OpenAI

OpenAI Services Agreement

This OpenAI Services Agreement ("Agreement") is entered as of the Effective Date between the organization agreeing to these terms ("Customer") and the OpenAI Contracting Party defined below ("OpenAI"). In this Agreement, OpenAI and Customer are each referred to as a "Party" and collectively as the "Parties." Capitalized terms not defined in the Agreement have the meanings provided in the Order Form, Customer represents it is lawfully able to enter into this Agreement and, if it is entering into the Agreement for an entity, that it has legal authority to bind that entity. By clicking "I agree," accepting the Order Form, or using the Services, Customer agrees to this Agreement.

1. Services.

    1.1. Services Term. OpenAI will deliver the Services to Customer for the Services Term. The Services Term will be listed on the Order Form. Unless the Parties agree otherwise in writing, increases in the Services purchased during a Services Term will have a prorated term ending concurrently with the then-current Services Term.

    1.2. Renewal. Renewal Terms, if any, and whether the Services auto renew, will be listed on the applicable Order Form. Notice of non-renewal or scope reduction must be given at least thirty days before the start of the next Renewal Term. If Customer reduces its license count, quantity, or minimum commitment, OpenAI may adjust or remove discounts offered to Customer based on its prior purchase.

    1.3. Authorized Purchasers.

        a. Provisioning. To provision the Services, OpenAI requires the email address of the initial Authorized Purchaser to be included on the Order Form. Failure to include correct Authorized Purchaser information on the Order Form may result in delays.

        b. Purchases. The Services may be configured to allow Authorized Purchasers to purchase additional licenses, quantities, or volumes of Services. Customer is responsible for understanding the Services settings that allow additional purchases. OpenAI will charge Customer for additional licenses, quantities, or volumes of Services for the remainder of the then-current Services Term based on Customer's then-current price unless otherwise set forth on the Order Form.

    1.4. Affiliates.

        a. Usage. OpenAI provisions the Services to specific entities using dedicated workspaces and organizational IDs. Customer Affiliates may use the Services under Customer's Account, which means Customer and its Affiliates usage will occur in the same workspace and under the same organizational ID. Customer will be responsible and liable for all acts and omissions of its Affiliates that access the Services in connection with this Agreement.

        b. Separate Purchases. If Customer Affiliates' purchase and use of the Services is intended to be separate from Customer's, then the Affiliate must execute a separate Order Form. OpenAI will then create a separate workspace and organizational ID for that Affiliate and provision the Services accordingly. If Customer Affiliates enter into Order Forms under this Agreement they will be bound by this Agreement.

    1.5. Usage-based Services. If Customer purchases Services based on usage, Customer acknowledges that OpenAI will charge Customer the Fees for the Services based on the usage calculated by OpenAI.

2. Provision.

    2.1. General. The Agreement governs Customer's access to and use of the Services. Customer may access and use the Services in accordance with the Agreement.

    2.2. Use. OpenAI grants Customer a non-exclusive right to access and use the Services during the Term. This includes the right to use OpenAI's API to integrate the Services into Customer Applications and to make Customer Applications available to End Users.

    2.3. Modifications. OpenAI may update the Services periodically. If an OpenAI update materially reduces the Services functionality, OpenAI will notify Customer at the Account email address. Within five business days of receipt of this notice, Customer may choose to terminate the Agreement by providing thirty days written notice. This termination right will not apply to updates made to features provided on a beta or evaluation basis.

3. Customer Obligations.

    3.1. Customer Account. Customer must provide accurate and current Account information. Customer will not share Account access credentials or individual login credentials between multiple users. Customer may not resell or

lease access to its Account or any End User Account. Customer will promptly notify OpenAI if it becomes aware of unauthorized access to the Account or the Services.

3.2. <u>End Users</u>. End User Accounts may only be provisioned to, registered for, and used by, a single End User. Customer is responsible for all activities that occur under its Account, including the activities of End Users with an End User Account or who access the Services through a Customer Application. Customer will obtain and maintain from End Users any consents necessary to allow Administrators to engage in the activities described in the Agreement and to allow OpenAI to deliver the Services.

