SECOND AMENDED AND RESTATED JOINT DEVELOPMENT AND COLLABORATION AGREEMENT
(*Argos II*)

This Second Amended and Restated Joint Development and Collaboration Agreement (Argos II) ("***Agreement***") is among Microsoft Corporation, a Washington corporation having its principal place of business at One Microsoft Way, Redmond, Washington 98052 ("***Microsoft***"); OpenAI, Inc., a Delaware corporation having its principal place of business at 3180 18th Street, Suite 100, San Francisco, California 94110 ("***OpenAI***"); and OpenAI OpCo, LLC, a Delaware limited liability company (formerly and successor to OpenAI, L.P. ("***LP***"), a Delaware limited partnership) having its principal place of business at 3180 18th Street, Suite 100, San Francisco, California 94110 ("***OpCo***"). This Agreement is effective on January 23, 2023 ("***Effective Date***") and it amends, supersedes, and replaces in its entirety that certain Amended and Restated Joint Development and Collaboration Agreement entered into between the parties as of March 5, 2021, as amended ("***Argos I Agreement***"), but only as of the Effective Date.

This Agreement consists of:

- This document ("***Cover Pages***");
- The attached terms and conditions ("***General Terms***");
- Exhibits A (Specifications), B (Relationship Management), C (Trademarks), D (Deployment Safety Board), E (Support), F (Pricing and Payment), G (Transition), H (New First Party Microsoft Product), and I (HPE Data Privacy and Security Agreement Schedule);
- The incorporated terms of the NDA (defined in Section 1(ee)); and
- Any Joint Marketing Plans (defined in Section 1(t)).

π PLAINTIFF π
United States District Court
Northern District of California
Case No. 4:24-CV-04722-YGR
Case Title Musk et al. v. Altman et al.
Exhibit No. 207
Date Entered
Mark Busby, Clerk
By: , Deputy Clerk

Table 1 – Contact Details

OpenAI		**Microsoft**	
Address:	OpenAI, Inc. 3180 18th Street, Suite 100 San Francisco, California 94110 USA Attn: Sam Altman, CEO	**Address:**	Microsoft Corporation One Microsoft Way Redmond, Washington 98052 USA Attn: Kevin Scott, CTO
Phone #:	(415) 879-9686	**Phone #:**	[redacted]
Fax:	N/A	**Fax #:**	[redacted]
E-Mail:	sama@openai.com	**E-Mail:**	[redacted]@microsoft.com
Except as provided in Section 12(a) of the General Terms, a copy of all notices must also be sent to: OpenAI General Counsel Addressed in hard copy as above and also: Copied via email to jason@openai.com Attention: General Counsel, Jason Kwon		Except as provided in Section 12(a) of the General Terms, a copy of all notices must also be sent to: Microsoft Corporation Corporate, External, and Legal Affairs Addressed in hard copy as above and also: Copied via email to [redacted]@microsoft.com Copied via fax to [redacted] Attention: VP, Deputy General Counsel, Frank Morrow	
OpCo		[redacted]	

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207.001

Address:	OpenAI OpCo, LLC 3180 18th Street, Suite 100 San Francisco, California 94110 USA	[redacted]
Phone #:	(415) 879-9686	
Fax:	N/A	
E-Mail:	sama@openai.com	[redacted]
Except as provided in Section **Error! Reference source not found.** of the General Terms, a copy of all notices must also be sent to: OpenAI General Counsel Addressed in hard copy as above and also: Copied via email to jason@openai.com Attention: General Counsel, Jason Kwon		[redacted]

By signing below, each party agrees to be bound by this Second Amended and Restated Joint Development and Collaboration Agreement (Argos II) as of the Effective Date.

Microsoft Corporation

Satya Nadella

By: (Sign)

Name: Satya Nadella

Chairman & Chief Executive Officer

Title: Chairman and Chief Executive Officer

01/20/2023

Date of Execution:

OpenAI, Inc.

By: (Sign)

Name: (Print)

Title:

Date of Execution:

OpenAI OpCo, LLC

By: (Sign)

Name: (Print)

Title:

Date of Execution:

Address:	OpenAI OpCo, LLC 3180 18th Street, Suite 100 San Francisco, California 94110 USA	[redacted]
Phone #:	(415) 879-9686	
Fax:	N/A	
E-Mail:	sama@openai.com	[redacted]
Except as provided in Section 12(a) of the General Terms, a copy of all notices must also be sent to: OpenAI General Counsel Addressed in hard copy as above and also: Copied via email to jason@openai.com Attention: General Counsel, Jason Kwon		[redacted]

By signing below, each party agrees to be bound by this Second Amended and Restated Joint Development and Collaboration Agreement (Argos II) as of the Effective Date.

Microsoft Corporation

By: (Sign)

Name: (Print)

Title:

Date of Execution:

OpenAI, Inc.

DocuSigned by:
Sam Altman
4837B78167FF44D...

By: (Sign)
Sam Altman

Name: (Print)
Chief Executive Officer

Title:
January 23, 2023

Date of Execution:

OpenAI OpCo, LLC

DocuSigned by:
Sam Altman
4837B78167FF44D...

By: (Sign)
Sam Altman

Name: (Print)
Chief Executive Officer

Title:
January 23, 2023

Date of Execution:

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Terms and Conditions

Background

Microsoft is a worldwide provider of software and services, including its cloud-based computing platform and cloud computing services collectively known as Microsoft Azure ("***Azure***").

OpenAI is a non-profit entity organized under Section 501(c)(3) of the U.S. Internal Revenue Code and is a worldwide leader in the development and distribution of artificial intelligence technologies.

OpenAI established an affiliate, LP, to advance OpenAI's mission and to commercially exploit certain of its artificial intelligence technologies. LP was capitalized by Microsoft and other investors, and Microsoft, OpenAI, LP, and other investors also entered into that certain Amended and Restated Limited Partnership Agreement of the LP, dated July 2, 2019 ("***First Investment Agreement***") to facilitate such investment by Microsoft.

The parties entered into that certain Joint Development and Collaboration Agreement between the parties, dated June 28, 2019, as amended ("***Original Agreement***") to collaborate in connection with certain development and licensing of certain artificial intelligence and supercomputing technologies, all pursuant to the terms in the Original Agreement.

The parties subsequently entered into the Argos I Agreement to accommodate certain changes in their business relationship as originally set forth in the Original Agreement, all pursuant to the terms in the Argos I Agreement. Contemporaneously with the Argos I Agreement, the parties entered into that certain Second Amended and Restated Limited Partnership of Agreement of LP, dated July 2, 2019 ("***Second Investment Agreement***").

The parties recognize that, to effectively achieve their respective relationship goals, enhanced support is required, namely, OpenAI desires improved support from Microsoft's applicable teams to optimize OpenAI's use of Azure compute, and Microsoft desires improved support from OpenAI regarding implementing OpenAI's IP in Microsoft's and its Affiliates' products and services.

The parties now wish to modify their existing agreement to accommodate certain changes in their business relationship as modified and set forth in the Argos I Agreement, providing for additional financial commitment from Microsoft (solely as and to the extent set forth in the Third Investment Agreement), a differing structure for IP (defined in Section 1(r)) and commercialization of IP, enhancement of support, and much deeper engagement between the parties' respective engineering teams to both further the mission of OpenAI and better enable Microsoft to commercialize such IP, all as set forth below.

In consideration of the parties' entry by Microsoft and OpenAI Global, LLC (an Affiliate (as defined in Section 1(a)) of OpenAI OpCo, LLC) into that certain Amended And Restated Limited Liability Company Agreement Of OpenAI Global, LLC entered into and effective contemporaneously with this Agreement ("***Third Investment Agreement***" and, collectively with the First Investment Agreement and the Second Investment Agreement, the "***Investment Agreements***") and of the terms of this Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree to amend and restate the Argos I Agreement as follows:

General Terms

Section 1. Definitions. The following capitalized terms have the respective meanings set forth below. All other initially capitalized terms have the meanings assigned in this Agreement.

(a) "***Affiliate***" means any legal entity that is owned by a party, that owns a party, or that is under common ownership with a party. Ownership means direct or indirect control of more than a 50% interest.

(b) "***AGI***" or "***Artificial General Intelligence***" means a highly autonomous system that outperforms humans at most economically valuable work. For clarity, AGI excludes: **(i)** any systems specific to limited domains; **(ii)** any non-AGI specific software/middleware (e.g., Singularity, ONNX, ONNX RT, or future derivatives of or successors to any of these); and **(iii)** the hardware used to develop, train, host, or operate any systems.

(c) "***Argos I Dedicated System***" means, collectively, **(i)** the Supercomputing Processing Units known to the parties as of the Effective Date as Owl, Panda, or Quail; and **(ii)** the Phase 2 Supercomputer.

(d) "***Argos II Dedicated System***" means, collectively, **(i)** the Phase 3 Supercomputer, **(ii)** the Phase 4 Supercomputer, and **(iii)** any other computer systems dedicated (or primarily dedicated) to OpenAI and purchased by OpenAI under this Agreement (or under a related Agreement) but excluding any Argos I Dedicated System.

(e) "***Azure Computing Capacity***" means edge computing resources provided by or on behalf of Microsoft and pursuant to Microsoft's designs and specifications, as part of Azure services, to enable and facilitate the processing of commercial workloads.

(f) "***Background IP***" means all Patents and Non-Patent IP, together with all Technology, owned or controlled by a party, or which a party otherwise acquired the right to license to another party without payment of any royalty or other amounts to any unaffiliated third party, where: **(i)** such Patents, Non-Patent IP, and Technology were developed, conceived, reduced to practice, obtained, or acquired, or the right to license such Patents, Non-Patent IP, or Technology was obtained, before the Effective Date; **(ii)** such Patents, Non-Patent IP, and Technology are developed, conceived, reduced to practice, obtained, or acquired, or the right to license such Patents, Non-Patent IP, or Technology is obtained, independently of any Joint Development under this Agreement; or **(iii)** such Patents, Non-Patent IP, or Technology are developed, conceived, reduced to practice, obtained, or acquired, or the right to license such Patents, Non-Patent IP, or Technology was obtained, in connection with such Joint Development but are not Foreground IP.

(g) "***Business Day***" means any day other than Saturday, Sunday, or national holidays in the United States.

(h) "***Collaboration***" means the development, implementation, commercialization, and marketing activities conducted by the parties under this Agreement.

(i) "***Commercial Use***" of a Technology means licensing, distributing, or providing such Technology on a commercial basis. "Commercial Use" does not include licensing, distributing, or providing the Technology for research or internal development purposes without any monetary or equivalent compensation.

(j) "***Commercially Deploy***" and "***Commercial Deployment***" means to develop, train, implement, operate, deploy, or make Commercial Use of, or any combination of these.

(k) "***Copyrights***" means collectively any and all copyrights, registered and unregistered, as well as applications for registration, including in and to works of authorship and all other rights corresponding to the foregoing, worldwide, whether published or unpublished, including rights to prepare, reproduce, perform, display, and distribute copyrighted works and copies, compilations, and derivative works of any of the foregoing.

(l) "***Development Materials***" means training data and the development environment of OpCo or OpenAI.

(m) ***"Excluded Customer-Trained Fine-Tuning Model"*** means, with respect to each party, an initially-Trained Model that is further trained by such party for use specifically by and for a particular customer with data owned or controlled by that customer ("Fine-Tuning Data"), but solely to the extent that, **(i)** such fine-tuning Model was trained pursuant to a valid written agreement between such party and customer for fine-tuning services using such party's base Model, **(ii)** the base Model is not exclusive to such customer, **(iii)** such agreement prohibits sharing such customer data with third parties; and **(iv)** such fine-tuning Model is not provided to any third party other than such customer and is not further used as a basis for any other Model (or an underlying Model to create another Excluded Customer-Trained Fine-Tuning Model) for any third party other than the customer providing such Fine-Tuning Data.

(n) ***"Excluded License"*** means any software license requiring, as a condition of the use, modification, or distribution of the software or other software combined or distributed with it, that any such software be: **(i)** disclosed or distributed in source code form; **(ii)** licensed for the purpose of making derivative works; or **(iii)** redistributable at no charge.

(o) "***First Party Products***" means, with respect to a party, all Licensed Products of such party or its Affiliates that: **(i)** are made, authored, and otherwise created solely by or on behalf of such party or its Affiliates; **(ii)** to the extent made commercially or otherwise publicly available, are branded solely with the brands, trademarks,

and service marks, as applicable, of such party or its Affiliates; **(iii)** to the extent made commercially or otherwise publicly available, are offered for sale to, or for use by, customers and end users solely by such party or its Affiliates (or by or through such party's or its Affiliates' applicable distribution channels) and solely under the brands, trademarks, and service marks, as applicable, of such party or its Affiliates; and **(iv)** to the extent offered as a hosted, online, or cloud service, are hosted solely on Microsoft's Azure service. Without limiting the foregoing, First Party Products exclude Licensed Products (or other products, services, or Technologies) that are white labeled or co-branded (although Licensed Products that are otherwise within the scope of this definition but that permit the ultimate customer or end user to include its brand are still First Party Products). For clarity, First Party Products include the OpenAI API and the Microsoft API.

(p) "***Foreground IP***" means all Patent and Non-Patent IP, together with all Technology, developed, conceived, or reduced to practice jointly by Microsoft with either or both of OpCoand OpenAI under this Agreement such that both Microsoft and either OpCo or OpenAI (or their respective applicable employees or contractors, as applicable based on whether the entity or its employee/contractor is the initial owner under Law) would be co-owners under Law (e.g., in the case of Patents, employees or contractors of both Microsoft and OpCo or OpenAI are co-inventors on a Patent; and in the case of Copyrights, both Microsoft and OpCo or OpenAI are joint authors of a work of authorship). For the avoidance of doubt, Foreground IP does not include: **(x)** Background IP of any party; **(y)** any Improvements to any party's Background IP; and **(z)** anything provided to a party under a separate agreement (e.g., Azure), even if provided or customized under or in relation to this Agreement.

(q) "***Improvement***" means any adaptation, alteration, derivative work, enhancement, modification, improvement, bug fix, or translation of a party's Background IP. Notwithstanding the foregoing: **(i)** any artificial intelligence and machine learning models that are Jointly Developed under this Agreement are deemed to be Improvements of the Background IP of OpCoor OpenAI; and **(ii)** any Supercomputer Tech that is Jointly Developed under this Agreement is deemed to be an Improvement to Microsoft's Background IP.

(r) "***Intellectual Property Rights***" or "***IP***" means worldwide Patents, Trade Secrets, Copyrights, mask work rights, moral rights, and Trademarks. The term includes: **(i)** all other intellectual property and other proprietary rights worldwide, whether under statute or at common law or equity; and **(ii)** all rights or causes of action for infringement or misappropriation of the foregoing that, with respect to a party, are owned or licensable by such party without incurring costs to unaffiliated third parties.

(s) "***Joint Development***" and other initially capitalized derivations of the same mean the process of intentionally jointly developing IP or Technology as evidenced by express, written agreement of the parties (which may include email) to jointly develop, or by collaboration reasonably demonstrating an intent to jointly develop, such IP or Technology in relation to the Collaboration. For clarity, none of the following may be construed to be Joint Development: **(i)** Microsoft merely requesting, and OpCo or OpenAI merely providing, Commercialization Support; and **(ii)** OpenAI merely requesting, and Microsoft merely providing, support for deployment or commercialization of OpenAI API on Azure. For additional clarity, all work done by the Onsite Engineers as part of projects working together with, and under the direction of, personnel of OpCo or OpenAI will be deemed Resource Developed IP, except to the extent: **(y)** the parties agree in writing (which may include email) that the work will result in Joint Development; or **(z)** the work is an Improvement to an Enabling Technology, Supercomputer Tech, or commercial Licensed Product (or any pre-release or development version of any of these), or other IP of Microsoft or its applicable Affiliate but not an Improvement to a Model of OpenAI or OpCo. For purposes of this definition, a commercial Licensed Product of Microsoft or its Affiliates is a product or service arising or created independent of this Agreement (e.g., Dynamics, GitHub, Office, Azure) and not, for example, the Azure-class version of the OpenAI API.

(t) "***Joint Marketing Plan***" means a document that describes each party's respective marketing obligations under or in relation to this Agreement. A Joint Marketing Plan may be in any form that the parties may find desirable, but such document is only a Joint Marketing Plan if it is signed by authorized representatives of all parties to be bound and if it expressly references this Agreement.

(u) "***Law***" means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, and requirements of any government authority (federal, state, local, or international) having jurisdiction.

(v) "***Licensed IP***" means all **(i)** of OpenAI's and OpCo's Background IP, **(ii)** Foreground IP (including OpCo's and OpenAI's interest in any Jointly Developed Foreground IP), and **(iii)** Improvements to OpCo's and OpenAI's and OpCo's Background IP, in each case of the foregoing clauses (i) – (iii), whether developed at any time during the Term or at any time before the Effective Date. For clarity, Licensed IP expressly includes all IP and Technology of OpenAI, OpCo, or both, excluding only AGI.

(w) "***Licensed Products***" means, with respect to a party, all products, services, and Technology of such party and its Affiliates. For clarity, "Licensed Products" includes all such products, services, and Technology of such party, whether intended for internal development, for external commercialization, for internal or external research purposes, or any combination of these.

(x) "***OpCo (or OpenAI) Trademarks***" means those Trademarks for which OpCo or OpenAI is the owner and licensor and that are listed in Section 3 of Exhibit C.

(y) "***Main Body***" means all parts of this document, excluding the Exhibits.

(z) "***Make Available***" and other initially capitalized derivations of the same (e.g., "Made Available") means the delivery or making available of Technology during the Term by a party. Nonetheless, a Technology is not Made Available solely as a result of: **(i)** being delivered or made available by a party on a temporary basis (e.g., designs or plans for which party is only seeking feedback from another party) where that temporary basis is expressed in writing (which may include email) at or before the time of disclosure; and **(ii)** OpCo or OpenAI deploying to Azure or using Azure services. Moreover, and for OpCo or OpenAI as recipient, no Enabling Technology, Supercomputer Tech, or commercial Licensed Product (or any pre-release or development version of either) of Microsoft or its applicable Affiliate may be construed to be Made Available to OpCo or OpenAI under this Agreement.

(aa) "***Microsoft API***" means the first party Azure services through which Microsoft makes available the OpenAI API and successors.

(bb) "***Microsoft Trademarks***" means those Trademarks for which Microsoft is the owner and licensor and that are listed in Section (b) of Exhibit C.

(cc) "***Model Training Code***" means certain code and data used to train a Trained Model. Model Training Code includes training recipes, training data, (where applicable), and scripts and source code that execute the training. For example, for a transformer Model, Model Training Code may include training recipes, sample data sets, tokeniser code, hyper-parameters values, and other items necessary to train a new Model from scratch.

(dd) "***Models***" means artificial intelligence models and machine learning models.

(ee) "***NDA***" means the Non-Disclosure Agreement between OpenAI and Microsoft with the later signature date of March 18, 2016.

(ff) "***Net Revenue***" means revenues recognized by a party in accordance with GAAP less **(i)** traffic acquisition costs, **(ii)** billing costs (e.g., credit card and invoicing fees), **(iii)** taxes (including digital services taxes), duties, levies, or other regulatory fees (whether paid to regulators or rights holders), **(iv)** fees or commissions, **(v)** discounts, credits, or refunds, and **(vi)** bad debt and other fraud adjustments.

(gg) "***Non-Patent IP***" means all IP other than Patents, Trademarks, and rights or causes of action for infringement of Patents and Trademarks.

(hh) "***OpenAI API***" means one or more application programming interfaces ("***API***") and related software used by OpCo or OpenAI as of the Effective Date to make Models available (e.g., to make the Model known as GPT-3, any successors to such Model, or any Models that enable the fine tuning of any of the foregoing, available) as well as any successors to such API and any Improvements thereto. For clarity, the OpenAI API does not include the Azure-class modifications made by Microsoft and its Affiliates to the Azure-class implementation of the OpenAI API that the parties intend to build under this Agreement.

(ii) "***Patent(s)***" means any and all patents, utility models, patent registrations, and equivalent rights (including originals, divisionals, provisionals, re-exams, continuations, continuations-in-part, extensions, or reissues), and applications for the foregoing in all countries of the world, and any other inventions, procedures, or formalities with respect to the foregoing that result in an enforceable patent right anywhere worldwide. For clarity,

Microsoft is granting any Patent rights under this Agreement through an arrangement with Microsoft's wholly owned subsidiary, Microsoft Technology Licensing, LLC.

(jj) "***Phase 2 Supercomputer***" means an Azure hosted supercomputer, as further described in Section 1 of Exhibit A.

(kk) "***Phase 3 Supercomputer***" means an Azure hosted supercomputer, as further described in Section 2 of Exhibit A, which may be one stand alone supercomputer or a Microsoft-designated cluster of dedicated systems.

(ll) "***Phase 4 Supercomputer***" means an Azure hosted supercomputer, as further described in Section 3 of Exhibit A, which may be one stand alone supercomputer or a Microsoft-designated cluster of dedicated systems. Without limiting the foregoing, the Phase 4 Supercomputer is, as of the Effective Date, intended to have at least the functionality and performance described in Section 3 of Exhibit A.

(mm) "***Senior Personnel***" means: **(i)** as applicable to Microsoft, any full-time employee of Microsoft at the level of "Corporate Vice President" or higher or with the job title "Technical Fellow"; **(ii)** as applicable to OpCo, any full-time employee of OpCo at the level of "Vice President" or higher or the leaders of Hardware and Infrastructure teams; and **(iii)** as applicable to OpenAI, any full-time employee of OpenAI at the level of "Vice President" or higher or the leaders of Hardware and Infrastructure teams.

(nn) "***Supercomputer Tech***" means any supercomputing hardware (including networking), software related to such supercomputing hardware (including the supercomputer operating system, networking software, cluster and fabric managers, compilers, runtimes, computer architecture, and designs), frameworks and other middleware (including storage services) developed by or for Microsoft and used by supercomputer users for application layer and model development, and any other Technology of Microsoft or its Affiliates that primarily embodies, or primarily relates to, such supercomputing hardware or software. For the avoidance of doubt: **(i)** the Argos I Dedicated System and the Argos II Dedicated System are, without limitation, Supercomputer Tech; and **(ii)** Supercomputer Tech excludes any application-layer software that executes on a supercomputer, but includes all other software layers/middleware (e.g., Singularity, ONNX, ONNX RT, or future derivatives of or successors to any of these) that relate to supercomputing hardware.

(oo) "***Supercomputing Processing Unit***" means the operational supercomputer processing unit developed and deployed under the Original Agreement.

(pp) "***Technology***" means any methodologies, tools, Models, software, firmware, hardware, discoveries, designs, prototypes, engineering and test data, test parameters, manufacturing methodology, documentation, ideas, know-how, works of authorship, databases, algorithms (including machine learning or artificial intelligence algorithms, Models, or modules), protocols, APIs, molds, practices, schematics, diagrams, specifications, formulae, measurements, data, and data maps.

(qq) "***Trade Secrets***" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, tangible or intangible, and whether stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, but only to the extent: **(i)** reasonable measures have been taken to keep such information secret; and **(ii)** such information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of such information.

(rr) "***Trademarks***" means all trademarks, service marks, logos, trade names, and rights in trade dress.

(ss) "***Trained Model***" means a Model for which the number and weighting of parameters have been fixed, and the predictive capabilities have been optimized, through the training of such Model using a robust volume and diversity of data. A Model may be deemed a Trained Model even if it remains subject to further optimization for inferencing.

The following terms are defined in the listed sections of this Agreement:

Term	Section
Advisory Review	Exhibit D

Term	Section
AGI Distribution	Section 4(k)(ii)

Term	Section
Agreement	Preamble
Agreement Related Taxes	Section 12(d)
AI Product Testing	Section 6(b)
API	Section 1(hh)
Approver	Exhibit C
Argos I Agreement	Preamble
Assigning Party	Section 2(e)
Azure	Background
Based on OpenAI IP	Exhibit H
Capex Bucket	Section 4(b)
Capex Bucket Limit	Section 4(b)
Change Event	Section 11(b)(iii)
Claim	Section 10(a)
Commercialization Support	Section 5(e)
Confidential Information	NDA
Contributed IP	Section 2(d)
Cover Pages	Preamble
current	Section 12(n)
currently	Section 12(n)
Current Product	Exhibit H
days	Section 12(n)
Defendant	Section 10(b)
Deployment	Section 5(g)(ii)
Deployment Safety Board	Section 5(g)(ii)
Deployment Safety Review	Exhibit D
Dispute	Exhibit B
Dispute Notice	Exhibit B
Dispute Response	Exhibit B
Draft	Section 2(b)
DSB	Section 5(g)(ii)
Effective Date	Preamble
Enabling Technologies	Section 3(m)
Executive Review	Section 5(c)
Executive Sponsor	Section 5(c)
First Investment Agreement	Background
Future Developments	Section 4(k)(ii)
General Terms	Preamble
Governing Board	Exhibit B
Implementation Principles	Exhibit D
in writing	Section 12(n)
Initial Term Date	Section 11(a)
Insolvent	Section 11(b)(i)
Investment Agreements	Background

Term	Section
Licensed Trademarks	Exhibit C
Material Jurisdiction	Section 11(b)(iii)
may	Section 12(n)
meet	Section 12(n)
meeting	Section 12(n)
Microsoft	Preamble
Microsoft API	Section 4(j)(i)
New First Party Microsoft Product	Exhibit H
notify	Section 12(n)
Onsite Engineers	Section 5(f)(i)
OpCo	Preamble
OpenAI	Preamble
or	Section 12(n)
ORA	Exhibit D
Original Agreement	Background
partner	Section 12(n)
Pooled Patent Licensee	Section 2(c)
Pooled Patent Owner	Section 2(c)
Pooled Patents	Section 2(a)
Professional Services	Section 5(i)
Publicity	Section 6(a)
Requesting Party	Section 2(e)
Respondent	Section 10(b)
Restricted Access Model Training Code	Section 3(e)(i)(B)
Review Materials	Exhibit D
Safety Criteria	Exhibit D
Safety Critical Thresholds	Exhibit D
Second Investment Agreement	Background
Shared Repository	Section 5(d)
Side Letter	Section 9(d)
signed	Section 12(n)
Primarily Developed OAI Models	Section 4(j)(i)
Subcontractors	Section 12(h)
Subscription Agreement	Section 9(d)
Sufficient AGI	Section 4(k)(i)
Term	Section 11(a)
then-current	Section 12(n)
Third Investment Agreement	Background
Trigger Date	Exhibit B
unreasonably withheld	Section 12(n)
Volume Licensing Agreement	Section 4(h)
Wind Down Plan	Section 11(d)
written	Section 12(n)

Section 2. Development. During the Term, Microsoft will work together with OpCo, OpenAI, or both to Jointly Develop Technology or IP, and the terms of this Section 2 will apply with respect thereto. The parties intend that, except as applied to Onsite Engineers as described in Section 1(s), all Joint Development should be intentional and documented (which documentation may be by email).

