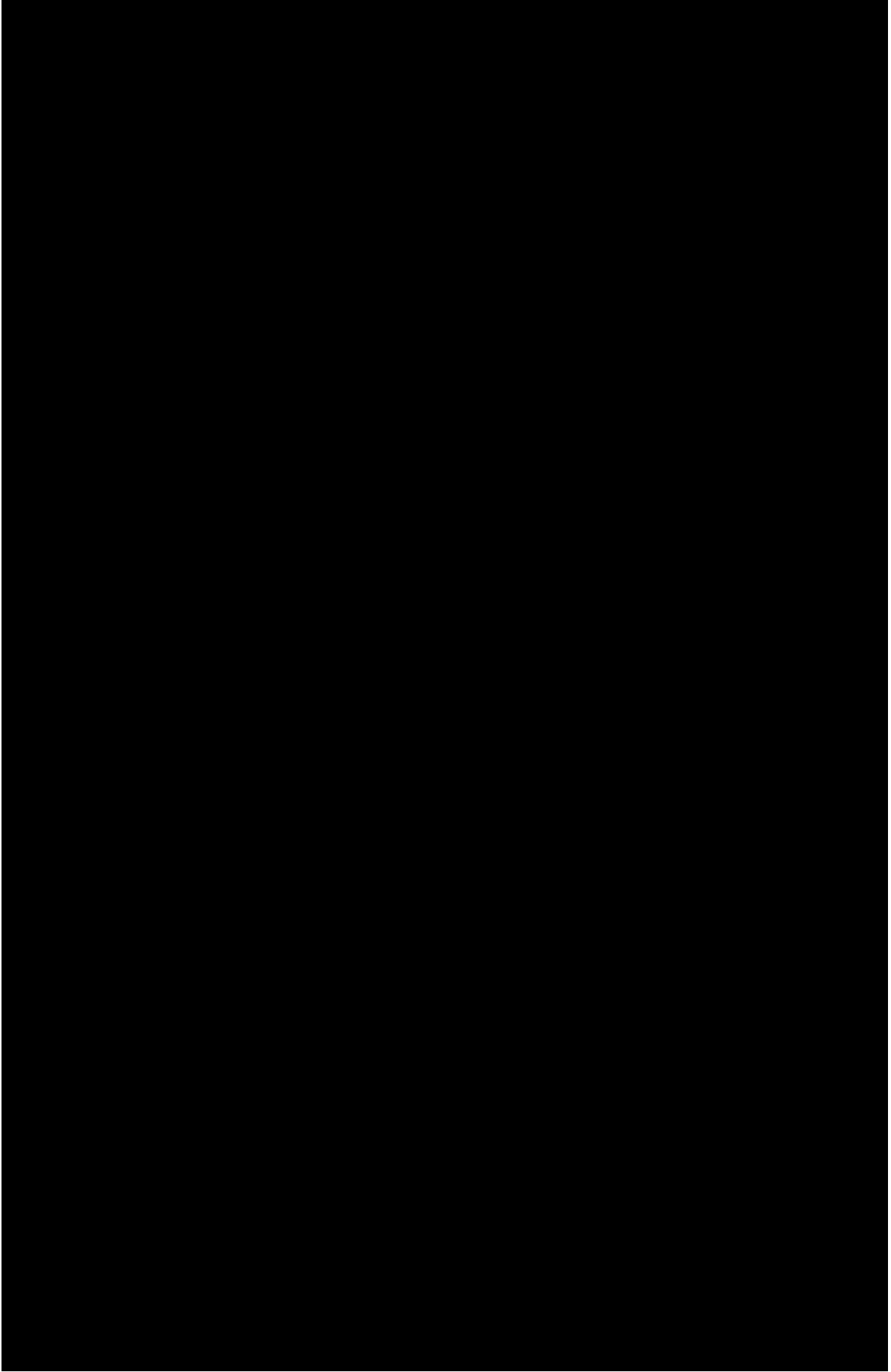




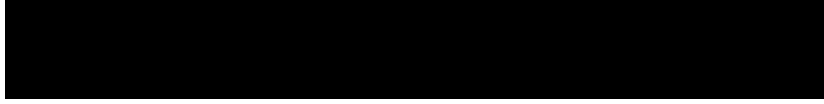
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Module D

Voice-only customer migration

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34 Industry consultation and preliminary matters for this Module

34.1 Industry consultation

- (a) On or before the First Stock Take Date for the first Rollout Region in which the Region Ready for Service Date occurs after the Commencement Date, TUSMA will use its best efforts to:
 - (i) consult with the industry (including Telstra) about the Commonwealth Government's policy to fund, through TUSMA, certain costs of migrating eligible voice-only customers to the NBN fibre network; and
 - (ii) notify Telstra in writing of the scope of Customer Management Tasks and Priority Assistance Customer Management Tasks that are to be performed by Telstra under this Module, including the following:
 - (A) the number and types of communications that Telstra must have with each Eligible Voice-Only Customer;
 - (B) any special or additional communications that are required for Priority Assistance Customers;
 - (C) the required timing for each customer communication; and
 - (D) the content of each customer communication and/or information that must be provided to each Eligible Voice-Only Customer during communications; and
 - (iii) notify Telstra of the Required Cabling Deployment Rules.

34.2 Customer Management Tasks and Customer Management Fees

- (a) Once the Customer Management Tasks and the Priority Assistance Customer Management Tasks have been notified to Telstra by TUSMA in accordance with **clause 34.1(a)(ii)**, each party must negotiate with the other in good faith and use its reasonable endeavours to agree the Customer Management Fees and the Priority Assistance Customer Management Fees within 30 days after the date of notification.
- (b) If the parties are unable to reach agreement about the Customer Management Fees or the Priority Assistance Customer Management Fees in the time specified in **clause 34.2(a)**, either party may refer the matter for expert determination in accordance with **clause 11.1**. For this purpose, the parties agree that the Customer Management Fees and the Priority Assistance Customer Management Fees determined by the expert panel must ensure that Telstra recovers the overall Cost of performing the Customer Management Tasks and Priority Assistance Customer Management Tasks notified by TUSMA.

34.3 Required Cabling Deployment Rules and rate card

- (a) Once the Required Cabling Deployment Rules have been notified to Telstra by TUSMA in accordance with **clause 34.1(a)(iii)**, each party must negotiate with the other in good faith and use its reasonable endeavours to agree a rate card that will apply when calculating the Reasonable Connection Costs under this **Module D (Voice-only customer migration)** within 30 days after the date of notification.
- (b) If the parties are unable to reach agreement about the rate card that will apply when calculating the Reasonable Connection Costs under this Module D in the

time specified in **clause 34.3(a)**, either party may refer the matter for expert determination in accordance with **clause 11.1**. For this purpose, the parties agree that the rate card that is determined by the expert panel must ensure that Telstra recovers its Costs of undertaking those tasks that are covered by the rate card.

34.4 Effect of this Module

- (a) **Clauses 35 to 37** (inclusive) will not take effect until the Customer Management Fees and the Priority Assistance Customer Management Fees referred to in **clause 34.2(a)** are agreed or, if applicable, determined by expert determination.
- (b) **Clauses 38 and 39** will not take effect until the rate card referred to in **clause 34.3(a)** is agreed or, if applicable, determined by expert determination.

35 Identifying Eligible Voice-Only Customers

- (a) Subject to **clause 35(b)**, on or about the First Stock Take Date for a Rollout Region, Telstra will prepare based on the information in Telstra's information systems and provide to TUSMA a list (**Eligible Customer List**) which in respect of the Service Addresses within the Fibre Footprint in that Rollout Region:
 - (i) identifies all Telstra Eligible Voice-Only Customers;
 - (ii) identifies all other Service Addresses (other than ULL Service Addresses) at which other Eligible Voice-Only Customers may be located and identifies the RSP resupplying Telstra wholesale voice services at each of those Service Addresses (or if not known to Telstra, the Telstra wholesale customer);
 - (iii) for each ULL Service Address, identifies the Service Address as being a ULL Service Address and identifies the Telstra wholesale customer; and
 - (iv) identifies any Eligible Voice-Only Customers who are Priority Assistance Customers.
- (b) Telstra is not required to comply with **clause 35(a)** to the extent the compliance would breach a confidentiality or privacy obligation which Telstra owes to a third party (**relevant third party**) and in that event:
 - (i) Telstra must notify TUSMA accordingly as soon as possible after it becomes aware that it is not required to comply with **clause 35(a)** by reason of a circumstance arising under this **clause 35(b)**;
 - (ii) Telstra must first use its best endeavours to amend or remove the obligation to allow it to comply with **clause 35(a)**, including, without limitation, seeking the consent of the relevant third party; and
 - (iii) Telstra will provide TUSMA with any information or assistance reasonably requested by TUSMA to enable TUSMA to attempt to obtain, on Telstra's behalf, the consent of the relevant third party or to otherwise take steps to ensure that Telstra's compliance with **clause 35(a)** will not breach a confidentiality or privacy obligation to which Telstra is subject.

36 Management of Telstra Eligible Voice-Only Customers

- (a) If:

- (i) prior to the First Stock Take Date for the first Rollout Region which is to be Migrated to the NBN fibre network after the Commencement Date, TUSMA requests Telstra to enter into an agreement with TUSMA regarding the performance of the Customer Management Tasks and Priority Assistance Customer Management Tasks (as notified by TUSMA under **clause 34.1(a)(ii)**) that must be undertaken by Telstra in respect of Telstra Eligible Voice-Only Customers in each Rollout Region;
- (ii) the terms of the agreement in relation to the performance of Customer Management Tasks and Priority Assistance Customer Management Tasks are substantially the same as the terms that TUSMA offers to each other RSP who supplies a voice service to Eligible Voice-Only Customers whose Service Addresses are within the Fibre Footprint;
- (iii) the terms of the agreement are no less favourable to Telstra than the terms of **clauses 34 to 36** (inclusive), **40 and 41** of this **Module D**; and
- (iv) the parties agree any amendments to this **Module D (Voice-only customer migration)** which are necessary to ensure that, to the extent the parties' obligations under this **Module D (Voice-only customer migration)** regarding the performance of the Customer Management Tasks and Priority Assistance Customer Management Tasks and the payment of the Customer Management Fees and Priority Assistance Customer Management Fees are dealt with in the agreement, those obligations cease to have effect on the date that the operative provisions of such agreement commence to apply,

Telstra must enter into that agreement with TUSMA.

- (b) If the parties do not enter into an agreement pursuant to **clause 36(a)**, the Customer Management Tasks and Priority Assistance Customer Management Tasks will be performed by Telstra, and the Customer Management Fees and Priority Assistance Customer Management Fees will be paid by TUSMA, in accordance with the terms of this **Module D (Voice-only customer migration)**.
- (c) The Customer Management Tasks or Priority Assistance Customer Management Tasks (as applicable) must be undertaken by Telstra for all Telstra Eligible Voice-Only Customers in a Rollout Region between the First Stock Take Date for that Rollout Region; and
 - (i) the Second Stock Take Date for that Rollout Region; or
 - (ii) if **clause 36(e)** applies, or if it is otherwise agreed, the Disconnection Date for that Rollout Region.
- (d) On or about the Second Stock Take Date for a Rollout Region, Telstra must provide TUSMA with:
 - (i) subject to **clause 35(b)** (which will apply as if references to **clause 35(a)** in that provision are references to this **clause 36(d)(i)**), a list based on the information in Telstra's information systems of:
 - (A) those of the Telstra Eligible Voice-Only Customers in that Rollout Region who were included in the Eligible Customer List provided to TUSMA under **clause 35(a)** who, as at the Second Stock Take Date, are still being provided with services over the Telstra copper network at the relevant Service Address; and
 - (B) any other Services Addresses in that Rollout Region which were included in the Eligible Customer List provided to TUSMA under

clause 35(a) which, as at the Second Stock Take Date, are not being provided with services over the Telstra copper network at the relevant Service Address;

- (ii) written certification identifying the Customer Management Tasks and Priority Assistance Customer Management Tasks it has undertaken in the Rollout Region and the Telstra Eligible Voice-Only Customers in respect of whom those tasks have been undertaken; and
 - (iii) if it has not completed certain Customer Management Tasks or Priority Assistance Customer Management Tasks (as applicable) in respect of any Telstra Eligible Voice-Only Customers, a notice setting out the reasons for this and details as to when it intends to undertake those customer management tasks in respect of those Eligible Voice-Only Customers.
- (e) If a notice is given by Telstra under **clause 37(d)(iii)**, Telstra may complete the applicable Customer Management Tasks or Priority Assistance Customer Management Tasks (as applicable) by the Disconnection Date for the relevant Rollout Region, unless:
- (i) within 5 days after receiving that notice, TUSMA gives notice to Telstra which details the concerns it has regarding the matters set out in that notice; and
 - (ii) within 5 days after receiving a notice under **clause 37(d)(i)**, Telstra does not address these concerns to TUSMA's reasonable satisfaction.
- (f) On or about the Certification Date for a Rollout Region, Telstra must provide TUSMA with a certified and complete list of all Customer Management Tasks and Priority Assistance Customer Management Tasks it has undertaken in the Rollout Region and the Telstra Eligible Voice-Only Customers in respect of whom those tasks have been undertaken (**Certification Notice**).

37 Management of eligible voice-only customers of other RSPs

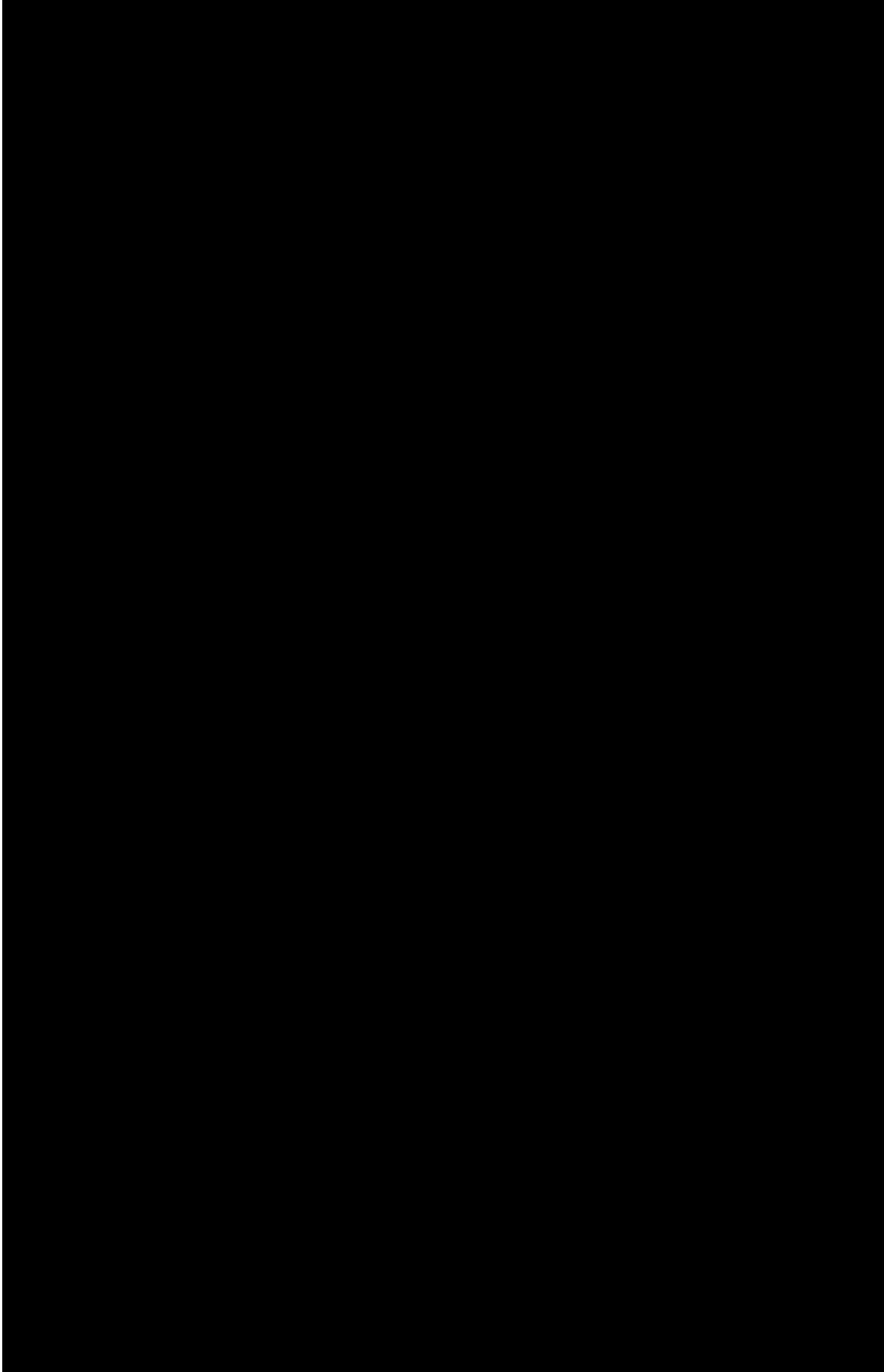
- (a) TUSMA will use its best efforts to negotiate and execute an agreement, in substantially the same terms as the agreement described in **clause 36**, with each other RSP who supplies a voice service to Eligible Voice-Only Customers whose Service Addresses are within the Fibre Footprint.
- (b) TUSMA will use reasonable endeavours to negotiate and agree those agreements with each relevant RSP prior to the First Stock Take Date for the first Rollout Region in which the Region Ready for Service Date occurs after the Commencement Date.
- (c) TUSMA will notify Telstra in accordance with **clause 37(f)** promptly upon becoming aware that it will require Telstra to undertake customer management tasks, as notified by TUSMA, in respect of another RSP's customers.
- (d) The parties agree in principle that TUSMA will treat all RSPs (including Telstra) in a non-discriminatory manner in relation to the terms and conditions on which TUSMA engages an RSP to provide customer management tasks in respect of their Eligible Voice-Only Customers.
- (e) TUSMA will require that any RSP (including Telstra) that receives compensation from TUSMA to undertake customer management tasks in respect of their Eligible Voice-Only Customers must, as a matter of general principle, perform those tasks in respect of all of their Eligible Voice-Only Customers.

- (f) If:
- (i) TUSMA is not able to finalise an agreement of the kind referred to in **clause 37(a)** with an RSP; or
 - (ii) an RSP with whom TUSMA has executed such an agreement fails to certify to TUSMA by the relevant Second Stock Take Date that it has performed the agreed customer management tasks in respect of each of its Eligible Voice-Only Customers in the relevant Rollout Region,

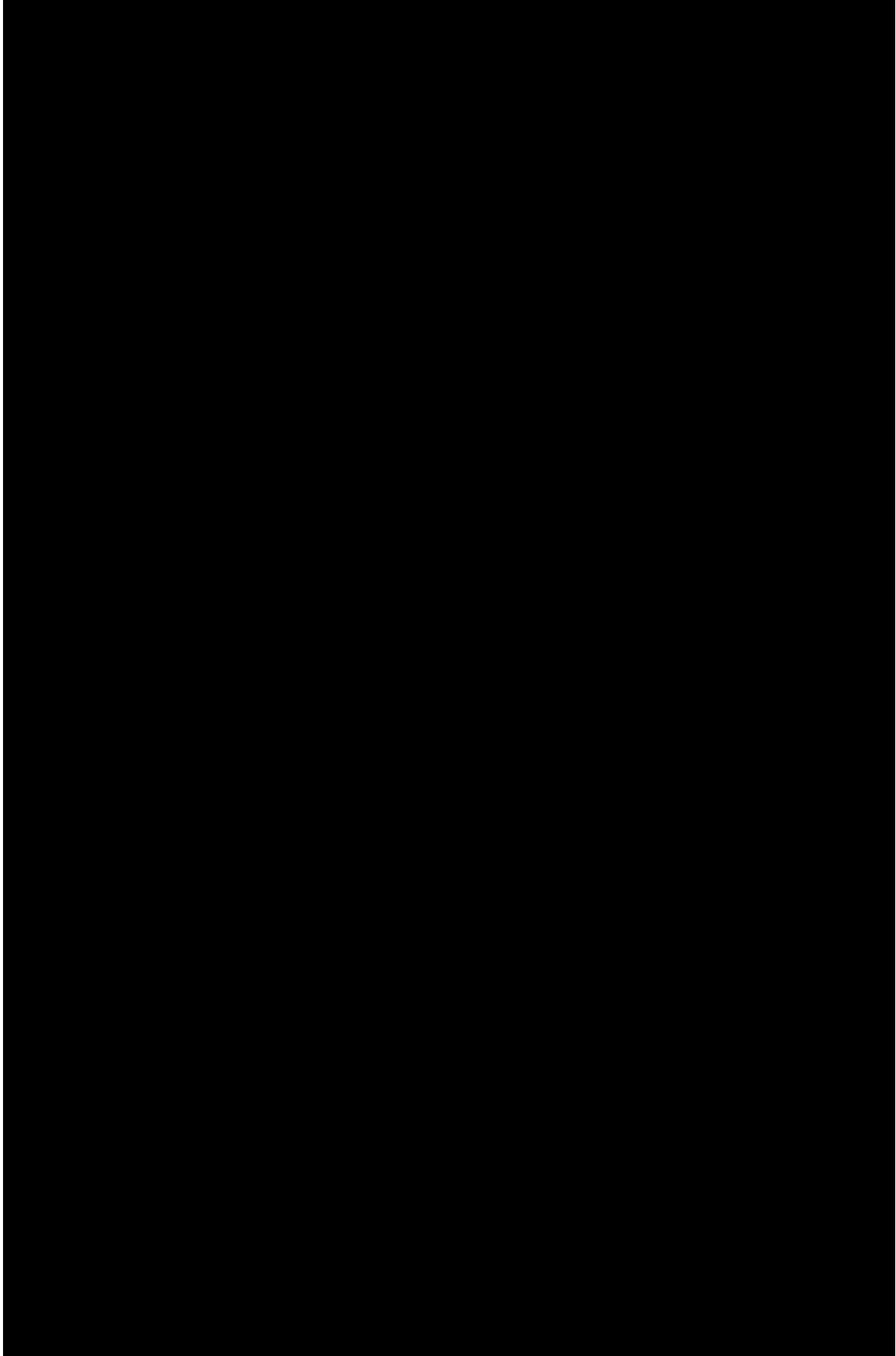
TUSMA may request that Telstra undertake specified customer management tasks in respect of any or all of the RSP's customers, and Telstra must agree to do so on reasonable terms and conditions to be agreed.

- (g) The customer management tasks to be undertaken by Telstra in respect of another RSP's Eligible Voice-Only Customers, and the terms on which Telstra will agree to undertake those tasks, will be substantially similar to those described in **clause 36**, but may include different or additional requirements (e.g. home visits) where the customer management tasks are being commenced on or after the relevant Second Stock Take Date, in which case the applicable Customer Management Fee or Priority Assistance Customer Management Fee which would have applied if the Eligible Voice-Only were Telstra Customers will be adjusted accordingly.
- (h) Telstra is not required to comply with this **clause 37** to the extent that compliance would breach a confidentiality or privacy obligation which Telstra owes to, or an obligation in contract or tort not to approach or promote services to End Users of, a third party (**relevant third party**) and in that event:
- (i) Telstra must notify TUSMA accordingly as soon as possible after it becomes aware that it is not required to comply with this **clause 37** by reason of a circumstance arising under this **clause 37(h)**;
 - (ii) Telstra must use its best endeavours to amend or remove that obligation to allow it to comply with this **clause 37**, including, without limitation, seeking the consent of the relevant third party; and
 - (iii) Telstra will provide TUSMA with any information or assistance reasonably requested by TUSMA to enable TUSMA to attempt to obtain, on Telstra's behalf, the consent of the relevant third party or to otherwise take steps to ensure that Telstra's compliance with this **clause 37** will not breach a confidentiality, privacy or contractual obligation to which Telstra is subject and will not give rise to any contractual or tortious liability relating to Telstra approaching or promoting services to End Users.
- (i) Nothing in this clause requires Telstra to agree to market any retail services or products to End Users other than Telstra's own retail services and products.

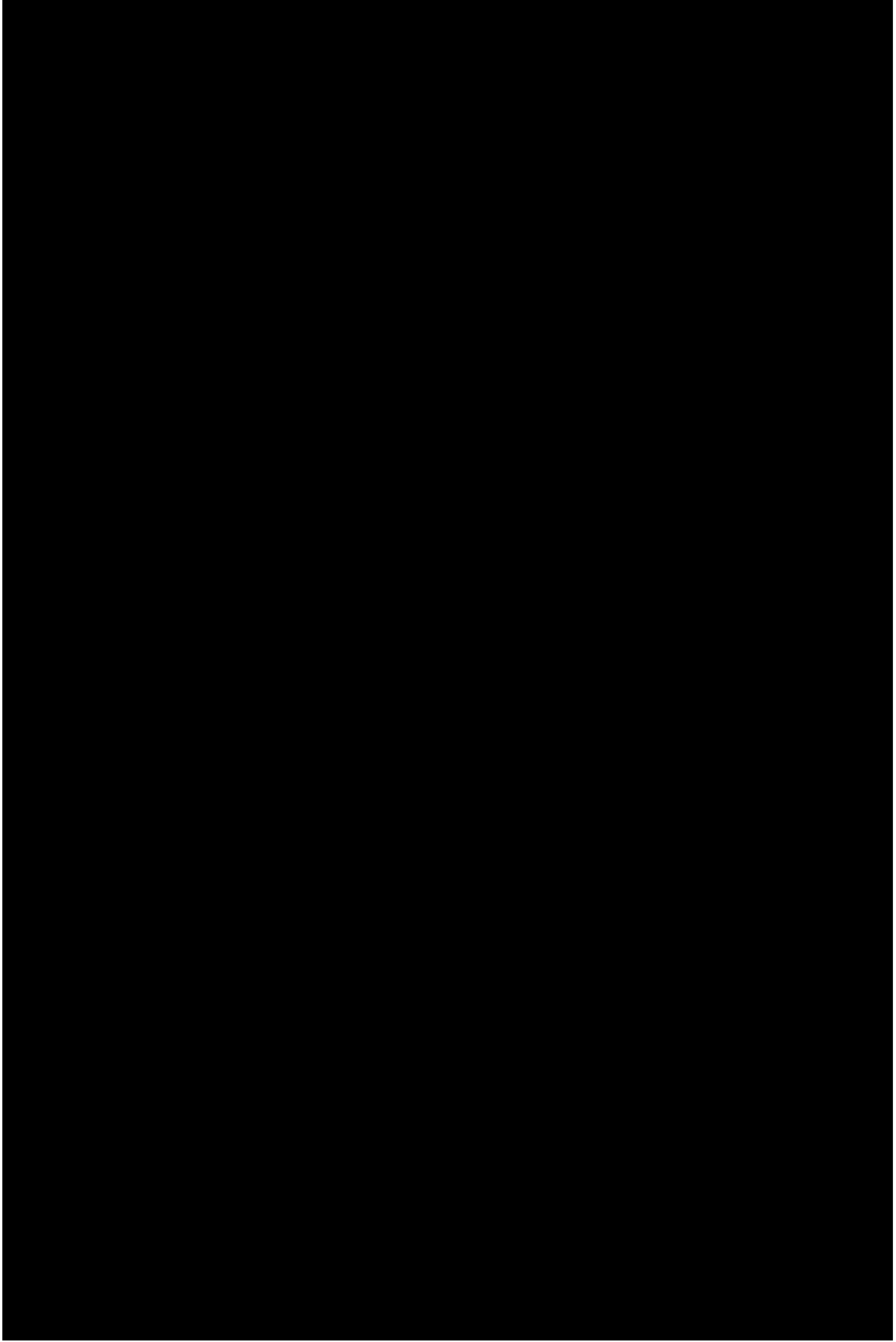




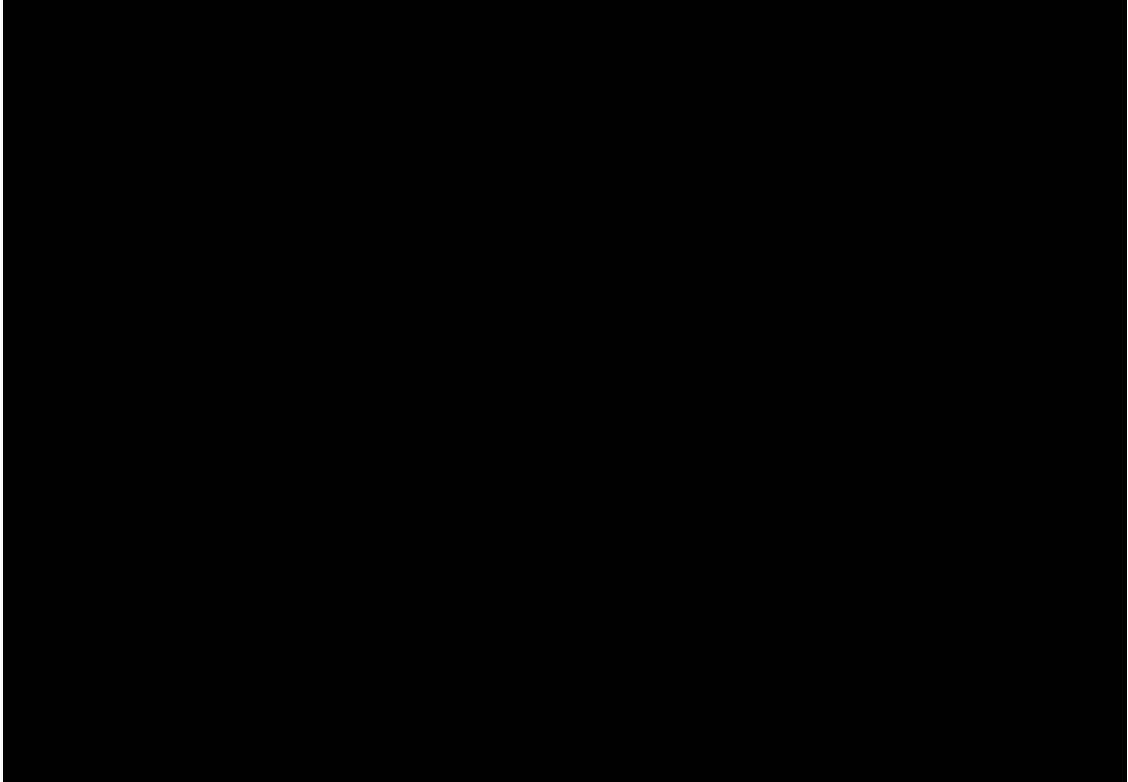
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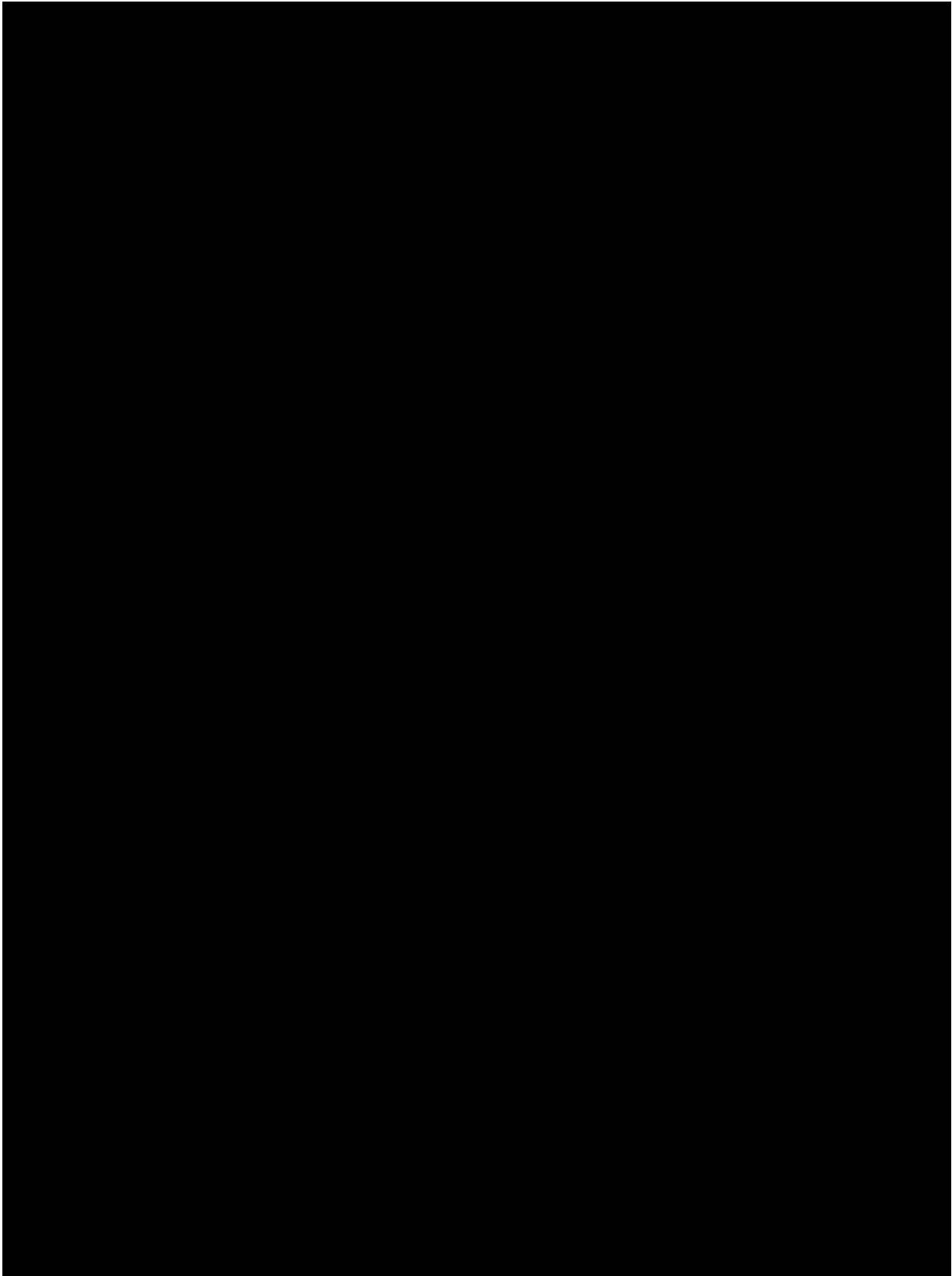
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39 Dial tone only period

- (a) Notwithstanding any other term in this Module, if as at the Disconnection Date for a Rollout Region, a Service Address that is in the Fibre Footprint in that Rollout Region is:
 - (i) not a ULLS Service Address;
 - (ii) connected to the Telstra copper network by at least one line that is used by Telstra to supply either:
 - (A) a STS to a retail customer of Telstra; or
 - (B) a WLR service to a wholesale customer of Telstra; and
 - (iii) not NBN Connected,then, subject to **clause 39(b)**, Telstra must ensure that a Soft Dial Tone is available over at least one line that connects that Service Address to the Telstra copper network for the period commencing on the day immediately after the Disconnection Date for that Rollout Region and ending on the earlier of:
 - (iv) the date that is 20 Business Days after the Disconnection Date for that Rollout Region
 - (v) the date that the Service Address is NBN Connected; or
 - (vi) the date that the line is used by NBN Co for pullthrough of NBN Fibre.
- (b) Telstra is not required under **clause 39(a)** to ensure that a Soft Dial Tone is available over a line at a Service Address during any period that Telstra, in

compliance with the Subscriber Agreement, uses the Telstra copper network to supply an active service as described in **clause 39(a)(ii)(A) or (B)** at that Service Address on or after the Disconnection Date for the Rollout Region in which that Service Address is located.



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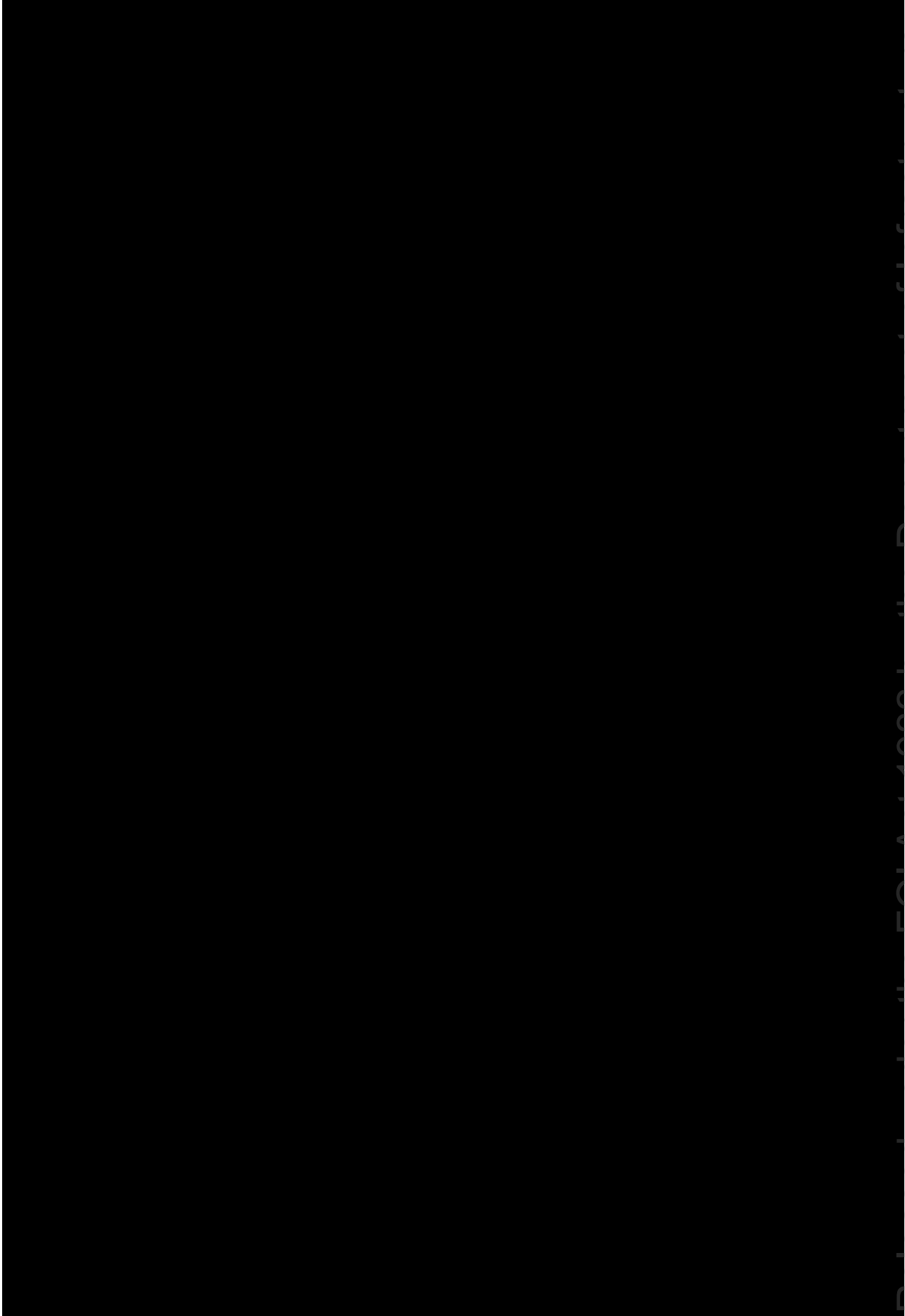
41 Review

- (a) The parties will periodically review the effectiveness, scope and pricing of the requirements and procedures in this Module relating to:
 - (i) Eligible Voice-Only Customers, with the objective of cost effectively maximising the number of Eligible Voice-Only Customers who Migrate to the NBN fibre network by the Disconnection Date in the relevant Rollout Region; and
 - (ii) the NBN Connection of Eligible Fibre Connection Customers, including the Required Cabling Deployment Rules.
- (b) In undertaking a review under **clause 41(a)**, the parties may take into account any material changes in Telstra's Costs of performing the relevant work.
- (c) The first review is to take place no later than 1 month after the first Certification Date which occurs under this Module and thereafter at agreed intervals or upon the reasonable request from time to time of either party.
- (d) The parties will negotiate in good faith any changes to this Agreement that are identified as being required during a review under this **clause 41**.

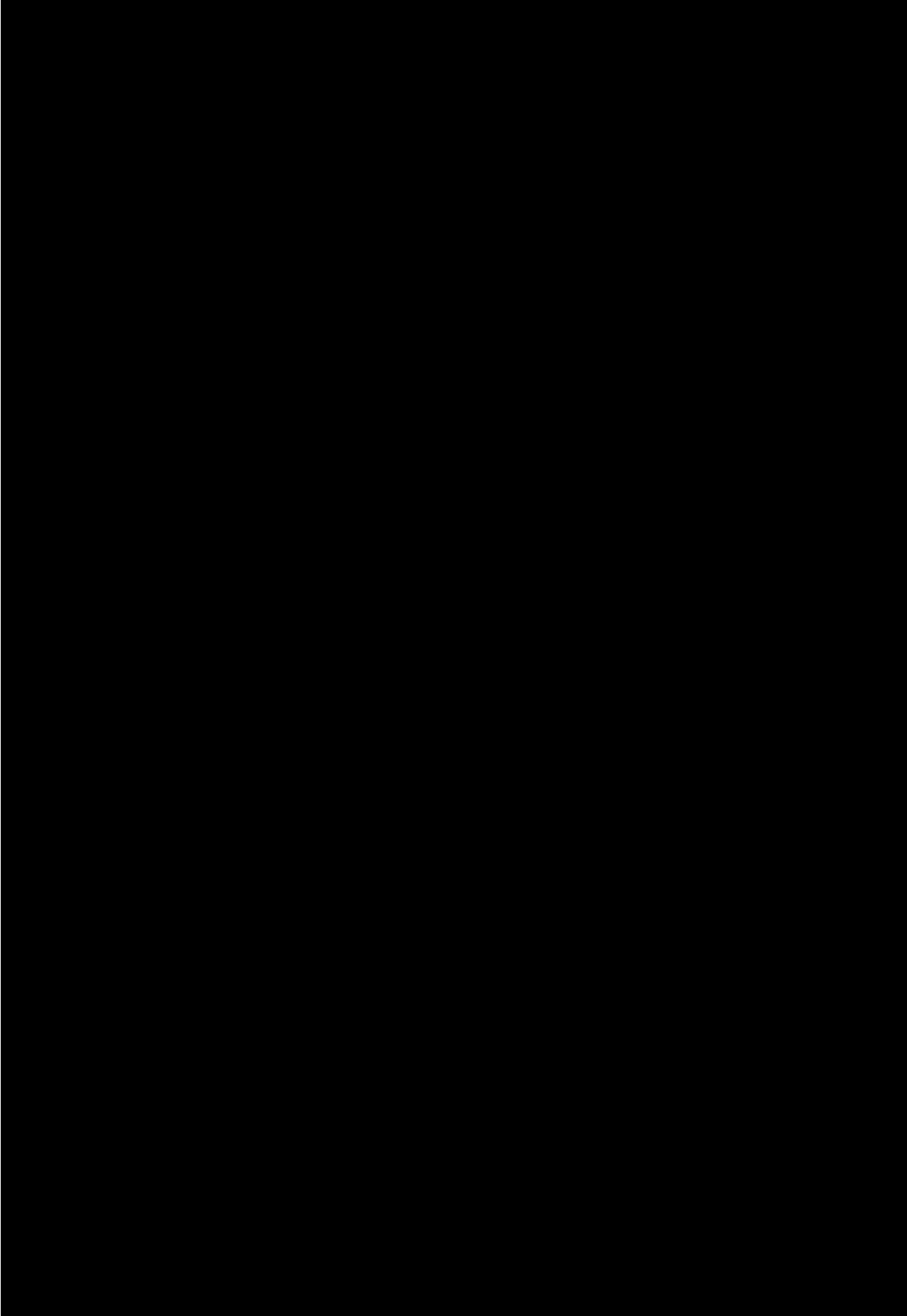
Module E

Emergency Call Service

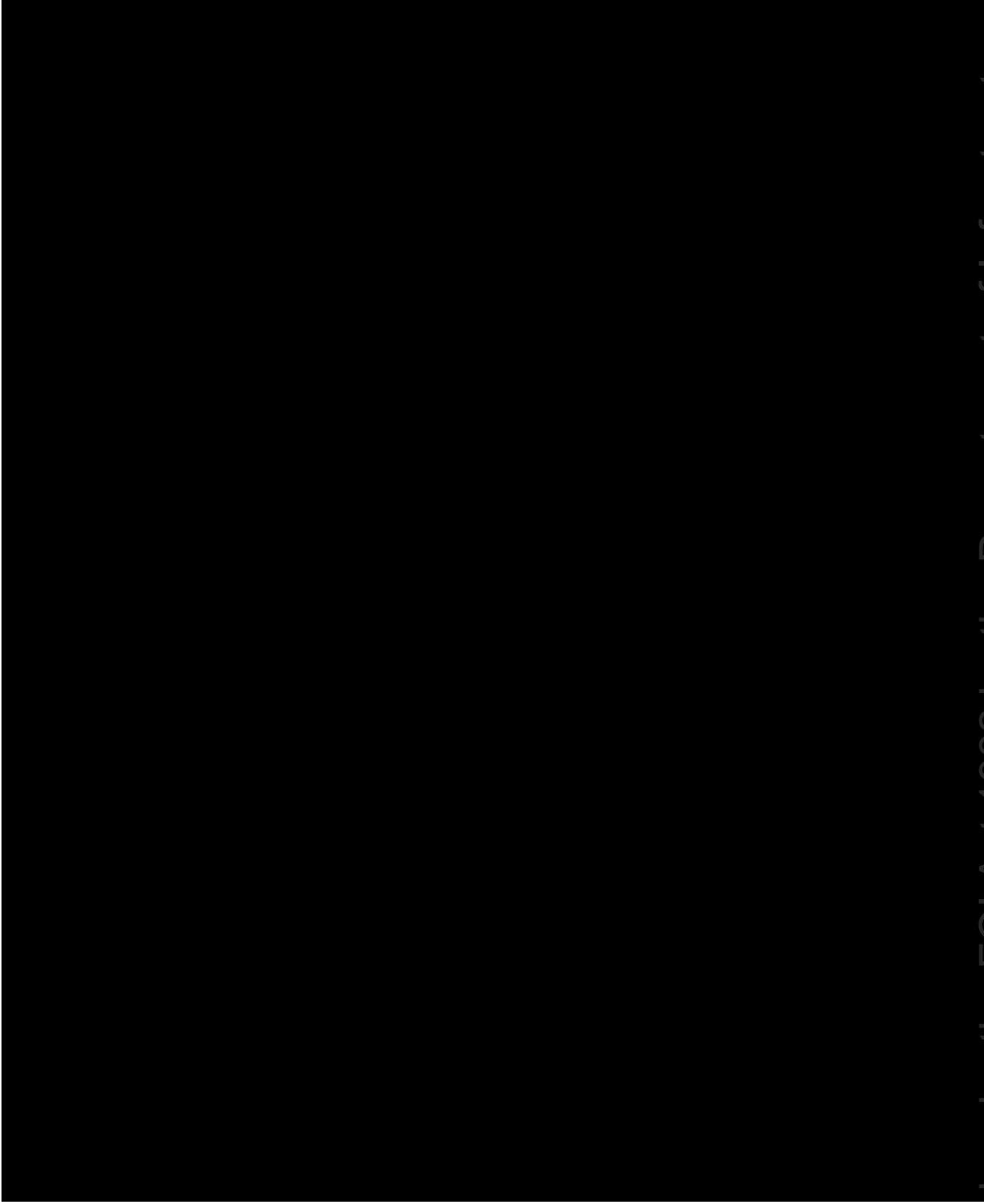
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Module F

Migration of Public Interest Services

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47 Research services

- (a) Telstra must notify TUSMA if it considers there to be a need to develop an appropriate technical solution to Migrate a Public Interest Service.
- (b) If TUSMA, acting reasonably, is satisfied that an appropriate technical solution to Migrate the Public Interest Service does not exist, it must:
 - (i) request that Telstra (at TUSMA's cost) undertake research to determine an appropriate technical solution; or
 - (ii) engage (at TUSMA's cost) a third party to undertake the necessary research.
- (c) If TUSMA notifies Telstra that it wishes to engage Telstra to undertake the research, Telstra will provide TUSMA with:
 - (i) a detailed scope of work description for the proposed research; and
 - (ii) a budget (including a detailed breakdown of relevant Costs) for the work described by Telstra pursuant to **clause 47(c)(i)**.
- (d) If TUSMA approves Telstra's scope of work and budget, then subject to **clause 48**, the parties will enter into an agreement setting out the terms on which Telstra will undertake the proposed research.
- (e) Unless otherwise agreed, an agreement entered into by the parties under **clause 47(d)** will not deal with the implementation of any Migration solution identified by Telstra. TUSMA is under no obligation to engage Telstra to implement, or to pay for the costs of implementation of, any Migration solution identified by Telstra.
- (f) Regardless of the party engaged to undertake research, TUSMA will consult as appropriate with Telstra and other industry participants regarding the required Migration solution, the person engaged to undertake the research, and the terms on which that person is engaged.

48 Intellectual property

- (a) Unless otherwise agreed, TUSMA will own the Intellectual Property in any solutions or other work developed by or on behalf of Telstra in accordance with this Module, and Telstra assigns such Intellectual Property to TUSMA immediately upon its creation.
- (b) Telstra undertakes to do all acts at its cost as may be necessary to give effect to the assignment in **clause 48(a)** including by executing any required documents or effecting any required registrations.
- (c) Telstra will grant to TUSMA, or obtain for TUSMA's benefit, a perpetual, non-exclusive, royalty free licence to use and sub-licence background Intellectual Property that is necessary for TUSMA or any sub licensee of TUSMA to use any Intellectual Property referred to in **clause 48(a)**. This licence will be limited to use within Australia only and will only be granted for the sole purpose of Migrating Public Interest Services.
- (d) If TUSMA owns the Intellectual Property referred to in **clause 48(a)**, TUSMA will grant to Telstra a perpetual, non-exclusive, royalty free licence to use and sub-licence that Intellectual Property.

- (e) Where TUSMA considers it efficient or appropriate to do so, it may agree that Telstra or a third party will own the Intellectual Property referred to in **clause 48(a)**. TUSMA will only agree those arrangements where it obtains (and is able to ensure other relevant parties obtain) a perpetual, non-exclusive, royalty free licence to use the Intellectual Property.
-

49 Payment

The amount payable by TUSMA under an agreement entered into by the parties under **clause 47(d)** will be as agreed by the parties. Payments will be structured so that all or part of the amount payable will not be paid until completion of the relevant research.

Module G

Dictionary

Released under the FOI Act 1982 by the Department of Infrastructure,
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50 Dictionary

In this Agreement:

ACMA means the Australian Communications and Media Authority.

Adequately Served means, in respect of a Service Addresses, that the Service Address is declared to be adequately served in accordance with the process and published criteria established by the Department.

Agreement means this agreement and includes the Modules.

Alternative Infrastructure means:

- (a) the NBN fibre network; and
- (b) other infrastructure which Telstra uses to provide carriage services, including but not limited to fixed, wireless, satellite and terrestrial wireless (including comprised within the NBN).

Business Day means a day other than a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

Certification Date means, in respect of a Rollout Region, the date that is 1 month (or another agreed period) after the Disconnection Date for that Rollout Region.

Certification Notice has the meaning given in **clause 35(e)**.

Commencement Date means the later of 1 July 2012 and the date that the Condition Precedent in **clause 1B(a)(i)** has been waived in accordance with **clause 1B(a)(ii)** or satisfied.

Confidential Information means information that is by its nature confidential; and

- (a) is designated by a party as confidential; or
- (b) which a party knows or ought to know is confidential information,

but does not include information which is, or becomes, public knowledge other than by breach of this Agreement or any other confidentiality obligation. For the purposes of this definition, any information given by Telstra to TUSMA under **Module D (Voice-only Customer Migration)** will be Confidential Information of Telstra.

Connected to the Telstra copper network means, in respect of a Service Address, that either an active service in operation is being provided or Soft Dial Tone is available over at least one line that connects the Service Address to the Telstra copper network.

Costs means the capital and operating costs which a provider has actually and reasonably incurred or would actually and reasonably incur in supplying the services, and includes:

- (a) a reasonable return on the value of assets used net of any depreciation recorded up to the time of the valuation of the asset for service costing purposes;
- (b) depreciation of the assets used to supply the services, to be assessed on the basis of the operator recovering the value of those assets over their useful life; and

(c) prudent and efficient operating costs.

CPE means customer premises equipment.

Customer Management Fee means the fee to be agreed by the parties or otherwise determined by expert determination in accordance with **clause 34.2** to be payable by TUSMA to Telstra in consideration of Telstra performing the Customer Management Tasks in respect of an Eligible Voice-Only Customer.

Customer Management Tasks means the tasks that are notified by TUSMA to Telstra in accordance with **clause 34.1(a)(ii)** in respect of Eligible Voice-Only Customers.

Default Rate means a per annum interest rate equal to the 90 day bank bill rate as published in the Australian Financial Review on the date the relevant payment was due and reset each 90 days thereafter plus 5%.

Department means the Department of Broadband, Communications and the Digital Economy.

Disconnection means, in respect of a Service Address, that the Service Address ceases to be Connected to the Telstra copper network, and **Disconnect** has a corresponding meaning.

Disconnection Date means, in respect of a Rollout Region, the date that is 18 months (or another period applicable under the Subscriber Agreement) after the Region Ready for Service Date of that Rollout Region.

Eligible Customer List has the meaning in **clause 35(a)**.

Eligible Fibre Connection Customer has the meaning given in **clause 38.1**.

Eligible Voice-Only Customer means, in respect of a line at a Service Address, an End User:

- (a) whose Service Address is within a Rollout Region and who, as at the First Stock Take Date of that Rollout Region, is acquiring a voice telephony service over the Telstra copper network at that Service Address and is not acquiring a broadband service over that network at that Service Address;
- (b) whose Service Address is in the Fibre Footprint; and
- (c) who is not acquiring a broadband service over the Telstra HFC network at that Service Address as at the First Stock Take Date for that Rollout Region,

and to avoid doubt:

- (d) does not include an End User at a Service Address which is connected to a line over which Telstra supplies an LSS to another RSP;
- (e) if there is more than one line at that Service Address for which a single End User is the account holder, there will only be one Eligible Voice-Only Customer for those lines; and
- (f) if there is more than one line at that Service Address for which more than one End User is the account holder, each End User will be an Eligible Voice-Only Customer.

Eligible Voice-Only Fibre Customer means, in respect of a line at a Service Address, an End User:

- (a) whose Service Address is within the Fibre Footprint with a Rollout Region;
- (b) who, as at the First Stock Take Date for that Rollout Region, is not acquiring a retail broadband service from Telstra over the Telstra copper network or the Telstra HFC network at that Service Address;
- (c) who first requests an NBN Connection at that Service Address prior to or within the 90 day period following the Disconnection Date for that Rollout Region for the purpose of Telstra supplying only an STS to that End User and is then NBN Connected at that Service Address; and
- (d) who is not an Eligible Voice-only Customer at that Service Address.

Emergency Call Person means the person described in paragraph (a) of the definition of “emergency call person” in section 7 of the Telco Act, or any similar definition which amends or replaces the definition in that provision.

Emergency Call Service has the meaning in section 7 of the Telco Act, or any provision which amends or replaces the definition in that provision.

Emergency Service Numbers means:

- (a) the telephone numbers 000 or 112; and
- (b) any other emergency call service number within the meaning of section 466 of the Telco Act for which Telstra is required to operate the Emergency Call Service from time to time.

Emergency Service Organisation has the meaning set out in section 147(11) of the TCPSS Act or any provision which amends or replaces the definition in that provision.

End User means a person who acquires or has requested a STS from Telstra.

Exceptional Copper Event will occur in relation to a Service Address as set out in clause 26.2(a).

Execution Date means the date that this Agreement is executed by both parties.

Fibre Footprint means the pool of Service Addresses Passed, or to be Passed, with the NBN fibre network as determined, for the purposes of this Agreement, in accordance with clause 52.

First Stock Take Date means, in respect of the Fibre Footprint within a Rollout Region, the date that is 12 months (or another agreed period) after the Region Ready for Service Date of that Rollout Region.

Frustrated means, in respect of a Service Address, that the Service Address is deemed to be frustrated as determined in accordance with published protocols established by the Department in accordance with the direction of the Shareholder Ministers to NBN Co dated 13 April 2011.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation and Interpretation Deed means the deed of that name entered into between NBN Co and Telstra dated on or about the date of this Agreement.

Indicative Fibre Rollout Region has the meaning in clause 52.1(a)(ii)(A).

Information Campaign and Migration Deed means the deed of that name entered into between Telstra and the Commonwealth dated on or about the date of this Agreement.

Initial Scope of Payphones USO Services means the supply, installation and maintenance of the USO Payphones and the supply of Payphone Carriage Services to each USO Payphone as required to fulfil the Payphones USO in accordance with:

- (a) the requirements and instruments set out in **clause 28.1(b)** (other than those referred to in paragraph (b) of this definition), each in their form as at the Execution Date; and
- (b) the determinations referred to in **clauses 28.1(b)(ii) and 28.1(b)(iii)**, in the form set out in **Attachments B, C, D and E** to this Agreement.

Initial Scope of STS USO Services means the supply of a STS to Service Addresses as required to fulfil the STS USO in accordance with:

- (a) the requirements and instruments set out in **clause 25.1(b)** (other than those referred to in paragraph (b) of this definition), each in their form as at the Execution Date; and
- (b) the determination under section 117B of the TCPSS Act referred to in **clause 25.1(b)(iii)** in the form set out in **Attachment A** to this Agreement.

Intellectual Property means all intellectual property rights, including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks, know how, trade secrets and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above.

LSS means a Telstra line sharing service as declared by the Australian Competition and Consumer Commission pursuant to section 152AL(3) of the *Competition and Consumer Act 2010 (Cth)*.

Module means each Module of this Agreement referred to in the Agreement Execution Document.

Migrate means the disconnection of services over Telstra's copper network at a Service Address or other location or premises, and NBN Connection at that Service Address, location or premises.

Minister means the Minister for Broadband, Communications and the Digital Economy.

NBN Co means NBN Co Limited (ACN 136 533 741) and each of its Related Bodies Corporate.

NBN fibre network means the national fibre to the premises network forming part of the NBN.

NBN means the national broadband network that is being constructed by NBN Co Limited and NBN Tasmania Limited or their Related Bodies Corporate.

NBN Connected means, in respect of a Service Address or other location or premises, that an active service in operation is being provided over a line that connects the Service Address or other location or premises to the NBN fibre network.

NBN Definitive Agreements means the:

- (a) Subscriber Agreement;
- (b) Implementation and Interpretation Deed;
- (c) deed referred to as the Access Deed entered into by Telstra and NBN Co dated on or about the date of this Agreement; and
- (d) agreement referred to as the Infrastructure Services Agreement entered into by Telstra and NBN Co dated on or about the date of this Agreement.

Non-fibre Footprint Address means a Service Address that is not in the Fibre Footprint.

Non-Premises means any premises, facility, article of CPE, place or thing, to which an STS is not required to be supplied in order to fulfil the STS USO, as determined in accordance with any determinations made under section 9 of the TCPSS Act or any provision which amends or replaces that provision (as amended from time to time).

Number of Expected Premises on a date means the number that is equal to 93% of the number of Premises in Australia as at that date (as determined in accordance with clause 13.2(d) of the Subscriber Agreement).

ONT means an optical network termination unit.

Passed has the meaning in the Implementation and Interpretation Deed.

payphone has the meaning set out in section 9C of the TCPSS Act, or any provision which amends or replaces that provision.

Payphone Carriage Services means a carriage service supplied by means of a payphone.

Payphone List has the meaning given in **clause 29(a)**.

Payphone Special Services Period means:

- (a) for any Rollout Region that has a Disconnection Date that is earlier than the Temporary Special Services Disconnection Date, the period ending on the Temporary Special Services Disconnection Date; and
- (b) for any other Rollout Region, the period ending on the Disconnection Date for the Rollout Region.

Payphones USO means the obligation to make payphones reasonably accessible to all people in Australia on an equitable basis wherever they reside or carry on business, as described in section 9(1)(b) and related provisions in Part 2 Division 2 of the TCPSS Act (as amended from time to time), or any similar obligation or function, whether imposed on Telstra or TUSMA, which amends or replaces those provisions of the TCPSS Act.

Permanent Cessation of Rollout will occur for the purposes of this Agreement if a "Permanent Cessation Rollout" is determined to have occurred under the terms of the Implementation and Interpretation Deed.

Premises means each of the following:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;

- (b) a school as defined by the Department of Education, Employment and Workplace Relations;
- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for a standard telephone service which is activated in compliance with the USO;
- (e) a payphone which is activated in compliance with the USO;
- (f) a payphone which is listed on the Payphone List; and
- (g) a location which NBN Co is directed by the Minister to connect to the NBN fibre network.

primary universal service provider means the person that is specified by the Minister as the primary universal service provider under section 12A of the TCPSS Act and any person that is required by or under any Commonwealth law to fulfil obligations which are substantially the same as or similar to the obligations of the primary universal service provider.

Priority Assistance Customer means, in respect of a line at a Service Address:

- (a) a Telstra Retail Customer who is identified in the Telstra customer records as an individual who satisfies the eligibility criteria of the "Priority Assistance for Individuals Policy" forming part of Telstra's SMP, as amended from time to time; or
- (b) a customer of another RSP who is identified in Telstra's records as a priority assistance customer of that RSP.

Priority Assistance Customer Management Fee means the fee to be agreed by the parties or otherwise determined by expert determination, in accordance with **clause 34.2** to be payable by TUSMA to Telstra in consideration of Telstra performing the Priority Assistance Customer Management Tasks.

Priority Assistance Customer Management Tasks means the tasks that are notified by TUSMA to Telstra in accordance with **clause 34.1(a)(ii)** in respect of Eligible Voice-Only Customers that are Priority Assistance Customers.

Proposed Fibre Footprint List has the meaning in **clause 52.1(a)(ii)(B)**.

PSAA Fee has the same meaning as in the Implementation and Interpretation Deed.

Public Alarm means an alarm or warning system that is:

- (a) Connected to the Telstra copper network and
- (b) operated by a Federal, State, Territory or local government body or agency or by a not-for-profit organisation; and
- (c) used to alert or inform people about matters which relate to public health, public safety or public security.

Public Interest Service means a carriage service to enable the operation of:

- (a) traffic lights; or

- (b) Public Alarms.

Reasonable Connection Costs means the costs to be determined in accordance with **clause 38.7**.

Rectification Plan means a plan which relates to a material breach by Telstra and which sets out the action Telstra proposes to take to:

- (a) ensure the breach ceases;
- (b) ensure that the breach does not occur in the future;
- (c) report to the relevant End Users (if applicable) and TUSMA on progress in implementing the Rectification Plan.

Region Ready for Service Date means, in respect of a Rollout Region, the date notified by NBN Co under the Subscriber Agreement for that Rollout Region.

Required Cabling means the cabling to be determined in accordance with **clause 38.6**.

Retail Service Provider means a carriage service provider that supplies retail carriage services to an end user.

Rollout means the design, construction and making operational of the NBN fibre network.

Rollout Region means:

- (a) a group of one or more Service Addresses; or
- (b) a geographical area,

identified by NBN Co as a Rollout Region under the Subscriber Agreement.

RSP means a Retail Service Provider.

Second Stock Take Date means, in respect of the Fibre Footprint in a Rollout Region, the date that is 15 months (or another agreed period) after the Region Ready for Service Date for that Rollout Region.

Service Address means a business or residential premises that is or may be connected to a network over which an STS is capable of being provided. To avoid doubt:

- (a) each premises that is part of a multiple dwelling unit is a Service Address for the purposes of this Agreement; and
- (b) a Service Address does not include a Non-Premises including a Non-Premises which is located on, at or within a business or residential premises.

SMP means the Telstra Universal Service Obligation Standard Marketing Plan, as amended from time to time and approved by the ACMA.

Soft Dial Tone means an inactive service supplied by Telstra using the Telstra copper network which includes the following features:

- (a) Telstra does not charge for the service; and
- (b) the service enables outgoing calls to be made to Triple Zero, the 106 Teletypewriter Service and the National Relay Service.

STS means a standard telephone service as defined in the TCPSS Act.

STS USO means the obligation to ensure that STS are reasonably accessible to all people in Australia on an equitable basis wherever they reside or carry on business, as described in section 9(1)(a) and related provisions in Part 2 Division 2 of the TCPSS Act (as amended from time to time), or any similar obligation or function, whether imposed on Telstra or performed by TUSMA, which amends or replaces the obligation in those provisions of the TCPSS Act.

Subscriber Agreement means the agreement of that name entered into between Telstra and NBN Co Limited dated on or about the date of this Agreement.

TCPSS Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)*.

Telco Act means the *Telecommunications Act 1997 (Cth)*.

Telstra copper network means the copper network over which Telstra is in a position to control (within the meaning of Division 7 of Part 33 of the Telco Act), comprising the transport systems (which may be copper or aluminium wire based) between the End User's premises, the pillars in the street and the remote access units, up to the MDF in the nearest exchange, which is or has been at any time used to provide telecommunications services.

Telstra Disability Equipment Program means the program designed and made available by Telstra on its website from time to time to provide eligible customers with specialised equipment to access the standard telephone service.

Telstra Eligible Voice-only Customer means an Eligible Voice-only Customer who is a Telstra Retail Customer.

Telstra HFC network means the hybrid fibre coaxial cable network over which Telstra is in a position to exercise control (within the meaning of Division 7 of Part 33 of the Telecommunications Act).

Telstra Materials means any materials provided by Telstra to TUSMA in performing the relevant services under a Module of this Agreement. For the avoidance of doubt, any materials that are provided by Telstra under **clauses 15.4, 19 or 20** are not Telstra Materials.

Telstra Operated Payphone means a payphone which is owned, maintained and operated by Telstra and for clarification does not include any payphone which:

- (a) is connected to the Telstra network but is owned by, leased (including from Telstra) by or operated by a third party; or
- (b) is not included or required to be included in a register of Telstra payphones that is required to be maintained by Telstra or the ACMA pursuant to a determination made under section 12EF of the TCPSS Act from time to time.

Telstra Retail Customer means a customer who is acquiring a retail voice telephone service from Telstra and does not include a carriage service provider who acquires a voice service from Telstra for the purpose of resupply to another customer.

Temporary Special Services Disconnection Date means the date notified as such by NBN Co to Telstra under the Subscriber Agreement which is relevant to payphones.