3.3. <u>Restrictions</u>. Customer will not, and will not permit End Users to: (a) use the Services or Customer Content in a way that violates applicable laws or OpenAI Policies; (b) use the Services or Customer Content in a way that violates third parties' rights; (c) allow minors to use OpenAI Services without consent from their parent or guardian; (d) Reverse Engineer any aspect of the Services or the systems used to provide the Services; (e) except for a Permitted Exception, use Output to develop artificial intelligence models that compete with OpenAI's products and services; (f) extract data from the Services other than as permitted through the Services; (g) buy, sell, or transfer API keys from, to, or with a third party; (h) interfere with or disrupt the Services, including circumvent any rate limits or restrictions or bypass any protective measures or safety mitigations for the Services; (i) violate or circumvent Usage Limits or otherwise configure the Services to avoid Usage Limits.

3.4. <u>Third-Party Services</u>. Third-Party Services may be available through the Services, which Customer may elect to use in its sole discretion. By accessing a Third-Party Service, Customer agrees to the applicable Third-Party Service Terms. Customer's access or use of Third-Party Services are governed by this Agreement and the relevant Third-Party Service Terms.

4. <u>Customer Content</u>.

4.1. <u>Generally</u>. Customer and Customer's End Users may provide Input and receive Output. As between Customer and OpenAI, to the extent permitted by applicable law, Customer: (a) retains all ownership rights in Input; and (b) owns all Output. OpenAI hereby assigns to Customer all OpenAI's right, title, and interest, if any, in and to Output.

4.2. <u>OpenAI Obligations</u>. OpenAI will only use Customer Content as necessary to provide Customer with the Services, comply with applicable law, enforce the OpenAI Policies, and prevent abuse. OpenAI will not use Customer Content to develop or improve the Services, unless Customer explicitly agrees to such use.

4.3. <u>Customer Obligations</u>. Customer is responsible for all Input and represents and warrants that it has all rights, licenses, and permissions required to provide Input to the Services. Customer is solely responsible for all use of the Outputs and for evaluating the accuracy and appropriateness of Output for Customer's use case.

4.4. <u>Similarity of Output</u>. Due to the nature of OpenAI's Services and artificial intelligence generally, Output may not be unique, and other users may receive similar content from OpenAI's services. Responses that are requested by and generated for other users are not considered Customer's Output.

5. <u>Security and Privacy</u>.

5.1. <u>Security Measures</u>. OpenAI will comply with the Security Measures. OpenAI may periodically update the Security Measures. If OpenAI updates the Security Measures in a manner that materially diminishes the administrative, technical, or physical security features of the Services taken as a whole, Customer may elect to terminate the Agreement and associated Order Forms by providing written notice to OpenAI within five business days of the update.

5.2. <u>Audit Reports</u>. OpenAI has completed audits, conducted by an independent auditor, that evaluated the design and effectiveness of OpenAI security policies, procedures, and controls for the Services. Upon Customer's written request, but no more than once per year, OpenAI will provide Customer a copy of the most recent Audit Reports, which will be deemed OpenAI Confidential Information.

5.3. <u>Privacy</u>. If Customer uses the Services to process Personal Data, OpenAI and Customer will comply with the DPA, which is incorporated by this reference into the Agreement.

5.4. <u>HIPAA</u>. Customer agrees not to use the Services to create, receive, maintain, transmit, or otherwise process Protected Health Information, unless it has signed the Healthcare Addendum. NOTWITHSTANDING THE FOREGOING, NOT ALL SERVICES OFFERED BY OPENAI ARE DESIGNED FOR PROCESSING PROTECTED HEALTH INFORMATION. IF CUSTOMER USES A SERVICE THAT IS NOT DESIGNED FOR PROCESSING PROTECTED HEALTH INFORMATION, CUSTOMER MAY NOT USE THE SERVICES TO STORE, TRANSMIT, OR PROCESS THIS INFORMATION.

6. Payment.

   6.1. Fees. Customer will pay OpenAI or Customer's reseller the applicable Fees in the currency and pursuant to the payment terms on the Order Form. Customer authorizes OpenAI, or Customer's reseller if applicable, to charge Customer for all applicable Fees using the payment method on the Account. Fees are non-refundable except as required by law or as otherwise specifically permitted in the Agreement. If Customer's Order Form includes a minimum commitment, the minimum commitment amount is non-cancellable except as required by law or as otherwise specifically permitted in the Agreement.

   6.2. Payment. Customer will pay OpenAI invoices on the payment interval set forth in the Order Form. OpenAI may suspend or terminate the Services if Fees are past due. Customer will provide complete and accurate billing and contact information to OpenAI.

   6.3. Taxes. Fees are exclusive of taxes, which OpenAI, or Customer's reseller, will charge as required by applicable law in connection with the Services. OpenAI, or Customer's reseller, will use the name and address in the Account as the place of supply for tax purposes. All Fees under this Agreement shall be paid in full, without any deduction or withholding for taxes, levies, duties, tariffs, or other charges of any nature imposed by any governmental authority. If any such deduction or withholding is required by law, Customer shall increase the payment to OpenAI, or to Customer's reseller, so that the net amount received equals the amount invoiced.