(a) Foreground IP. Each party will own any Jointly Developed Improvements to its Background IP (including the IP in any such Jointly Developed Improvements but excluding any other party's Background IP in such Jointly Developed Improvements). If any Foreground IP arises under this Agreement: **(i)** the parties will have no duty to account for any Copyrights and Trade Secrets in any such Foreground IP and in any works of authorship or other subject matter to the extent embodying such Copyrights or Trade Secrets (including any data and computer code); and **(ii)** ownership of any Patents included in any such Foreground IP ("***Pooled Patents***") will be allocated in accordance with Section 2(b).

(b) Pooled Patents. For purposes of this Section 2(b), OpCo and OpenAI may both participate in the Draft process, but they will be treated as a single party for Draft purposes and referred to in this Section 2(b) solely as OpCo. The Pooled Patents will be identified and reserved for a Draft process. "***Draft***" as used in this Section 2(b) refers to a mechanism by which a party may select Pooled Patents to solely own in accordance with the process set forth below. When a mutually agreed even number of Pooled Patents is reserved for the Draft or when a mutually agreed period of time has passed from the Effective Date or from the last Draft (as the case may be), the Governing Board will perform a Draft process, whereby each party in turn selects a Pooled Patent to solely own. The first party to select on the first Draft will be Microsoft, and for subsequent Drafts, the right of first selection will alternate. In addition, within a Draft, the selection order will alternate, such that the party that has the first selection will also have the fourth, fifth, eighth, and ninth selection, etc., and the party that has the second selection will also have the third, sixth, and seventh selection, etc. The parties will alternate the selection of Pooled Patents in this manner until all Pooled Patents are allocated to one or the other party. Subject in each case to the licensing obligations under this Agreement, all rights, title, and ownership associated with Pooled Patents: **(i)** selected by Microsoft in the Draft will be solely owned by Microsoft; and **(ii)** selected by OpCo in the Draft will be solely owned by OpCo. The party that is assigned a particular Pooled Patent may file IP registrations and applications, as applicable, on such Pooled Patent anywhere in the world, solely in its own name, and at its own sole expense.

(c) Pooled Patent License. To the extent a party is granted ownership of a Pooled Patent under Section 2(b) ("***Pooled Patent Owner***"), Pooled Patent Owner grants to the other parties (each, a "***Pooled Patent Licensee***") a worldwide, nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable license under such Pooled Patent to make, have made, use, sell, offer to sell, import, export, lease, transfer, and otherwise distribute any Licensed Products of such Pooled Patent Licensee, which license includes: **(i)** the right to practice the methods claimed in such Pooled Patent in connection with such Licensed Products; and **(ii)** the right for Pooled Patent Licensee to sublicense to third parties the foregoing rights, including the right to sublicense to further third parties, in each case solely to the extent reasonably necessary or desirable to enable Pooled Patent Licensee to exercise the foregoing rights in this Section 2(c). Nothing in this Section 2(c) will be deemed to limit the rights granted to Microsoft, OpCo or OpenAI under Section 2(d).

(d) Assignments; Background IP License. Each party makes (and to the extent it cannot do so at present, will be deemed in the future to have made) all assignments necessary to achieve the allocation of ownership in Foreground IP and any Jointly Developed Improvements in this Section 2. For clarity, any such assignment with respect to Jointly Developed Improvements will not affect the assigning party's rights with respect to its Background IP included in such Improvements. If Microsoft provides any Contributed IP to OpCo or OpenAI under this Agreement, the receiving party will have the rights described in the applicable subsection below. "***Contributed IP***" means Background IP that Microsoft Makes Available to OpCo or OpenAI under this Agreement, except that Contributed IP expressly excludes: **(w)** solely for purposes of subsections (ii) (Other Intentional Contributions) and (iii) (Any Other Contributions) of this Section, Technology that Microsoft notifies OpCo or OpenAI in writing (including via email) is being delivered or made available by Microsoft on a temporary basis only for a specific purpose (e.g., designs or plans for which Microsoft is only seeking feedback from OpenAI or

OpCo); **(x)** any Enabling Technologies; **(y)** any Supercomputer Tech or IP in Supercomputer Tech; and **(iii)** any commercially Licensed Products (or any pre-release or development version of any of these) of Microsoft or its Affiliates.

(i) Contributions in Improvements. If Microsoft provides any Contributed IP to OpCo or OpenAI in or as an Improvement to OpCo's or OpenAI's Background IP, then Microsoft grants OpCo or OpenAI, as applicable, a worldwide, nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable license in such Contributed IP. For clarity, if the Improvement was to a Model, and Microsoft includes data that was used to train or otherwise improve such Model, OpCo or OpenAI, as applicable, may retain and continue to evolve and use such Model (but may not retain or continue to use the contributed data), so long as the underlying contributed data cannot be reverse engineered from, or from use of, the Model.

(ii) Other Intentional Contributions. If Microsoft provides any Contributed IP to OpCo or OpenAI as a contribution under this Agreement, which intention must be expressed in writing (but such writing requires no more than an email from an authorized representative of Microsoft expressly stating that the particular Background IP is intended to be Contributed IP under this Agreement), then Microsoft grants OpCo or OpenAI, as applicable, a worldwide, nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable license in such Contributed IP. Microsoft will have 90 days from the date Contributed IP is first made available to confirm in writing (which may include email) whether Contributed IP is Made Available under subsection (ii) or (iii) of this Section; absent such confirmation, the Contributed IP will be deemed to be Made Available under subsection (ii).

(iii) Any Other Contributions. If Microsoft provides any other Contributed IP to OpCo or OpenAI under this Agreement, but such Contributed IP is not included in an Improvement to OpCo's or OpenAI's Background IP (and thus Section 2(d)(i) does not apply) and such contribution is not memorialized in accordance with Section 2(d)(ii), then Microsoft grants OpCo or OpenAI, as applicable, a worldwide, nonexclusive, royalty-free, fully paid-up license, solely for and during the Term, in such Contributed IP, for the sole purpose of OpCo's or OpenAI's, as applicable, internal evaluation and internal development, but expressly excluding any right to: **(A)** sell, import, export, lease, transfer, or otherwise distribute any products, services, or other Technologies on which any Patent in such Contributed IP reads or that implement any Patent in such Contributed IP; **(B)** distribute such Contributed IP to any third party except and solely in connection with such other party's internal evaluation and internal development; **(C)** otherwise commercialize such Contributed IP; or **(D)** any combination of the foregoing clauses (A) – (C).

(iv) General Terms. The licenses granted in the foregoing Sections 2(d)(i) and 2(d)(ii) include a: **(A)** license under Microsoft's current and future Patents in Contributed IP to make, have made, use, sell, offer to sell, import, export, lease, transfer, and otherwise distribute (through multiple tiers and models of distribution) Licensed Products of OpCo or OpenAI to the extent incorporating or using Contributed IP; **(B)** license under Microsoft's current and future Non-Patent IP in Contributed IP, to reproduce, format, import, and create derivative works of Contributed IP, and combine Contributed IP (or derivative works of Contributed IP), but in each case solely to create, and to incorporate and use Contributed IP in or with, Licensed Products of OpCo or OpenAI; and **(C)** right to sublicense to Subcontractors the foregoing licenses, including the right to sublicense to other Subcontractors, in each case solely to the extent necessary to enable OpCo or OpenAI to exercise the rights granted under the foregoing clauses 2(d)(iv)(A) and (B) in connection with the development and commercialization of Licensed Products of OpCo or OpenAI. The license granted in the foregoing Section 2(d)(iii) includes a: **(X)** license under Microsoft's current and future Patents in Contributed IP to make, have made, and use Licensed Products of OpCo or OpenAI to the extent incorporating or using Contributed IP; **(Y)** license under Microsoft's current and future Non-Patent IP in Contributed IP, solely to reproduce, format, and create derivative works of Contributed IP, and combine Contributed IP (or derivative works of the Contributed IP), but in each case solely to internally develop (and expressly not to mass produce or distribute) Licensed Products of OpCo or OpenAI; and **(Z)** right to sublicense to Subcontractors the foregoing licenses, including the right to sublicense to other Subcontractors, in each case solely to the extent necessary to enable OpCo or OpenAI to exercise the rights granted under the foregoing 2(d)(iv)(X) and (Y) in connection with the development (but

expressly excluding the commercialization) of Licensed Products of OpCo or OpenAI. Notwithstanding the foregoing, OpCo and OpenAI will (and will cause its Affiliates to) not expose any Trade Secrets or Confidential Information of Microsoft that may be embodied in the Contributed IP to any third party (other than Subcontractors of OpCo or OpenAI in accordance with Section 7). To the extent such Contributed IP consists of Microsoft's data, however, the license in Section 3(h)(v) will apply to such data and not the license in this Section 2(d). Additionally, nothing in this Section 2(d) will be construed to be in derogation of a party's rights to exploit Non-Patent IP (including Improvements) owned by such party.

(e) Assistance. Each party ("***Assigning Party***") will, at the request and expense of the applicable other party ("***Requesting Party***"), execute and deliver all assignments and other documents, and take all other actions, as the Requesting Party may reasonably request to evidence, perfect, or protect the Requesting Party's rights in any Foreground IP or Improvements (as applicable) that Requesting Party owns under this Section 2. This includes making inventors available to review Patent applications and execute declarations and assignments for such applications and otherwise to cooperate in the filing and prosecution of any Copyright or Patent applications that Requesting Party may elect to file in such Foreground IP or Improvement (as applicable). Assigning Party will not challenge, oppose, or interfere with any applications relating to any Pooled Patent that Requesting Party solely owns under this Agreement or file any applications on its own behalf for the same invention. Each party as Assigning Party irrevocably appoints the applicable other party as Assigning Party's attorney-in-fact (which appointment is coupled with an interest) to sign those documents on Assigning Party's behalf that Assigning Party is required by this Section 2(e) to sign if Assigning Party refuses or is unable to do so.

(f) Development Reservation. Nothing in this Section 2 or in Section 3 will have any effect on either party's ownership of rights in its Background IP.

Section 3. Other Intellectual Property Rights and Obligations.

(a) Disclosure and Delivery. At or prior to the first meeting of the Governing Board after the Effective Date, OpCo and OpenAI will disclose and describe to Microsoft or Microsoft's wholly owned Affiliates all Licensed IP in its possession, custody, or control as of the date of such disclosure, including its research and development efforts with respect to Licensed IP ("***Initial Disclosure***"). Thereafter, OpCo and OpenAI will, on Microsoft's request (or absent such a request, will use good faith efforts to proactively), promptly disclose and describe to Microsoft any Licensed IP (including new Models) that comes into existence or is obtained following such Initial Disclosure, including any related information and materials (each, a "***Subsequent Disclosure***"). The Initial Disclosure and each Subsequent Disclosure are not intended to provide an exhaustive listing of all Licensed IP in or underlying any given Model or development project. Rather, the Initial Disclosure and each Subsequent Disclosure is intended to provide to Microsoft a high-level catalog of Models and development projects that are in OpCo's or OpenAI's custody or control, or under development by or on behalf of OpCo or OpenAI, and a brief description of each, at the time of such disclosure. At each meeting of the Governing Board, and otherwise from time to time on Microsoft's reasonable request, OpCo and OpenAI will respond to Microsoft's questions regarding Licensed IP (including requests to provide additional detail or to answer specific questions regarding Models or projects disclosed in the Initial Disclosure or any Subsequent Disclosure (e.g., specifically what data was used to train any given Model)), including by describing and, promptly after Microsoft's request (except for Technology described in the following clause (iii), which OpCo and OpenAI will identify sufficiently for Microsoft to obtain its own licenses), providing access to: **(i)** all Trained Models included in the Licensed IP; **(ii)** Technology owned or controlled by OpCo or OpenAI; and **(iii)** Technology which OpCo or OpenAI otherwise acquired the right to license to another party, and all other Technology of or provided by any third party to OpCo or OpenAI on which any Technology described in the foregoing clauses (i), (ii), or both, or any other Licensed IP, has a Technical Dependency ("***Dependent Third-Party Tech***"). Microsoft will use reasonable efforts to make requests through a central Microsoft point of contact (which may be a designated individual or a designated administrative team ("***OAI Program Management Office***"), in Microsoft's reasonable discretion). If any Dependent Third-Party Tech is identified but cannot be shared by OpCo or OpenAI with Microsoft, and such Dependent Third-Party Tech is not generally commercially available to Microsoft, the parties will meet and confer on whether and how to enable access by Microsoft. OpCo and OpenAI will provide or Make Available to

Microsoft or Microsoft's wholly owned Affiliates all Licensed IP and Technology (which for clarity excludes Technology to the extent it is a system that meets the definition of AGI) of (or otherwise licensable by) OpCo, OpenAI, or both, which will be Made Available only on Microsoft's written request (which may be by email). Notwithstanding anything to the contrary in this Section 3(a), neither party is under any obligation to disclose any Excluded Customer-Trained Fine-Tuning Model (but this exclusion may not be construed to apply to the underlying Model(s) from which such Excluded Customer-Trained Fine-Tuning Model is derived). All Technology Made Available to Microsoft or its Affiliates under this Agreement is deemed to be owned fully by OpCo, OpenAI, or both, and licensed to Microsoft under the terms of this Agreement, except and solely to the extent that OpCo or OpenAI identifies to Microsoft, in writing (which may include email) within 90 days of when such Technology is first Made Available to Microsoft or its applicable Affiliate, the Dependent Third-Party Tech (or any other third-party Technology) in such Technology. For purposes of this Section 3(a), Licensed IP has a "***Technical Dependency***" on some third-party data or Technology only if it is not practicable to compile, train, use, or otherwise exploit such Licensed IP in the manner in which it was used by OpCo, OpenAI, or both as of or prior to the date the Licensed IP was disclosed to Microsoft, without ownership of, access to, or a license to that third-party data or Technology.

(b) Mutuality. In recognition of the mutuality of rights contemplated under this Section 3, the geographic restrictions under Section 3(g), the safety review requirements under Section 5(g), and authorization requirements in Section 7(b) are all deemed modified mutatis mutandis, to the minimum extent necessary, to also apply to and limit the sharing, disclosure, and commercialization of any Licensed IP by OpCo, OpenAI, their respective Affiliates, or any combination of these (and, for clarity, the parties' respective roles and rights (e.g., voting rights) on the DSB will be reversed for review of potential commercial deployments by OpCo, OpenAI, or their respective Affiliates). Except with respect to OpCo's and OpenAI's use of Model Training Code to train or re-train Models that exceed the Petaflop Threshold and OpCo's and OpenAI's development or commercialization of AGI, OpenAI will not make Commercial Use of the Licensed IP (including in any First Party Product using Technology embodying any Licensed IP) in any manner **(i)** that exceeds the rights granted to Microsoft to the Licensed IP under this Agreement or **(ii)** other than as set forth in Section 3(e)(i), for which Microsoft would not be permitted to use the Licensed IP under this Agreement (e.g., consent would be required for third party marketable products as in Section 3(d)(ii)); in each case of (i) or (ii) mutatis mutandis in respect of Licensed Products of OpenAI or OpCo, without Microsoft's express written consent.

(c) Licensed IP. OpCo and OpenAI each grants and, to the extent such grant is not operative as of the Effective Date, will be deemed to have granted in the future, to Microsoft and Microsoft's Affiliates a perpetual, irrevocable, worldwide, exclusive (solely during the Term, and except for the limited rights in retained by OpenAI), royalty-free, and fully paid license under all Licensed IP and for all purposes. At the same time, OpCo and OpenAI each retain identical rights to those granted in the immediately preceding sentence, except OpCo's and OpenAI's retained rights are not exclusive and (except as set forth in Section 3(d)) may be exercised only by OpCo and OpenAI and their respective Affiliates.

(d) Mutually Permitted Activities; Mutual Restrictions. Microsoft and its Affiliates covenant to exercise (and OpCo and OpenAI each have retained solely the right to exercise) rights in Licensed IP, solely as follows:

(i) First Party Products. Each party may implement the Licensed IP in, with, or to enable, any First Party Products of that party and its Affiliates;

(ii) Third Party Marketable Projects. Each party may use Licensed IP in strategic projects jointly developed with or for third-party partners (e.g., Adobe) as marketable products or services, although that party covenants not to engage in such use unless it first obtains the other party's consent for any such projects, which the other party will not unreasonably withhold, condition, or delay;

(iii) Third Party Internally Built Projects. Each party may use Licensed IP to build custom, purpose-built solutions built specifically for any customer of that party or its Affiliates in the ordinary course of operating that party's or its Affiliate's products and services (e.g., via developing customer-specific solutions resulting from professional services provided by that party for its customers);

(iv) Internal Research and Development. Each party may use Licensed IP to engage in internal research and development activities;

(v) Safety. Neither party may engage in activities contemplated under the foregoing Sections 3(d)(i) – 3(d)(iv) without complying with Deployment Safety Review and any geographic restrictions, each as applicable under this Agreement; and

(vi) No Rights to Further License IP. Except and solely to the extent necessary to engage in activities contemplated under, and in accordance with, the foregoing Sections 3(d)(i) – 3(d)(iv), which includes engaging Subcontractors in accordance with Section 12(h), Microsoft and its Affiliates will not (and OpCo, OpenAI, and their Affiliates have not retained the right to) grant licenses or sublicenses to, or to expose any Trade Secrets or Confidential Information in, the Licensed IP to third parties. For clarity, and without limiting the foregoing, no party has any right, without the other party's advance written consent in each case, to license or sublicense any Licensed IP to any third party (other than Subcontractors as contemplated in this Agreement) in any manner that discloses to that third party any Trade Secrets or Confidential Information embodied in the Licensed IP or that does not add significant and primary functionality or value to that of the Licensed IP. For further clarity, either party making the functionality of any Model that is part of the Licensed IP available to its customers or end users via an API meets the foregoing standard of "adding significant and primary functional or value" and is permitted, so long as the underlying source code of the API or Model is not also disclosed.

(e) Limited Differences. In recognition of the parties' respective differences and core competencies, the following additional covenants will apply regarding the parties' respective exercise of rights in Licensed IP, as specified below:

(i) By Microsoft.

(A) No AGI. Microsoft will (and will cause its Affiliates to) not use the Licensed IP to develop or pursue the development or commercialization of AGI.

(B) Petaflop Threshold. Microsoft (and its Affiliates) may access and use Restricted Access Model Training Code through and by no more than 30 employees designated by Microsoft at any one time. Microsoft will (and will cause its Affiliates to) not use or access, or permit use or access of, the Restricted Access Model Training Code to train or re-train Models where 36,000 Pf/s-days of compute or more will be expended to train or re-train a neural network component of any such Model, where the amount of compute is calculated as in Kaplan et al, 2020[1] ("***Petaflop Threshold***"). If, at any time during the Term, OpenAI has a reasonable basis, founded on specific and articulable facts, for believing that Microsoft personnel accessing or using, the Restricted Access Model Training Code raises specific safety or security concerns, OpenAI may promptly notify the Governing Board, including by specifying OpenAI's particular concerns and the basis for them. The Governing Board will then promptly convene (no later than 10 days after notice) to consider whether (and, if so, how) to modify Microsoft's access to or use of Restricted Access Model Training Code to reasonably remediate such concerns, and the parties will promptly implement any such remediation. Microsoft will (and will cause its Affiliates to) not use or access Restricted Access Model Training Code through or by any other employees or personnel of Microsoft (or its Affiliates) without OpenAI's prior written consent. "***Restricted Access Model Training Code***" means Model Training Code that **(A)** is required to train or re-train a Model where the compute expended to train or re-train a neural network component of such Model exceeds the Petaflop Threshold, and **(B)** is not required to train or re-train a Model where the compute expended to train or re-train a neural network component of such Model is below the Petaflop Threshold.

(C) Protection of Licensed IP. Microsoft will implement measures at least as protective as how Microsoft handles its own most valuable Technology that are intended to prevent the unauthorized disclosure, theft, or reverse engineering of Licensed IP, including through the implementation of secure internal access processes (taking into account input and feedback from OpenAI). Microsoft will provide OpenAI with reasonable visibility into such measures and processes through mutually acceptable means. The parties will work together to establish an initial secure infrastructure and update such infrastructure on an ongoing basis to address new

[1] https://arxiv.org/abs/2001.08361

threats. As part of such work, Microsoft will make available a security team to collaborate with OpenAI's security team on securing the infrastructure for Model training and deployment.

(ii) By OpCo and OpenAI. OpCo and OpenAI will host the Licensed IP (including any First Party Products using Technology incorporating or using any Licensed IP) solely on Azure and, subject to the terms of Section 4(j)(iv), will solely make Commercial Use of APIs incorporating or using the Licensed IP, whether directly or indirectly, through the Azure Marketplace.

(f) Effect of Termination, Expiration, or Achievement of Sufficient AGI. When this Agreement expires or is terminated, or on the achievement of Sufficient AGI, or upon a default being triggered under Section 11(b) of the Third Investment Agreement, the license granted in Section 3(c) will become non-exclusive and any limitations on Commercial Use by OpCo or OpenAI or their respective Affiliates (and all other restrictive covenants applied to OpCo or OpenAI or their respective Affiliates) will be deemed terminated, effective, as applicable, as of the effective date of expiration or termination, achievement of Sufficient AGI or such default being triggered.

(g) Excluded Geographies. Microsoft will not, disclose or make available any Licensed IP to any of its personnel, or host Licensed IP in any datacenters, located in the People's Republic of China, the Hong Kong Special Administrative Region, Taiwan (Republic of China), Ukraine, or the Russian Federation. For clarity, the foregoing is not a limitation on countries from which an end customer can access the functionality of any Licensed Product, including Azure services. If a change in Law or other circumstances directly and negatively affects the export of Models to, or use of Models in, any other jurisdiction, the Governing Board will, at OpenAI's reasonable request based on specific and articulable factors, consider whether to include such jurisdiction on the list of excluded geographies.

(h) Data. The parties intend to work together to share data in furtherance of the goals of the Collaboration. Any such data sharing must, however, be in accordance with Law, which is evolving. The parties will, therefore, work together, in good faith, to share data consistent with this Section 3(h) and best practices (and with their respective policies and third-party agreements), which may involve execution from time to time of applicable addenda to facilitate such sharing. Each party receiving data from another party under this Agreement will handle, use, process, and store such data in compliance with all applicable Law (as well as with any other restrictions and limitations identified by the providing party at time of disclosure or delivery).

(i) Sharing. Subject to Law and the parties' applicable privacy policies, the parties currently intend to share at least some data with one another to aid in the development of their respective products, services, and technologies under or in relation to this Agreement. Moreover, Microsoft, OpCo, and OpenAI will, on request, share data, where not prohibited by customer or legal obligations, for the purposes of Model training, improving Models, and general product research and development. No party, however, will disclose to another party any data that: **(A)** contains any personal data, without first obtaining the receiving party's advance written consent; **(B)** the disclosing party does not have all rights and consents necessary to disclose to the receiving party; or **(C)** does not comply with Law.

(ii) Data Working Group; Acquisition. As soon as practicable after the Effective Date, the Governing Board will constitute a permanent working group to regularly discuss and regularly manage issues and decisions related to the acquisition and use of data under or in relation to this Agreement ("***Data Working Group***"). The Data Working Group will be constituted and operated in accordance with the requirements and principles in Exhibit J. Without limiting the foregoing: **(A)** on a periodic basis (no less than once annually), the Governing Board will discuss major dataset acquisitions and the necessary scope of such acquisitions; and **(B)** if either party acquires, on commercial terms, any data intended for Model training, it will make commercially reasonable efforts to obtain rights from the data provider sufficient to: **(1)** share such data with the other party, and **(2)** use the data in commercial projects. In connection with any negotiations for such data licenses, the negotiating party(ies) will not, without the other parties' respective consent, disclose the identity of the other parties to this Agreement but may refer to such other parties as "confidential strategic technology partners" or similar language.

(iii) Personal Data. To the extent a party elects to provide, transfer, share, or otherwise disclose, and other parties consent to receive, any personal data under this Agreement, then: **(A)** each party will comply with Law pertaining to data protection and data security in relation to such personal data; **(B)** the disclosing party(ies) will determine the purposes and means of the processing of such personal data under and in connection with this Agreement; **(C)** receiving party(ies) will process that personal data solely on behalf of the disclosing party(ies) and as per the instructions of the disclosing party(ies); **(D)** receiving party(ies) will not collect, retain, use, or disclose such personal data for any purpose other than for the specific purposes specified in this Agreement, including retaining, using, or disclosing such personal data for a commercial purpose other than specified in this Agreement or outside of the direct business relationship with the disclosing party(ies); **(E)** receiving party(ies) will not sell, rent, transfer, share or otherwise disclose such personal data with any third party without the disclosing party(ies)' prior written consent; and **(F)** unless otherwise agreed by the disclosing party(ies), receiving party(ies) will implement appropriate technical and organizational measures to protect that personal data against accidental or unlawful destruction or accidental loss, alteration, or unauthorized disclosure or access.

(iv) Commercial Use; Model Training. The primary purpose of this Agreement is to provide for the Commercial Use of Licensed Products powered by Licensed IP. Therefore, and notwithstanding anything to the contrary in this Agreement, neither OpCo nor OpenAI will, without Microsoft's advance written agreement in each case, knowingly, taking into consideration industry best practices and Microsoft's input delivered through the Data Working Group, provide Microsoft any Model trained in a manner or using data that would preclude or limit the Commercial Use of such Model. The foregoing does not apply to Models trained solely for research purposes. If Microsoft or its applicable Affiliate has concerns regarding the use of any particular data to train a Model, it will notify OpenAI and OpenAI will promptly retrain that Model using solely data approved by Microsoft or such Affiliate. Subject to the foregoing, OpCo and OpenAI may train all Models using data selected solely by OpCo and OpenAI (although OpCo and OpenAI will, at all times, consider in good faith the recommendations promulgated by the Data Working Group).

(v) Data License. Subject to any third party or governmental limitations applicable to particular data, and any additional restrictions that the receiving party(ies) agree to (which agreement may be by email) at the time of disclosure, each party grants to the other parties a worldwide, nonexclusive, perpetual, irrevocable, sublicensable (but solely to the licensee party's Subcontractors), non-transferable, royalty free, fully paid license to access, copy, and use any data provided by that party (to the extent the granting party has the right to grant such license without payment of any royalty or other amounts to any unaffiliated third party (or granting party has such right but only on payment of an incremental royalty or other amount, and receiving party elects to fully pay such amount)). Each party as licensee of such data covenants not to use such data except for such licensee's internal purposes with regard to its Licensed Products, including (solely with regard to the licensee's Licensed Products) to perform services, to create deliverables, to perform analytics, and to develop, improve, train, and otherwise enhance in any way its and its Affiliates' Licensed Products (and expressly excluding any right to advertise or market using such data or any use that violates Law). Unless the parties agree otherwise in writing (which may include email), however: **(A)** the perpetual nature of the license in this Section 3(h)(v) is only to retain the benefit of a Model having been trained or improved by such data (and then only to the extent such contributed data cannot be reverse engineered from such Model or from use of such Model), and does not apply to such contributed data itself; and **(B)** the receiving party(ies) will return or destroy (at the contributing party's preference) such data when this Agreement expires or is terminated (or earlier, but only: **(X)** if the contributing party specified a shorter retention period when it provided such data; **(Y)** on the contributing party's request in response to receiving party's use of such data in breach of this Agreement or outside of the scope of the license in this Section 3(h)(v)) (unless such use in breach of this Agreement or outside of the scope of the license is terminated within 30 days after notice thereof); or **(Z)** as the contributing party reasonably deems necessary to limit liability to third parties.