TUSMA means the Telecommunications Universal Service Management Agency, a Commonwealth agency established to implement agreements associated with the

Commonwealth's reform of the universal service obligation and the delivery of public interest telecommunications services.

ULL Service Address means a Service Address in respect of which Telstra has supplied a ULLS to a RSP.

ULLS means a Telstra unconditioned local loop service as declared by the Australian Competition and Consumer Commission pursuant to section 152AL(3) of the *Competition and Consumer Act 2010 (Cth)*.

USO Levy Credit means a levy credit as described in section 20J of the TCPSS Act (as amended from time to time), or any levy credit which replaces that levy credit.

USO Payphone means any Telstra Operated Payphone that is included in the Payphone List from time to time.

WLR service means the wholesale line rental service as declared by the Australian Competition and Consumer Commission pursuant to section 152AL(3) of the *Competition and Consumer Act 2010 (Cth)* or a substantially similar service that Telstra provides on a solely commercial basis.

51 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular number include the plural and words in the plural number include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (g) a reference to any authority, agency or body (whether statutory or otherwise) will, if any such authority, agency or body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of such authority, agency or body are transferred to any other authority, agency or body, be deemed to refer respectively to the authority, agency or body established or constituted in its place or which most closely succeeds to its powers or functions;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) the Modules and any attachments form part of this Agreement;

- (j) the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) any reading down or severance of a particular provision does not affect the other provisions of this Agreement; and
- (l) a reference to a financial year is a reference to each 12 month period ending on 30 June.

52 Fibre Footprint

- (a) The parties acknowledge that:
 - (i) certain provisions in this Agreement assume that it will be possible to determine whether Service Addresses not yet Passed by the NBN fibre network will be Passed by the NBN fibre network in the future;
 - (ii) however, it is anticipated that NBN Co will incrementally plan and publish its rollout plans as follows:
 - (A) NBN Co will publish an indicative map of the geographic area within which NBN Co intends to deploy its fibre network which will not specify whether specific Service Addresses are within or outside the Fibre Footprint (**Indicative Fibre Rollout Region**);
 - (B) NBN Co will publish a list of the Service Addresses it proposes to Pass in a Rollout Region within the Indicative Fibre Rollout Region prior to the Region Ready for Service Date for that Rollout Region (**Proposed Fibre Footprint List**);
 - (C) NBN Co may not have Passed all Service Addresses on the Proposed Fibre Footprint List as at the Disconnection Date for that Rollout Region;
 - (D) NBN Co may add or remove a Service Address from the Proposed Fibre Footprint List from time to time; and
 - (E) NBN Co may continue to Pass additional Service Addresses within a Rollout Region after the Disconnection Date for that Rollout Region.
- (b) Accordingly, the parties agree that:
 - (i) until NBN Co provides Telstra or TUSMA with the Proposed Fibre Footprint List, all Service Addresses:
 - (A) within an Indicative Fibre Rollout Region will be treated as Service Addresses falling within the Fibre Footprint for the purposes of this Agreement; and
 - (B) outside any Indicative Fibre Rollout Region will be treated as a Non-Fibre Footprint Address for the purposes of this Agreement; and
 - (ii) when NBN Co provides Telstra or TUSMA with the Proposed Fibre Footprint List for a Rollout Region, all Service Addresses on that list will be treated as being in the Fibre Footprint for that Rollout Region.

- (c) The parties will agree on any reasonable transitional arrangements reasonably required to deal with the change in status of Service Addresses from being within the Fibre Footprint to being a Non-fibre Footprint Address or vice versa as a result of the application of **clause 52(b)**.

Amendment Agreement

TUSMA Agreement

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AMENDMENT AGREEMENT
AMENDMENT AGREEMENT
TUSMA AGREEMENT

Date **14 DECEMBER 2014**

Parties

Commonwealth of Australia (Commonwealth) represented by and acting through the Department of Communications, ABN 51 491 646 726 (**Department**)

Telecommunications Universal Service Management Agency, ABN 42 734 640 460 established by the *Telecommunications Universal Service Management Agency Act 2012* (Cth) and representing the Commonwealth of Australia (**TUSMA**)

Telstra Corporation Limited ABN 33 051 775 556 of Telstra Centre, 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)

Background

- A. The Commonwealth and Telstra entered into the TUSMA Agreement. Pursuant to section 22 of the TUSMA Act, the TUSMA Act and any other law of the Commonwealth has effect as if the TUSMA Agreement had been entered into by TUSMA.
 - B. The parties have agreed to amend the Agreement on the terms set out in this agreement.
-

Operative provisions

1. Definitions and Interpretation

Definitions

- 1.1. Unless the contrary intention appears, terms defined in the TUSMA Agreement (as amended by this agreement) have the same meaning in this agreement, clauses 1.1, 24.5 and 51 of the TUSMA Agreement (as amended by this agreement) apply as if set out in full in this agreement and:

Conditions Precedent Satisfaction Date means the "Restatement Date" as defined in the DAR or such other date as agreed in writing by the parties.

DAR means:

- (a) the deed entitled "Deed of Amendment and Restatement - Definitive Agreements" dated 14 December 2014 between NBN Co Limited and Telstra; or

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- (b) if the deed referred to in subparagraph (a) terminates under clause 3.7 of that deed and NBN Co and Telstra enter into a deed of amendment and restatement under clause 3.7 of that deed, that deed of amendment and restatement.

TUSMA Act means the *Telecommunications Universal Service Management Agency Act 2012* (Cth).

TUSMA Agreement means the agreement originally entitled "Telecommunications Universal Services Management Agency (TUSMA) Agreement" dated in or about June 2011 between Telstra and the Commonwealth.

2. Amendment of the Agreement

The parties agree that:

- (a) with effect on and from the Conditions Precedent Satisfaction Date, the TUSMA Agreement is amended to be on the terms set out in Schedule 1; and
- (b) the TUSMA Agreement, as amended by this agreement, continues in full force and effect and each party will comply with its obligations under the TUSMA Agreement.

3. Costs

Each party will bear its own costs and expenses (including legal costs) arising out of and incidental to the negotiation, preparation, execution and delivery of this Deed.

EXECUTED as an agreement.

EXECUTED for and on behalf of the Commonwealth of Australia by:

M. B. Turnbull
Name of authorised officer


Signature

In the presence of:

DREN CLARKE
Name of witness


Signature of witness

EXECUTED for and on behalf of the Telecommunications Universal Service Management Agency by:

Nerida O'Loughlin
Name of authorised officer


Signature

In the presence of:

CAROLYN McLEAN
Name of witness


Signature of witness

EXECUTED by Telstra Corporation Limited in accordance with the requirements of section 127 of the Corporations Act 2001 (Cth) in the presence of:

D. THODEY
Name of director


Signature

and by:

DAMIAN COLEMAN
Name of director/secretary


Signature of director/secretary

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SCHEDULE 1

AMENDED AGREEMENT

Telstra USO Performance Agreement

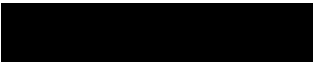
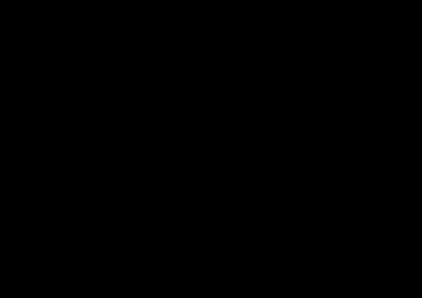
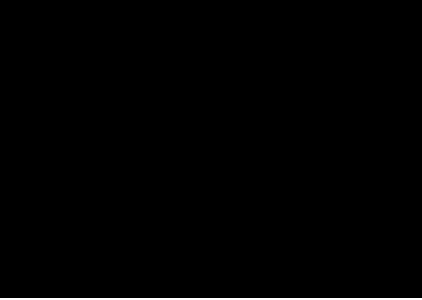
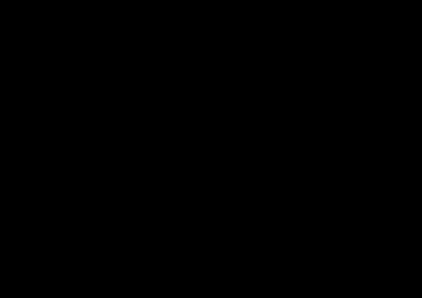
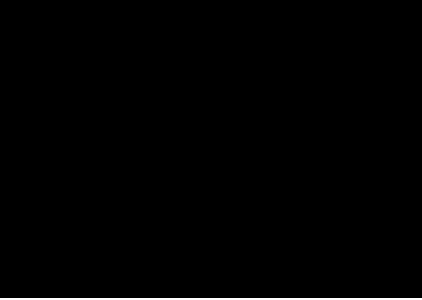
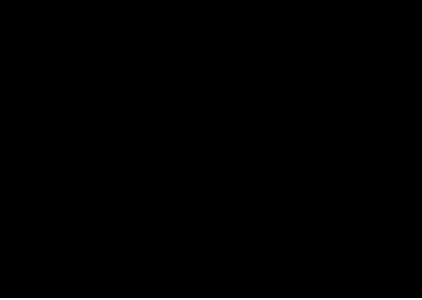
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Parties

- 1 **Telstra Corporation Limited** ABN 33 051 775 556 of Telstra Centre, 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)
 - 2 **Telecommunications Universal Service Management Agency**, ABN 42 734 640 460 established by the Telecommunications Universal Service Management Agency Act 2012 (Cth) and representing the Commonwealth of Australia (**TUSMA**)
 - 3 **Commonwealth of Australia (Commonwealth)** represented by and acting through the Department of Communications, ABN 51 491 646 726 (**Department**)
-

1 Agreement

The parties agree to comply with the terms and conditions of this Agreement.

Executed as an agreement.

Module A

Agreement Introduction and General Terms

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1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression used in this Agreement:

- (a) which is defined in the Dictionary in **Module G (Dictionary)**, has the meaning given to it in the Dictionary;
- (b) which is defined in the Telco Act but is not defined in the Dictionary, has the meaning given to it in the Telco Act;
- (c) which is defined in the TCPSS Act but is not defined in the Dictionary or the Telco Act, has the meaning given to it in the TCPSS Act;
- (d) which is defined in the *Corporations Act 2001* (Cth), but is not defined in the Dictionary, the Telco Act or the TCPSS Act, has the meaning given to it in the *Corporations Act 2001* (Cth); and
- (e) which is defined in the GST Law, but is not defined in the Dictionary, the Telco Act, the TCPSS Act or the *Corporations Act 2001* (Cth), has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in **Module G (Dictionary)** sets out rules of interpretation for this Agreement.

2 The Department

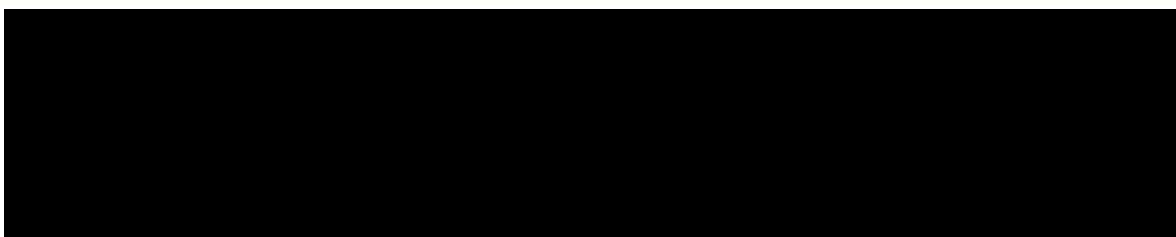
- (a) The parties acknowledge that, until the dissolution of TUSMA, TUSMA will be responsible for administering this Agreement on behalf of the Commonwealth.
- (b) The parties acknowledge that, with effect on and from the date that TUSMA is dissolved:
 - (i) the Department will become responsible for administering this Agreement on behalf of the Commonwealth; and
 - (ii) TUSMA will cease to be responsible for administering this Agreement on behalf of the Commonwealth.
- (c) Unless expressly stated otherwise, a reference in this Agreement to:
 - (i) "the Department" includes, while TUSMA is administering this Agreement, a reference to:
 - (A) TUSMA; and
 - (B) the chief executive officer of TUSMA; and
 - (ii) "the Department" includes the Commonwealth.

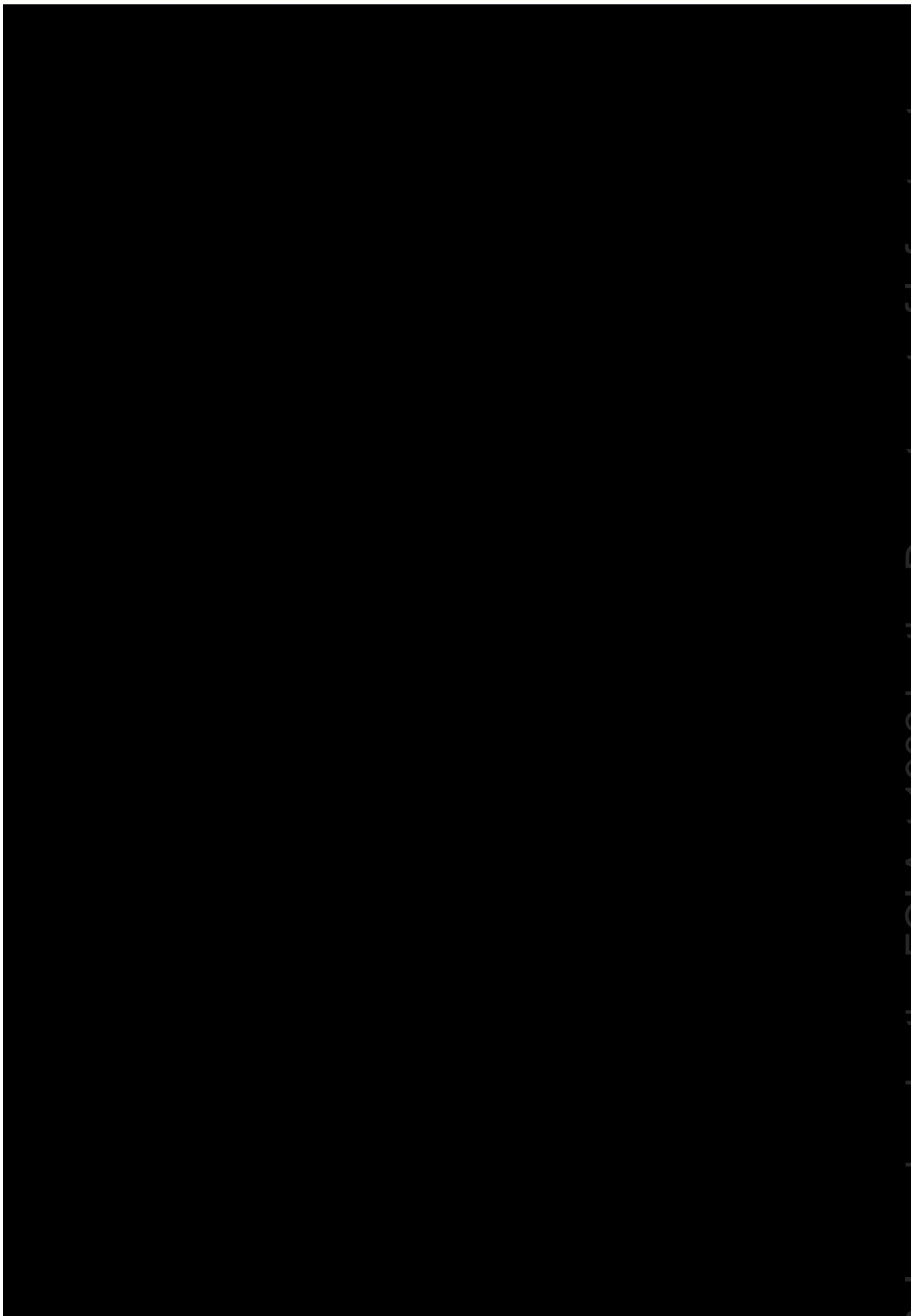
3 Commonwealth Funding

During each financial year ending after 1 July 2014, until such time as **Module B (Standard Telephone Service USO)** is terminated or otherwise ends, the Commonwealth will contribute \$100,000,000 in each financial year (the amount for a part of a financial year to be proportionately reduced) to a special account for the purpose of providing public interest telecommunications services. This contribution will not be raised through an industry levy imposed under the *Telecommunications (Industry Levy) Act 2012* (Cth) (or any replacement levy for the industry levy imposed under the *Telecommunications (Industry Levy) Act 2012*).

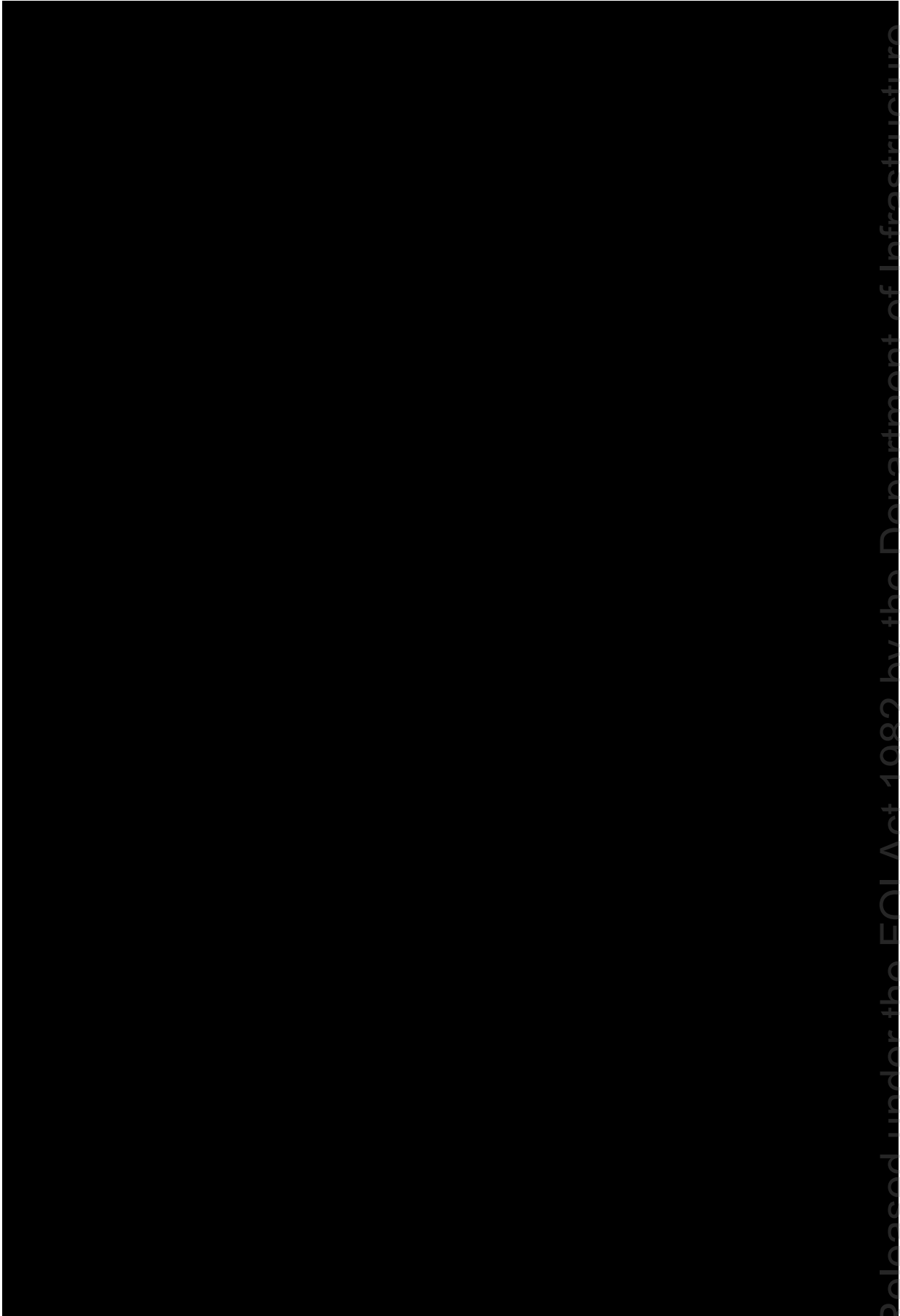
4 Term

- (a) Unless terminated earlier in accordance with this Agreement, the term of each of:
- (i) this **Module A (Agreement Introduction and General Terms)**; and
 - (ii) **Module G (Dictionary)**,
- commences on the Commencement Date and ends on the date that the term of the last continuing Module ends.
- (b) Unless terminated earlier in accordance with this Agreement, the term of each of:
- (i) **Module B (Standard Telephone Service USO)**;
 - (ii) **Module C (Payphones USO)**; and
 - (iii) **Module E (Emergency Call Service)**,
- commences on the Commencement Date and ends on 1 July 2032.
- (c) The term of **Module D (Voice-only Customer Migration)** commences on the Commencement Date and ends on the same date as the date the rollout of the NBN Co Fixed Line Network is complete, unless terminated earlier in accordance with this Agreement. For this purpose, the rollout of the NBN Co Fixed Line Network will be considered to be complete on the date that is 6 months after the Disconnection Date for the final Rollout Region for which NBN Co may give a Region Ready for Service Date notice under the Subscriber Agreement.
- (d) The term of **Module F (Migration of Public Interest Services)** commences on the Commencement Date and ends on 1 July 2017, unless terminated earlier in accordance with this Agreement.
- (e) The term of this Agreement commences on the date that the first Module commences and ends on the date that the last remaining Module ends, unless terminated earlier in accordance with this Agreement.
-

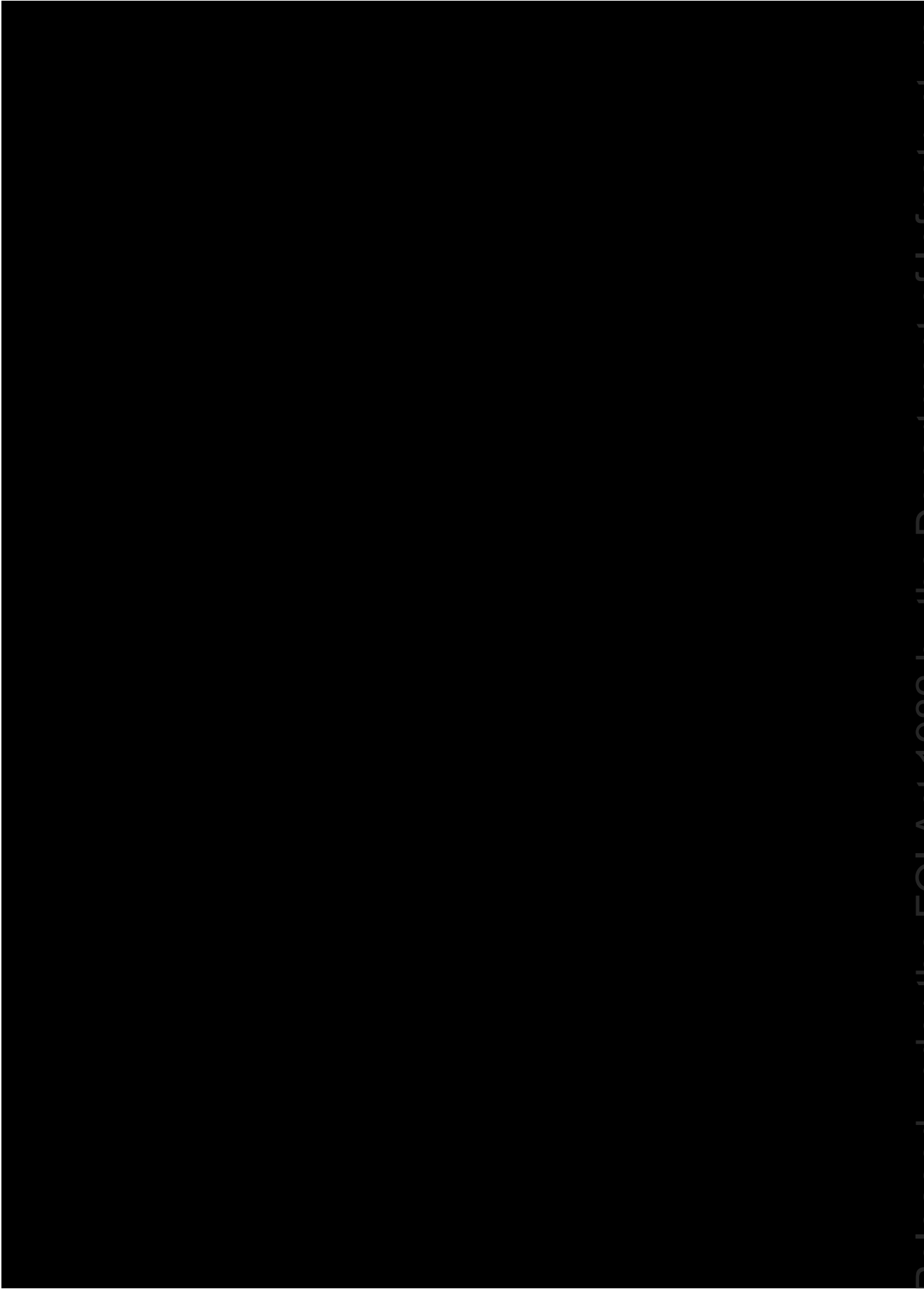




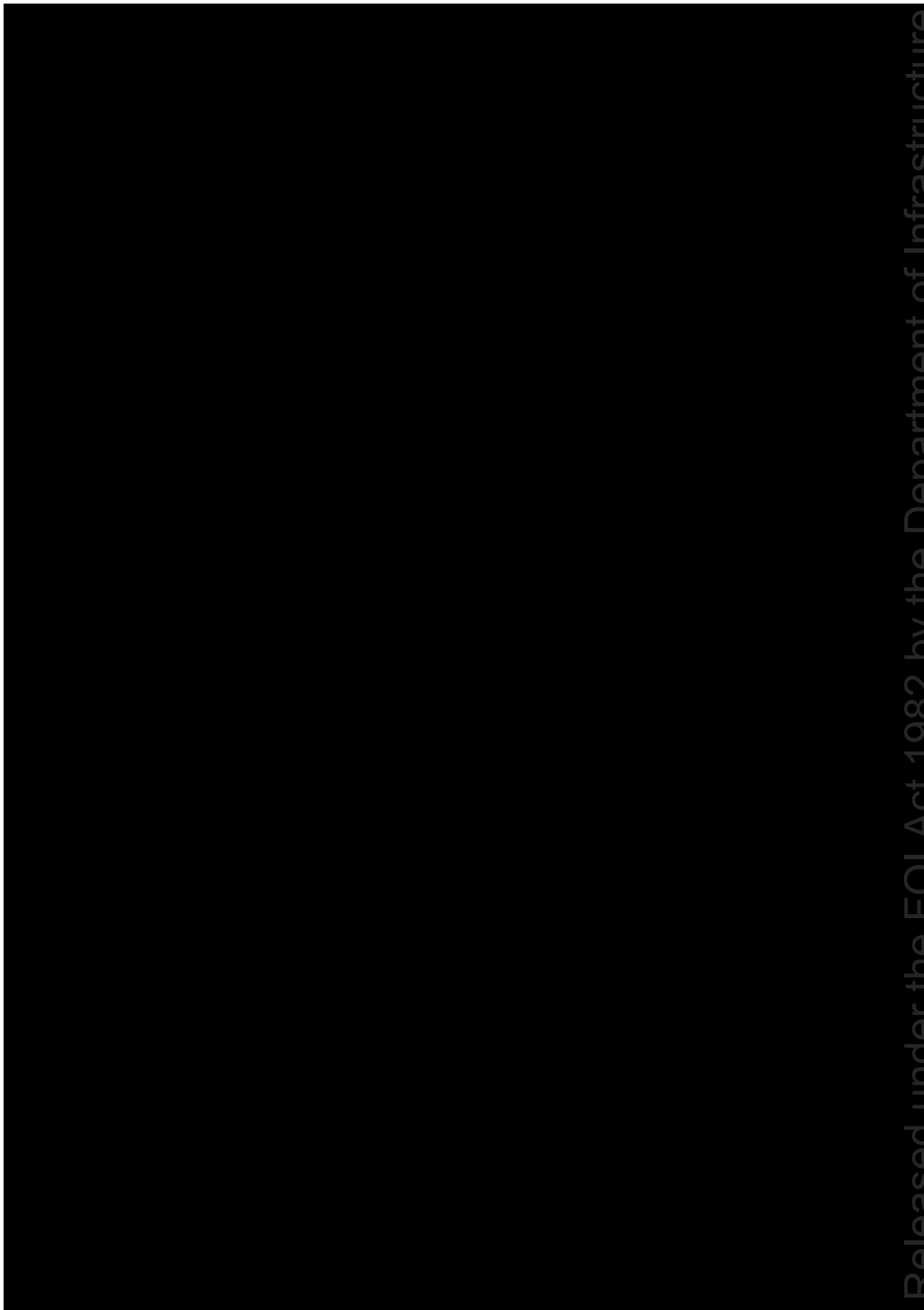
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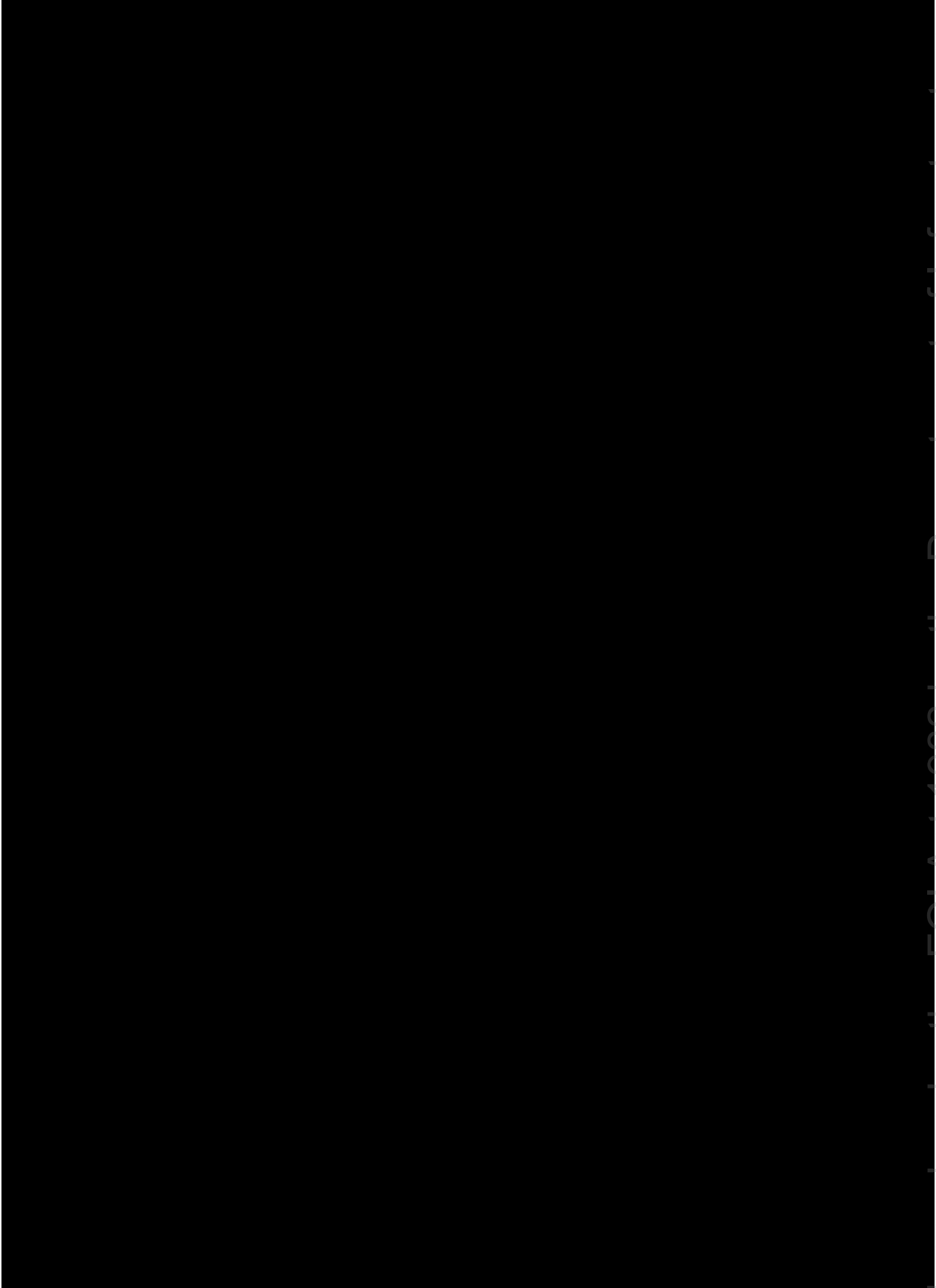
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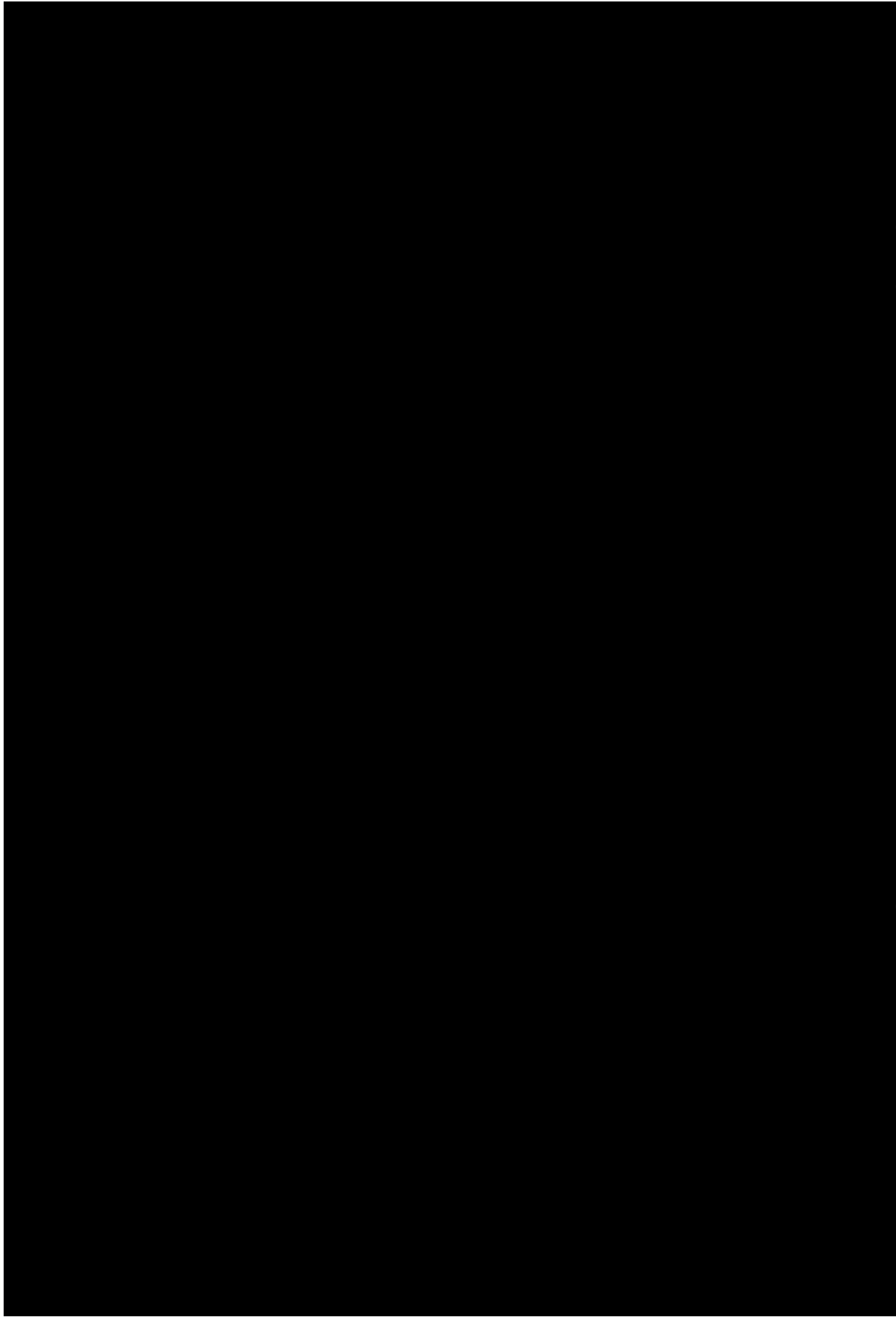
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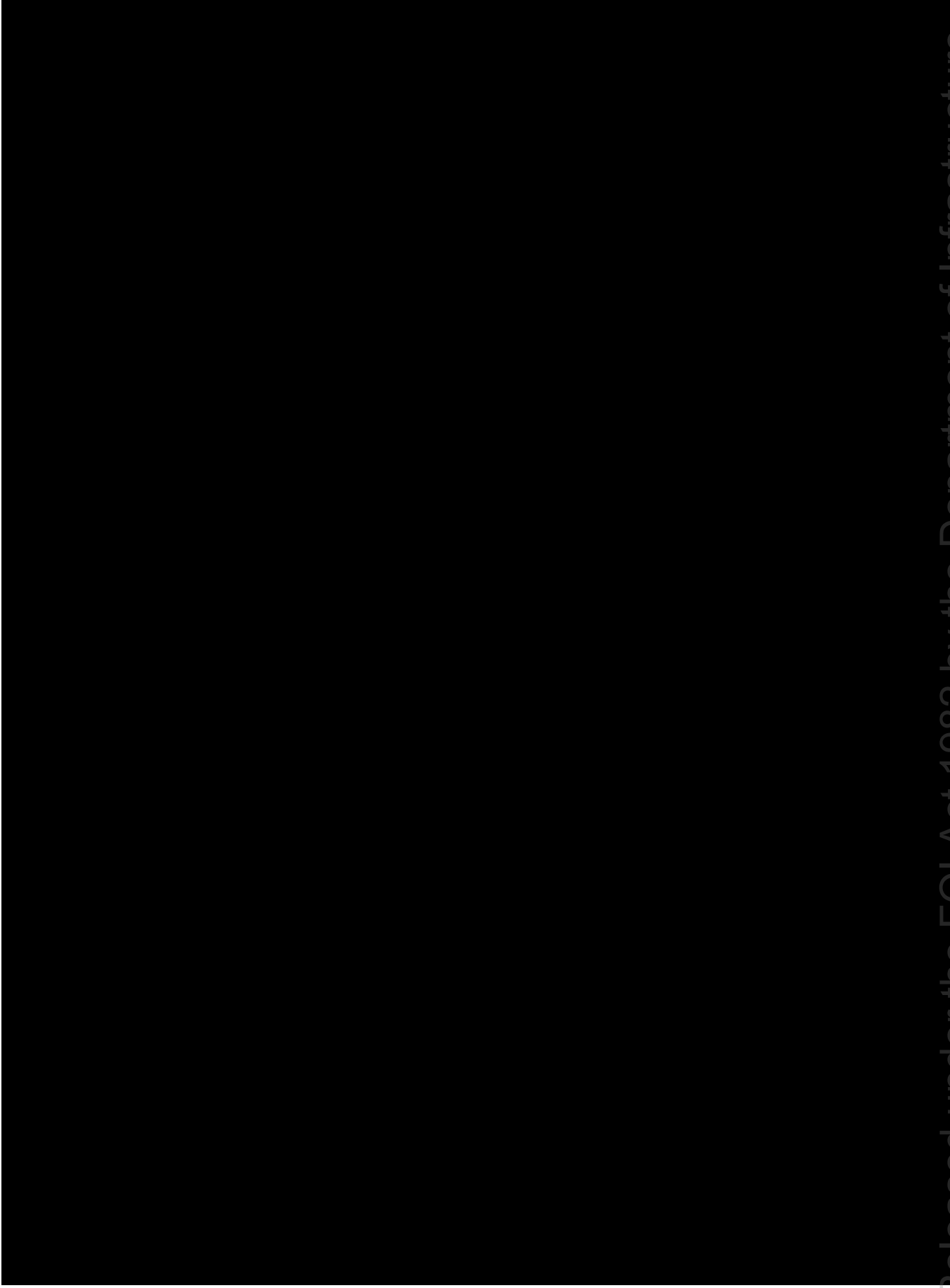
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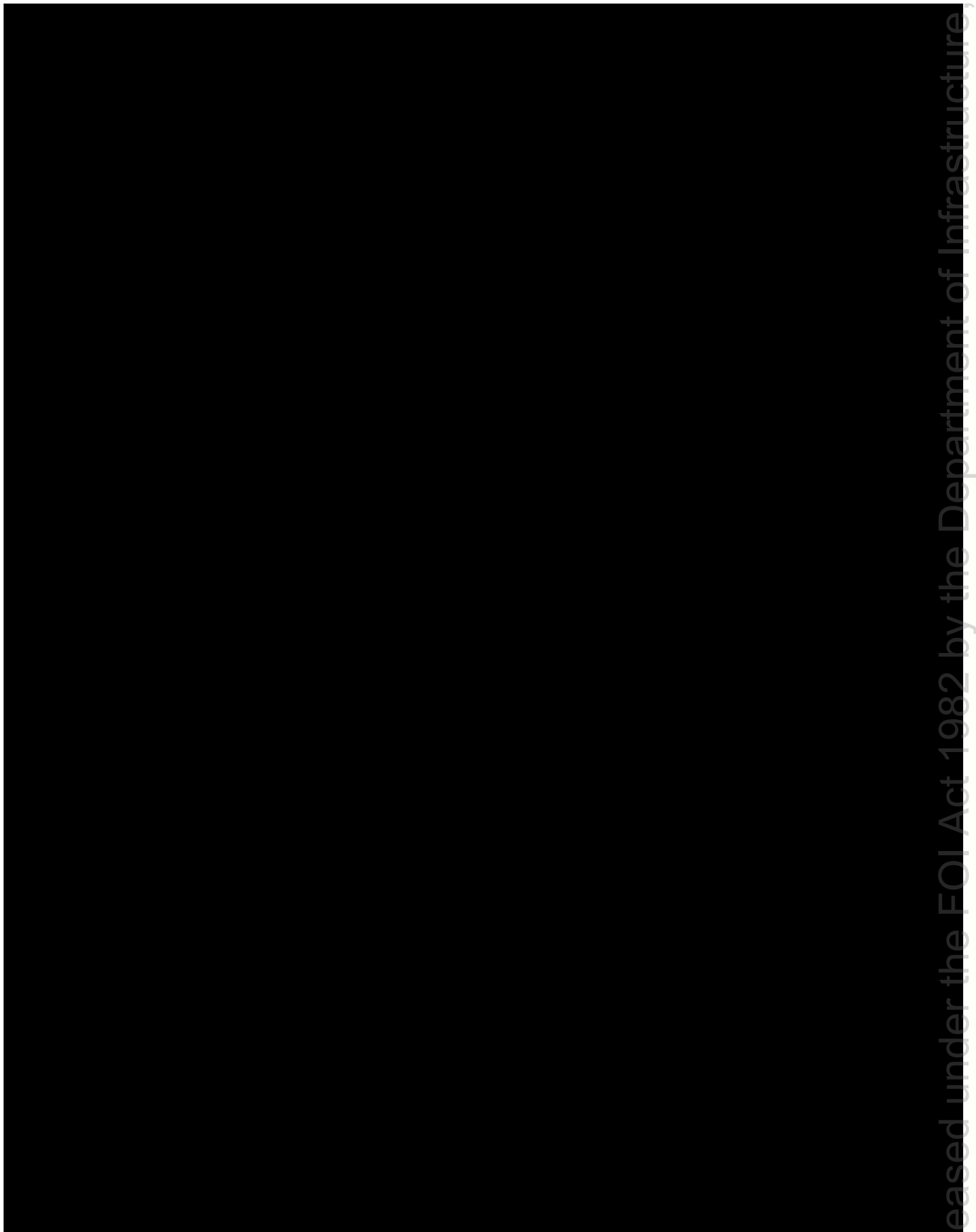
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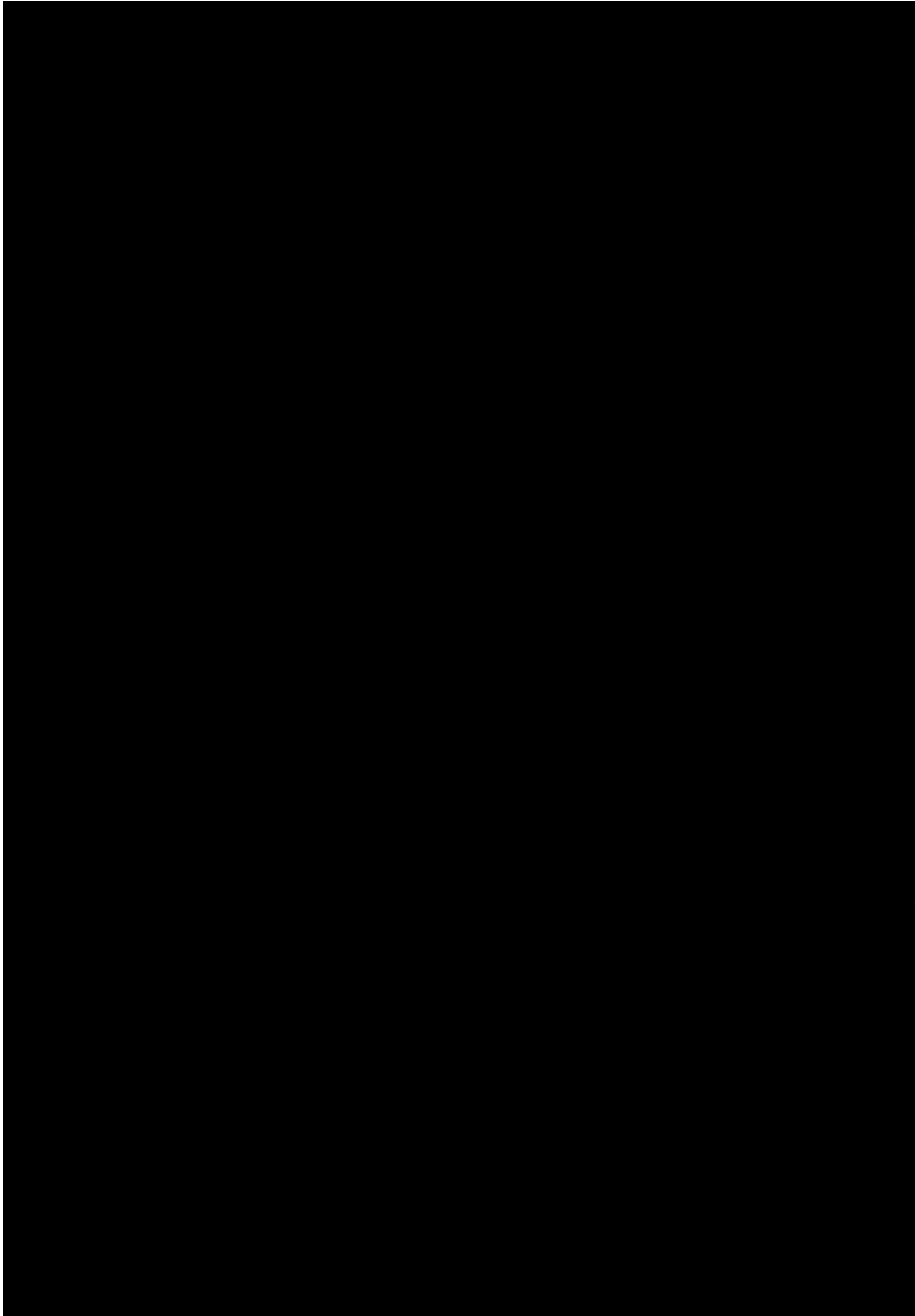
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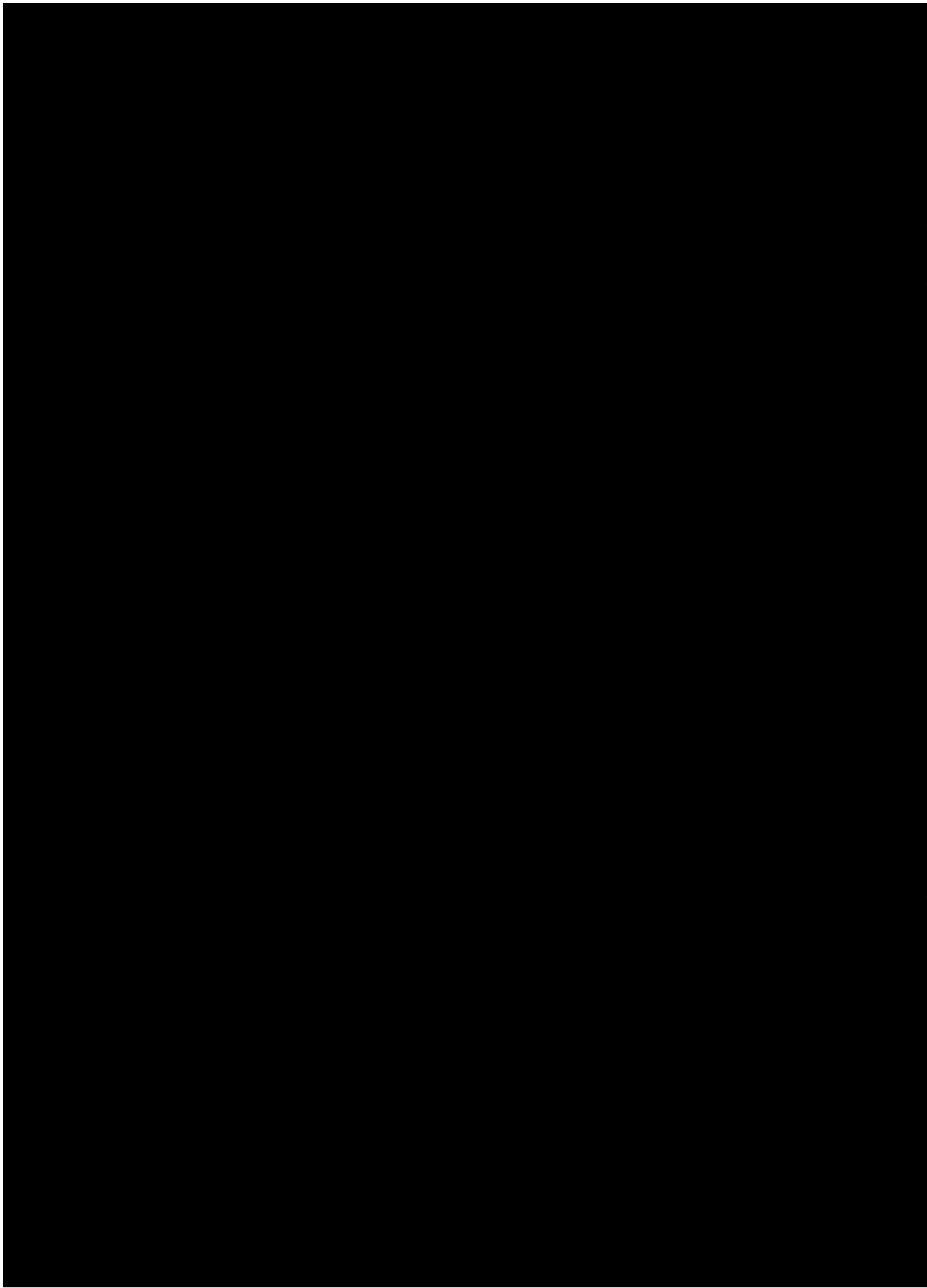
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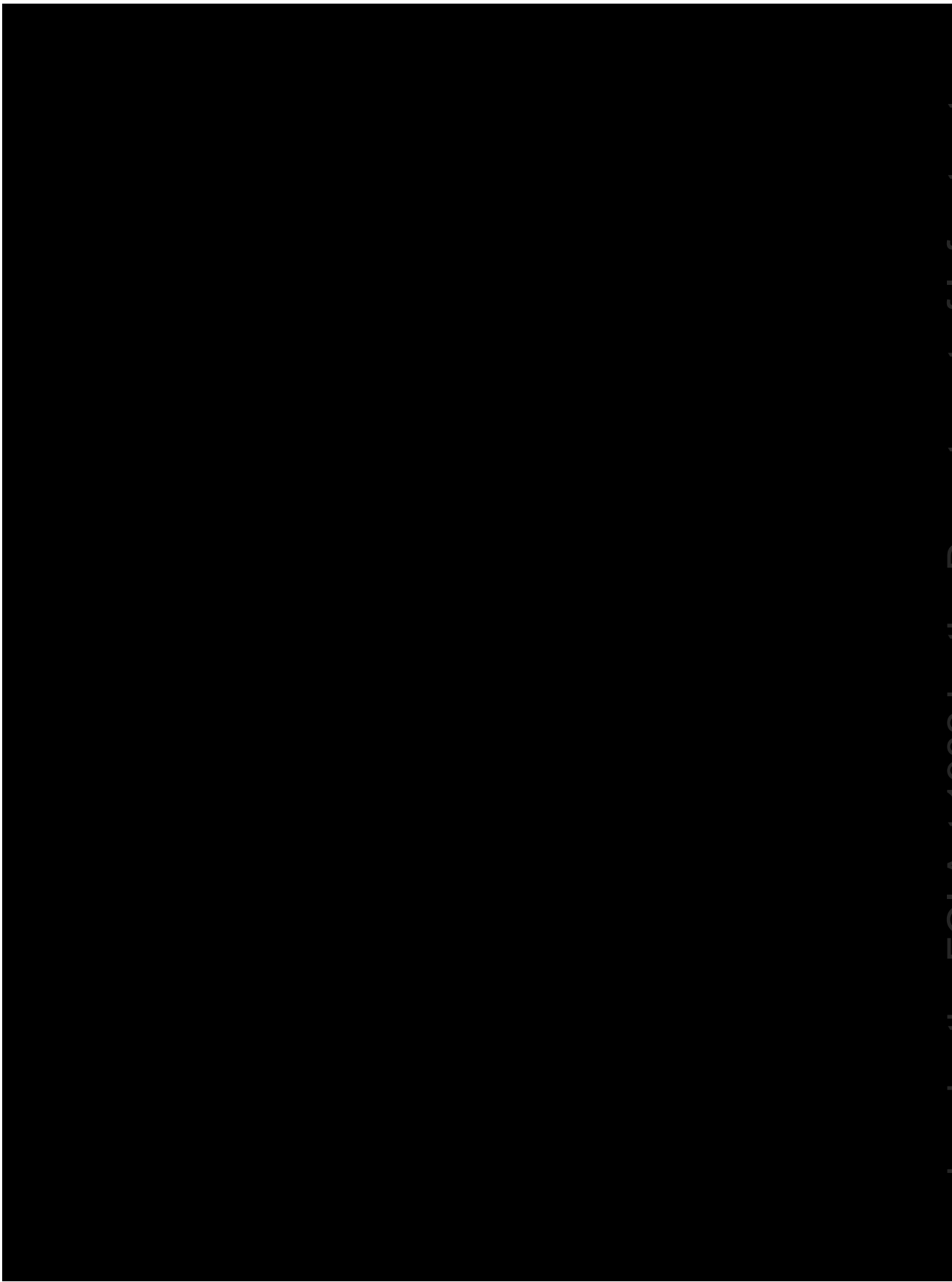
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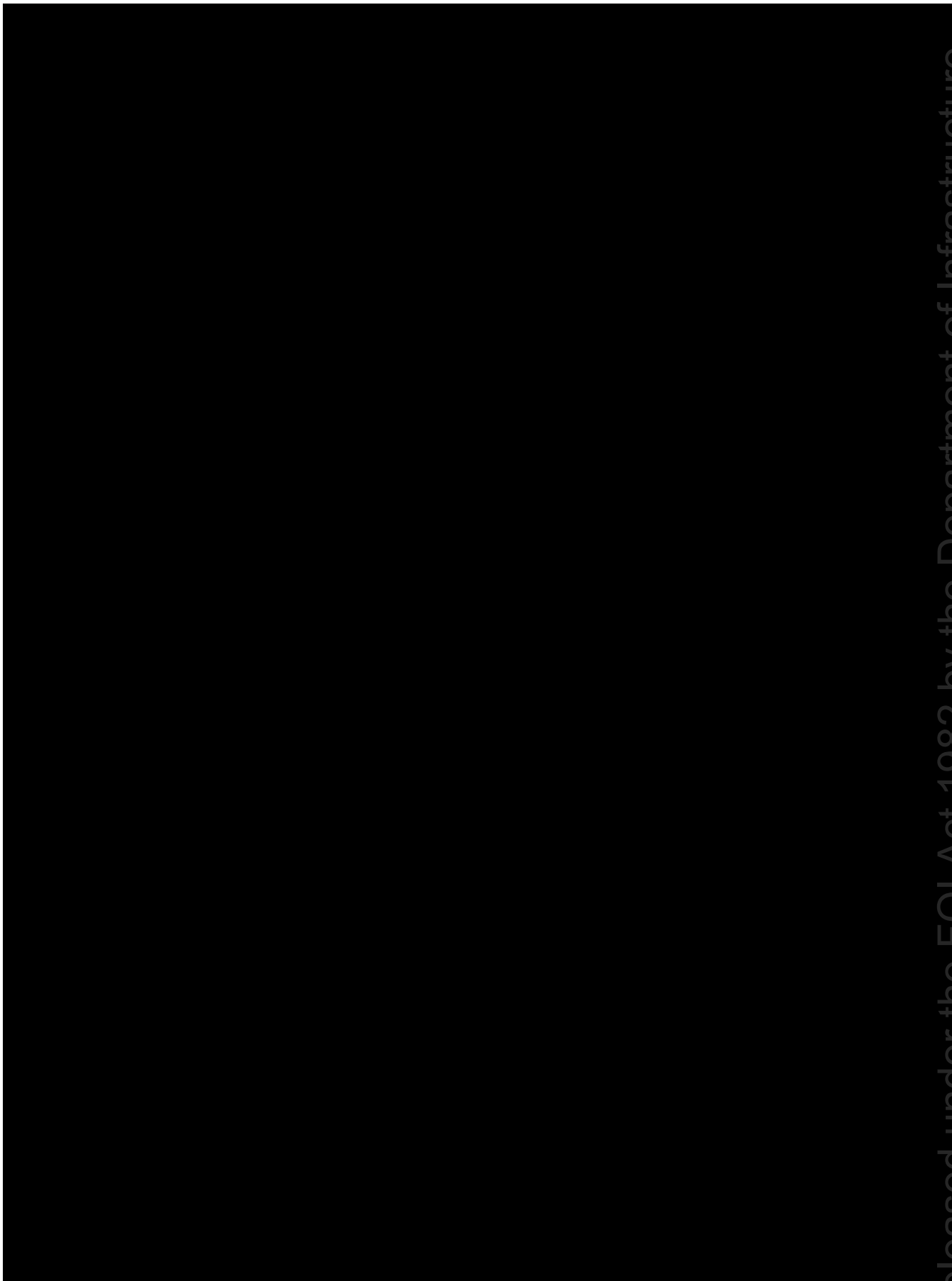
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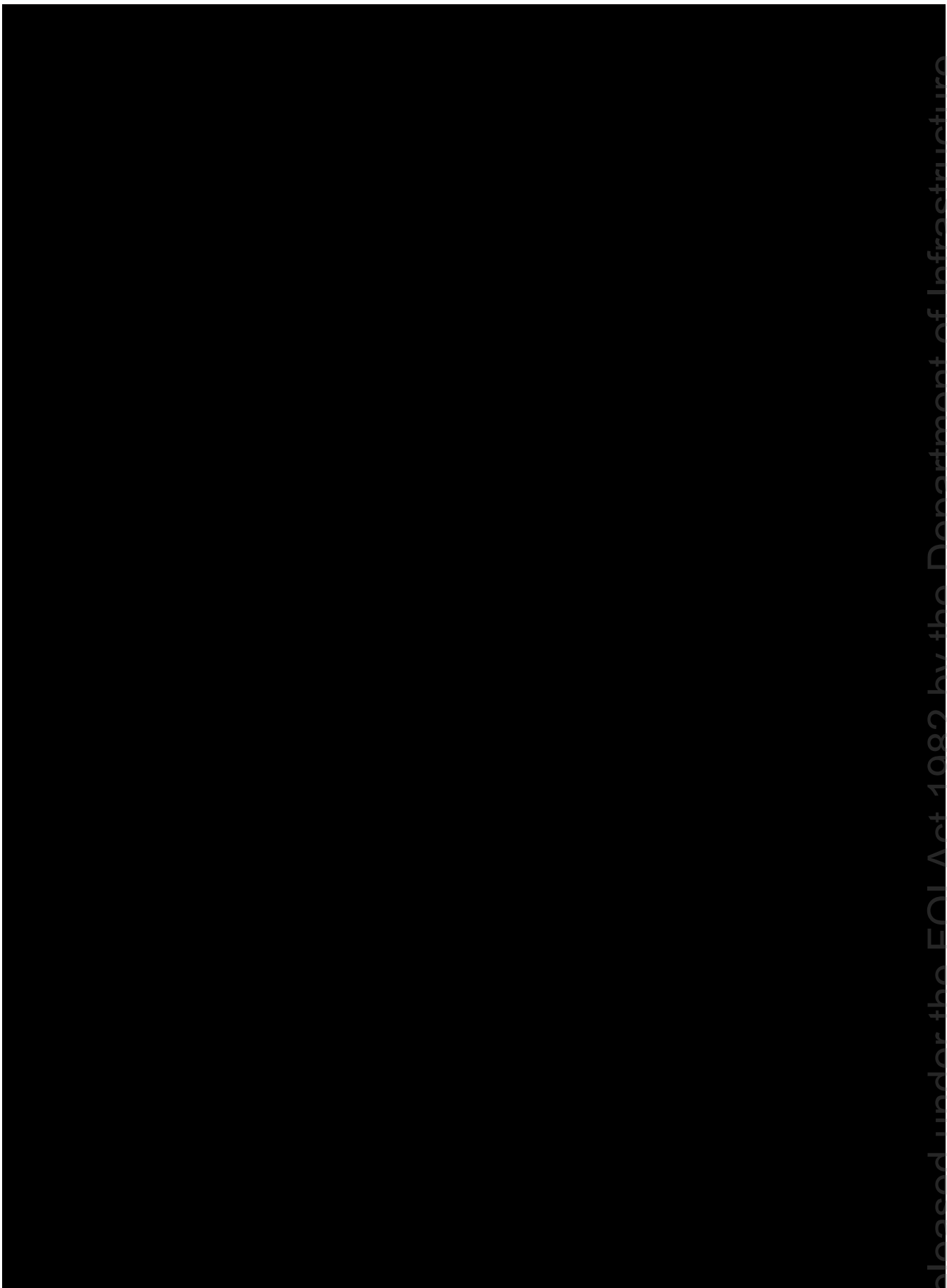
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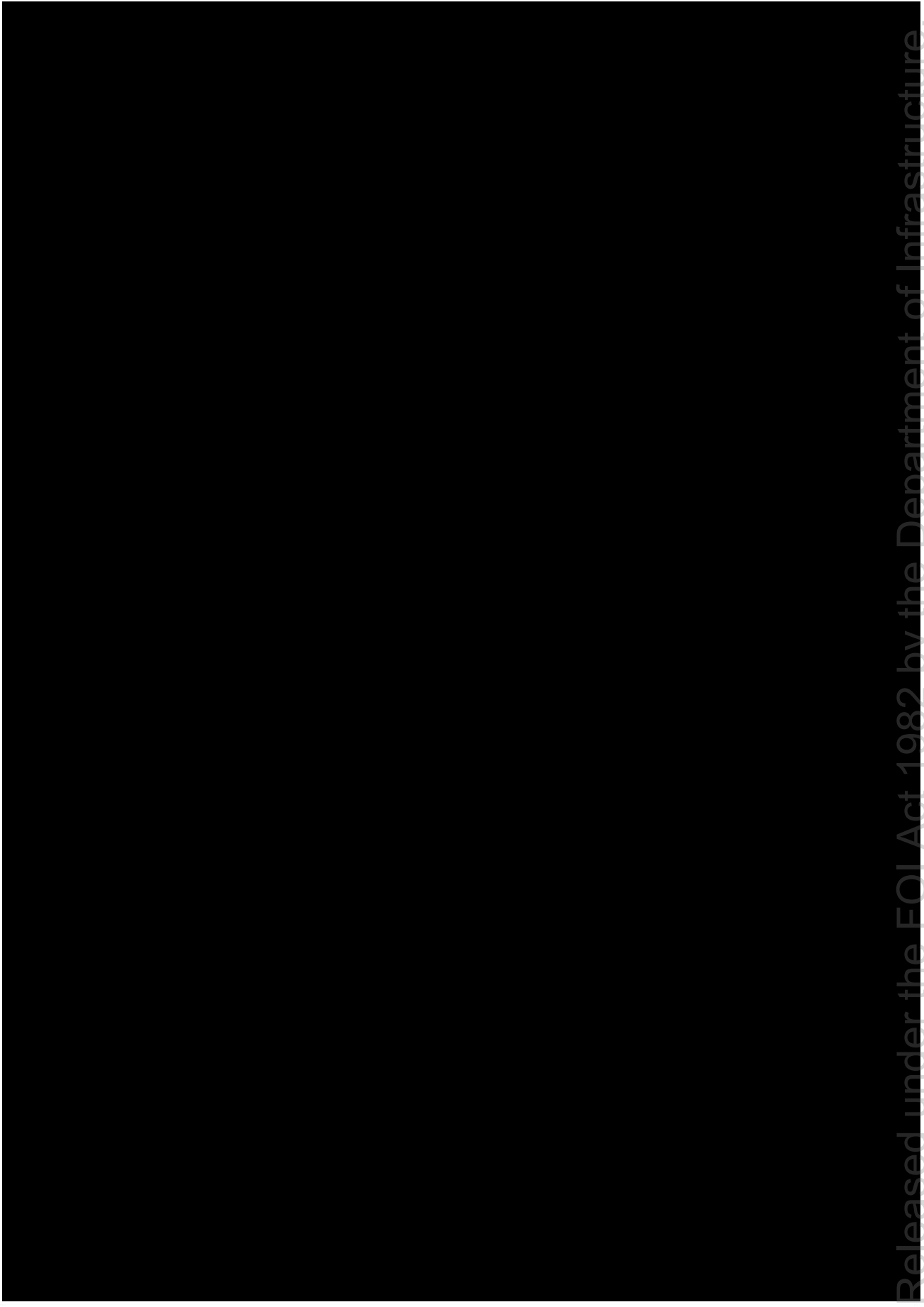
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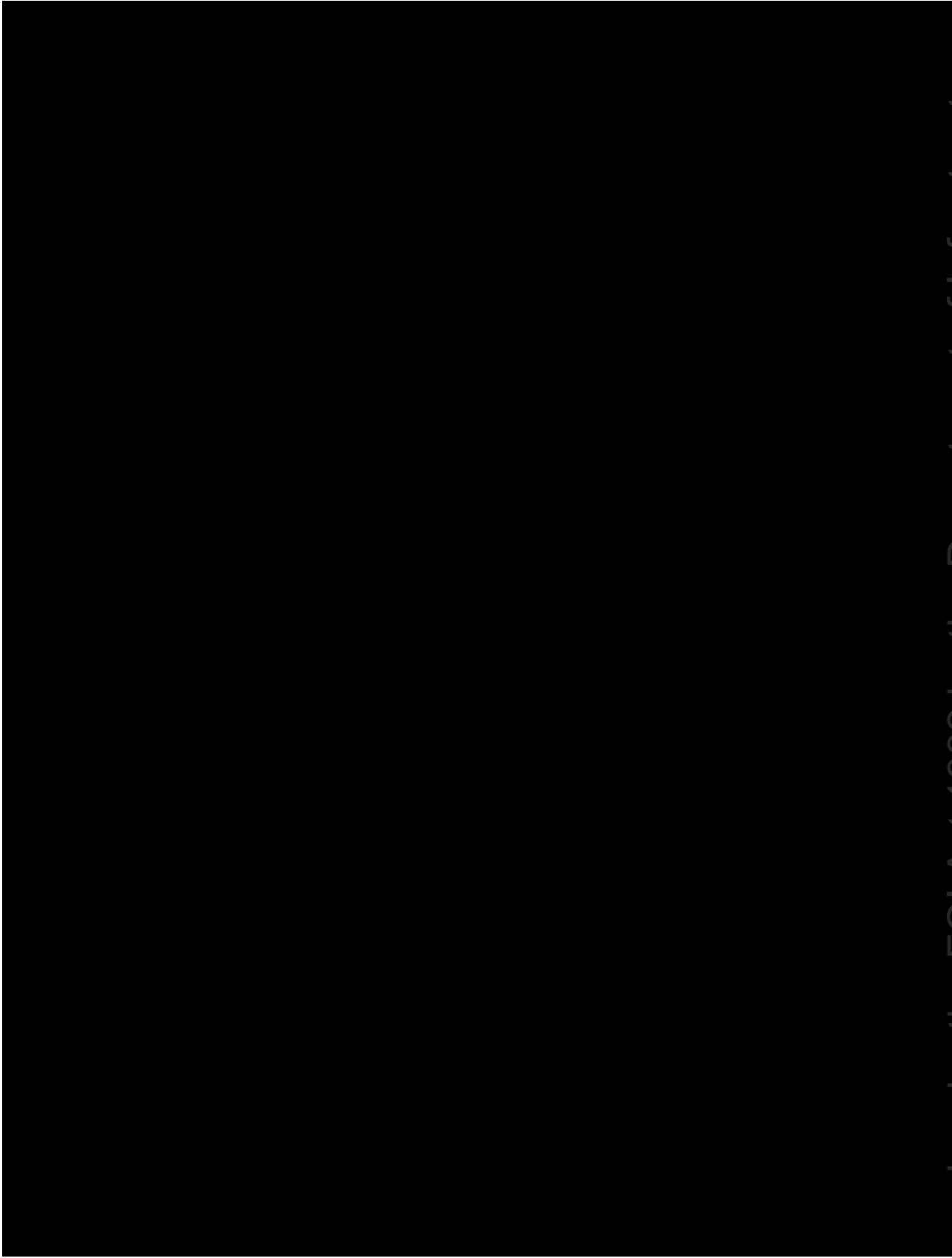
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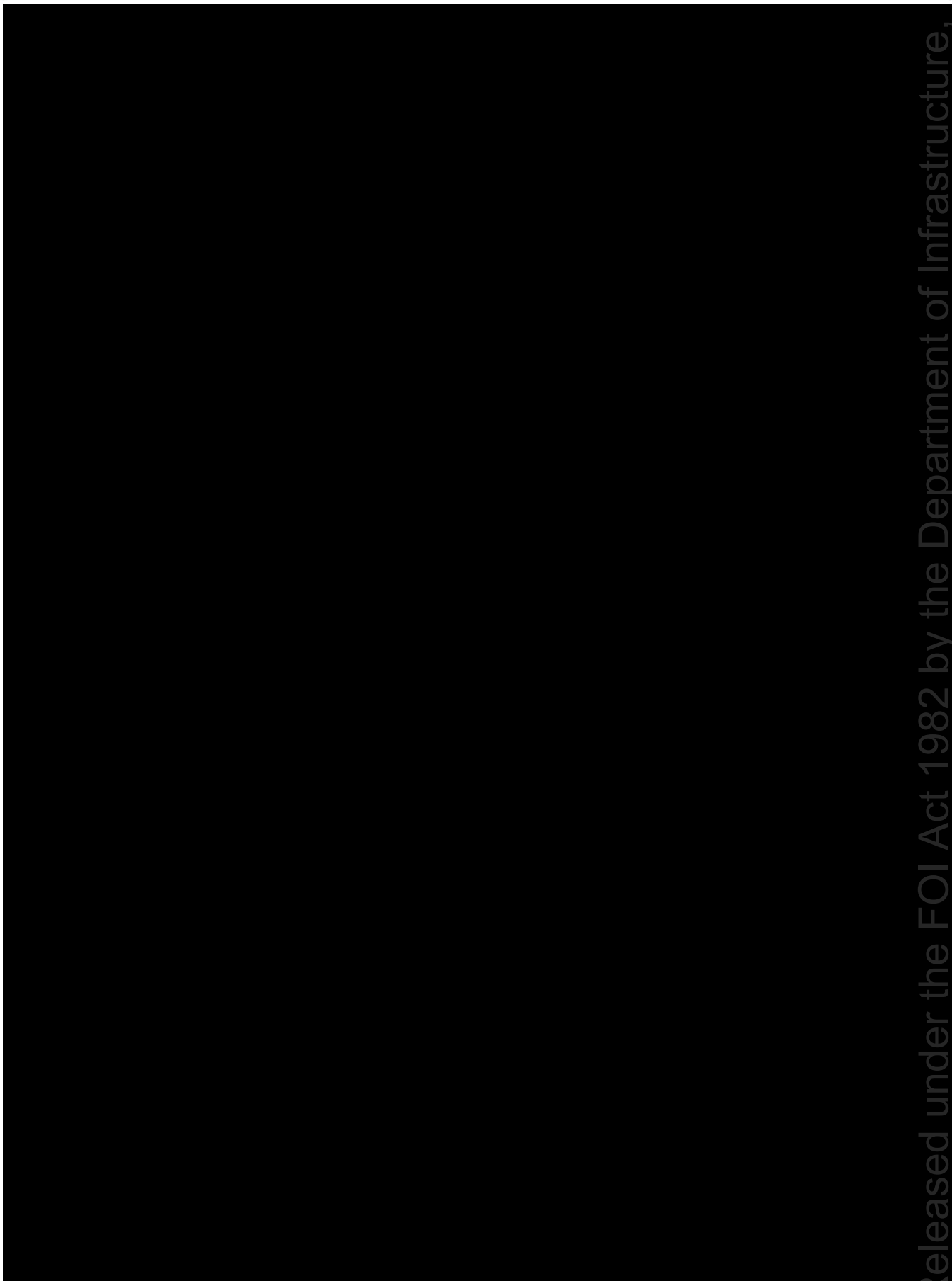
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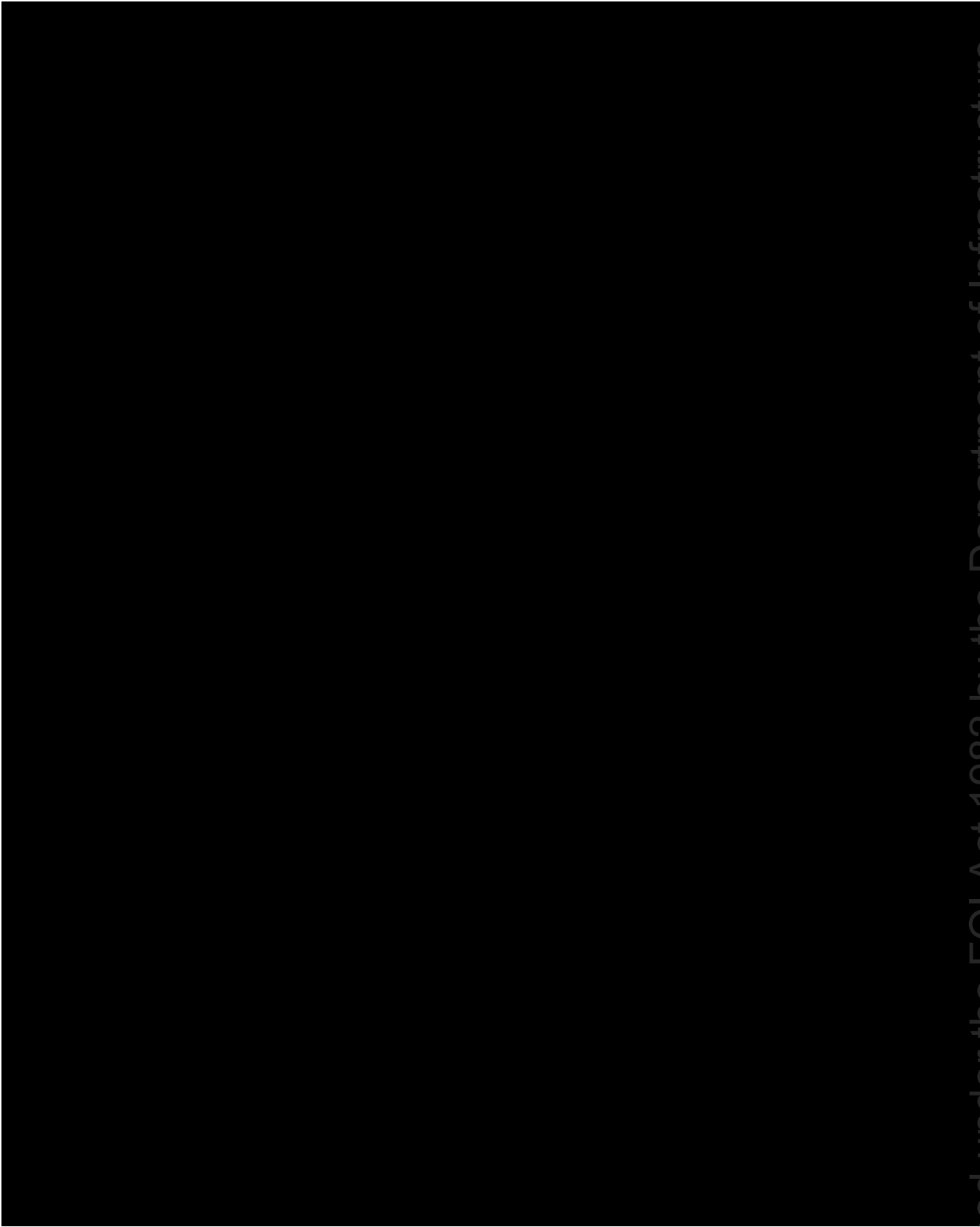
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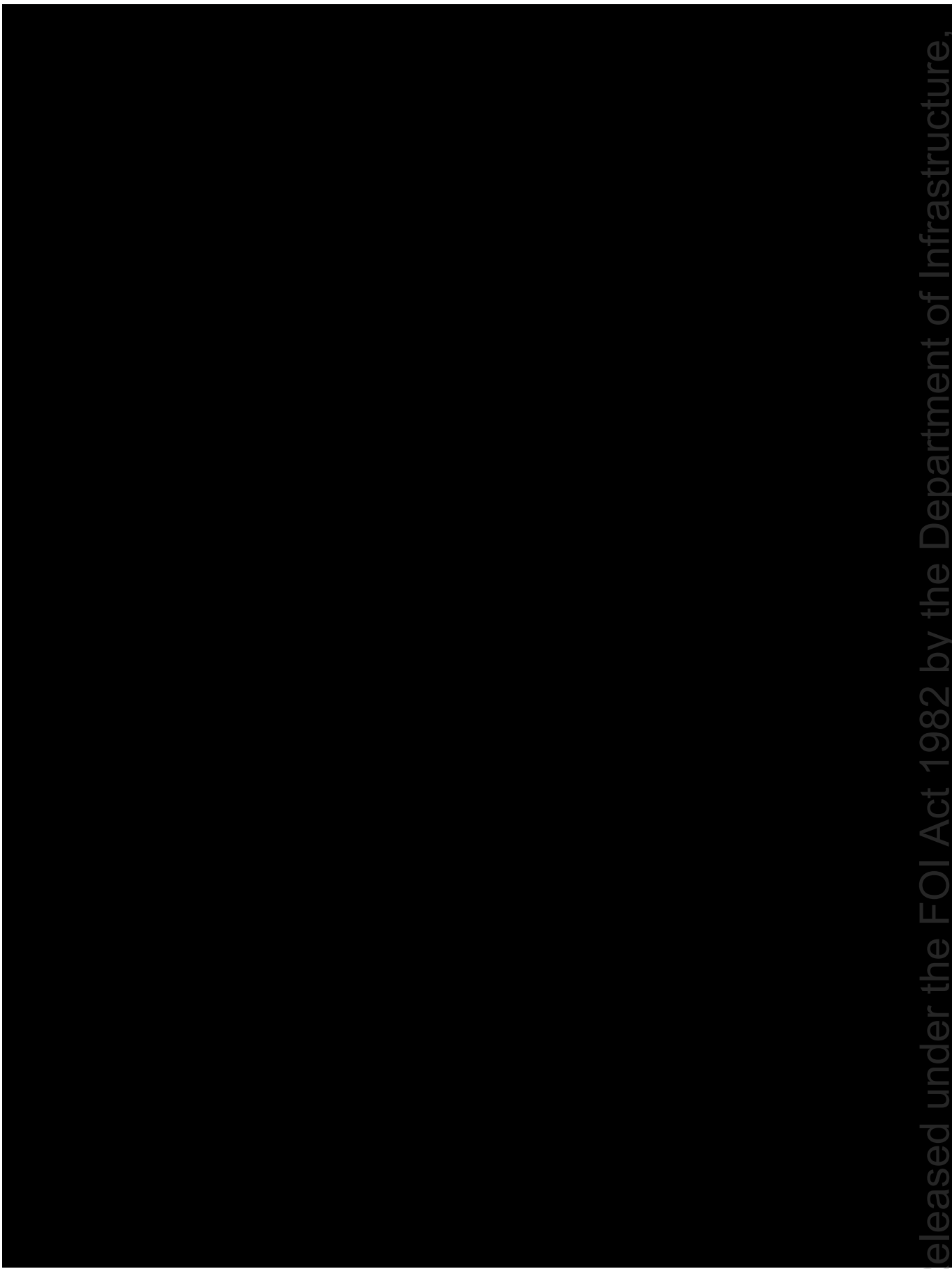
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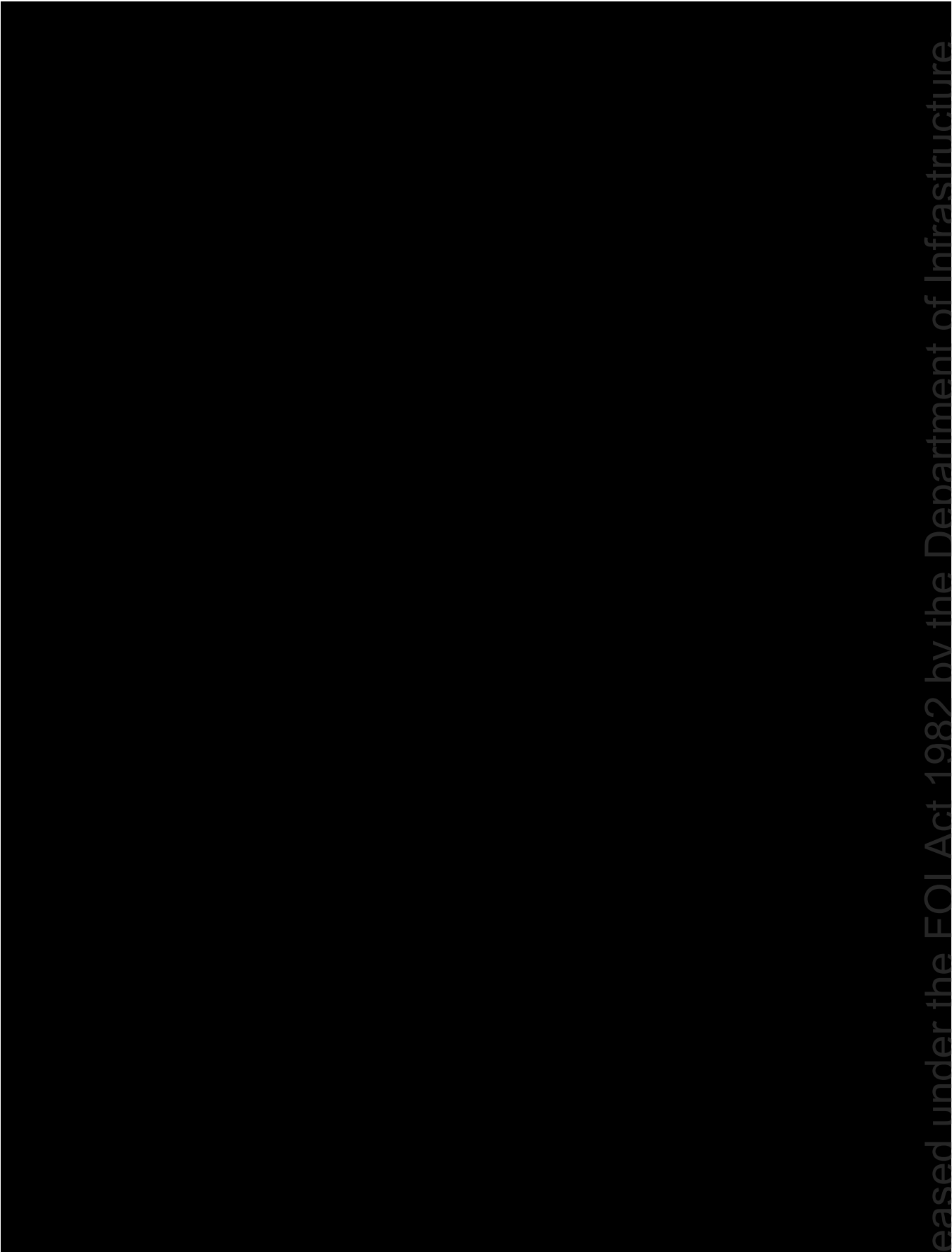
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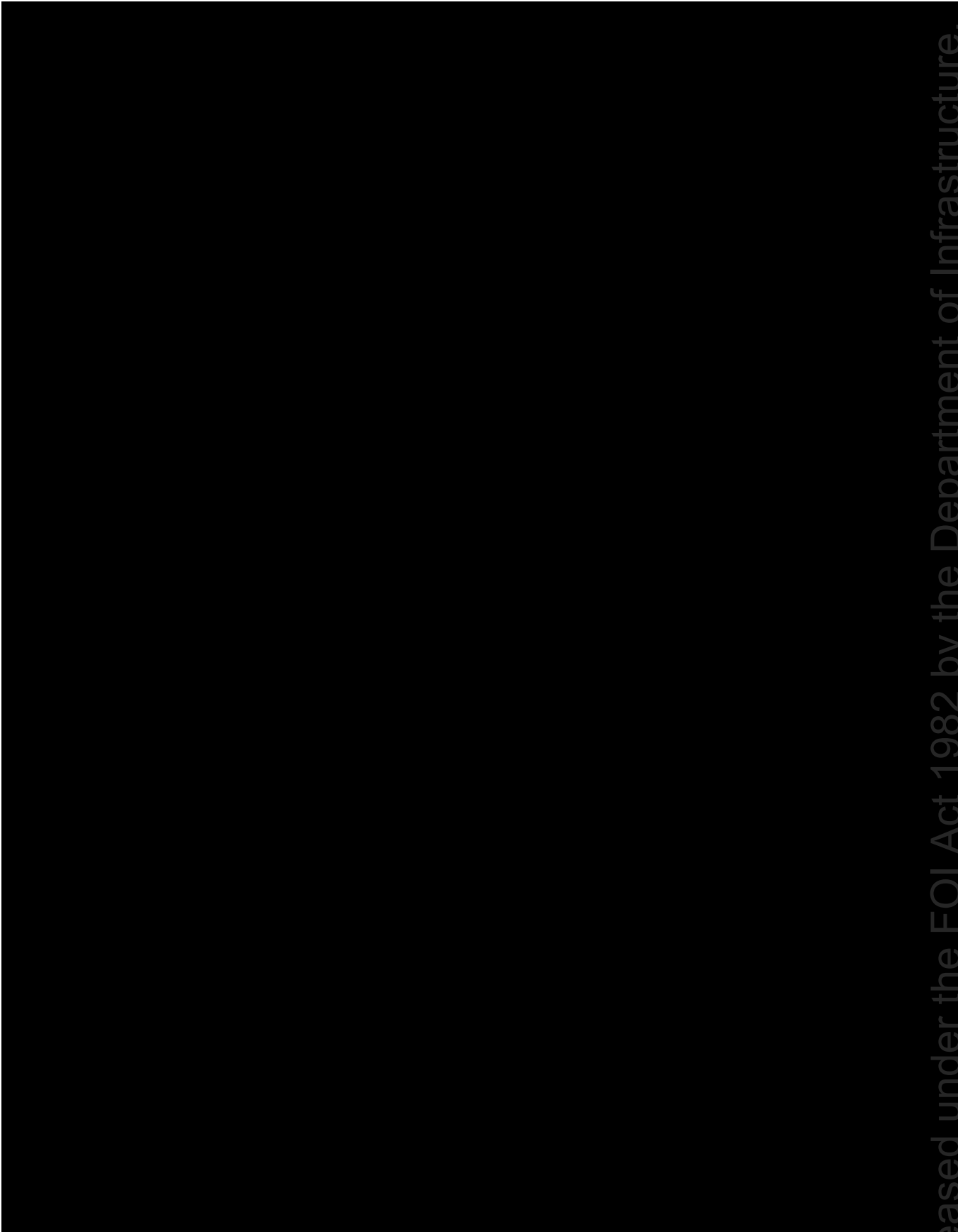
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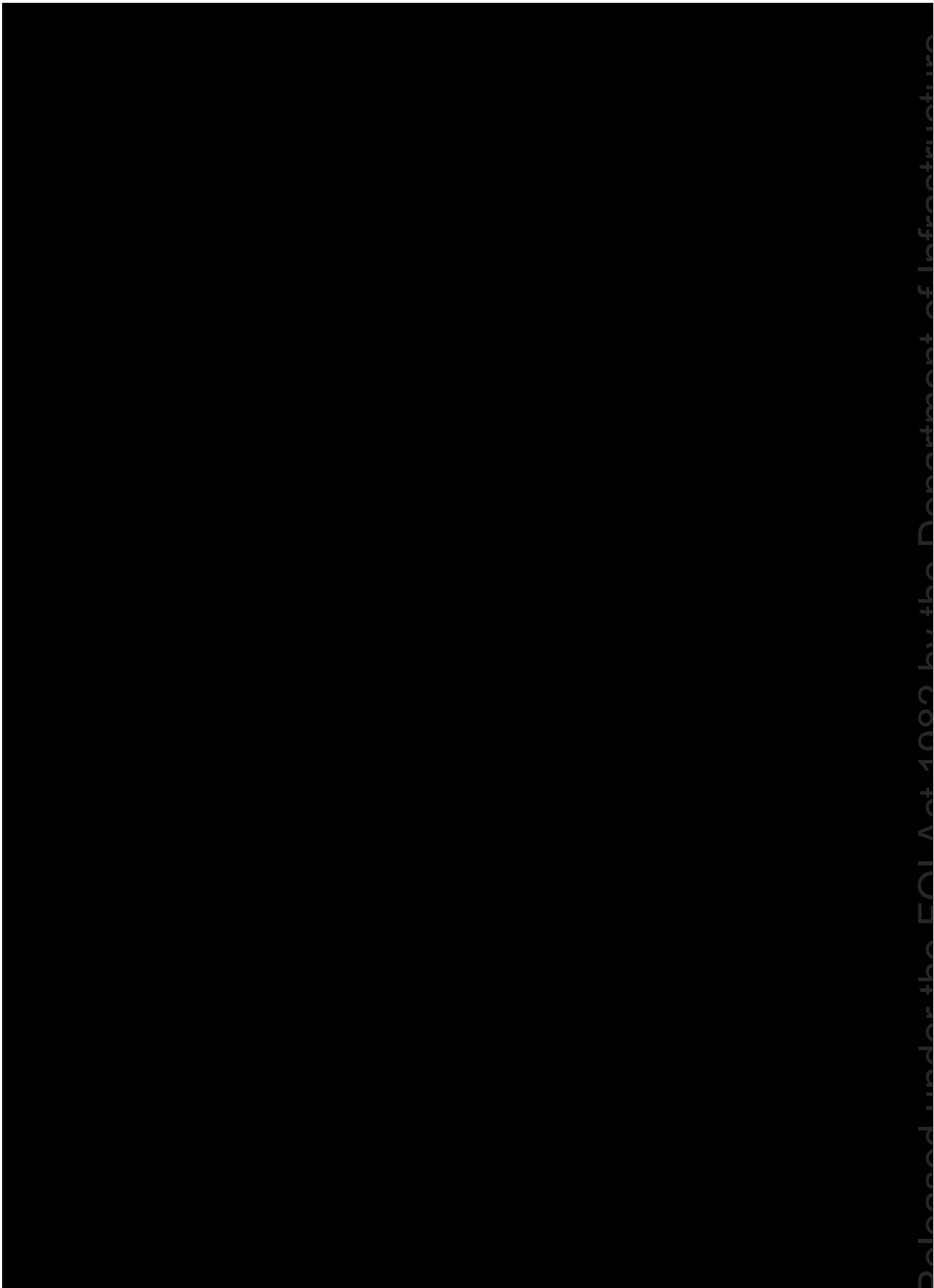