   6.4. Disputes. To dispute an invoice Customer must: (a) contact ar-enterprise@openai.com within thirty days of the date the disputed invoice was issued; and (b) pay all undisputed amounts. Overdue undisputed amounts may be subject to a finance charge of 1.5% of the unpaid balance per month.

   6.5. Service Credits. Customer may need to prepay for Services by purchasing Service Credits. Service Credits are subject to the Service Credit Terms.

   6.6. Corrections. Price changes on the Pricing Page will be effective fourteen days after they are posted. OpenAI has the right to correct pricing errors or mistakes even after issuing an invoice or receiving payment.

7. Confidentiality.

   7.1. Use and Nondisclosure. Recipient agrees it will: (a) only use Discloser's Confidential Information to exercise its rights and fulfill its obligations under this Agreement; (b) take reasonable measures to protect the Confidential Information; and (c) not disclose the Confidential Information to any third party except as expressly permitted in this Agreement.

   7.2. Exceptions. The obligations in Section 7.1 do not apply to information that: (a) is or becomes generally available to the public through no fault of Recipient; (b) was in Recipient's possession or known by it prior to receipt from Discloser; (c) was rightfully disclosed to Recipient without restriction by a third party; or (d) was independently developed without use of Discloser's Confidential Information.

   7.3. Permitted Disclosure. Recipient may disclose Confidential Information only to its Affiliates, employees, contractors, and agents who have a need to know and who are bound by confidentiality obligations at least as restrictive as those in this Agreement. Recipient will be responsible for any breach of this Section 7 by its employees, contractors, and agents. Recipient may disclose Confidential Information to the extent required by law, if Recipient uses reasonable efforts to notify Discloser, to the extent permitted, prior to doing so.

   7.4. Remedies. Recipient acknowledges that a disclosure of Confidential Information in violation of these terms would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure by Recipient, Discloser will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

8. Suspension.

   8.1. Of End User Accounts. If an End User: (a) violates the Agreement; or (b) causes, or will cause, a Security Emergency, then OpenAI may request that Customer suspend or terminate the relevant End User account. If Customer fails to promptly suspend or terminate the End User account, then OpenAI may do so.

   8.2. Of the Services. OpenAI may limit or suspend Customer's access to the Services if: (a) it is required to do so by law; (b) Customer violates the Agreement or OpenAI Policies; or (c) doing so is necessary to prevent or terminate a Security Emergency. OpenAI will use reasonable efforts to notify Customer before limiting to or suspending the Services pursuant to the preceding sentence but may do so without prior notice to the extent reasonably necessary. OpenAI will use reasonable efforts to: (i) narrowly tailor a limitation or suspension to prevent or terminate the Security Emergency; and (ii) cooperate with Customer to promptly restore access to the Services once it verifies Customer has resolved the condition requiring suspension.

9. IP Rights.

   9.1. Reservation of Rights. Except as expressly set forth herein, the Agreement does not grant: (a) OpenAI any IP Rights in Customer Content; or (b) Customer any IP Rights in the Services. Customer obtains only a limited right to use the Services, and no ownership rights are transferred to Customer or its End Users under this Agreement.

   9.2. Limited Permission. Customer grants OpenAI only the limited rights that are reasonably necessary for OpenAI to deliver the Services. This limited permission also extends to subcontractors or sub-processors.

   9.3. Feedback. If Customer provides Feedback, Customer grants OpenAI the right to use and exploit Feedback without restriction or compensation.

10. No Publicity. Except with express prior written permission in each instance, neither Party will: (i) include the other Party's name or logo on their websites, media, or marketing materials; or (ii) make any public statement about its relationship with the other Party or this Agreement.

11. Term and Termination.

    11.1. Agreement Term. The Agreement will remain in effect for the Term.

    11.2. Termination. Either Party may terminate this Agreement, including all Order Forms, upon written notice if the other party: (a) materially breaches this Agreement and fails to cure the breach within thirty days after receipt of written notice; or (b) ceases its business operations or becomes subject to insolvency proceedings.