(i) Open Source. The Governing Board will review whether and when the parties will make Licensed IP licensed or made available under or in relation to this Agreement available pursuant to open source terms (and

during the Term no party will make such Licensed IP generally available to third parties, under open source terms, unless and until such licensing has been discussed by the Governing Board and the parties have mutually agreed). Notwithstanding the foregoing, or anything in Section 7 to the contrary, however, the parties both recognize the importance of the open source community and advancing the state and understanding of artificial intelligence and machine learning through the publication of appropriate scholarly research. The parties will, therefore, work together in good faith through the Governing Board to agree from time to time on: **(i)** appropriate open source projects to which the parties can contribute (jointly or solely), along with guidelines regarding what can be contributed; and **(ii)** scholarly papers that can be published that may disclose certain Trade Secret information of a party. The Governing Board will prioritize this activity consistent with OpCo's and OpenAI's mission of making artificial intelligence available to benefit all mankind.

(j) Non-Assertion Covenant. During the period beginning on the Effective Date and continuing for 10 years, Microsoft and its Affiliates will not assert any Patent infringement claim against OpenAI or OpCo or any of their respective Affiliates (or any of their respective customers or partners) for making, using, selling, offering to sell, or importing any product or service that practices an Improvement created by or on behalf of Microsoft or its Affiliate to any Background IP owned or controlled by OpCo, OpenAI or their respective Affiliates as of the Effective Date or at any time during the Term ("***NAC Claims***"). The covenant in the immediately prior sentence: **(i)** does not apply to any actions taken by Microsoft or its Affiliates (including assertion of NAC Claims as counterclaims) in defense of or response to a Patent infringement claim brought against it by OpCo, OpenAI, or any of their respective Affiliates; **(ii)** in respect of any such customer or partner, does not apply to any actions taken by Microsoft or its Affiliates (including assertion of NAC Claims as counterclaims) in defense of or response to a Patent infringement claim brought against it by such customer or partner; **(iii)** may not be construed to transfer or assign any rights or interests in any Patent owned or controlled by Microsoft or its Affiliates to OpenAI; **(iv)** does not prevent Microsoft or its Affiliates from complying with discovery requests, testifying at depositions, serving as a witness, or engaging in other activities in response to requests of any governmental body in accordance with Law or that Microsoft or any of its Affiliates is otherwise legally obligated or compelled to participate in or provide; and **(v)** does not apply to any product or service to the extent that it practices an Improvement to energy efficient, low-powered superconducting technology and electronics that operate at or near cryogenic temperatures to improve their performance or efficiency, including **(A)** software, hardware, and other non-software components related to the foregoing, such as firmware used to operate such superconducting electronics and enclosures, and **(B)** design, development, and testing tools used for the foregoing. For clarity, no license is provided under this Section 3(j) with respect to the manufacture, use, sale, offering for sale, import, export, or other disposition or promotion of any Licensed Products.

(k) Trademarks. Each party will license its Trademarks, and may use the other party's Trademarks, in accordance with Exhibit C.

(l) Independent Development; No Obligation. Except as expressly set forth in Sections 3(c), 3(d), 4(k)(iii), 5(a), and Exhibit G, this Agreement: **(i)** is nonexclusive; **(ii)** does not restrict either party from directly or indirectly acquiring, licensing, developing, making, using, or distributing technologies, products, or services performing the same or similar functions as any of another party's technologies, products, or services; and **(iii)** does not limit or preclude the parties from entering into similar agreements with third parties.

(m) Reservation of Rights. Except as expressly set forth in this Agreement (including any applicable Joint Marketing Plan), this Agreement does not grant to any party (by implication, estoppel, exhaustion, or otherwise) any right, title, interest, or license, in another party's IP or encumber, license, or sublicense another party's IP under the terms of any Excluded License or otherwise. Each party reserves all rights not expressly granted in this Agreement. Subject to the licenses expressly granted in this Agreement, nothing in this Agreement will have any effect on any party's ownership of its Background IP or such party's embodiments of such Background IP. For clarity, and notwithstanding anything in this Agreement purportedly to the contrary, nothing in this Agreement grants, or may be construed to grant, to OpenAI or OpCo any license or other rights in or to any IP in Enabling Technologies of Microsoft or its Affiliates. "***Enabling Technologies***" mean base technologies that may be necessary to make, use, or sell any Licensed Product, including generally applicable manufacturing technology,

object-oriented technology, compiler technology, operating system technology, networking technology, security technology, processor architecture, code-morphing technology, testing technology, file system technology, generic storage technology, or communication technology, and Supercomputer Tech.

(n) Negotiation of Supercomputer Tech License. The parties anticipate discussions regarding future collaboration on computer chip design efforts to develop supercomputers. Promptly upon request by a party, the parties agree to engage in good faith discussions regarding a possible royalty-bearing license to Supercomputer Tech that Microsoft may choose to make available to OpenAI or OpCo for the design, implementation, and use of such chips ("***SC Tech License***").

Section 4. Commercial Terms.

(a) Argos I Dedicated System Exclusive Use.

(i) Owl. During the Term, Microsoft will make 100% of Supercomputing Processing Unit known to the parties as of the Effective Date as "Owl" available for purchase and use by OpCo and OpenAI (in the aggregate) pursuant to Section 4(e) until April 30, 2024 ("***Owl Exclusive Use Period***") and in consideration for such exclusive use, OpenAI will make a contemporaneous payment to Microsoft of $17 million U.S. dollars ("***Owl Extension Fee***"). The Owl Extension Fee will be paid for by deduction from the Capex Bucket.

(ii) Phase 2 Supercomputer. During the Term, Microsoft will make 100% of the Phase 2 Supercomputer available for purchase and use by OpCo and OpenAI (in the aggregate) pursuant to Section 4(e) for a period beginning on the date such Phase 2 Supercomputer was first made available to OpenAI and continuing for **(A)** four years or **(B)** termination or expiration of this Agreement, whichever is earlier (each such period for each such system, the "***Phase 2 Exclusive Use Period***"). On OpenAI's notice to Microsoft (at least 180 days before the expiration of the Phase 2 Exclusive Period and any subsequent extension period), OpenAI may extend such exclusive use for up to three consecutive one-year periods that may not extend beyond termination or expiration of the Agreement, in each case in consideration of additional and ongoing payments by OpenAI of hosting and management fees as contemplated under this Agreement (whether in direct payments or conversion to additional equity).

(iii) Other Argos I Dedicated Systems. During the Term, Microsoft will make 100% of the Supercomputing Processing Unit known to the parties as of the Effective Date as "Panda" and the Supercomputing Processing Unit known to the parties as of the Effective Date as "Quail" available for purchase and use by OpCo and OpenAI (in the aggregate) pursuant to Section 4(e) for a period beginning on the date such Supercomputing Processing Unit was first made available to OpenAI and continuing for **(A)** four years or **(B)** termination or expiration of this Agreement, whichever is earlier ("***Other Argos I Dedicated System Exclusive Use Period***"). On OpenAI's notice to Microsoft (at least 180 days before the expiration of the Other Argos I Dedicated System Exclusive Period and any subsequent extension period), OpenAI may extend such exclusive use for up to three consecutive one-year periods that may not extend beyond termination or expiration of the Agreement, in each case in consideration of additional and ongoing payment by OpenAI of hosting and management fees as contemplated under this Agreement (whether in direct payments or conversion to additional equity).

(b) Capex Bucket. During the Term, Microsoft will fund the capital expenditure for the design, manufacturing, and deployment, and the subsequent compute cost, of the Argos II Dedicated System, up to an aggregate amount not to exceed nine billion U.S. dollars (comprising eight billion U.S. dollars for Argos II plus one billion U.S. dollars rolled over from Argos I) (such funds, the "***Capex Bucket,***" and such not to exceed amount, the "***Capex Bucket Limit***"). For clarity, to the extent funds remain in escrow under the Argos I Agreement, those funds will be disbursed and expended in accordance with the terms of such agreement. Notwithstanding anything to the contrary in this Agreement: **(i)** in no event will Microsoft's financial obligations for expenses intended to be funded from the Capex Bucket under this Agreement (excluding Section 4(j)(iii)) exceed the Capex Bucket Limit; and **(ii)** under no circumstances may the Capex Bucket funds be used for any purposes other than for the costs of the Argos I Dedicated Systems and Argos II Dedicated Systems as expressly specified in this Agreement and for mutually agreed data sets purchased in accordance with Section 3(h)(iii). On a case-by-case basis, the parties may agree, through the Governing Board, to reallocate Capex Bucket funds otherwise intended for the Phase 4 Supercomputer to purchase or license mutually agreed and mutually beneficial data as described

in Section 3(h)(iii). The actual cost of any such data purchase or license will be treated as capital contributions to OpenAI and taken into account to increase Microsoft's Target Redemption Amount on a quarterly basis; although only 50% of the cost of any such data purchase will be so credited if the applicable purchase or license is mutually agreed with Microsoft and provides Microsoft substantially similar rights as it provides OpenAI.

(c) Phase 3 Supercomputer. During the Term, and subject at all times to the Capex Bucket Limit, Microsoft will build and deploy the Phase 3 Supercomputer. The intended delivery date of the Phase 3 Supercomputer is (and Microsoft will use commercially reasonable efforts to effect the initial modular delivery of the Phase 3 Supercomputer by) the end of the first calendar quarter of 2023. The parties acknowledge that Microsoft's ability to make the Phase 3 Supercomputer available to OpCo and OpenAI is contingent on: **(i)** Microsoft being able to obtain sufficient component parts from third-party vendors (e.g., NVIDIA Corporation) over which Microsoft has no control; **(ii)** Microsoft solving certain engineering problems related to such Phase 3 Supercomputer; and **(iii)** the sufficiency of funds remaining in the Capex Bucket. Therefore, so long as Microsoft continues to make commercially reasonable efforts to make such Phase 3 Supercomputer available for use by OpCo and OpenAI in accordance with this Section 4(c), Microsoft's failure timely to do so will not constitute breach of this Agreement. Notwithstanding anything to the contrary in this Agreement, Microsoft will have final discretion as to the specifications, system design, and deployment schedule of the Phase 3 Supercomputer (and will regularly seek and consider in good faith the input of OpCo and OpenAI regarding such specifications, system design, and deployment schedule). Once Microsoft finalizes such specifications, system design, and deployment schedule, Microsoft will spend up to the then-remaining amount of the Capex Bucket to deliver the Phase 3 Supercomputer in accordance with such specifications, designs, and schedules.

(d) Phase 4 Supercomputer. During the Term, and subject at all times to the Capex Bucket Limit, Microsoft will create a design specification for a Phase 4 Supercomputer intended to maximize the compute capacity of the Phase 4 Supercomputer. Commencing as soon as Microsoft deems reasonably appropriate, and subject at all times to the Capex Bucket Limit, Microsoft will build and deploy such Phase 4 Supercomputer for use by OpCo and OpenAI. The intended delivery date of the Phase 4 Supercomputer is 2025. The parties acknowledge that Microsoft's ability to make such Phase 4 Supercomputer available to OpCo and OpenAI is contingent on: **(i)** Microsoft being able to obtain sufficient component parts from third-party vendors (e.g., NVIDIA Corporation) over which Microsoft has no control; **(ii)** Microsoft solving certain engineering problems related to such Phase 4 Supercomputer; and **(iii)** the sufficiency of funds remaining in the Capex Bucket. Therefore, so long as Microsoft continues to make commercially reasonable efforts to make such Phase 4 Supercomputer available for use by OpCo and OpenAI in accordance with this Section 4(d), Microsoft's failure timely to do so will not constitute breach of this Agreement. Notwithstanding anything to the contrary in this Agreement, Microsoft will have final discretion as to the specifications, system design, and deployment schedule of the Phase 4 Supercomputer (and will regularly seek and consider in good faith the input of OpCo and OpenAI regarding such specifications, system design, and deployment schedule). Once Microsoft finalizes such specifications, system design, and deployment schedule, Microsoft will spend up to the then-remaining amount of the Capex Bucket to deliver the Phase 4 Supercomputer in accordance with such specifications, designs, and schedules.

(e) Purchase Commitment. During the Term, but subject to Section 4(a) and the Capex Budget Limit, OpCo and OpenAI (in the aggregate) will purchase 100% of the compute capacity of Argos I Dedicated System for use solely by OpCo and OpenAI. On completion of each supercomputer or designated system of the Argos II Dedicated System, OpCo and OpenAI will also purchase 100% of the compute capacity of each such supercomputer or designated system of the Argos II Dedicated System for use solely by OpCo and OpenAI, including use to develop and train Models that would be made available to Microsoft as Licensed IP. Throughout the Term, OpCo and OpenAI will purchase 100% of their compute capacity from Microsoft; to the extent that, at any time during the Term, OpCo or OpenAI have compute capacity needs that it does not reasonably believe Microsoft can meet internally, the parties will discuss in good faith whether Microsoft can obtain such capacity from an appropriate third party and provide such third-party capacity to OpCo and OpenAI.

(f) Argos II Dedicated System Exclusive Use; Availability of Compute Capacity.

(i) Argos II Dedicated System Exclusive Use. Following completion of the Phase 3 Supercomputer, the Phase 4 Supercomputer, or any other dedicated system of the Argos II Dedicated System, Microsoft will make available 100% of the compute capacity of such supercomputer or dedicated system, as applicable, for purchase and use by OpenAI (in the aggregate) pursuant to Section 4(e) for a period beginning on the date such supercomputer or dedicated system was first made available to OpenAI and continuing **(A)** for four years or **(B)** termination or expiration of this Agreement, whichever is earlier (each such period for each such system, the "***Argos II Dedicated System Exclusive Use Period***"). If, during the Term, Microsoft's obligation to provide 100% of the compute capacity of any such Argos II Dedicated System expires, then, on OpenAI's notice to Microsoft (at least 180 days before the expiration of the applicable Argos II Dedicated System Exclusive Use Period and any subsequent extension period), OpenAI may extend such exclusive use for up to three consecutive one-year periods that may not extend beyond termination or expiration of the Agreement, in each case in consideration of additional and ongoing payment by OpenAI of hosting and management fees as contemplated under this Agreement (whether in direct payments or conversion to additional equity).

(ii) Availability of Compute Capacity. Each Argos I Dedicated System and Argos 2 Dedicated System will, when initially completed, be made available to OpCo and OpenAI pursuant to a mutually agreed process ("***Go-Live Process***"). Microsoft will, after the Go-Live Process for each applicable supercomputer or dedicated system is completed, use reasonable efforts to maintain the target availability percentage of such system. Such target availability percentage will, for each system, initially be 80% Actual Availability and will increase by 5% Actual Availability for each two-month period over the first six months after the applicable system is completed, to a maximum of 95% Actual Availability. If the Actual Billing Cycle Availability of such capacity falls below the applicable target availability percentage for any given system, Microsoft will, as OpCo's and OpenAI's sole and exclusive remedy for such performance deficit, prorate the Applicable Compute Costs incurred by OpenAI for such billing cycle for that system by calculating the product of such compute costs multiplied by the Actual Billing Cycle Availability. (Example 1: if the Actual Billing Cycle Availability was 78% for a given system at a time when the target availability percentage for that system was 80%, Microsoft will bill 78% of the Applicable Compute Costs incurred by OpenAI for that system during the applicable billing cycle. Example 2: if the Actual Billing Cycle Availability was 85% for a given system at a time when the target availability percentage for that system was 85%, Microsoft will bill 100% of the Applicable Compute Costs incurred by OpenAI for that system during the applicable billing cycle). "***Actual Availability***" means, at any given time, the percentage availablity of nodes in a system, i.e., [[(total number of nodes in a system) – (OFR Nodes for the "system)] / (total number of nodes in the system)]. "***Actual Billing Cycle Availability***" means, for each billing cycle, the arithmetic mean of the hourly Actual Availability as calculated over the duration of the billing cycle. "***Applicable Compute Costs***" means all costs billed to OpenAI for such billing cycle for the applicable supercomputer or system, including capital expenditures for its design, manufacturing, and deployment, as well as actual compute usage costs. "***OFR Node***" means a given computer system node that the parties agree is out for repair pursuant to their then-current processes for identifying nodes in need of repair, for the entire period that such node is out for repair. The parties will agree in good faith on applying to this Agreement unused credits from previous service level arrangements under the Argos I Agreement.

(g) Pricing. Pricing and payment (including deductions from the Capex Bucket) for the Argos I Dedicated System compute and the Argos II Dedicated System hardware and compute will be in accordance with Exhibit F and the Volume Licensing Agreement.

(h) Purchase and Use of Azure Services. The parties acknowledge that OpCo and OpenAI will be purchasing Azure services under that certain Server and Cloud Enrollment (Direct) effective as of April 1, 2018 between OpCo and Microsoft or Microsoft's applicable Affiliate ("***Volume Licensing Agreement***"). Except for any disputes under the Investment Agreements, any party's use of any Azure services and related disputes will be governed solely by the Volume Licensing Agreement.

(i) Azure Computing Capacity. During the Term, Microsoft will make commercially reasonable efforts to increase its generally available Azure Computing Capacity to address growing demands across Microsoft and OpenAI. For calendar year 2023, Microsoft will continue to make available the quantity of GPUs allocated to

OpenAI as of the Effective Date for Azure Computing Capacity and will increase such quantity to an aggregate total of 30,000 GPUs of Azure Computing Capacity by December 31, 2023. Commencing on January 1, 2024, and again on January 1st of every subsequent calendar year during the Term, Microsoft will designate a certain percentage of its then-current, aggregate Azure Computing Capacity to be made available to OpenAI during that calendar year ("***OpenAI Computing Share***"). Microsoft may change the OpenAI Computing Share from time to time on notice to OpenAI, and, although the OpenAI Computing Share may decrease as Microsoft's aggregate Azure Computing Capacity increases, the aggregate compute capacity available to OpenAI during the Term will not decrease. OpenAI will pay for its consumption of the OpenAI Computing Share solely on an "as used" basis, pursuant to this Agreement and the Volume Licensing Agreement. In addition, and to the extent OpenAI needs additional Computing capacity during the Term, OpenAI may request delivery of additional Computing capacity from Microsoft ("***Reserved Computing Capacity***") pursuant to the process set forth in and subject to the terms of an amendment to the Volume Licensing Agreement to be executed promptly (but in any event within 90 days) following the Effective Date ("***Reserved Capacity Amendment***"). The Reserved Capacity Amendment will include the following general process and concepts:

(i) Beginning March 15, 2024, and on the 15th calendar day of every other month thereafter during the Term (each such 15th calendar day commencing on March 15, 2024, the "***Reserved Capacity Delivery Deadline***"), Microsoft will make available to OpenAI up to 20,000 GPUs of Reserved Computing Capacity, ***on the condition that***, no less than 36 weeks prior to the applicable Reserved Capacity Delivery Deadline, OpenAI provides the Governing Board with a written request for such Reserved Computing Capacity. Commencing on March 15, 2024, and continuing during the Term, Microsoft will not be obligated to deliver more than 120,000 GPUs as part of Reserved Computing Capacity in any 12-month period. Examples are set forth in Table 2 below. The Governing Board may modify the number of GPUs and delivery schedule.

Table 2 – Reserved Computing Capacity Examples	
Example 1:	If prior to July 15, 2023, OpenAI requests 20,000 GPUs of Reserved Computing Capacity, Microsoft will deliver those GPUs by March 15, 2024.
Example 2:	If prior to July 15, 2023, OpenAI requests 60,000 GPUs of Reserved Computing Capacity, Microsoft will deliver 20,000 tranches of those GPUs beginning on March 15, 2024, and continue on the 15th of every other month thereafter for six months – i.e., May 15, July 15, etc...
Example 3:	If prior to July 15, 2023, OpenAI requests 120,000 GPUs of Reserved Computing Capacity, Microsoft will deliver 20,000 tranches of those GPUs beginning on March 15, 2024, and continue on the 15th of every other month thereafter for twelve months.

(ii) Following delivery of the Reserved Computing Capacity to OpenAI, OpenAI will be entitled to 100% of the use of, and will be obligated to pay Microsoft for 100% of, the Reserved Computing Capacity (including all applicable reserved capacity charges, warehousing fees, and any other costs associated with maintaining availability of Reserved Computing Capacity) pursuant to this Agreement and the Volume Licensing Agreement (as amended), without regard to OpenAI's actual usage (if any) of such Reserved Computing Capacity. Such payments will be made monthly, in accordance with a three-year, mutually agreed amortization schedule (with neither party's agreement to be unreasonably withheld, delayed, or conditioned), which shall survive termination or expiration of this Agreement and the Volume License Agreement (as amended). No payment for Azure Computing Capacity will be deducted from the Capex Bucket.

(iii) Microsoft reserves the right to determine the makeup and location of the hardware supporting the delivery of the Reserved Computing Capacity, except that **(A)** Microsoft will use commercially reasonable efforts to meet OpenAI requests for hardware location, and will not host OpenAI's Reserved Computing Capacity in any Excluded Geography, and **(B)** if OpenAI requests a specific GPU instance type or component requirement for such GPUs, the Governing Board will review such request and make a recommendation to Microsoft to consider in good faith when determining the hardware makeup of the Reserved Computing Capacity. The parties

recognize that a change in GPU instance or component requirements may require a modification of the delivery schedule set forth in Section 4(i)(i).

(j) Additional Commercialization Terms.

(i) Commercialization Lead Time for Primarily Developed OAI Models. With respect to each Model (including any Fine Tuning Model) developed primarily by OpenAI during the Term that is considered a major new release (e.g., GPT-3 to GPT-4) and not a minor release ("***Primarily Developed OAI Models***"), neither Microsoft nor its Affiliates will make such Primarily Developed OAI Model available through the Microsoft API for a period commencing on the date the Primarily Developed OAI Model (irrespective of its characterization as a pre-release or non-final version) is first made publicly available through the OpenAI API or otherwise by OpenAI or OpCo and expiring six months after such date. The covenant in the previous sentence does not prohibit the following during such six-month period: **(A)** Microsoft's or its Affiliate's internal, first party use of the Primarily Developed OAI Model; **(B)** Microsoft's or its Affiliate's release of private previews of the Primarily Developed OAI Models that Microsoft or its Affiliate has a bona fide interest in publicly releasing following expiration of the six-month period; **(C)** Microsoft's or its Affiliate's use of the of the Primarily Developed OAI Model in any Licensed Products of Microsoft or its Affiliates (other than the Microsoft API); and **(D)** Microsoft's or its Affiliate's use of such Primarily Developed OAI Model to help customers other than by making such Primarily Developed OAI Model available to such customers via a generally available API (e.g., Microsoft and its Affiliates can use the Primarily Developed OAI Model to help fine tune that Model for specific customers). Nothing in this Section 4(j)(i) limits or modifies OpCo's and OpenAI's obligations to promptly disclose any Primarily Developed OAI Models under Section 3(a). "***Fine Tuning Model***" means a Model, exposed as an API, that enables a customer (or Microsoft, OpCo, or OpenAI, each on a customer's behalf) to further train or tune a base Model using that customer's data.

(ii) Collaboration. The parties will collaborate on commercialization of certain Licensed IP. To that end, the parties will establish a joint product planning and commercialization process for such Licensed IP, including identification by Microsoft or its applicable Affiliate of one or more specific technologies or product capabilities that require development support. Consistent with and as determined in this joint process, OpCo, OpenAI, or both will create technology and deploy products or services in collaboration with Microsoft, Microsoft's applicable Affiliates, or both, and Microsoft or the applicable Affiliates will take on mass-scale commercialization activities, including marketing, sales, hosting, compliance, and support. Microsoft (or its applicable Affiliate) and OpCo, OpenAI, or both will build a joint team that will transfer knowledge and methods via co-development rotations and joint research to ensure successful application of Licensed IP into the Licensed Products of Microsoft or its Affiliates.

(iii) Commercialization Revenue.

(A) Generated by OpCo or OpenAI. OpCo and OpenAI will retain 80%, and Microsoft and its Affiliates will receive 20%, of Net Revenue generated by OpCo and OpenAI during the Term through the Commercial Use of any Technology embodying any Licensed IP as permitted in this Agreement, whether such Commercial Use is through the OpenAI API or otherwise.

(B) Generated by Microsoft or its Affiliates. Microsoft and its Affiliates will retain 80%, and OpCo and OpenAI will receive 20%, of Net Revenue generated by Microsoft or its Affiliates during the Term through third-party Commercial Use of the Microsoft API and the Commercial Use of any New First Party Microsoft Products.

(C) Reporting and Payment. All such revenue will be reported and paid over to the applicable party in accordance with Exhibit F.

(iv) Transition of OpenAI IP to Azure Marketplace. No later than six months after the Effective Date, OpCo and OpenAI will transition the OpenAI API to be available solely through the Azure Marketplace. Microsoft will, on reasonable request, cooperate with OpenAI to provide support to enable such transition. To assist in the transition, the parties may form a joint working group to define the interim timelines and requirements to enable OpCo and OpenAI to promptly transition the OpenAI API to the Azure Marketplace. After completion of the transition, and for the remainder of the Term, OpCo and OpenAI will exclusively commercialize the OpenAI API

on the Azure Marketplace (and any successor versions to such Azure Marketplace). Notwithstanding the foregoing, however, the parties may reasonably agree to extend the period specified in this Section 4(j)(iv) due to dependencies on Microsoft's Azure Marketplace team that Microsoft is not timely meeting.

(v) Exclusive Advertising Provider. The parties will, within 45 days after the Effective Date, negotiate and execute a separate contract under which OpenAI and OpCo will grant to Microsoft the exclusive right to solicit, deliver, and display advertising in all products, services, and Technologies in or through which OpenAI, OpCo, or any of their respective Affiliates includes advertising, subject to OpenAI's right to directly solicit such advertising without the assistance of any third party.

(vi) Advertising Revenue. Microsoft will also share applicable advertising revenue from certain In-Scope Products, as and to the extent set forth in Exhibit H.

(k) Artificial General Intelligence.

(i) Achievement. OpCo and OpenAI may during the Term, in good faith, declare certain Models developed by OpCo or OpenAI to be "***Sufficient AGI,***" meaning that such Models: **(A)** are within the scope of the definition of AGI; and **(B)** are clearly capable of generating the Target Redemption Amount (defined in the Third Investment Agreement) of return on investment capital for each of OpenAI's members (including Microsoft), which such determination will be made pursuant to standards that Microsoft has reviewed and approved (such approval not to be unreasonably withheld, conditioned, or delayed). On achievement of Sufficient AGI as provided in this Section 4(k)(i), OpCo and OpenAI may collaborate with Microsoft to monetize Sufficient AGI until OpCo and OpenAI generate and pay over to each member the full Target Redemption Amount payable to each such member.

(ii) Future Developments. After OpCo and OpenAI pay over to each such member the full applicable Target Redemption Amount in accordance with Section 4(k)(i): **(A)** OpCo, OpenAI, and Microsoft will collaborate in good faith to make the benefits of artificial general intelligence available to all humanity ("***AGI Distribution***"); and **(B)** Microsoft will have the right of first refusal to be OpCo's and OpenAI's commercialization partner for AGI if OpCo or OpenAI chooses to have a commercialization partner (collectively with AGI Distribution, "***Future Developments***"). The parties will, therefore, beginning promptly on or after the achievement of AGI, enter into discussions to negotiate a further amendment to this Agreement to facilitate such Future Developments, which would include establishing a joint product planning and commercialization process for AGI that is the same as or similar to the then-current commercialization process for Licensed IP.