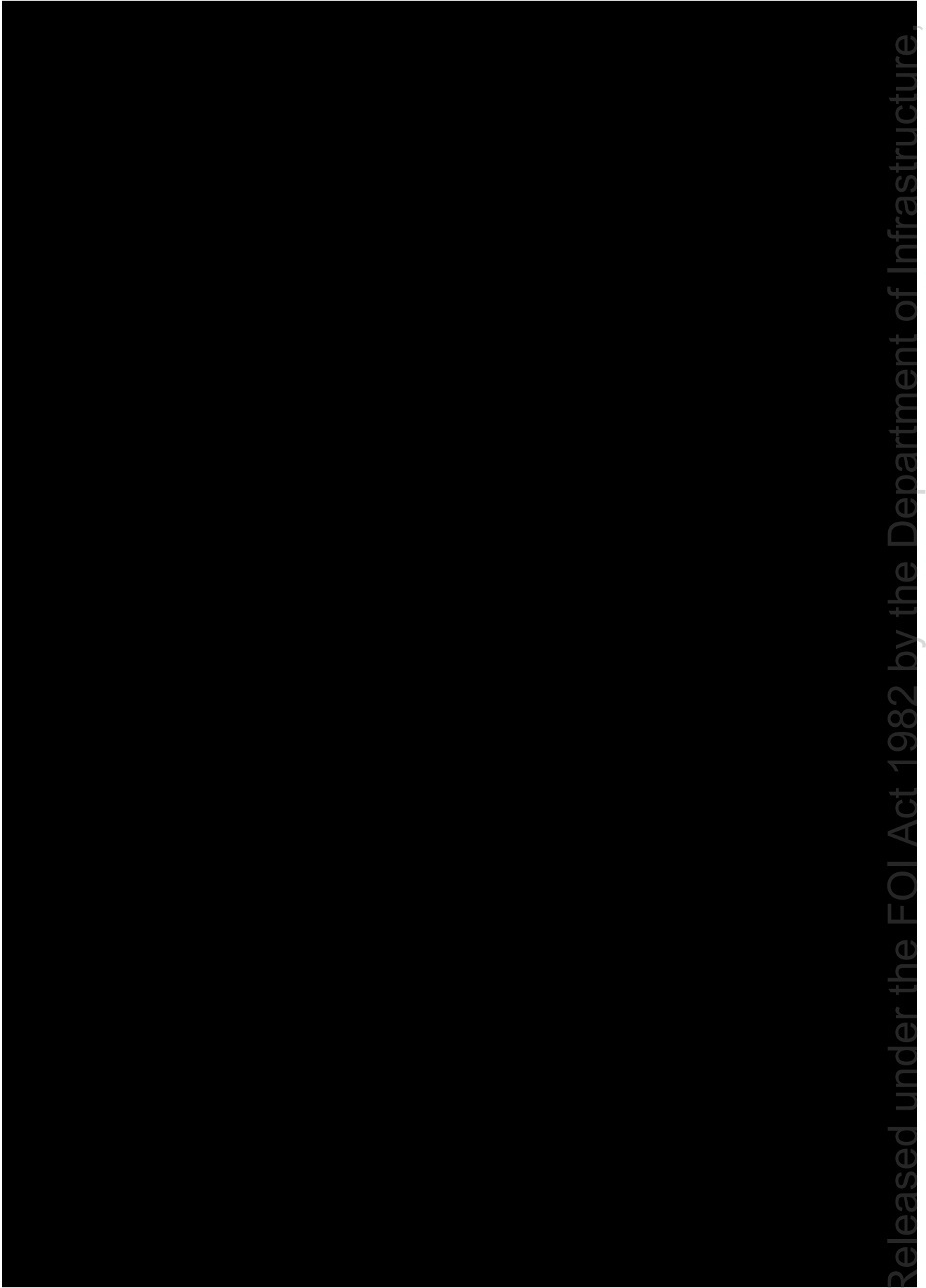
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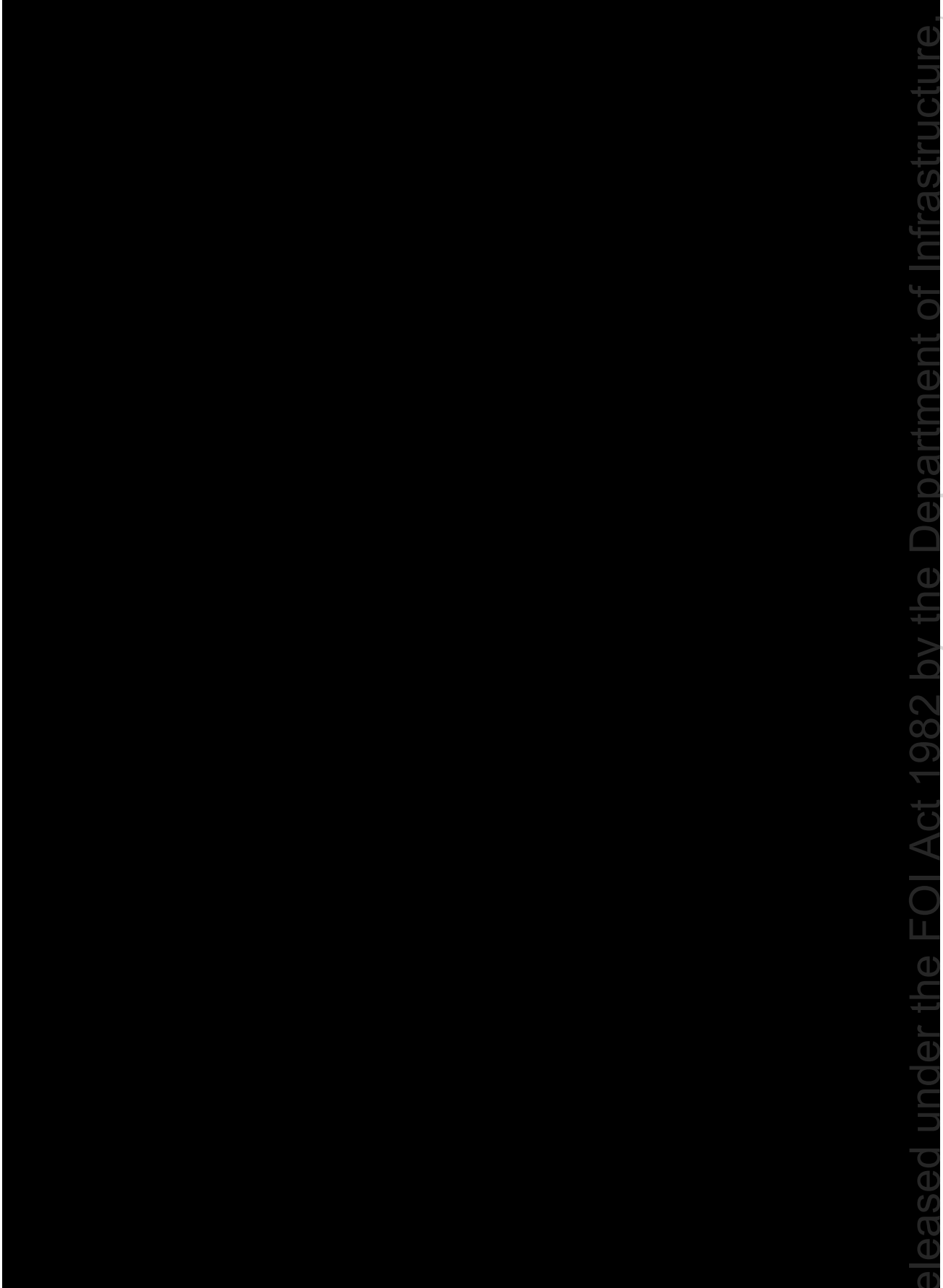
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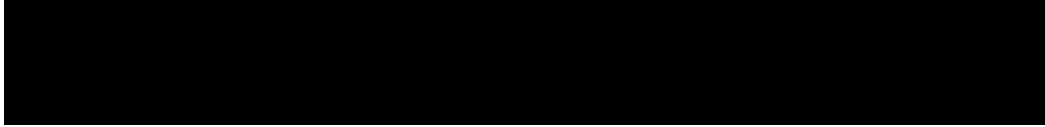




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9B Early Cessation

- (a) If:
- (i) Telstra has validly terminated the NBN Definitive Agreements under **clause 24.7** of the Implementation and Interpretation Deed (excluding consideration of any amendments to that **clause 24.7** made without the consent of the Commonwealth) (**Early Cessation**);
 - (ii) at any time on and from the date on which Early Cessation occurs to the date which is 2 calendar years after the date on which the amount payable by NBN Co to Telstra under **clauses 24.3 to 24.12** of the Implementation and Interpretation Deed is finally determined (whether as a result of a court process or otherwise), any Regulatory Requirement requires Telstra to first satisfy a Separation Obligation; and
 - (iii) Telstra notifies the Department during the period referred to in subclause 9B(a)(ii) that it wishes to make a claim under this **clause 9B**,

this **clause 9B** applies. This **clause 9B** does not apply in any other circumstances. If the conditions in **clauses 9B(a)(i) to (iii)** are satisfied, then subject to **clause 9B(b)**, the Department will pay to Telstra the costs (other than if those costs are de minimis) that Telstra directly incurs in the course of implementation of the organisational, system, process, adapting existing products and services and other changes directly required in order for Telstra to comply with the Separation Obligation referred to in **clause 9B(a)(ii)**, including in respect of the Residual 7% to the extent that that Separation Obligation applies in that area. For the avoidance of doubt, Telstra may not claim payment from the Commonwealth, whether under this **clause 9B** or otherwise, for any ongoing operational costs of complying with the Separation Obligation. Telstra may not make a claim for payment under this **clause 9B** at any time after the date which is 18 months from the date it issues a notice under **clause 9B(a)(iii)**.

- (b) The amount payable by the Department to Telstra in respect of a claim under **clause 9B(a)** will be reduced by the Mitigation Amount. For the purposes of this **clause 9B**, the **Mitigation Amount** is the amount which, if the claim under **clause 9B(a)** were a claim for damages for breach of a contractual obligation by the Department not to impose a Separation Obligation on Telstra, the damages payable by the Department would be reduced as a consequence of the application of the principle that the courts will not award damages for losses and costs that could have been avoided by the claimant mitigating its costs and losses.
- (c) For the avoidance of doubt, the Commonwealth does not undertake to Telstra not to impose a Separation Obligation on Telstra.
- (d) If Telstra makes a claim under this **clause 9B** it must provide reasonable details of the costs that Telstra is claiming and receipts for Telstra's external costs and reasonable evidence of Telstra's internal costs. Subject to this **clause 9B**, the Department will pay a claim made by Telstra in accordance with this **clause 9B** within 6 months of the date of receipt of that claim.
- (e) The parties may not refer any dispute under this **clause 9B** to expert determination in accordance with **clause 11.1**.

- (f) The Department may audit a claim received from Telstra under this **clause 9B**. If the Department notifies Telstra that it intends to audit a claim, the audit will be undertaken in accordance with **clause 20** and Telstra will co-operate with the Department in relation to that audit.
- (g) If the Department audits a claim made by Telstra under **clause 9B(f)** or the parties agree to engage in mediation under **clause 9B(h)**, the 6 month period in **clause 9B(d)** will be extended for so long as is necessary to enable that audit or that mediation to be undertaken or a period of 3 months, whichever is shorter.
- (h) If the Department disputes any claim made by Telstra in accordance with this **clause 9B** or Telstra disputes any reduction in payment by the Department in accordance with **clause 9B(b)**, the parties may agree to refer the dispute for mediation in accordance with, and subject to, the Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules. The parties, with the assistance of the mediator, must endeavour to resolve the dispute within 60 Business Days after the appointment of the mediator. In resolving the dispute, the parties and the mediator will have regard to:
- (i) the terms of this **clause 9B**;
 - (ii) the submissions made by each party as to the costs Telstra has incurred for which it is seeking reimbursement;
 - (iii) the potential mitigation steps and the costs incurred to take such steps which are referred to in **clause 9B(b)**.

For the avoidance of doubt, the parties are not obliged to use the mediation process in this **clause 9B(h)** and either party may at any time commence legal proceedings in relation to any dispute under this **clause 9B**.

- (i) If the Department uses the proceeds of an industry levy imposed under the TIL Act (or any replacement levy for the industry levy imposed under the TIL Act) to pay any amount payable by it to Telstra under this **clause 9B**, then to the extent that Telstra's contribution to the payment funded from that industry levy exceeds the amount Telstra's contribution would have been if the levy was:
- (i) imposed on persons who, as at the date the levy was imposed, would be 'participating persons' if section 92 of the TUSMA Act (as it existed as at 1 November 2014) was applied; and
 - (ii) calculated using the same methodology as applies to the calculation of the industry levy for the periods falling on or after 1 July 2014 under the TIL Act (as it existed as at 1 November 2014),

then the Department will also pay to Telstra, at the time it makes the relevant payment under **clause 9B(d)**, an amount equal to that excess (**Make-Up Payment**). If the Department uses the proceeds of an industry levy imposed under the TIL Act (or any replacement levy for the industry levy imposed under the TIL Act) to pay the Make-Up Payment (or part thereof), the Make-Up Payment must be grossed up so to put Telstra in the position it would have been if the Department had not used those proceeds of the industry levy to fund the Make-Up Payment (or relevant part thereof).

- (j) Telstra must not make any claim of any nature (including under any other provision of this Agreement) against the Commonwealth for any costs, losses, damages or expenses, of any nature, that it incurs in respect of a Separation Obligation imposed in the circumstances specified in **clause 9B(a)(i) and (ii)** other than a claim under this **clause 9B**.

(k) In this **clause 9B**:

control has the meaning given in section 577Q of the Telco Act.

eligible service has the meaning given in section 152AL of the *Competition and Consumer Act 2010*.

Regulatory Requirement means any Act, legislative instrument, Ministerial determination, Ministerial direction, licence condition, service provider rule, binding decision made by the ACCC under Part XIC of the *Competition and Consumer Act 2010* or legally binding decision or determination under any of the foregoing other than, in any case, in relation to a merger or acquisition or as an enforcement remedy under section 577G of the Telco Act or in respect of a breach of another law.

Residual 7% means, as at any date, an area or areas of Australia located in band 3 and 4 exchange service areas which have been declared by the Australian Competition and Consumer Commission and which contain in aggregate not more than 7% of the Premises in Australia.

Residual Copper Network means that part or parts of the Telstra copper network over which Telstra is in a position to exercise control immediately after the Early Cessation.

Residual HFC Network means that part or parts of the Telstra HFC Network over which Telstra is in a position to exercise control immediately after the Early Cessation.

Separation Obligation means an obligation imposed on Telstra which:

- (a) requires that Telstra will not supply fixed line carriage services to retail customers in Australia using the Residual HFC Network and/or Residual Copper Network; or
- (b) requires Telstra to:
 - (i) establish and maintain a company or separate business unit to manage the operations of the Residual HFC Network and/or Residual Copper Network;
 - (ii) ensure some or all of the wholesale operations of the Residual HFC Network and/or Residual Copper Network must be conducted wholly through that company or business unit (or another company or separated business unit) and no retail customer operations may be conducted through it; and
 - (iii) ensure the offer and supply of some or all eligible services to a person who is a carrier or carriage service provider using the Residual HFC Network and/or Residual Copper Network must only be effected through the wholesale company or business unit which must not offer eligible services to end-user customers,

in the case of paragraph (a) or (b) of this definition, where this obligation applies to an area of Australia greater than the Residual 7% as at the date the obligation is imposed (including where that obligation is to be phased in to geographical areas over a period of time).

For the purposes of this clause a Regulatory Requirement '**requires**' Telstra to satisfy a Separation Obligation when it either:

- (c) requires this as a result of the imposition of a direct obligation on Telstra; or

- (d) indirectly requires this on the basis that a direct consequence of a choice or failure to take the action referred to in paragraph (a) or (b) of this definition will be the imposition, by means of a Regulatory Requirement, of a significant impediment or significant burden on the ongoing ordinary course of business operations of that part of the Telstra business to which the direct consequence of that choice or failure relate, other than where this occurs in relation to a merger or acquisition or as an enforcement remedy under section 577G of the Telco Act or in respect of a breach of another law.

TIL Act means the *Telecommunications (Industry Levy) Act 2012*.

10 Warranties and reporting

10.1 General warranties

- (a) Telstra represents and warrants to the Department that:
- (i) Telstra is duly registered and incorporated;
 - (ii) the Agreement constitutes a valid and legally binding obligation on Telstra in accordance with its terms;
 - (iii) the execution, delivery and performance of the Agreement by Telstra does not:
 - (A) breach any law or any agreement which is binding on Telstra; or
 - (B) violate Telstra's constitution or any law applying to Telstra or the listing requirements or business rules of any stock exchange on which Telstra is listed;
 - (iv) Telstra has taken all corporate and other actions required to enter into the Agreement and to authorise the execution and delivery of the Agreement and the satisfaction of Telstra's obligations under the Agreement;
 - (v) Telstra has the requisite power and authority to enter into the Agreement and to carry out the obligations contemplated by the Agreement;
 - (vi) Telstra has disclosed to the Department in writing any claim, litigation, proceeding, arbitration, investigation or material controversy that is pending or has been threatened or is contemplated which may have a material adverse effect on Telstra's ability to enter into the Agreement or carry out the services supplied under a Module; and
 - (vii) Telstra is not in default in the payment of any material sum or in the satisfaction of any material obligation in respect of any financial liability and no event has occurred which with the giving of notice, lapse of time or other condition could constitute a default in respect of any financial liability.

10.2 Performance of services

- (a) Telstra represents and warrants to the Department that it will provide all of the services set out in each Module, and that it will provide those services in accordance with the requirements of the relevant Module.
- (b) Without limiting any specific provisions of this Agreement, Telstra represents and warrants to the Department that:
 - (i) it will comply with the time frame for the performance of the services supplied under a Module as set out in the relevant Module or as otherwise agreed;
 - (ii) it will maintain all licences necessary to perform the services supplied under a Module;
 - (iii) the performance of the services under a Module, will not breach an obligation owed to another person; and
 - (iv) the performance of the services under a Module (excluding **Module F (Migration of Public Interest Services)**), will not infringe any Intellectual Property rights or moral rights of another person.
- (c) Telstra is fully responsible for the performance of its obligations under this Agreement, even though Telstra may have subcontracted any of them under a subcontract or otherwise. Telstra will remain liable to the Department for the acts, defaults and neglects of any subcontractor, or any employee or agent of a subcontractor, as fully as if they were Telstra's acts, defaults or neglects.

10.3 Reporting

- (a) Telstra will report on its performance of the services under a Module (including in respect of its performance against the performance standards and performance benchmarks referred to in the Modules) in accordance with applicable regulation, other agreed criteria, and any other reasonable requirements of the Department on a quarterly or other agreed basis in a format agreed by the parties in this Agreement.
- (b) The parties agree that:
 - (i) to the extent reasonably possible, reporting under this Agreement will be consistent with Telstra's regulatory reporting obligations;
 - (ii) subject to **clause 10.3(b)(iii)**, Telstra will not be required to report on an individual service basis or more frequently than quarterly; and
- (iii) the Department will have the right to require the provision by Telstra of separate reports or additional information where it considers it necessary to investigate any possible non-compliance by Telstra with this Agreement or to satisfy a Ministerial request.

11 Dispute resolution

11.1 Expert determination

- (a) The parties agree that certain types of disputes can be resolved through independent expert determination. The types of disputes that the parties agree will be subject to expert determination are disputes relating to:
- (i) the matters referred to in **clause 5.5(b)** (10 year review);
 - (ii) the matters referred to in **clause 6(f)** (amount of anticipated reduction in Telstra's Costs under a cost savings proposal);
 - (iii) the matters referred to in **clause 7.2(g)** (amount of payment adjustment);
 - (iv) the matters referred to in **clause 9.5(d)** (Telstra's Costs in providing Transition Services);
 - (v) the matters referred to in **clause 9A(c)** (Permanent Cessation of Rollout);
 - (vi) the matters referred to in **clause 26.2(f)** (business rules for Exceptional Copper Events in **clause 26.2(e)**);
 - (vii) the matters referred to in **clauses 32.2(c)(i)(B), 32.3(d) and 32.4(g)** (payphone migration);
 - (viii) the matters referred to in **clause 34.2(b)** (Customer Management Fee and Priority Assistance Customer Management Fee);
 - (ix) the matters referred to in **clause 34.3(b)** (rate card for Reasonable Connection Costs);
 - (x) the matters referred to in **clause 40(d)** (amounts to be paid under **Module D (Voice-only Customer Migration)**);
 - (xi) the matters referred to in **clause 45.1(e)** (Telstra's Costs and revenues of performing the Emergency Call Service);
 - (xii) the matters referred to in **clause 46.1(e)** (estimate of Telstra's Costs for upgrade to E000 platforms and whether a major upgrade is reasonably required);
 - (xiii) the matters referred to in **clause 46.1(h)** (amount to be reimbursed to Telstra for upgrade to E000 platforms); and
 - (xiv) any technical issues concerning the provision of services under a Module.
- (b) If a party wishes to refer a matter for expert determination in accordance with the terms of this Agreement, that party must give notice to the other party.
- (c) If a notice is given by a party under **clause 11.1(b)**, the provisions of this **clause 11.1** will apply. However, nothing in this **clause 11.1** will prevent either party from seeking urgent interlocutory relief.
- (d) Expert determinations will be made by a panel of three independent experts, to be determined as follows:

- (i) within 14 days after a notice is given under **clause 11.1(b)**, each party must nominate one expert and must give the other party written notice of its nominated expert together with written evidence that its nominated expert has accepted the appointment. Each party acknowledges and agrees that experts required to determine disputes under **clause 46.1(e)** as to whether an upgrade is a major upgrade as defined for the purposes of **Module E** require sufficient technical expertise to assist in the determination process;
 - (ii) the parties must jointly instruct their nominated experts to appoint the third expert and to give each party written notice of the third expert they appoint, together with evidence that the third expert has accepted the appointment; and
 - (iii) if the nominated experts are unable to agree the appointment of a third expert or, where the dispute relates to the question of whether an upgrade is a major upgrade as defined for the purposes of **Module E**, either party objects to the proposed third expert, the parties must jointly request The Institute of Arbitrators & Mediators Australia to nominate the third expert (who must be a person with sufficient expertise in the subject matter of the dispute to assist in the determination process), in which case the parties must jointly appoint the third expert nominated by The Institute of Arbitrators & Mediators Australia.
- (e) In addition to any other terms of reference which the parties agree to provide to the expert panel in relation to the matters in dispute, panel members must have regard to the terms of this Agreement and must not make a decision or determination which is inconsistent with the terms of this Agreement.
- (f) In respect of expert determinations made under this **clause 11.1**, unless otherwise agreed by the parties:
- (i) determinations will be final and binding on the parties;
 - (ii) proceedings will be conducted in accordance with The Institute of Arbitrators & Mediators Australia's Expert Determination Rules (in which case the expert panel will be treated as if it were "the Expert" for the purpose of those rules), but only to the extent they are not inconsistent with this **clause 11.1**;
 - (iii) either party may be represented or accompanied by its legal and other advisers;
 - (iv) the experts must be suitably qualified with appropriate expertise, practical experience and industry knowledge;
 - (v) the experts will not be bound by the rules of evidence and may receive any information in such manner as the experts thinks fit;
 - (vi) the experts shall make their determination on the matters in dispute:
 - (A) on the basis of information received from the parties and the expert's own expertise;
 - (B) in accordance with the law and the terms of this Agreement;
 - (C) as expeditiously as possible after receipt of the parties' submissions or any subsequent conference with the parties; and
 - (D) in writing with reasons;

- (vii) decisions (including the final determination) of the expert panel (including as “the Expert” under the The Institute of Arbitrators & Mediators Australia’s Expert Determination Rules) will be made as follows:
 - (A) by unanimous agreement; or
 - (B) if unanimous agreement cannot be reached, by majority; or
 - (C) if majority agreement cannot be reached, by the decision of the expert that was not appointed by a party under **clause 11.1(d)(i)**;
- (viii) if the expert panel considers that additional terms of reference are needed, it must request the parties to submit (either alone or together) additional terms of reference. If the parties make separate submissions, the panel must adopt the terms of reference that are common to those submissions and must notify the parties of the other terms of reference in those submissions that it has determined it will have regard to;
- (ix) the process in Schedule B of the Institute of Arbitrators & Mediators Australia’s Expert Determination Rules will not apply but, in any event, the process by which the proceedings are to be conducted by the expert panel must provide that:
 - (A) the parties are given an equal opportunity to make submissions to the expert panel; and
 - (B) a determination will not be made unless each party has been given the opportunity to make at least one submission to the expert panel; and
- (x) the parties must equally share the professional fees of the independent experts.

11.2 Internal escalation

- (a) The parties must, acting in good faith, attempt to resolve all other disputes through a process of escalation which requires (at a minimum):
 - (i) two levels of escalation within the senior management group of each party; and
 - (ii) representatives of both parties in each level of escalation working together collaboratively to resolve the relevant dispute within a reasonable timeframe.
- (b) Failing resolution of the dispute through the escalation process, the parties may agree to attempt to resolve the dispute through mediation, or have the dispute determined through binding arbitration or expert determination.
- (c) The parties may not commence legal proceedings (other than to seek urgent interlocutory relief) until the escalation process has been completed in relation to a dispute.
- (d) The parties must continue to perform their respective obligations under this Agreement while the dispute is being resolved.

12 GST

12.1 Interpretation

Words or expressions used in this clause which are defined in the GST Law have the same meaning in this clause.

12.2 GST inclusive amounts

For the purposes of this Agreement any consideration to be paid or provided for a supply made under or in connection with this Agreement (unless specifically described in this Agreement as GST inclusive), is exclusive of GST.

12.3 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

12.4 Tax invoices

The Department need not make a payment for a taxable supply made under or in connection with this Agreement in respect of a taxable supply until Telstra has given the Department a tax invoice for the supply to which the payment relates.

12.5 Adjustment note

Telstra must give the Department an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this Agreement within seven days after the date Telstra becomes aware of the adjustment event.

13 Confidential Information and Intellectual Property

13.1 Confidential Information not to be disclosed

- (a) Subject to **clause 13.3**, a party to this Agreement must not, without the prior written consent of the other party, use or disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the use or disclosure of the Confidential Information, a party may impose such conditions as it thinks fit and the other party agrees to comply with these conditions.

13.2 Written undertakings

- (a) A party may at any time require the other party to arrange for:
 - (i) its advisers; or
 - (ii) any other third party, other than a Commonwealth employee, to whom information may be disclosed pursuant to **clause 13.3(a)** or **13.3(e)**

to give such written undertakings as may be reasonably required in relation to their access to, and use of, Confidential Information.

- (b) If the other party receives a request under **clause 13.2(a)** it agrees to arrange promptly for all such undertakings to be given.

13.3 Exceptions to obligations

The obligations of the parties under this **clause 13** will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
- (c) is disclosed by the Department to the responsible Minister;
- (d) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Department within the Department's organisation, or with another Commonwealth agency, where this relates to the Department's legitimate interests arising under or in respect of matters the subject of this Agreement;
- (f) is authorised or required by law, including under this Agreement, under a licence, under the rules of the Australian Stock Exchange or otherwise, to be disclosed;
- (g) is disclosed by Telstra to any government agency (Commonwealth or State) responsible for tax or duty under any law or any order, or in connection with any review (formal or informal) or audit by such a government agency, or which is disclosed by Telstra to such a government agency as part of any application for advice or a ruling from a responsible government agency or any return or other filing made under any tax or duty law; or
- (h) is in the public domain otherwise than due to a breach of this **clause 13**.

13.4 Obligations on disclosure

Where a party discloses Confidential Information to another person:

- (a) pursuant to **clauses 13.3(a), 13.3(b), or 13.3(e)**, the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to **clauses 13.3(c), 13.3(d) and 13.3(g)**, the disclosing party must notify the receiving party that the information is Confidential Information.

13.5 Additional confidential information

- (a) The parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.

- (b) Where the parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of, this Agreement, on the date by which both parties have signed this documentation.

13.6 Period of confidentiality

The obligations under this **clause 13** continue, notwithstanding the expiry or termination of this Agreement.

13.7 No reduction in privacy obligations

Nothing in this **clause 13** derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Agreement, in relation to the protection of personal information.

13.8 Confidentiality of provisions

The provisions of this Agreement, unless otherwise agreed by the parties, are not considered by the parties to be confidential.

13.9 IP licence

Unless otherwise agreed and subject to **clause 48(c)**, Telstra grants to the Commonwealth, or will obtain for the Commonwealth's benefit, a perpetual, irrevocable, non-exclusive, royalty free licence in Australia to use any Intellectual Property in the Telstra Materials that are provided to the Department under this Agreement for the sole purpose of allowing the Department to obtain the benefit of the services provided to the Department under this Agreement.

14 Protection of Personal Information

14.1 Application of the clause

- (a) This **clause 14** applies only where Telstra deals with personal information when, and for the purpose of, providing services under a Module of this Agreement.
- (b) If there is a material change in any principle or code referred to in **clause 14.2** which makes compliance with this **clause 14** more onerous for Telstra and, but for this **clause 14**, Telstra would not otherwise be required to comply with, then:
- (i) Telstra may request that the Department agree to amend this **clause 14** so that the material change does not impose additional obligations on Telstra;
 - (ii) the Department will consider Telstra's request in good faith; and
 - (iii) if the Department agrees to Telstra's request, the parties will amend this **clause 14** in accordance with **clause 24.2**.

14.2 Obligations

Telstra agrees in respect of the provision of the relevant services under a Module:

- (a) to use or to disclose personal information obtained during the course of providing those services only for the purposes for which it is collected and for fulfilling its obligations under this Agreement;

- (b) not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle under the *Privacy Act 1988* (the Privacy Act);
- (c) to notify individuals whose personal information Telstra holds, that complaints about acts or practices of Telstra may be investigated by the Privacy Commissioner who has power to award compensation against Telstra in appropriate circumstances;
- (d) to immediately notify the Department if Telstra becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this **clause 14**, whether by Telstra or any subcontractor;
- (e) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this **clause 14**; and
- (f) to ensure that any employee of Telstra who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of Telstra set out in this **clause 14**.

14.3 Subcontracts

Telstra agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as Telstra has under this **clause 14**, including the requirement in relation to subcontracts.

14.4 Definitions

In this **clause 14**, the term 'personal information' has the meaning it has in section 6 of the Privacy Act being:

'information or an opinion about an identified individual, 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.'

15 Compliance with laws and policies

15.1 General

Without limiting specific provisions of this Agreement, Telstra must, in relation to its performance of services under a Module:

- (a) comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth);
- (b) ensure that funds provided under this Agreement, including subcontracts, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism, including "terrorist organisations" as defined in Division 102 of the *Criminal Code Act 1995* (Cth) and listed in regulations made under the act and regulations made under the *Charter of the United Nations Act 1945* (Cth);

- (c) observe the same standards and obligations that are imposed on Commonwealth personnel under the *Work Health and Safety Act 2011* (Cth);
- (d) comply with the obligations imposed under the Lobbying Code of Conduct (Cth), if applicable;
- (e) comply with all relevant legislation of the Commonwealth, or of any State, Territory or local authority including:
 - (i) the *Crimes Act 1914* (Cth);
 - (ii) the *Disability Discrimination Act 1992* (Cth);
 - (iii) the *Racial Discrimination Act 1975* (Cth);
 - (iv) the *Sex Discrimination Act 1984* (Cth);
 - (v) the *Age Discrimination Act 2004* (Cth);
 - (vi) any obligations it has under the *Work Health and Safety Act 2011* (Cth); and
 - (vii) the *Fair Work Act 2009* (Cth); and
- (f) comply with all applicable workers compensation laws.

15.2 Workplace relations

Without limiting specific provisions of this Agreement, Telstra must undertake to provide the Department with details of all court and industrial tribunal findings, orders and penalties made against Telstra and their subcontractors relevant to the provision of the services under a Module during its term (and any extension of its term). The details must include information about what action was taken or is proposed to be taken in relation to each finding, order or penalty.

15.3 Genuine dispute resolution

Telstra must provide genuine dispute resolution procedures in its enterprise agreements made under the *Fair Work Act 2009* (Cth) after the commencement of the fair work principles equivalent to those in Schedule 6.1 of the *Fair Work Regulations 2009*.

15.4 Access to documents

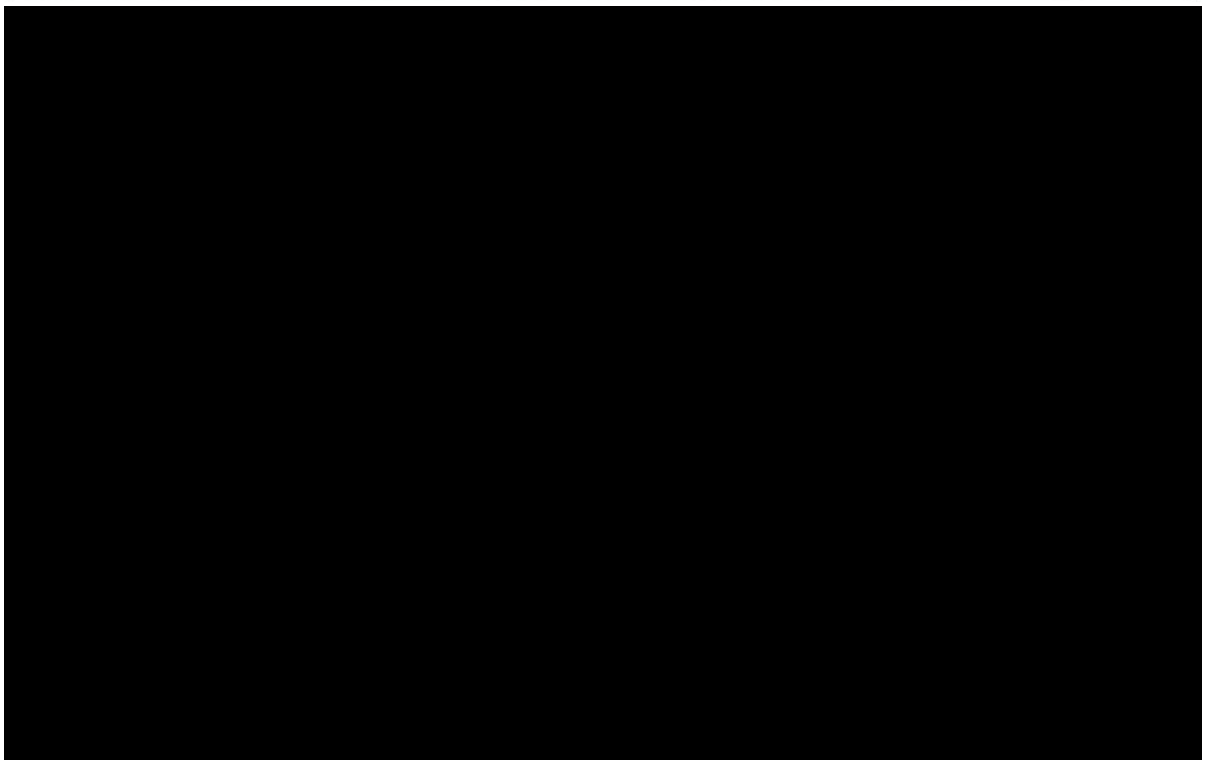
- (a) In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- (b) Telstra acknowledges that this Agreement is a Commonwealth contract.
- (c) Where the Department has received a request for access to a document created by, or in the possession of, Telstra or any subcontractor that relates to the performance of this Agreement (and not to the entry into this Agreement), the Department may at any time by written notice require Telstra to provide the document to the Department and Telstra must, at no additional cost to the Department, promptly comply with the notice.
- (d) Telstra must include in any subcontract relating to the performance of this Agreement provisions that will enable Telstra to comply with its obligations under this **clause 15.4**.

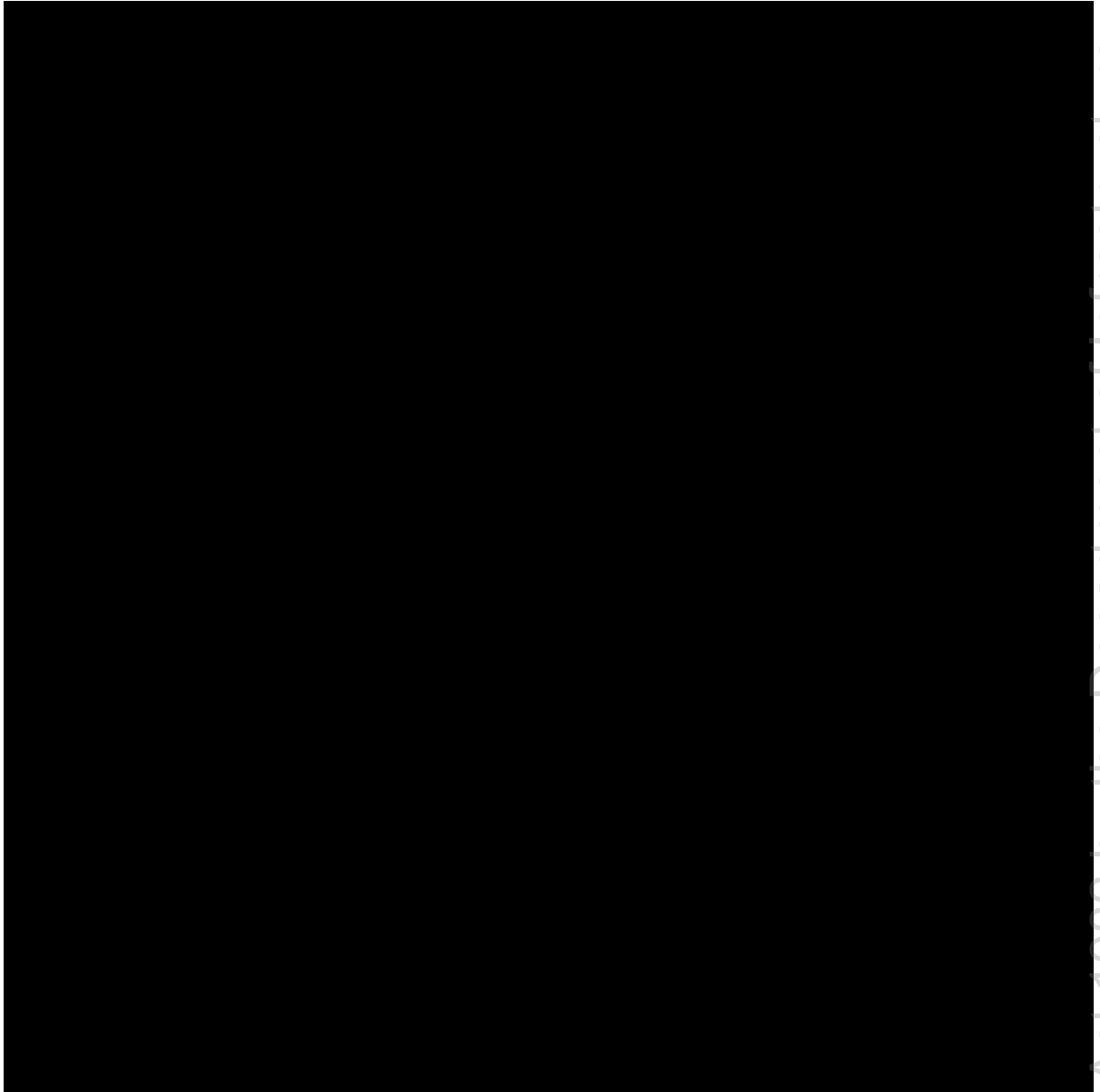
16 Security and fraud

Without derogating from Telstra's obligations in this Agreement, Telstra must comply with the requirements of:

- (a) the Department's security policies, including any policy of the Department that requires Telstra to:
 - (i) obtain the appropriate security clearances for Telstra's personnel requiring access to security classified information;
 - (ii) require Telstra and Telstra Personnel to wear a security or identification pass while on the Department's premises;
 - (iii) ensure Telstra's premises and facilities are suitable for the storage and handling of security classified information up to and including the nominated level if required to keep security classified information on its premises; and
 - (iv) have systems able to meet designated information security standards relevant to these activities if Telstra electronically processes, stores, transmits or disposes of security classified information;
- (b) the Commonwealth Protective Security Manual or any replacement manual, in force from time to time, and issued by the Attorney-General's Department; and
- (c) the Commonwealth Fraud Control Guidelines or any replacement guidelines, in force from time to time,

copies of which will be provided to Telstra by the Department if required.