    11.3. Effects of Termination. If this Agreement terminates: (a) the rights granted by OpenAI to Customer will cease immediately; and (b) OpenAI will delete all Customer Content from its systems within thirty days, unless: (i) OpenAI is legally required to retain it; or (ii) Customer has agreed otherwise in writing. Termination or expiration will not affect any rights or obligations, including the payment of amounts due, which have accrued under this Agreement up to the date of termination. In addition, except for a termination by Customer for cause, if this Agreement terminates any unpaid minimum commitment amounts set forth on the Order form will become immediately due. Despite anything to the contrary in this Agreement, OpenAI may retain Abusive Customer Content, or, if Customer's access to the Services is suspended via Section 8 or terminated via Section 11, share information related to Abusive Customer Content, as required by law, or as reasonably necessary to protect the Services or any third party from harm.

    11.4. Survival. The following provisions will survive termination or expiration of the Agreement: 6.2 (Payment), 9 (IP Rights), 11.3 (Effects of Termination), 11.4 (Survival), 12 (Warranties; Disclaimers), 13 (Indemnification), 14 (Limitation of Liability), 16 (Miscellaneous).

12. Warranties; Disclaimer.

    12.1. Warranties. OpenAI warrants that, during the Term, when used in accordance with this Agreement, the Services will conform in all material respects with the Documentation.

    12.2. Disclaimer. SUBJECT TO SECTION 12.1, THE SERVICES ARE PROVIDED "AS IS." TO THE EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, OPENAI AND ITS AFFILIATES AND LICENSORS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT. OPENAI MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, THAT CUSTOMER CONTENT WILL BE ACCURATE, THAT DEFECTS WILL BE CORRECTED, OR REGARDING ANY THIRD-PARTY SERVICES. OPENAI WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY CUSTOMER CONTENT, THIRD-PARTY SERVICES, THIRD-PARTY CONTENT, OR NON-OPENAI SERVICES (INCLUDING FOR ANY DELAYS, INTERRUPTIONS, TRANSMISSION ERRORS, SECURITY FAILURES, AND OTHER PROBLEMS CAUSED BY THESE ITEMS).

    12.3. Beta Services. Despite anything to the contrary in the Agreement: (a) Customer may choose to use Beta Services in its sole discretion; (b) Beta Services may not be supported and may be changed at any time without notice; (c) Beta Services may not be as reliable or available as the Services; (d) Beta Services have not been subjected to the same Security Measures and auditing as the Services; and (e) OPENAI WILL HAVE NO LIABILITY ARISING OUT OF OR IN CONNECTION WITH BETA SERVICES – USE AT YOUR OWN RISK.

13. Indemnification.

    13.1. By OpenAI. OpenAI agrees to indemnify, defend, and hold Customer harmless against any liabilities, damages and costs (including reasonable attorneys' fees) payable to a third party arising out of a Claim alleging that the Services infringe any third-party IP Right. This excludes claims to the extent arising from: (a) combination of any

Services with products, services, or software not provided by OpenAI or on OpenAI's behalf; (b) modification of any Services by any party other than OpenAI; (c) Customer Content; (d) Customer Applications (if any and the claim would not have arisen but for the Customer Application). In addition, the Service-Specific Terms Indemnity, as of the Effective Date, is included in this Agreement, is not subject to any liability cap, and OpenAI may not materially reduce Customer's protections under the Service-Specific Terms Indemnity without Customer's written agreement.

13.2. <u>By Customer</u>. Customer agrees to indemnify, defend, and hold OpenAI and its affiliates and licensors harmless against any liabilities, damages, and costs (including reasonable attorneys' fees) payable to a third party arising out of a Claim related to: (a) use of the Services in violation of this Agreement; (b) Customer Applications, if any; or (c) Customer Content.

13.3. <u>Mitigation</u>. If OpenAI reasonably believes that all or any portion of the Services is likely to become the subject of an infringement Claim, OpenAI will: (a) obtain, at OpenAI's expense, the right for Customer to continue using the Services in accordance with this Agreement; (b) replace or modify the allegedly infringing Service; or (c) if (a) and (b) are not commercially practicable, OpenAI may, in its sole discretion, terminate this Agreement upon written notice to Customer and refund any prepaid amounts for unused Services. Customer will promptly comply with all reasonable instructions provided by OpenAI with respect to the above, including any instruction to replace, modify, or cease use of the Service.