(iii) Limited Exclusivity. Throughout the Term: **(A)** OpCo and OpenAI will use Microsoft as the preferred compute partner for AGI; and **(B)** Microsoft will not pursue AGI (including investments in or collaboration with third parties pursuing AGI, in each case solely to the extent such investments or collaborations are directed to AGI) other than jointly with OpCo or OpenAI.

(l) Tax Treatment. For United States federal income and other applicable tax purposes, the parties and their respective Affiliates agree to treat Microsoft's funding of the Capex Bucket in a manner consistent with the treatment provided in the Third Investment Agreement.

Section 5. Other Rights and Obligations.

(a) Microsoft Cloud and Edge Services. OpCo and OpenAI will, throughout the Term, use solely Microsoft's Azure services (and other relevant Microsoft cloud, edge, and supercomputing services) for all artificial intelligence training, Inference, deployment, and commercial workloads. No purchases of such Azure services will be deducted from the Capex Bucket. OpCo and OpenAI will also during the Term work with Microsoft to identify opportunities to use such services to host and operate other cloud services (e.g., storage, compute, and web hosting) of OpCo, OpenAI, or any Affiliates of either. For the avoidance of doubt, OpenAI is under no obligation to refrain from using any third party service for purposes other than artificial intelligence training, Inference, deployment, and commercial workloads (e.g., HR, financial systems, email, business communications, etc.).

(b) Governance. The parties' relationship under this Agreement will be managed by the Governing Board, which will be comprised of personnel from each party as specified in Exhibit B and will operate in accordance

with the terms in this Agreement, including Exhibit B. For purposes of determining composition of the Governing Board, OpCo and OpenAI will be jointly represented so that the aggregate number of representatives of these two parties on the Governing Board will be the same as the number of Microsoft representatives on the Governing Board.

(c) Executive Reviews. Each party will designate at least one sponsor at the "Vice President" or "Corporate Vice President" level or above ("***Executive Sponsor***") who will meet periodically to review and evaluate: **(i)** design/build status of the Phase 3 Supercomputer and the Phase 4 Supercomputer; **(ii)** status of machine learning Model development; **(iii)** progress of OpCo and OpenAI to achieving AGI, and **(iv)** possible future investments required to achieve commercialization of Licensed IP and realization of AGI. Each such review is an "***Executive Review***". For purposes of the Executive Reviews, OpCo and OpenAI will be treated as a single party and will have a single Executive Sponsor. The parties' initial Executive Sponsors are identified in Table 3 below, although either party may change its Executive Sponsor on notice to the other. Nothing in this Agreement may be construed to prevent an Executive Sponsor from also being a Governing Board member. Executive Reviews will be conducted in person, telephonically, via video conference, or otherwise as mutually agreed, and will occur at least every 60 days. Unless otherwise mutually agreed (and to the extent then-current world conditions allow), at least one such meeting per year will be conducted in person and will alternate locations between Microsoft's headquarters location in Redmond, Washington and OpCo's headquarters location in San Francisco, California. Each party may choose to have additional executives as it deems relevant attend Executive Reviews, although it will provide the hosting party reasonable advance notice of who is attending to facilitate logistics, and the parties will avoid substantial overlap between attendance at Governing Board meetings and attendance at Executive Review to promote candor. The first Executive Review is currently contemplated to be within 90 days after the Effective Date.

Table 3 – Executive Sponsors			
Microsoft's Executive Sponsor		**OpenAI's/OpCo's Executive Sponsor**	
Name:	Kevin Scott	**Name:**	Sam Altman
Title:	Chief Technology Officer	**Title:**	Chief Executive Officer
Physical address:	1 Microsoft Way, Redmond, WA 98052	**Physical address:**	3180 18th Street, San Francisco, CA 94110
Office phone:	[redacted]	**Office phone:**	(415) 879-9686
Email:	[redacted]@microsoft.com	**Email:**	sama@openai.com

(d) Knowledge Transfer. Microsoft, OpCo, and OpenAI share a common goal of sharing knowledge about, and enabling joint collaboration and commercialization using, Licensed IP. Accordingly, the parties will establish one or more joint GitHub repositories (or similar shared repositories) for sharing Licensed IP (each a "***Shared Repository***"). Once OpCo or OpenAI shares any such information through a Shared Repository, it will be deemed permanently shared.

(e) Commercialization Support and Training. Throughout the Term, OpCo and OpenAI will support Microsoft's and Microsoft's Affiliates' commercialization of any and all Licensed IP ("***Commercialization Support***"). Commercialization Support will include the specific support and training activities listed in Section 1 of Exhibit E, and OpCo and OpenAI will prioritize Commercialization Support at least at the same level of importance and priority, and using at least the same level of applicable internal engineering resources, as OpCo and OpenAI use to support their own commercialization activities. Notwithstanding the foregoing, however, and to the extent such activities are not sufficient for Microsoft to implement any Licensed IP in any Licensed Products of Microsoft or its Affiliates, Microsoft will notify OpCo and OpenAI, and the parties will work together in good faith through the Governing Board to agree on additional technical support and training necessary (or reasonably desirable) to facilitate such implementation. OpCo and OpenAI will make commercially reasonable efforts to provide such additional support and training to Microsoft and its applicable Affiliates.

(f) Onsite Engineers.

(i) Staffing. For purposes of collaborating on the development and use of Licensed IP during the Term, Microsoft will embed engineers concurrently onsite at OpCo's and OpenAI's facilities as follows: **(A)** during the first three-year period commencing on the Effective Date, up to 20 Microsoft full-time engineers; and **(B)** during the remainder of the Term, the greater of 20 full-time engineers and 10% of OpenAI's then-current aggregate research engineering personnel (clauses (A) and (B), collectively, "***Onsite Engineers***"). On an annual basis, the Governing Board will discuss the allocation and use of such Onsite Engineers and decide whether any adjustments are needed. Microsoft may change the Onsite Engineers from time to time with reasonable advance notice to OpenAI. All Onsite Engineers: **(X)** must have successfully passed a legally compliant criminal background check prior to onsite placement with OpenAI, **(Y)** must be reasonably skilled and qualified with regard to technologies such as the Licensed IP, as reasonably determined by Microsoft; and **(Z)** are subject to OpenAI's reasonable discretion to review and approve their selection, level, and role on OpenAI projects. OpenAI may interview Onsite Engineers before their onsite placement and request information about their experience and qualifications (e.g., resumes, certifications, etc.). Notwithstanding anything in this Section 5(f)(i) to the contrary, actual Onsite Engineer staffing may fluctuate from time to time during the Term (e.g., but without limitation, due to the cessation of employment of any Onsite Engineer) and OpenAI's failure to have the required number of Onsite Engineers engaged at any given time is deemed to not breach this Agreement so long as OpenAI is working with Microsoft in good faith to fulfill the staffing obligations under this Section 5(f)(i) (e.g., but without limitation, promptly to replace Onsite Engineers who have ceased being employed by Microsoft, subject to Microsoft promptly proposing a suitable replacement). For clarity, although all Onsite Engineers will be full-time personnel of Microsoft, they will not perform services for OpenAI on behalf of Microsoft on a full-time basis. Such Onsite Engineers will, however, while engaged as Onsite Engineers, dedicate the overwhelming majority of their time as Microsoft employees (e.g., 70% – 85% of their full-time efforts) to performing as Onsite Engineers.

(ii) Direction and Management. OpenAI will onboard the initial group of Onsite Engineers proportionally over the first 9 months after the Effective Date. OpenAI will operationalize the setup. As between the parties, and while such Onsite Engineers are embedded with OpenAI, the Onsite Engineers will take business direction from OpenAI with respect to prioritization of such Onsite Engineers' time and work tasks involving OpenAI (but the Onsite Engineers' employment will continue to be managed by their Microsoft managers). During the Term, OpenAI will provide feedback to Microsoft on any human resource-related issues for such Onsite Engineers, including performance evaluation and removal from OpenAI projects. Microsoft will reasonably cooperate and assist OpenAI in the investigation of any complaints, disputes, claims, actions, or proceedings that relate to, are in connection with, or arise out of the Onsite Engineers while performing services for OpenAI on behalf of Microsoft. Microsoft will instruct Onsite Engineers to comply with OpenAI policies and practices concerning workplace conduct and safety, confidentiality, conflicts of interest, and other OpenAI policies related to its security, facilities, and workplace. OpenAI may suspend or terminate any Onsite Engineer's access to OpenAI systems, facilities, or workplaces for violations (or suspected violations, to the same extent that OpenAI would suspend or terminate the access of its own personnel for such suspected violations) of OpenAI policies or practices that are generally applicable to OpenAI employees.

(iii) IP Ownership. Except to the extent of any Improvements of Microsoft's Background IP (or any other IP (if any) that may be created by Onsite Engineers separate from their respective work from, or when not being directed by, OpCo or OpenAI), all of which will remain (or, as between the parties, will be) Microsoft's IP, any Patent and Non-Patent IP, together with any Technology, developed, conceived, or reduced to practice by such Onsite Engineers while embedded with OpCo or OpenAI and in the course and scope of performing their respective obligations as Onsite Engineers ("***Resource Developed IP***") will be deemed Background IP solely created by OpenAI. For clarity, nothing in this Section 5(f)(iii) will have any effect on Microsoft sole ownership of its Background IP, including any such Background IP that may be included in any Resource Developed IP or on which any Resource Developed IP may have a technical or other dependency.

(iv) Role in Commercialization. The Onsite Engineers will be a primary means to accomplish Commercialization Support and will assist with any knowledge transfer with respect to Licensed IP. For such

Commercialization Support, the parties will work together in good faith to maximize the exposure of Onsite Engineers to the working knowledge of OpCo and OpenAI engineers and researchers. Without limiting the foregoing, the Onsite Engineers should have direction from both Microsoft and from OpCo and OpenAI (although such direction will come solely from Microsoft when a given Onsite Engineer is not doing work or otherwise performing services for OpCo or OpenAI, and in relation to such work and services, and will come solely from OpCo and OpenAI when a given Onsite Engineer is doing work or otherwise performing services for OpCo and OpenAI on behalf of Microsoft, and in relation to such work and services (but Onsite Engineers' employment will continue to be managed by their Microsoft managers)) and should participate actively in working on the commercialization efforts for Microsoft's Licensed Products. Microsoft, including Onsite Engineers, as applicable, will execute reasonable documentation (that is not inconsistent with this Agreement) for third parties present within OpCo's and OpenAI's facilities. Due to then-current world pandemic conditions, if any, Onsite Engineers may, for a portion of the Term, work remotely (in a manner substantially similar at any given time to the rest of, and considered in connection with, OpCo's and OpenAI's own personnel (e.g., if OpCo and OpenAI have all or substantially all of their personnel working remotely, then the Onsite Engineers should work remotely, and when OpCo and OpenAI re-open their offices for a partial workforce, at least some of the Onsite Engineers should be included in that partial workforce and in any workforce rotations that provide for alternating onsite and remote access)). Notwithstanding anything in this Section 5(f) to the contrary, however, Microsoft is and will remain the employer of record for the Onsite Engineers, and the parties will cooperate in good faith (including by sharing information relating to personnel issues) so that each company performs its appropriate role in accordance with this Agreement and the Law. For example, but without limitation, if an Onsite Engineer violates a human resource rule applicable to OpenAI personnel (e.g., a rule prohibiting harassment), OpenAI will promptly remove such Onsite Engineer from OpenAI systems and premises and terminate such individual's role as an Onsite Engineer but Microsoft will also investigate the incident under Microsoft's policies (if notified by OpenAI) and issue any appropriate discipline if warranted on conclusion of its investigation.

(v) Additional Requirements; Limitations. Notwithstanding anything to the contrary in this Agreement, OpenAI is not required to train the Onsite Engineers to build, train, and fine tune Models from scratch. At a minimum, however, OpenAI will create conditions to ensure equal opportunity for the Onsite Engineers to be as productive as OpenAI employees of equivalent levels and roles. Specifically, OpenAI will not segregate, limit, or classify Onsite Engineers on the basis of their affiliation with Microsoft. For purposes of this Section 5(f)(v): **(A)** "***segregate***" means to set apart or otherwise isolate Onsite Engineers from OpenAI personnel, such as where certain facilities or systems are used only by OpenAI employees and others are generally used only by Onsite Engineers; **(B)** "***limit***" means to restrict, curb, or curtail Onsite Engineers access to OpenAI personnel, facilities, or systems in a manner that precludes the ability of Onsite Engineers to participate and contribute in the same ways as OpenAI personnel of equivalent levels and roles; and **(C)** "***classify***" means to group or categorize Onsite Engineers and OpenAI personnel so that certain engineering roles are recognized as generally reserved for Onsite Engineers and other engineering roles are reserved for OpenAI employees. Notwithstanding anything to the contrary in this Agreement, OpenAI has full discretion, to be exercised reasonably, as to whether to approve specific personnel, and resource levels and roles, on all projects, so long as (in the aggregate) OpenAI approves a sufficient number of such personnel to comply with then current staffing levels contemplated in this Agreement. If OpenAI rejects any such personnel from time to time, it will do so solely in writing (which may include email) and articulate to Microsoft the specific reasons for OpenAI's rejection and what (if anything) could be changed to obtain OpenAI's approval.

(vi) Non Solicitation. During the Term and for one year after expiration or termination of the Agreement, neither OpCo nor OpenAI (nor any Affiliate or successor-in-interest) may directly or indirectly solicit any Onsite Engineers to leave the employ of, or otherwise modify their contractual relationships with, Microsoft or its Affiliates to the detriment of Microsoft. The foregoing does not apply to a general solicitation that is not specifically directed at Onsite Engineers nor any subsequent recruitment efforts related to a specific role after an Onsite Engineer has applied for that role.

(g) Safety Review.

(i) Purpose and Intent. Microsoft, OpCo, and OpenAI collectively commit to treat the development of all artificial intelligence systems that both implement Licensed IP or AGI and involve neural network Models above the Safety Critical Thresholds as being safety-critical and requiring formal lifecycle management of safety, including management of security and ethics/impacts and concerns. The parties also recognize that Microsoft's intent in entering into this Agreement is to obtain access to the Licensed IP primarily for commercial use and implementation in Licensed Products of Microsoft or its Affiliates. Consistent with the foregoing in this Section 5(g)(i), Microsoft, OpCo, and OpenAI will work together in good faith through the Deployment Safety Board, in accordance with Section 5(g)(ii) and Exhibit D, to cause such advanced artificial intelligence to be safe and to maximally benefit society, which may involve cooperation with competitors and governments.

(ii) Deployment Safety Board. The parties have formed a body to adjudicate matters related to Deployment of advanced artificial intelligence Models and related technologies, including AGI, by the parties and their respective Affiliates (such body, the "***Deployment Safety Board***" or "***DSB***"), all as further described in Exhibit D. "***Deployment***" means the implementation in commercial applications or in applications that involve third-party use, or both, whether internally or externally, of Models incorporating Licensed IP or AGI by or for one or more of the parties. "***Deployed***" means, as applicable to a given commercial application, the state of having achieved Deployment.

(h) Data Protection Commitments. The terms in the Microsoft Online Services Data Protection Addendum ("***DPA***") apply to the Azure services purchased in association with this Agreement.

(i) Azure Rapid Response Support. Microsoft will provide a team, as and to the extent reasonably defined and reasonably staffed by Microsoft, to provide support for OpCo's and OpenAI's implementation of Azure in accordance with the terms and protocols of Microsoft's standard Azure Rapid Response Support offering. OpCo and OpenAI will not pay Microsoft directly for Azure Rapid Response Support, although the cost of all Azure Rapid Response Support may not be paid for, deducted, or otherwise funded from the Capex Bucket. Azure Rapid Response Support, and any other technical support and consulting services relating to the Azure services purchased and used under this Agreement, will be considered "***Professional Services***" as that term is defined in the Online Services Terms, which is incorporated by reference in the Volume Licensing Agreement. The provision of Professional Services will be governed by the Professional Services Terms in the Online Services Terms and Attachment 1 to the DPA, which sets forth the privacy and security terms for Professional Services Data, including any Personal Data in such Professional Services Data, in connection with the provision of Professional Services.

(j) Support Transfer to Hewlett Packard Enterprises ("*HPE*"). If Microsoft is contacted by OpenAI for technical support and Microsoft must engage HPE to resolve the issue for OpenAI, Microsoft will transfer the support case, including Professional Services Data (and the Personal Data in such Professional Services Data) to HPE for resolution. The transfer is made subject to the terms of the Support Transfer Agreement between HPE and Microsoft, which establishes Microsoft and HPE as independent processors of OpenAI's Professional Services Data. Before any transfer of Professional Services Data to HPE will occur, Microsoft will obtain and record consent from OpenAI for the transfer. The above provision serves as OpenAI's authorization to allow its representative(s) who requests technical support to provide consent on its behalf to Microsoft for the transfer of the Support Data to HPE. Once a support ticket is transferred to HPE (as provided above), the processing of OpenAI's Professional Services Data (including the Personal Data in such Professional Services Data) by HPE as an independent processor for the purposes of providing technical support will be governed by the HPE Data Privacy and Security Agreement Schedule attached as Exhibit I.

Section 6. Marketing and Public Relations.

(a) General. No party may issue any press releases and other public announcements regarding this Agreement (collectively "***Publicity***") without the prior written approval of the other parties (which approval will not be unreasonably withheld).

(b) Marketing; AI Product Testing. The parties may, from time to time, enter into Joint Marketing Plans to set forth marketing obligations under or in relation to this Agreement. Each party will perform its respective tasks, activities, and other obligations described in each Joint Marketing Plan (if any). In addition, the parties will work together in good faith, from time to time during the Term, to identify opportunities to implement, and to

implement as mutually agreed, Microsoft's products, services, or technologies relevant to artificial intelligence or machine learning within certain OpCo or OpenAI research operations for evaluation by OpCo or OpenAI in a production or limited production environment and at no cost to OpCo or OpenAI during the evaluation period ("***AI Product Testing***"). Any AI Product Testing will be structured so as to be minimally disruptive to OpCo and OpenAI and, based on the outcome of given AI Product Testing, the parties will work together in good faith to prepare and issue a mutually agreed joint press release (or to engage in other mutually agreed joint public relations activities) to discuss the results of such AI Product Testing. To the extent such public relations includes printed or published textual matter, each party will provide a quote from an appropriate executive (as determined by the party providing the quote) describing or commenting on the AI Product Testing, the results, and the benefits of the applicable products, services, or technologies.

Section 7. Confidentiality. Notwithstanding the licenses in Section 3(c):

(a) NDA. The terms of the NDA will apply to all Confidential Information (as defined in the NDA) and Trade Secrets exchanged or disclosed by the parties under this Agreement (without regard to any earlier termination or expiration of the NDA), except that the obligations of non-use and non-disclosure will continue in perpetuity. The terms of this Agreement are also Confidential Information. Section 5 of the NDA (General rights and obligations), however, will not apply to the extent it conflicts with these General Terms. For avoidance of doubt, OpCo is deemed to be an Affiliate of OpenAI for purposes of (and is bound by the terms of) the NDA. The parties will take reasonable steps to inform applicable employees, including all Onsite Engineers, about obligations of confidentiality under this Agreement. Without limitation of the foregoing, and subject to for Subcontractors, neither party will disclose any Confidential Information of the other party to any third party (including, in the case of Microsoft, governments through Microsoft's Government Security Program or equivalent or commercial partners through Microsoft's Shared Source Initiative or equivalent) during the Term, absent prior written approval of the licensor, which approval will not be unreasonably withheld. If successful commercialization by Microsoft requires such disclosure (e.g., making available certain algorithms or source code for inspection by a government agency or regulated industry), Microsoft will use reasonable efforts to limit disclosure to prevent replication by the third party, and such approval by OpenAI and OpCo will not be unreasonably withheld.

(b) International Affiliates. In addition, the parties may not disclose the Confidential Information of the other parties to their Affiliates domiciled in the countries listed in Section 3(g). Notwithstanding the foregoing, Microsoft may seek authorization to disclose information to Affiliates domiciled in countries listed in Section 3(g) through the Governing Board. The Governing Board will have the sole authority to approve the authorization of each such country by a simple majority vote after demonstration by Microsoft that appropriate security measures as applicable to that country have been implemented. No party's representatives to the Governing Board will unreasonably withhold consent, but the parties all acknowledge that, with some countries listed in Section 3(g) and the current state of their respective politics, no security measures currently known may be acceptable. Microsoft will implement the foregoing security measures in a manner that is reasonably acceptable to the parties (and OpCo and OpenAI will not unreasonably withhold their acceptance). In the event, due to a change in Law or other circumstances, OpenAI has reasonable concerns that the deployment security measures implemented by or on behalf of Microsoft in a country listed in Section 3(g) in which disclosure to Affiliates is permitted are no longer sufficient to safeguard the Licensed IP, the Governing Board will, at OpenAI's request, consider whether additional security measures are required to safeguard the Licensed IP or distribution to Affiliates in such country should be restricted and the parties will work collaboratively to ensure the Licensed IP are protected while enabling commercial availability and will implement any such incremental security measures that a majority of all members of the Governing Board have agreed, in a properly noticed meeting in accordance with Exhibit B, are necessary.

(c) Trade Secret Protection. With regard to Model Training Code (and any code or scripts provided for inference, pre-training, fine tuning, or distilling Models), OpCo and OpenAI each waives any claim alleging Trade Secret misappropriation allegedly arising out of or related to Microsoft's developing, building, training, or otherwise working with Models to the extent that the Microsoft personnel engaged in such acts did not have access to such Model Training Code (or such other code or scripts) or copies thereof within three months prior

to the time they were so engaged. For clarity's sake, notwithstanding the foregoing, Microsoft may not disclose to third parties any OpCo or OpenAI Trade Secrets.

Section 8. Representations and Warranties. Each party continuously represents and warrants that: **(a)** it has full power and authority to enter into, perform its obligations under, and grant the rights granted pursuant to, this Agreement; **(b)** it will use commercially reasonable efforts to perform its obligations in a good and workmanlike manner; **(c)** this Agreement is a legal and valid obligation binding on it and enforceable according to its terms; and **(d)** its (or its Affiliate's) performance of activities pursuant to this Agreement will not violate any rights of third parties, any agreement or obligation between it (or its Affiliates) and any third party, or, to its knowledge, any Law. Each of OpCo and OpenAI further represents and warrants that: **(t)** OpCo and OpenAI have no Patents as of the Effective Date, other than one pending patent application; **(u)** OpCo and OpenAI continue to own and control all IP owned and controlled by OpCo and OpenAI as of each of the effective date of the Original Agreement, the effective date of the Argos I Agreement, and the Effective Date of this Agreement; **(v)** OpCo and OpenAI have not, since the effective date of the Original Agreement, exclusively licensed, or assigned or otherwise transferred, any IP to any Affiliate or other third party (excluding only **(i)** licenses granted to Microsoft and **(ii)** any non-exclusive licenses granted in the ordinary course of OpCo's and OpenAI's business that do not, and did not when granted, breach whichever of the Original Agreement, the Argos I Agreement, or this Agreement was executory when such grant was made); **(w)** except in accordance with Section 3(h), no Licensed IP, or Technology that it Makes Available to Microsoft contains any personal data (including personal names, addresses, e-mails, and other such information) and it has all the necessary rights and consents to grant the licenses to the Licensed IP under this Agreement; **(x)** as of the Effective Date, OpCo and OpenAI are not willfully infringing, and to the knowledge of OpCo and OpenAI neither is infringing, any Patents of any third party with regard to any Licensed IP, or Technology that it Makes Available to Microsoft; **(y)** it will take reasonable precautions consistent with industry practice to ensure that any Licensed IP and any third-party IP or Technology (e.g., open source software) in its Licensed IP Made Available to Microsoft will be at all times free of computer viruses, Trojan horses, trap doors, worms, or other malicious, hidden computer programming routines that could cause damage to data, storage media, or equipment; and **(z)** other than with notice provided in accordance with Section 3(a), no Licensed IP Made Available to Microsoft is or will be governed, in whole or in part, by an Excluded License. Microsoft continuously further represents and warrants that: **(i)** other than in accordance with Section 3(h), no Contributed IP or Technology that it Makes Available to OpCo or OpenAI contains any personal data (including personal names, addresses, e-mails, and other such information) and it has all the necessary rights and consents to grant the licenses to Contributed IP under this Agreement; **(ii)** it will take reasonable precautions consistent with industry practice to ensure that any third-party IP or Technology (e.g., open source software) in any Contributed IP Made Available to OpCo and OpenAI will be at all times free of computer viruses, Trojan horses, trap doors, worms, or other malicious, hidden computer programming routines that could cause damage to data, storage media, or equipment; and **(iii)** except as set forth in Section 5 of the GitHub portion of Exhibit G, and unless otherwise agreed in writing by OpCo or OpenAI (which may include email), no Contributed IP Made Available to OpCo or OpenAI will be governed, in whole or in part, by an Excluded License. The warranties in the foregoing clauses (t), (u), and (x) of this Section 8 are made solely as of the Effective Date; the warranties in the foregoing clauses (v), (w), (y), and (z) of this Section 8, however, are made both as of the Effective Date and continuously throughout the Term.

Section 9. Disclaimers; Limitations on Liability.

(a) No Other Warranties. Except as may otherwise be expressly stated in this Agreement, or in the Volume Licensing Agreement or a separate written agreement between the parties, including with respect to any Azure services, the Argos I Dedicated System, and the Argos II Dedicated System: **(i)** each party's performance and IP and Technology are provided "as-is," "with all faults," and "as available"; **(ii)** each party bears all risk of another party's performance and of using another party's IP or Technology (other than for such other party's breach and subject to each party's obligations under Section 10); and **(iii)** any implied or statutory warranties related to this Agreement (including any warranties or conditions of product liability, fitness for a particular purpose, non-

infringement, merchantability, workmanlike effort, lack of viruses, quiet enjoyment, scope of license, lack of errors, satisfactory condition, or quality) are expressly excluded.

(b) Excluded Damages. Except as otherwise provided in Section 9(d), no party will be liable to the other for any special, incidental, exemplary, punitive, consequential, or other indirect damages (including damages for loss of data or profits), foreseeable or unforeseeable, arising under or related to this Agreement regardless of whether liability is based on breach of contract, tort, strict liability, breach of warranty, or otherwise, even if that party has been advised the damages are possible and without regard to whether application of the exclusion causes any remedy to fail of its essential purpose or not fully compensate a party for any losses.

(c) Limited Liability. Except as otherwise provided in Section 9(d), (i) the maximum, aggregate liability of each party to the other parties or any third party for any claim arising under or related to this Agreement is limited to direct damages in an amount not exceeding $25,000,000, and (ii) the maximum, aggregate liability of each party to the other parties or any third party for all claims arising under or related to this Agreement is $75,000,000.