18 Conflict of interest

18.1 Warranty that there is no conflict of interest

Telstra warrants that at the date of signing this Agreement no conflict with the interests of the Department exists or is likely to arise in the performance of services under a Module.

18.2 Notification of a conflict of interest

If, during the performance of services under a Module a conflict of interest arises, or appears to have arisen, Telstra agrees to:

- (a) notify the Department immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and

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Transport, Regional Development, Communications and the Arts

- (c) take such steps as the Department may reasonably require to resolve or otherwise deal with the conflict.

18.3 Obligation

Telstra agrees that it will not, and will use its best endeavours to ensure that any officer, employee, agent or subcontractor of Telstra does not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict Telstra in providing services under a Module to the Department fairly and independently.

18.4 NBN Definitive Agreements

For the purposes of this clause, the Department acknowledges and agrees that a conflict with the interests of the Department does not exist by reason of any action that is taken by Telstra in relation to an NBN Definitive Agreement or the Continuity Deed, including:

- (a) entering into a NBN Definitive Agreement or the Continuity Deed;
- (b) giving effect to a NBN Definitive Agreement or the Continuity Deed; and
- (c) taking action to enforce a NBN Definitive Agreement or the Continuity Deed.

19 Books and records

19.1 Telstra to keep books and records

Telstra must:

- (a) keep and must require its subcontractors to keep adequate books and records in sufficient detail to enable the amounts payable by the Department under this Agreement to be determined; and
- (b) retain for a period of seven years after termination or expiration of this Agreement all books and records relating to the services to be performed under a Module.

19.2 Examination of books and records

The Department and its representatives may, at reasonable times, review (including examine and copy) material in the possession of Telstra which is relevant to the services to be performed under a Module (including Telstra's books and records) and Telstra must fully assist in those reviews.

19.3 Answering questions and providing assistance

Telstra must give full and accurate answers to any questions the Department or its representative may have concerning books or records relating to this Agreement and provide all assistance reasonably requested by the Department in respect of any inquiry into or concerning the performance of the services under a Module or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any Parliamentary committee.

19.4 Survival

This clause applies for the term of this Agreement and for a period of seven years from the termination or expiry of this Agreement.

20 Audit and access

20.1 Types of audits

Audits under **clause 20.2** may be conducted of:

- (a) Telstra's practices and procedures as they relate to this Agreement including security procedures;
- (b) the manner in which Telstra performs its obligations under this Agreement;
- (c) the compliance of Telstra's invoices and reports with its obligations under this Agreement;
- (d) Telstra's compliance with all its obligations under this Agreement;
- (e) Telstra's compliance with its confidentiality, privacy, security and Commonwealth policy obligations under this Agreement; and
- (f) any other matters determined by the Department to be relevant to the performance of Telstra's obligations under this Agreement.

20.2 Audits

- (a) Telstra must participate in audits of this Agreement at the frequency and in relation to the matters specified by the Department (including on an ad hoc basis if requested by the Department), for the purpose of ensuring that this Agreement is being properly performed and administered. The Department may appoint an independent person to assist in the audits. Audits may consider all aspects of Telstra's performance including but not limited to any performance indicators, benchmarks or targets.
- (b) Telstra must participate promptly and cooperatively in any audits conducted by the Department or its nominee.
- (c) Except for those circumstances in which notice is not practicable or appropriate (e.g. caused by a regulatory request with shorter notice or investigation of theft or breach of this Agreement), and without limiting any other right, recourse or remedy of the Department, the Department must give Telstra reasonable notice of an audit and where reasonably practicable an indication of which documents and/or class of documents the auditor may require.
- (d) Subject to any express provisions in this Agreement to the contrary each party must bear its own costs of any audits.
- (e) Subject to **clauses 20.2(a)** and **20.2(b)** the requirement for, and participation in, audits does not in any way reduce Telstra's responsibility to perform its obligations in accordance with this Agreement.
- (f) The Department must use reasonable endeavours to ensure that audits performed pursuant to **clause 20.2(a)** do not unreasonably delay or disrupt in any material respect Telstra's performance of its obligations under this Agreement.
- (g) Telstra must promptly take, at no additional cost to the Department, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way Telstra has under this Agreement:

- (i) supplied any goods or services; or
- (ii) calculated fees, or any other amounts or charges billed to the Department.

20.3 Access to Telstra's premises and records

- (a) For the purposes of **clause 20.2** and this **clause 20.3**, Telstra must, and must ensure that its subcontractors grant the Department and its nominees or the Auditor-General access as required by the Department, to Telstra's premises and data, records, accounts and other financial material or material (including the Department's property) relevant to the performance of this Agreement, however and wherever stored or located, under Telstra's or its subcontractor's custody, possession or control for inspection and/or copying.
- (b) In the case of documents or records stored on a medium other than in writing, Telstra must make available on request at no additional cost to the Department such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- (c) Subject to **clause 20.2(c)** and without limiting any other provision of this Agreement, the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions and/or powers respectively, may, at reasonable times:
 - (i) access the premises of Telstra;
 - (ii) require the provision by Telstra, its employees, agents or subcontractors, of records and other information which are related to this Agreement; and
 - (iii) access, inspect and copy documentation and records or any other matter relevant to Telstra's obligations or performance of this Agreement, however stored, in the custody or under the control of Telstra, its employees, agents or subcontractors.
- (d) Telstra must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this **clause 20.3** with respect to the subcontractor's premises, data, records, accounts, financial material and information and those of its employees, agents or subcontractors.
- (e) This **clause 20.3** applies for the term of this Agreement and for a period of seven years from the date of its expiration or termination.
- (f) In the exercise of the general rights granted by **clause 20.3**, the Department must use reasonable endeavours not to unreasonably interfere with Telstra's performance under this Agreement in any material respect.
- (g) If in exercising the rights granted under **clause 20.1**, **clause 20.2** or **clause 20.3** the Department unreasonably interferes with Telstra's performance of its obligations under this Agreement in a material respect and that interference substantially delays Telstra in performing its obligations it may request an extension of time to perform its obligations.
- (h) The Department must not unreasonably refuse a request pursuant to **clause 20.3(g)** where Telstra substantiates the request, within a reasonable time, to the satisfaction of the Department, provided that:

- (i) Telstra advised the Department of the delay within 15 days of the exercise of the rights and the delay occurring;
 - (ii) the delay could not have been reasonably contemplated or allowed for by Telstra before entering this Agreement; and
 - (iii) Telstra has taken or takes all reasonable steps to minimise any delay.
- (i) In no circumstances shall any extension of time pursuant to **clause 20.3(h)** exceed the amount of any delay directly arising from the exercise of the rights.
 - (j) In no circumstances shall Telstra be entitled to any delay costs or other costs or expenses of whatever nature relating in any way to the exercise of any rights under **clause 20.1, clause 20.2** or **clause 20.3** other than to the extent expressly provided for under **clause 20.3(l)**.
 - (k) Without limiting any of its other obligations under this Agreement Telstra must, at its cost, ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to this Agreement or its performance are maintained in such a form and manner as to facilitate access and inspection under **clause 20.1, clause 20.2** or **clause 20.3**.
 - (l) If Telstra reasonably believes that the exercise of the rights granted under **clause 20.1, clause 20.2** or **clause 20.3** will cause Telstra to incur direct expenses which, having regard to the value of this Agreement, are substantial and materially exceed those which it would otherwise have to incur but for this **clause 20 (excessive direct expenses)**, it may give notice of those excessive direct expenses to the Department. If Telstra substantiates that its direct expenses in complying with this **clause 20** are excessive the Department and Telstra shall negotiate an appropriate reimbursement, but in no circumstances shall any reimbursement be greater than the direct expenses incurred.

20.4 No restriction

Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Department under this Agreement are in addition to any other power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

21 Notices

21.1 Giving of notices

- (a) A party giving notice or notifying under this Agreement must do so in writing or electronically:
 - (i) directed to the recipient's address for notices; and
 - (ii) hand delivered or sent, by pre-paid post or electronically to that address.
- (b) The parties' addresses and email addresses for notices are specified as follows:

Telstra

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Address: Level 40 – Telstra Centre
242 Exhibition Street
Melbourne Victoria 3000
Attention: Group General Counsel
Email: GGCOffice@team.telstra.com

Commonwealth

Department

Address: 38 Sydney Avenue
Forrest ACT 2603
Attention: Sylvia Spaseski, Assistant Secretary Consumer Access
Email: Sylvia.Spaseski@communications.gov.au

TUSMA

Address: Level 46, Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC 8010
Attention: Chief Executive Officer
Email: Kathleen.Sillieri@tasma.gov.au

- (c) A party may vary its addresses for notices from time to time by notice in writing to the other party.

21.2 Receipt of notice

A notice given in accordance with **clause 21.1** is taken to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid post, two Business Days after the date of posting; or
- (c) if transmitted electronically, upon the message leaving the sender's system.

22 Waiver

- (a) If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- (b) A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- (c) In this **clause 22**, 'rights' means rights or remedies provided by this Agreement or at law.

23 Relationship

- (a) Telstra must not represent itself, and must ensure that its officers, employees, contractors and agents do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

24 Miscellaneous

24.1 Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.

24.2 Variation

No agreement or understanding varying or extending this Agreement shall be legally binding upon either party unless in writing and signed by both parties.

24.3 Assignment

- (a) Subject to **clause 24.3(b)**, a party cannot assign its obligations, and agrees not to assign its rights, under this Agreement without, in either case, obtaining prior approval in writing from the other party.
- (b) The Department may assign its rights under this Agreement to any Commonwealth entity or Commonwealth company (as defined in the *Public Governance, Performance and Accountability Act 2013* (Cth)) without obtaining Telstra's prior approval unless the assignee is NBN Co.

24.4 Novation

Telstra agrees not to consult with any other person (other than its advisers) for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the Department.

24.5 Governing law and jurisdiction

This Agreement is governed by the laws in the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

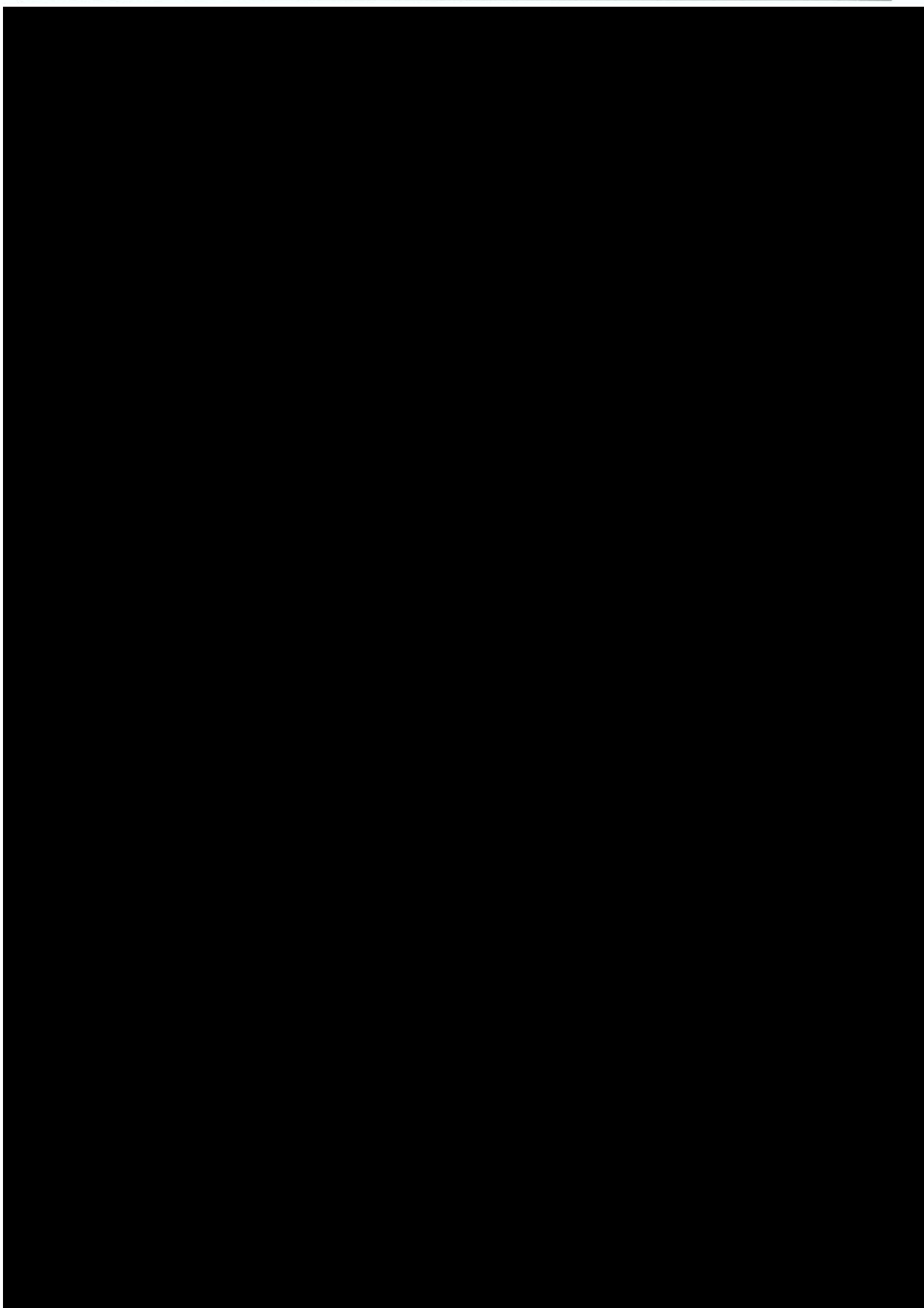
24.6 Severability

If any part of this Agreement is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Agreement shall not be affected and shall be read as if that part had been severed.

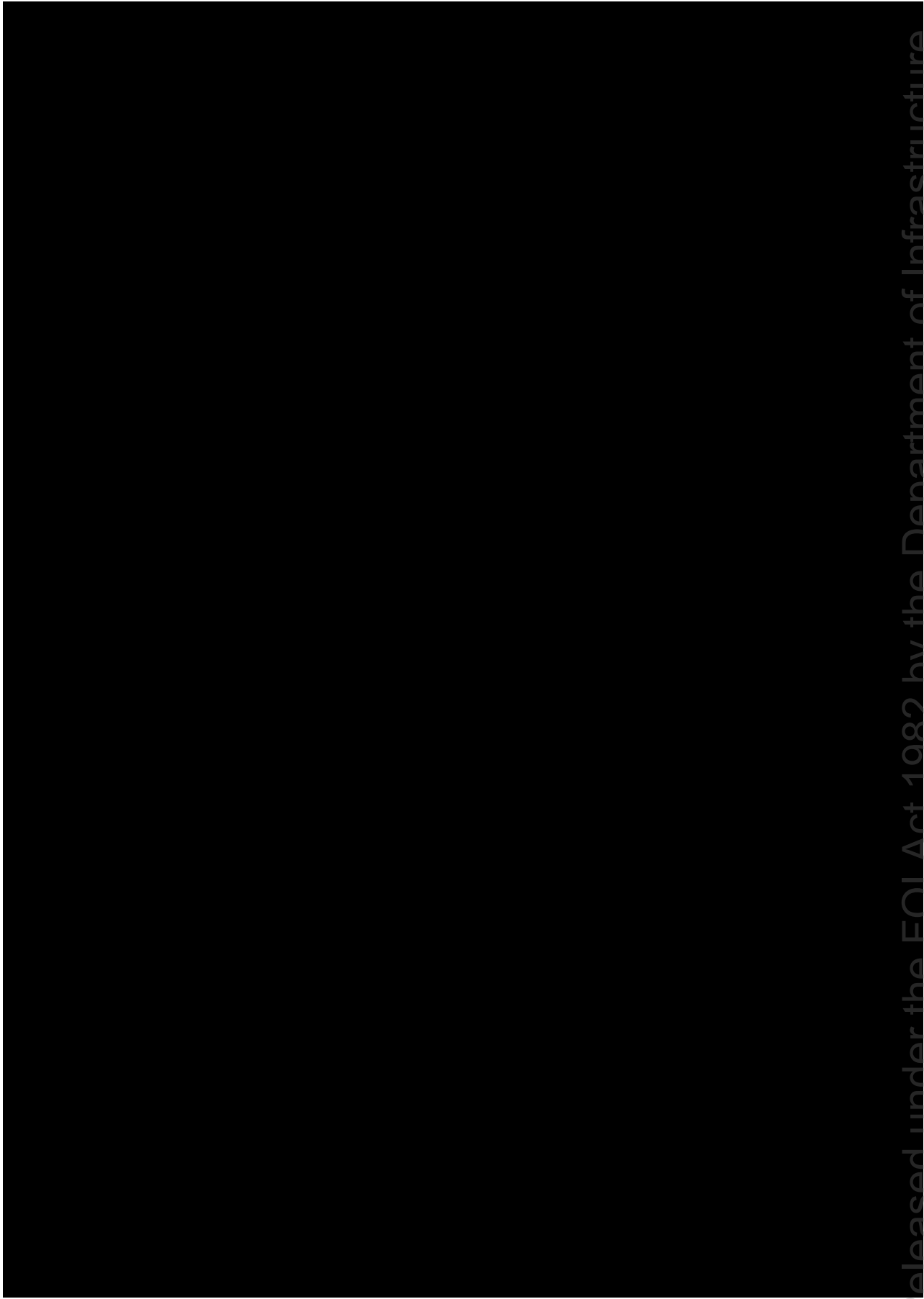
Module B

Standard Telephone Service USO

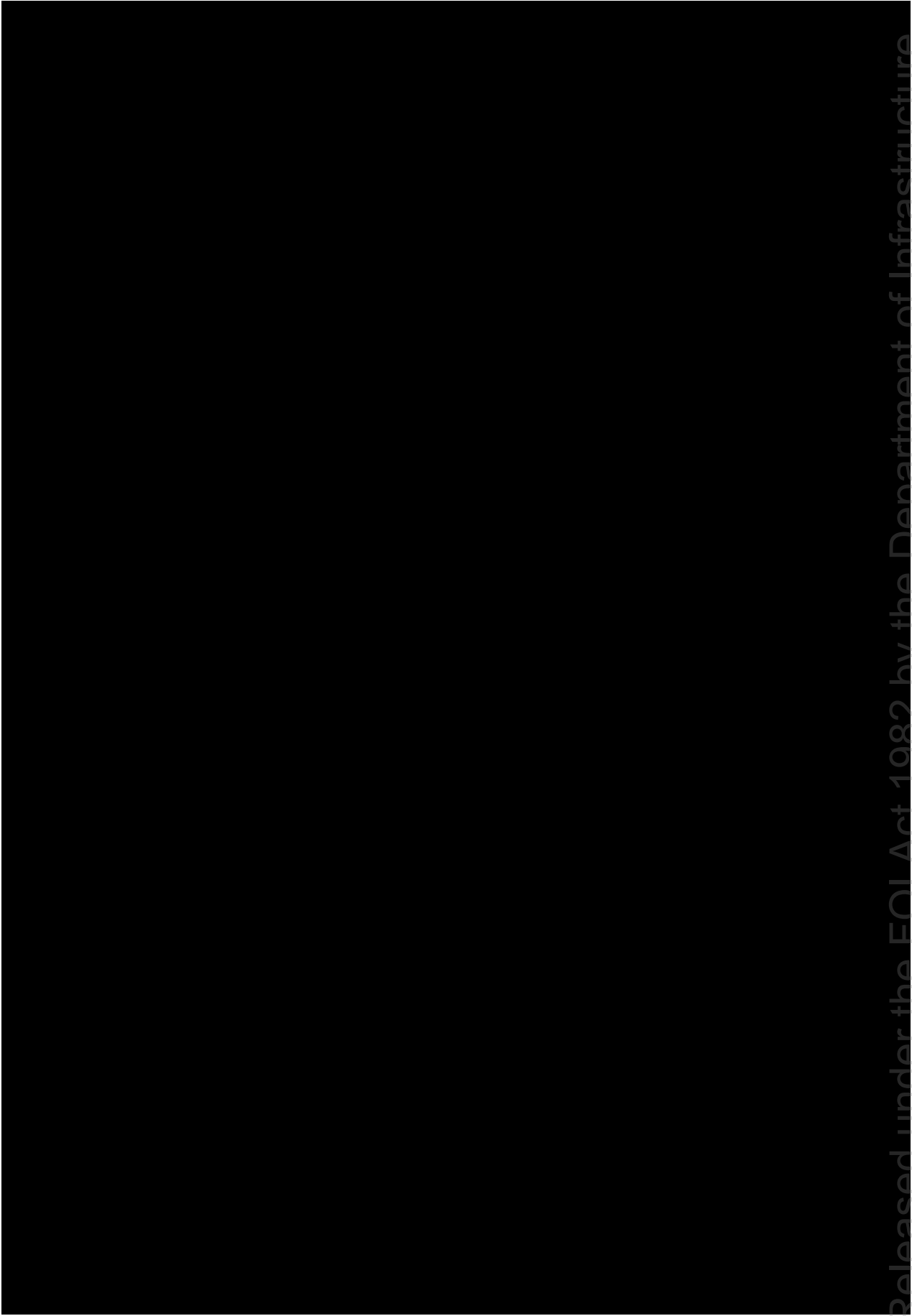
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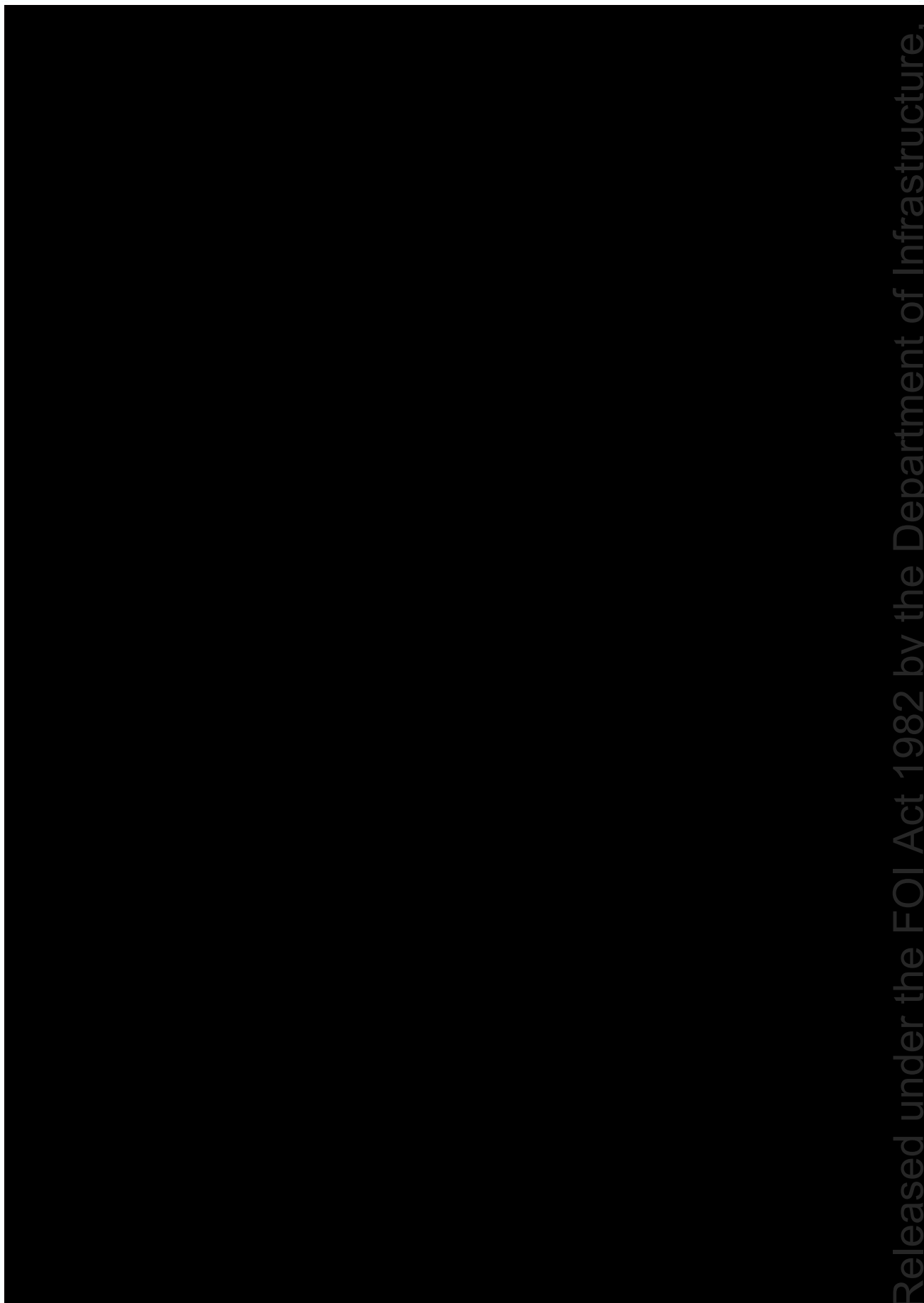
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Transport, Regional Development, Communications and the Arts



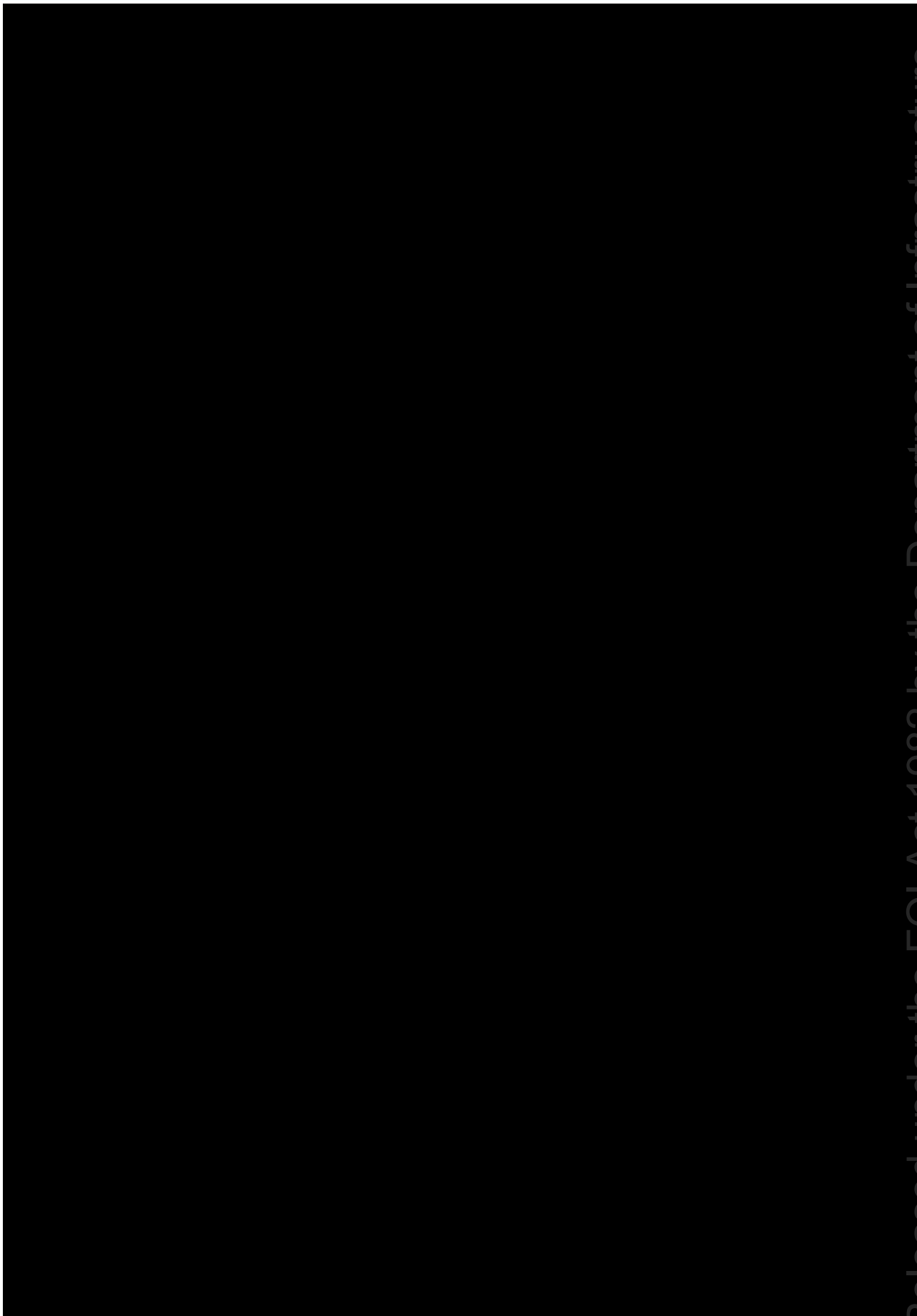
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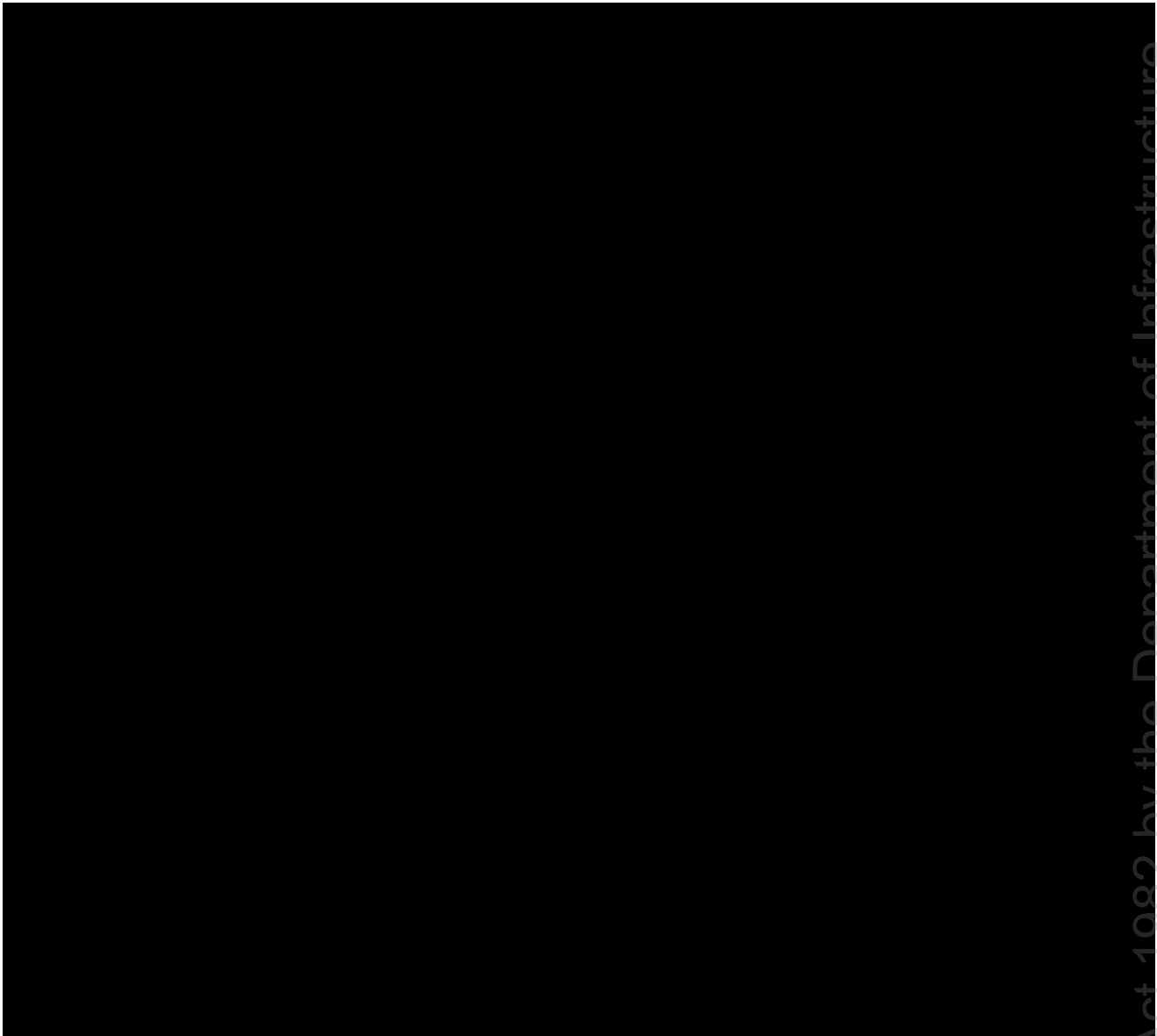
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Module C

Payphones USO

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28 Scope of service

28.1 Services to be performed

- (a) During the term of this Module, Telstra will, in accordance with the requirements and instruments identified in **clause 28.1(b)** (where as relevant, amended or enacted from time to time) and as set out in clause 28.2:
 - (i) supply, install and maintain the USO Payphones; and
 - (ii) supply Payphone Carriage Services to each USO Payphone,
 - as required to fulfil the Payphones USO and as otherwise set out in this Module.
- (b) The requirements and instruments referred to in **clause 28.1(a)** are:
 - (i) the requirements of the Payphones USO as set out in the TCPSS Act;
 - (ii) any determination made under section 12EF, section 12EG or section 12EH of the TCPSS Act;
 - (iii) any performance standards and benchmarks included in a determination made by the Minister under section 12ED or section 12EE of the TCPSS Act; and
 - (iv) any other requirements which apply by law in relation to the fulfilment of the Payphones USO.
- (c) The parties agree that the USO Payphones may be Connected to the Telstra copper network or Alternative Infrastructure.

28.2 While Telstra is the primary universal service provider

For so long as Telstra is the primary universal service provider for the Payphones USO Telstra must comply with the requirements and instruments identified in clause 28.1.

28.3 Variation in Agreement

If the services to be performed by Telstra from time to time under this Module change because any of the requirements or determinations identified in **clause 28.1(b)** change, or a requirement or determination of the kind identified in **clause 28.1(b)** is made that change will constitute a change in the scope of the services to be performed under this Module and the parties will agree any amendments to this Agreement (if any) which are necessary to ensure that the services that Telstra is required to supply under this Module are consistent with, and will enable Telstra to comply with, the requirements of this **clause 28**.

29 Payphone list

- (a) The Payphone List (including each update of it) must be provided to the Department in a format reasonably specified by the Department.
- (b) The Payphone List will be amended and updated during the term of this Module in accordance with the terms of this Module at the time the register of Telstra payphones that is required to be maintained by Telstra or the ACMA pursuant to a determination made under section 12EF of the TCPSS Act is required to be

amended and updated. The amended and updated Payphone List will be provided by Telstra to the Department not less often than once in each calendar quarter during the term of this Module.

30 New payphones

- (a) If during the term of this Module Telstra installs a new Telstra Operated Payphone, Telstra will notify the Department of the details of that payphone and that payphone will be added to the Payphone List and will be a USO Payphone, and Telstra will not remove that payphone without complying with **clause 31(a)**.
- (b) If during the term of this Module, the ACMA determines in accordance with the TCPSS Act or a determination made under the TCPSS Act that a new payphone is required to satisfy the Payphones USO, that payphone will be installed by Telstra and will become a USO Payphone and will be added to the Payphone List, and Telstra will not remove that payphone without complying with **clause 31(a)**.
- (c) If a new USO Payphone is added to the Payphone List under **clause 30(a) or 30(b)**, whether there is a payment adjustment will be determined in accordance with **clause 33.2**.

31 Removal of USO Payphones

- (a) During the term of this Module, Telstra may remove any USO Payphone (including any associated cabinet and infrastructure) provided that:
 - (i) it notifies the Department in writing of its intention to remove the payphone by providing a quarterly report within 30 calendar days of the end of a quarter (or the next Business Day if the due date falls on a weekend or public holiday) that includes the information agreed between the parties, as evidenced by the following letters:
 - (A) the letter dated 3 July 2012 from TUSMA to Telstra with subject line 'Provision of payphone information to the Telecommunications Universal Service Management Agency (TUSMA) under Module C of the TUSMA Definitive Agreement';
 - (B) the letter dated 7 December 2012 from Telstra to TUSMA with subject line 'Telecommunications Universal Service Management Agency (TUSMA) Definitive Agreement (DA) Clause 31(a)(i) Notification of intent to remove – July 2012'; and
 - (C) the letter dated 31 January 2013 from Telstra to TUSMA with subject line 'Telecommunications Universal Service Management Agency (TUSMA) Definitive Agreement (DA) Clause 31(a)(i) Notification of intent to remove – FY13 December Quarter',

or by other procedures as agreed between the Department and Telstra from time to time;
 - (ii) the payphone's removal is permitted under the TCPSS Act and any determination made under the TCPSS Act;
 - (iii) Telstra complies with the requirements regarding public consultation and notification regarding the removal of the payphone set out in the TCPSS Act and any determination made under the TCPSS Act; and

- (iv) following Telstra complying with the obligations in **clause 31(a)(iii)**, the ACMA does not determine in accordance with the TCPSS Act or a determination made under the TCPSS Act that the payphone should remain.
- (b) If a payphone is removed in accordance with **clause 31(a)**:
 - (i) it will be removed from the Payphone List and will cease to be a USO Payphone; and
 - (ii) whether there is a payment adjustment will be determined in accordance with **clause 33.2**.
- (c) In any circumstances where the ACMA determines in accordance with the TCPSS Act or a determination made under the TCPSS Act that a payphone may not be removed, the payphone will continue to be a USO Payphone and will remain on the Payphone List, and Telstra will not remove that payphone without complying with **clause 31(a)**.
- (d) In any circumstances where Telstra has removed a payphone and the ACMA subsequently determines that the payphone must be reinstalled, the payphone will be reinstalled by Telstra, will be reinstated as a USO Payphone and will be reinstated on the Payphone List, and Telstra will not remove that payphone without complying with **clause 31(a)**.

32 Migration of payphones

32.1 Temporary Special Services Disconnection

Telstra will notify the Department of the Temporary Special Services Disconnection Date applicable to payphones as soon as practicable after that date is determined in accordance with the Subscriber Agreement.

32.2 Migration of USO Payphones to efficient Alternative Infrastructure

- (a) At any time prior to the date that is 6 months before the conclusion of the Payphones Special Services Period for a Rollout Region, the Department may request that Telstra provide it with an estimate of its Costs in undertaking the migration of any USO Payphone located in that Rollout Region (and which is still Connected to the Telstra copper network at that date) from the Telstra copper network to:
 - (i) an Alternative Infrastructure specified by the Department; or
 - (ii) any Alternative Infrastructure which Telstra determines to be an efficient alternative to the Telstra copper network.
- (b) Telstra must provide an estimate requested under **clause 32.2(a)** to the Department within 14 days of receipt of the request.
- (c) If an estimate provided by Telstra under **clause 32.2(b)** relates to migration of a USO Payphone to Alternative Infrastructure other than the NBN Co Fixed Line Network, no later than 14 days after receiving an estimate from Telstra under **clause 32.2(b)**, the Department must notify Telstra in respect of each USO Payphone included in the estimate whether:
 - (i) the Department requires Telstra to migrate the USO Payphone to the relevant Alternative Infrastructure and that either:

- (A) the Department accepts the estimate; or
 - (B) the Department disagrees with the estimate, in which case the Department must refer the matter as a dispute to be resolved by expert determination under **clause 11.1**; or
- (ii) the Department does not require Telstra to migrate the USO Payphone and that either:
- (A) the Department will provide a payphone in substitution for the USO Payphone, in which case **clause 32.2(f)** will apply; or
 - (B) the Department will not provide a payphone in substitution for the USO Payphone, in which case the requirements in **clause 31** will apply and, if Telstra migrates the USO Payphone to an Alternative Infrastructure, the Department will not be required to compensate Telstra for any Costs incurred by Telstra in undertaking the migration unless **clause 32.3** applies.
- (d) If an estimate provided by Telstra under **clause 32.2(b)** relates to Migration of a USO Payphone to the NBN Co Fixed Line Network, the Department must notify Telstra within the time specified in **clause 32.2(c)** whether it will provide a payphone in substitution for the USO Payphone, in which case **clause 32.2(f)** will apply, but is not otherwise required to give the notice in response to the estimate provided by Telstra under **clause 32.2(b)**.
- (e) If the Department fails within the time required by **clause 32.2(c)** to give notice under **clauses 32.2(c)(i) or (ii)** in respect of a USO Payphone, the Department will be deemed not to require Telstra to migrate that payphone in accordance with the estimate provided by Telstra.
- (f) If the Department notifies Telstra under **clause 32.2(c)(ii)(A) or 32.2(d)** that it will provide a payphone in substitution for a USO Payphone:
- (i) the requirements in **clause 31** will not apply;
 - (ii) the existing payphone will cease to be a USO Payphone once removed;
 - (iii) the existing payphone will be removed from the Payphone List and **clause 33.2(b)** will apply to determine whether there will be a payment adjustment;
 - (iv) if Telstra migrates the existing payphone to an Alternative Infrastructure, the Department will not be required to compensate Telstra for any Costs incurred by Telstra in undertaking the migration unless **clause 32.3** applies; and
 - (v) the substitute payphone will not be a USO Payphone and will not be added to the Payphone List and neither party will have any obligations under this Agreement in relation to it.
- (g) If the Department notifies Telstra under **clause 32.2(c)(i)** that it requires Telstra to migrate a USO Payphone to the relevant Alternative Infrastructure, subject to **clause 32.4**, the Department will ensure that the migration of that payphone to the relevant Alternative Infrastructure will occur at no cost to Telstra.

32.3 Migration of USO Payphones to the NBN Co Fixed Line Network

- (a) If a USO Payphone is still Connected to the Telstra copper network at the date that is 3 months before the conclusion of the Payphones Special Services Period for the Rollout Region in which it is located, subject to **clause 32.4**, the Department will ensure that Migration of that payphone will occur at no cost to Telstra.
- (b) To avoid doubt, **clause 32.3(a)** may apply to any USO Payphone that complies with the requirements of that clause and in respect of which:
 - (i) the Department has not requested an estimate within the time prescribed by **clause 32.2(a)**;
 - (ii) the Department has given a notice to Telstra under **clause 32.2(c)(ii)(B)**; or
 - (iii) the Department has given a notice to Telstra under **clause 32.2(c)(i)(A)** or **32.2(d)** but the ACMA determines the payphone must not be removed.
- (c) If the Department is required under **clause 32.3(a)** to compensate Telstra for its Costs in undertaking the Migration of a USO Payphone, then before undertaking the Migration, unless **clause 32.3(e)** applies, Telstra must provide the Department with an estimate of those Costs.
- (d) If the Department does not agree with an estimate provided by Telstra under **clause 32.3(c)**, the Department must within 14 days after receiving that estimate notify a dispute, in which case **clause 11.1** will apply. If the Department fails to give notice within the time required under this **clause 32.3(d)**, the Department is deemed to have accepted Telstra's estimate for the Migration.
- (e) If Telstra has already provided the Department with an estimate under **clause 32.2(b)** of Telstra's Costs in undertaking Migration of a USO Payphone and:
 - (i) that estimate was provided less than 9 months before the date referred to in **clause 32.3(a)**, that estimate will be deemed to have been provided in accordance with **clause 32.3(c)** on the date referred to in **clause 32.3(a)**; or
 - (ii) that estimate was provided more than 9 months before the date referred to in **clause 32.3(a)**, Telstra will, at its option or if the Department requests it to, provide the Department with a revised estimate in accordance with **clause 32.3(c)**. If Telstra elects not provide a revised estimate to the Department and the Department does not request that it provide such estimate, the estimate provided under **clause 32.2(b)** will be deemed to have been provided in accordance with **clause 32.3(c)** on the date referred to in **clause 32.3(a)**.
- (f) If a USO Payphone has been removed from the Payphone List in accordance with **clause 32.2(f)(iii)**, but the ACMA determines that the payphone must not be removed, it will be reinstated on the Payphone List once it has been Migrated.

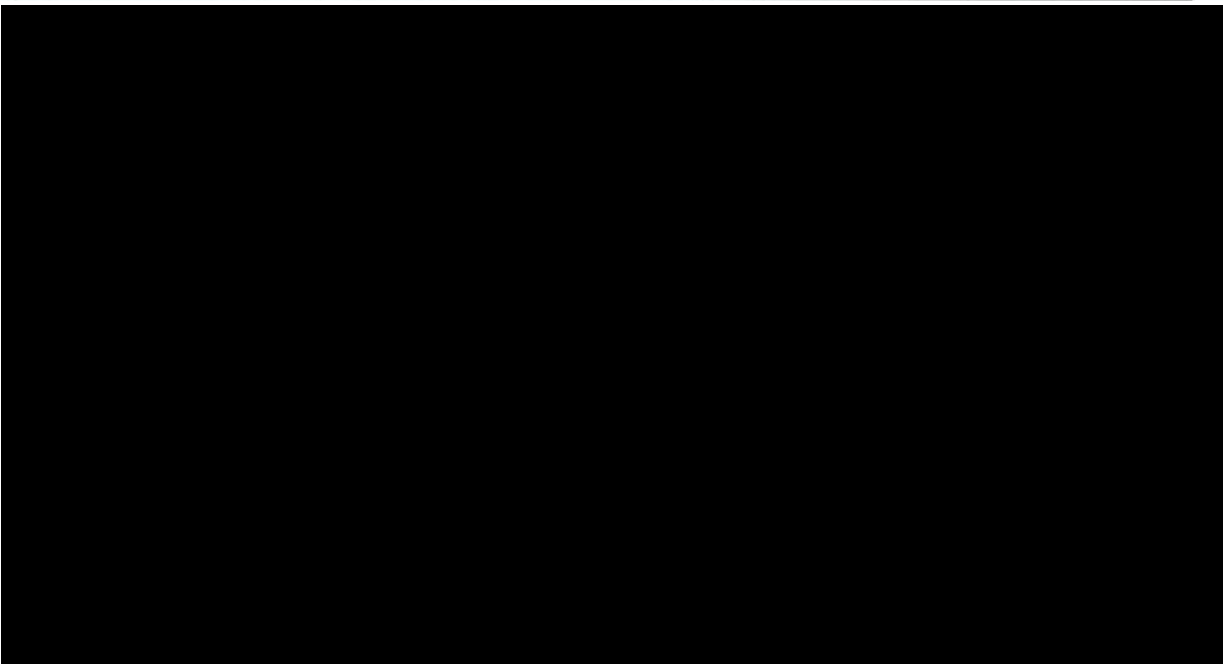
32.4 Payment

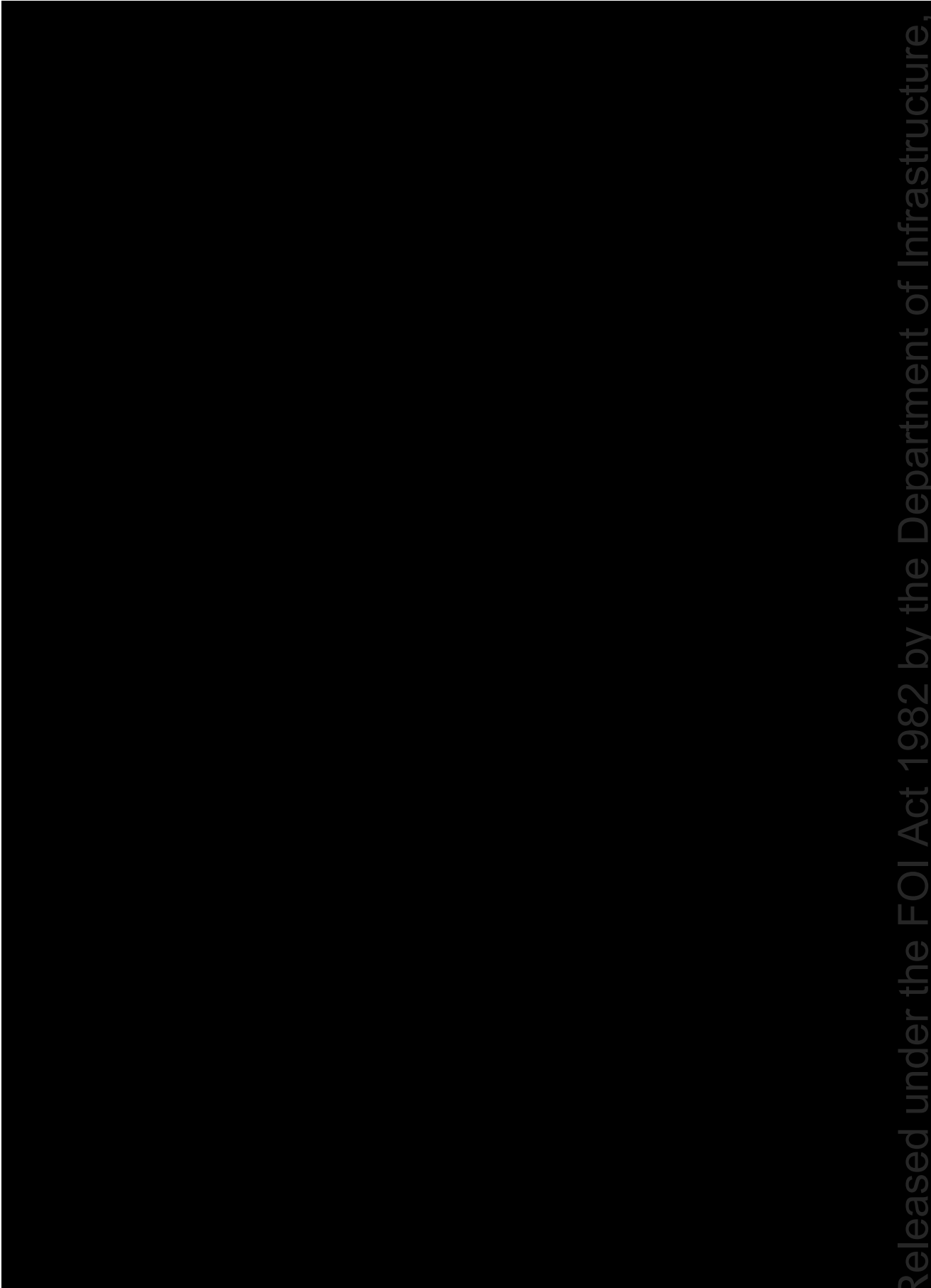
If the Department:

- (a) has agreed under **clause 32.2(c)(i)** to compensate Telstra for its Costs in undertaking a migration of a USO Payphone to an Alternative Infrastructure; or
- (b) is required under **clause 32.3** to compensate Telstra for its Costs in undertaking a Migration of a USO Payphone,

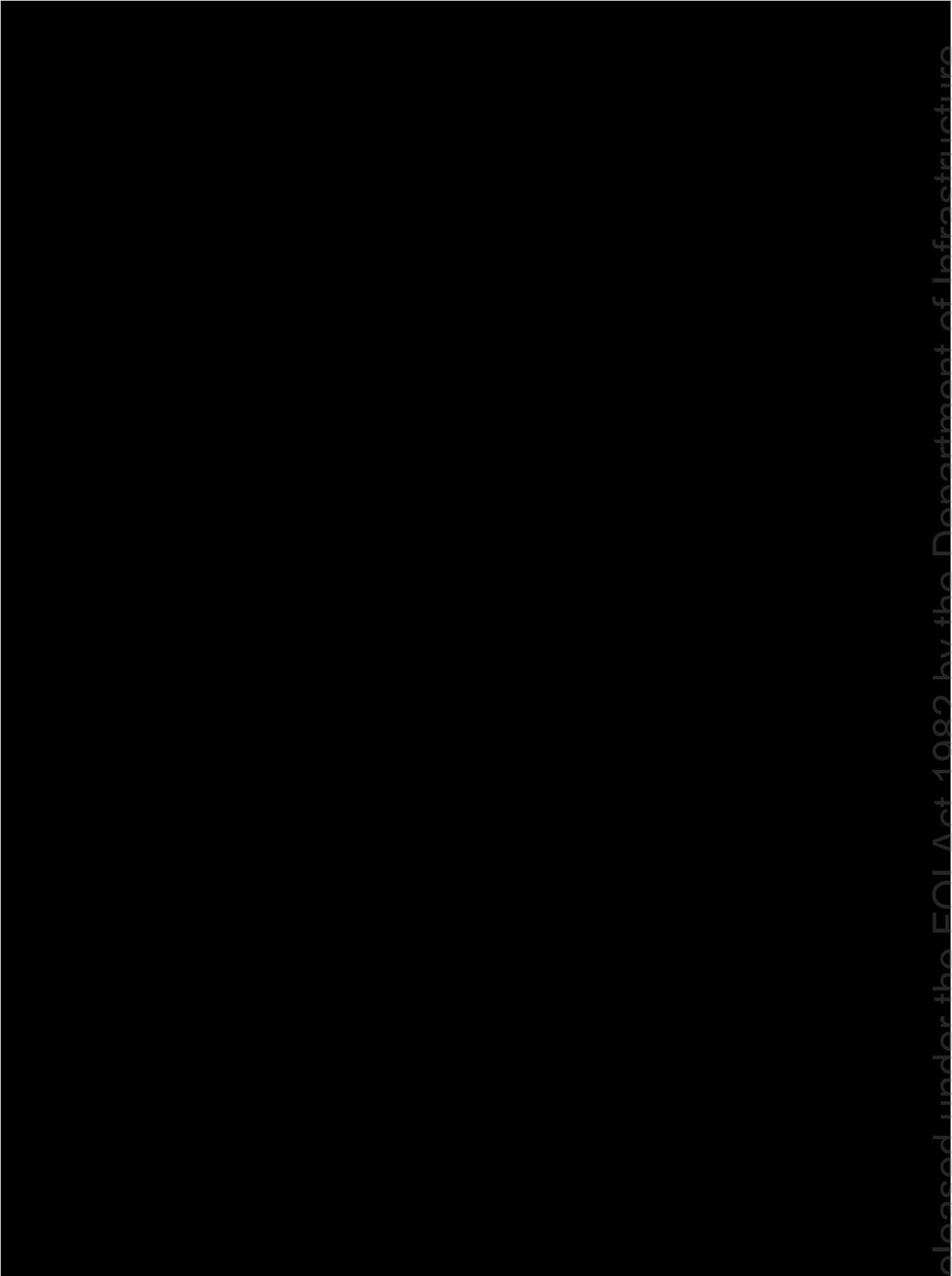
then:

- (c) Telstra must undertake the migration as cost effectively as possible;
- (d) to claim reimbursement from the Department for its Costs in undertaking the migration, within 21 days after the end of the calendar quarter in which the migration is undertaken, Telstra must provide a claim for reimbursement to the Department which provides details of Telstra's Costs, including a breakdown of all costs and receipts to evidence their incurrence;
- (e) the Department may audit any claim for reimbursement received from Telstra. If the Department notifies Telstra that it intends to audit a claim, the audit will be undertaken (and Telstra will cooperate with the Department in relation to that audit) in accordance with **clause 20**;
- (f) on the date that is 30 days after the commencement of each calendar quarter during the term of this Module, with the first payment being due 30 days after 1 October 2012, the Department will, subject to **clause 32.4(h)**, reimburse to Telstra the Costs (if any) for which Telstra is entitled to reimbursement under this **clause 32** and for which Telstra has submitted a claim for reimbursement in the previous calendar quarter in accordance with **clause 32.4(d)**;
- (g) if the parties disagree regarding any aspect of a claim by Telstra for reimbursement under this **clause 32**, either party may refer the matter of expert determination in accordance with **clause 11.1**; and
- (h) the Department is not required to pay or reimburse Telstra for any Costs incurred by Telstra in undertaking a migration under this **clause 32**:
 - (i) unless Telstra has provided the information required under **clause 32.4(d)** to support a claim for reimbursement of those Costs; and
 - (ii) until those Costs are agreed or, if applicable, determined by expert determination.

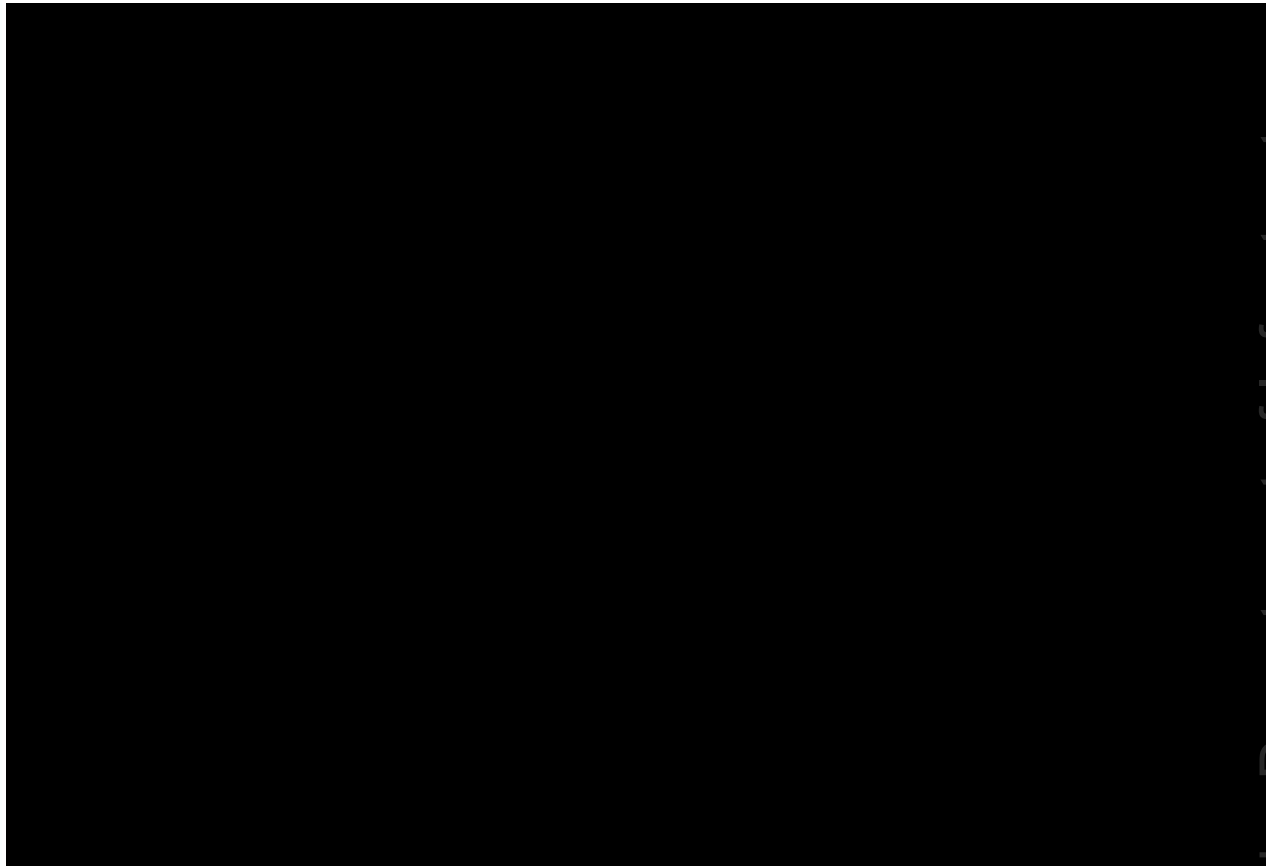




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Module D

Voice-only customer migration

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34 Industry consultation and preliminary matters for this Module

34.1 Industry consultation

- (a) On or before the First Stock Take Date for the first Rollout Region in which the Region Ready for Service Date occurs after the Commencement Date, the Department will use its best efforts to:
 - (i) consult with the industry (including Telstra) about the Commonwealth Government's policy to fund certain costs of migrating eligible voice-only customers to the NBN Co Fixed Line Network; and
 - (ii) notify Telstra in writing of the scope of Customer Management Tasks and Priority Assistance Customer Management Tasks that are to be performed by Telstra under this Module, including the following:
 - (A) the number and types of communications that Telstra must have with each Eligible Voice-Only Customer;
 - (B) any special or additional communications that are required for Priority Assistance Customers;
 - (C) the required timing for each customer communication; and
 - (D) the content of each customer communication and/or information that must be provided to each Eligible Voice-Only Customer during communications; and
 - (iii) notify Telstra of the Required Cabling Deployment Rules.

34.2 Customer Management Tasks and Customer Management Fees

- (a) Once the Customer Management Tasks and the Priority Assistance Customer Management Tasks have been notified to Telstra by the Department in accordance with **clause 34.1(a)(ii)**, each party must negotiate with the other in good faith and use its reasonable endeavours to agree the Customer Management Fees and the Priority Assistance Customer Management Fees within 30 days after the date of notification.
- (b) If the parties are unable to reach agreement about the Customer Management Fees or the Priority Assistance Customer Management Fees in the time specified in **clause 34.2(a)**, either party may refer the matter for expert determination in accordance with **clause 11.1**. For this purpose, the parties agree that the Customer Management Fees and the Priority Assistance Customer Management Fees determined by the expert panel must ensure that Telstra recovers the overall Cost of performing the Customer Management Tasks and Priority Assistance Customer Management Tasks notified by the Department.

34.3 Required Cabling Deployment Rules and rate card

- (a) Once the Required Cabling Deployment Rules have been notified to Telstra by the Department in accordance with **clause 34.1(a)(iii)**, each party must negotiate with the other in good faith and use its reasonable endeavours to agree a rate card that will apply when calculating the Reasonable Connection Costs under this **Module D (Voice-only customer migration)** within 30 days after the date of notification.
- (b) If the parties are unable to reach agreement about the rate card that will apply when calculating the Reasonable Connection Costs under this Module D in the

time specified in **clause 34.3(a)**, either party may refer the matter for expert determination in accordance with **clause 11.1**. For this purpose, the parties agree that the rate card that is determined by the expert panel must ensure that Telstra recovers its Costs of undertaking those tasks that are covered by the rate card.

34.4 Effect of this Module

- (a) **Clauses 35 to 37** (inclusive) will not take effect until the Customer Management Fees and the Priority Assistance Customer Management Fees referred to in **clause 34.2(a)** are agreed or, if applicable, determined by expert determination.
- (b) **Clauses 38 and 39** will not take effect until the rate card referred to in **clause 34.3(a)** is agreed or, if applicable, determined by expert determination.
- (c) The parties agree that this Module D is modified to the extent necessary to give effect to the terms of the letter agreement from TUSMA to Telstra dated 17 September 2014 and accepted by Telstra on 18 September 2014.
- (d) The parties agree to negotiate in good faith to amend this Module D as soon as practicable after the completion of the first review undertaken in accordance with clause 41 and the issue of the Migration Assurance Policy for the purposes of reflecting changes required to assist Eligible Voice-Only Customer migration to the NBN.

35 Identifying Eligible Voice-Only Customers

- (a) Subject to **clause 35(b)**, on or about the First Stock Take Date for a Rollout Region, Telstra will prepare based on the information in Telstra's information systems and provide to the Department a list (**Eligible Customer List**) which in respect of the Service Addresses within the Fixed Line Footprint in that Rollout Region:
 - (i) identifies all Telstra Eligible Voice-Only Customers;
 - (ii) identifies all other Service Addresses (other than ULL Service Addresses) at which other Eligible Voice-Only Customers may be located and identifies the RSP resupplying Telstra wholesale voice services at each of those Service Addresses (or if not known to Telstra, the Telstra wholesale customer);
 - (iii) for each ULL Service Address, identifies the Service Address as being a ULL Service Address and identifies the Telstra wholesale customer; and
 - (iv) identifies any Eligible Voice-Only Customers who are Priority Assistance Customers.
- (b) Telstra is not required to comply with **clause 35(a)** to the extent the compliance would breach a confidentiality or privacy obligation which Telstra owes to a third party (**relevant third party**) and in that event:
 - (i) Telstra must notify the Department accordingly as soon as possible after it becomes aware that it is not required to comply with **clause 35(a)** by reason of a circumstance arising under this **clause 35(b)**;
 - (ii) Telstra must first use its best endeavours to amend or remove the obligation to allow it to comply with **clause 35(a)**, including, without limitation, seeking the consent of the relevant third party; and

- (iii) Telstra will provide the Department with any information or assistance reasonably requested by the Department to enable the Department to attempt to obtain, on Telstra's behalf, the consent of the relevant third party or to otherwise take steps to ensure that Telstra's compliance with **clause 35(a)** will not breach a confidentiality or privacy obligation to which Telstra is subject.

36 Management of Telstra Eligible Voice-Only Customers

- (a) If:
 - (i) prior to the First Stock Take Date for the first Rollout Region which is to be Migrated to the NBN Co Fixed Line Network after the Commencement Date, the Department requests Telstra to enter into an agreement with the Department regarding the performance of the Customer Management Tasks and Priority Assistance Customer Management Tasks (as notified by the Department under **clause 34.1(a)(ii)**) that must be undertaken by Telstra in respect of Telstra Eligible Voice-Only Customers in each Rollout Region;
 - (ii) the terms of the agreement in relation to the performance of Customer Management Tasks and Priority Assistance Customer Management Tasks are substantially the same as the terms that the Department offers to each other RSP who supplies a voice service to Eligible Voice-Only Customers whose Service Addresses are within the Fixed Line Footprint;
 - (iii) the terms of the agreement are no less favourable to Telstra than the terms of **clauses 34 to 36** (inclusive), **40 and 41** of this **Module D**; and
 - (iv) the parties agree any amendments to this **Module D (Voice-only customer migration)** which are necessary to ensure that, to the extent the parties' obligations under this **Module D (Voice-only customer migration)** regarding the performance of the Customer Management Tasks and Priority Assistance Customer Management Tasks and the payment of the Customer Management Fees and Priority Assistance Customer Management Fees are dealt with in the agreement, those obligations cease to have effect on the date that the operative provisions of such agreement commence to apply,

Telstra must enter into that agreement with the Department.
- (b) If the parties do not enter into an agreement pursuant to **clause 36(a)**, the Customer Management Tasks and Priority Assistance Customer Management Tasks will be performed by Telstra, and the Customer Management Fees and Priority Assistance Customer Management Fees will be paid by the Department, in accordance with the terms of this **Module D (Voice-only customer migration)**.
- (c) The Customer Management Tasks or Priority Assistance Customer Management Tasks (as applicable) must be undertaken by Telstra for all Telstra Eligible Voice-Only Customers in a Rollout Region between the First Stock Take Date for that Rollout Region; and
 - (i) the Second Stock Take Date for that Rollout Region; or
 - (ii) if **clause 36(e)** applies, or if it is otherwise agreed, the Disconnection Date for that Rollout Region.
- (d) On or about the Second Stock Take Date for a Rollout Region, Telstra must provide the Department with:

- (i) subject to **clause 35(b)** (which will apply as if references to **clause 35(a)** in that provision are references to this **clause 36(d)(i)**), a list based on the information in Telstra's information systems of:
 - (A) those of the Telstra Eligible Voice-Only Customers in that Rollout Region who were included in the Eligible Customer List provided to the Department under **clause 35(a)** who, as at the Second Stock Take Date, are still being provided with services over the Telstra copper network at the relevant Service Address; and
 - (B) any other Services Addresses in that Rollout Region which were included in the Eligible Customer List provided to the Department under **clause 35(a)** which, as at the Second Stock Take Date, are not being provided with services over the Telstra copper network at the relevant Service Address;
 - (ii) written certification identifying the Customer Management Tasks and Priority Assistance Customer Management Tasks it has undertaken in the Rollout Region and the Telstra Eligible Voice-Only Customers in respect of whom those tasks have been undertaken; and
 - (iii) if it has not completed certain Customer Management Tasks or Priority Assistance Customer Management Tasks (as applicable) in respect of any Telstra Eligible Voice-Only Customers, a notice setting out the reasons for this and details as to when it intends to undertake those customer management tasks in respect of those Eligible Voice-Only Customers.
- (e) If a notice is given by Telstra under **clause 36(d)(iii)**, Telstra may complete the applicable Customer Management Tasks or Priority Assistance Customer Management Tasks (as applicable) by the Disconnection Date for the relevant Rollout Region, unless:
- (i) within 5 days after receiving that notice, the Department gives notice to Telstra which details the concerns it has regarding the matters set out in that notice; and
 - (ii) within 5 days after receiving a notice under **clause 36(e)(i)**, Telstra does not address these concerns to the Department's reasonable satisfaction.
- (f) On or about the Certification Date for a Rollout Region, Telstra must provide the Department with a certified and complete list of all Customer Management Tasks and Priority Assistance Customer Management Tasks it has undertaken in the Rollout Region and the Telstra Eligible Voice-Only Customers in respect of whom those tasks have been undertaken (**Certification Notice**).