13.4. <u>Procedure</u>. A party seeking indemnity will provide the indemnifying party with prompt written notice upon becoming aware of any claim, reasonable cooperation in the defense of or investigation of the claim and allow the indemnifying party sole control of defense and settlement of the claim including selection of counsel, provided that the party seeking indemnity is entitled to participate in its own defense at its sole expense. The indemnifying party cannot enter any settlement or compromise of any claim without prior written consent of the other party, which will not be unreasonably withheld, except that the indemnifying party may without consent enter any settlement of a claim that resolves the claim without liability to the other party, impairment to any of the other party's rights, or requiring the other party to make any admission of liability. THE INDEMNITIES ARE A PARTY'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S IP RIGHTS.

14. <u>Limitation of Liability</u>.

14.1. <u>Limitation on Indirect Liability</u>. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR: (A) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (B) CUSTOMER'S BREACH OF SECTION 3.3 (RESTRICTIONS); (C) OPENAI'S BREACH OF SECTION 5.1 (SECURITY MEASURES); OR (D) EITHER PARTY'S BREACH OF SECTION 7 (CONFIDENTIALITY); NEITHER CUSTOMER NOR OPENAI OR EITHER PARTY'S AFFILIATES OR LICENSORS WILL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14.2. <u>Limitation on Amount of Liability</u>. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR: (A) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (B) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR (C) CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S TOTAL LIABILITY UNDER THE AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT CUSTOMER PAID TO OPENAI DURING THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATIONS APPLY DESPITE ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

15. <u>Dispute Resolution</u>.

15.1. <u>Mandatory Arbitration</u>. Customer and OpenAI agree to resolve any Disputes, regardless of when they arose, even if it was before this Agreement existed, through final and binding arbitration.

15.2. <u>Informal Dispute Resolution</u>. OpenAI wants to understand and address Customer concerns prior to formal legal action. The Parties agree to try to resolve Disputes informally before filing a claim against one another. Customer will do so by completing the Informal Dispute Resolution Form. OpenAI will do so by notifying Customer at the Account email address. If the Parties cannot resolve a Dispute within sixty days, either Party may initiate arbitration. Both Parties also agree to attend an individual settlement conference if either Party requests one during this time. Any statute of limitations will be tolled during this informal resolution process.

15.3. <u>Generally</u>. Customer and OpenAI agree to resolve any Disputes through final and binding arbitration, except as set forth below. Either Party may commence binding arbitration through NAM, or, if NAM is not available, an alternative arbitral forum selected by the Parties. The initiating Party will pay all filing fees for the arbitration and

payment for other administrative and arbitrator's costs will be governed by the arbitration provider's rules. If a Party's claim is determined to be frivolous, the Party who initiated the frivolous claim is responsible for reimbursing the other Party for all administrative, hearing, and other fees incurred as a result of the frivolous claim.

15.4. Procedure. The arbitration will be conducted by telephone, based on written submissions, video conference, or in person in San Francisco, California or at another mutually agreed location. The arbitration will be conducted by a sole arbitrator by NAM under its then-prevailing rules. All issues are for the arbitrator to decide, except a California court has the authority to determine: (a) if a provision of this arbitration section should be severed and the consequences of that severance; (b) whether the Parties have complied with conditions precedent to arbitration; and (c) whether an arbitration provider is available to hear the arbitration. The amount of any settlement offer will not be disclosed to the arbitrator by either party until after the arbitrator determines the final award, if any.

15.5. Exceptions. Nothing in this Agreement requires arbitration of the following claims: (a) individual claims brought in small claims court; and (b) injunctive or other equitable relief to stop unauthorized use or abuse of the Services or intellectual property infringement.

15.6. No Class Actions. Disputes must be brought on an individual basis only and may not be brought as a plaintiff or class member in any purported class, consolidated, or representative proceeding. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed. If for any reason a Dispute proceeds in court rather than through arbitration, each Party knowingly and irrevocably waives any right to trial by jury in any action, proceeding, or counterclaim. This does not prevent either Party from participating in a class-wide settlement of claims.

15.7. Batch Arbitration. If twenty-five or more claimants represented by the same or similar counsel file demands for arbitration raising substantially similar Disputes within ninety days of each other, then Customer and OpenAI agree that NAM will administer them in Batches, unless there are less than fifty claimants in total or after batching, which will comprise a single Batch. NAM will administer each Batch as a single consolidated arbitration with one arbitrator, one set of arbitration fees, and one hearing held by videoconference or in a location decided by the arbitrator for each Batch. If any part of this section is found to be invalid or unenforceable as to a particular claimant or Batch, it will be severed and arbitrated in individual proceedings.

15.8. Severability. If any part of this Section 15 is found to be illegal or unenforceable, the remainder will remain in effect, except that if a finding of partial illegality or unenforceability would allow class or representative arbitration, this Section 15 will be unenforceable in its entirety. Nothing in this section will be deemed to waive or otherwise limit the right to seek public injunctive relief or any other non-waivable right, pending a ruling on the substance of that claim from the arbitrator.