(d) Applicability of Limitations and Exclusions. The exclusions in Section 9(b) and limitations in Section 9(c) do not apply to: **(i)** liability arising from a party's obligations under, or damages for breach of, any obligations under Section 10; **(ii)** damages for breach of confidentiality under the NDA or this Agreement; **(iii)** fraud; **(iv)** a party's infringement, misappropriation, or other violation of another party's IP; **(v)** the Investment Agreements, nor the "***Subscription Agreement,***" nor the "***Side Letter***" entered into by Microsoft and OpenAI Global, LLC in connection with the Investment Agreements; **(vi)** the Volume Licensing Agreement, including any enrollments; **(vii)** breach by OpCo or OpenAI of the covenants in Section 3(d) and Section 3(e)(ii); **(viii)** breach by Microsoft of the covenants in Section 3(d) and Section 3(e)(i) and Section 4(k)(iii); or **(ix)** breach by either party of its payment obligations in Section 4(i), Section 4(j)(iii), or Section 4(j)(vi). In addition, each party's liability for loss or damage of any kind (including loss or damage caused by negligence) arising under this Agreement is reduced to the extent that the other parties or their Affiliates or agents caused or contributed to that loss or damage. All disclaimers and limitations in this Agreement are made by each party on its own behalf and on behalf of its applicable Affiliates to the other parties and the other parties' applicable Affiliates. Nothing in this Section 9 will preclude a party from immediately, and in any jurisdiction, seeking injunctive relief, including a temporary restraining order against another party, to protect IP or confidentiality, or taking action related to the obligations in Section 10.

Section 10.Defense of Third-Party Claims.

(a) Definition of Claim. "***Claim***" means an unaffiliated third party's demand, suit, or other action to the extent: **(i)** it arises from Respondent's gross negligence or willful misconduct related to the Collaboration; **(ii)** alleging that any IP or Technology that Respondent Makes Available to Defendant under or in relation to this Agreement infringes third-party Non-Patent IP; or **(iii)** arising out of or relating to Respondent's or its Affiliates' commercialization of any Licensed Products of Respondent or its Affiliates that, pursuant to the licenses granted herein, include Licensed IP (including any distributor, reseller, or end-user claims), except, in the case of (iii), to the extent such Claim arises from or is based on the Defendant's breach of this Agreement, gross negligence, willful misconduct, or infringement of third party Non-Patent IP (or Patent IP willfully infringed by Defendant) by IP or Technology that Defendant Made Available to Respondent under or in relation to this Agreement.

(b) Obligation. If a Claim is brought against a party, or its Affiliates or their officers, directors, employees, agents, representatives, licensees, successors, or permitted assigns (all, collectively, "***Defendant***"), the other party ("***Respondent***") will defend the Claim (including by paying litigation costs and reasonable attorneys' fees) and pay any settlement that Respondent consents to or any adverse final judgment. For purposes of this Section 10 and Section 9(c): **(i)** OpCo and OpenAI are regarded as the same "party"; and **(ii)** if a covered Claim is brought against Microsoft, OpCo and OpenAI will be jointly and severally liable and obligated as Respondent. For purposes of the definition of Claims, Respondent means, collectively, Respondent or its Affiliates or their officers, directors, employees, agents, representatives, licensees, successors, or permitted assigns.

(c) Procedure. Defendant: **(i)** will promptly notify Respondent of any Claim and permit Respondent, using mutually agreed counsel, to answer and defend; **(ii)** at Respondent's reasonable request and expense, will assist

in the defense and provide information and materials necessary or useful to the defense; and **(iii)** at its sole expense, may participate in the defense with separate counsel. Respondent is not responsible for settlements it does not consent to and will not settle Claims under this Section 10 without Defendant's consent (with both parties' consent not unreasonably withheld). No party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent (in the other's sole discretion). Respondent will not publicize any settlement without Defendant's prior, written consent (in Defendant's sole discretion).

(d) Exclusions. No party has a duty to defend or pay a settlement amount or judgment to the extent a Claim arises from or is based on, as alleged: **(i)** subject to Respondent providing a replacement or modified version of such IP or Technology as set forth in Section 10(f), use of Respondent's IP or Technology beyond a reasonable time after Respondent notifies Defendant to discontinue use of the original IP or Technology because of or in anticipation of a Claim; **(ii)** combining Respondent's IP or Technology with any hardware, software, service, or thing not provided by Respondent, or choosing to use or implement the IP or Technology in a particular way not recommended or approved by Respondent in writing (which may include email), if the Claim would not have arisen but for the combination or choice; **(iii)** damages attributable to the value of the use of any hardware, software, service, or thing (including any IP or Technology) not provided by Respondent; **(iv)** modifying Respondent's IP or Technology if the Claim would not have arisen but for the modification; or **(v)** using Respondent's Trademark(s) without Respondent's written consent. Defendant will reimburse Respondent for any costs or damages resulting from the actions referenced in this Section 10(d).

(e) Exclusive Remedy. As among the parties and solely to the extent the applicable party as Respondent performs fully in accordance with this Section 10, this Section 10 states the entire liability of each party, and the sole and exclusive remedy of each party and any third parties, for third party Claims of IP infringement, IP misappropriation, and IP violation in connection with this Agreement. Notwithstanding the foregoing, the provisions of this Section 10 are not intended to, and do not, amend, modify, or limit the indemnification and exculpation provisions of the Investment Agreements or of the Volume Licensing Agreement, nor the rights and benefits available to any of the parties under such provisions, nor the obligations the parties may have under such provisions.

(f) Duty to Cure. If any IP or Technology (including Licensed IP and Contributed IP) licensed under this Agreement is held to violate any third-party rights for which the Respondent is obligated to indemnify under this Section 10, and its use is or is reasonably likely to be enjoined, Respondent will promptly use commercially reasonable efforts to procure for Defendant the rights under Section 2 and 3 or to replace or modify such IP or Technology, as applicable, with an equivalent, non-infringing version that complies with this Agreement and the applicable documentation to Defendant's reasonable satisfaction. The maximum amount payable by OpenAI and OpCo (collectively) or Microsoft for license procurement under this Section 10(f) will be $20,000,000 per indemnified Claim.

Section 11.Term and Termination.

(a) Term. The term of this Agreement ("***Term***") begins on the Effective Date and continues until December 31, 2030 ("***Initial Term Date***"), unless earlier terminated by a party or extended in accordance with this Section 11.

(b) Termination. A party may suspend performance or terminate this Agreement only as provided in this Section 11(b):

(i) Insolvency. As applicable to any party, a party may terminate immediately on notice at any time if the other party becomes Insolvent. "***Insolvent***" means, as applied to a party: **(A)** admitting in writing the inability to pay debts as they mature; **(B)** making a general assignment for the benefit of creditors; **(C)** suffering or permitting the appointment of a trustee or receiver for all or any of that party's assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; **(D)** filing (or having filed) any petition as a debtor under any provision of Law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; **(E)** being adjudicated insolvent or bankrupt; **(F)** undergoing wind up or liquidation; or **(G)** ceasing to carry on business in the ordinary course.

(ii) Material Breach. As applicable to any party, after reviewing the applicable issue with the Governing Board as provided for Disputes in Section 2 of Exhibit B, if the other party materially breaches this Agreement and fails to cure such breach within 60 days after notice of the breach, the non-breaching party may terminate on 60 days' notice.

(iii) Change Event. Solely as applicable to Microsoft as terminating party, after reviewing the applicable issue with the Governing Board as provided for Disputes in Section 2 of Exhibit B, Microsoft may terminate on 180 days' notice if a Change Event has occurred, but only if the termination notice is provided within 30 days after Microsoft becomes aware of the Change Event. "***Change Event***" means that applicable regulatory bodies in any of the Material Jurisdictions determine that the artificial intelligence that is the subject matter of this Agreement is illegal or otherwise subject to any substantial regulation or legal limitation it is not subject to as of the Effective Date which would materially adversely affect the commercial utility of the use of such artificial intelligence. "***Material Jurisdiction***" means the United States, the European Union (including for such purposes the United Kingdom), and Canada.

(c) Effect of Termination or Expiration. No party will be liable to the other for damages resulting solely from terminating this Agreement under this Section 11. On any termination or expiration of this Agreement, the rights and obligations of the parties under this Agreement will terminate, except that Section 1, 2(a), 2(b) and 2(c) (in each case, solely as applicable to any Pooled Patents arising during the Term), 2(d)(i), 2(d)(ii), 2(d)(iv), 2(e), 2(f), 3(c) (solely to the extent such license is granted during the Term, and in accordance with its terms), 3(d)(i)-(iv) but solely with respect to Microsoft, 3(d)(v) (solely as contemplated in Section 11(c)(iv)), 3(d)(vi) but solely with respect to Microsoft, 3(e)(i), 3(f), 3(g), 3(h)(iii), 3(h)(v), 3(j) (in accordance with its terms), 3(l), 3(m), 4(h), 4(j)(iii) (solely to the extent of revenue earned during the Term), 5(f)(iii), 5(f)(vi) (in accordance with its terms), 5(g) (solely as contemplated in this Section 11(c) and Exhibit D), 5(h), 5(i) (solely as applicable to support provided during the Term), 5(j) (solely as applicable to support provided during the Term), 6(a), 7 (in accordance with its terms), 9, 10 (with respect to Claims arising during the Term), 11, and 12, and Exhibits B, D (solely as contemplated in this Section 11(c)), and G, will survive termination or expiration of this Agreement. In addition, on termination or expiration of the Agreement: **(w)** each party's license to any then-existing Licensed IP and Contributed IP will survive in perpetuity; **(x)** subject to Section 11(c)(iv), the parties' obligations under Section 5(g) and Exhibit D will survive with respect to commercialization of Licensed IP by the parties; and **(y)** each party and its Affiliates waives and releases all other parties from all claims of infringement or misappropriation arising out of or related to access to or use of IP, Technology, or information to which such other party had rightful access during the Term (provided that such waiver and release with respect to Licensed IP, Contributed IP, AGI, Trade Secrets, and other Confidential Information will apply only to the extent the access thereto and use thereof are in compliance with this Agreement). Moreover, on termination or expiration of this Agreement at the Initial Term Date, the following clauses (i) – (iv) will apply:

(i) Commercialization Revenue. The parties' respective obligations to deliver to the other revenue share under Section 4(j)(iii)are deemed removed in their entirety.

(ii) Supercomputer Hardware. If OpenAI terminates due to uncured material breach by Microsoft, OpenAI may: **(A)** purchase up to, and Microsoft will supply, 85% of the compute capacity of then-existing Argos I Dedicated Systems and Argos II Dedicated Systems that OpenAI had been purchasing the capacity of under this Agreement immediately before such termination, for a period beginning on the date such dedicated system was first made available to OpenAI and continuing for four years, provided that, except with respect to Owl, on OpenAI's notice to Microsoft (at least 180 days before such four year period), OpenAI may extend such exclusive use for up to three consecutive one-year periods in each case in consideration of additional and ongoing payments by OpenAI of hosting and management fees as contemplated under this Agreement (whether in direct payments or (as set forth in the immediately following subsection (B)) conversion to additional equity); and **(B)** if there are funds remaining in the Capex Bucket, OpenAI may elect to use such remaining funds, or pay by means other than the Capex Bucket funds, or a combination of both. If Microsoft terminates due to material breach by OpCo or OpenAI, OpenAI may purchase up to, and Microsoft will supply, 60% of the compute capacity of then-existing Argos I Dedicated Systems and Argos II Dedicated Systems that OpenAI had been purchasing the capacity

of under this Agreement immediately before such termination, for a period of up to six months at the then-current discount on consumption rates on reasonable terms to be negotiated in good faith by the parties, however, OpenAI may not pay for such compute capacity using any funds remaining in the Capex Bucket. If the Agreement expires of its own terms, OpCo and OpenAI may use any remaining Capex Bucket funding to purchase use of Argos I Dedicated Systems, Argos II Dedicated Systems, or some mutually agreed combination of both, on reasonable terms to be negotiated in good faith by the parties.

(iii) AGI. Microsoft's rights and privileges and OpenAI's and OpCo's obligations under Section 4(k) with regard to AGI and Sufficient AGI will be deemed removed in their entirety on a prospective basis and not replaced.

(iv) DSB. After the Term, and until such time (if any) as there is an adequate, generally accepted, public regulatory framework applicable to artificial intelligence and machine learning Models, to the extent that either party continues to implement Licensed IP in new applications for which the DSB would have had oversight during the Term, the parties will implement the following post-Term protections: **(A)** Microsoft's RAI Standard requirements or OpenAI's equivalent requirements will apply to each such implementation of Microsoft or OpenAI or OpCo, respectively, or their respective Affiliates; **(B)** each party covenants not to alter its RAI Standard (or, in the case of OpenAI and OpCo, OpenAI's equivalent standard) review criteria to substantially and negatively change the effect of protections that are in place as of the effective date of termination or expiration of the Agreement, except as may be required by Law; and **(C)** before the effective date of any termination or expiration, the parties may identify mutually-acceptable third-party ethicists and technologists who will serve in the role of each party's respective representatives on the DSB ("***DSB Proxies***"). Any DSB Proxies will be funded by, and bound by confidentiality obligations to, Microsoft, although they will provide regular reports to OpCo and OpenAI confirming operation of the post-Term DSB and that applicable protections are being maintained.

(d) Orderly Transfer and Wind Down. On termination or expiration of this Agreement for any reason whatsoever (including a breach by another party), the parties will work together promptly and in good faith to provide for an optimal and orderly transfer and wind down experience, including by: **(i)** coordinating their public communications to present a consistent message; **(ii)** re-enabling and re-staffing Microsoft's internal capabilities to build its own large scale machine learning models (at a level that is substantially similar to Microsoft's capabilities immediately prior to the Effective Date); **(iii)** delivering to Microsoft all Trained Models and all other Licensed IP developed, before the termination or expiration date and not previously Made Available to Microsoft; **(iv)** finalizing the knowledge transfer to the extent required in this Agreement; **(v)** separating any Joint Development or joint commercialization activities; and **(vi)** otherwise performing their respective obligations in accordance with a mutually agreed plan to wind down the Collaboration ("***Wind Down Plan***"). Except as otherwise expressly provided in this Agreement, each party will pay the applicable other party, at the performing party's standard rates, for services that such other party is requested by the payor party to provide, and are acceptably provided, pursuant to the Wind Down Plan or otherwise in connection with such transfer and wind down.

Section 12. General.

(a) Notices. All notices under this Agreement will be: **(i)** in writing; **(ii)** deemed given when received; **(iii)** sent by delivery service, messenger, or registered or certified mail (postage prepaid, return receipt requested); and **(iv)** addressed and sent, with any required copies, as provided in accordance with the contact table on the Cover Pages (or as the recipient has otherwise designated before notice was sent). Communications in the ordinary course of business, however (which do not include any notices related to alleged breach, Disputes, or any Claims), may be sent by email and need not be copied.

(b) Governing Law and Jurisdiction. The laws of the United States and the State of New York, U.S.A. govern this Agreement, without regard to their conflicts of laws provisions. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in the Southern District of New York. Otherwise, the parties consent to exclusive jurisdiction and venue in the New York State Courts in the Borough of Manhattan, New York. No party will claim lack of personal jurisdiction or forum non conveniens in these courts.

(c) Attorneys' Fees. If a party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs, and other expenses, including the costs and fees incurred on appeal or in a bankruptcy or similar action.

(d) Taxes. No party is liable for any income, sales, use, or value-added taxes that any other party is legally obligated to pay and that relate to any transactions specifically arising under, or relating to the exercise of the rights granted in, this Agreement ("***Agreement Related Taxes***"). Each party will pay to the applicable other party any Agreement Related Taxes it owes due to transactions specifically arising under this Agreement that the Law requires be collected from it by such other party. No party will collect Agreement Related Taxes covered by a valid exemption certificate provided by the applicable other party. Each party will defend, indemnify, and hold the applicable other party harmless from any claims, costs (including reasonable attorneys' fees), and liabilities that relate to such party's Agreement Related Taxes. If the Law requires that Agreement Related Taxes be withheld from any payments from one party to another, such amounts will be withheld and paid to the appropriate taxing authority. Any party that withholds such Agreement Related Taxes will deliver to the applicable other party an official receipt for all Agreement Related Taxes withheld. The parties will use reasonable efforts to minimize any taxes withheld to the extent allowed by Law. Despite anything in this Agreement to the contrary, this Section 12(d) will govern the treatment of all Agreement Related Taxes. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, this Section 12(d) will not apply with respect to any income, sales, use, or value added taxes that may accrue to either party under the Investment Agreements, or to taxes arising under the Volume Licensing Agreement or any enrollment under the Volume Licensing Agreement.

(e) Assignment. Each party may assign this Agreement, or any rights or duties under it, to a third party that was a U.S. Affiliate of that party as of the Effective Date (although OpenAI may not assign this Agreement to OpCo and OpCo may not assign this Agreement to OpenAI), but only if such assignee is reasonably capable of performing, and agrees to be bound by, the assignor's obligations and duties under this Agreement. If any party makes such a permitted assignment, it must provide 30 days' prior notice to the other parties in writing. Any other assignment or transfer of this Agreement, or any rights or duties under it, requires prior written approval of the other parties. This applies to assignment or transfer by operation of law, as well as other assignments or transfers. Any attempts to assign without such approval is void *ab initio*, and if Microsoft is the non-assigning party, Microsoft may terminate this Agreement immediately on notice to OpCo and OpenAI. For purposes of the foregoing sentence, an assignment under this Section 12(e) is deemed to include the following: **(i)** a change in the beneficial ownership of a party of greater than 20% (in one or more transactions) if that party is a partnership, trust, limited liability company, public benefit company, or other like entity; **(ii)** a merger of a party with another entity, whether or not the party is the surviving entity; and **(iii)** the same or other transfer of more than 50% of a party's assets (in one or more transactions). If any assignment to a Microsoft Affiliate creates or would create an adverse tax consequence for OpenAI or OpCo, OpenAI or OpCo, as applicable, will notify Microsoft, and the parties will discuss the matter in the Governing Board, and Microsoft will resolve such matter in a manner that will prevent OpenAI or OpCo from having such adverse tax consequence. If any assignment to an OpenAI or OpCo Affiliate creates or would create an adverse tax consequence for Microsoft, Microsoft will notify OpenAI or OpCo, as applicable, and the parties will discuss the matter in the Governing Board and OpenAI or OpCo, as applicable, will resolve such matter in a manner that will prevent Microsoft from having such adverse tax consequence.

(f) Relationship of the Parties. This Agreement does not create an association, partnership, joint venture, trust, or agency among the parties. No party has any power to bind any other party. Each party will have sole responsibility for any and all compensation, benefits, withholding, and other taxes, expenses, and other applicable costs for its employees.

(g) Force Majeure. No party is liable for failure to perform any obligation under this Agreement to the extent this failure is caused by a force majeure event outside of its reasonable control, including acts of God, natural disasters, war, civil disturbance, action by governmental entity, and strikes. The party affected by the force majeure event will provide notice to the other parties within a commercially reasonable time and will use

commercially reasonable efforts to resume performance as soon as possible. Obligations not performed due to a force majeure event will be performed as soon as reasonably possible when the force majeure event ends.

(h) Subcontractors. Although this Agreement is entered into solely among its named parties, any party may delegate performance of various portions of its obligations under this Agreement to designated third parties (collectively, "***Subcontractors***") or to its Affiliates, in each case except as may be expressly prohibited under this Agreement. No party, however, will delegate any such performance that requires disclosure of another party's Technology (or otherwise disclose another party's Technology) to any Subcontractor (other than to an individual independent contractor who works alongside employees, supplements the party's workforce, and is subject to written obligations of confidentiality consistent with the confidentiality terms of this Agreement or to an Affiliate of the delegating party) without first seeking and obtaining advance, written consent (which may be by email) from the party that owns the Technology. No delegation to any Subcontractors of any performance that involves access to or disclosure of Development Materials will be permitted without advance, written consent of OpenAI or OpCo. The delegating party remains liable for the Subcontractor's or Affiliate's performance, and a Subcontractor's or Affiliate's act or failure to act that would have breached this Agreement had the delegating party so acted or failed to act will be imputed to the delegating party. For avoidance of doubt, but subject to the confidentiality and other terms of this Agreement, the licenses in this Agreement may be exercised on behalf of a party and its applicable Affiliates by such party's (and its applicable Affiliates') employees, consultants, outsourced workers, independent contractors, and interns hired by each licensee or such Affiliates who perform (and solely in the course of performing) services for them. For clarity, the geographic limitations in this Agreement that apply to a party also apply to that party's Subcontractors, Affiliates, and any individual independent contractors. For the purposes of this Agreement, the term "Subcontractors" excludes individuals retained under contract, either directly by a party (or its Affiliates) or indirectly through an agency or other entity that provides individual workers to companies, for performance of duties similar to those performed by a party's employees and whose work product performed for a party is owned by that party (i.e., "temps" or temporary agency employees, outsourced workers, interns, and the like); and all such individuals will be deemed to be personnel of the applicable party.

(i) No Implied Waiver. No failure or delay by any party in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power, or remedy. No waiver is binding unless it is in writing and signed by the waiving party.

(j) Export. The parties will comply with all domestic and international Law that applies to the export of software or other Technology. Such Law may include restrictions on end-users, end-use, and destination.

(k) No Third-Party Beneficiaries. This Agreement does not create any enforceable rights by anyone other than the parties.

(l) Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect, and the parties will amend the Agreement to substitute a new legal, valid, and enforceable provision that most nearly reflects the parties' intent with respect to such provision.

(m) Onsite Requirements. Any party may agree to host another party's employees and agents on its premises to facilitate certain mutually agreed activities. The visiting party will cause its employees and agents to: **(i)** comply with all policies, rules, and regulations provided or imposed by the hosting party (to the extent otherwise consistent with this Agreement); and **(ii)** access and use the hosting party's resources and facilities in good faith and solely as authorized by the hosting party and as necessary for the purposes of such mutually agreed activities. The hosting party will provide the visiting party with reasonable access to resources, including office space and Internet access. If the visiting party temporarily relocates any of its employees and agents to the hosting party's facility, such employees and agents will remain employees and agents of the visiting party.

(n) Interpretation. Lists of examples following "including," "e.g.," or "for example" are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." This Agreement will be interpreted according to its plain meaning without presuming that it should favor any party. Unless stated, or context requires, otherwise: **(i)** "written" or "in writing" means a non-electronic document only; **(ii)** all internal

references are to this Agreement, its parties, and its Exhibits; **(iii)** "days" means calendar days; **(iv)** "may" means that the applicable party has a right, but not a concomitant duty; **(v)** all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; **(vi)** "partner," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership in a legal sense; **(vii)** "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; **(viii)** "notify" means to give notice as provided in Section 12(a); **(ix)** URLs are understood to also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at such URLs; **(x)** a writing is "signed" when it has been hand-signed (i.e., with a pen) or signed by electronic signature service, in each case by duly authorized representatives of each party; **(xi)** unless otherwise provided, a party's choices under this Agreement are in its sole discretion, but such choices must be exercised in good faith; **(xii)** the singular includes the plural and vice versa; **(xiii)** a reference to a document includes any amendment, replacement, or novation of it; **(xiv)** "meet" or "meeting" when referring to the Governing Board means to meet by any commercially reasonable means, including telephone conference; **(xv)** the word "or" will be deemed to be an inclusive "or"; **(xvi)** "unreasonably withheld" means that the applicable consent or agreement will not be unreasonably withheld, delayed, conditioned, or limited; **(xvii)** references to products, services, or programs of Microsoft or any of its Affiliates (e.g., Office, Azure, Xbox, Microsoft 365, Dynamics, GitHub, Azure Marketplace, Government Security Program, etc.) are deemed to include all applicable versions, as determined by Microsoft or the applicable Affiliate, and any successors; and **(xviii)** a reference to a thing includes a part of that thing (i.e., is interpreted to include "in whole or in part").

(o) Miscellaneous. All rights and remedies under this Agreement are cumulative. Each party will pay its own costs and expenses to perform (except if expressly stated otherwise in this Agreement). When performing this Agreement, each party will comply with Law.

(p) Execution. This Agreement is effective only when signed by authorized representatives of all parties. This Agreement may be signed in any number of counterparts (or by fax or other electronic means to accurately send images, including mutually agreed electronic signature service, such as Adobe Sign), all of which taken together constitute one and the same Agreement.

(q) Amendments. Any change, modification, extension, termination, or waiver of this Agreement, or any part of it (including any Joint Marketing Plan), must be in a writing signed by all parties.

(r) Entire Agreement. The terms of this Agreement (including of all Exhibits, the applicable terms of the NDA, and any Joint Marketing Plans, all of which are deemed incorporated by this reference) constitute the entire understanding among the parties with regard to the subject matter of this Agreement. This Agreement merges and supersedes all prior communications, oral understandings, representations, prior discussions, letters of intent, or preliminary agreements among the parties that relate to the specific subject matter of this Agreement (although, for avoidance of doubt, this Agreement neither merges nor supersedes, and is not merged into or superseded by, the Volume Licensing Agreement (including enrollments), nor the Investment Agreements, nor the Subscription Agreement, nor the Side Letter entered into by Microsoft and OpenAI GP, L.L.C. in connection with such Investment Agreements). Notwithstanding any provision of this Agreement to the contrary, the provisions of this Agreement (including all Exhibits, the applicable terms of the NDA, and any Joint Marketing Plans) are not intended to, and do not, amend, modify, or limit the provisions of the Investment Agreements, the Subscription Agreement, and the Side Letter, nor the obligations of the parties under any of the foregoing.

(s) Transition. The terms in Exhibit G will apply to effectuate the transition from the Original Agreement or Argos I Agreement to this Agreement.

(t) Order of Precedence. If there is a conflict between the General Terms and the terms in any Joint Marketing Plan, the General Terms will control. If, however, a Joint Marketing Plan expressly recites the parties' intent to supersede or modify the General Terms, then the applicable conflicting terms in the Joint Marketing Plan will control, but solely as applied to that Joint Marketing Plan. Except as may otherwise be expressly provided in these General Terms, the NDA and any other agreements contemplated in this Agreement (including any applicable license or service agreements for Azure) are separate agreements governed by their own terms.

(u) Future Negotiations. This Agreement contemplates future negotiations between the parties, including under Sections 3(n), 4(a)(ii), 4(a)(iii), 4(f)(i), 4(f)(ii), 4(i), 4(j)(vi), 4(k)(ii), 11(c)(ii) and Exhibit B Section 3 (each, a ***"Future Negotiation"***). Notwithstanding anything in this Agreement to the contrary, the only obligation regarding any such Future Negotiation is for the parties to agree on a time to discuss the applicable topics and then to engage in such Future Negotiation in good faith and in accordance with the applicable section of this Agreement. No party will have any obligation whatsoever with regard to the topics of any such Future Negotiation unless and until all parties agree on the terms applicable to such topics and enter into a signed writing (e.g., an amendment or addendum to this Agreement or a separate written agreement) setting forth such terms. Any party may terminate any such Future Negotiation at any time if, in its good faith business judgment, further discussions or negotiations are not likely to lead to such a mutually agreed amendment or addendum or separate agreement. Each party will pay all costs it incurs related to any such Future Negotiations.

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Exhibit A – Specifications

Section 1 Phase 2 Supercomputer. The Phase 2 Supercomputer specifications are as set forth in this Section 1 of this Exhibit A.