37 Management of eligible voice-only customers of other RSPs

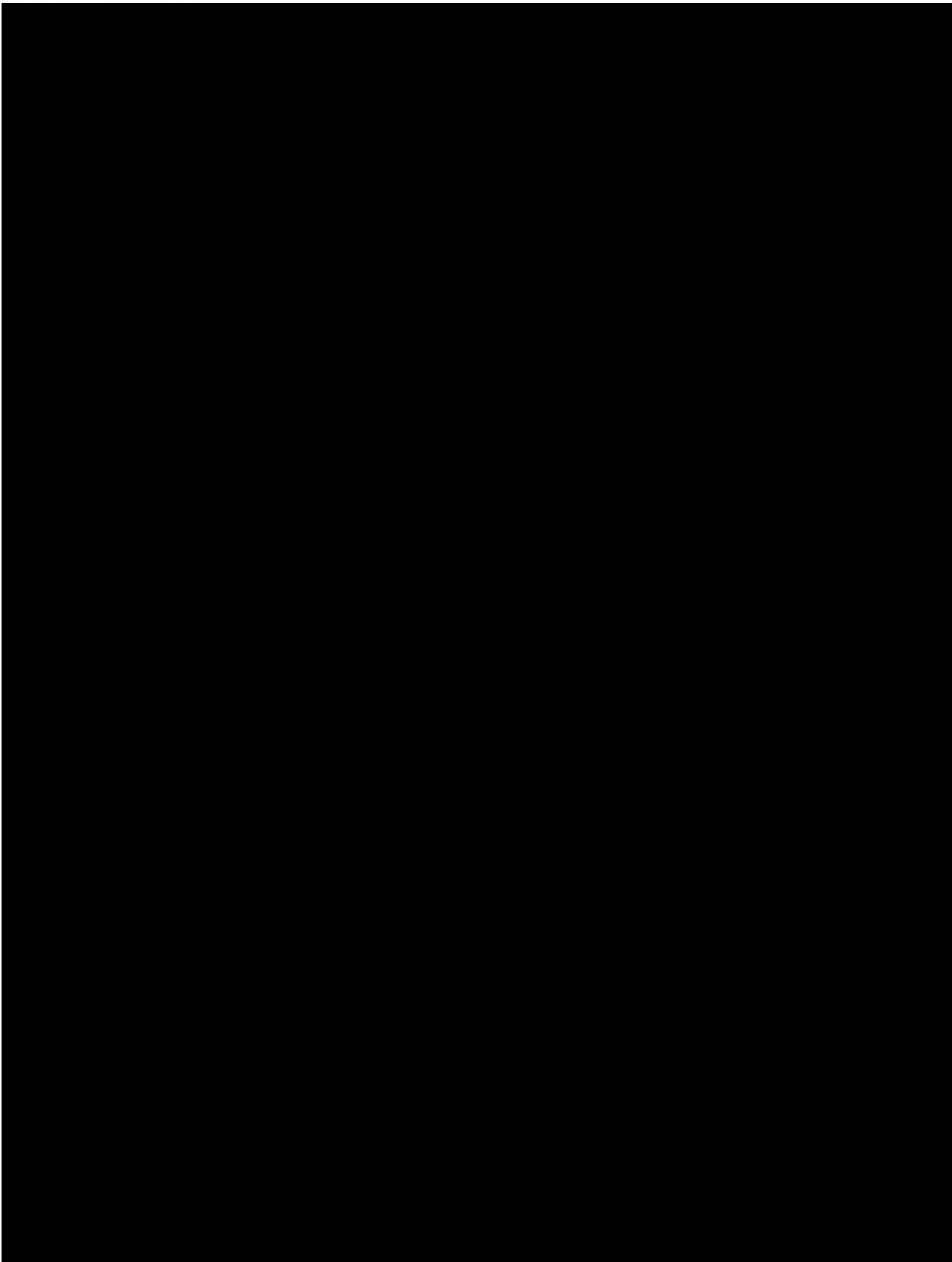
- (a) The Department will use its best efforts to negotiate and execute an agreement, in substantially the same terms as the agreement described in **clause 36**, with each other RSP who supplies a voice service to Eligible Voice-Only Customers whose Service Addresses are within the Fixed Line Footprint.
- (b) The Department will use reasonable endeavours to negotiate and agree those agreements with each relevant RSP prior to the First Stock Take Date for the first Rollout Region in which the Region Ready for Service Date occurs after the Commencement Date.

- (c) The Department will notify Telstra in accordance with **clause 37(f)** promptly upon becoming aware that it will require Telstra to undertake customer management tasks, as notified by the Department, in respect of another RSP's customers.
- (d) The parties agree in principle that the Department will treat all RSPs (including Telstra) in a non-discriminatory manner in relation to the terms and conditions on which the Department engages an RSP to provide customer management tasks in respect of their Eligible Voice-Only Customers.
- (e) The Department will require that any RSP (including Telstra) that receives compensation from the Department to undertake customer management tasks in respect of their Eligible Voice-Only Customers must, as a matter of general principle, perform those tasks in respect of all of their Eligible Voice-Only Customers.
- (f) If:
 - (i) the Department is not able to finalise an agreement of the kind referred to in **clause 37(a)** with an RSP; or
 - (ii) an RSP with whom the Department has executed such an agreement fails to certify to the Department by the relevant Second Stock Take Date that it has performed the agreed customer management tasks in respect of each of its Eligible Voice-Only Customers in the relevant Rollout Region,

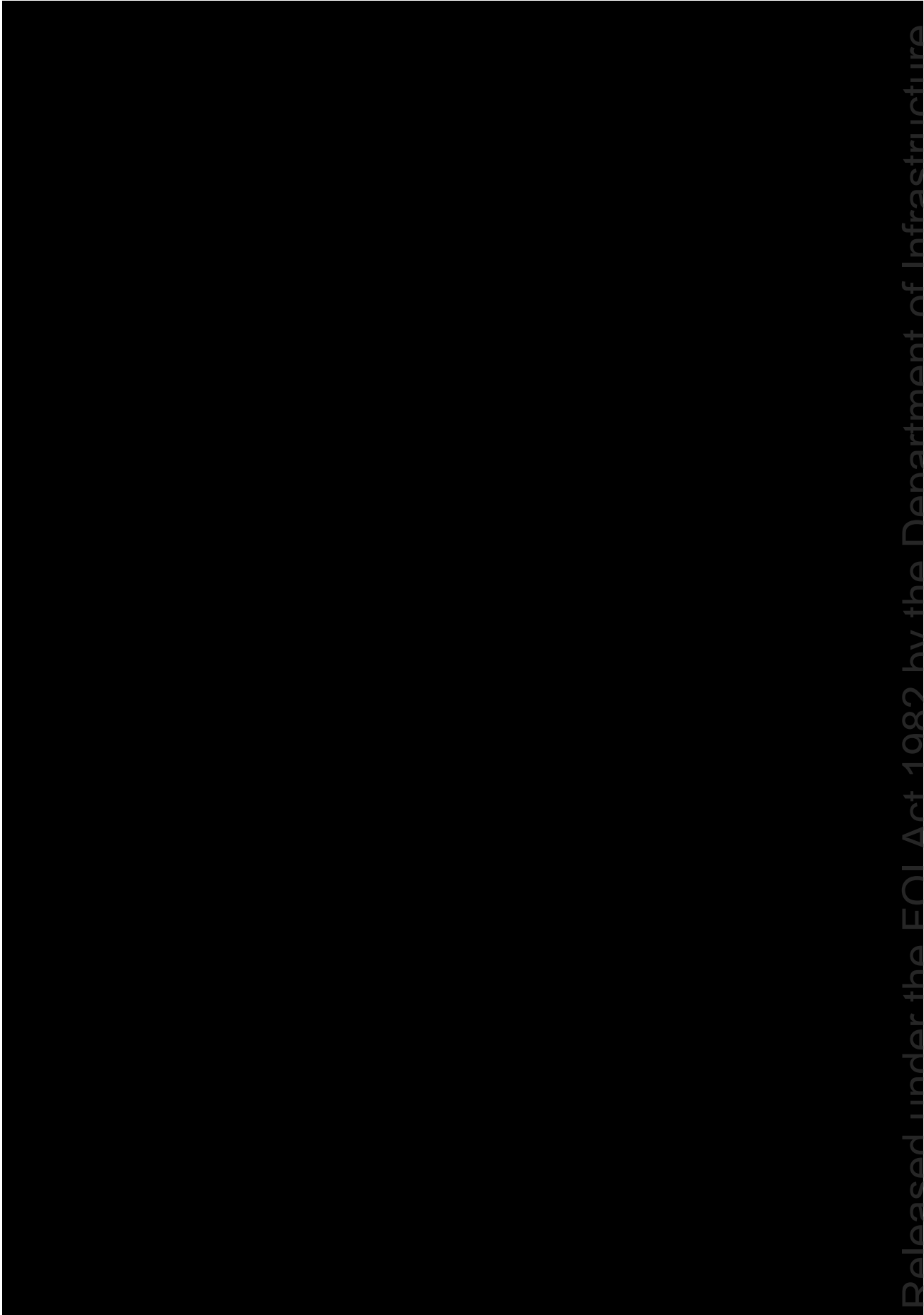
the Department may request that Telstra undertake specified customer management tasks in respect of any or all of the RSP's customers, and Telstra must agree to do so on reasonable terms and conditions to be agreed.

- (g) The customer management tasks to be undertaken by Telstra in respect of another RSP's Eligible Voice-Only Customers, and the terms on which Telstra will agree to undertake those tasks, will be substantially similar to those described in **clause 36**, but may include different or additional requirements (e.g. home visits) where the customer management tasks are being commenced on or after the relevant Second Stock Take Date, in which case the applicable Customer Management Fee or Priority Assistance Customer Management Fee which would have applied if the Eligible Voice-Only were Telstra Customers will be adjusted accordingly.
- (h) Telstra is not required to comply with this **clause 37** to the extent that compliance would breach a confidentiality or privacy obligation which Telstra owes to, or an obligation in contract or tort not to approach or promote services to End Users of, a third party (**relevant third party**) and in that event:
 - (i) Telstra must notify the Department accordingly as soon as possible after it becomes aware that it is not required to comply with this **clause 37** by reason of a circumstance arising under this **clause 37(h)**;
 - (ii) Telstra must use its best endeavours to amend or remove that obligation to allow it to comply with this **clause 37**, including, without limitation, seeking the consent of the relevant third party; and
 - (iii) Telstra will provide the Department with any information or assistance reasonably requested by the Department to enable the Department to attempt to obtain, on Telstra's behalf, the consent of the relevant third party or to otherwise take steps to ensure that Telstra's compliance with this **clause 37** will not breach a confidentiality, privacy or contractual obligation to which Telstra is subject and will not give rise to any contractual or tortious liability relating to Telstra approaching or promoting services to End Users.

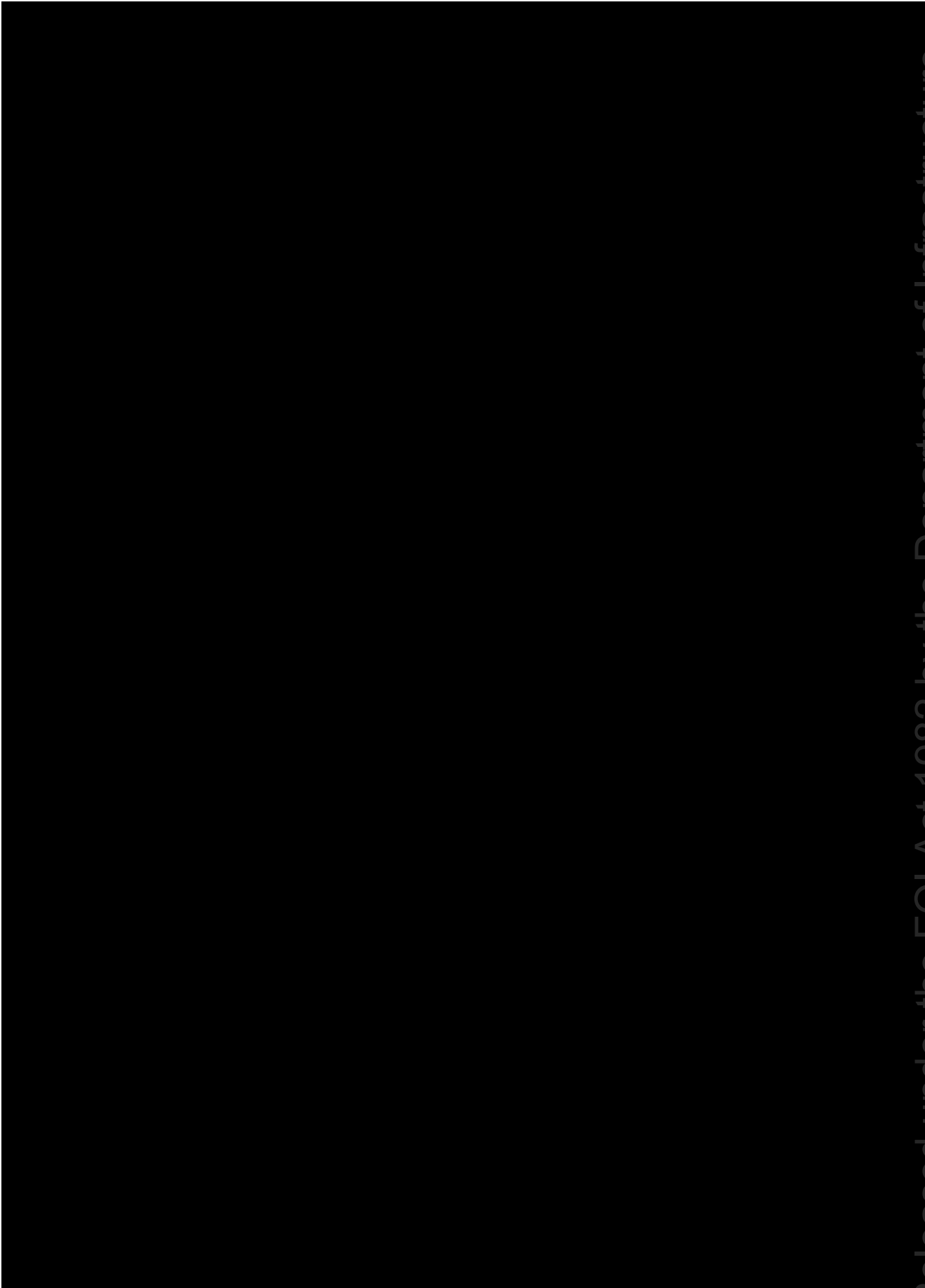
- (i) Nothing in this clause requires Telstra to agree to market any retail services or products to End Users other than Telstra's own retail services and products.



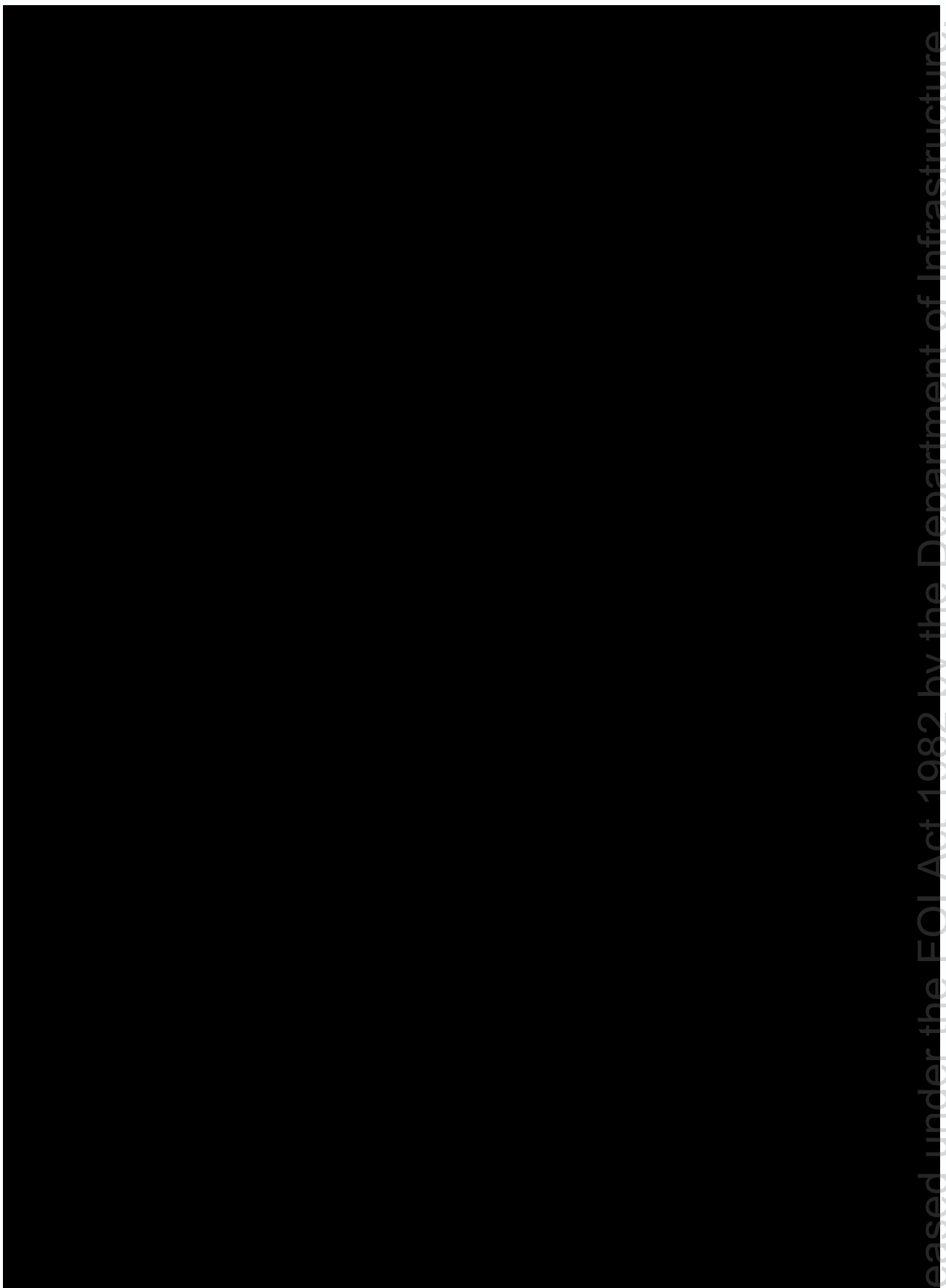
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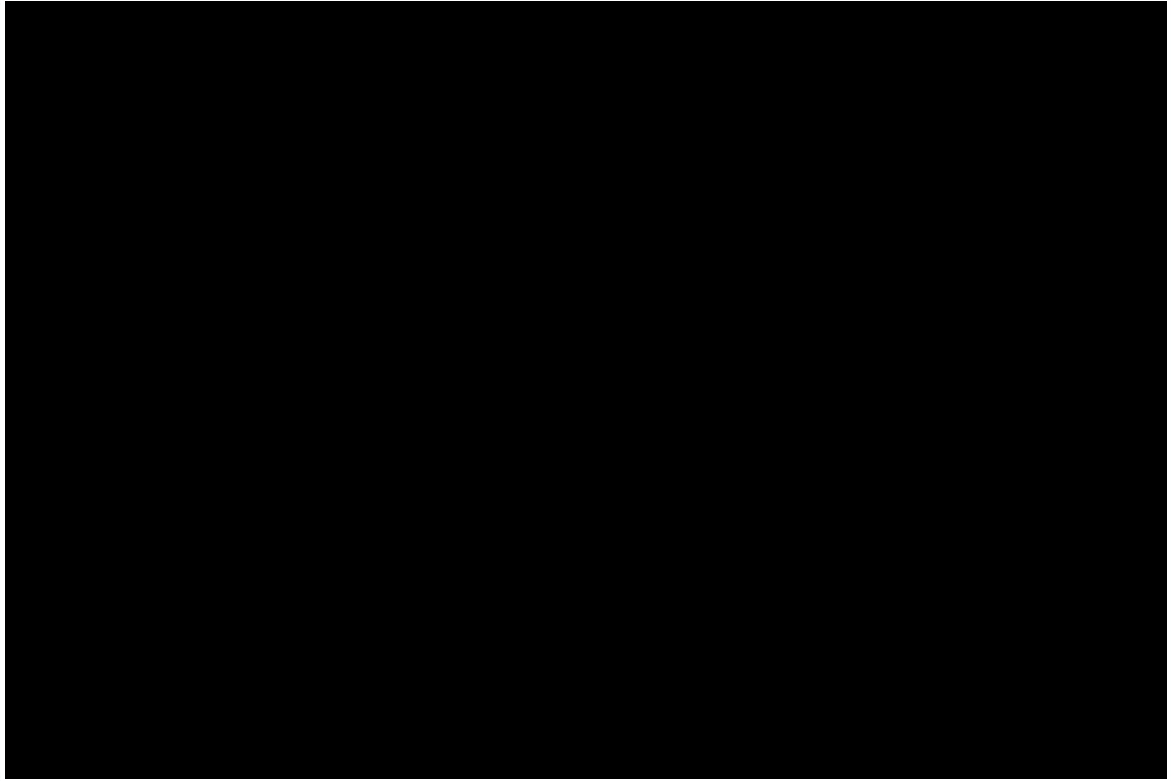
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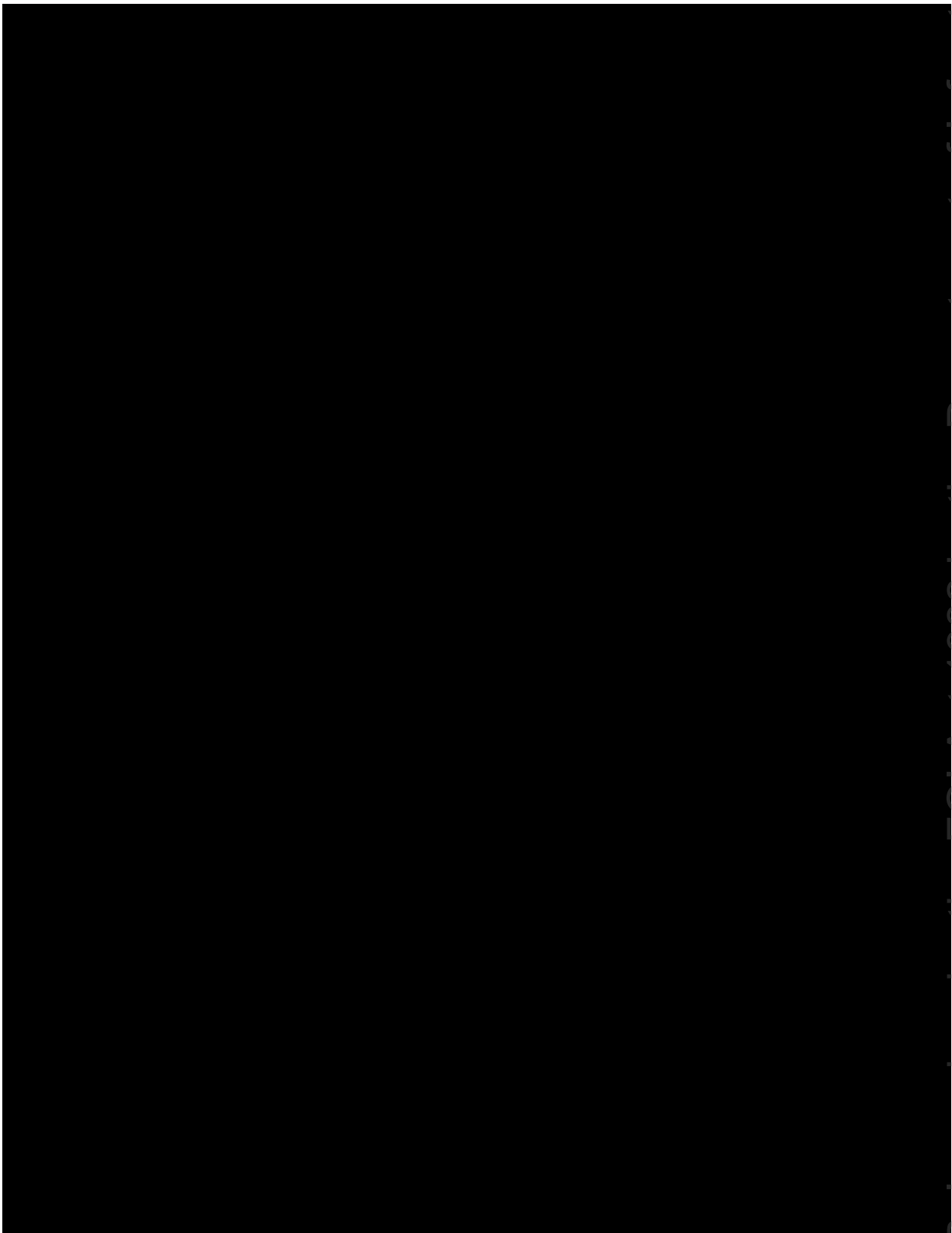
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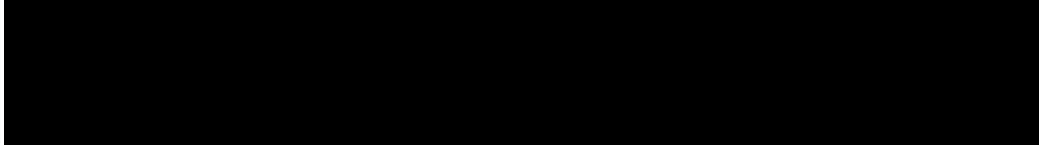
39 Dial tone only period

- (a) Notwithstanding any other term in this Module, if as at the Disconnection Date for a Rollout Region, a Service Address that is in the Fixed Line Footprint in that Rollout Region is:
- (i) not a ULLS Service Address;
 - (ii) connected to the Telstra copper network by at least one line that is used by Telstra to supply either:
 - (A) a STS to a retail customer of Telstra; or
 - (B) a WLR service to a wholesale customer of Telstra; and
 - (iii) not NBN Connected,
- then, subject to **clause 39(b)**, Telstra must ensure that a Soft Dial Tone is available over at least one line that connects that Service Address to the Telstra copper network for a period of at least 30 Business Days after the Disconnection Date for that Rollout Region or such other period or periods as agreed between the Department and Telstra.
- (b) Telstra is not required under **clause 39(a)** to ensure that a Soft Dial Tone is available over a line at a Service Address:
- (i) during any period that Telstra, in compliance with the Subscriber Agreement, uses the Telstra copper network to supply an active service as described in **clause 39(a)(ii)(A) or (B)** at that Service Address on or after the Disconnection Date for the Rollout Region in which that Service Address is located;

- (ii) once the Service Address is NBN Connected; or
- (iii) once the line is used by NBN Co for pullthrough of NBN Fibre, NBN HFC or a copper line.



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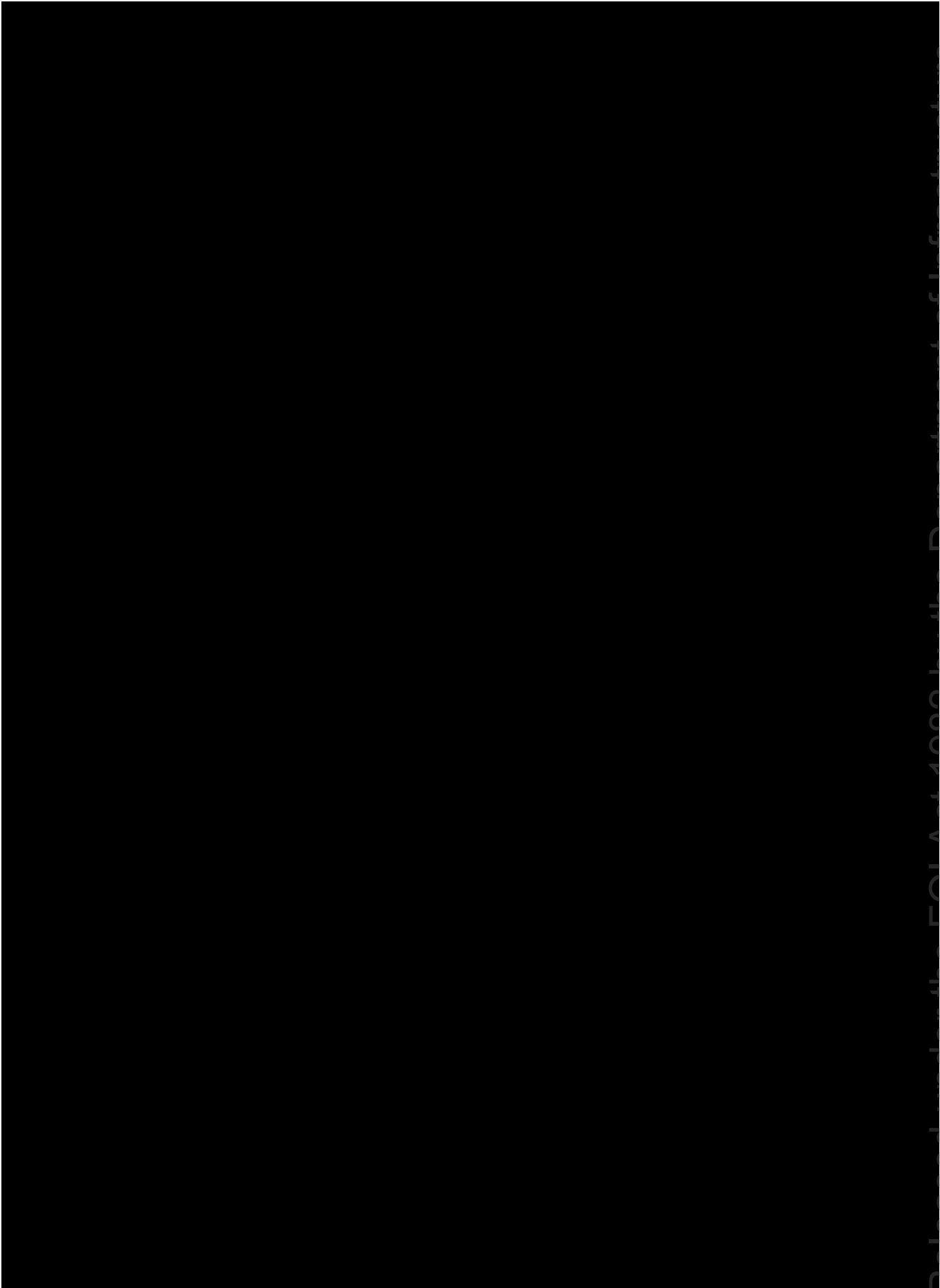
41 Review

- (a) The parties will periodically review the effectiveness, scope and pricing of the requirements and procedures in this Module relating to:
 - (i) Eligible Voice-Only Customers, with the objective of cost effectively maximising the number of Eligible Voice-Only Customers who Migrate to the NBN Co Fixed Line Network by the Disconnection Date in the relevant Rollout Region; and
 - (ii) the NBN Connection of Eligible Fixed Line Connection Customers, including the Required Cabling Deployment Rules and the rate card referred to in **clause 34.3**.
- (b) In undertaking a review under **clause 41(a)**, the parties may take into account any material changes in Telstra's Costs of performing the relevant work.
- (c) The first review is to take place no later than 1 month after the first Certification Date which occurs under this Module and thereafter at agreed intervals or upon the reasonable request from time to time of either party.
- (d) The parties will negotiate in good faith any changes to this Agreement that are identified as being required during a review under this **clause 41**.

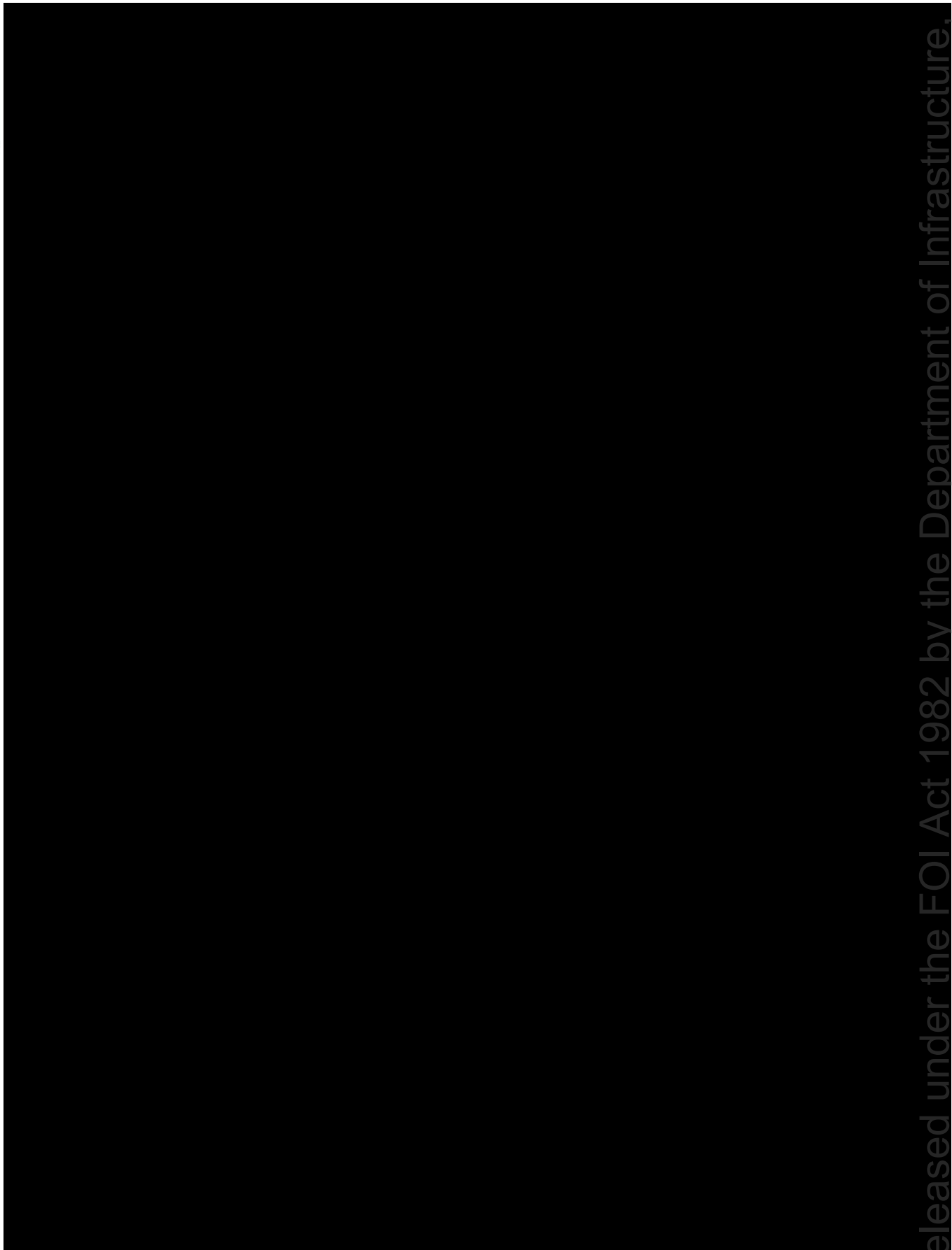
Module E

Emergency Call Service

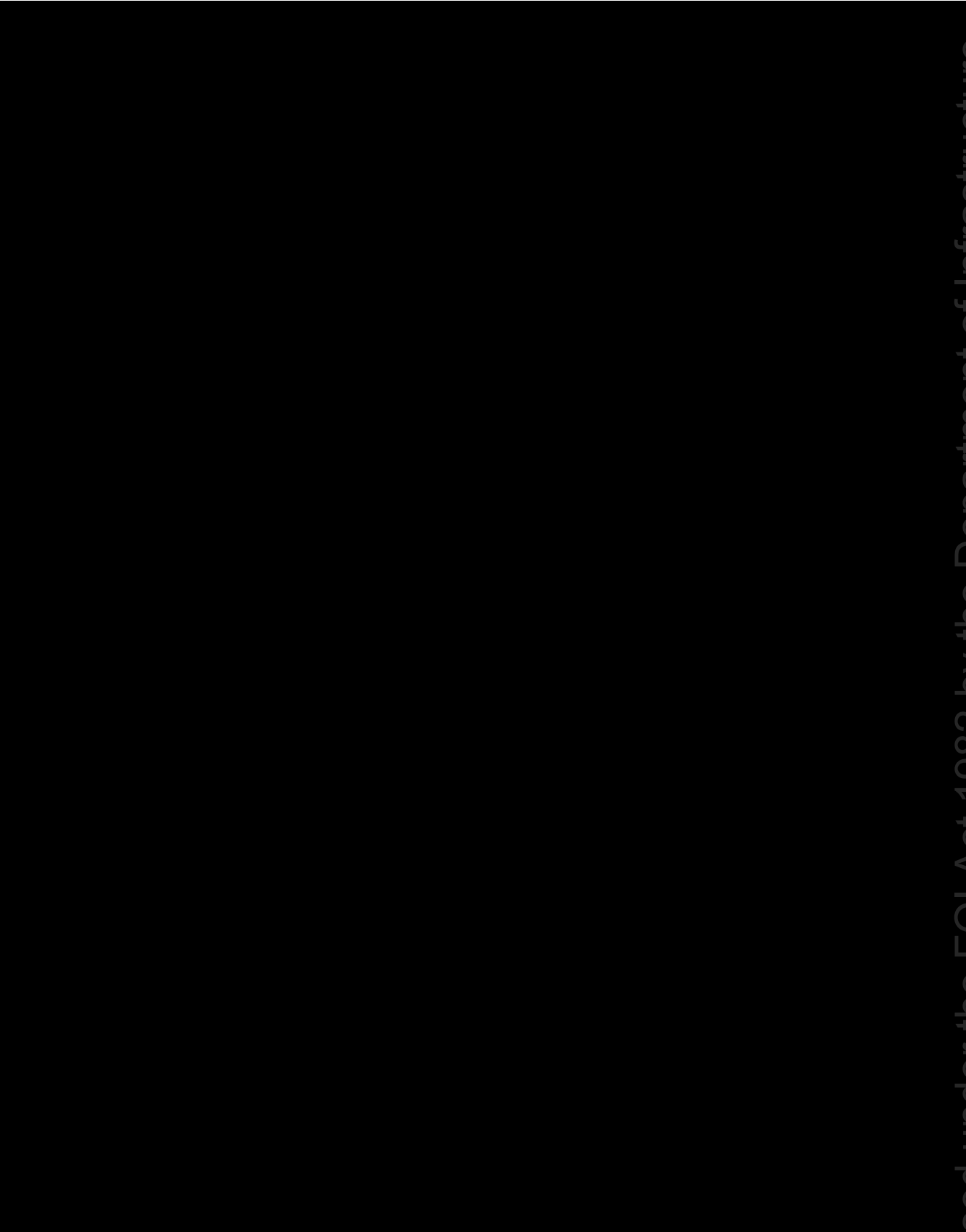
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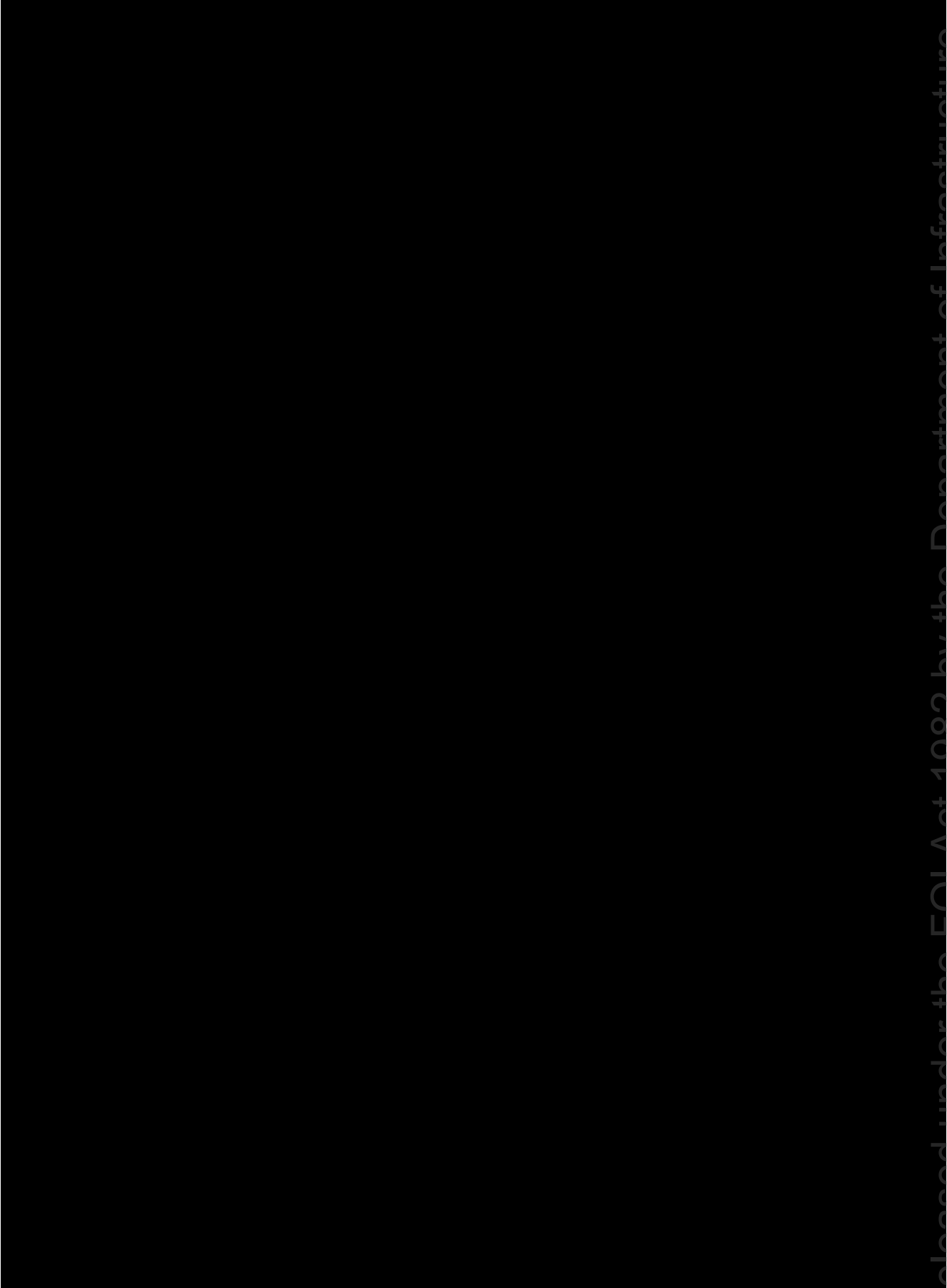
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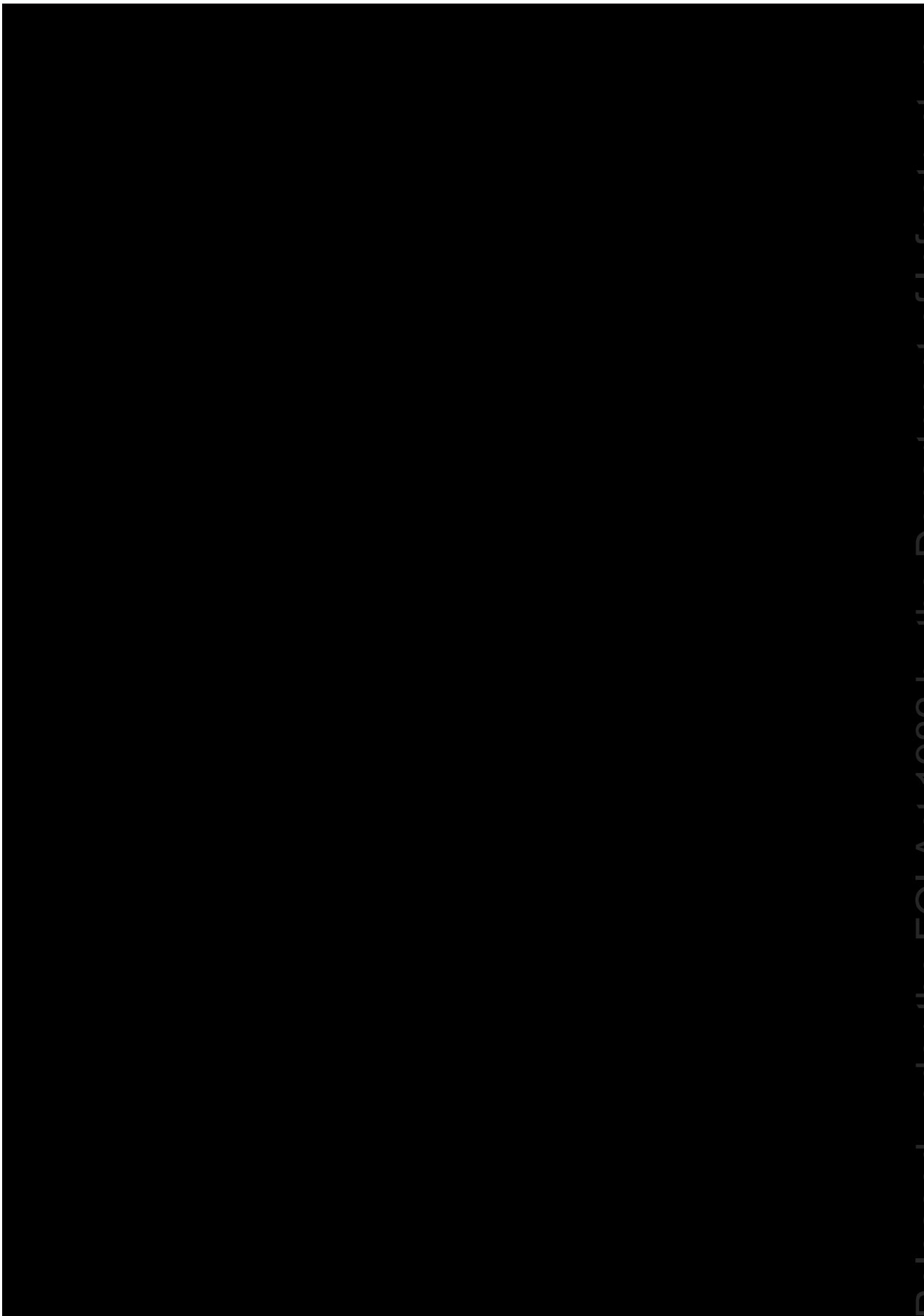
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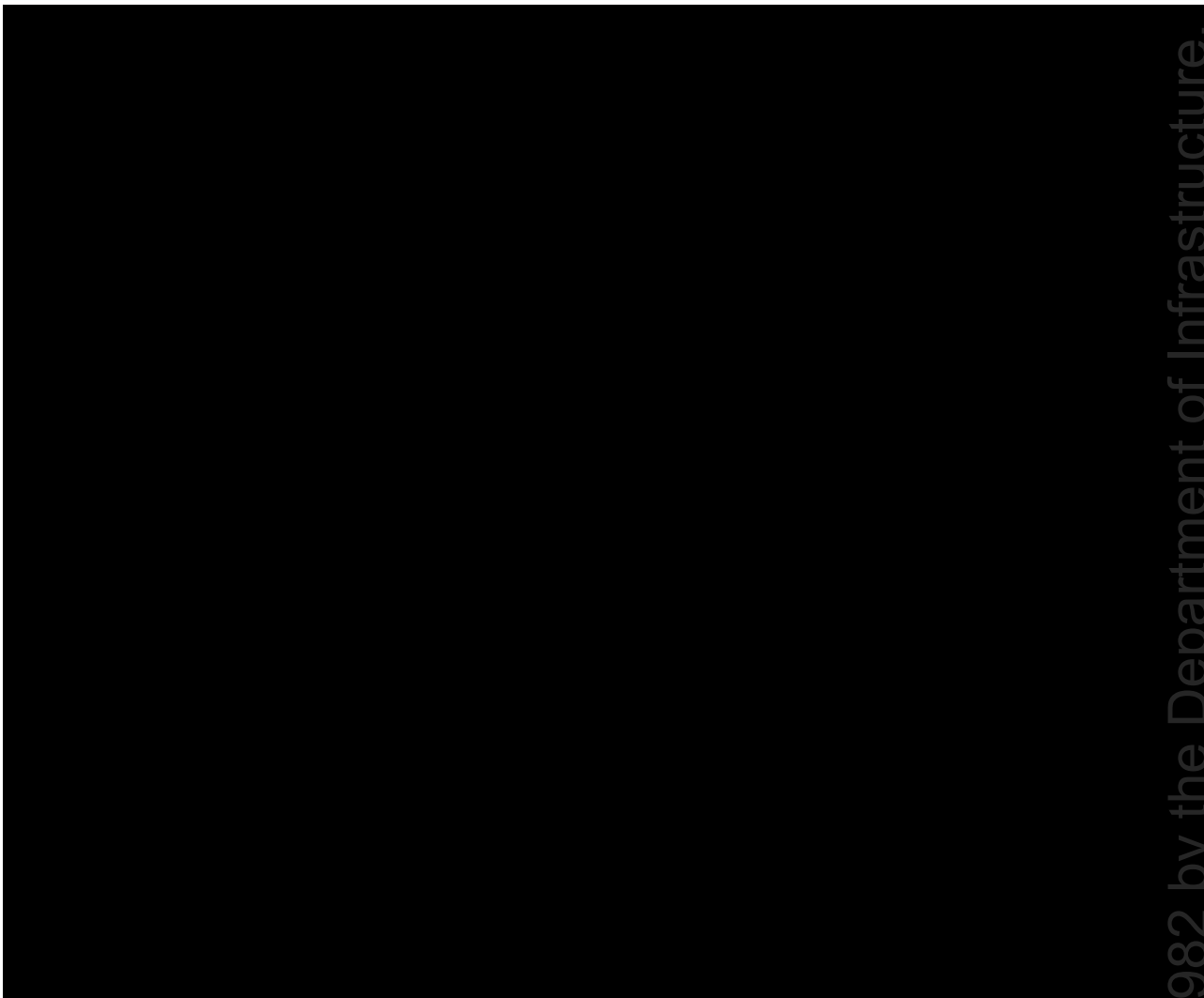
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Module F

Migration of Public Interest Services

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47 Research services

- (a) Telstra must notify the Department if it considers there to be a need to develop an appropriate technical solution to Migrate a Public Interest Service.
- (b) If the Department, acting reasonably, is satisfied that an appropriate technical solution to Migrate the Public Interest Service does not exist, it must:
 - (i) request that Telstra (at the Department's cost) undertake research to determine an appropriate technical solution; or
 - (ii) engage (at the Department's cost) a third party to undertake the necessary research.
- (c) If the Department notifies Telstra that it wishes to engage Telstra to undertake the research, Telstra will provide the Department with:
 - (i) a detailed scope of work description for the proposed research; and
 - (ii) a budget (including a detailed breakdown of relevant Costs) for the work described by Telstra pursuant to **clause 47(c)(i)**.
- (d) If the Department approves Telstra's scope of work and budget, then subject to **clause 48**, the parties will enter into an agreement setting out the terms on which Telstra will undertake the proposed research.
- (e) Unless otherwise agreed, an agreement entered into by the parties under **clause 47(d)** will not deal with the implementation of any Migration solution identified by Telstra. The Department is under no obligation to engage Telstra to implement, or to pay for the costs of implementation of, any Migration solution identified by Telstra.
- (f) Regardless of the party engaged to undertake research, the Department will consult as appropriate with Telstra and other industry participants regarding the required Migration solution, the person engaged to undertake the research, and the terms on which that person is engaged.

48 Intellectual property

- (a) Unless otherwise agreed, the Department will own the Intellectual Property in any solutions or other work developed by or on behalf of Telstra in accordance with this Module, and Telstra assigns such Intellectual Property to the Department immediately upon its creation.
- (b) Telstra undertakes to do all acts at its cost as may be necessary to give effect to the assignment in **clause 48(a)** including by executing any required documents or effecting any required registrations.
- (c) Telstra will grant to the Commonwealth, or obtain for the Commonwealth's benefit, a perpetual, non-exclusive, royalty free licence to use and sub-license background Intellectual Property that is necessary for the Commonwealth or any sub licensee of the Commonwealth to use any Intellectual Property referred to in **clause 48(a)**. This licence will be limited to use within Australia only and will only be granted for the sole purpose of Migrating Public Interest Services.

- (d) If the Commonwealth owns the Intellectual Property referred to in **clause 48(a)**, the Commonwealth will grant to Telstra a perpetual, non-exclusive, royalty free licence to use and sub-licence that Intellectual Property.
- (e) Where the Department considers it efficient or appropriate to do so, it may agree that Telstra or a third party will own the Intellectual Property referred to in **clause 48(a)**. The Department will only agree those arrangements where it obtains (and is able to ensure other relevant parties obtain) a perpetual, non-exclusive, royalty free licence to use the Intellectual Property.

49 Payment

The amount payable by the Department under an agreement entered into by the parties under **clause 47(d)** will be as agreed by the parties. Payments will be structured so that all or part of the amount payable will not be paid until completion of the relevant research.

Module G

Dictionary

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50 Dictionary

In this Agreement:

ACMA means the Australian Communications and Media Authority.

Acquired Network Rollout Region means a Rollout Region that is or will be serviced using a fixed line telecommunications network where NBN Co has entered into an agreement, arrangement or understanding to acquire the ownership, control or operation of that network from a person other than NBN Co, but excluding:

- (a) HFC assets or copper network assets acquired by NBN Co from Telstra under the NBN Definitive Agreements; and
- (b) HFC assets acquired by NBN Co from Optus..

Adequately Served has the same meaning as in the Implementation and Interpretation Deed (excluding any amendments to that meaning which are not approved by the Commonwealth).

Agreement means this agreement and includes the Modules.

Alternative Infrastructure means:

- (a) the NBN Co Fixed Line Network; and
- (b) other infrastructure which Telstra uses to provide carriage services, including but not limited to fixed, wireless, satellite and terrestrial wireless (including comprised within the NBN).

Asset Transfer Date means the date that ownership of the relevant network asset is transferred to NBN Co, determined in accordance with the Infrastructure Services Agreement.

Business Day means a day other than a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

Certification Date means, in respect of a Rollout Region, the date that is 1 month (or another agreed period) after the Disconnection Date for that Rollout Region.

Certification Notice has the meaning given in **clause 36(f)**.

Commencement Date means 1 July 2012.

Conditions Precedent Satisfaction Date means the "Restatement Date" as defined in the DAR or such other date as agreed in writing by the parties.

Confidential Information means information that is by its nature confidential and which is disclosed by or on behalf of a party under or in connection with this Agreement and which:

- (a) is designated by a party as confidential; or
- (b) which a party knows or ought to know is confidential information,

but does not include information which is, or becomes, public knowledge other than by breach of this Agreement or any other confidentiality obligation. For the purposes of this

definition, any information given by Telstra to the Department under **Module D (Voice-only Customer Migration)** will be Confidential Information of Telstra.

Connected to the Telstra copper network means, in respect of a Service Address, that either an active service in operation is being provided or Soft Dial Tone is available over at least one line that connects the Service Address to the Telstra copper network.

Continuity Deed means the deed of that name entered into between NBN Co and Telstra dated 14 December 2014.

Costs means the capital and operating costs which a provider has actually and reasonably incurred or would actually and reasonably incur in supplying the services, and includes:

- (a) a reasonable return on the value of assets used net of any depreciation recorded up to the time of the valuation of the asset for service costing purposes;
- (b) depreciation of the assets used to supply the services, to be assessed on the basis of the operator recovering the value of those assets over their useful life; and
- (c) prudent and efficient operating costs.

CPE means customer premises equipment.

Customer Management Fee means the fee to be agreed by the parties or otherwise determined by expert determination in accordance with **clause 34.2** to be payable by the Department to Telstra in consideration of Telstra performing the Customer Management Tasks in respect of an Eligible Voice-Only Customer.

Customer Management Tasks means the tasks that are notified by the Department to Telstra in accordance with **clause 34.1(a)(ii)** in respect of Eligible Voice-Only Customers.

DAR means:

- (a) the deed entitled "Deed of Amendment and Restatement - Definitive Agreements" dated 14 December 2014 between NBN Co Limited and Telstra; or
- (b) if the deed referred to in subparagraph (a) terminates under clause 3.7 of that deed and NBN Co and Telstra enter into a deed of amendment and restatement under clause 3.7 of that deed, that deed of amendment and restatement.

Default Rate means a per annum interest rate equal to the 90 day bank bill rate as published in the Australian Financial Review on the date the relevant payment was due and reset each 90 days thereafter plus 5%.

Department means the Department of Communications.

Disconnection means, in respect of a Service Address, that the Service Address ceases to be Connected to the Telstra copper network, and **Disconnect** has a corresponding meaning.

Disconnection Date means, in respect of a Rollout Region, the date that is 18 months (or another period applicable under the Subscriber Agreement) after the Region Ready for Service Date of that Rollout Region.

Eligibility Certification has the meaning given in **clause 38.3(c)(ii)**.

Eligible Customer List has the meaning in **clause 35(a)**.

Eligible Fixed Line Connection Customer has the meaning given in **clause 38.1**.

Eligible Voice-Only Customer means, in respect of a line at a Service Address, an End User:

- (a) whose Service Address is within a Rollout Region and who, as at the First Stock Take Date of that Rollout Region, is acquiring a voice telephony service or Equivalent Service over the Telstra copper network at that Service Address and is not acquiring a broadband service over that network at that Service Address;
- (b) whose Service Address is in the Fixed Line Footprint; and
- (c) who is not acquiring a broadband service over the Telstra HFC network at that Service Address as at the First Stock Take Date for that Rollout Region,

and to avoid doubt:

- (d) does not include an End User at a Service Address which is connected to a line over which Telstra supplies an LSS to another RSP;
- (e) if there is more than one line at that Service Address for which a single End User is the account holder, there will only be one Eligible Voice-Only Customer for those lines; and
- (f) if there is more than one line at that Service Address for which more than one End User is the account holder, each End User will be an Eligible Voice-Only Customer.

Eligible Voice-Only Fixed Line Customer means, in respect of a line at a Service Address, an End User:

- (a) whose Service Address is within the Fixed Line Footprint with a Rollout Region;
- (b) who, as at the First Stock Take Date for that Rollout Region, is not acquiring a retail broadband service from Telstra over the Telstra copper network or the Telstra HFC network at that Service Address;
- (c) who first requests an NBN Connection at that Service Address prior to or within the 90 day period following the Disconnection Date for that Rollout Region for the purpose of Telstra supplying only an STS to that End User and is then NBN Connected at that Service Address; and
- (d) who is not an Eligible Voice-Only Customer at that Service Address.

Emergency Call Person means the person described in paragraph (a) of the definition of "emergency call person" in section 7 of the Telco Act, or any similar definition which amends or replaces the definition in that provision.

Emergency Call Service has the meaning in section 7 of the Telco Act, or any provision which amends or replaces the definition in that provision.

Emergency Service Numbers means:

- (a) the telephone numbers 000 or 112; and
- (b) any other emergency call service number within the meaning of section 466 of the Telco Act for which Telstra is required to operate the Emergency Call Service from time to time.

Emergency Service Organisation has the meaning set out in the TCPSS Act.

End User means a person who acquires or has requested the supply of a STS from Telstra.

Equivalent Service means a carriage service supplied or to be supplied in circumstances where:

- (a) voice telephony is not practical for a particular End User with a disability (for example, because they have a hearing impairment); and
- (b) another form of communication that is equivalent to voice telephony (for example, communication by means of a teletypewriter) is required to be supplied to the End User in order to comply with the *Disability Discrimination Act 1992*.

Exceptional Copper Event will occur in relation to a Service Address as set out in clause 26.2(a).

Execution Date means the date that this Agreement was first executed by both parties, being in or about June 2011.

First Stock Take Date means, in respect of the Fixed Line Footprint within a Rollout Region, the date that is 12 months (or another agreed period) after the Region Ready for Service Date of that Rollout Region.

Fixed Line Footprint means the pool of Service Addresses Passed, or to be Passed, with the NBN Co Fixed Line Network as determined, for the purposes of this Agreement, in accordance with clause 52.

Frustrated means, in respect of a Service Address, that the Service Address is deemed to be frustrated, as determined in accordance with protocols agreed between NBN Co and the Department from time to time and which are published on NBN Co's website, as a result of being unable to be connected to the NBN Co Fixed Line Network either because:

- (a) the owner or occupier of the Service Address refuses to allow any access to that Service Address that is required for the connection to the NBN Co Fixed Line Network to occur; or
- (b) any legal impediment prevents the connection of the Service Address to the NBN Co Fixed Line Network.

Full National Number means a 10 digit telephone number allocated to a Service Address for the purposes of supplying telecommunications services.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation and Interpretation Deed means the deed of that name entered into between NBN Co and Telstra dated on or about the date of this Agreement as amended by the DAR.

Indicative Fixed Line Rollout Region has the meaning in clause 52(a)(ii)(A).

Industry Migration Arrangements means any industry processes, policies, codes, protocols or arrangements used to facilitate Migration under the MAP Policy Statement, including to the extent if any that these are implemented through service provider rules or carrier licence conditions made under the Telco Act.

Information Campaign and Migration Deed means the deed of that name entered into between Telstra and the Commonwealth dated on or about the date of this Agreement as amended by a deed dated 14 December 2014.

Initial Release Rollout Region means a Rollout Region in respect of which Rollout commenced prior to the commencement date of the Subscriber Agreement.

Intact Path means a metallic path connected to the network boundary point at the relevant Service Address where the line from the network boundary point to the exchange equipment is complete, exists from a previous service, and is capable of carrying a service without manual involvement by field staff to run jumpers.

Intellectual Property means all intellectual property rights, including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks, know how, trade secrets and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above.

Long Copper Tail means a copper line or series of copper lines owned by NBN Co that are directly connected to copper network assets in a Rollout Region for which the Asset Transfer Date has occurred and which connect to a Service Address outside the Fixed Line Footprint.

LSS means a Telstra line sharing service as declared by the Australian Competition and Consumer Commission pursuant to section 152AL(3) of the *Competition and Consumer Act 2010* (Cth).

MAP Policy Statement means the policy statement (including any replacement or updated statement from time to time) issued by the Minister in respect of the disconnection of copper services and HFC services at a Premises and connection to the NBN Co Fixed Line Network at the same Premises, including overarching principles for the allocation of roles and responsibilities associated with that migration.

Mode 3 Devices means electronic equipment that enables telephony line sharing between devices but provides the ability to control the telephone line and gain priority over other devices connected to that telephone line when required.

Module means each module of this Agreement.

Migrate means the disconnection of services over Telstra's copper network at a Service Address or other location or premises, and NBN Connection at that Service Address, location or premises.

Migration Assurance Policy means both:

- (a) the MAP Policy Statement; and
- (b) the Industry Migration Arrangements.

Minister means the Minister for Communications.

MDU Common Area has the same meaning as in the Implementation and Interpretation Deed as at the Conditions Precedent Satisfaction Date.

NBN has the same meaning as 'national broadband network' in the NBN Act.

NBN Act means the *National Broadband Network Companies Act 2011* (Cth).

NBN Co means NBN Co Limited (ACN 136 533 741) and each of its Related Bodies Corporate.

NBN Co Fixed Line Network means any fixed line telecommunications network that is owned or controlled by, or operated by or on behalf of, NBN Co including fibre to the premises, fibre to the basement, fibre to the node and hybrid fibre-coaxial cable access technologies.

NBN Connected means, in respect of a Service Address or other location or premises, that an active service in operation is being provided over a line that connects the Service Address or other location or premises to the NBN Co Fixed Line Network.

NBN Definitive Agreements means the:

- (a) Subscriber Agreement;
- (b) Implementation and Interpretation Deed;
- (c) deed referred to as the "Access Deed" entered into by Telstra and NBN Co dated on or about the date of this Agreement as amended by the DAR; and
- (d) agreement referred to as the "Infrastructure Services Agreement" entered into by Telstra and NBN Co dated on or about the date of this Agreement as amended by the DAR.

Non-fixed line Footprint Address means a Service Address that is not in the Fixed Line Footprint.

Non-Premises means any premises, facility, article of CPE, place or thing, to which an STS is not required to be supplied in order to fulfil the STS USO, as determined in accordance with any determinations made under section 9 of the TCPSS Act or any provision which amends or replaces that provision (as amended from time to time).

Number of Expected Premises on a date means the number that is equal to 93% of the number of Premises in Australia as at that date (as determined in accordance with clause 13.2(d) of the Subscriber Agreement).

ONT means an optical network termination unit.

Passed has the same meaning as in the Implementation and Interpretation Deed as at the Conditions Precedent Satisfaction Date.

payphone has the same meaning as in the TCPSS Act.