16. Miscellaneous.

16.1. Entire Agreement. This Agreement is the entire agreement between Customer and OpenAI with respect to its subject matter and supersedes all prior or contemporaneous agreements, communications and understandings, whether written or oral. This Agreement hereby incorporates by this reference the OpenAI Policies and relevant Order Forms. Customer agrees that any terms and conditions contained in any purchase order Customer sends to OpenAI will not apply to this Agreement and are null and void.

16.2. Conflicting Terms. If there is a conflict between the documents that make up the Agreement, the documents will control in the following order, the: (a) Order Form; (b) Service-Specific Terms; (c) Agreement; and (d) OpenAI Policies.

16.3. Governing Law. This Agreement will be governed by the Governing Laws. All claims arising out of or relating to this Agreement will be brought exclusively in the Venue.

16.4. Severability. Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.

16.5. Notices. Notices must be sent via email, first class, airmail, or overnight courier and are deemed given when received. Notices to Customer may also be sent to the applicable Account email address and are deemed given when sent. Notices to OpenAI must be sent to OpenAI Legal at contract-notices@openai.com, with a copy to: (a) if OpenAI, L.L.C., 1455 3rd Street, San Francisco, California 94158; or (b) if OpenAI Ireland Ltd, 1st Floor, The Liffey Trust Centre, 117-126 Sheriff Street Upper, Dublin 1, D01 YC43, Ireland.

16.6. Waiver. A waiver of any default is not a waiver of any subsequent default.

16.7. <u>Assignment</u>. This Agreement cannot be assigned other than as permitted under this Section 16.7 (Assignment). OpenAI may assign this Agreement to an Affiliate without notice or Customer consent. Either Party may assign this Agreement to a successor to substantially all the respective party's assets or business, provided the assigning party provides at least thirty days prior written notice of the assignment. This Agreement will be binding upon the parties and their respective successors and permitted assigns.

16.8. <u>No Agency</u>. OpenAI and Customer are not legal partners or agents but are independent contractors.

16.9. <u>Force Majeure.</u> Except for payment obligations, neither Customer nor OpenAI will have any liability for failures or delays resulting from conditions beyond Customer's or OpenAI's reasonable control, including but not limited to governmental action or acts of terrorism, earthquake or other acts of God, labor conditions, or power failures.

16.10. <u>No Third-Party Beneficiaries</u>. There are no intended third-party beneficiaries to this Agreement, and it is Customer and OpenAI's specific intent that nothing contained in this Agreement will give rise to any right or cause of action, contractual or otherwise, in or on behalf of any third party.

16.11. <u>Trade Controls</u>. Customer is solely responsible for ensuring that its use of the Services complies with applicable trade laws, including sanctions and export control laws. Customer's Input may not include material or information that requires a government license for release or export. Customer may not use the Services in or for the benefit of, or export or re-export the Services to, any U.S. embargoed countries or to anyone on a Restricted Party List. Customer represents and warrants that Customer and End Users are not located in any U.S. embargoed countries, are not identified on any Restricted Party List, and that Customer will comply with applicable export control laws, including any "know your customer" requirements or obligations applicable to Customer's End Users.

16.12. <u>Geographical Limitations on Use</u>. Customer and End Users may not access or offer access to the Services outside of the Supported Countries and Territories. A violation of this Section 16.12 may result in Services suspension under Section 8.

16.13. <u>Updates</u>.

    a. <u>Generally</u>. OpenAI may update this Agreement, or OpenAI Policies, by providing Customer with reasonable notice, including by posting the update on OpenAI's website. If OpenAI determines in its sole judgment that an update materially impacts Customer's rights or obligations, OpenAI will provide Customer at least thirty days' notice before the update is effective, unless the update is necessary for OpenAI to comply with applicable law, in which case OpenAI will provide Customer with as much notice as reasonably possible. Any other updates will be effective on the date OpenAI posts the updated Agreement or OpenAI Policy. Customer's continued use of, or access to, the Services after an update is effective constitutes acceptance of the update. If Customer does not agree with an update, Customer may stop using the Services or terminate this Agreement under Section 11.

    b. <u>Exceptions</u>. Except for an update to comply with applicable law, updates to this Agreement or the OpenAI Policies will not apply to: (i) Disputes between Customer and OpenAI arising prior to the update; or (ii) Order Forms signed by Customer and OpenAI (as opposed to an automated ordering page) prior to OpenAI notifying Customer of the update. However, to the extent an update relates to a Service or feature launched after an Order Form is signed it will be effective upon Customer's first use of that Service