(a) GPU Servers.

- 5 Microsoft Ballard datacenter colos, with 6144 physical GPUs per colo
- Server type: Microsoft ND A100 v4, with 8 Nvidia A100 80GB GPUs per server

(b) Network.

- Mellanox InfiniBand HDR 200Gb/s network: non-blocking, full fat tree within each datacenter colo, with 4:1 oversubscription between colos

Section 2 Phase 3 Supercomputer. The current design and specifications for the Phase 3 Supercomputer are as set forth in this Section 2 of this Exhibit A.

The aspirational capabilities of the Phase 3 Supercomputer are a supercomputer capable of 50 exaflop peak performance.

(a) GPU Servers.

- 6 Microsoft Ballard datacenter colos, with a total of 26,624 GPUs
- Server type: Microsoft NDv5, with 8 Nvidia H100 80GB GPUs per server

(b) Network.

- Mellanox InfiniBand NDR 400Gb/s network connecting one cluster island that spans 4 colos, and one cluster island that spans 2 colos. Ethernet connection between the 2 cluster islands.

Section 3 Phase 4 Supercomputer. *The aspirational capabilities of the Phase 4 Supercomputer are a supercomputer capable of 1000 exaflop peak performance*. Parties to confirm specifications.

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Exhibit B – Relationship Management

For purposes of this Exhibit B, OpCo and OpenAI will be deemed to be one party.

Section 1 Governing Board.

(a) Establishment and General Responsibilities. The parties have established an organizational body to manage their relationship and strategic direction under this Agreement ("***Governing Board***"). In addition to monitoring and controlling the parties' day-to-day operations under this Agreement, the Governing Board's responsibilities include: **(i)** providing advice and recommendations with respect to the overall management of, and strategic direction for, the parties' performance under this Agreement; **(ii)** appropriately prioritizing the parties' respective resources to facilitate effective Commercialization Support; **(iii)** ensuring that Onsite Engineers are meaningfully and consistently engaged with the engineers of OpCo and OpenAI to facilitate maximum knowledge transfer; **(iv)** efficiently managing each party's respective contractual obligations under this Agreement; **(v)** fostering collaboration and alignment on key operational issues, if any; **(vi)** appropriately obtaining and addressing each party's perspectives, preferences, ideas, and solutions; **(vii)** setting the strategic direction for the parties' performance under this Agreement; **(viii)** reviewing short-term (approximately six month) and long-term (approximately one-to two-year) capacity demands provided by OpCo and OpenAI, which OpCo and OpenAI will provide in writing and in advance of the monthly Governing Board meetings; **(ix)** reviewing and agreeing on strategic commercial data acquisitions, including reallocation of Capex Bucket funds otherwise intended for the Phase 4 Supercomputer, to purchase mutually agreed and mutually beneficial data as described in Section 3(h)(iii) of the Main Body; **(x)** reviewing hardware specifications for dedicated systems, including supercomputing systems; **(xi)** reviewing and agreeing on applicable costs (including then-current per-KW costs); **(xii)** reviewing and accepting or rejecting Joint Marketing Plans from any party; **(xiii)** reviewing the parties' performance; **(xiv)** setting product development strategies under this Agreement, including prioritizing and sequencing initiatives and proposed development projects; **(xv)** monitoring technology trends applicable to the technologies that are the subject matter of this Agreement; **(xvi)** establishing policies and practices for the parties to minimize the risk that confidential information related to the Collaboration is disclosed to third parties or that confidential information of third parties is inappropriately incorporated into the Collaboration, **(xvii)** attempting to resolve disagreements informally before a party commences Dispute resolution pursuant to Section 2 of this Exhibit B; **(xviii)** effectively addressing any Disputes pursuant to Section 2 of this Exhibit B before seeking an alternate Dispute resolution process; **(xix)** preparing sufficiently detailed business cases for Joint Marketing Plans; **(xx)** implementing the strategies developed by the Governing Board; **(xxi)** reviewing and agreeing (on an annual basis) on any adjustments to the number of Onsite Engineers; and **(xxii)** such other matters as are assigned to it in this Agreement or as otherwise determined by the parties from time to time.

(b) Composition. The Governing Board will be initially comprised of the individuals listed in Table B1 below. No individual (other than Sam Altman) will participate on the Governing Board who: **(i)** is not a full-time member of the Senior Personnel of the party being represented (or its Affiliate); **(ii)** does not have appropriate decision-making authority for the applicable party with regard to this Agreement; and **(iii)** the other parties have not approved of (with such approval not unreasonably withheld). Absent exigent personal circumstances, each member of the Governing Board will serve for at least one year, and the parties will review composition of the Governing Board annually. To maximize the benefits of continuity, no party will change its Governing Board members unnecessarily or unreasonably (as reasonably determined by each party as applicable to its own members), and each party will make commercially reasonable efforts to stagger terms on the Governing Board so that not all of its members will retire from the Governing Board at the same time. The size and composition of the Governing Board may be revised from time to time on the written agreement of the parties (although no party will be given disproportionate representation on the Governing Board). The Governing Board will at all times be co-chaired by one executive from each party. For purposes of determining composition of the Governing

Board, OpCo and OpenAI will be jointly represented so that the aggregate number of representatives of these two parties on the Governing Board will be the same as the number of Microsoft representatives on the Governing Board.

Table B1 – Governing Board			
OpCo and OpenAI		**Microsoft**	
Position 1 – Co-Chair		**Position 1 – Co-Chair**	
Name:	Sam Altman	**Name:**	Kevin Scott
Title:	Chief Executive Officer	**Title:**	Chief Technology Officer
Email:	sama@openai.com	**Email:**	[redacted]@microsoft.com
Position 2		**Position 2**	
Name:	Ermira Murati	**Name:**	Eric Boyd
Title:	SVP Research, Product & Partnerships	**Title:**	Corporate Vice President
Email:	mira@openai.com	**Email:**	[redacted]@microsoft.com
Position 3		**Position 3**	
Name:	Chris Berner	**Name:**	Mikhail Parakhin
Title:	Head of Compute	**Title:**	Corporate Vice President
Email:	cberner@openai.com	**Email:**	[redacted]@microsoft.com
Position 4		**Position 4**	
Name:	Peter Welinder	**Name:**	Johannes Gehrke
Title:	VP of Product & Partnerships	**Title:**	Technical Fellow / Lab Director
Email:	pw@openai.com	**Email:**	[redacted]@microsoft.com
Position 5		**Position 5**	
Name:	*To be provided at a later date*	**Name:**	Mark Russinovich
Title:	*To be provided at a later date*	**Title:**	Azure CTO and Technical Fellow
Email:	*To be provided at a later date*	**Email:**	[redacted]@microsoft.com

(c) **Meetings.** The Governing Board will meet at least monthly at a mutually agreeable time and place (in person or by telephone or video conference). Notwithstanding the foregoing (and solely to the extent that world conditions permit in-person meetings), at least one of the scheduled monthly meetings per year will be in person, at Microsoft's headquarters location in Redmond, Washington, if requested by Microsoft, and at least one of the scheduled monthly meetings per year will be in person, at OpCo's headquarters location in San Francisco, California, if requested by OpCo. In addition, any party may call a special Governing Board meeting on reasonable advance notice, which notice will specify the purpose for the special meeting. Except as otherwise expressly provided in this Agreement, the Governing Board (and any subcommittee formed by it) will determine the frequency, place, and agenda for its meetings, the manner in which meetings will be called, and all procedural matters relating to conduct of meetings, recordkeeping, and approval of matters at such meetings. A quorum will be present if at least: **(i)** two of each party's Governing Board members are present; or **(ii)** the parties' Governing Board co-chairs are present. No more than one of a party's Governing Board members may be represented by proxy at a Governing Board meeting. Each party's ongoing technical support to the other parties, which formed a material part of the desire to execute this Agreement, will be a standing agenda item at each meeting of the Governing Board.

(d) **Voting.** The representatives of each party to the Governing Board will collectively be entitled to one vote. Decisions of the Governing Board must be made unanimously and in writing (which may include an email exchange between the requisite Governing Board members that unambiguously expresses their agreement). If the Governing Board fails to agree on a matter at two consecutive meetings, such matter will be resolved in accordance with Section 2 of this Exhibit B. Notwithstanding the above, if both parties' respective co-chairs on the Governing Board reach agreement in writing on any matter, such agreement will be deemed an agreement by the Governing Board, even where no formal Governing Board meeting was held with respect to such matter. For clarity: **(i)** no purported decision of the Governing Board will be binding unless and until committed to writing; and **(ii)** Governing Board meeting notes or minutes that merely indicate that a topic was discussed, without any formal vote being taken and vote tally being recited or without stating that a specific decision was made and that all Governing Board members present agreed to that decision, are not a sufficient writing.

Section 2 Preliminary Dispute Resolution. In accordance with this Agreement, the parties will endeavor in good faith to promptly, reasonably, and equitably settle any controversy or claim arising out of or relating to this Agreement (each, a "***Dispute***"). A Dispute may include any claim with respect to a party's obligations or its performance, failure to perform, adequacy of performance, or good faith exercise of its rights, under this Agreement. All discussions and negotiations pursuant to this Section 2 of this Exhibit B are confidential and will be treated as compromise and settlement negotiations under the federal rules of evidence and applicable state rules of evidence. All Disputes will be addressed in accordance with the following terms:

(a) **Informal Escalation.** With respect to a Dispute that is not resolved by agreement between the respective personnel of the parties responsible for day-to-day administration and performance of this Agreement, the parties will follow escalation paths set forth in Table B2, delineated by business unit or organization. The parties will use diligent efforts to arrange either or both personal meetings or telephone conferences as needed, at mutually convenient times and places, between the respective representatives for the parties at the successive management levels identified in Table B2, each of which will have a period of allotted time as specified below in which to attempt to resolve the Dispute.

(b) **Escalation Points.** Escalation points, and timeline for attempted resolution at each point (with such timeline not to be less than 45 business days total), to be identified by the parties at the time of the dispute.

(c) **Notice and Response.** Prior to initiation of litigation by a party or the exercise of any termination right under this Agreement, the disputing party will notify the other parties of a Dispute that the parties have been otherwise unable to settle or resolve informally and in the ordinary course of business. Within five Business Days after receipt of the notice ("***Dispute Notice***"), the receiving party will submit to the disputing party a written response to the Dispute notice ("***Dispute Response***"). The Dispute Notice and Dispute Response will include: **(i)** a statement of that party's position and summary of the evidence and arguments supporting its position; and **(ii)** the name and title of the executive (who will be a member of the Governing Board) who will negotiate that party's position.

(d) **Attempted Resolution.** The parties' designated executives will meet at a mutually acceptable time and place within 10 Business Days after the Trigger Date and will attempt in good faith to resolve the Dispute. If the parties are unable to resolve the Dispute to their mutual satisfaction within 20 Business Days after the Trigger Date, then resolution of the Dispute will be escalated to more senior executives of the parties who have authority to settle the Dispute but who do not have direct responsibility for administration of the Agreement. With respect to Microsoft, such executive will be at the Corporate Vice President level or higher; with respect to OpCo and OpenAI, such executive will be at the Vice President level or higher. Such more senior executives will meet at a mutually acceptable time and place within 10 Business Days of the Dispute being escalated to them. "***Trigger Date***" means the date on which the initiating party receives the Dispute Response.

(e) **Further Actions.** If the Dispute is not resolved to the parties' mutual satisfaction within 40 Business Days after the Trigger Date, or if the responding party fails to provide a Dispute Response within 10 Business Days after the initiating party sent the Dispute Notice, then any party may exercise its rights and remedies in accordance with the applicable terms of this Agreement and the Law. Notwithstanding anything to the contrary in this Agreement: **(i)** any party may initiate litigation immediately to seek equitable relief; and **(ii)** nothing in this Agreement will preclude a party from immediately, and in any jurisdiction, seeking injunctive relief, including a temporary restraining order against another party, to protect IP or confidentiality, or taking action related to the obligations in Section 10 of the General Terms.

(f) **No Implied Waiver.** Notwithstanding the inability of the Governing Board to agree on the resolution of a matter, or the rejection of a matter by the Governing Board, any contractual obligation of a party set forth in this Agreement will continue to be a contractual obligation of that party, unless waived (expressly and in a signed writing) by the other parties.

Section 3 Continuity. OpenAI (the nonprofit entity, acting in its capacity as the Manager) will, throughout the Term, remain in control of OpCo, continuing to oversee OpCo's operations and ensuring that OpCo remains committed to OpenAI's core mission. However, if during the Term, OpenAI becomes no longer the Manager of OpCo, the parties will negotiate and execute an amendment to this Agreement as relevant thereto (including so as to remove OpenAI from provisions regarding commercialization), on mutually acceptable terms.

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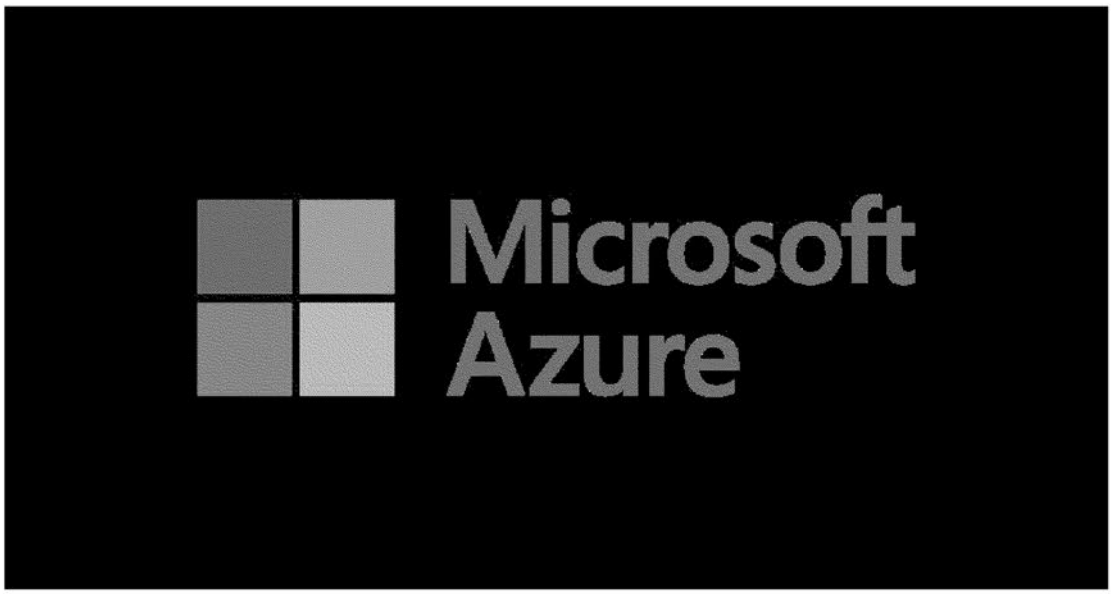
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Exhibit C – Trademarks

(a) License and Obligations. Each party grants to the other parties a worldwide, nonexclusive, nontransferable, sublicensable (but solely to the licensee's Subcontractors), limited right to copy, publicly display, and publicly perform the Trademarks listed in this Exhibit C ("***Licensed Trademarks***") solely in relation to the activities contemplated by this Agreement. Each party covenants that it will use any other party's Licensed Trademarks in accordance with the requirements and restrictions below. No party may modify another party's Licensed Trademarks (including the design, color, or relative proportions of the elements of another party's Licensed Trademarks) without the applicable other party's consent. All goodwill, rights, and benefits in a party's Licensed Trademarks arising from their use under this Agreement will inure to the providing party.

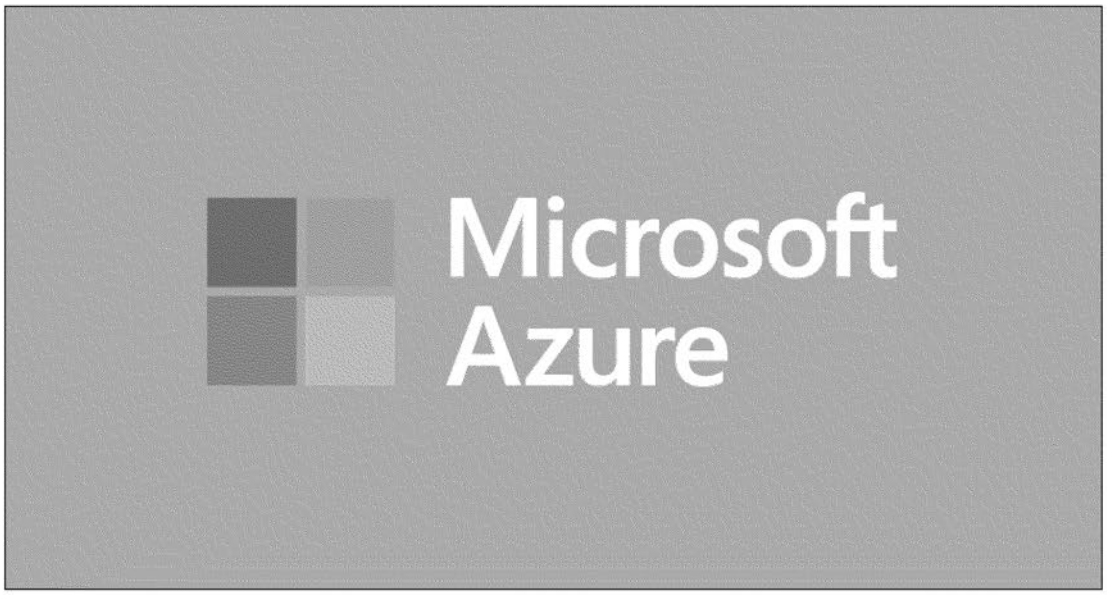
(b) Microsoft Trademarks.

Table C1 – Microsoft Trademarks





The following logo uses white text for use on non-white backgrounds, and is shown on a gray background for contrast:



Note: Microsoft may change the Microsoft Trademarks periodically; OpCo and OpenAI will update their use of any Microsoft Trademarks to reflect the change as soon as commercially practicable after Microsoft's reasonable notice.

Section 2 Microsoft Trademark Usage Guidelines. OpCo and OpenAI will use Microsoft Trademarks in accordance with the guidelines at: https://www.microsoft.com/en-us/legal/intellectualproperty/trademarks.

Section 3 OpCo (or OpenAI) Trademarks.

Table C2 – OpCo (or OpenAI) Trademarks
The unregistered trademark "OpenAI"; The logo set forth below, which is the subject of U.S. Trademark Registration 5,448,123:  **Note:** OpCo (or OpenAI) may change the OpCo (or OpenAI) Trademarks periodically; Microsoft will update its uses of any such OpCo (or OpenAI) Trademarks to reflect the change as soon as commercially practicable after OpCo's (or OpenAI's) reasonable notice to Microsoft.

Section 4 OpCo (or OpenAI) Trademark Usage Guidelines. Microsoft will use OpCo and OpenAI Trademarks in accordance with the guidelines at: https://s3-us-west-2.amazonaws.com/openai-assets/design/openai-visual-identity-guide-v2.2.pdf.

Section 5 Mutual Restrictions. No party will use another party's Licensed Trademarks to: **(i)** imply another party's endorsement, sponsorship, or affiliation except as allowed by this Agreement; or **(ii)** disparage another party or its products or services. Each party will promptly correct any deficiencies in its use of the other's Licensed Trademarks after notice. Moreover, before a party disseminates marketing collateral or any other materials that promote or include such other party's Licensed Trademarks in connection with this Agreement, that party will submit a copy of such materials to such other party ("***Approver***") for approval, and the Approver will use commercially reasonable efforts to approve or disapprove of such materials within 30 days of receipt. If the Approver does not provide written notice of its approval within 30 days after receipt, the subject materials will be deemed approved. Moreover, approval will be deemed granted for any such materials that do not vary materially from a previously approved use. If the materials are disapproved, the parties will work in good faith to mutually agree on appropriate modifications to the materials and, absent such agreement, the submitting party will refrain from using, circulating, or otherwise distributing such materials. At any time, an Approver may withdraw any previously provided approval with respect to any such materials and, on receiving notice of any such withdrawal, the other party will cease all further use and distribution of the subject materials as soon as commercially practicable. For clarification, subject only to the confidentiality obligations in this Agreement, nothing in this Agreement may be interpreted to restrict a party from making descriptive references to the other party's products or services that are otherwise permitted under applicable trademark Law.

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Exhibit D – Deployment Safety Board

For purposes of this Exhibit D, OpCo and OpenAI will be deemed to be one party.

Section 1 Composition. The DSB will consist of three representatives from OpCo and OpenAI collectively and three from Microsoft, for a total of six members. Each DSB member will be a full-time employee of the respective party and, for Microsoft, one member will be Microsoft's Chief Technology Officer (or a reasonably equivalent officer, but only if Microsoft's Chief Technology Officer as of the Effective Date is no longer employed by the company), one member will be from Microsoft's Office of Responsible AI ("***ORA***") and all members will be at an employment level of Vice President (or similar) or higher and have relevant domain and technical expertise regarding safety issues and authority, and for OpCo and OpenAI, one member will be OpenAI's Chief Executive Officer (or a reasonably equivalent officer, but only if OpenAI's Chief Executive Officer as of the Effective Date is no longer employed by the company) and all members will be at an employment level of Vice President (or similar) or higher and have relevant domain and technical expertise regarding safety issues and authority. No more than one person from OpCo and OpenAI collectively and Microsoft can sit both on the DSB and the Governing Board. To maximize the benefits of continuity, no party will change its DSB members unnecessarily or unreasonably (as reasonably determined by each party as applicable to its own members), and each party will make commercially reasonable efforts to stagger the terms of its DSB representatives so that not all of its representatives will retire from the DSB at the same time. The size and composition of the DSB may be revised from time to time on the written agreement of the Governing Board, but the Governing Board may not give either OpCo and OpenAI, in the aggregate, or Microsoft disproportionate representation on the DSB. The DSB will at all times be co-chaired by one executive from each party. The DSB will be initially comprised of the individuals listed in Table E1 below (although the parties will review, and adjust as necessary, their respective DSB members on or about the one-year anniversary of the Effective Date):

Table D1 – DSB Members			
OpCo and OpenAI		**Microsoft**	
Position 1 – Co-Chair		**Position 1 – Co-Chair**	
Name:	Sam Altman	**Name:**	Kevin Scott
Title:	Chief Executive Officer	**Title:**	Chief Technology Officer
Email:	sama@openai.com	**Email:**	[redacted]@microsoft.com
Position 2		**Position 2**	
Name:	Miles Brundage	**Name:**	Natasha Crampton
Title:	Head of Policy Research	**Title:**	Chief Responsible AI Officer
Email:	miles@openai.com	**Email:**	[redacted]@microsoft.com
Position 3		**Position 3**	
Name:	Josh Achiam	**Name:**	Eric Horvitz
Title:	Head of Applied Safety	**Title:**	Technical Fellow & Chief Scientific Officer
Email:	jachiam@openai.com	**Email:**	[redacted]@microsoft.com

Section 2 General Responsibilities. The purpose of the DSB is to ensure that each party's Deployment of Licensed IP, Technology, and AGI is responsible, safe, and beneficial. To facilitate the foregoing, the DSB will carry out the following responsibilities:

(a) Safety Criteria. The DSB will develop a set of mutually agreed standards that the development and operation of a product, service, or technology must satisfy to be Deployed ("***Safety Criteria***"), and such standards will align with best practices for safety critical systems in other engineering fields.

(i) Initial Criteria. The initial Safety Criteria will presumptively be based on Microsoft's Responsible AI Standard ("***RAI Standard***"), which incorporates Microsoft's Responsible AI Principles: Fairness, Reliability & Safety, Privacy & Security, Inclusiveness, Transparency, and Accountability. The DSB will determine within three months after signing the Agreement whether alternative, revised, or supplemental Safety Criteria are appropriate, and if so, the parties will work together via the DSB to identify and agree upon such alternative, revised, or supplemental Safety Criteria. Except as agreed by the DSB nothing in this Exhibit D may be construed to modify or supersede the Safety Criteria.

(ii) Review Materials. The Safety Criteria adopted by the DSB must specify in reasonable detail the materials necessary for the DSB to perform a Deployment Safety Review ("***Review Materials***"), potentially including any Responsible AI Impact Assessment for the potential deployment and any materials issued as part of the ORA Sensitive Use Review process (*e.g.*, ORA guidance, leadership review group guidance). However, it is also understood that because the projects to be reviewed will likely incorporate novel research, there may be occasions when additional information is requested during a Deployment Safety Review that could not have been reasonably predicted when specifying the Safety Criteria.

(iii) Future Modification. The parties will routinely update Safety Criteria to accord with best practices in the field, with proposed amendments to the Safety Criteria requiring a simple majority vote of all DSB members.

(b) Trigger Conditions. The DSB will also develop, and periodically update, trigger conditions determining when a project would be subject to such Safety Criteria and review processes by the DSB ("***Trigger Conditions***"). The initial Trigger Conditions will be based on minimum thresholds for compute usage or neural network parameter counts, as described in Section 5 of this Exhibit D.

(c) Deployment Safety Reviews. Subject to the Implementation Principles in Section 5 of this Exhibit D, the DSB will evaluate each party's proposed Deployments of Licensed IP for consistency with the Safety Criteria, for all projects that satisfy the Trigger Conditions ("***Deployment Safety Review***"). Notwithstanding the foregoing, the parties agree that (without limitation to any other Models that may not meet the Safety-Critical Compute Threshold or give rise to a Trigger Condition) the GPT-2, GPT-3, and the upcoming 12B-equivalent Model for code generation do not meet the Safety-Critical Compute Threshold or give rise to a Trigger Condition and accordingly do not fall within the scope of a DSB review.

(i) Review Cycle. In accordance with best practices from professional safety engineering, safety reviews in accordance with the Safety Criteria will take place at various points in the lifecycle of a project as specified in the Safety Criteria and this Section 2(c) to ensure safety features are smoothly incorporated into design, development, and operations.

(A) Launch Review. A Launch Review will occur before any party begins operating the relevant Models in its Deployment context. Project stakeholders will provide the DSB with an updated deployment plan, along with all Review Materials needed to conduct the Launch Review. Deployment cannot proceed without approval from the DSB at the Launch Review step. At this time, the DSB and project stakeholders will jointly determine a plan for future ***Operations Reviews***.

(B) Operations Reviews. During "Operations Reviews," the DSB will evaluate that operations during Deployment continue to meet the Safety Criteria.

Section 3 Meetings. The DSB will meet regularly (at least bi-annually) to discuss matters generally within the scope of Section 2 of this Exhibit D. Such meetings will be conducted in person, telephonically, via video conference, or otherwise as mutually agreed. Unless otherwise mutually agreed (and to the extent then-current world conditions allow), at least one of such regularly scheduled meetings per year will, where a majority of the DSB members agree that an in-person meeting is practicable, be conducted in person and will alternate locations between Microsoft's headquarters location in Redmond, Washington and OpCo's headquarters location in San Francisco, California. Notwithstanding the foregoing, however, and consistent with the Implementation

Principles and the acknowledged commercial purpose of this Agreement, time is of the essence with regard to evaluation of potential Deployments by the DSB and when any Deployment Safety Review is requested, the DSB will meet as soon as commercially practicable (and in all cases within five Business Days of the request) and will provide the requesting party with a written review result within 10 Business Days of the request; provided, however that correct and detailed evaluation of highly technical Review Materials may, on a case-by-case basis, require additional time beyond these periods, and in some instances a review result may be postponed on this basis (although, for clarity, no such extension beyond 10 Business Days will be permitted without a majority vote of all members of the DSB entitled to vote).