Payphone Carriage Services means a carriage service supplied by means of a payphone.

Payphone List means a list of all Telstra Operated Payphones as at the date of the list, consistent with any register of Telstra payphones that is required to be maintained by Telstra or the ACMA pursuant to a determination made under section 12EF of the TCPSS Act.

Payphones Special Services Period means:

- (a) for any Rollout Region that has a Disconnection Date that is earlier than the Temporary Special Services Disconnection Date, the period ending on the Temporary Special Services Disconnection Date; and

- (b) for any other Rollout Region, the period ending on the Disconnection Date for the Rollout Region.

Payphones USO means the obligation to supply, install and maintain payphones in Australia and to make payphones reasonably accessible to all people in Australia on an equitable basis wherever they reside or carry on business, as described in section 9(1)(b) and related provisions in Part 2 Division 2 of the TCPSS Act (as amended from time to time), or any similar obligation or function which amends or replaces those provisions of the TCPSS Act.

Permanent Cessation of Rollout will occur for the purposes of this Agreement if a "Permanent Cessation of Rollout" is determined to have occurred under the terms of the Implementation and Interpretation Deed.

Premises means each of the following:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;
- (b) a school as defined by the Department of Education, Employment and Workplace Relations;
- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for an STS which is activated in compliance with the STS USO;
- (e) a payphone which is activated in compliance with the Payphones USO;
- (f) a payphone which is listed on the Payphone List; and
- (g) a location which NBN Co is directed by the Minister to connect to the NBN Co Fixed Line Network; and
- (h) a MDU Common Area on and from such time as NBN Co notifies Telstra of the addition of the MDU Common Area to the "Proposed Fixed Line Footprint List" (and the Fixed Line Footprint) for a Rollout Region in accordance with clause 3.3(a) or 5.2(b) of the Subscriber Agreement),

but does not include any MDU Common Area until such time as NBN Co notifies Telstra of the addition of the MDU Common Area to the "Proposed Fixed Line Footprint List" (and the Fixed Line Footprint) for a Rollout Region in accordance with clause 3.3(a) or 5.2(b) of the Subscriber Agreement), unless that MDU Common Area is a Special Common Area that is in such "Proposed Fixed Line Footprint List" and which NBN Co has not removed from such "Proposed Fixed Line Footprint List" under clause 5.2(be) of the Subscriber Agreement.

primary universal service provider means the person that is specified by the Minister as the primary universal service provider under section 12A of the TCPSS Act and any person that is required by or under any Commonwealth law to fulfil obligations which are substantially the same as or similar to the obligations of the primary universal service provider.

Priority Assistance Customer means, in respect of a line at a Service Address:

- (a) a Telstra Retail Customer who is identified in the Telstra customer records as an individual who satisfies the eligibility criteria to be a 'priority assistance customer' as made publicly available by Telstra from time to time; or

- (b) a customer of another RSP who is identified in Telstra's records as a priority assistance customer of that RSP.

Priority Assistance Customer Management Fee means the fee to be agreed by the parties or otherwise determined by expert determination, in accordance with **clause 34.2** to be payable by the Department to Telstra in consideration of Telstra performing the Priority Assistance Customer Management Tasks.

Priority Assistance Customer Management Tasks means the tasks that are notified by the Department to Telstra in accordance with **clause 34.1(a)(ii)** in respect of Eligible Voice-Only Customers that are Priority Assistance Customers.

Proposed Fixed Line Footprint List has the meaning in **clause 52(a)(ii)(B)**.

PSAA Fee has the same meaning as in the Implementation and Interpretation Deed.

Public Alarm means an alarm or warning system that is:

- (a) Connected to the Telstra copper network;
- (b) operated by a Federal, State, Territory or local government body or agency or by a not-for-profit organisation; and
- (c) used to alert or inform people about matters which relate to public health, public safety or public security.

Public Interest Service means a carriage service to enable the operation of:

- (a) traffic lights; or
- (b) Public Alarms.

Reasonable Connection Costs means the costs to be determined in accordance with **clause 38.7**.

Rectification Plan means a plan which relates to a material breach by Telstra and which sets out the action Telstra proposes to take to:

- (a) ensure the breach ceases;
- (b) ensure that the breach does not occur in the future;
- (c) report to the relevant End Users (if applicable) and the Department on progress in implementing the Rectification Plan.

Region Ready for Service Date means:

- (a) in respect of an Initial Release Rollout Region or an Acquired Network Rollout Region, the date notified by NBN Co as the "Disconnection Commencement Date" under the Subscriber Agreement for that Rollout Region; and
- (b) in respect of any other Rollout Region, the date notified by NBN Co as the Region Ready for Service Date under the Subscriber Agreement for that Rollout Region.

Required Cabling means the cabling to be determined in accordance with **clause 38.6**.

Retail Service Provider or **RSP** means a carriage service provider that supplies retail carriage services to an end user.

Rollout means the design, construction and making operational of the NBN Co Fixed Line Network.

Rollout Region means:

- (a) a group of one or more Service Addresses; or
- (b) a geographical area,

identified by NBN Co as a “Rollout Region” under the Subscriber Agreement.

Second Stock Take Date means, in respect of the Fixed Line Footprint in a Rollout Region, the date that is 15 months (or another agreed period) after the Region Ready for Service Date for that Rollout Region.

Service Address means a business or residential premises that is or may be connected to a network over which an STS is capable of being supplied. To avoid doubt:

- (a) each premises that is part of a multiple dwelling unit is a Service Address for the purposes of this Agreement; and
- (b) a Service Address does not include a Non-Premises including a Non-Premises which is located on, at or within a business or residential premises.

Soft Dial Tone means an inactive service supplied by Telstra using the Telstra copper network which includes the following features:

- (a) Telstra does not charge for the service; and
- (b) the service enables outgoing calls to be made to Triple Zero, the 106 Teletypewriter Service and the National Relay Service.

Special Common Area has the same meaning as in the Implementation and Interpretation Deed as at the Conditions Precedent Satisfaction Date.

STS or standard telephone service means a standard telephone service as defined in the TCPSS Act.

STS USO means the obligation to ensure that STS are reasonably accessible to all people in Australia on an equitable basis wherever they reside or carry on business, as described in section 9(1)(a) and related provisions in Part 2 Division 2 of the TCPSS Act (as amended from time to time), or any similar obligation or function which amends or replaces the obligation in those provisions of the TCPSS Act.

Subscriber Agreement means the agreement of that name entered into between Telstra and NBN Co Limited dated on or about the date of this Agreement as amended by the DAR.

supply of an STS has the same meaning as given in section 9E of the TCPSS Act.

TCPSS Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Telco Act means the *Telecommunications Act 1997* (Cth).

Telstra copper network means the copper network over which Telstra is in a position to control (within the meaning of Division 7 of Part 33 of the Telco Act), comprising the transport systems (which may be copper or aluminium wire based) between the End

User's premises, the pillars in the street and the remote access units, up to the MDF in the nearest exchange, which is or has been at any time used to provide telecommunications services.

Telstra Disability Equipment Program means the program designed and made available by Telstra on its website from time to time to provide eligible customers with specialised equipment to access the STS.

Telstra Eligible Voice-only Customer means an Eligible Voice-Only Customer who is a Telstra Retail Customer.

Telstra HFC network means the hybrid fibre coaxial cable network over which Telstra is in a position to exercise control (within the meaning of Division 7 of Part 33 of the Telco Act).

Telstra Materials means any materials provided by Telstra to the Department in performing the relevant services under a Module of this Agreement. For the avoidance of doubt, any materials that are provided by Telstra under **clauses 15.4, 19 or 20** are not Telstra Materials.

Telstra Operated Payphone means a payphone which is owned, maintained and operated by Telstra and for clarification does not include any payphone which:

- (a) is connected to the Telstra network but is owned by, leased (including from Telstra) by or operated by a third party; or
- (b) is not included or required to be included in a register of Telstra payphones that is required to be maintained by Telstra or the ACMA pursuant to a determination made under section 12EF of the TCPSS Act from time to time.

Telstra Retail Customer means a customer who is acquiring a retail voice telephone service from Telstra and does not include a carriage service provider who acquires a voice service from Telstra for the purpose of resupply to another customer.

Temporary Special Services Disconnection Date means the date notified as such by NBN Co to Telstra under the Subscriber Agreement which is relevant to payphones.

TUSMA Act means the *Telecommunications Universal Service Management Agency Act 2012* (Cth).

ULL Service Address means a Service Address in respect of which Telstra has supplied a ULLS to a RSP.

ULLS means a Telstra unconditioned local loop service as declared by the Australian Competition and Consumer Commission pursuant to section 152AL(3) of the *Competition and Consumer Act 2010* (Cth).

USO Payphone means any Telstra Operated Payphone that is included in the Payphone List from time to time.

WLR service means the wholesale line rental service as declared by the Australian Competition and Consumer Commission pursuant to section 152AL(3) of the *Competition and Consumer Act 2010* (Cth) or a substantially similar service that Telstra provides on a solely commercial basis.

51 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular number include the plural and words in the plural number include the singular,
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (g) a reference to any authority, agency or body (whether statutory or otherwise) will, if any such authority, agency or body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of such authority, agency or body are transferred to any other authority, agency or body, be deemed to refer respectively to the authority, agency or body established or constituted in its place or which most closely succeeds to its powers or functions;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) the Modules and any attachments form part of this Agreement;
- (j) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) any reading down or severance of a particular provision does not affect the other provisions of this Agreement; and
- (l) a reference to a financial year is a reference to each 12 month period ending on 30 June.

52 Fixed Line Footprint

- (a) The parties acknowledge that:
 - (i) certain provisions in this Agreement assume that it will be possible to determine whether Service Addresses not yet Passed by the NBN Co Fixed Line Network will be Passed by the NBN Co Fixed Line Network in the future;
 - (ii) however, it is anticipated that NBN Co will incrementally plan and publish its rollout plans as follows:
 - (A) NBN Co will publish an indicative map of the geographic area within which NBN Co intends to deploy its fixed line network which will not specify whether specific Service Addresses are within or outside the Fixed Line Footprint (**Indicative Fixed Line Rollout Region**);

- (B) NBN Co will publish a list of the Service Addresses it proposes to Pass in a Rollout Region within the Indicative Fixed Line Rollout Region prior to the Region Ready for Service Date for that Rollout Region (**Proposed Fixed Line Footprint List**);
 - (C) NBN Co may not have Passed all Service Addresses on the Proposed Fixed Line Footprint List as at the Disconnection Date for that Rollout Region;
 - (D) NBN Co may add or remove a Service Address from the Proposed Fixed Line Footprint List from time to time; and
 - (E) NBN Co may continue to Pass additional Service Addresses within a Rollout Region after the Disconnection Date for that Rollout Region.
- (b) Accordingly, the parties agree that:
- (i) until NBN Co provides Telstra or the Department with the Proposed Fixed Line Footprint List, all Service Addresses:
 - (A) within an Indicative Fixed Line Rollout Region will be treated as Service Addresses falling within the Fixed Line Footprint for the purposes of this Agreement; and
 - (B) outside any Indicative Fixed Line Rollout Region will be treated as a Non-Fixed Line Footprint Address for the purposes of this Agreement; and
 - (ii) when NBN Co provides Telstra or the Department with the Proposed Fixed Line Footprint List for a Rollout Region, all Service Addresses on that list will be treated as being in the Fixed Line Footprint for that Rollout Region.
- (c) The parties will agree on any reasonable transitional arrangements reasonably required to deal with the change in status of Service Addresses from being within the Fixed Line Footprint to being a Non-fixed line Footprint Address or vice versa as a result of the application of **clause 52(b)**.

Released under the FOI Act 1982 by the Department of Infrastructure,
Transport, Regional Development, Communications and the Arts.

Commonwealth of Australia

Telstra Corporation Limited

Variation Agreement

Released under the FOI Act 1982 by the Department of Infrastructure,
Transport, Regional Development, Communications and the Arts

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Date

Parties

Commonwealth of Australia (Commonwealth) represented by and acting through the Department of Broadband, Communications and the Digital Economy, ABN 51 491 646 726 (**Department**)

Telstra Corporation Limited ABN 33 051 775 556 of Telstra Centre, 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)

Background

- A The Department and Telstra are parties to the TUSMA Agreement.
- B The parties wish to amend the terms of the TUSMA Agreement in accordance with this agreement.

Agreed terms

1 Interpretation

1.1 Definitions

Unless the context otherwise requires, in this agreement:

- (a) **TUSMA Agreement** means the Telecommunications Universal Service Management Agency (TUSMA) Agreement between the Department and Telstra dated 23 June 2011; and
- (b) terms defined in the TUSMA Agreement have the same meaning in this agreement.

1.2 Construction

Unless expressed to the contrary, this agreement will be interpreted in accordance with **clause 51** of the TUSMA Agreement as if references to the TUSMA Agreement were references to this agreement.

1.3 Headings

Headings do not affect the interpretation of this agreement.

2 Variation of TUSMA Agreement

2.1 Variations

On and from the Commencement Date, the TUSMA Agreement is amended as set out in **Attachment A**.

2.2 TUSMA Agreement continues

The Department and Telstra acknowledge and agree that the TUSMA Agreement as varied by this agreement continues in full force on and from the Commencement Date.

3 General

3.1 Amendment

This agreement may only be varied or replaced by a document executed by the parties.

3.2 Governing law and jurisdiction


This agreement is governed by the laws of the Australian Capital Territory.

Executed as an agreement.

Signed for and on behalf of the
Commonwealth of Australia by
Daryl Quinlivan, Deputy Secretary,
Department of Broadband,
Communications and the Digital
Economy in the presence of:



Signature of witness

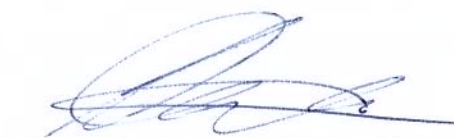
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Signature

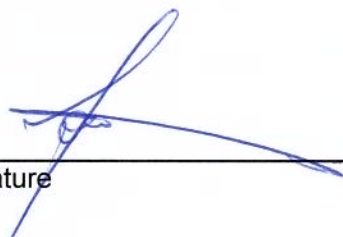
CHRISTINE CHIVERS

Name of witness (print)

Signed by **Tony Warren** as
authorised representative for
Telstra Corporation Limited in the
presence of:



Signature of witness

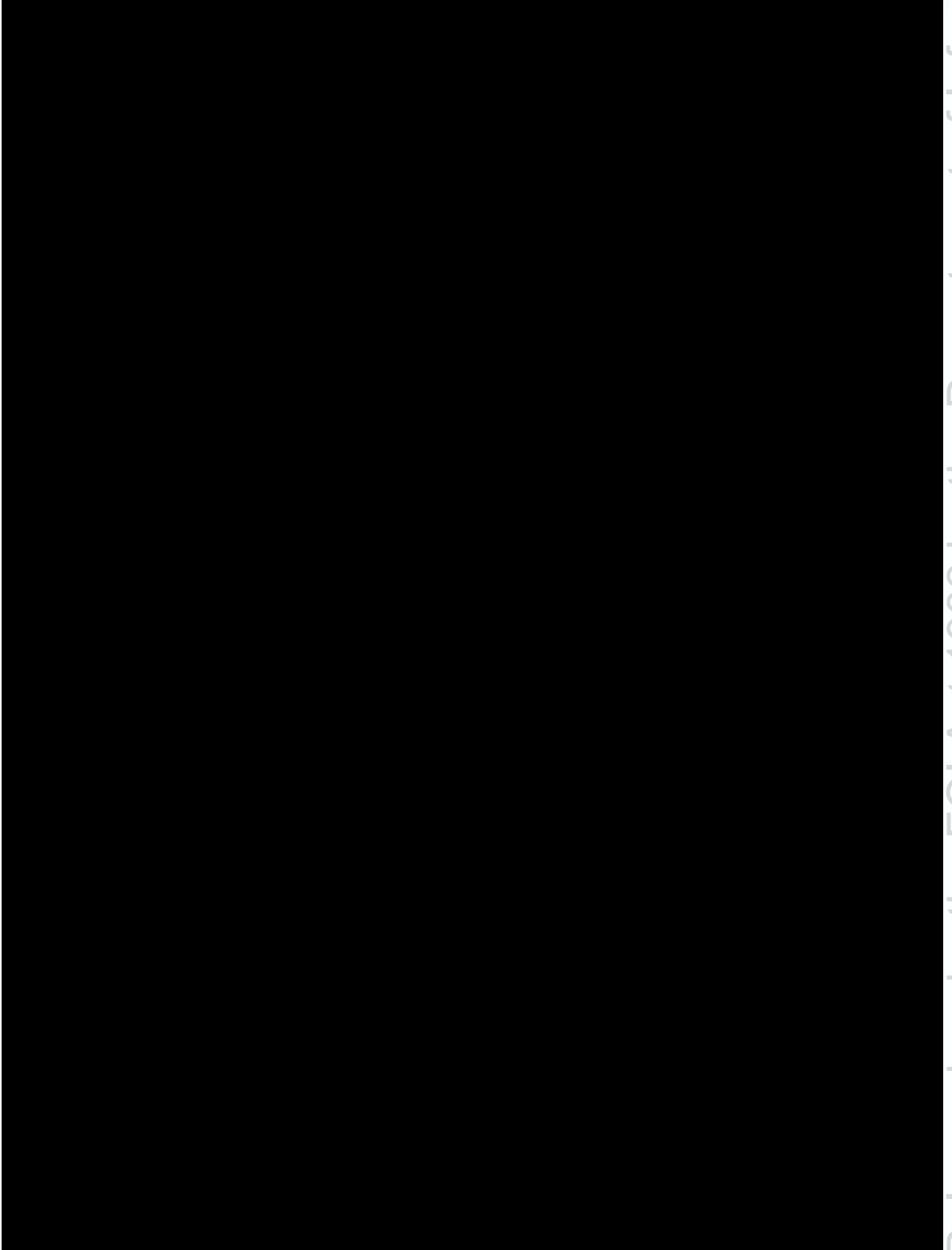
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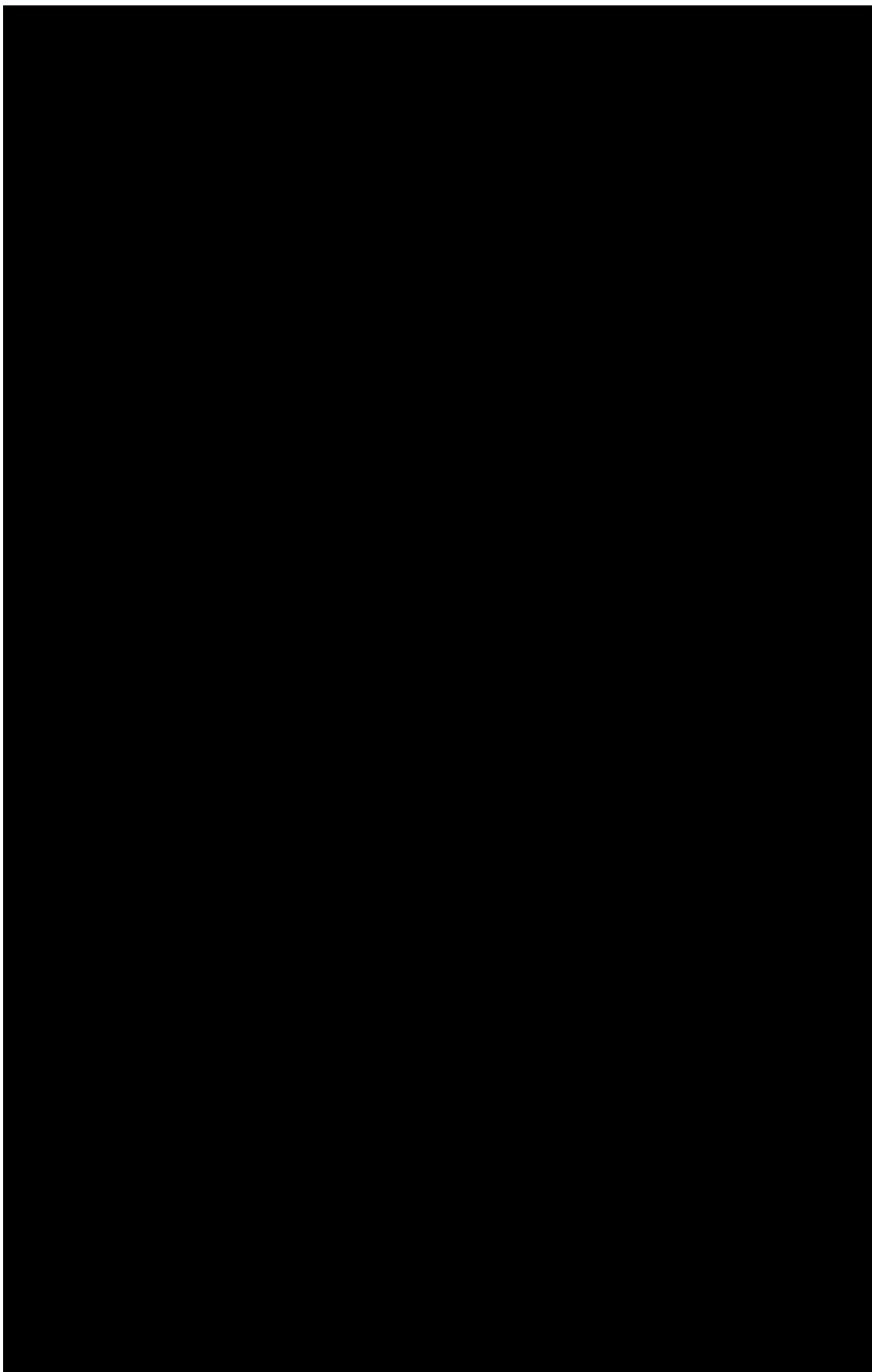
RAMAH SAKUL

Name of witness (print)

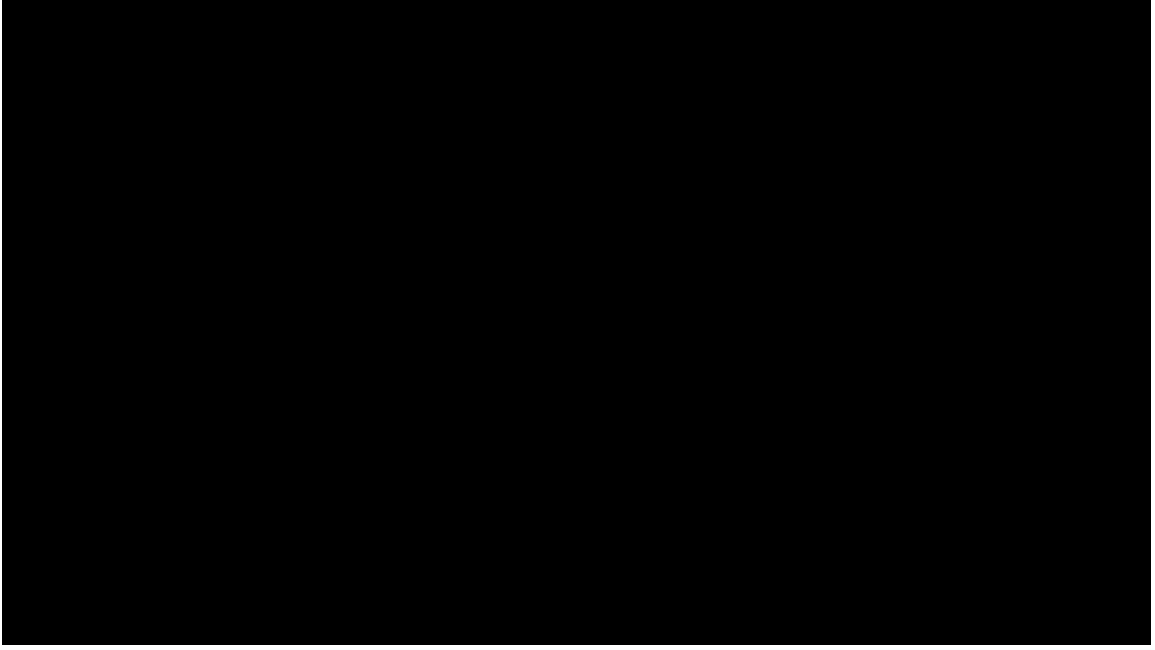
Attachment A – Amendments



Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



Released under the FOI Act 1982 by the Department of Infrastructure,
Transport, Regional Development, Communications and the Arts

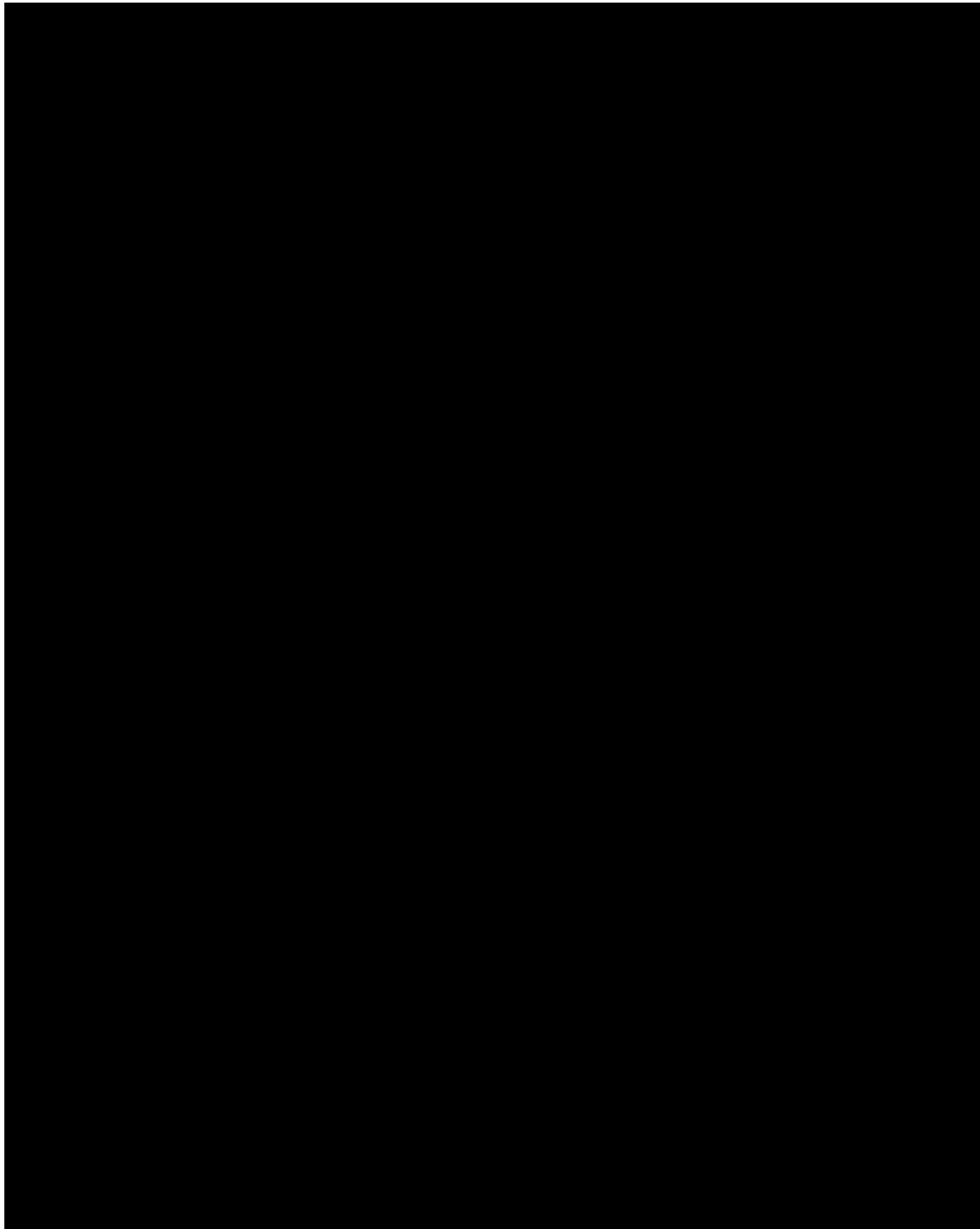


Australian Government
Telecommunications Universal
Service Management Agency

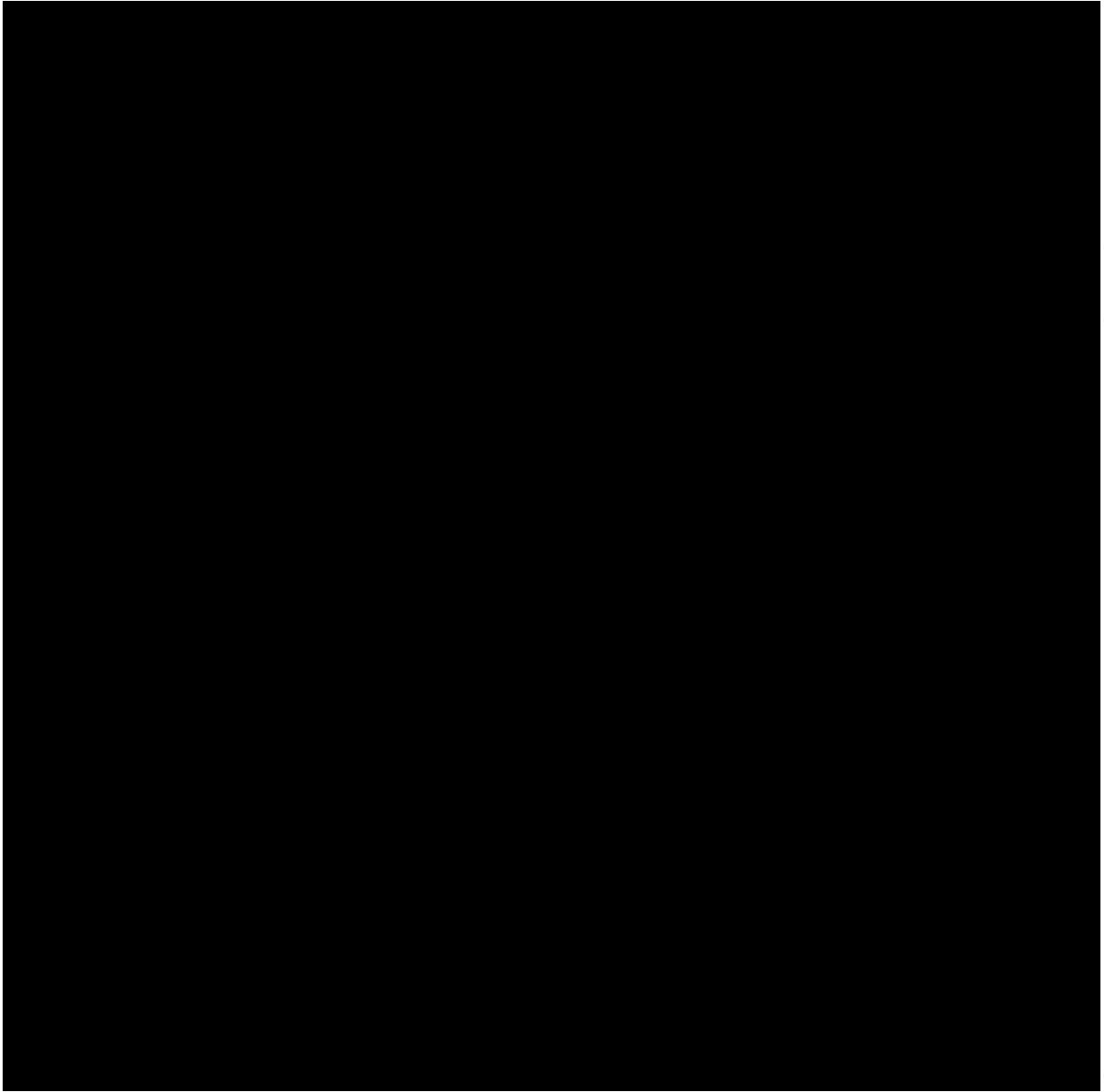
24 December 2014

Telstra Corporation Limited
Level 38 – Telstra Centre
242 Exhibition Street
Melbourne Victoria 3000