16.14. <u>Government Entity Rights</u>. This Section 16.15 applies to Government Entities. For U.S. federal Government Entities, the Services are "commercial computer software" as defined at 48 C.F.R. § 2.101 and 48 C.F.R. § 252.227-7014(a)(1) and as the term is used in 48 C.F.R. §§ 12.212 and 227.7202, and related services are "commercial services" as defined in 48 C.F.R. § 2.101. The Services and Documentation are: (a) provided to Government Entity Customers and End Users, for use by the Government Entity or on its behalf; (b) subject to this Agreement and with only those rights as are granted to all other Customers and End Users, except to the limited extent prohibited by applicable law.

17. <u>Definitions</u>.

"<u>Abusive Customer Content</u>" means Inputs or Outputs that violate Section 3.3.

"<u>Account</u>" means an administrative account provided to Customer by OpenAI for the purpose of administering the Services.

"<u>Administrator</u>" means a Customer designated End User with administrative privileges.

"<u>Account Console</u>" means the online tool provided by OpenAI to Customer for use in administering the Services.

"Affiliate" means with respect to either Party, any other person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, that Party.

"API" means OpenAI's application programming interface.

"Audit Reports" means the third-party audit reports for the Services.

"Authorized Purchaser" means a Customer employee designated by Customer to act as an authorized purchaser of the Services. Customer can designate Authorized Purchasers in an offline Order Form or in the Admin Console. Administrators are Authorized Purchasers. Authorized Purchasers may be periodically updated by Customer in the Account Console.

"Batch" means, for purposes of Section 15.7, a group of up to 50 claimants.

"Beta Services" means services or features identified as alpha, beta, preview, early access, or evaluation, or words or phrases with similar meanings.

"Confidential Information" means any business, technical or financial information, materials, or other subject matter disclosed by Discloser to Recipient that is: (a) identified as confidential at the time of disclosure; or (b) should be reasonably understood by Recipient to be confidential under the circumstances. Confidential Information includes Customer Content.

"Claim" means legal proceedings filed by a third party.

"Customer Application" means Customer's applications, products, or services that integrate with an OpenAI API.

"Customer Content" means the Input and the Output.

"Discloser" means the Party that discloses Confidential Information to the other under this Agreement.

"Dispute" means a claim by a Party arising out of or relating to this Agreement or the Services.

"Documentation" means the documentation OpenAI provides to Customer or otherwise makes publicly available.

"DPA" means the OpenAI data processing addendum at: https://openai.com/policies/data-processing-addendum/.

"End User" means any party: (a) who accesses the Services under Customer's Account; or (b) who uses Customer Applications. End Users may include Customer's and its Affiliate's employees, consultants, customers, agents, representatives, students or any other person authorized by Customer to use the Services through Customer's Account.

"End User Account" means an account for an End User under Customer's Account.

"Feedback" means any feedback provided by Customer to OpenAI regarding the Services.

"Fees" means all fees charged to Customer's Account in accordance with an Order Form, or if an Order Form does not exist, then according to the Pricing Page.

"Governing Laws" means: (a) for Customers in the EEA, Switzerland, or UK, the laws of Ireland; and (b) for all other Customers, the laws of the State of California, excluding California's conflicts of law rules or principles.

"Government Entity" means any nation or government, any state, municipality, or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau or court, whether domestic, foreign or multinational, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any employee or official thereof.

"Healthcare Addendum" means the OpenAI Healthcare Addendum and Business Associate Agreement provided by OpenAI to Customer.

"Informal Dispute Resolution Form" means the form located at this link.

"Initial Term" means the initial term for the Services beginning on the Start Date and continuing for the duration set forth on the Order Form.

"Input" means Customer and Customer's End Users input to the Services.

"IP Rights" means all registered or unregistered intellectual property rights throughout the world, including rights in patents, copyrights, trademarks, trade secrets, designs, databases, domain names, and moral rights.

"NAM" means National Arbitration and Mediation.

"OpenAI Contracting Party" means: (a) OpenAI, LLC, for Customers located outside the EEA or Switzerland; (b) OpenAI Ireland Ltd. for Customers located in the EEA or Switzerland; or (c) OpenAI Public Sector, LLC if designated on the Order Form.