Section 4 Decisions. Adoption or revision of Safety Criteria or Trigger Conditions requires a simple majority decision of all members of the DSB. A decision to approve a potential Deployment in response to a request for a Deployment Safety Review requires a simple majority decision of those members of the DSB present (via any commercially reasonable means, including telephonic attendance and attendance via video call) for the meeting, as long as both parties are represented in equal numbers at that meeting. If a Deployment Safety Review vote is tied, the vote will be decided in OpenAI's and OpCo's favor. At no time will the DSB make decisions with a disproportionate number of representatives from OpenAI and OpCo in the aggregate, or Microsoft. DSB members may attend by proxy if they are unable to attend themselves, or may designate a substitute (so long as such substitute has substantially equivalent qualifications as the DSB member unable to attend, although the parties' respective co-chairs may not attend by proxy any such meeting where a Deployment Safety Review vote, or a vote to change Safety Criteria or Trigger Conditions will be taken). Any opinion or decision of the DSB must be in writing (which may include email) and, if the opinion or decision is to reject a potential Deployment, it must contain sufficient information for the requesting party to understand what revisions would be necessary for acceptance. Once the DSB has made a decision to approve a potential Deployment, that decision is irrevocable unless or until previously not-considered evidence is presented that warrants the decision to be revisited and a majority of the members of the DSB agree to revoke or revise it.

Section 5 Implementation Principles. The DSB will make decisions applying the Safety Criteria to potential Deployments using the principles in this Section 5 of this Exhibit D ("***Implementation Principles***"):

(a) Standard of Review. The DSB will review potential Deployments to assess whether they are irresponsible, unsafe, detrimental, or will result in harmful effects, guided by the concepts reflected in the Safety Criteria.

(b) Blocking Deployment. If the DSB rejects any potential Deployment, it will provide specific, written guidance sufficient for the requesting party to understand the basis for the DSB's decision. Any such rejection will be reconsidered if the requesting party presents new information to address the DSB's concerns that were set forth in its written rejection.

(c) Consistency and Efficiency. When asked to evaluate any potential Deployment, to maximize consistency and efficiency in decision-making, the DSB will evaluate both the proposed Deployment and any planned or potential similar Deployments referenced in the Review Materials.

(d) Advisory Reviews. The parties acknowledge that development of a potential Deployment from concept to completion and, as applicable, commercial availability can be a multiyear process and completing such development only to have such potential Deployment rejected by the DSB at the Launch Review stage is commercially impractical. To prevent this, the party developing a potential Deployment may submit Review Materials for the potential Deployment at the concept stage, and the DSB will, in accordance with Section 3 of this Exhibit D, issue an opinion regarding whether the potential Deployment, if completed in accordance with the specifications in the Review Materials, would be approved by the DSB ("***Advisory Review***"). Such Advisory Review opinion will be binding on the DSB when the potential Deployment is again submitted for review after completion of development ("***Launch Review***") to the extent that the completed Deployment is consistent with the Review Materials submitted for Advisory Review.

(e) Estoppel. If the DSB makes a determination that a particular feature or function of a potential Deployment is consistent with the Safety Criteria, the DSB will be estopped to deny that implementation of substantially

similar features or functions in other potential Deployments is consistent with the Safety Criteria unless the DSB identifies significant differences between the prior, approved Deployment and the potential new Deployment that are material from the perspective of the Safety Criteria.

(f) Materiality. The DSB will not require new reviews of updated or upgraded Deployments that do not vary materially, from the perspective of the Safety Criteria, from previously approved versions of such Deployments.

(g) Trigger Conditions. Microsoft, OpenAI, and OpCo mutually agree that the intent behind the DSB is to help achieve safety assurance for AI systems that are expected to approach, achieve, or exceed human-level performance on societally important tasks. The parties have a shared expectation that not every Deployment by the parties needs to be subject to the activities of the DSB. These intentions and expectations will be made rigorous and repeatable through the development of specific, actionable, measurable Trigger Conditions that would describe when an AI system does, or is likely to, meet the bar of "approaching, achieving, or exceeding human-level performance on societally-important tasks," with a margin of safety.

(i) Initial Trigger Conditions. A Deployment is subject to DSB activities if the AI system to be deployed either currently satisfies, or is intended upon completion to satisfy, either Minimum Threshold criteria described in Section 5(h) of this Exhibit D.

(ii) Updating Trigger Conditions. The precise Trigger Conditions can and should change over time in response to new information from research and development. As described in Section 4 of this Exhibit D, the DSB may update the Trigger Conditions by majority vote. Changes to the Trigger Conditions would be effective immediately after the changes are approved by the DSB and would be applicable to the deployment of Microsoft Licensed Products incorporating any Licensed IP that is first Deployed by Microsoft after that date.

(h) Minimum Threshold. There are two Minimum Threshold criteria for AI systems, the "Safety-Critical Parameters Threshold" and the "Safety Critical Compute Threshold" as follows (collectively, the "***Safety Critical Thresholds***"):

(i) Safety-Critical Parameters Threshold. The AI system utilizes as a component a neural network that uses over 1 trillion parameters in a forward Inference pass. This excludes transformer networks with mixture-of-experts layers where the total parameter count exceeds 1 trillion, but fewer than 1 trillion parameters are used in forward pass due to the "gates" in the mixture-of-experts layers.

(ii) Safety-Critical Compute Threshold. More than 20,000 Pf/s-days of compute will be expended to train a neural network component of the AI system, where the amount of compute is calculated as in Kaplan et al, 2020.[2]

(i) Commercialization. A critical purpose of this Agreement is to provide for the Deployment of Licensed IP in Licensed Products of Microsoft or its Affiliates. The DSB will apply the Safety Criteria in recognition of this purpose and will not unreasonably reject a Deployment context.

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[2] https://arxiv.org/abs/2001.08361

Exhibit E – Support

Section 1 Support Obligations.

Supporting activities will be as agreed upon by the Governing Board.

The parties each will make commercially reasonable efforts to support the milestones and timelines as agreed and prioritized by the Governing Board.

Three types of support are contemplated:

(a) Mainline support for tech transfer:

- Support for activities conducted by the Onsite Engineers such as:
  - Model verification/configuration to work on Microsoft infrastructure;
  - Inferencing;
  - Model adaptations (e.g., fine-tuning);
  - Generalization into the Microsoft platform (i.e., Azure) to enable broad adoption; and
  - Productionization research (e.g., brainstorming and feedback on Inference optimization, summarization, distillation)
- Support incubation brainstorming
- Access to sufficient OpenAI resources (e.g., researchers, engineers, documentation) to support use of the Licensed IP
  - For example:
    - Support in understanding the Model code, architecture, training scripts, hyperparameters, tips, and tricks

(b) Future downstream issues:

- Assistance in discovery and addressing of challenging issues (e.g., bugs and performance) that Microsoft cannot resolve independently;
- Issues down the road with safety/security of Models and their use; work to collaborate on mitigations; and
- Any mitigations requiring Joint Development to be prioritized by the Governing Board.

(c) GitHub Support:

- A team of OpenAI engineers dedicated to the creation, improvement, and maintenance of Models trained on GitHub source code and related artifacts, in each case consistent with past practice;
- Prioritization of commercialization issues as determined by the Governing Board, including as related to performance and cost criteria;
- Weekly 1-hour team meetings to report progress and adjust plans;
- Shared messaging channel for continuous team collaboration; and
- Mutually agreed service levels for the API and the relevant Models.

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Exhibit F – Pricing and Payments

Section 1 Pricing Model.

(a) **Phase 2 Supercomputer Pricing.** Purchase of compute capacity of the Phase 2 Supercomputer will be paid for by deduction from the Capex Bucket. Argos 1 Dedicated System pricing (excluding Owl) will be calculated at a fixed [redacted], which will be calculated using the following two variables: (i) [redacted] and (ii) [redacted]

(b) **Argos II Dedicated System Pricing.** Purchase of new hardware and compute capacity of the Argos II Dedicated System will be paid for by deduction from the Capex Bucket. Argos II Dedicated System pricing will be calculated at a fixed [redacted] which will be calculated using the following two variables: **(i)** [redacted] and **(ii)** a [redacted] At OpCo or OpenAI's request, Microsoft will provide OpCo and OpenAI with a reasonable forecasting of costs. OpCo and OpenAI will owe 100% of the price, including for the applicable computing capacity, calculated as above for each entire supercomputer system, which will be deducted from the remaining amounts of the Capex Bucket. OpCo and OpenAI may, collectively, no more than once a year and with reasonable notice, audit Microsoft's financial records to verify that the price of the Argos II Dedicated System hardware is a reasonable approximation based on the criteria above. OpCo or OpenAI must use a recognized and independent public accounting firm that is reasonably acceptable to Microsoft. Before Microsoft purchases Argos II Dedicated System hardware, or OpCo or OpenAI is provided access to such a Argos II Dedicated System, Microsoft will verify that the amount of money in the Capex Bucket is at least as much as the price of the new Argos II Dedicated System hardware, plus any amounts for previous Argos II Dedicated System purchases minus amounts deducted from the Capex Bucket for use of previous Argos II Dedicated System hardware purchases (and if there is an insufficient remaining balance in the Capex Bucket at that time, Microsoft has no obligation to purchase such Argos II Dedicated System hardware until the parties have agreed on incremental funding). The cost of hardware and other capital expenditures for Argos II Dedicated Systems will be billed to OpenAI only following delivery, in equal installments over a 48-month period.

(c) **Azure – Generally Available Services.** For all Azure services that Microsoft makes generally available to its customers, Microsoft will provide OpCo and OpenAI with a 60% discount on consumption rates to the extent OpCo and OpenAI use such services for the purposes of this Agreement. No such purchases of Azure services, however, may be paid for, deducted, or funded from the Capex Bucket.

(d) **Azure – Customized Services.** For any customized Azure services or Azure services not made generally available by Microsoft to its customers, the parties will cooperate, on a quarterly basis and in good faith, to agree on pricing terms using calculations similar to those used for the Phase 2 Supercomputer pricing. No such purchases of customized or not generally available Azure services, however, may be paid for, deducted, or funded from the Capex Bucket.

Section 2 Payment of Commercialization Revenue.

(a) **Payment.** Within 45 days after the end of each calendar quarter of the Term in which Net Revenue was earned that must be shared with the other party under this Agreement, the payor party will remit to the payee party the portion of Net Revenue owed, and will contemporaneously furnish to the payee a brief, written, electronic statement (which may be by email) sufficient for the payee to determine the basis for the amount paid. Payments will be made in immediately available U.S. funds, to the applicable address set

forth in Table 1 of the Main Body (or otherwise pursuant to reasonable payment instructions provided under Section 12(a) of the Main Body by the payee party from time to time).

(b) **Audit.** Each party (each, as applicable, "***Audited Party***") will, during the Term and until three years after Audited Party makes its final shared revenue payment under this Agreement, keep all usual and proper records and books of account (with all usual and proper entries) relating to such shared Net Revenue payments made to the other party (each, as applicable, "***Auditing Party***") under this Agreement. Auditing Party may, from time to time (but no more than once per calendar year, unless a prior audit reveals a breach of Audited Party's Net Revenue payment obligations under this Agreement), audit these records to assess compliance with the Net Revenue sharing obligations under this Agreement. Any audit will be conducted: **(i)** on no less than 90 days' prior notice; **(ii)** by a mutually agreed (with Audited Party's agreement not to be unreasonably withheld, conditioned, or delayed), nationally recognized, public accounting firm, not working on a contingent fee basis, that is bound to keep confidential any Confidential Information (including any competitively sensitive information) learned during the audit; and **(iii)** during regular business hours at Audited Party's offices in a manner that will not unreasonably interfere with Audited Party's normal business activities. For purposes of this Section 2(b) of this Exhibit F, Deloitte & Touche, Ernst & Young, PricewaterhouseCoopers, and KPMG are all deemed to be mutually agreed. Auditing Party will bear the cost of any audit, unless the audit shows that Audited Party underpaid Auditing Party by 5% or more of the amounts actually due for the audited period, or the audit otherwise discloses a material breach of Net Revenue sharing obligations, in which case Audited Party will pay Auditing Party for all reasonable and documented costs and expenses incurred in conducting the audit. In addition, if an undisputed audit shows that Audited Party underpaid Auditing Party for any audited period, Audited Party will re-compute the amount that should have been paid to Auditing Party for that period and promptly pay Auditing Party the difference between the amounts actually owed and actually paid, plus interest at the maximum legal rate from the date such incorrect amounts were originally paid until the date the incorrect payment is fully rectified.

Section 3 Payment via Capex Bucket.

(a) All Capex Bucket deductions made pursuant to this Agreement will be made quarterly, in arrears.

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Exhibit G – Transition

The parties will, within 60 days after the Effective Date, enter into an amendment to include additional transition terms, including with regard to any outstanding statements of work. No party will unreasonably withhold its agreement to such amended terms.

Supercomputer Tech Collateral Exchange

Background

The parties entered into the Agreement to define certain development and licensing terms regarding certain of their respective developments in the field of artificial intelligence and to set forth terms applicable to their collaboration and development activities. This section ("***Supercomputer Tech SOW***") consists of incremental terms applicable to licensing or development of their respective offerings or other activities under or in relation to the Agreement. The terms in this Supercomputer Tech SOW are intended by the parties to amend, modify, and supersede to the extent of any express inconsistencies, the provisions of the General Terms, but solely with regard to the terms in this section. Except as may otherwise be expressly stated in this Supercomputer Tech SOW, this Supercomputer Tech SOW is considered a part of the Agreement, and all terms of the Agreement apply to this section. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

Section 1 Project leads. The individuals identified immediately below are (unless replaced, on notice to the other parties) the parties' respective project leads for this Supercomputer Tech SOW and (unless otherwise provided in this Supercomputer Tech SOW) are authorized to speak for the applicable party with regard to this Supercomputer Tech SOW:

Contact Details	
OpCo / OpenAI Lead	**Microsoft Lead**
Name: Christopher Berner	Name: Dimitry Melts
Email: cberner@openai.com	Email: [redacted]@microsoft.com

Section 2 High-level description of the purpose of this Supercomputer Tech SOW & description of certain Microsoft shared Supercomputer Tech. The parties desire pursuant to this Supercomputer Tech SOW for Microsoft to share with OpenAI and OpCo certain of its Supercomputer Tech with OpenAI and OpCo; for the parties to collaborate on such Supercomputer Tech; and for OpenAI and OpCo to use and provide feedback on the Microsoft Supercomputer Tech (such activities, the "Project" and such goal, the "Purpose"). Such Supercomputer Tech includes, but is not limited to, any Technology (e.g., hardware specifications, system-on-chip architectures, programming models, data types, system capabilities, system performance characteristics, etc.) used or usable in the design or architecture of a supercomputer and shared by Microsoft under this Supercomputer Tech SOW, and all such Supercomputer Tech is and will be owned by Microsoft. For clarity, however, that certain Technology described at https://openai.com/blog/triton/ ("***Triton***") is deemed expressly excluded from the scope of the Project and of the Purpose. Although Microsoft currently intends to evaluate Triton for suitability to various contexts, and Microsoft, OpenAI, OpCo, or any combination of them may engage in joint development work, or Microsoft may engage in independent development work, related to Triton, such development work will not be performed under the terms of this Supercomputer Tech SOW, and the parties will enter into separate documentation (e.g., a separate SOW under the Agreement, a separate development or licensing agreement, or otherwise) related to any such development work.

Section 3 Roles & Responsibilities.

- In connection with the Project, Microsoft will be making certain of its Supercomputer Tech accessible to OpenAI and OpCo for use in connection with the Project for the Purpose. Microsoft will determine in its sole discretion which of its Supercomputer Tech will be made available for use in connection with this Supercomputer Tech SOW, including the method in which it will be made available, and the requirements for granting access and permissions to access and use such Supercomputer Tech to OpenAI and OpCo personnel.
- OpenAI and OpCo will comply with all such permissioning and access requirements and procedures communicated to OpenAI and OpCo in writing and will be solely responsible for maintaining the security and confidentiality of any access credentials and for all activities conducted using such credentials.
- OpenAI and OpCo agree to provide any and all written feedback on the Microsoft Supercomputer Tech through the confidential Teams site established for engineering collaboration under this Supercomputer Tech SOW, or via other methods as agreed by the parties, which may include email.
- All Microsoft information, data, and other materials provided to OpenAI or OpCo constitutes Confidential Information of Microsoft.
- Each party will provide such skilled personnel, resources, and materials as reasonably necessary for the performance of its responsibilities in connection with the Project.

Section 4 Licensing and other intellectual property terms.

- Notwithstanding anything to the contrary in the Agreement or this Supercomputer Tech SOW, all Microsoft Background IP shared with OpenAI or OpCo under this Supercomputer Tech SOW is deemed to be Supercomputer Tech.
- All Supercomputer Tech being made available for use in connection with this Project is being licensed to OpenAI and OpCo on a nonexclusive basis for use during the term of this Supercomputer Tech SOW solely in connection with the performance of the Project and does not constitute contributed IP.
- The Supercomputer Tech will be accessed and used by OpenAI and OpCo solely internally for the purpose of performing the Project under this Supercomputer Tech SOW and pursuant to the terms of that certain Confidential Information Transmittal Record dated June 20, 2020 ("***CITR***"). Without limiting the foregoing, OpenAI and OpCo will not reverse assemble, reverse compile, decompile, translate, or otherwise attempt to discover the source code of any component of the Supercomputer Tech (except to the extent that such acts are necessary for and carried out in furtherance of the collaboration contemplated under this Supercomputer Tech SOW) and will not access or use the Supercomputer Tech for any purpose other than the Purpose. Microsoft reserves the right to suspend or revoke access to the Supercomputer Tech, at any time with or without cause, but will use reasonable good faith efforts to provide prior notice and accommodate OpenAI requests for temporary continued use. Upon expiration or termination of this Supercomputer Tech SOW, all rights to access or use the Supercomputer Tech will terminate, unless otherwise agreed upon by the parties in writing (which may include email) on a temporary basis (e.g., to finish existing training runs).
- Ownership and rights with respect to all Jointly Developed Improvements developed in the course of the Project will be governed by the terms of the Agreement, and given the nature of the activities to be performed pursuant to this Supercomputer Tech SOW, all such Jointly Developed Improvements are also deemed to be Supercomputer Tech. Notwithstanding the foregoing, the parties do not intend to, and will not, create any Jointly Developed Improvements under this Supercomputer Tech SOW related to Triton. To the extent the parties do create any Jointly Developed Improvements (or otherwise jointly create any intellectual property or other proprietary rights) related to Triton, such Jointly Developed Improvements (or other jointly created intellectual property or other proprietary rights) are expressly deemed excluded from this Supercomputer Tech SOW.

Section 5 Payment. Each party will be responsible for its own costs and expenses in connection with the performance of these activities under this Supercomputer Tech SOW.

Section 6 Personnel. The individuals identified immediately below, if any, are (unless replaced, on notice to the other parties) key personnel that will be involved in the performance of the activities under this Supercomputer Tech SOW on behalf of the party identified. In the event a party needs to replace any of its key personnel, it will promptly notify the other party and seek to identify a comparably skilled replacement reasonably satisfactory to the other parties.

Key Personnel	
OpCo / OpenAI Personnel	**Microsoft Personnel**
Christopher Berner	Doug Burger
Scott Gray	Alex Wetmore
Philippe Tillet	Eric Chung
Mikhail Pavlov	Marco Heddes
Matt Knight	Dimitry Melts
Felipe Such	Brian Harry

Section 7 Term and Termination. The term of this Supercomputer Tech SOW will begin on the Effective Date and remain in effect until the earlier of expiration or termination of the Agreement and completion of the Project, unless this Supercomputer Tech SOW is terminated earlier in accordance with this Supercomputer Tech SOW or the remainder of the Agreement. In addition to any rights of termination under the Agreement, each party will have the right to terminate this Supercomputer Tech SOW at any time on written notice to the other parties.

GitHub

Effective May 1, 2021 ("*GitHub Transition Date*"), that certain Service Provider Evaluation Agreement among GitHub, Inc. ("*GitHub*"), OpenAI, and OpCo, dated August 7, 2020, as amended ("*SPEA*"), is amended, superseded, and replaced in its entirety by the Agreement.

Notwithstanding any provision of the Agreement to the contrary:

1. Any developer tools technology that is Jointly Developed under the Agreement that would have been covered by the SPEA is deemed to be solely an Improvement to Microsoft's Background IP and solely owned by Microsoft or its Affiliates. Any Jointly Developed models developed or trained under the Agreement are deemed to be an Improvement to Background IP of OpCo or OpenAI and solely owned by OpCo or OpenAI, although any Models trained or developed under the Agreement solely by Microsoft or its Affiliates are deemed to be solely owned by Microsoft or its Affiliates, subject to retention by OpenAI and OpCo of any of their Background IP therein.
2. No Foreground IP resulted or shall result under the SPEA prior to the Effective Date. For purposes of clarification: **(a)** the artificial intelligence and machine learning models of OpenAI trained pursuant to the SPEA resulted solely in Improvements to Background IP of OpCo or OpenAI; and **(b)** the developer tool product development work undertaken pursuant to the SPEA resulted solely in Improvements to Background IP of Microsoft.
3. Without the prior approval of Microsoft in each instance, OpenAI and OpCo are prohibited from using, or permitting others to use, the Subject Models for Research or research purposes other than research internal to OpenAI or OpCo.
4. On notice from Microsoft, OpenAI and OpCo will return or destroy the data licensed by GitHub to OpenAI or OpCo under the Agreement or the SPEA ("***GitHub-provided Data***").

5. The GitHub-provided Data includes open source code and other content licensed under Excluded Licenses. To the extent such data is included in Contributed IP, the representation and warranty of Microsoft made in Section 8 of the Agreement that "no Contributed IP Made Available to OpCo or OpenAI is governed, in whole or in part, by an Excluded License" will not apply.
6. OpenAI and OpCo consented under the SPEA, and consented under the Agreement, to receiving personal data as part of the GitHub-provided Data.
7. That certain GitHub Data Protection Agreement by and between GitHub and OpenAI and OpCo, dated August 7, 2020 ("***GitHub DPA***"), will continue in full force and effect, although Sections 2 and 3 of the Data Processing Exhibit to the GitHub DPA are, upon the GitHub Transition Date, deleted in their entirety and replaced with the following:

   "The subject matter and duration of the processing of GitHub Protected Data

   The processing of GitHub Protected Data under that certain Amended and Restated Joint Development and Collaboration Agreement among Microsoft Corporation, OpenAI, Inc., and OpenAI, L.P., effective March 5, 2021 (as the same may be amended by such parties from time to time in accordance with its terms) during the duration of such agreement. Such agreement is the 'Agreement' as defined in the Addendum. For clarification, GitHub Protected Data is personal data subject to Section 3(h)(iii) of the Agreement.

   The nature and purpose of the processing of GitHub Protected Data

   Pursuant to the Agreement (as the same may be amended by the parties thereto from time to time in accordance with its terms) during the duration of the Agreement."

Bing

Parties to review any transition requirements after the Effective Date.

SOWs

Parties to review any transition requirements after the Effective Date.

Other

Parties to review any transition requirements after the Effective Date.

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Exhibit H – New First Party Microsoft Product/Advertising Revenue

Section 1 Obligation to Share New First Party Microsoft Product Revenue. Microsoft will share revenue from New First Party Microsoft Products in accordance with Section 4(j)(iii)(B) and the definitions in this Exhibit H.

Section 2 Definition of New First Party Microsoft Product. "***New First Party Microsoft Product***" means a product or service developed by or for Microsoft or one of its Affiliates for broad commercialization (i.e., is made generally commercially available and excluding custom products or custom services) that is not:

(a) a Current Product: where "***Current Product***" means any product or service of Microsoft or any of its Affiliates, and all versions and SKUs of that product or service, that exist (i.e., are or were commercially available, are available in a pre-release (e.g., "alpha," "beta," "preview," "insider," etc.) form, or have been substantially developed (i.e., coding has been substantially completed and the product or service release date or pre-release date has been publicly announced)) as of (or at any time before) the Effective Date, including but not limited to:

(i) "***Advertising Products***" means software, services, and tools designed to assist users in **(A)** promoting or selling products and services online, or **(B)** increasing product or brand awareness online;

(ii) "***Business Application Products***" means software, products, or services (including components incorporated in such software, products, or services) that assist end users with one or more of the following business functions: sales, marketing, customer or field service, human resource management (including recruiting), professional development and learning, project management, finance, commerce (including fraud detection), and supply chain management;

(iii) "***Cloud Platform Products***" means IT software or platform-based IT services, such as compute/OS, databases, storage, analytics, networking, IoT, AI/ML, media, cloud security, identity and access management, software development, and application and device management and governance services;

(iv) "***Gaming Products***" means software, products, or services (including components incorporated in such software, products, or services) with the primary purpose of providing interactive video or computer gaming, including gaming consoles and video games whether client-based, delivered over the internet, or otherwise, including components of and peripherals for any of the foregoing;

(v) "***Healthcare Products***" means software, products, or services (including components incorporated in such software products, or services) designed for physicians, patients, and hospitals that assist in the scheduling and delivery of healthcare-related services;

(vi) "***Information Worker Productivity Products***" means software, products, or services (including components incorporated in such software, products, or services) that provide: **(A)** word processing, spreadsheets, or presentations, **(B)** written or audio note-taking, **(C)** XML forms-based information search and retrieval, **(D)** integrated email, task, calendaring, and contact management, **(E)** creation, management, sharing, and distribution of collaborative content, **(F)** diagramming or drawing, **(G)** project management, **(H)** enterprise-level communications or presence awareness services to connect people with information and business services, **(I)** audio/video conferencing, or **(J)** databases, whether personal or enterprise;

(vii) "***Operating System Products***" means system or platform software, products, or services (including components incorporated in such software, products, or services) that function as an operational environment and an interface layer between underlying hardware and higher-level software (e.g., Microsoft Windows family of operating system products, Apple macOS, Google Android, and Linux, and quantum computing);

(viii) "***Personal Computing Devices***" means multifunction computing devices, such as personal computers, personal digital assistants, and smartphones;

(ix) "***Professional Social Network Platforms***" means a platform-based product on or through which users build social networks or relationships with other people, typically with shared professional or career content, interests, activities, background, or people connections;

(x) "***Search and Information Products***" means software, products, or services (including components incorporated in such software, products, or services): **(A)** designed to carry out web or other information-based searches, or **(B)** aggregate applications, news, and other information in an online portal or other site;

(xi) "***Security Products and Functionality***" means software, products, or services (including components incorporated in such software, products, or services) that provide or enable: **(A)** endpoint antimalware, **(B)** email protection, **(C)** endpoint and application management, **(D)** information protection and governance, **(E)** network, data, application, and endpoint security monitoring and response, **(F)** threat intelligence, **(G)** insider risk management, **(H)** IoT security, and **(I)** identity and network access;

(xii) "***Software Development Products***" means software, products, or services (including components incorporated in such software, products, or services) that provide **(A)** programming languages, **(B)** compilers, optimizers, and interpreters, **(C)** programming and debugging tools, **(D)** software testing tools, **(E)** optimization tools, **(F)** design and planning tools, **(G)** support, update, and delivery tools, and **(H)** development platform services (such as access control, bug tracking, task management, and continuous integration);

(xiii) "***Unified Communications Products***" means software, products, or services (including components incorporated in such software, products, or services) with the primary purpose of providing one or more, or integrating different, communication systems or methods, such as email, voice mail, fax, PBX technology, VoIP telephony, video or audio conferencing, presence, or instant messaging communications; and

(xiv) "***Virtual or Augmented Reality Functionality***" means **(A)** a 3D display system with one or more sensors that are able to detect the orientation of the system, **(B)** software that provides display information to be displayed within such system based on information about the system's orientation, or **(C)** any combination of (A) and (B), or portions of either, where the primary function of such combination is to provide an immersive or augmented visual environment for computing devices.