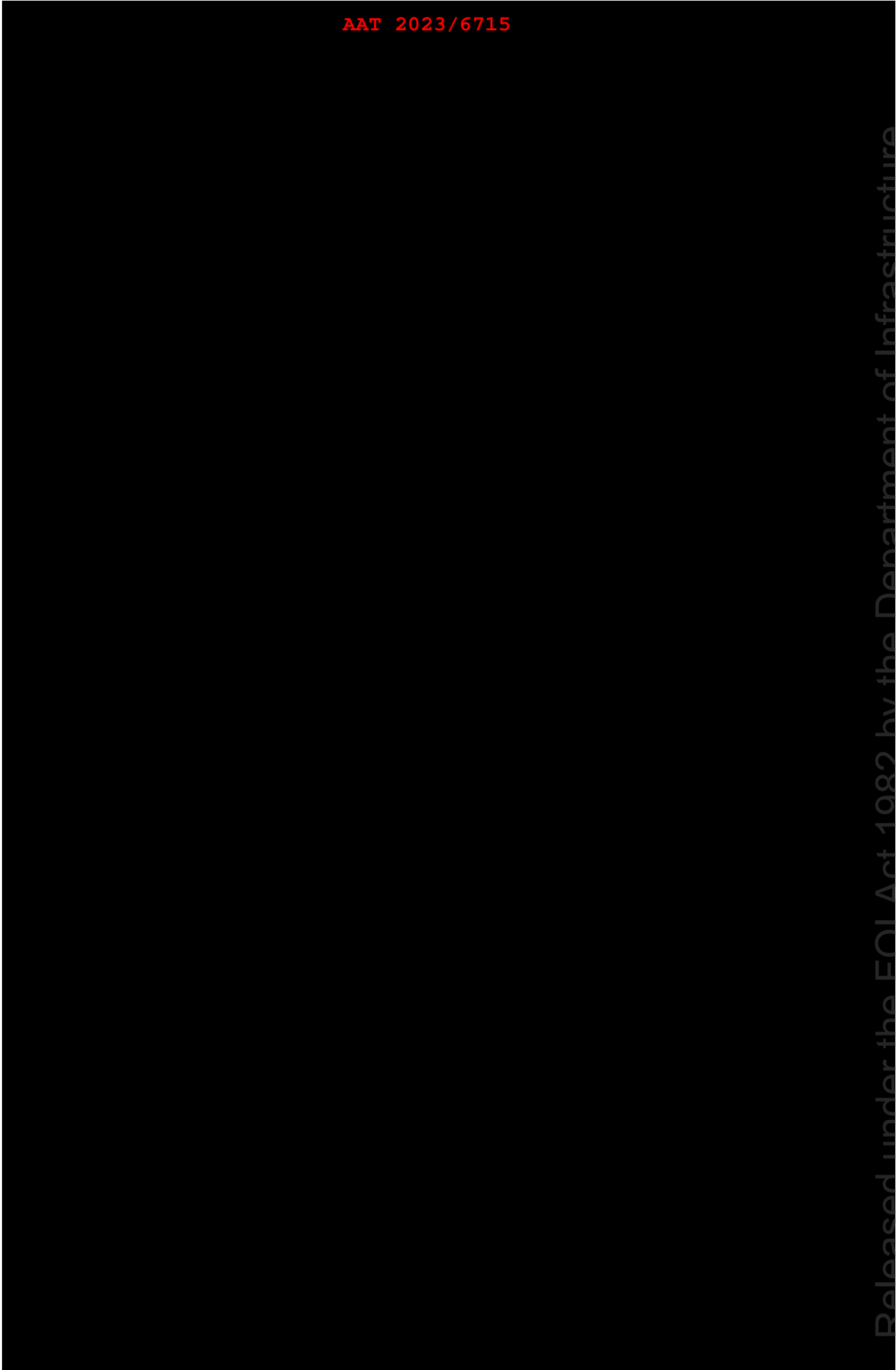
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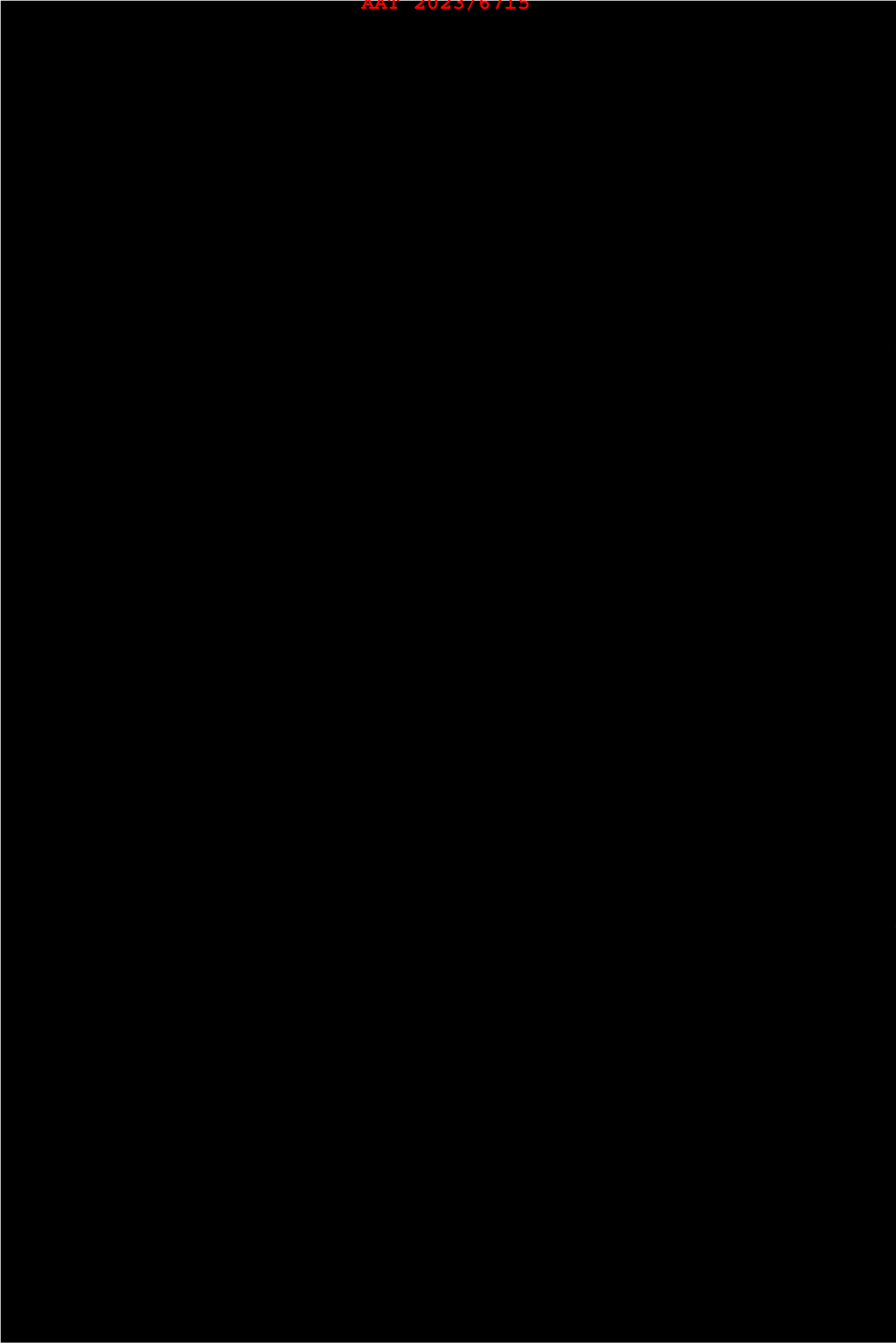
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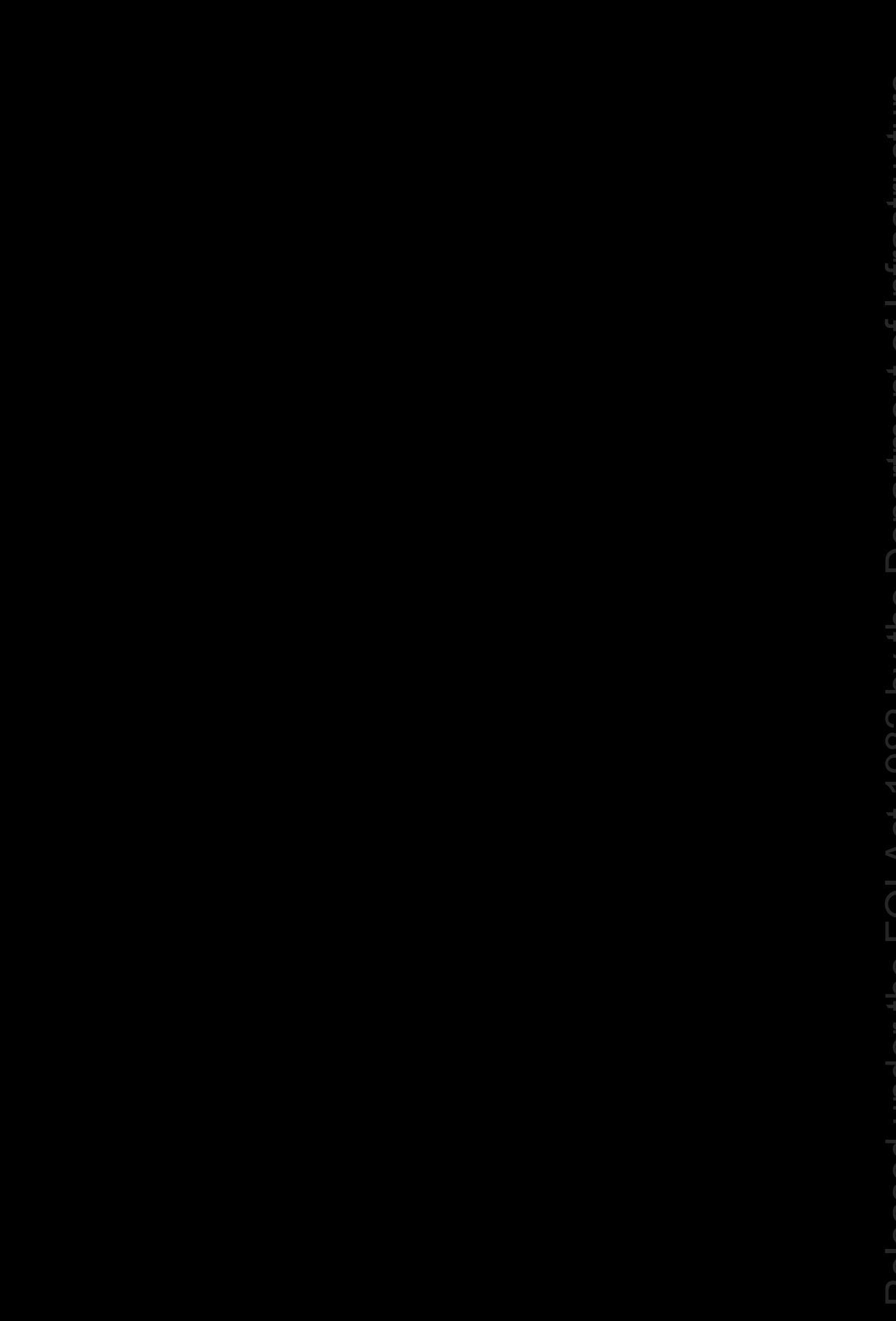
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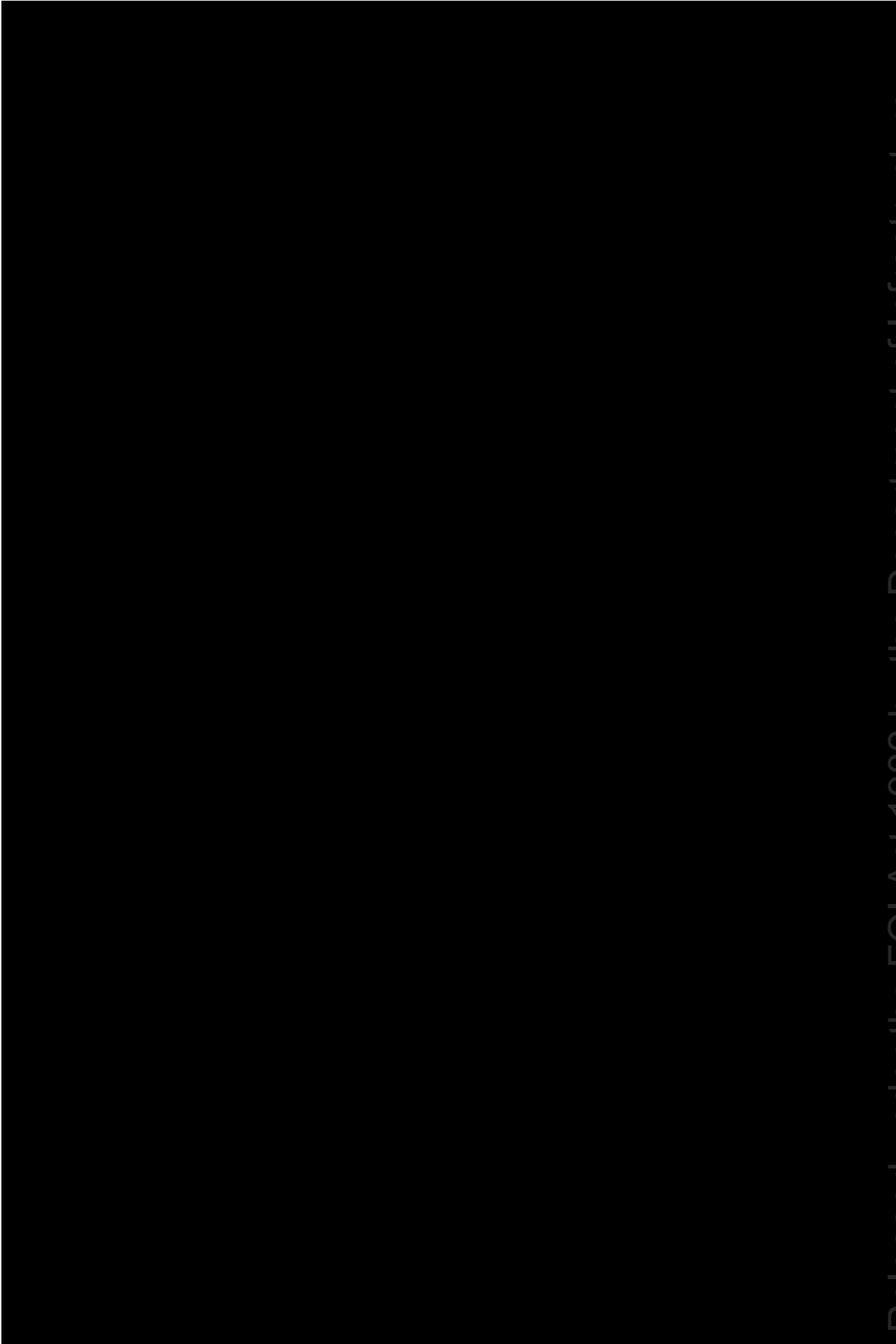
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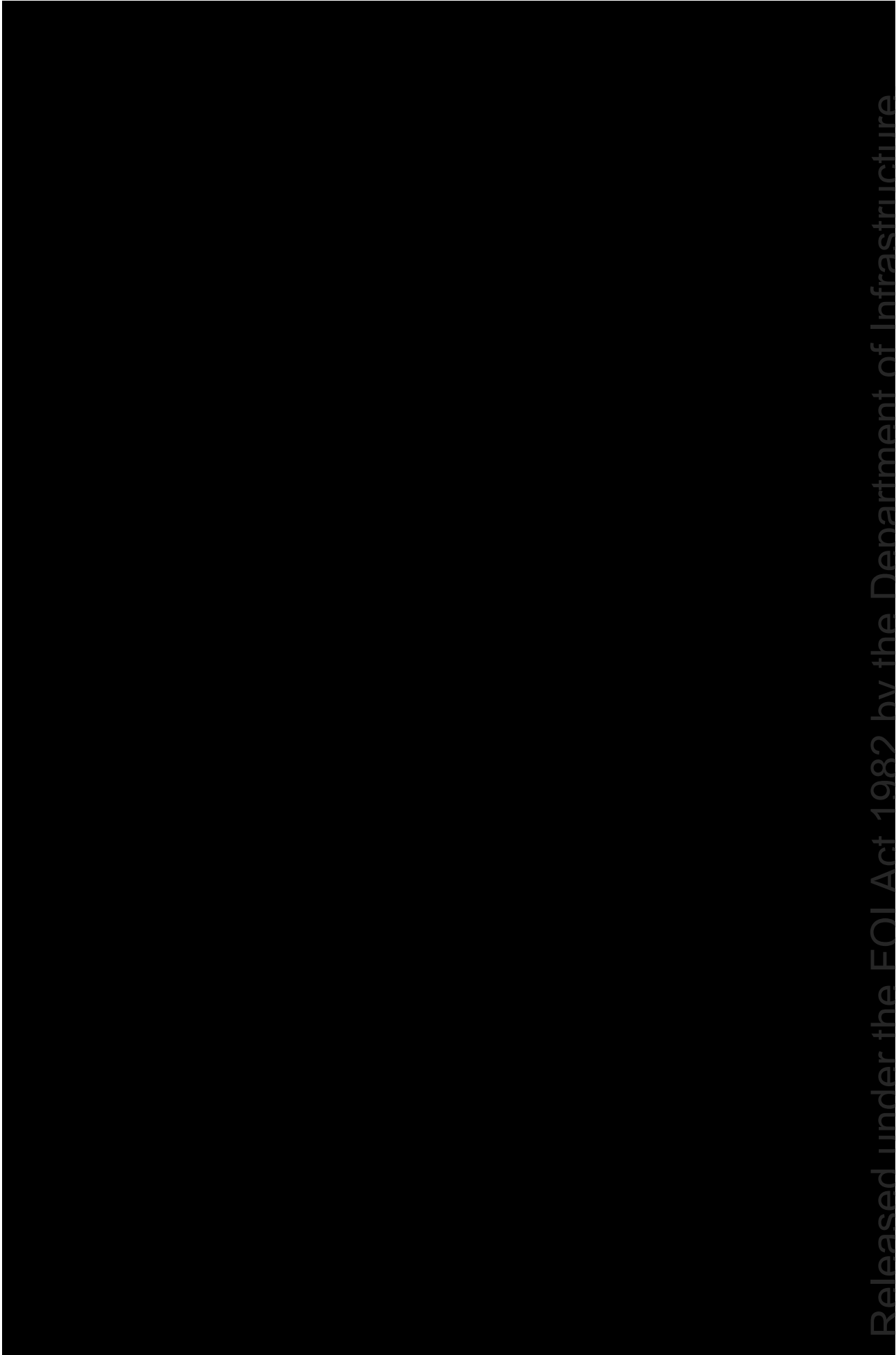
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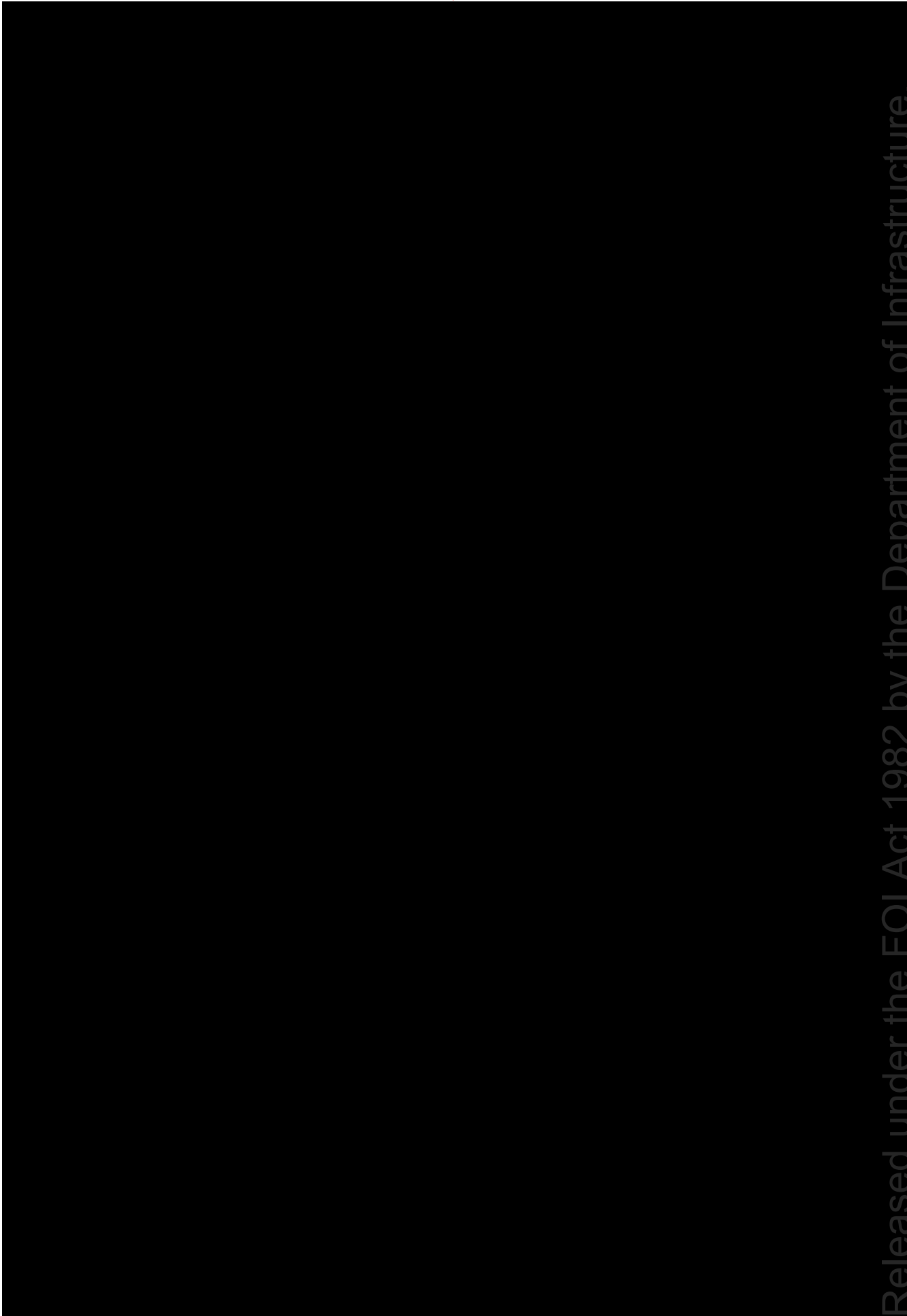
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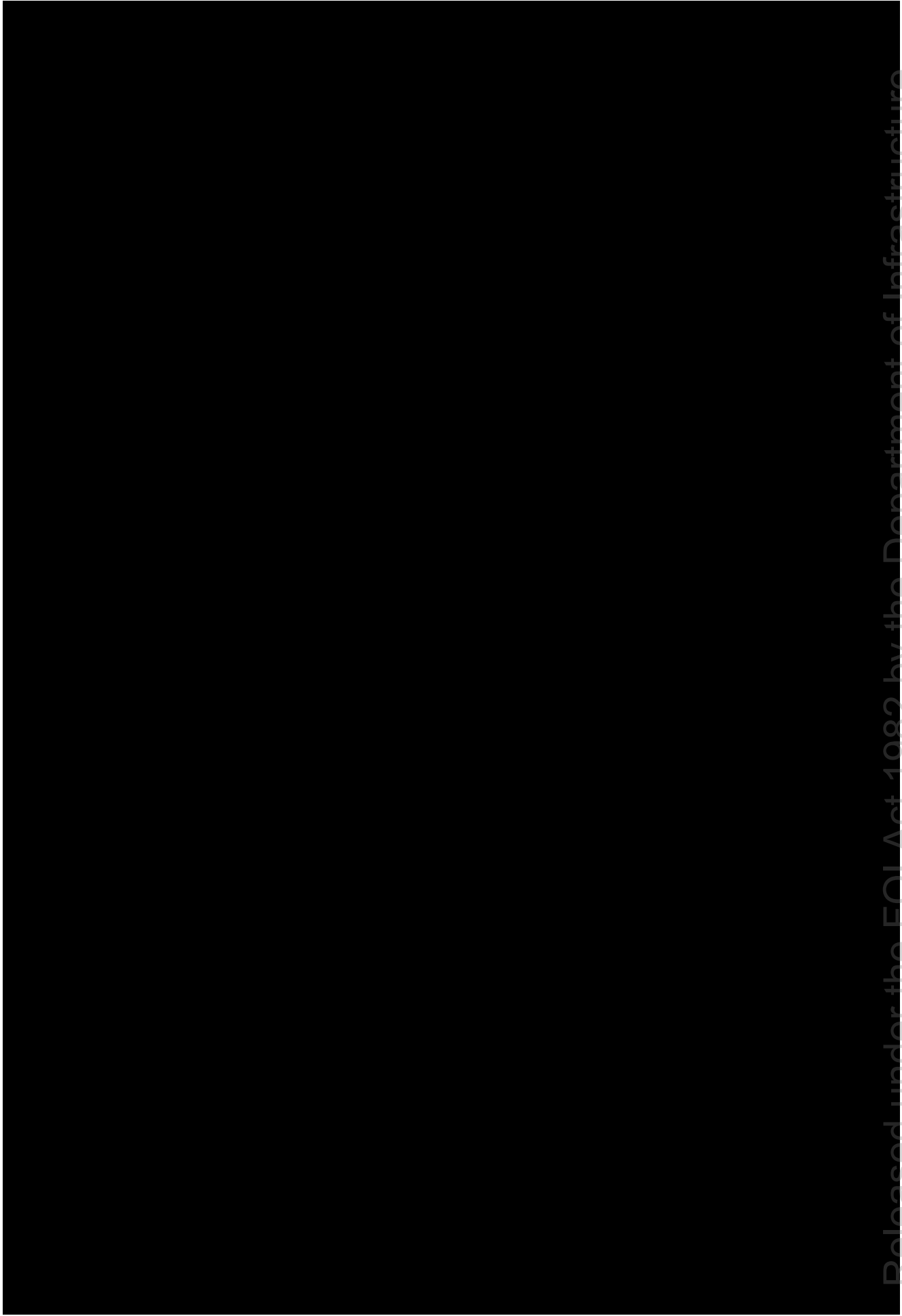
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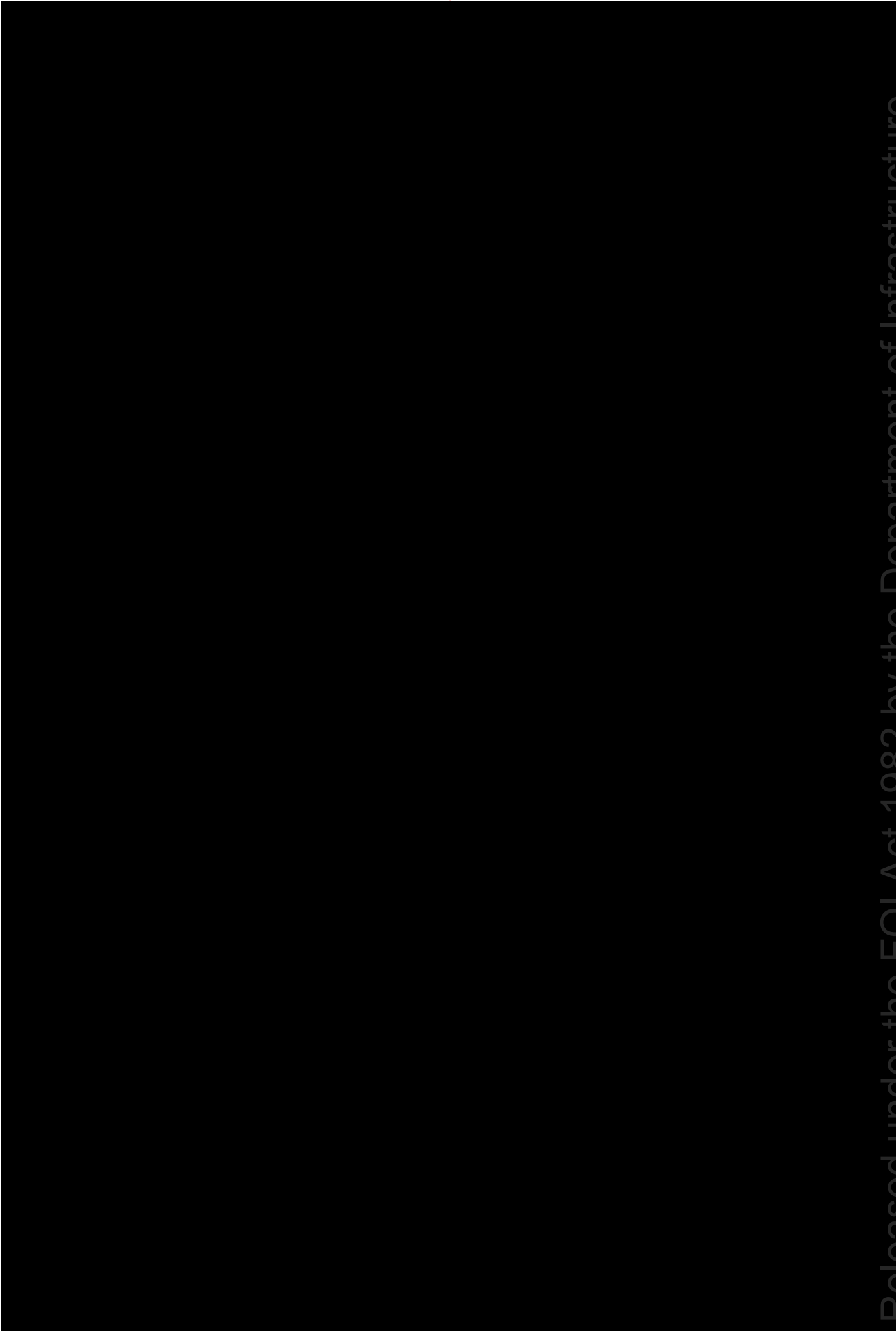
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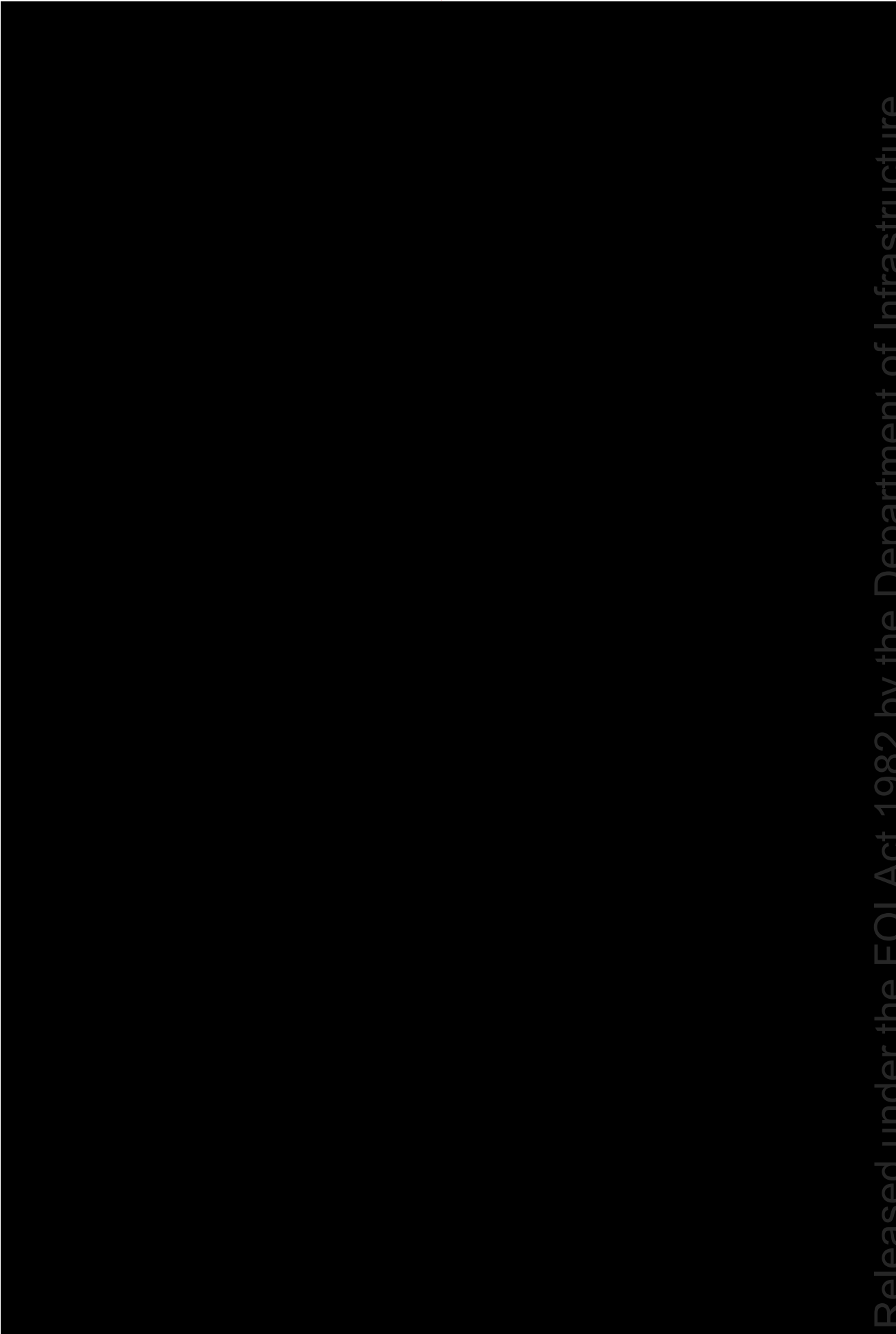
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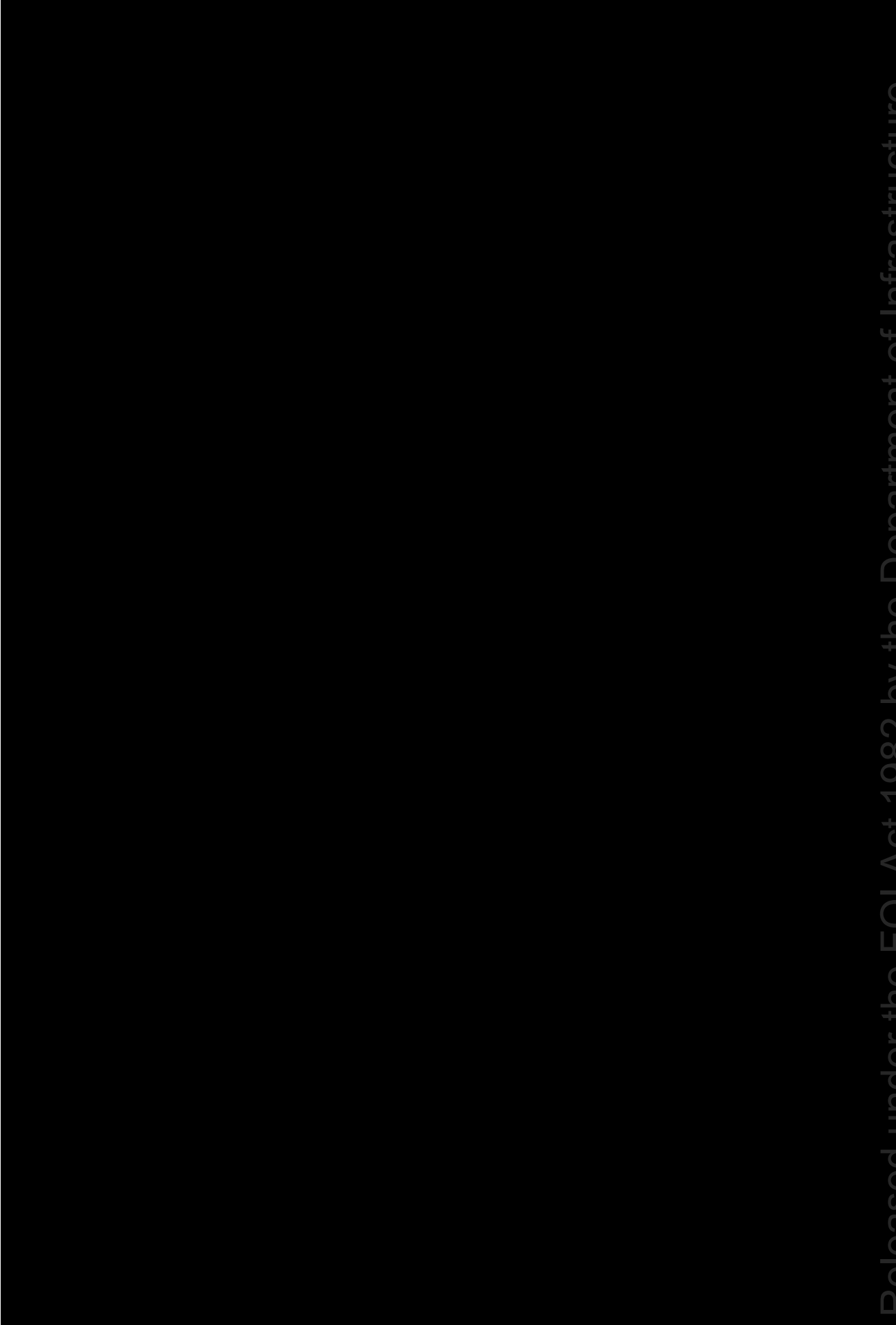
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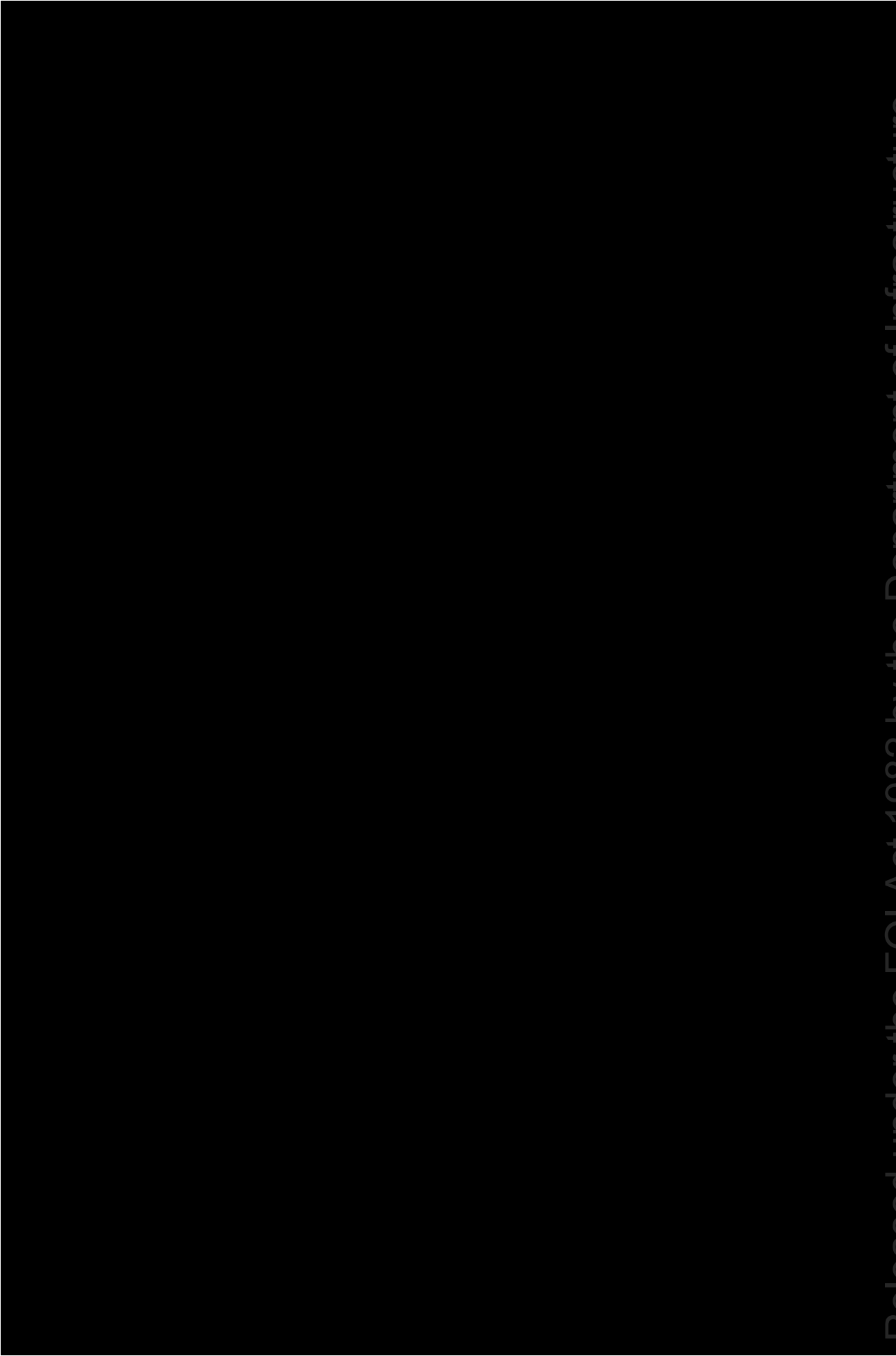
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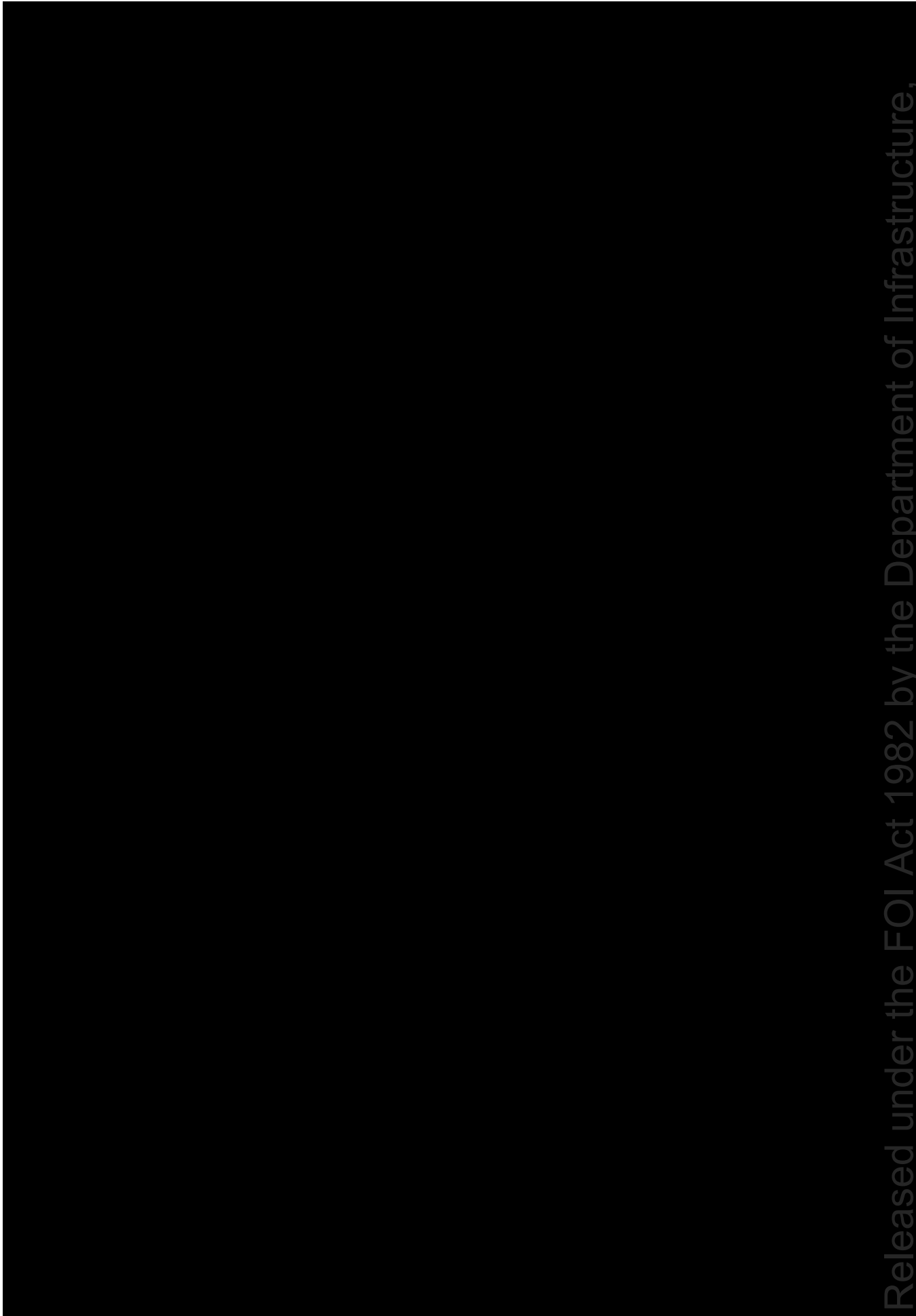
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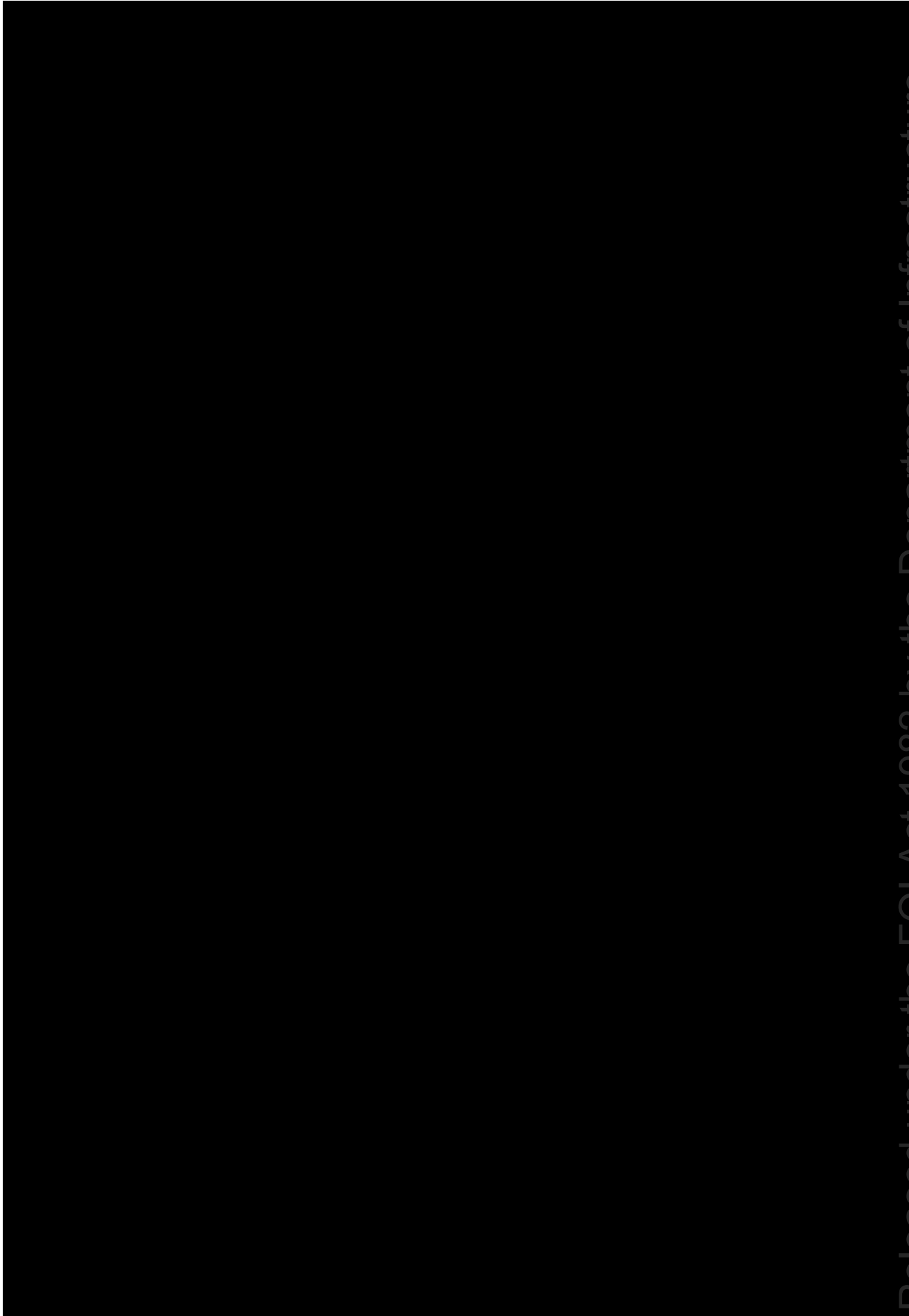
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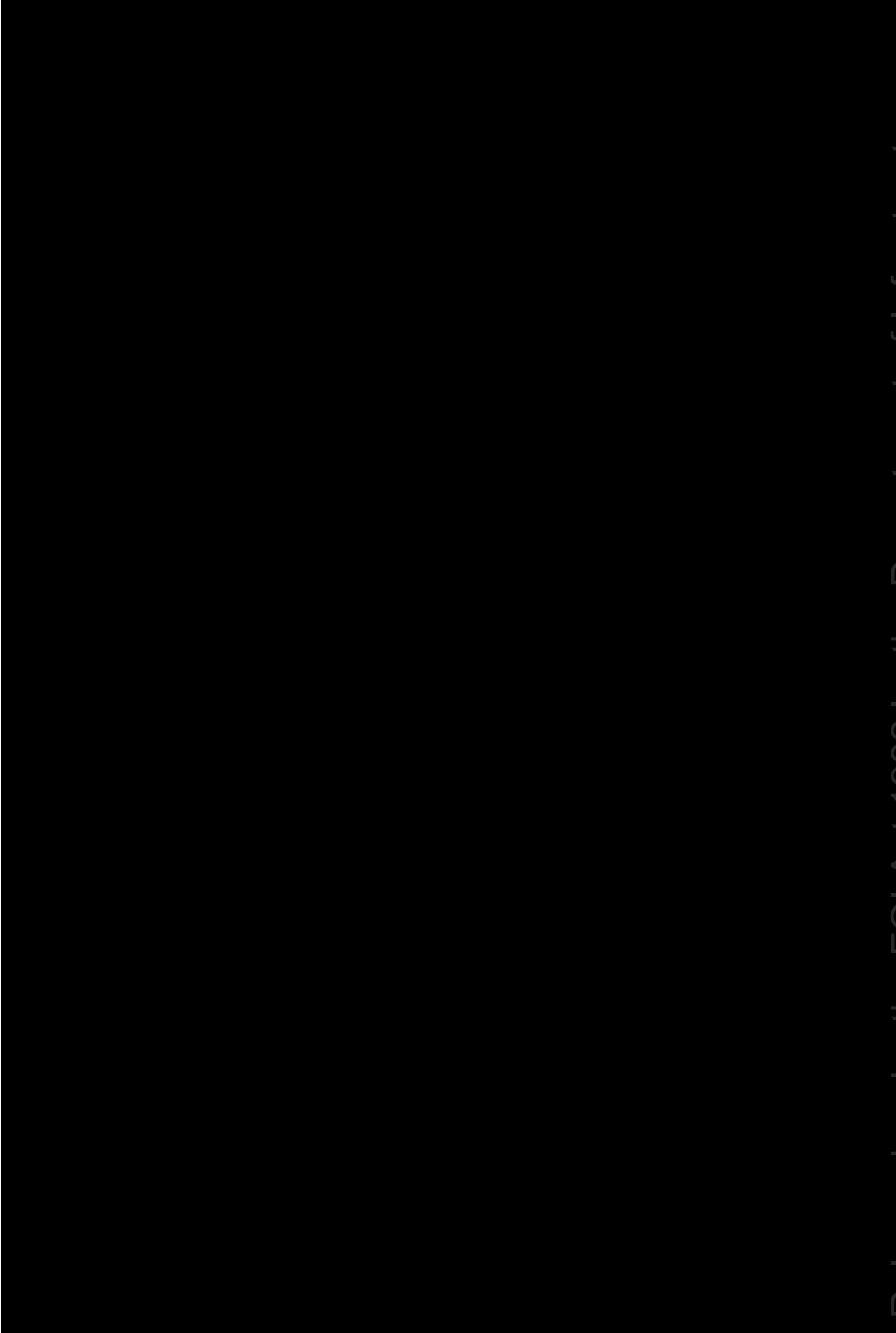
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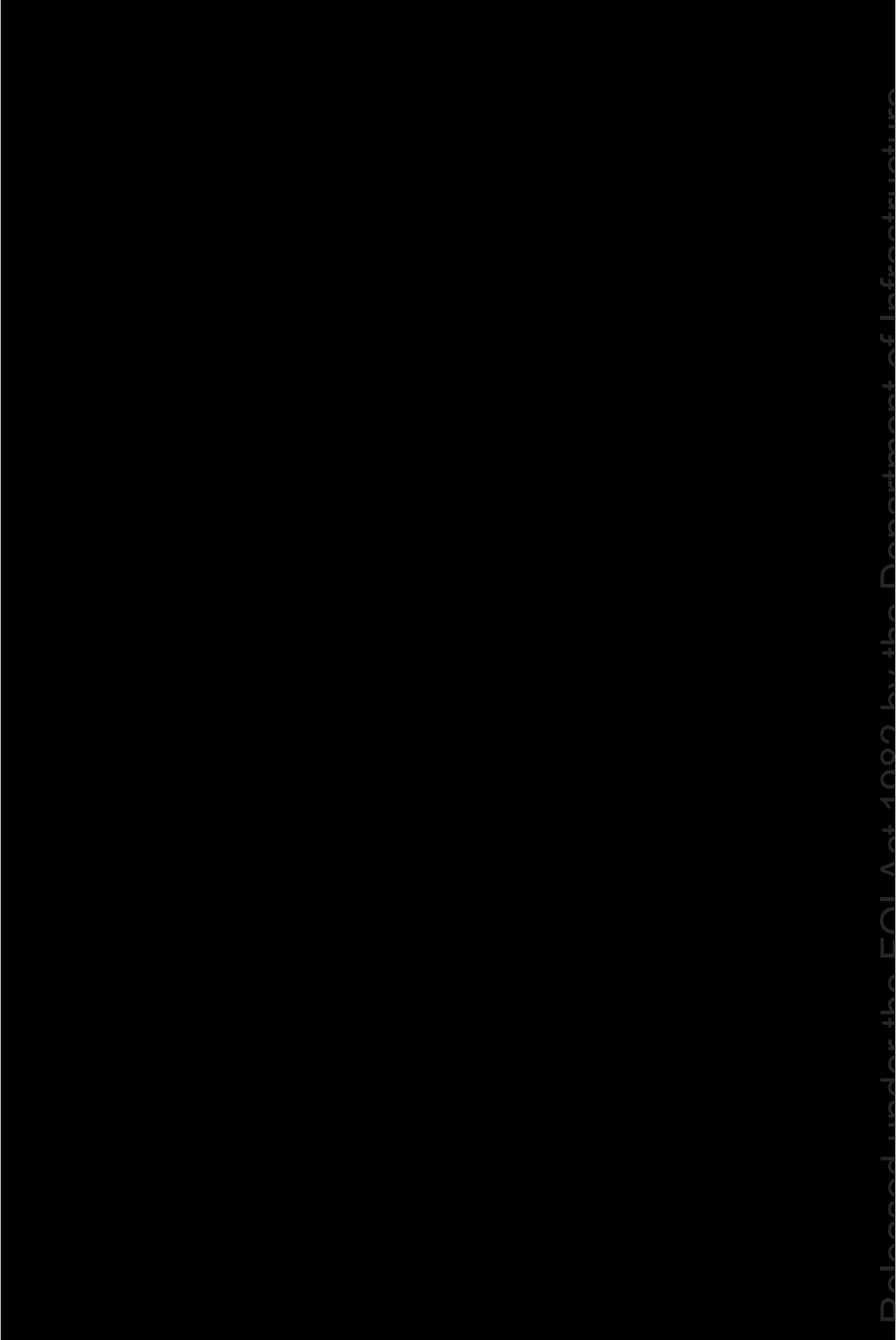
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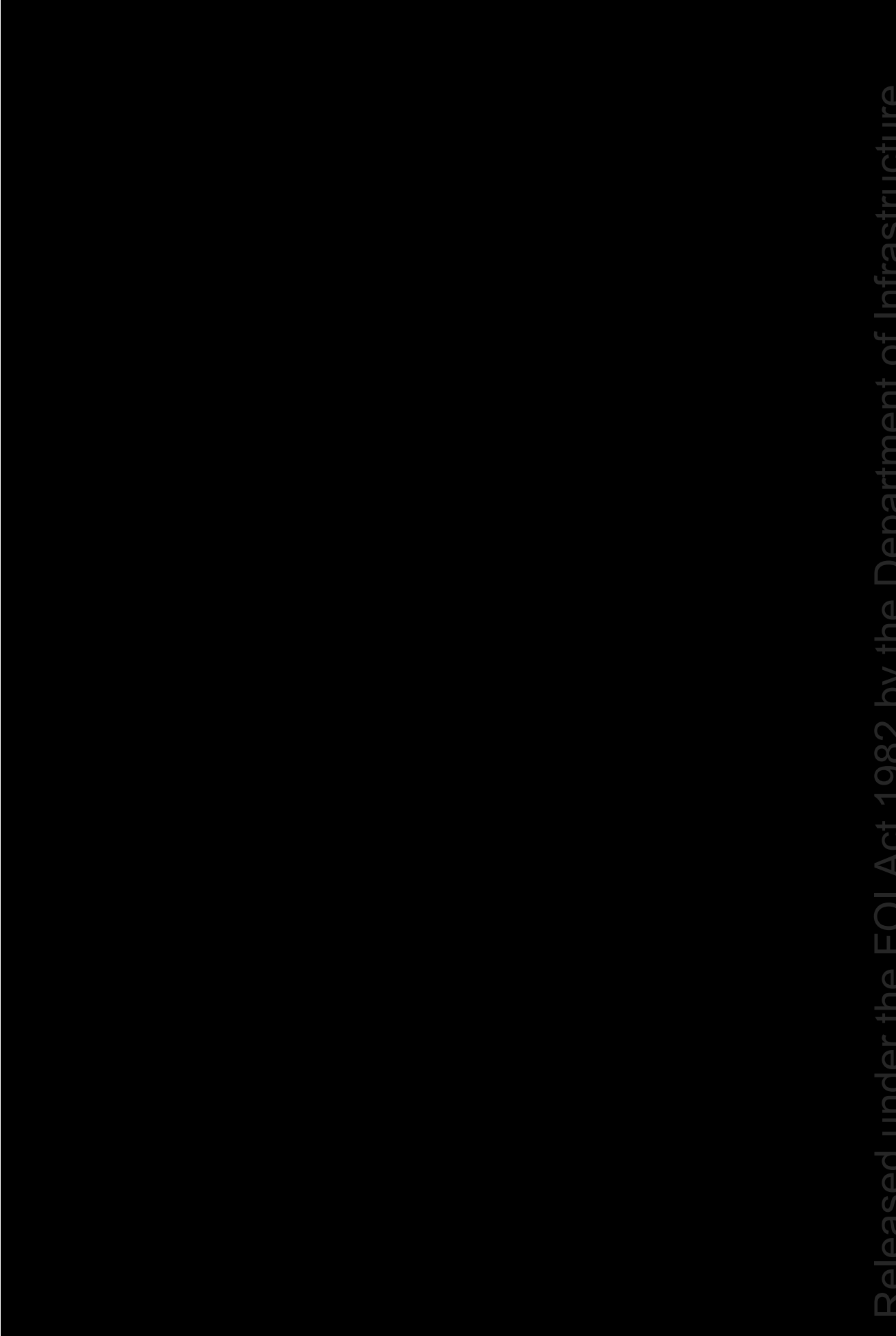
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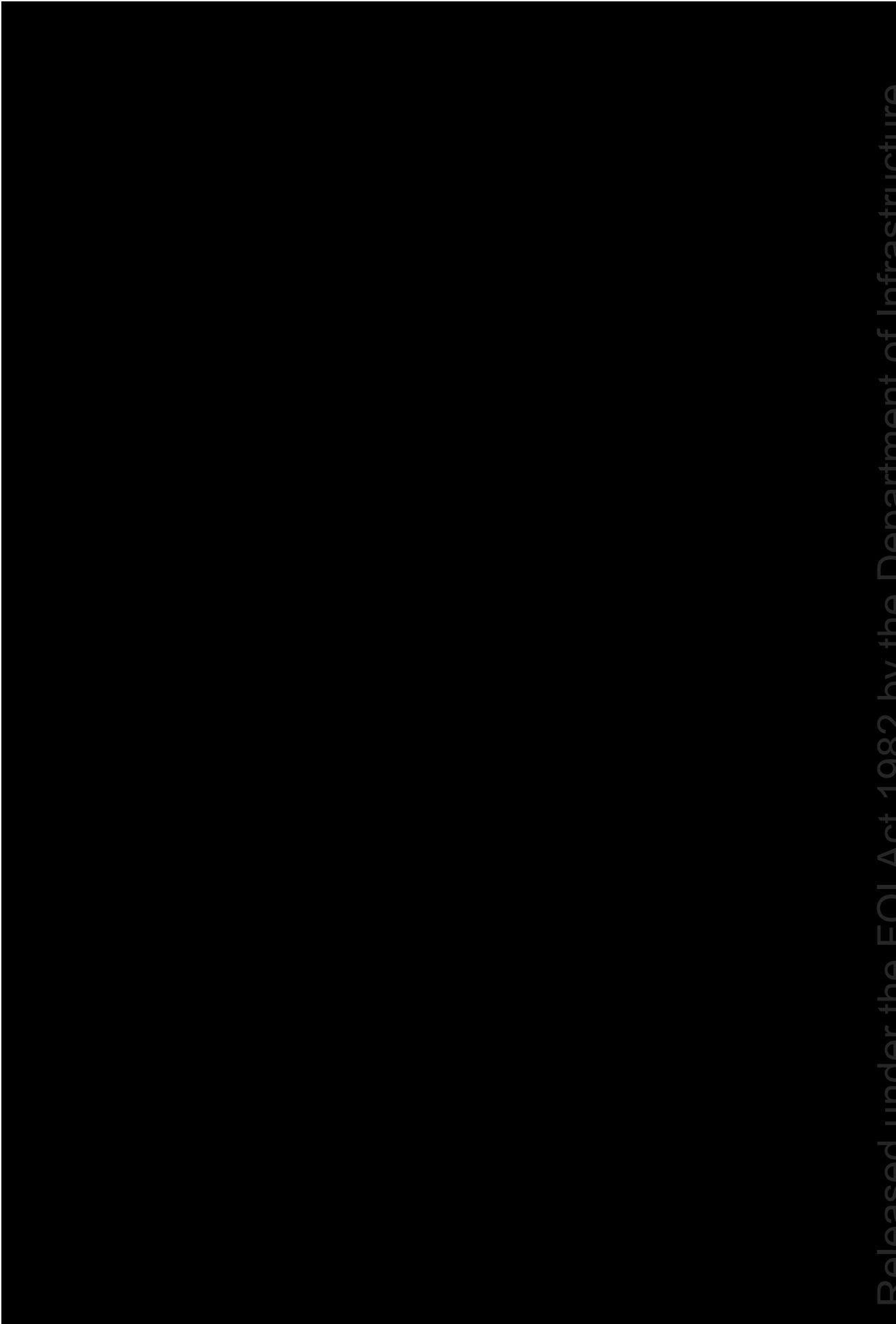
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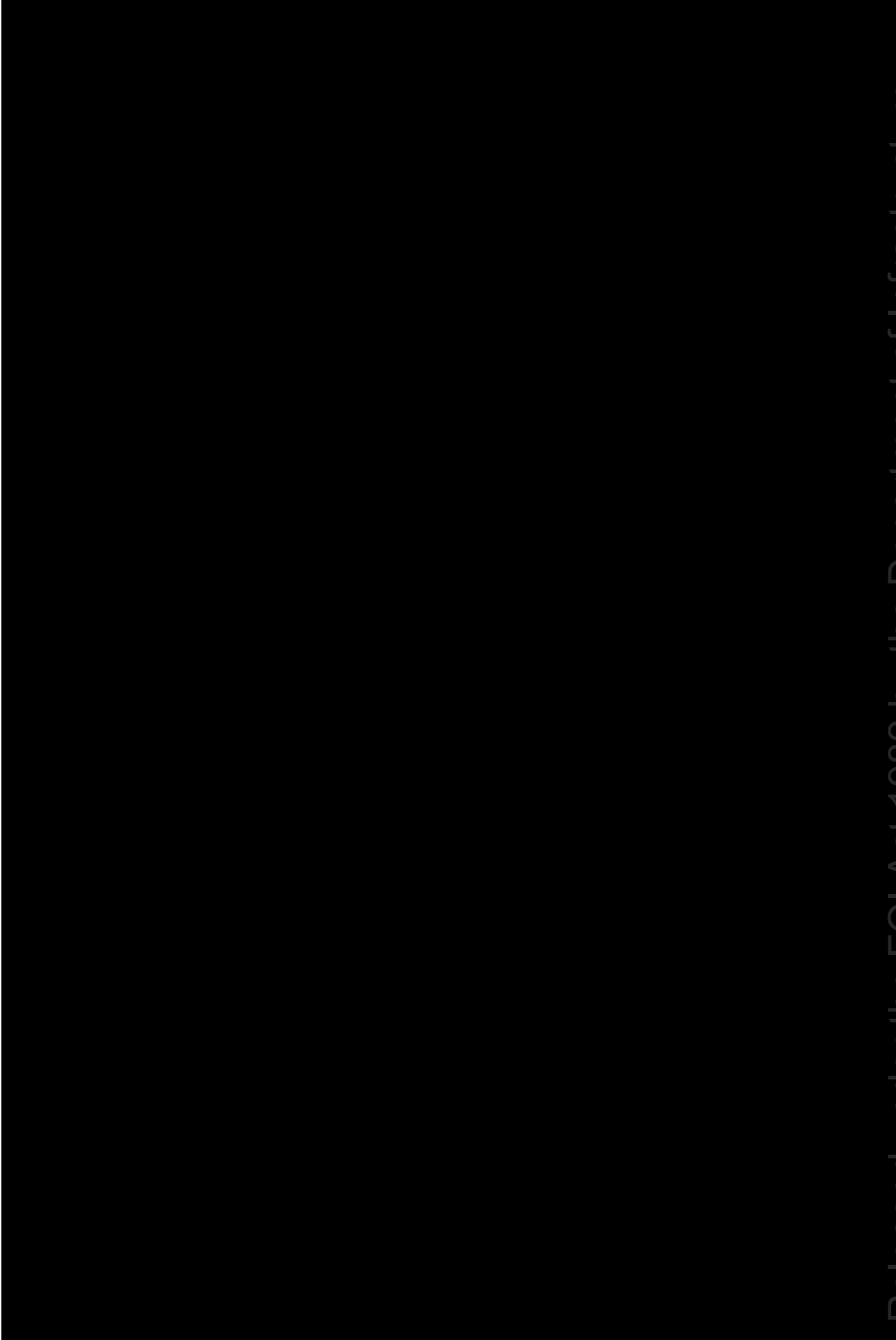
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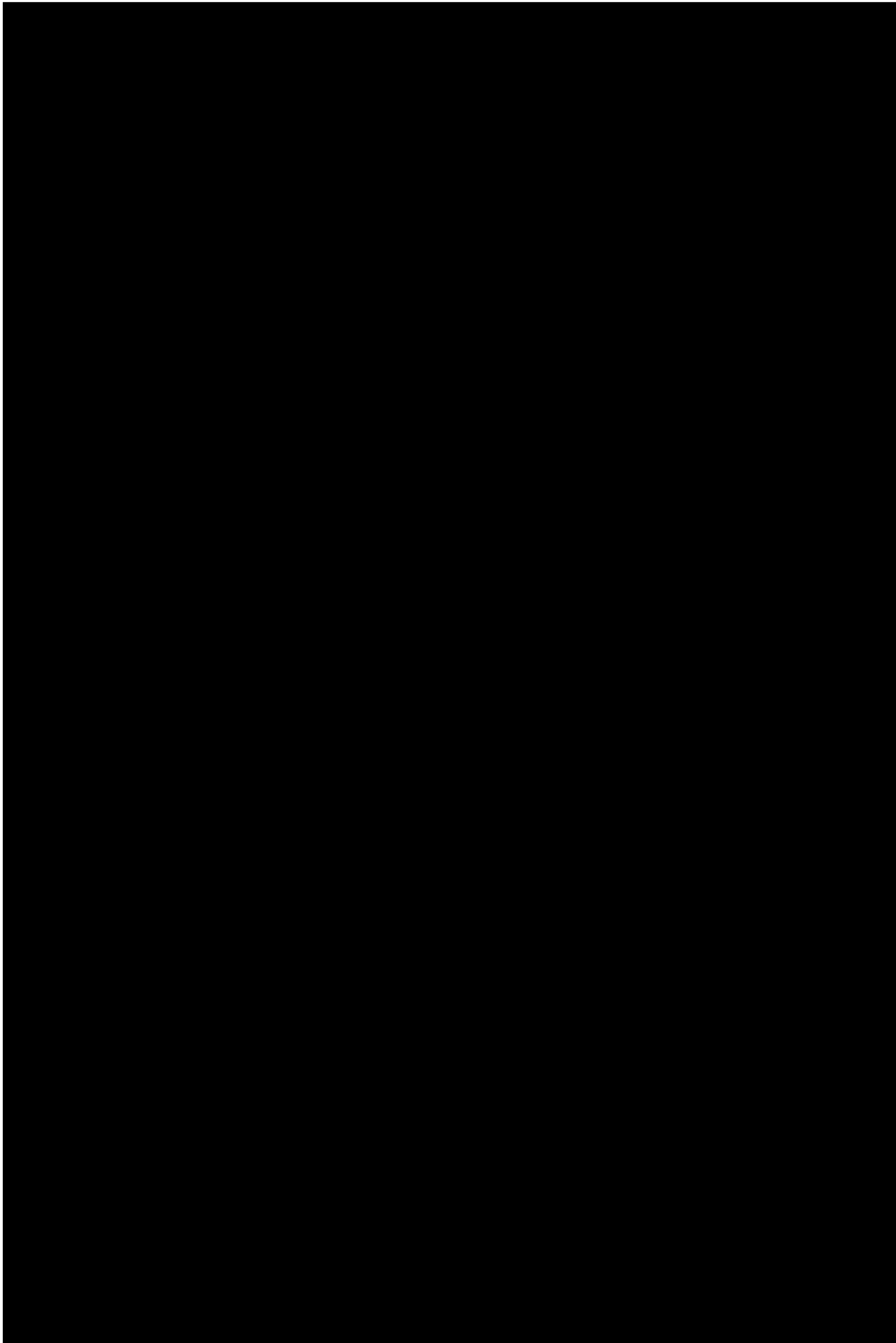
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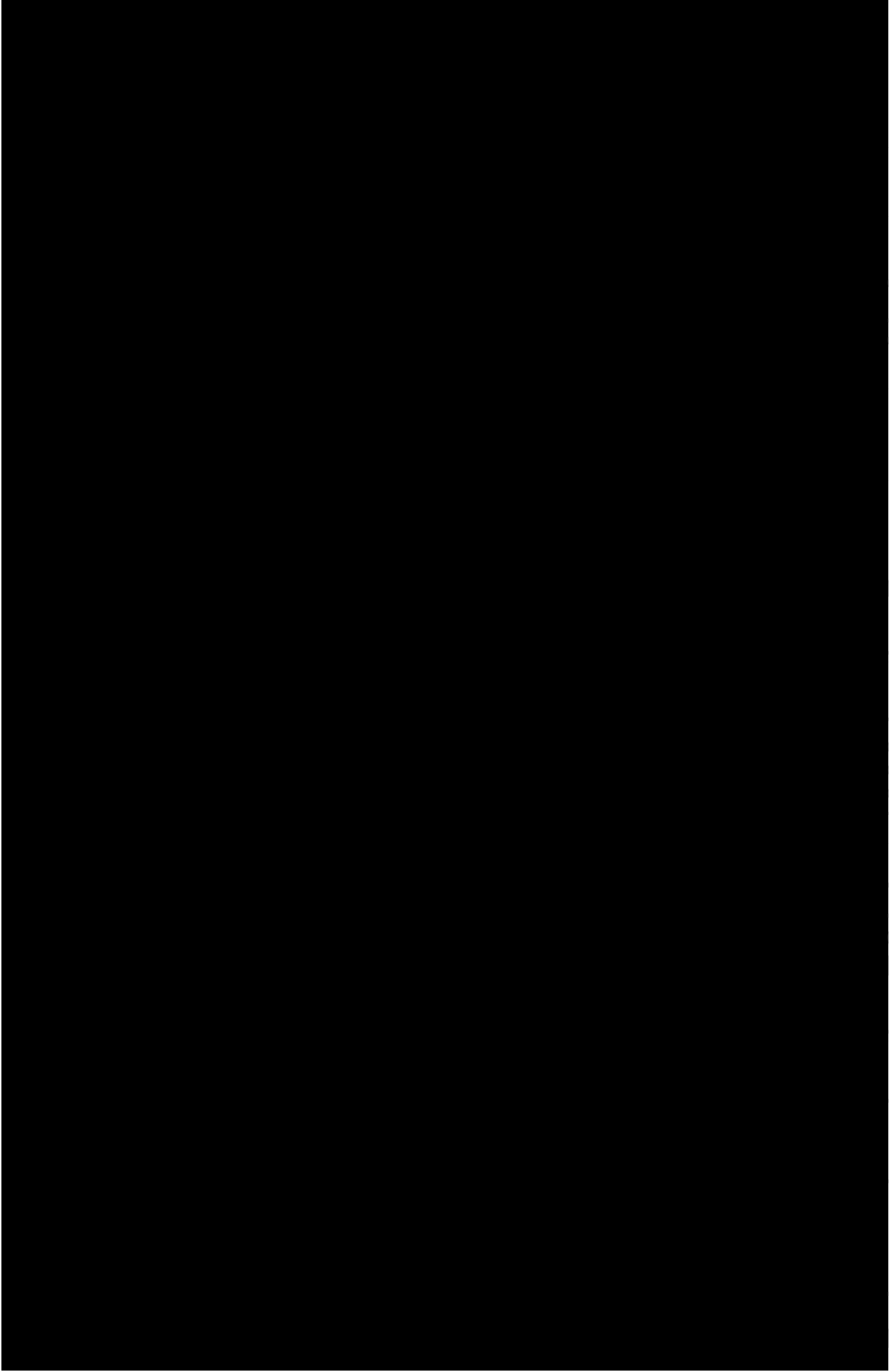
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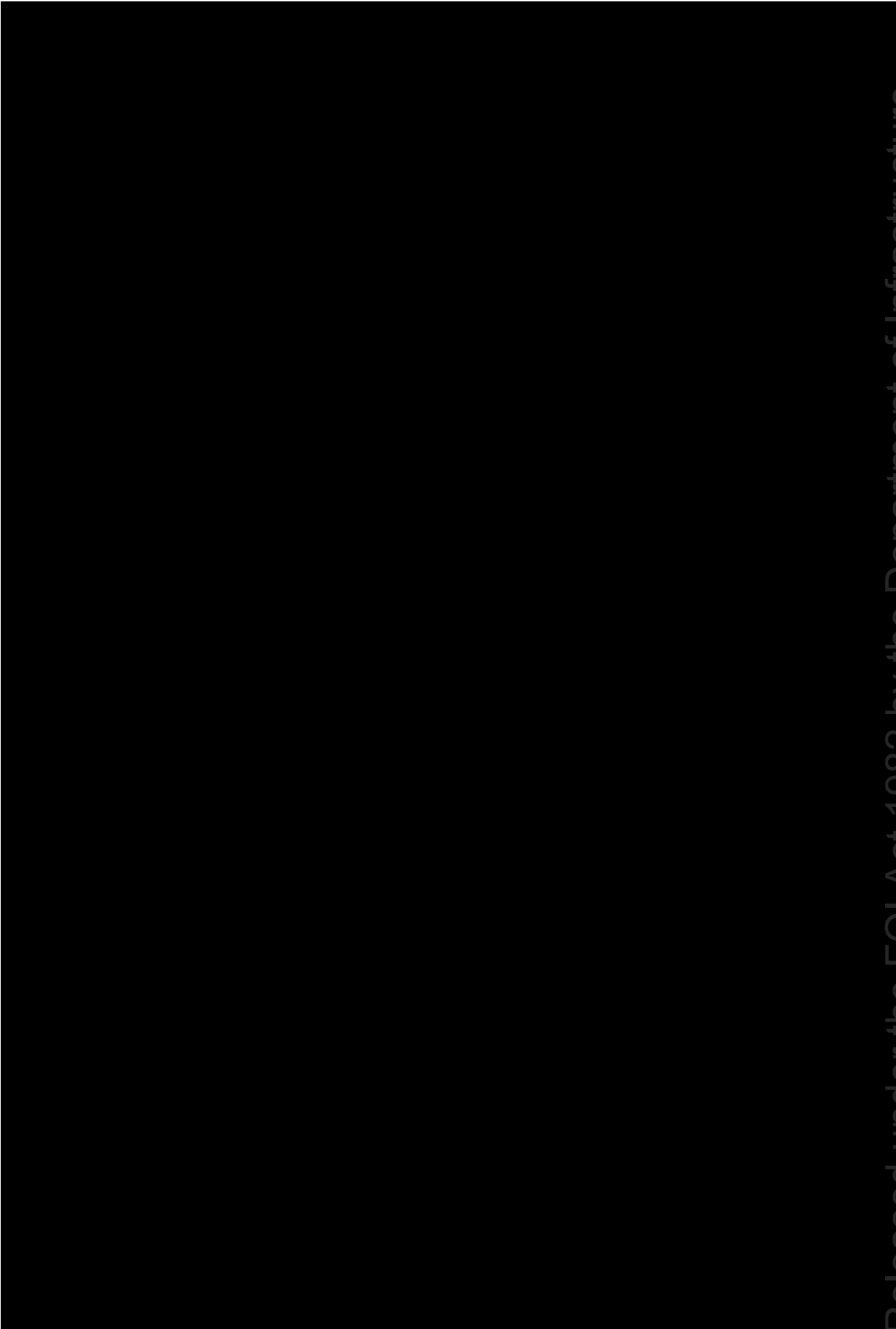
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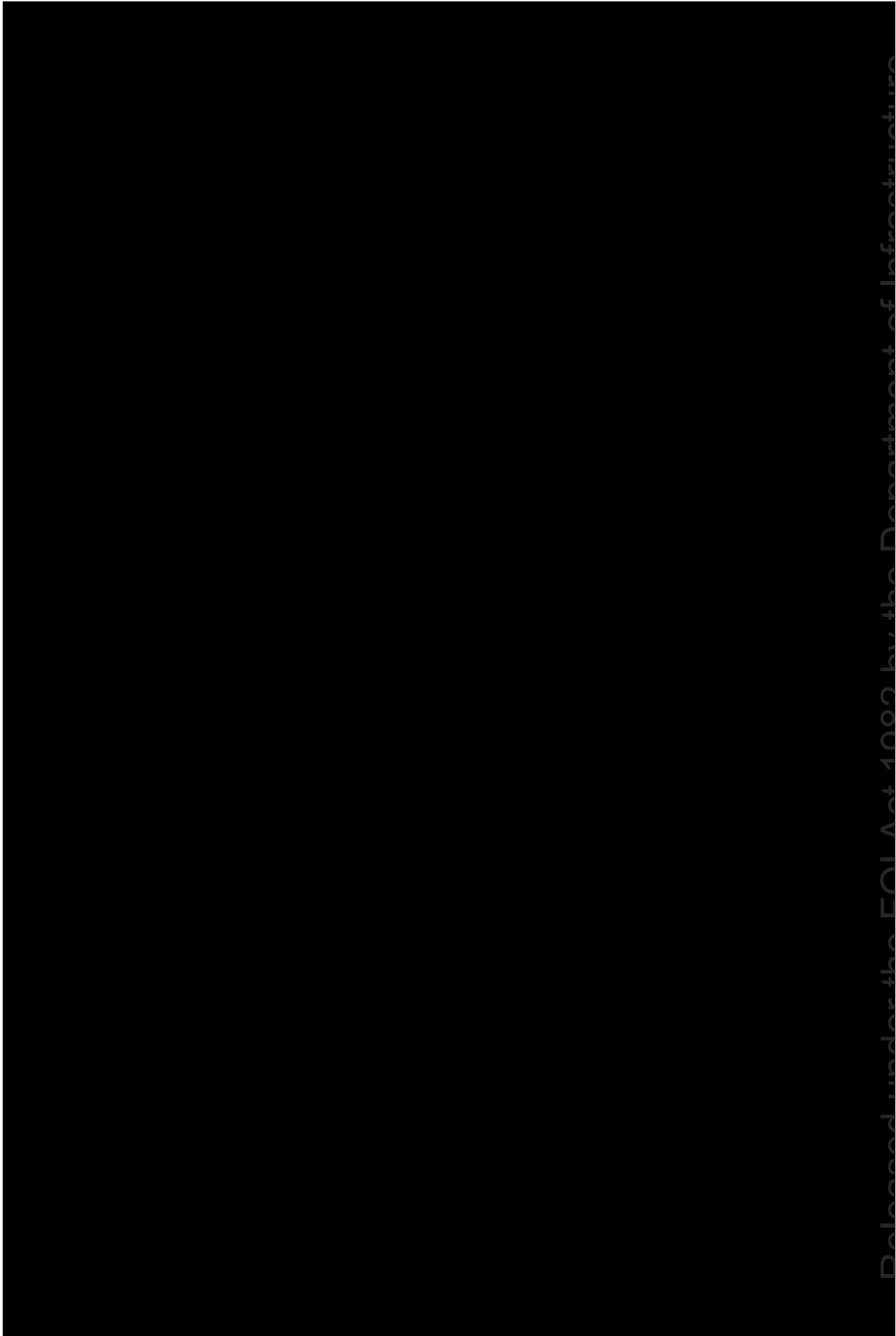
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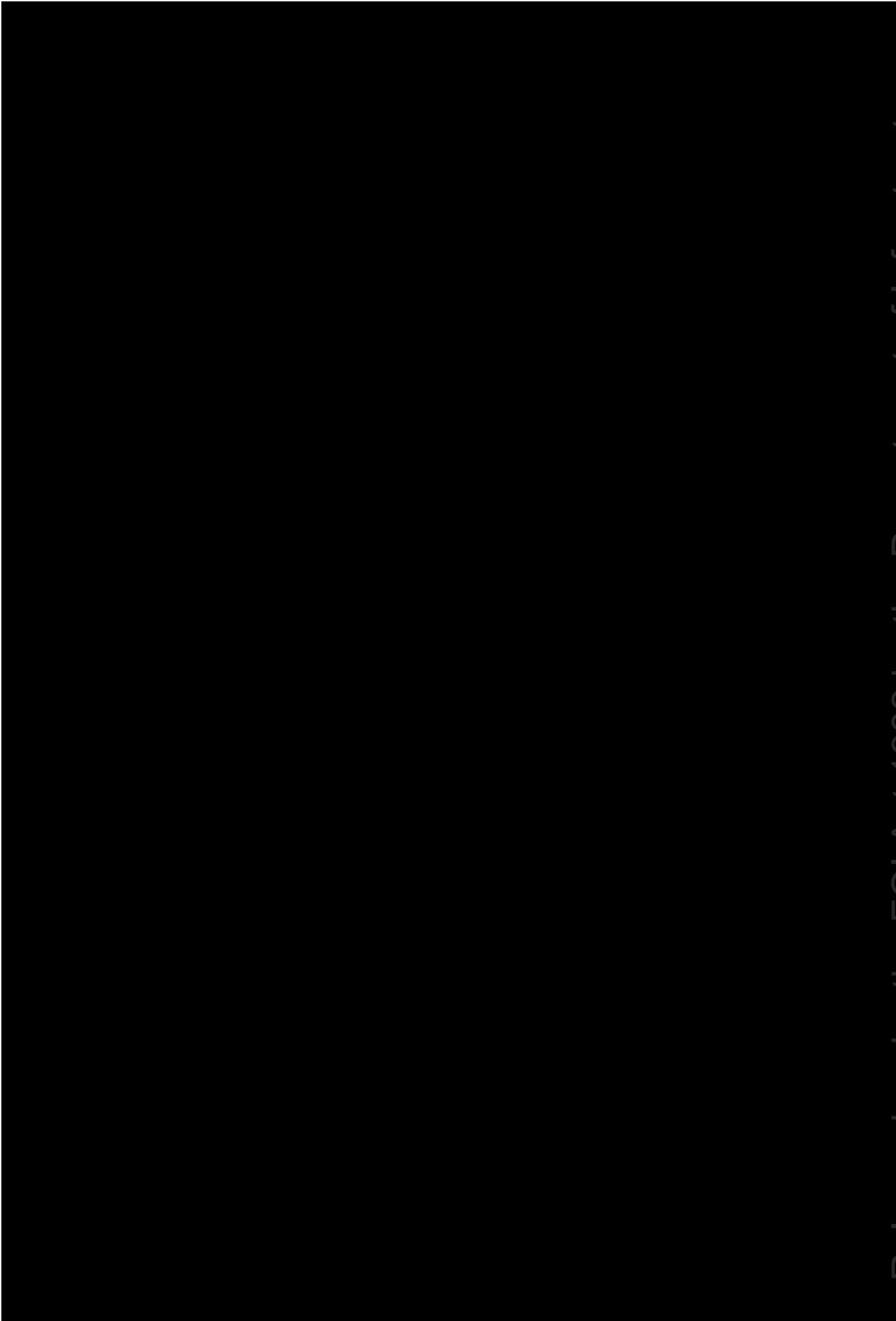
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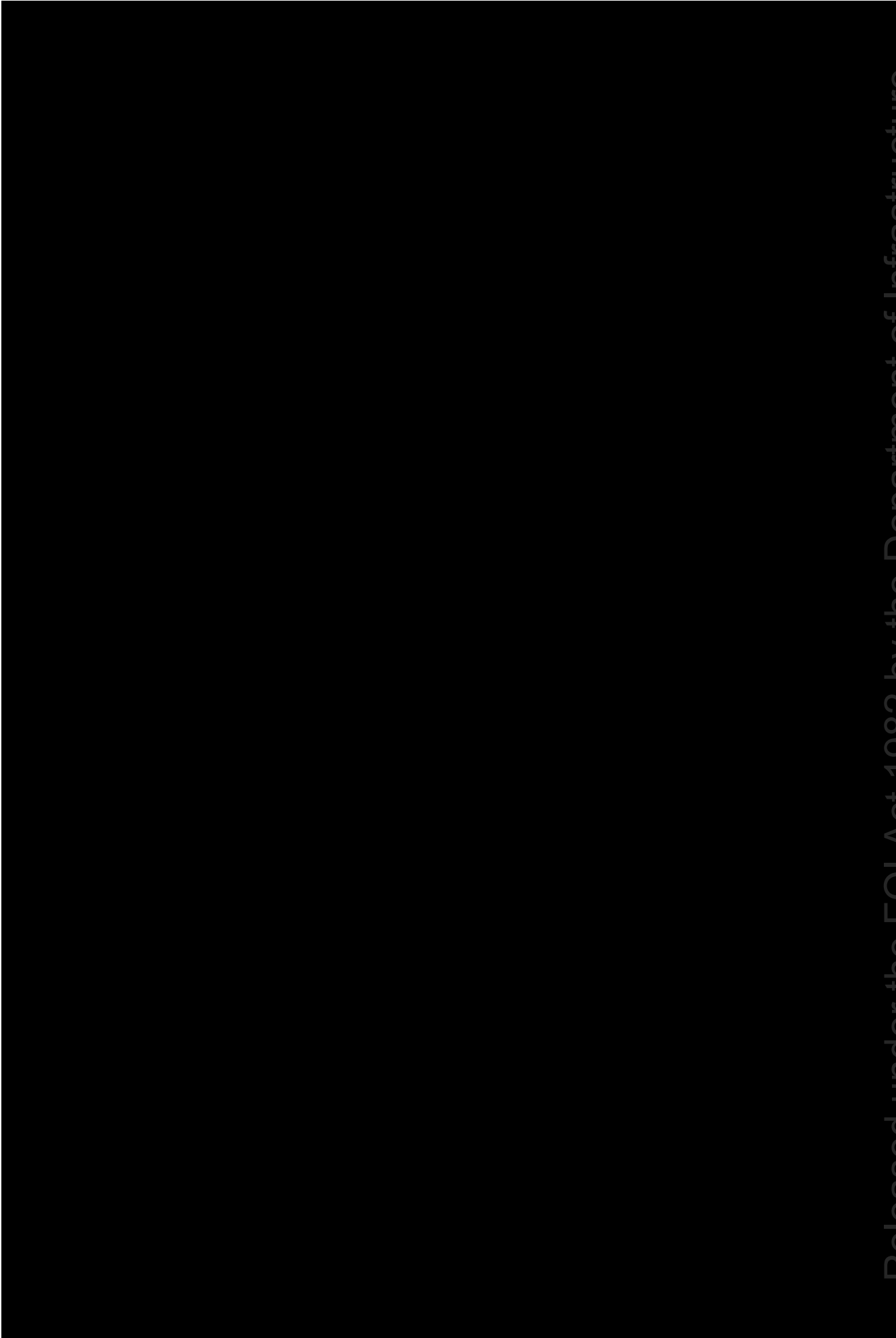
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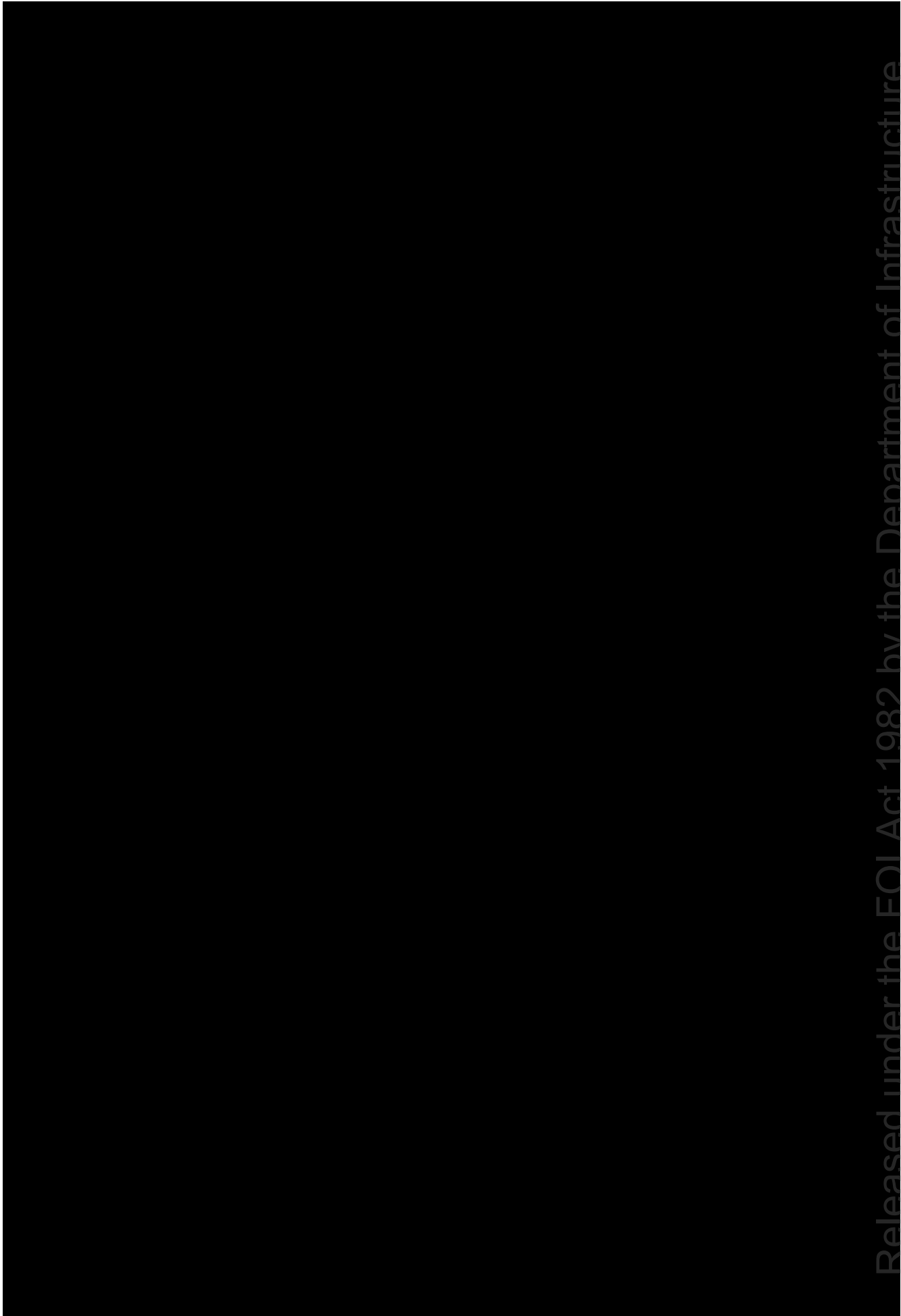


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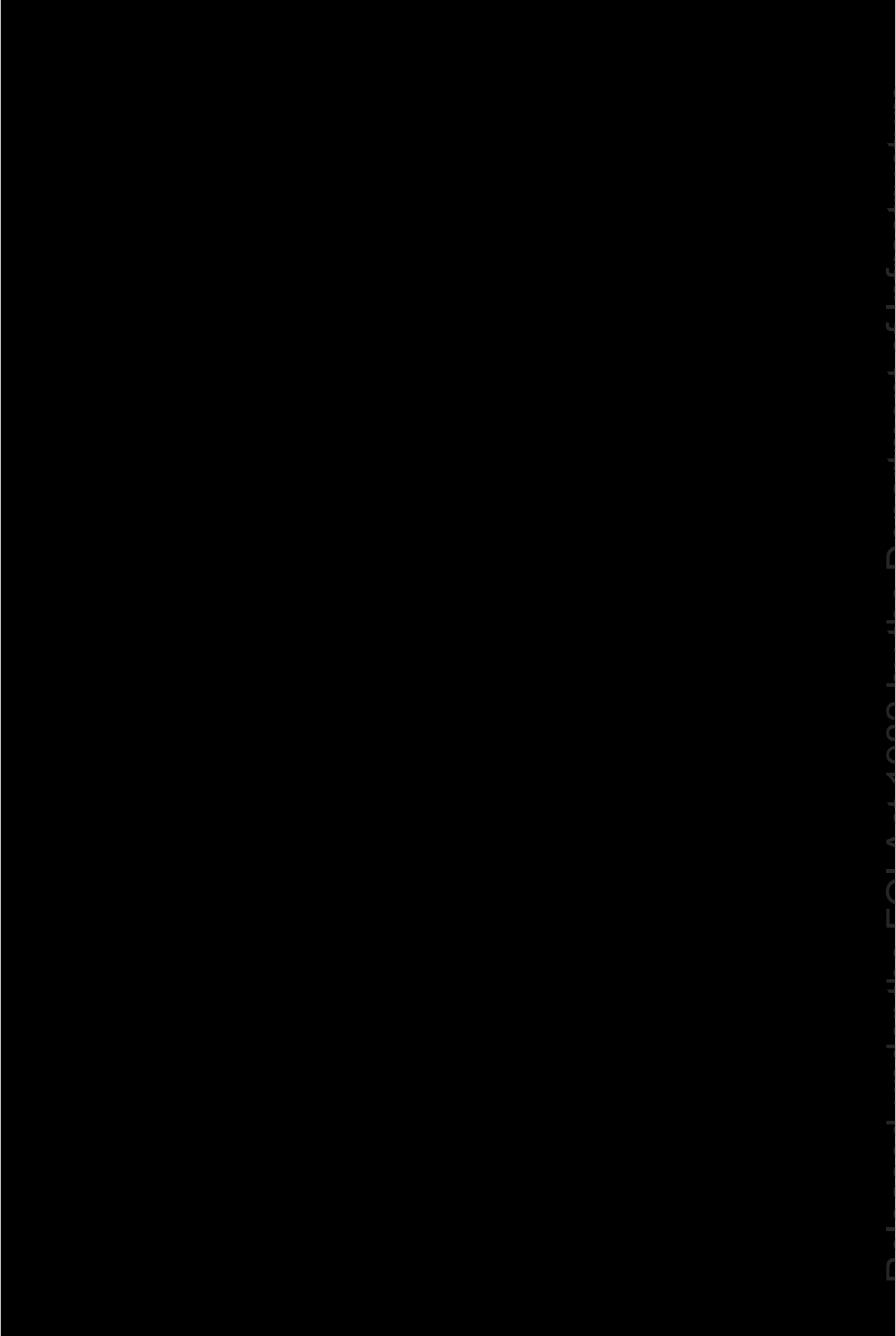