"OpenAI Policies" means the Service-Specific Terms, Sharing and Publication Policy, and Usage Policies. The version of OpenAI Policies applicable to Customer are those in effect on the most recent effective date between either the Agreement, Customer's most recent Order Form, or Services renewal. If Customer elects to use new Services added to the Service-Specific Terms after the most recent effective date in the preceding sentence, then the OpenAI Policies in effect as of that Customer use will apply.

"Order Form" means: (a) when purchasing from OpenAI, the ordering document signed by Customer and OpenAI or OpenAI webpage that Customer uses to purchase the Services; or (b) when purchasing from a reseller, the ordering document signed by Customer and its reseller or reseller's webpage Customer uses to purchase the Services.

"Output" means output from the Services based on the Input.

"Permitted Exception" means Customer using Output to: (a) develop artificial intelligence models primarily intended to categorize, classify, or organize data (e.g., embeddings or classifiers), if these models are not distributed or made commercially available to third parties; and (b) fine tune or customize models provided as part of OpenAI's fine-tuning or other Services set forth on the Pricing Page.

"Personal Data" is as defined in the DPA.

"Pricing Page" means the pages available at https://openai.com/api/pricing/ or https://openai.com/chatgpt/pricing/.

"Protected Health Information" is as defined under the HIPAA Privacy Rule (45 C.F.R. Section 160.103).

"Recipient" means the Party receiving Confidential Information from the Discloser.

"Renewal Term" means a renewal term for the Services following either the Initial Term, or a previous Renewal Term. Note that if Customer renews without a new Order Form, the duration of that Renewal Term will be the same duration of the immediately preceding Initial Term or Renewal Term.

"Restricted Party List" means the U.S. Office of Foreign Assets Control's ("OFAC") list of Specially Designated Nationals (aka the "SDN List"), the U.S. Bureau of Industry and Security's ("BIS") Denied Persons List and Entity List, and any other applicable restricted party lists promulgated by OFAC, BIS, or other agencies of comparable jurisdiction, inside or outside the U.S., now or in the future.

"Reverse Engineer" means reverse assemble, reverse compile, decompile, translate, engage in model extraction or stealing attacks, or otherwise attempt to discover the source code or underlying components of the Services, algorithms, and systems of the Services (except to the extent these restrictions are contrary to applicable law).

"Security Emergency" means use of the Services by Customer or a Customer End User that could reasonably result in a security risk, credible risk of harm, infringement of third-party rights, or liability to OpenAI, the Services, or a third party.

"Security Measures" means the security measures available at: cdn.openai.com/osa/security-measures.pdf

"Service Credits" means, for the Services, either credits purchased by Customer or promotional credits provided by OpenAI to Customer.

"Service Credit Terms" means the terms available at: https://openai.com/policies/service-credit-terms/.

"Services" means OpenAI's services for businesses, enterprises, or developers made available for purchase or use in Customer's Account, along with any of OpenAI's associated software, tools, developer services, documentation, and websites, but excluding any Third-Party Service.

"Services Term" means the Initial Term and all Renewal Terms.

"Service-Specific Terms" means the terms specific to certain services at: https://openai.com/policies/service-terms.

"Service-Specific Terms Indemnity" means OpenAI's indemnities included in the Service-Specific Terms.

"Sharing and Publication Policy" means the terms at: https://openai.com/policies/sharing-publication-policy.

"Start Date" means the date an Initial Term, or Renewal Term, begins. Start Dates are listed on the Order Form. Note that if Customer renews without a new Order Form, the Start Date for that Renewal Term will be calculated based on the original Start Date.

"Supported Countries and Territories" means the countries and territories for which OpenAI supports access to API Services and our ChatGPT services. These countries and territories are available at:

https://help.openai.com/en/articles/5347006-openai-api-supported-countries-and-territories (for API) or https://help.openai.com/en/articles/7947663-chatgpt-supported-countries (for ChatGPT), and may be updated from time to time.

"Term" means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of: (i) the end of the Services Term; or (ii) termination of the Agreement as set forth herein.

"Third-Party Services" means products, services, or content offered by parties other than OpenAI through the Services.

"Third-Party Service Terms" means any additional terms applicable to the Third-Party Service.

"Usage Limits" means End User, messaging, token, throughput rate, or other limits on Customer's use of the Services as described in the applicable Order Form or Documentation.

"Usage Policies" means the usage policies at: https://openai.com/policies/usage-policies.

"Venue" means: (a) for Customers in the EEA, Switzerland or UK, the courts of Dublin, Ireland; and (b) for all other Customers, federal or state courts located in San Francisco County, California.