(b) a successor to a Current Product; or

(i) where a product or service is a successor to a Current Product if it is: **(A)** a version of any Current Product that is released after the Effective Date; **(B)** a new SKU of any Current Product that is released after the Effective Date; or **(C)** a new product or service that is marketed by Microsoft or any of its Affiliates as a replacement for any Current Product;

(c) in the same family as a Current Product; or

(i) where a product or service is in the same family as a Current Product if it is: **(A)** marketed under: **(1)** the same brand as the brand under which any Current Product is marketed as of the Effective Date (e.g., "Office" is a brand of a Current Product); **(2)** a derivative of any brand under which any Current Product is marketed as of the Effective Date (e.g., "Office NextGen" is a derivative of the "Office" brand); or **(3)** a successor brand to the brand under which any Current Product is marketed as of the Effective Date (e.g., "Microsoft 365" is a successor brand to "Office 365"); or **(B)** comprised substantially of new, updated, or replacement features, functions, or applications within a Current Product suite (e.g., adding new features or new applications to Office or to Microsoft 365 would be excluded from "New First Party Microsoft Product");

(d) substantially derived from one or more Current Products; and

(i) where a product or service is "***substantially derived***" from a Current Product if: **(A)** the initial codebase for that product or service consists of at least 60% unmodified code from one or more Current Products (as assessed by numbers of lines of code); **(B)** there is nothing sufficiently inventive or sufficiently novel in such product or service that Microsoft or its applicable Affiliate elects to file any patent applications on (or, if Microsoft or such Affiliate elects to file patent applications, such applications all claim priority to one or more prior patents of Microsoft or such Affiliate and such prior patents all read on a Current Product); **(C)** that product or service relies substantially on AI or machine learning models (or successors to models) on which a Current

Product also relies; or **(D)** that product or service implements a material portion of the feature set or of the material functionalities of one or more Current Products;

(e) is "Based on OpenAI IP": where a product is "Based on OpenAI IP" if:

(i) a material feature or function of the product (i.e., a feature or function that makes the product inventive, novel, or competitive) is comprised substantially of, could not have been implemented without, or achieved a substantial time-to-market advantage due to implementation of OpenAI IP; and

(ii) the product does not make mere incidental use of OpenAI IP (for example, but without limitation, using OpenAI IP to improve the quality of context-based suggestions in email or a word processor may be a mere incidental use; using OpenAI IP to provide relevant source code snippets in a programming environment may not be a mere incidental use (although the provision of such code snippets would not be a New First Party Product because it is a successor to Microsoft Visual Studio, in the same family as GitHub-branded services, or both)).

Section 3 Obligation to Share Certain Advertising Revenue. Microsoft will share certain revenue from Microsoft's advertising business with OpenAI in accordance with Section 1 of this Exhibit H. Microsoft will pay Open AI a revenue share equal to the base revenue share calculated as set forth in Table H1 below (and in accordance with the examples in Table H2 below) adjusted as set forth in Table H3 below (and in accordance with the examples in Table H4 below). The revenue share payment will be calculated at the end of every Microsoft fiscal quarter by **(a)** comparing Net Revenue on Paid Results for In-Scope Products in the subject quarter to Net Revenue on Paid Results for In-Scope Products in the same quarter of the prior fiscal year, **(b)** calculating the cumulative incremental advertising revenue growth, if any, **(c)** determining the total base share on a tiered or graduated basis in accordance with Table H1, **(d)** comparing the Online Operations Expense in the subject quarter to the Online Operations Expense in the same quarter of the prior fiscal year, and **(e)** adjusting the base share in accordance with Table H3.

Table H1 – Base Share Calculated by Growth Tier	
For any growth in Net Revenue on Paid Results for In-Scope Products at or above 15% and below 20% year-over-year	base share is 10% of growth in Net Revenue
For any growth in Net Revenue on Paid Results for In-Scope Products at or above 20% and below 25% year-over-year	base share is 15% of growth in Net Revenue
For any growth in Net Revenue on Paid Results for In-Scope Products at or above 25% year-over-year	base share is 20% of growth in Net Revenue

Table H2 – Base Share Calculated by Growth Tier (Examples)										
	% Net Revenue Share									
Year-over-Year Net Revenue Growth	0%	5%	10%	15%	18%	20%	23%	25%	28%	30%
On growth <5%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
On growth 5% to <10%		0%	0%	0%	0%	0%	0%	0%	0%	0%
On growth 10% to <15%			0%	0%	0%	0%	0%	0%	0%	0%
On growth 15% to <20%				10%	10%	10%	10%	10%	10%	10%
On growth 20% to <25%						15%	15%	15%	15%	15%
On growth 25% or greater								20%	20%	20%

Table H3 – Online Ops Adjustment to Base Share
[base share as calculated in Table H1 above] *
[1 - [(subject quarter Online Operations Expense as a % of Net Revenue)/(prior year quarter Online Operations Expense as % of Net Revenue) - 1]]

Table H4 – Online Ops Adjustment to Base Share (where Base Share = $50 million)
If subject quarter Online Operations Expense as % of Net Revenue is 17%, and prior year quarter Online Operations Expense as % of Net Revenue is 20%, then payment is $50 million x [1 - [(17%)/(20%) - 1]], or $50 million * 115% = **$57.5 million**.
If subject quarter Online Operations Expense as % of Net Revenue is 20%, and prior year quarter Online Operations Expense as % of Net Revenue is 17%, then payment is $50 million x [1 - [(20%)/(17%) - 1]], or $50 million * 82% = **$41.2 million**.
If subject quarter Online Operations Expense as % of Net Revenue is 17%, and prior year quarter Online Operations Expense as % of Net Revenue is 17%, then payment is $50 million x [1 - [(17%)/(17%) - 1]], or $50 million * 1 = **$50 million**.

Section 4 Advertising Revenue Share Definitions.

(a) "***In-Scope Products***" means Microsoft Bing, MSN, and Microsoft Start (or any of their successors). In-scope products include the in-development product known as "Project Prometheus" and other consumer-focused chat-based products first developed in Microsoft's Advertising and Web Services organization that generate advertising revenues.

(b) "***Online Operations Expense***" means costs of servers and associated data center infrastructure (such as power, infrastructure, bandwidth, depreciation, and related costs) to deliver In-Scope Products.

(c) "***Paid Results***" means delivery of any listings, search results, or content that are paid advertisements or otherwise promoted by advertisers.

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Exhibit E
HPE Data Processing Agreement

HPE POINTNEXT SERVICES

Legal data sheet

HPE DATA PRIVACY AND SECURITY AGREEMENT SCHEDULE

HPE Support and Professional Services ("Services")

This Data Privacy and Security Agreement ("DPSA") Schedule governs the privacy and security of Personal Data by HPE in connection with the Services on Customer's behalf and is made a part of the agreement between HPE and Customer, or if no agreement exists, HPE's standard terms and conditions ("Agreement").

1. **This DPSA forms part of the Agreement**. To the extent there are any conflicts between the terms of this DPSA and the Agreement, the DPSA shall prevail.
2. **Definitions:**
   - 2.1. "Personal Data" or "Customer Personal Data" means any (Customer) information relating to an identified or identifiable natural persons or as otherwise defined in applicable Privacy Laws.
   - 2.2. "Business Contact Data" means (i) contact information of Customer's representatives for invoicing, billing, and other business inquiries, (ii) information on Customer's usage of Services, and (iii) other information that HPE collects and needs to communicate with Customer.
   - 2.3. "Privacy Laws" mean all applicable laws and regulations relating to the Processing of Personal Data and privacy that may exist in the relevant jurisdictions.
   - 2.4. "Controller" means the natural or legal person, public authority, agency, or any other body which alone or jointly with others determines the purposes and means of the Processing of Personal Data in accordance with applicable Privacy Law.
   - 2.5. "Processor" means any natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of a Controller or on the instruction of another Processor acting on behalf of a Controller.

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2.6. "Process," "Processing," or "Processed" means an operation or set of operations performed on or with Personal Data whether or not by automatic means (including, without limitation, accessing, collecting, recording, organizing, retaining, storing, adapting or altering, retrieving, consulting, using, disclosing, making available, aligning, combining, blocking, erasing, and destroying Personal Data) and any equivalent definitions in Privacy Law to the extent that such definition should modify this definition.

2.7. "Special Category Data" means Customer Personal Data which relates to an individual's racial/ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health, sexual life, biometric data (if used for the purpose of uniquely identifying an individual) or genetic data.

3. **Appointment and Instructions:**

3.1. HPE shall Process Customer Personal Data as necessary to provide the Services and to meet HPE's obligations under this DPSA, the Agreement, and applicable Privacy Law as a service provider and Processor of Customer Personal Data. Details of the Processing including the subject matter, purpose and duration of the Processing the types of personal data and categories of data to whom the data are set out in Exhibit A.

3.2. HPE shall Process Customer Personal Data in accordance with Customer's instructions as set out in this DPSA, the Agreement, or other documented instructions between HPE and Customer. Potential costs and charges associated with such additional instructions shall be agreed pursuant to the terms of the Agreement.

3.3. HPE may Process Customer Personal Data other than on the instructions of Customer if it is required under law applicable to HPE. In this situation, HPE shall inform Customer of such a requirement before HPE Processes Customer Personal Data unless the law prohibits this on important grounds of public interest. If HPE is unable to comply with Customer's instructions or this DPSA due to changes in legislation or, if HPE believes (without having to conduct a comprehensive legal analysis) that any instruction from Customer will violate applicable law or for any other reason, HPE shall promptly notify Customer in writing.

3.4. HPE acknowledges that HPE has no right, title, or interest in Customer Personal Data (including all intellectual property or proprietary information contained therein). HPE may not sell, rent, or lease Customer Personal Data to anyone.

3.5. If Customer uses the Services to Process any categories of data not expressly covered by this DPSA, Customer acts at its own risk and HPE shall not be responsible for any potential compliance deficits related to such use.

4. **Compliance with laws**

4.1. The Parties shall at all times comply with their respective obligations under this DPSA and Privacy Laws that apply to their respective processing of Personal Data. In addition, if HPE interacts with Protected Health Information as defined under the Health Insurance Portability and Accountability Act, the parties agree to comply with the terms of the Business Associate Agreement found at hpe.com/info/customerprivacy.html.

4.2. HPE shall also comply with all applicable laws and HPE's privacy policy with respect to the Processing of Business Contact Data and use Business Contact Data only for legitimate business purposes, including, without limitation, invoicing, collections, service usage monitoring and optimization, service improvements, maintenance, support, professional services, communications relating to contract renewals (directly or through a subprocessor acting on HPE's behalf or an HPE approved reseller for contract renewal purposes), and information about new and additional services.

4.3. Where HPE discloses its personnel's personal data to Customer or HPE personnel provide their personal data directly to Customer, which Customer Processes to manage its use of the Services, Customer shall Process that data in accordance with its privacy policies and applicable Privacy Laws. Such disclosures shall be made by HPE only where lawful for the purposes of contract management, service management, or Customer's reasonable and lawful background screening verification or security purposes.

5. Security

5.1. HPE shall implement and maintain the physical, technical, and organizational security measures set out in Exhibit A, as may be supplemented or modified in the applicable transaction document, to protect Customer Personal Data and Business Contact Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure, or access.

5.2. Customer acknowledges that HPE may change the security measures through the adoption of new or enhanced security technologies and authorizes HPE to make such changes provided that they do not diminish the level of protection. HPE shall make information about the most up to date security measures applicable to the Services available to Customer upon request.

6. Subprocessing and Location of Processing

6.1. Customer authorizes HPE to engage affiliated and unaffiliated subprocessors ("Subprocessors") to perform some or all of its obligations under the Agreement. Only where necessary to provide the Services, HPE will provide its Subprocessors with access to Customer Personal Data.

6.2. The Subprocessors applicable to the Services and location of processing can be found at hpe.com/info/ customer-privacy.html and are deemed as approved by Customer. Customer will subscribe to HPE's notification tool on the above website, and in the event of changes to approved Subprocessors, HPE will notify Customer via the notice subscription tool. Customer may object to the appointment or replacement of a Subprocessor at any time, and the parties shall use all reasonable endeavors to resolve Customer's objection. If the parties fail to resolve Customer's objection within a reasonable period of time, the matter shall be addressed pursuant to the dispute resolution procedure in the Agreement. In case HPE and customer fail to agree on an amicable resolution to the proposed subprocessor change, HPE shall have a right to terminate the contract without further obligations.

6.3. HPE shall conduct appropriate due diligence of its Subprocessors and execute valid, enforceable, and written contracts with Subprocessors requiring the Subprocessor to

abide by terms no less protective than those in this DPSA regarding the Processing and protection of Customer Personal Data (including the EU Model Contract terms relating to data importers in the case of an onward transfer of EU, EEA, or Swiss Personal Data to a non-adequate country).

6.4. HPE remains responsible for the acts and omissions of the Subprocessors it engages to provide the Services to Customers giving rise to a breach of this DPSA as if they were its own acts or omissions.

7. Audit and Assurance

7.1. HPE shall arrange for audits of HPE's data Processing and protection practices to confirm compliance with applicable Privacy Law by reputable third-party auditors and provide Customer with a report summary and additional information on request.

7.2. Customer shall have the right to conduct additional audits of HPE's compliance with its obligations under this DPSA in accordance with the Agreement. The audit rights are generally exercised in consultation with HPE. HPE is obliged to assist Customer in such audits and any audits of the competent authorities. These audits must be carried out in consideration of the business processes and HPE's need for security and confidentiality.

7.3. Certain information about HPE's security standards and practices are sensitive confidential information which will not be disclosed by HPE to Customer. Upon request, HPE agrees to respond, no more than once per year, to a reasonable information security questionnaire concerning security practices specific to the Services provided hereunder.

7.4. On Customer's request, HPE shall within a reasonable timeframe make appropriate information available to Customer to demonstrate its compliance with applicable Privacy Law, save where that information is readily available to Customer direct through its use of the Services.

8. Providing Customer Assistance

8.1. At Customer's request HPE shall cooperate with Customer and provide Customer with assistance necessary to facilitate the Processing of Customer Personal Data in compliance with Privacy Laws applicable to Customer in relation to HPE Services, including by way of example:

8.1.1. assist Customer by implementing appropriate and reasonable technical and organizational measures, insofar as this is possible, to assist with Customer's obligation to respond to requests from individuals seeking to exercise their rights under the Privacy Laws applicable to Customer;

8.1.2. provide reasonable assistance to Customer in Customer's assessment and implementation of appropriate technical and organizational measures to ensure a level of security appropriate to the risks represented by the Processing and the nature of Customer Personal Data;

8.1.3. the notification of Security Incidents pursuant to Exhibit A;

8.1.4. provide reasonable assistance to Customer in carrying out a privacy impact assessment.

8.2. If Customer requests cooperation or assistance pursuant to this Section, Customer shall notify HPE in writing of the requirements and formulate Customer's

instructions. HPE shall respond within a reasonable period of time and provide Customer with approximate time and fee estimates for the implementation of any changes necessary to accommodate Customer's compliance needs. To the extent that compliance with this Section constitutes a change to the scope of the Services, the parties shall, acting reasonably, agree on appropriate change order.

9. Data Quality, Retrieval and Destruction, Repair, or Replacement Service

9.1. To the extent that Customer is not able to access Customer Personal Data itself, HPE shall on Customer's written request (i) update, correct, or delete Customer Personal Data; and/or (ii) provide copies of Customer Personal Data.

9.2. Upon termination of the Agreement, HPE shall at the election of Customer return or delete Customer Personal Data and HPE shall not retain copies of Customer Personal Data unless otherwise agreed with Customer or where it is required to do so under applicable law, in which case HPE shall stop actively Processing the data and maintain the security and confidentiality of the data.

9.3. With regard to the repair or replacement of data carriers (server, hard-disks, SSD, flash-disks, memory etc.), Customer will either purchase the optional CDMR Service or adequately wipe (following the NIST Standard) carriers prior to providing them to HPE.

10. Data Transfers

10.1. To address the transfer of EU, EEA, UK (once the UK has ceased to be a member state of the EU) or Swiss Personal Data by Customer or a Customer affiliate to HPE or an HPE affiliate located in a country which is not approved by the European Commission as providing adequate protection for personal data pursuant to Article 25(6) of the Directive 95/46/EC or Article 45(3) of the General Data Protection Regulation, the Customer may rely on HPE's Binding Corporate Rules-Processors (BCR-P) or the execution of a controller to processor EU Model Contract ("EU Model Contract"). The list of Services subject to HPE BCR-P are listed on BCR website at hpe.com/uk/en/privacy/binding-corporate-rules.html and/or can be provided upon request.

10.2. For BCR-P transfers, HPE (and any other HPE company and Subprocessor whom the Customer authorizes to Process Personal Data pursuant to Clause 4 of the DPSA) may receive and/or transfer Personal Data to any country in accordance with the BCR-P. Customer shall ensure that if the transfer involves Special Category Data, that data subjects have been informed of the transfer, or will be informed before the transfer, that this Special Category Data could be transmitted to another country. The BCR-P shall be binding on the Customer by means of the third-party rights set out in Clause 4.1 of the BCR-P which shall include the right to enforce the BCR-P against HPE, including judicial remedies and the right to receive compensation. The BCR-P includes the intercompany agreement and the applicable policies and procedures which form HPE's Binding Corporate Rules for Processors as they apply to the Customer and as developed, amended or updated by HPE from time to time in accordance with the applicable Working Documents adopted by the Article 29 Working Party (and subsequently the European Data Protection Board). A copy of the documentation comprising the BCR-P, which is incorporated by reference and is an integral part of this DPSA, is available to Customer upon written request. Customer shall inform data subjects regarding the existence of Processors outside of the EU/EEA/Switzerland and of Customer's reliance on the BCR-P as required by

Privacy Laws and shall make available to data subjects upon request a link to HPE's BCR Rights Notice at hpe.com/uk/en/privacy/binding-corporate-rules.html.

10.3. For EU Model Contract transfers, HPE hereby grants Customer the right to benefit from, and Customer hereby agrees to be bound to, the EU Model Contracts executed by HPE with Sub-processors as if Customer executed such EU Model Contracts as the controller.

10.3.1. When interpreting the EU Model Contract, the term "Member State in which the data exporter is established" will be interpreted to mean (as appropriate) Switzerland or the EU or EEA member state in which the Data Exporter (as defined in the EU Model Contract) is established.

10.3.2. In the case of any conflict between the EU Model Contract, the terms of this DPSA, and the

Agreement, to the extent HPE Processes the Personal Data of EEA or Swiss residents, the EU Model Contract shall prevail but only to the extent necessary to resolve the conflict or inconsistency.

10.3.3. Any audit pursuant to an EU Model Contract shall be conducted in accordance with the general procedures for audits provided in the Agreement and Exhibit A except to the extent expressly required by a regulatory authority or Privacy Laws. Customer shall use commercially reasonable efforts to notify the regulatory authority of the audit requirements of the Agreement and to request that the audit be conducted in accordance with those requirements.

10.3.4. Any losses suffered by the parties or their respective affiliates under the EU Model Contract shall be treated as if they had been suffered by Customer or HPE respectively and shall in all cases be recovered by Customer or HPE subject to any limits on that party's liability in the Agreement. Nothing in this Section shall limit the liability of either party in relation to a claim by a data subject under an EU Model Contract.

10.3.5. In the event that EU Model Contracts are no longer a valid transfer mechanism or where HPE commits to an alternative valid transfer mechanism (e.g., Binding Corporate Rules for Processors), HPE shall notify Customer of the mechanism and seek Customer's agreement to rely on this mechanism instead of the EU Model Contract.

EXHIBIT A—SUPPORT AND PROFESSIONAL SERVICES DATA PROCESSING

In this Exhibit, HPE describes the terms specific to Services, including its commitment to technical and organizational security measures to protect Customer Personal Data.

HPE performs the following Personal Data Processing as part of Services	As part of providing on-site and remote hardware and software maintenance support and professional services, HPE may have access to data stored in the Customer's business applications (including metadata), IT, and network infrastructure. This data may include Customer Personal Data.
Type of Customer Personal Data Processed	The type of personal data processed will depend on the data the Customer has stored on the business applications (including metadata), IT and network infrastructure and may include sensitive personal data.
Categories of Data Subjects	Any data subject whose Personal Data is stored by the Customer on the business applications (including metadata), IT and network infrastructure including, without limitation Customer's clients, end users, employees, contractors and temporary workers.

Duration of Processing	HPE shall process Customer Personal Data for the duration of the applicable transaction document.
Security Measures	HPE shall maintain the following information and physical security program for the protection of Customer Personal Data (the "HPE Security Program").

1.1. As part of the HPE Security Program, HPE conducts periodic reviews of security practices against industry standards, such as NIST, ISO 27001, and SOC. HPE regularly re-evaluates and updates the HPE Security Program as the industry evolves, new technologies emerge, or new threats are identified.

1.2. The HPE Security Program consists at least of the following:

1.2.1. HPE maintains physical security standards designed to prohibit unauthorized physical access to HPE facilities and equipment by using the following practices:

- physical access to locations is limited to HPE employees, subcontractors, and authorized visitors;
- HPE employees, subcontractors, and authorized visitors are issued identification cards that must be worn while on-premises;
- monitoring access to HPE facilities, including restricted areas and equipment within facilities;
- access to the data center where Customer Personal Data is hosted is logged, monitored, and tracked; and
- data centers are secured with alarm systems and video cameras.

1.2.2. HPE maintains the following standards for access control and administration of the relevant IT environment.

- administrator accounts should only be used for the purpose of performing administrative activities;
- each account with administrative privileges must be traceable to a uniquely identifiable individual;
- all access to computers and servers must be authenticated and within the scope of an employee's job function;
- initial passwords must be changed by the user on first use;
- the display and printing of passwords must be masked, suppressed, or otherwise obscured such that unauthorized parties will not be able to observe or subsequently recover them;
- passwords must be uniquely identifiable to an individual;
- passwords must be encrypted when transmitted;
- password complexity should never be less than 3 out of 4 character classes and must have character class choices such as upper case letters, lower case letters, numeric digits, or special characters;
- password length must be configured to be at least 8 characters;
- passwords must expire every 90 days;
- automatic time-out of access to computers and servers if left idle with the requirement for password authentication for re-access;
- accounts must be set to lockout after several erroneous failed login attempts.

1.2.3. Computers and servers have reasonable up-to-date versions of system security software which may include host firewall, anti-virus protection, and up-to-date patches and virus definitions. Software is configured to scan for and promptly remove or fix identified findings. HPE maintains logs of various components of

the infrastructure and an intrusion detection system to monitor, detect, and report misuse patterns, suspicious activities, unauthorized users, and other actual and threatened security risks.

1.3. Upon request, HPE will review with Customer a summary of vulnerability assessments. Vulnerability assessments shall not entitle Customer to view, or in any way access records and/or processes: (a) not directly related to Services; (b) in violation of Applicable Laws; and/or (c) in violation of HPE's confidentiality and security obligations owed to a third party.

1.4. Employees and contractors are trained on HPE's privacy and security policies and made aware of their responsibilities with regard to privacy and security practices. HPE employees and contractors are contractually bound to maintain the confidence of Customer Personal Data and comply with applicable HPE policies, standards, or requirements in relation to the Processing of Customer Personal Data. Failure to comply with those policies, standards, or requirements will be subject to investigation which may result in disciplinary action up to and including termination of employment or engagement by HPE.

1.5. In the event HPE confirms a security breach leading to the accidental or unlawful destruction, loss, alteration, or unauthorized disclosure of, or access to, Customer Personal Data ("Security Incident"), HPE will:

1.5.1. without undue delay, notify Customer of the Security Incident. HPE will provide Customer with updates on the status of the Security Incident until the matter has been remediated. The reports will include, without limitation, a description of the Security Incident, actions taken, and remediation plans. If Customer becomes aware of a Security Incident that affects the Services, Customer shall promptly notify HPE of such and inform HPE of the scope of the Security Incident.

1.5.2. at the request and cost of the Customer, (i) provide reasonable assistance to the Customer in notifying a security breach to the supervisory authority competent under the Privacy Laws applicable to the Customer; and (ii) provide reasonable assistance to the Customer in communicating a data breach to data subjects in cases where the data breach is likely to result in a high risk to the rights and freedoms of individuals.



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Exhibit J – Data Working Group

Section 1 Composition. The Data Working Group will consist of an equal number of members from each party (with OpenAI and OpCo deemed to be one party for purposes of this Exhibit J). At least one member of the Data Working Group from each party will be a member of that party's legal team that participates in data-related analysis pertaining to artificial intelligence. Subject to the foregoing in this Section 1 of this Exhibit J, the size and composition of the Data Working Group is subject to Governing Board discussion and agreement.

Section 2 Purpose. The purpose of the Data Working Group is to discuss data use policies, practices, and legal developments and to share information and seek alignment on data use policies.

Section 3 Operating Principles.

Table J1 – Operating Principles
• The Data Working Group will, from time to time, discuss and consider non-binding data acquisition and usage policies that should be used under and in relation to the Technology contemplated under this Agreement ("***Data Policies***"). The parties will construct any Data Policies to be as practical and extensible as reasonably possible, to both minimize the burden to engineering while maximizing the commercial applicability and suitability of acquired data, all subject to then-current and evolving Law and to reflect a reasonable quantum and balancing of risk in light of the intended use of (including the particular Models to be trained by) the particular data. • The Data Working Group will periodically update any Data Policies to reflect changes in Law and industry best practices. • OpCo or OpenAI may use any datasets to train Models, although OpCo and OpenAI will always consider in good faith any Data Policies suggested by the Data Working Group. If Microsoft has any questions at any time regarding OpCo's or OpenAI's chosen datasets to train any Models, it may raise them to the Governing Board, which will promptly review Microsoft's questions and respond. • If either party becomes aware of a viable commercial alternative to a non-commercial dataset, it will make the other party aware through the Data Working Group or other appropriate channels, and the parties will discuss whether to acquire such commercial alternative and on what terms. • If the use of any such dataset requires commercial licensing for a fee, the parties will share equally in the cost and work together in good faith to negotiate rights for both parties to use the dataset.

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