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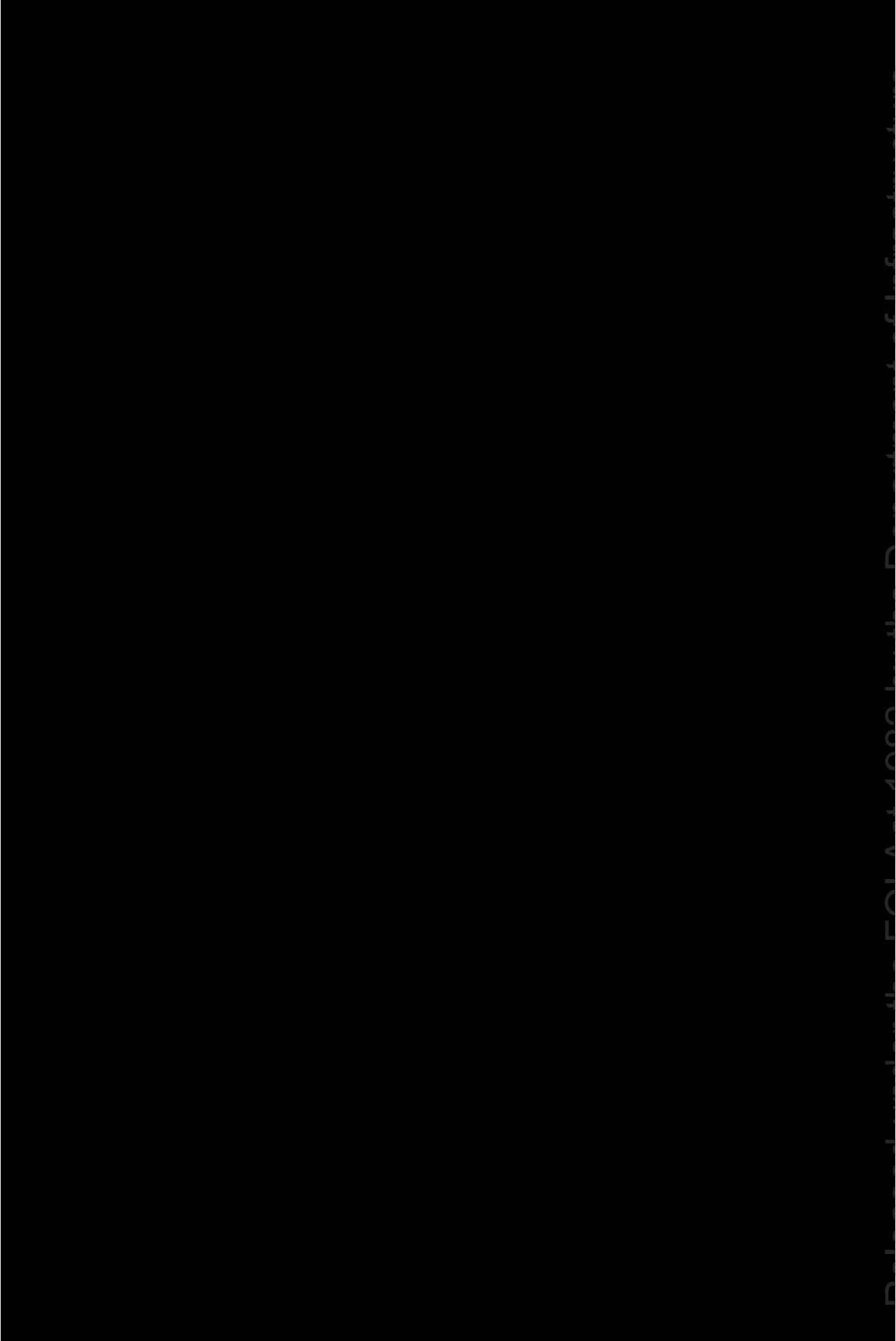
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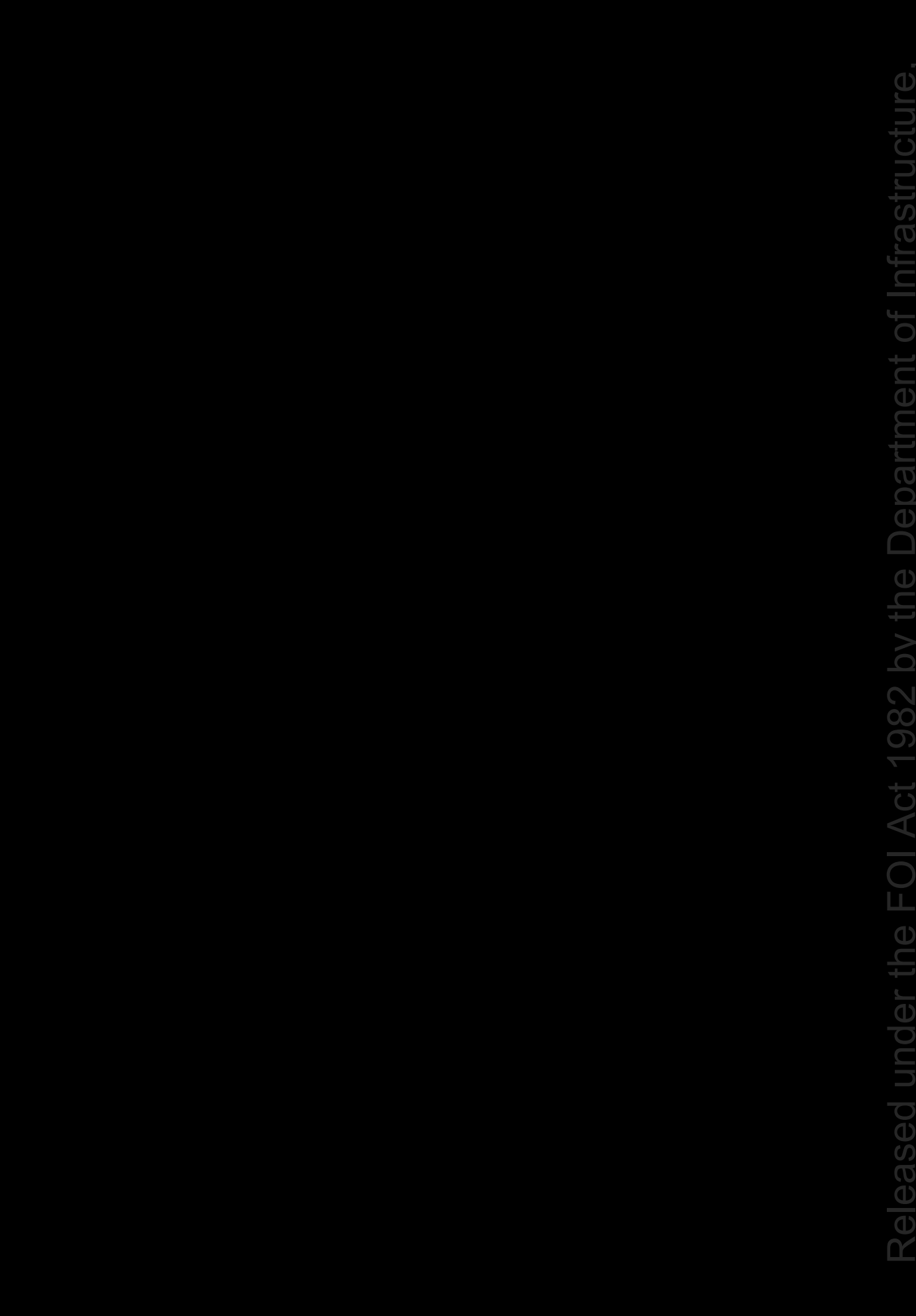
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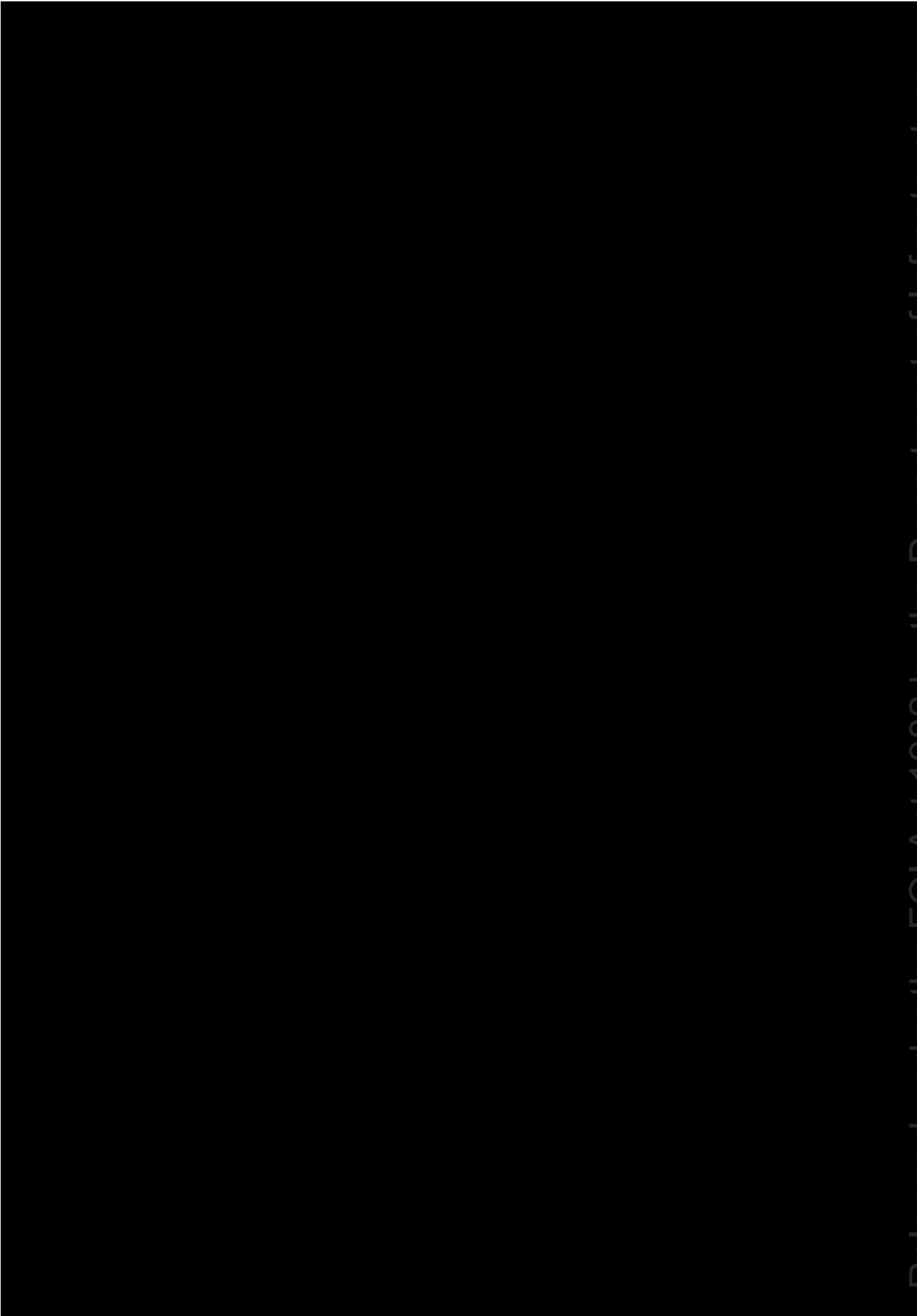
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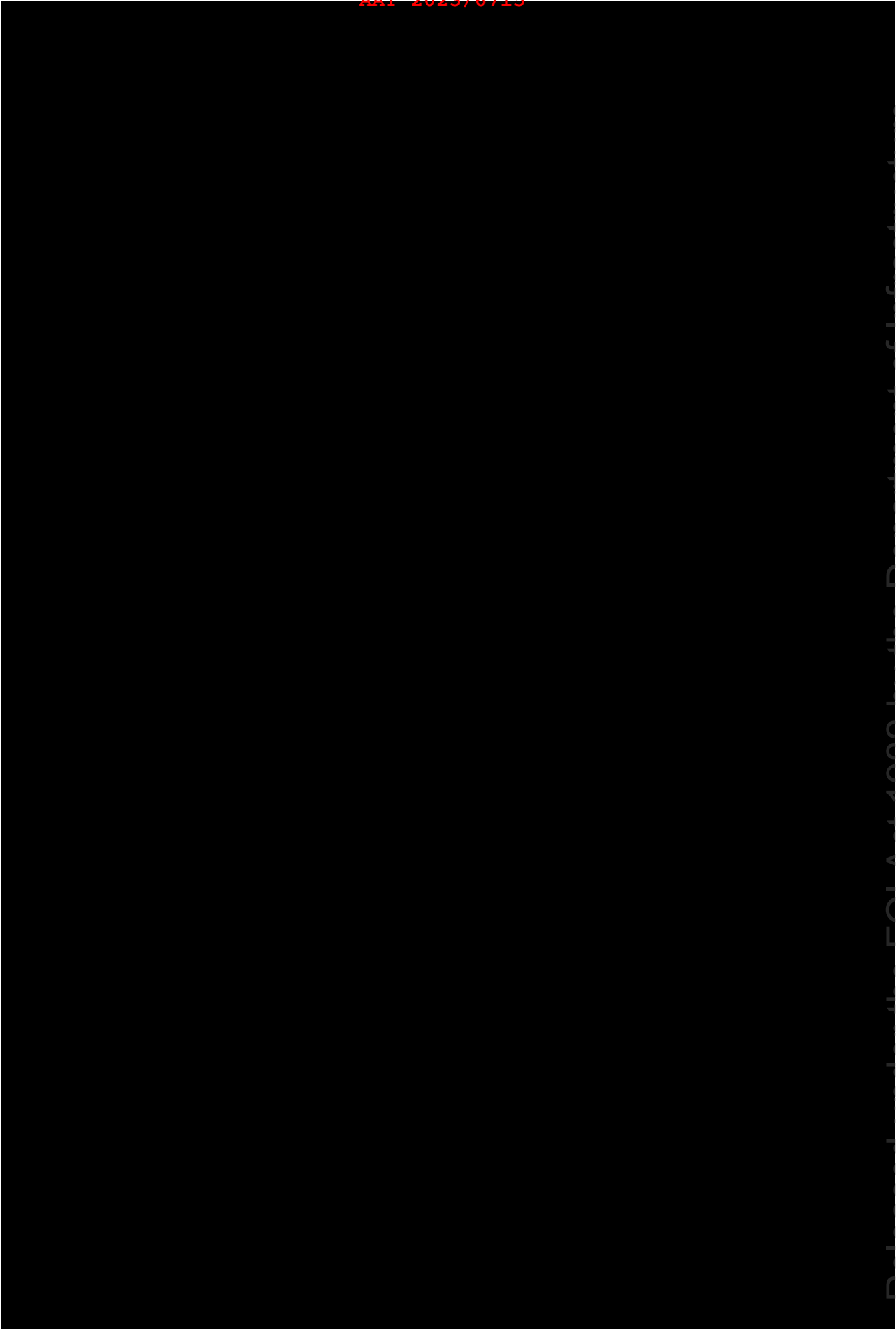
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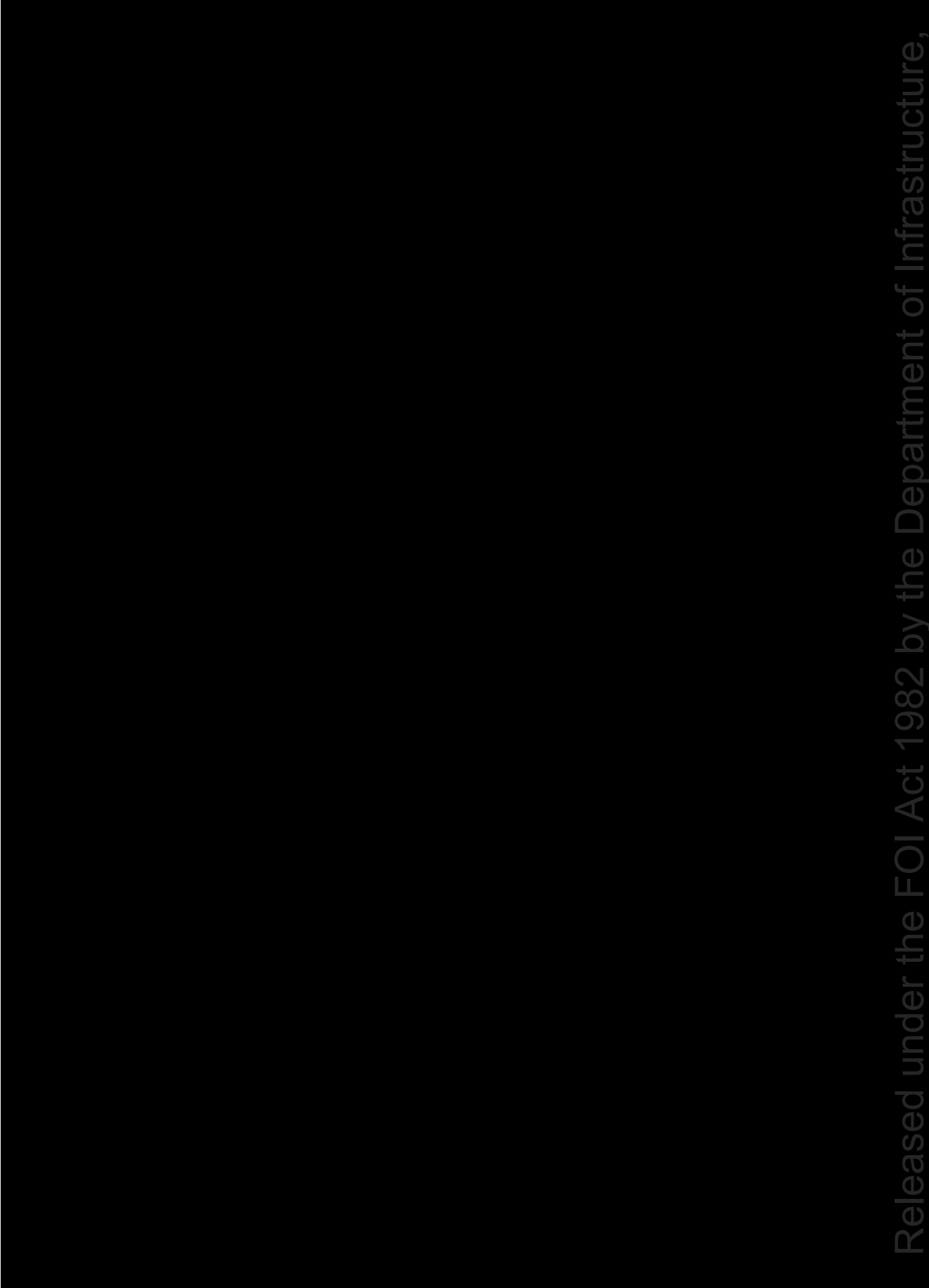
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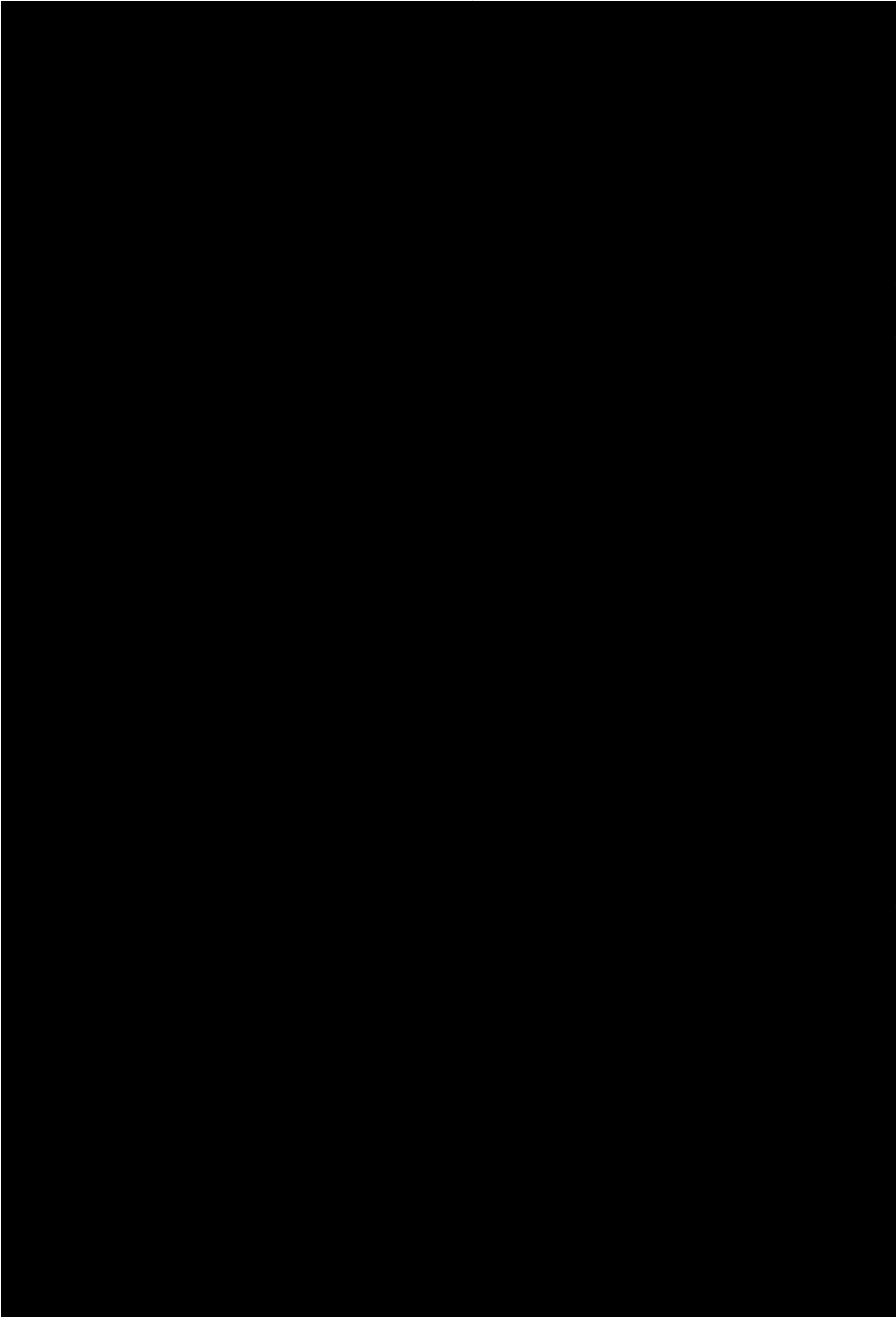
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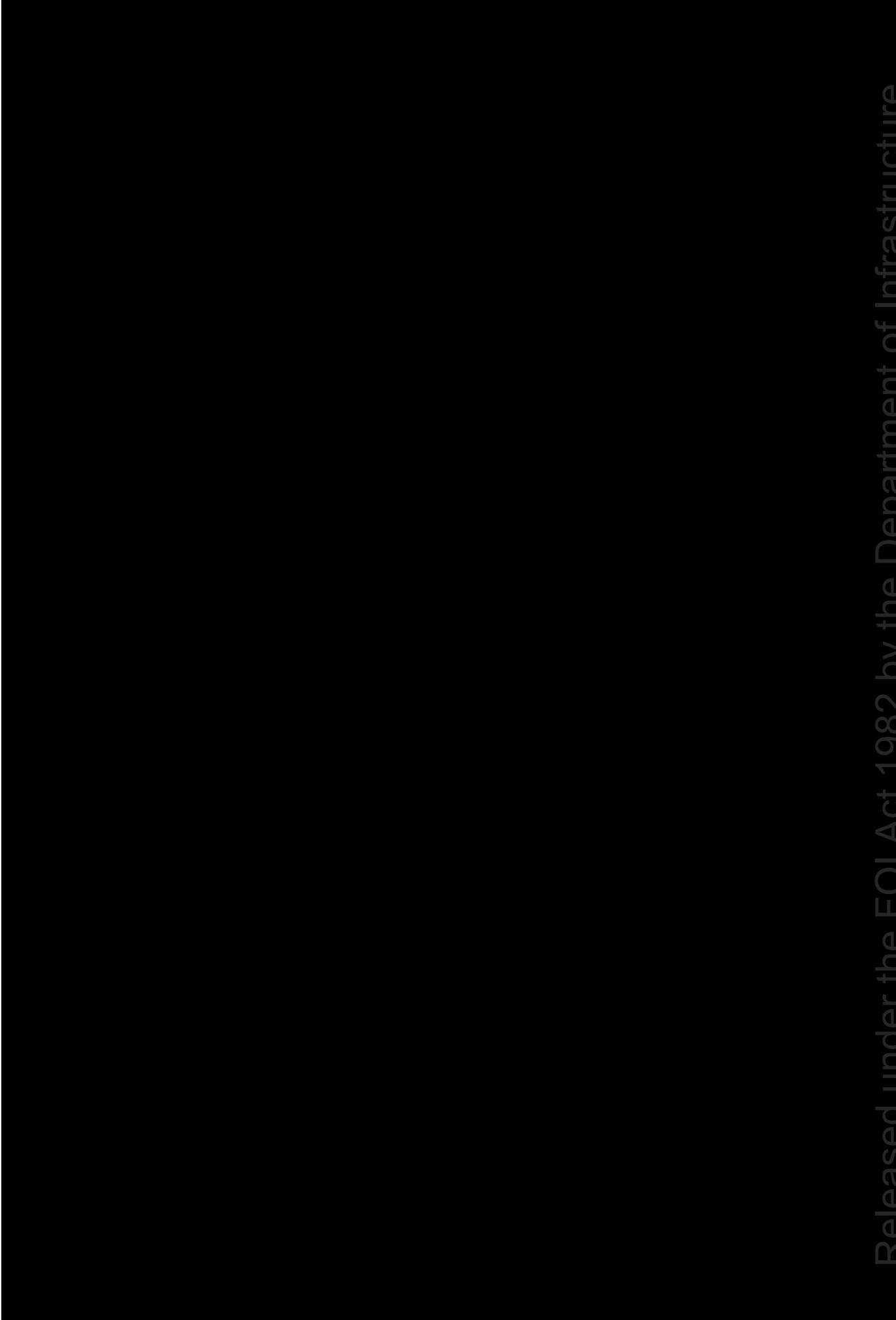
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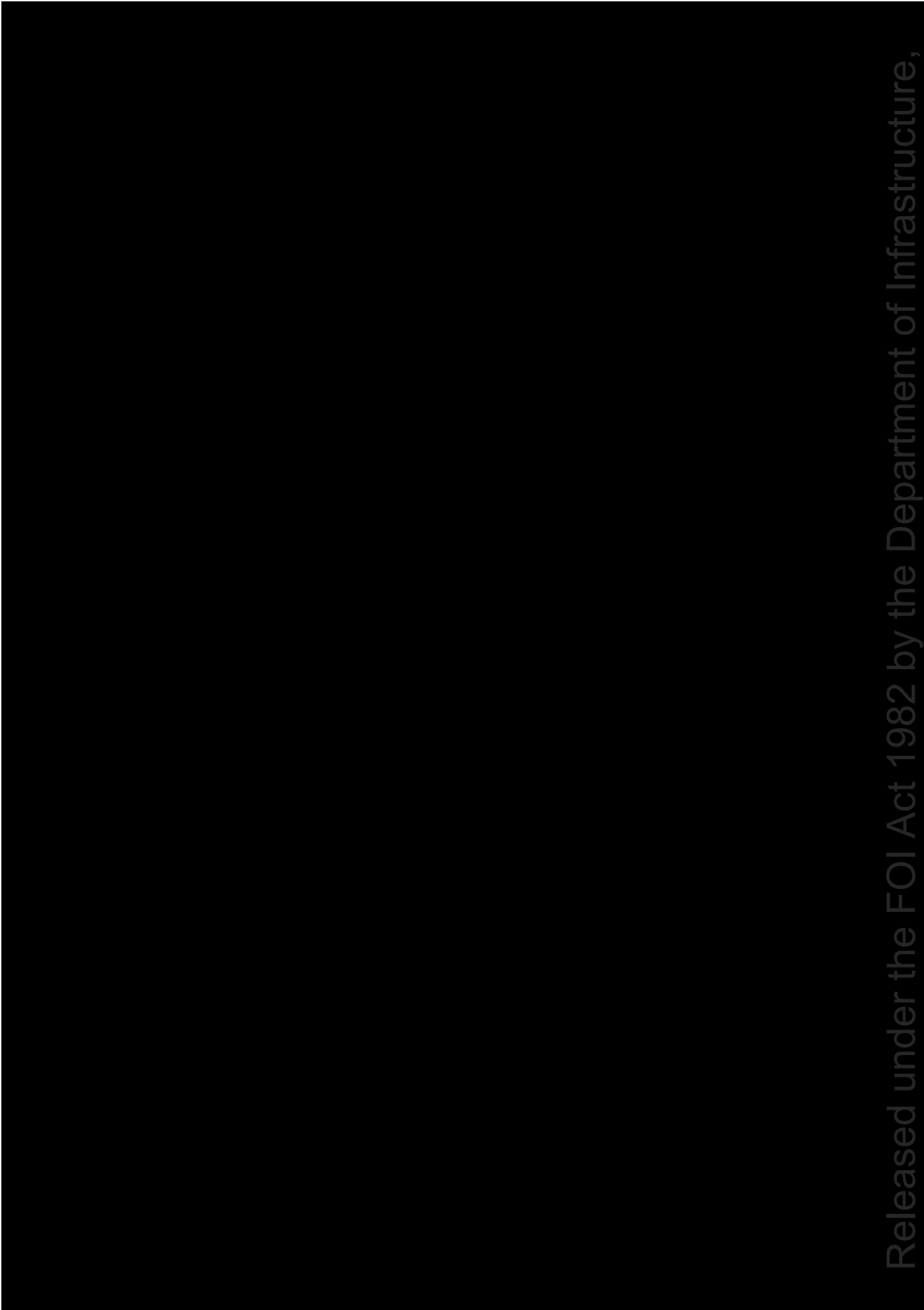


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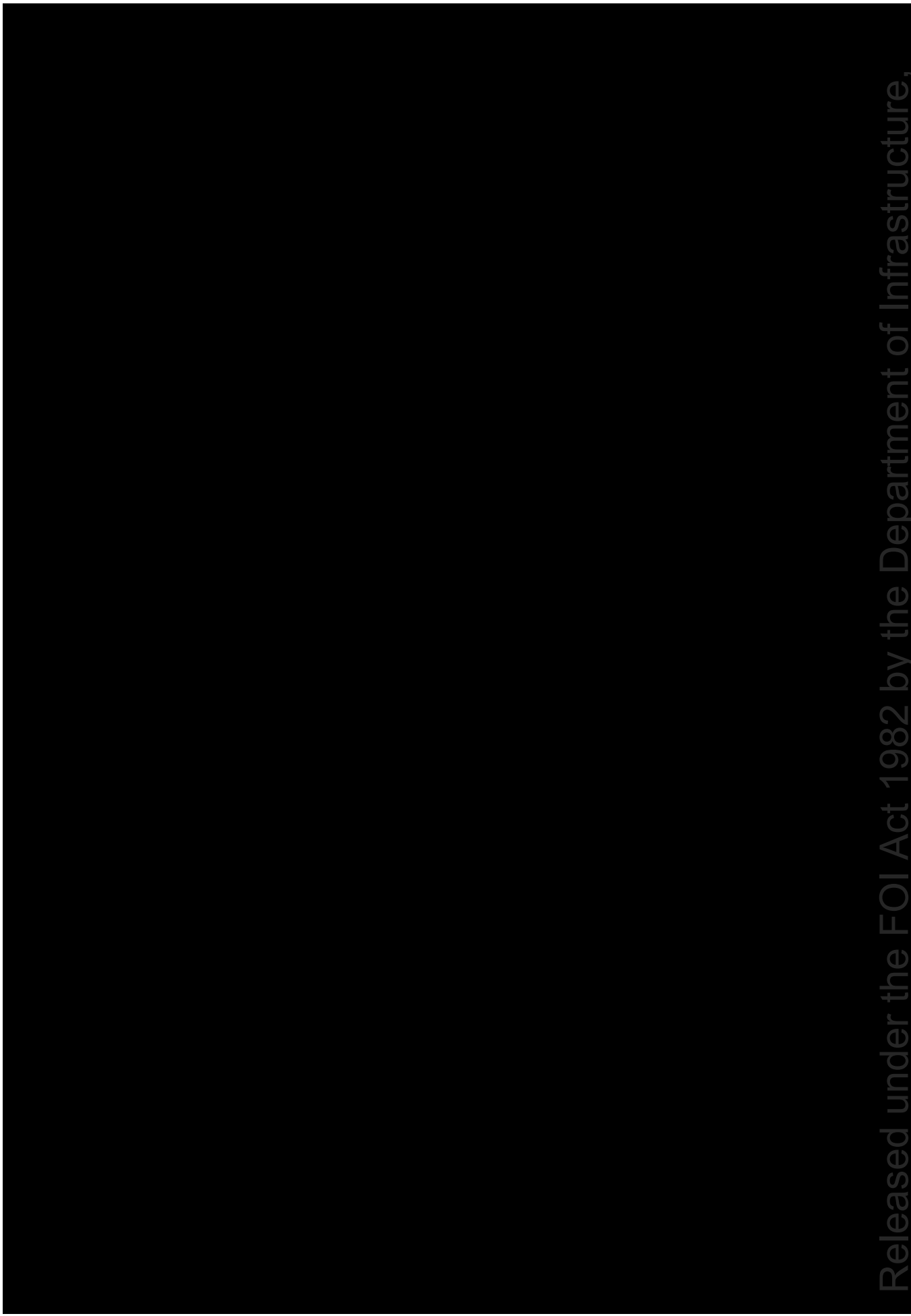


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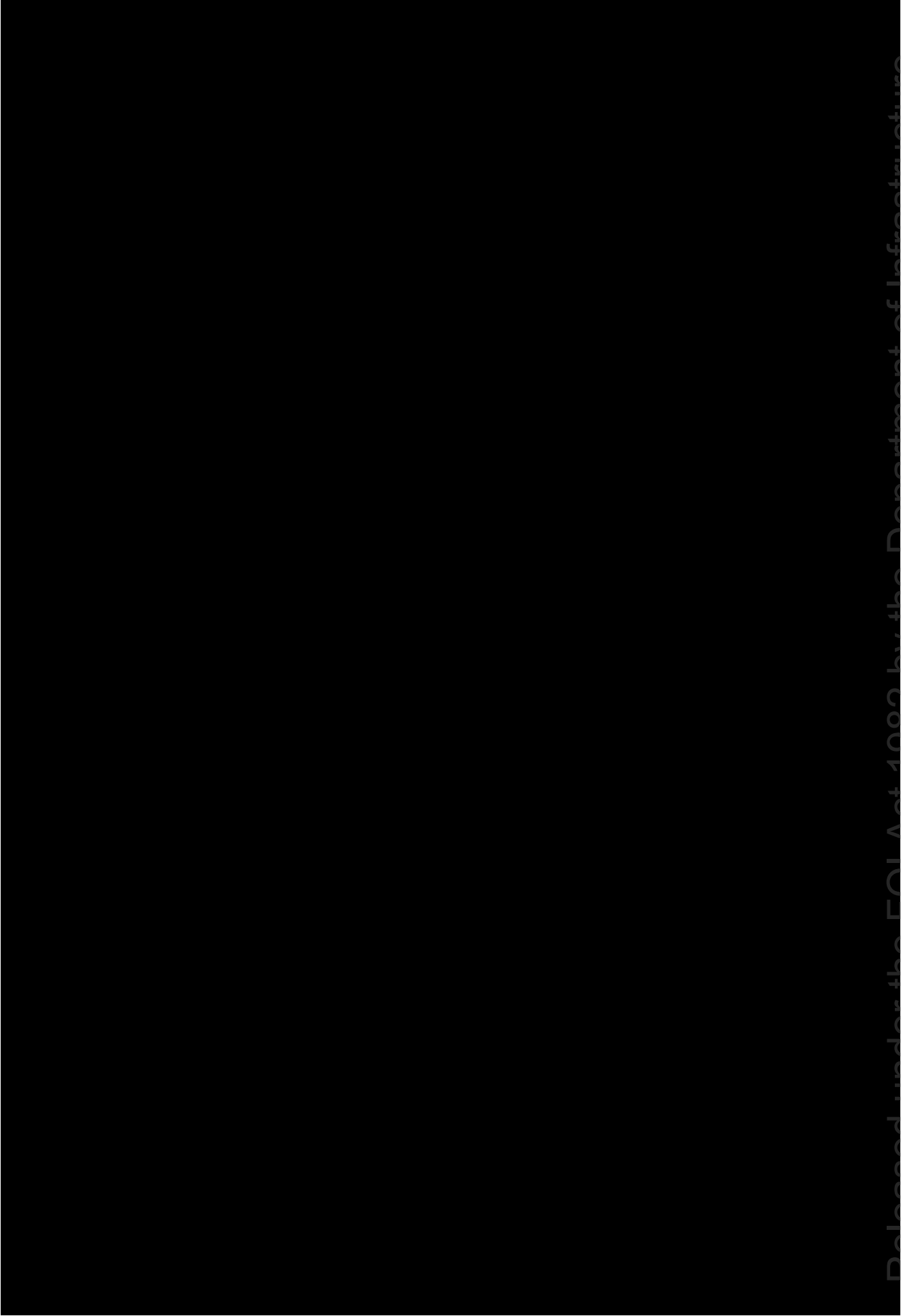
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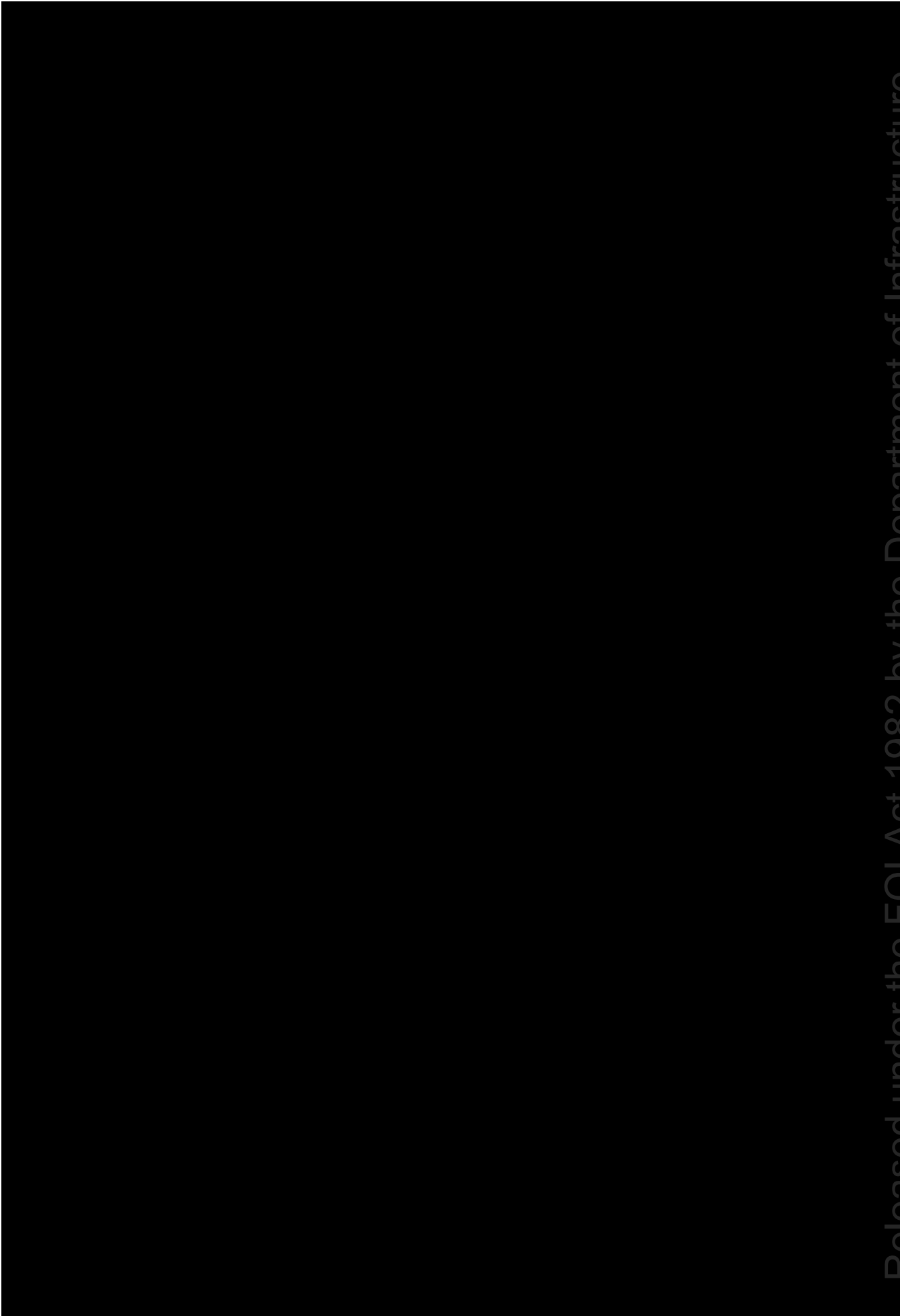
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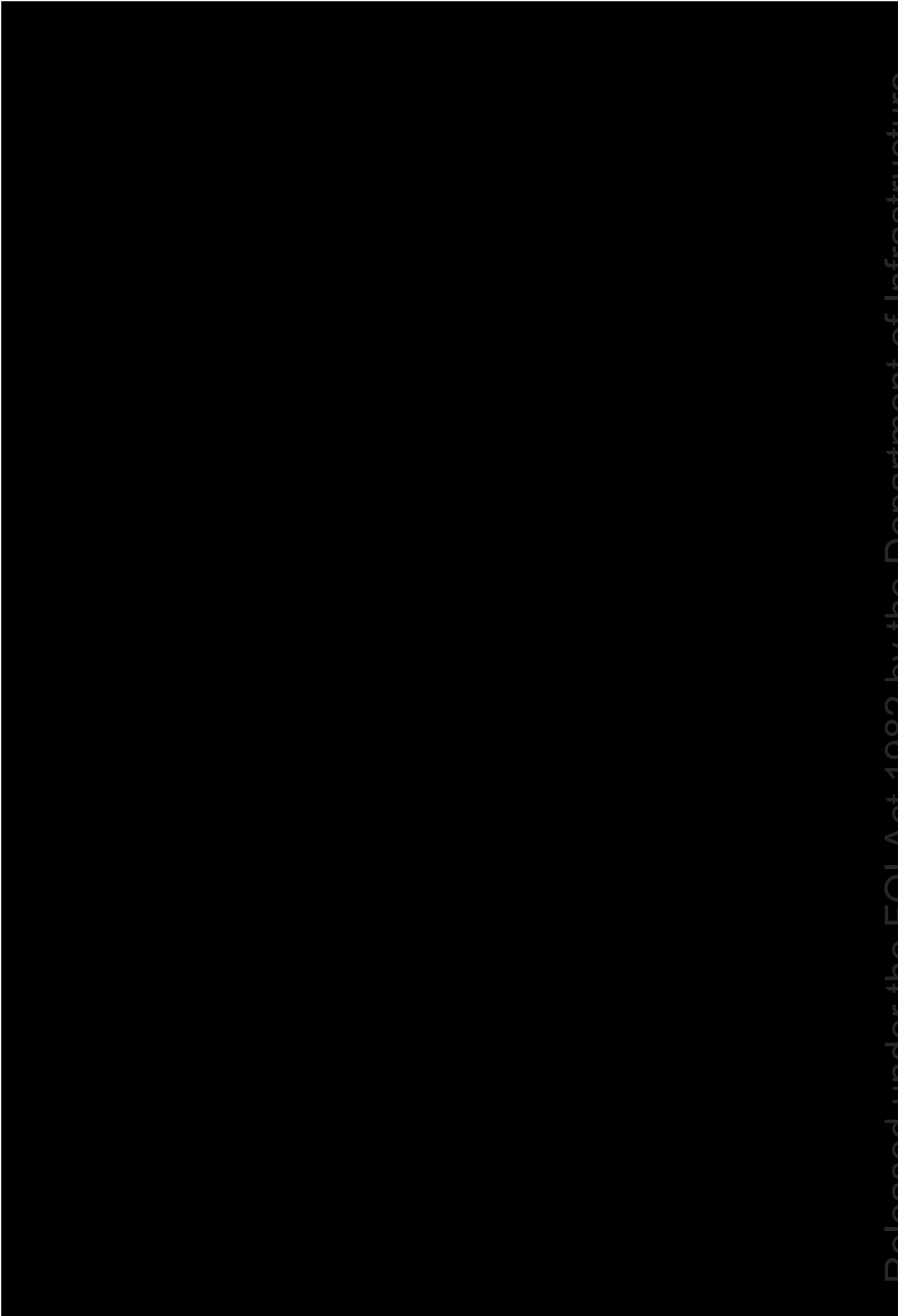


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Amendment Agreement to TUSOP Agreement

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

AMENDMENT AGREEMENT TO TUSOP AGREEMENT

Date 9 November 2016

Parties

Commonwealth of Australia (Commonwealth) represented by and acting through the Department of Communications and the Arts, ABN 51 491 646 726 (**Department**)

Telstra Corporation Limited ABN 33 051 775 556 of Telstra Centre, 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)

Background

- A. The Commonwealth of Australia and Telstra are parties to an agreement now entitled 'Telstra USO Performance Agreement' originally dated in or about June 2011, as amended from time to time including by an amendment agreement dated 14 December 2014 (**TUSOP Agreement**).
- B. The parties have agreed to amend the TUSOP Agreement to terminate provisions relating to the performance of Customer Management Tasks and the Priority Assistance Customer Management Tasks on the terms set out in this agreement.

Operative provisions**1. Definitions and Interpretation****1.1 Definitions**

Unless the contrary intention appears and subject to clause 1.2, terms defined in the TUSOP Agreement (as amended by this agreement) have the same meaning in this agreement, clauses 1.1, 12, 24.2, 24.3, 24.5, 24.6 and 51 of the TUSOP Agreement (as amended by this agreement) apply as if set out in full in this agreement and:

Final Invoice has the meaning given in clause 3.1.

Final IT Development Costs Payment means [REDACTED]

IT Development Costs means [REDACTED]

Start Date means 30 June 2016.

1.2 Existing definitions

The following terms have the same meaning in this agreement as in the TUSOP Agreement, excluding any amendments made by this agreement:

- (a) Customer Management Fee;
- (b) Customer Management Tasks;

- (c) Priority Assistance Customer Management Fee; and
- (d) Priority Assistance Customer Management Tasks.

2. Amendment of the Agreement

2.1. Amendments

The parties agree that with effect on and from the Start Date:

- (a) subclause 11.1(a)(viii) is deleted and replaced with 'NOT USED';
- (b) in subclause 11.1(a)(ix), 'or clause 41(e)' is added after the reference to clause 34.3(b);
- (c) Module D of the TUSOP Agreement is amended to be on the terms set out in Schedule 1;
- (d) the following definitions are deleted from clause 50 (except to the extent a definition is required to apply the transitional arrangements in clause 3):
 - (i) Certification Date;
 - (ii) Certification Notice;
 - (iii) Customer Management Fee;
 - (iv) Customer Management Tasks;
 - (v) Eligible Customer List;
 - (vi) Priority Assistance Customer;
 - (vii) Priority Assistance Customer Management Fee;
 - (viii) Priority Assistance Customer Management Tasks;
 - (ix) Second Stock Take Date; and
 - (x) Telstra Eligible Voice-only Customer.

2.2. Changes to IT Development Costs Balances

- (a) The parties acknowledge and agree that, as at the date of this agreement:
 - (i) the amounts payable to Telstra by the Department under Module D of the TUSOP Agreement include amounts to compensate Telstra for incurring the IT Development Costs;
 - (ii) as at the date of this agreement, the rate card for the Reasonable Connection Costs includes:
 - A. for Required Cabling completed on or prior to 30 June 2015, an amount of \$3.00 (excluding GST) for each Service Address for an Eligible Fixed Line Connection Customer as compensation for the IT Development Costs; and

- B. for Required Cabling completed on or after 1 July 2015, an amount of \$23.00 (excluding GST) for each Service Address for an Eligible Fixed Line Connection Customer as compensation for the IT Development Costs;
 - (iii) to and including 31 March 2016, an amount of \$126,436 (excluding GST) had been paid by the Department to Telstra as compensation for IT Development Costs in respect of the Reasonable Connection Costs;
 - (iv) to and including the Start Date, the Customer Management Fees included an amount of \$8.50 (excluding GST) for each Customer Management Task as compensation for the IT Development Costs; and
 - (v) to and including the Start Date, an amount of \$308,992 (excluding GST) had been paid by the Department to Telstra as part of the Customer Management Fees as compensation for IT Development Costs.
- (b) The parties agree that, for the period from and including 1 April 2016, Telstra is only entitled to receive as compensation for IT Development Costs, in respect of the Reasonable Connection Costs payable by the Department, an aggregate amount of \$396,753 (excluding GST). The parties also agree that, with effect on and from the date that this amount is received by Telstra, which may be a date prior to the date of this agreement (**Relevant Date**), the Reasonable Connection Cost for each Service Address for an Eligible Fixed Line Connection Customer will be reduced by:
- (i) \$3.00, where the Required Cabling was completed on or prior to 30 June 2015. For the avoidance of doubt, the parties agree that the Reasonable Connection Costs in such cases will be \$207.00 with effect from the Relevant Date; and
 - (ii) \$23.00, where the Required Cabling was completed on or after 1 July 2015. For the avoidance of doubt, the parties agree that the Reasonable Connection Costs in such cases will be \$247.00 with effect from the Relevant Date.
- (c) If, as a consequence of the operation of clause 2.2(b), Telstra has issued invoices for Reasonable Connection Costs for amounts greater than the amounts payable by the Department in accordance with clause 2.2(b) then:
- (i) if the Department has not paid the relevant invoice or invoices, Telstra will cancel the invoice or invoices and re-issue the invoice or invoices for the correct amount, determined as required by clause 2.2(b); or
 - (ii) if the Department has paid the relevant invoice or invoices, the Department will set-off against the amount owing by it to Telstra under clause 3.2 the difference between the amount invoiced by Telstra and the lower amount that should have been invoiced as a consequence of the operation of clause 2.2(b).

- (d) The parties agree that, the amount payable by the Department in accordance with clause 3.2 represents the full amount recoverable by Telstra in respect of IT Development Costs incurred by it in relation to the performance of Customer Management Tasks as at the Start Date. Nothing in this clause affects Telstra's ability to agree with the Department that it may recover costs incurred by it after the Start Date in the development by it of an information technology solution to comply with its obligations under Module D of the TUSOP Agreement, provided the Department has approved the development by Telstra of that information technology solution prior to any such costs being incurred. Nothing in this clause imposes any obligation on the Department to approve any such solution.
- (e) Nothing in this clause 2.2 limits the operation of clause 41 of the TUSOP Agreement

2.3. Continuing agreement

The TUSOP Agreement, as amended by this agreement, continues in full force and effect and each party agrees to comply with its obligations under the TUSOP Agreement.

3. Transitional provisions

3.1 Final Invoice

Not later than 30 days after the date of this agreement, Telstra must provide to the Department an invoice for the Final IT Development Costs Payment (**Final Invoice**). The Final Invoice must not include a claim for the payment of any fees that have previously been included in an invoice submitted to the Department.

3.2 Final payment

- (a) Subject to clause 2.2(c), within 30 days of receipt of the Final Invoice the Department will pay to Telstra the Final IT Development Costs Payment specified in the Final Invoice.
- (b) If the Department fails to make a payment of the amounts payable under clause 3.2(a) by the due date, interest on the unpaid amount may be charged by Telstra at the Default Rate for the period from the due date for payment until the date that payment is received. For this purpose, interest on the unpaid amount will accrue daily and will compound annually.
- (c) All amounts payable under this clause 3 are exclusive of GST.

4. Costs

Each party will bear its own costs and expenses (including legal costs) arising out of and incidental to the negotiation, preparation, execution and delivery of this agreement.

EXECUTED as an agreement.

EXECUTED for and on behalf of the)
Commonwealth of Australia by:)

Angela Flannery
Name of authorised officer


Signature


In the presence of:

Briony Sefton
Name of witness


Signature of witness


EXECUTED by Telstra)
Corporation Limited in)
accordance with the requirements)
of section 127 of the Corporations)
Act 2001 (Cth) in the presence of:

WILL IRVING
Name of Group Executive


Signature

and by: ^{WI} In the presence of

NADE McDONALD
Name of director/secretary
Witness WI


Signature of director/secretary
Witness WI

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SCHEDULE 1

Module D

Voice-only customer migration

34 Industry consultation and preliminary matters for this Module

34.1 Industry consultation

- (a) On or before the First Stock Take Date for the first Rollout Region in which the Region Ready for Service Date occurs after the Commencement Date, the Department will use its best efforts to:
 - (i) consult with the industry (including Telstra) about the Commonwealth Government's policy to fund certain costs of migrating eligible voice-only customers to the NBN Co Fixed Line Network; and
 - (ii) NOT USED
 - (iii) notify Telstra of the Required Cabling Deployment Rules.

34.2 NOT USED

34.3 Rate card for Required Cabling Deployment Rules

- (a) Once the Required Cabling Deployment Rules have been notified to Telstra by the Department in accordance with **clause 34.1(a)(iii)**, each party must negotiate with the other in good faith and use its reasonable endeavours to agree a rate card that will apply when calculating the Reasonable Connection Costs under this **Module D** within 30 days after the date of notification.
- (b) If the parties are unable to reach agreement about the rate card that will apply when calculating the Reasonable Connection Costs under this Module in the time specified in **clause 34.3(a)**, either party may refer the matter for expert determination in accordance with **clause 11.1**. For this purpose, the parties agree that the rate card that is determined by the expert panel must ensure that Telstra recovers its Costs of undertaking those tasks that are covered by the rate card.

34.4 Effect of this Module

- (a) NOT USED
- (b) **Clauses 38 and 39** will not take effect until the rate card referred to in **clause 34.3(a)** is agreed or, if applicable, determined by expert determination.
- (c) NOT USED
- (d) NOT USED

35 NOT USED

36 NOT USED

37 NOT USED

38 Connection costs

38.1 Eligibility

As described in this **clause 38**, the Department will be responsible for the Reasonable Connection Costs incurred by Telstra in NBN Connecting the first line at a Service Address for:

- (a) an Eligible Voice-Only Fixed Line Customer who at that Service Address does not acquire a broadband service over the NBN Co Fixed Line Network from Telstra or any related body corporate of Telstra for a period of at least 3 months following the date of NBN Connection; or
- (b) an Eligible Voice-Only Customer who at that Service Address:
 - (i) is NBN Connected after the date that is 12 months after the Region Ready For Service Date for the applicable Rollout Region for the purpose of acquiring only a voice telephony service or Equivalent Service from Telstra over the NBN Co Fixed Line Network; and
 - (ii) does not acquire a broadband service over the NBN from Telstra or any related body corporate of Telstra for a period of at least 3 months following the date of NBN Connection,

(each an **Eligible Fixed Line Connection Customer**).

38.2 NOT USED

38.3 The Department must pay Reasonable Connection Costs

- (a) If Telstra undertakes Required Cabling at a Service Address for an Eligible Fixed Line Connection Customer, the Department will compensate Telstra for the Reasonable Connection Costs that Telstra incurs in respect of that Eligible Fixed Line Connection Customer at that Service Address.
- (b) NOT USED
- (c) To claim reimbursement of Reasonable Connection Costs under **clause 38.3(a)**, within 21 days after the end of each calendar quarter Telstra must provide a claim for reimbursement to the Department which provides:
 - (i) full details of all Reasonable Connection Costs in respect of an Eligible Fixed Line Connection Customer at a Service Address that it seeks to recover; and
 - (ii) written certification that the relevant Eligible Fixed Line Connection Customer met the requirements of clause 38.1(a) or 38.1(b), as applicable (**Eligibility Certification**).
- (d) The Department may audit any claim for reimbursement received from Telstra. If the Department notifies Telstra that it intends to audit a claim, the audit will be

undertaken (and Telstra will cooperate with the Department in relation to that audit) in accordance with **clause 20**.

38.4 NOT USED

38.5 When payment for Required Cabling is not required

- (a) If Required Cabling is not required to be undertaken for an Eligible Fixed Line Connection Customer at a Service Address because:
- (i) the Eligible Fixed Line Connection Customer's existing CPE and/or socket at the Service Address is located sufficiently close to the ONT that it can be plugged directly into the ONT at the time of ONT installation without the requirement for additional cabling; or
 - (ii) the Eligible Fixed Line Connection Customer is prepared to relocate the existing CPE so that it can be plugged directly into the ONT at the time of ONT installation without the requirement to use and modify existing cabling,

there will be no payment for Required Cabling in respect of the Eligible Fixed Line Connection Customer at that Service Address.

- (b) Notwithstanding any other term in this Module, Telstra will not be entitled to make a claim for reimbursement, and the Department will not be required to pay Telstra, for the cost of any Required Cabling for an Eligible Fixed Line Connection Customer at a Service Address to the extent Telstra has charged the Eligible Fixed Line Connection Customer for that Required Cabling.
- (c) Not used.
- (d) Nothing in this Module requires Telstra to provide Required Cabling, or incur other Reasonable Connection Costs, to NBN Connect an Eligible Fixed Line Connection Customer at a Service Address to the extent required for that End User to acquire services from another RSP.

38.6 Determining Required Cabling

- (a) Subject to **clause 38.6(b)**, for an Eligible Fixed Line Connection Customer at a Service Address:
- (i) if at least one Mode 3 Device is used to provide a medical alert dialler service at that Service Address, the Required Cabling is the cabling required to connect the relevant ONT to:
 - (A) the existing first socket; or
 - (B) the entry point to the Service Address; or
 - (C) another point within the Service Address,

which complies with the Required Cabling Deployment Rules, so as to enable that Eligible Fixed Line Connection Customer at that Service Address to use one such Mode 3 Device via the voice telephony service to be provided over the NBN Co Fixed Line Network; or

- (ii) if **clause 38.6(a)(i)** does not apply and at least one article of CPE is connected to existing cabling at that Service Address, the Required Cabling is:

- (A) the connection of one article of CPE at that Service Address directly to the relevant ONT but only if such a connection is practicable, complies with the Required Cabling Deployment Rules and Telstra did not install the ONT at that Service Address; or
- (B) if **clause 38.6(a)(ii)(A)** does not apply, the cabling required to connect the relevant ONT to:
 - (1) the nearest existing socket; or
 - (2) the nearest point on existing cabling at which it is technically feasible to install a new socket; or
 - (3) another point within the Service Address,

which complies with the Required Cabling Deployment Rules, so as to enable that Eligible Fixed Line Connection Customer at that Service Address to use one such article of CPE to access the voice telephony service to be provided over the NBN Co Fixed Line Network.

- (b) The Required Cabling for an Eligible Fixed Line Connection Customer at a Service Address:
 - (i) where there is more than one means by which that cabling can be implemented, means the most cost effective and efficient means of implementing that cabling;
 - (ii) includes ancillary equipment, including sockets, adaptors, plates and tubing, used to configure, connect and protect the cabling; and
 - (iii) unless the Department agrees otherwise, only includes the minimum amount of cabling and ancillary equipment reasonably required to enable a voice telephony service to be provided to the Service Address over the NBN Co Fixed Line Network.
- (c) For the purposes of **clause 38.6(a)(i)** above, whether a Mode 3 Device is to be identified as a medical alert service will be determined by reasonable enquiry in accordance with the Required Cabling Deployment Rules.
- (d) In undertaking Required Cabling Telstra must comply with applicable technical standards, industry codes and other instruments as described in the Required Cabling Deployment Rules and that apply at law to Required Cabling activities.

38.7 Calculating Reasonable Connection Costs

The Reasonable Connection Costs in respect of an Eligible Fixed Line Connection Customer at a Service Address:

- (a) are the reasonable Costs incurred by Telstra in undertaking the Required Cabling for that Eligible Fixed Line Connection Customer at that Service Address;
- (b) unless otherwise agreed, will include:
 - (i) any connection charges for the NBN Connection used to supply the voice telephony service to the Eligible Fixed Line Connection Customer; and

- (ii) charges for the supply and installation of batteries for the relevant ONT, which Telstra pays NBN Co, to the extent Telstra is prohibited by law from passing through such charges to the Eligible Fixed Line Connection Customer;
- (c) will not include the cost of providing new or replacing CPE at that Service Address;
- (d) will be determined in accordance with the rate card agreed or determined pursuant to **clause 34.3** (as varied pursuant to clause 41(e)); and
- (e) excludes any amounts payable by NBN Co to Telstra in undertaking the Required Cabling.

39 Dial tone only period

- (a) Notwithstanding any other term in this Module, Telstra will, on and from the Disconnection Date for a Rollout Region, provide Soft Dial Tone in accordance with the requirements of the Migration Plan at a Service Address that is in the Fixed Line Footprint in that Rollout Region.
- (b) NOT USED

40 Payment

- (a) Within 30 days of receipt of an invoice from Telstra (such invoices to be issued not more often than calendar quarterly during the term of this Module), with the first payment being due 30 days after 1 October 2012, subject to **clause 40(b)**, the Department will pay to Telstra the Reasonable Connection Costs (if any) for all Service Addresses for which Telstra has submitted a claim for reimbursement in the previous calendar quarter under **clause 38.3(c)**.
- (b) The Department is not required to pay an amount to Telstra under **clause 40(a)** unless Telstra has provided the certification and information required under this Module to support a claim for reimbursement of that amount.
- (c) The Department may audit any claim for reimbursement received from Telstra. If the Department notifies Telstra that it intends to audit a claim, the audit will be undertaken (and Telstra must cooperate with the Department in relation to that audit) in accordance with **clause 20**.
- (d) If the parties disagree regarding any aspect of a claim by Telstra for payment under this Module, either party may refer the matter for expert determination in accordance with **clause 11.1**.
- (e) NOT USED
- (f) NOT USED
- (g) If the Department fails to make a payment of the amounts payable under this Module by the due date for payment, interest on the unpaid amount may be charged by Telstra at the Default Rate for the period from the due date for payment until the date that payment is received. For this purpose, interest on the unpaid amount will accrue daily and will compound annually.
- (h) All amounts payable under this Module are exclusive of GST.

41 Review

- (a) The parties will periodically review the effectiveness, scope and pricing of the requirements and procedures in this Module, including the Required Cabling Deployment Rules and the rate card referred to in **clause 34.3**.
- (b) In undertaking a review under **clause 41(a)**, the parties will take into account any material changes in Telstra's Costs of performing the relevant work. The parties acknowledge that, as a result of any such review, the costs payable by the Department to Telstra under this Module D may either be increased or reduced.
- (c) A review under **clause 41(a)** will take place at 12 month intervals from October 2017 and the parties will use reasonable endeavours to complete the review within 60 days from its commencement.
- (d) The parties will negotiate in good faith any changes to this Agreement that are identified as being required during a review under this **clause 41**.
- (e) If the parties are unable to reach agreement as to the outcomes of a review undertaken under **clause 41(a)** within 90 days of commencement of the review, either party may refer the matter for expert determination in accordance with **clause 11.1**.

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Transport, Regional Development, Communications and the Arts

AAT 2023/6715

Spence, Pip

From: Heazlett, Mark
Sent: Friday, 18 June 2010 6:06 PM
To: Tapley, Mark
Cc: Harris, Peter; Quinlivan, Daryl; Cullen, Marianne; Spence, Pip; Lyons, Colin
Subject: Options to generate \$190 m NPV [SEC=IN-CONFIDENCE:COMMERCIAL]
Security Classification: COMMERCIAL-IN-CONFIDENCE

Mark

We have looked at the payments that would be necessary to produce a \$190 million NPV for Telstra if delivered through an additional contribution to the USO Co budget.

Key assumptions that have been applied are:

- Discount rate of 10%
- Payments made over 10 years, matching length of USO contract
- Additional payments would reduce industry contributions of which Telstra would comprise 60%

The annual amount required has been calculated on the basis of payments starting in 2011/12 or 2013/14 (this would match the timing of the currently agreed Government contribution).

If payments commenced in 2011/12 the annual amount would need to \$52 million.

If payments commenced in 2013/14 the annual amount would increase to \$63 million.

Each calculation is based on there being ten payments of that amount, the difference is solely the additional periods of discount that are applied.

One approach to generating additional revenue to cover the payments would be the application of a levy for each phone number currently in operation. A charge of \$2 per annum could be expected to raise around \$70 million p.a., based on 25 million mobile services in use and 10 million fixed line services.

Mark Heazlett
6271 7299
0411 117829

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Transport, Regional Development, Communications and the Arts

23/06/2010

Spence, Pip

From: Hall, Mark J [Mark.Hall@team.telstra.com]
Sent: Tuesday, 20 April 2010 11:59 AM
To: Spence, Pip
Cc: Cullen, Marianne; Oldham, Rob J
Subject: Voice migration [SEC=IN-CONFIDENCE]
Attachments: Migration Cost Discussion v4 3.pdf

Pip,

Further to last night's email I have attached the Migration Cost paper Rob Oldham tabled with you late last month.

The CPE costs represent █% of the Deployment Cost and █% of the Migration costs as identified on page 12.

So the maths is as follows.

Total Specials Service = \$ █ (nominal)

Less Traffic Lights/Alarms \$ █

Remaining Special Services \$ █

CPE Deployment Costs = \$ █ x █% (see bottom of page 12) x █% = \$ █

CPE Migration Costs = \$ █ x █% (see bottom of page 12) x █% = \$ █

Total = \$ █ (there is a rounding in the % such that the number is \$ █).

This can also be reconciled with the \$ █ (nominal) attributed to USO co (\$ █ CPE, \$ █ traffic lights/alarms and \$ █ voice migration (wiring) and customer communication costs).

I hope this makes it clearer.

Regards

MARK HALL | Executive Director, Corporate Planning Accounting & Administration | (P) 03 9634 2900 | (M) 0417 542 771 | (F) 03 9632 5904

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CPE proportion

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Infrastructure DivisionBrief **XX****Definitive Agreements (DAs) and Commonwealth Agreements****Key points**

- The DAs and Commonwealth Agreements are commercially sensitive documents (and from Telstra's perspective are subject to ASX listing and disclosure rules) and are therefore subject to a tripartite confidentiality agreement. This agreement provides the Commonwealth with access to information on the DAs for the purpose of shareholder-related activities (noting the Commonwealth is not a party to the DAs). Similar arrangements were in place for the 2011 DAs.
- Because of these confidentiality requirements a cautious approach should be adopted in disclosing information that is not already in the public domain. The suggested approach to responding to detailed questions is:
 - Commercial matters should be referred to NBN Co
 - Questions of detail that are not appropriate for referral to NBN Co can be taken on notice.
- The amended DAs were signed on Sunday 14 December 2014.
- Amendments will come into effect once the Conditions Precedent are met; the 2011 DAs continue to operate until then.
- The key outcomes of the DAs are: relevant parts of Telstra's copper and HFC network will progressively transfer to NBN Co; NBN Co will have access to certain passive infrastructure (e.g. ducts) owned by Telstra; Telstra will progressively disconnect customers from its networks, facilitating its structural separation.
- Telstra shareholders have been 'kept whole', therefore a shareholder vote is not required.
- Telstra has released summaries of the amended DAs to the ASX (attached).

1. Question**How much will Telstra be paid under the amended DAs?****1. Answer**

- As noted in the information Telstra provided to investors, the amended DAs and Commonwealth Agreements are expected to deliver equivalent net present value on a like for like basis to the original agreements (\$11 billion post-tax as at June 2010).
- Telstra also noted that the original split between the value of the infrastructure payments, disconnection payments and the Commonwealth Agreements is broadly the same as the amended DAs (\$5 billion, \$4 billion and \$2 billion respectively).

Clearing Officer

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Date 6/5/2015

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2. Question

What were the key changes to the DAs and Commonwealth Agreements?

2. Answer

- There are two key changes to the DAs:
 1. The DAs have been amended so that they are ‘technology-neutral’, rather than FTTP-specific, to accommodate the MTM
 2. Telstra will progressively transfer ownership of relevant parts of its copper and HFC networks to NBN Co.
- The three Commonwealth Agreements – the TUSMA Agreement, the Retraining Deed and the Public Information Campaign on Migration Deed – were also amended so that they are ‘technology-neutral’.
- Additionally the TUSMA Deed was amended to:
 - reflect the Government’s decision to abolish TUSMA and transfer its functions (including the management of the Agreement) to the Department;
 - address operational issues that had arisen in the operation of the Agreement since July 2012; and,
 - include a compensation regime for Telstra if it incurs additional separation costs as a result of new regulation where the MTM rollout ceases after 75 per cent of premises are passed or adequately served.
- There were no changes to the 2011 Commonwealth Guarantee which will continue to apply to the amended DAs.

3. Question

What was the ACCC’s role?

3. Answer

- The ACCC was regularly briefed on a confidential basis as the negotiation progressed, and has provided its views on competition and consumer issues.
- The ACCC will need to approve Telstra’s varied Migration Plan.
- On 20 March 2015 Telstra submitted its revised Migration Plan to the ACCC for assessment and approval. The ACCC released a discussion paper on 1 April seeking stakeholder views. Submissions closed on 4 May 2015.
- The ACCC is considering the plan in light of stakeholder feedback.

4. Question

Clearing Officer

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When will the amended agreements come into effect?**4. Answer**

- The amended DAs will come into effect when the Conditions Precedent have been met. The Conditions Precedent include tax rulings and ACCC approval of Telstra's varied Migration Plan.
- As Telstra noted in its advice to investors, the parties hope to have all Conditions Precedent satisfied in the first half of this year.

5. Question**How have reductions in remediation been treated?****5. Answer**

- Under the original DAs Telstra was responsible for remediating all ducts for which NBN Co required access.
- It is correct that fewer ducts will require remediation under the MTM than the former FTTP approach. As a consequence, Telstra's remediation obligations have been reduced and, as noted in its advice to investors, Telstra will provide a remediation credit to NBN Co over the rollout period.

6. Question**What additional contracts will Telstra be getting outside the DAs? Was this part of the deal?****6. Answer**

- Telstra and NBN Co signed a contract to provide planning and design services on 19 December 2014. The contract is for up to four years and up to approximately \$390 million.
- Telstra was awarded this contract following a competitive process which was conducted separately to the DA negotiations.
- It is open to Telstra to participate in other NBN Co procurement activities. Questions about NBN Co's procurement are best directed to NBN Co.

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