
**AMENDMENT TO OPENAI (ChatGPT and Dall-E) TERMS OF SERVICE
APPLICABLE TO DEPARTMENT OF HOMELAND SECURITY USERS/MEMBERS**

This Amendment is an agreement between OpenAI, L.L.C. (together with their affiliates, "OpenAI" or "Company") and Department of Homeland Security ("DHS," "Agency,") and applies to Agency users of OpenAI Site and Services.

The Agency is required when entering into agreements with other parties to follow applicable federal laws and regulations, including those related to ethics; privacy and security; civil rights and civil liberties; accessibility; federal records; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum.

Company and Agency (together, the "Parties") agree to modify the Company's standard Terms of Service, available at [<https://openai.com/policies/terms-of-use>] (the "TOS") (dated March 14, 2023) to accommodate Agency's legal status, its public (in contrast to private) mission, and other special circumstances. Accordingly, the TOS are hereby modified by this Amendment as they pertain to Agency's use of the Company Services.

- A. **Government entity:** Agency within the TOS shall mean the Agency itself and shall not apply to, nor bind (i) the individual(s) who utilize the Company Site or Services on Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency. Company will look solely to Agency to enforce any violation or breach of the TOS by such individuals (provided that Company will remain able to suspend individual user accounts pursuant to the TOS), subject to federal law.
- B. **Public purpose:** Agency shall use the Company Site and Services solely in furtherance of Agency's public purpose. Any requirement(s) set forth within the TOS that use of the Company Site and Services be for private, personal and/or non-commercial purposes is hereby waived.
- C. **Applicability:** Company agrees to apply this Amendment to all Agency users of Company's Site and Services, including those who created accounts prior to signing of this Amendment; provided that this only applies to users who have official DHS email addresses in their account information (DHS will provide Company with a list of email address endings that apply to DHS users).
- D. **Law and disputes:** The TOS are governed by Federal law and any disputes related to the Agency's use of the Company Site and Services shall be subject to the Contract Disputes Act, 41 U.S.C. §§ 7101–7109.
 - a. Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.
 - b. Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

- c. Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.
- E. **Indemnification, Liability, Statute of Limitations:** Any provisions in the TOS related to indemnification, penalties, filing deadlines, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341) is stricken from the TOS and is unenforceable, except to the extent expressly authorized by law. Liability for any breach of the TOS as modified by this Amendment, or any claim arising from the TOS as modified by this Amendment, shall be determined under the Federal Tort Claims Act, Contract Disputes Act, or other governing federal authority. Federal Statute of Limitations provisions shall apply to any breach or claim. Any clause of the TOS requiring the Company to defend or indemnify Agency is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.
- F. **Arbitration; equitable or injunctive relief:** Any arbitration, mediation or similar dispute resolution provision in the TOS is hereby deleted. Equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).
- G. **Limitation of liability:** The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the TOS in any way grants Company a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.
- H. **No endorsement:** Company agrees that Agency seals, trademarks, logos, service marks, trade names, and the fact that Agency has a presence on the Company Site and use its Services, shall not be used by Company in such a manner as to state or imply that Company's products or services are endorsed, sponsored or recommended by Agency or by any other element of the Federal Government, or are considered by Agency or the Federal Government to be superior to any other products or services. If applicable, except for pages whose design and content is under the control of the Agency, or for links to or promotion of such pages, Company agrees not to display any Agency or government seals, trademarks, logos, service marks, and trade names on the Company's homepage or elsewhere on the Company Site unless permission to do has been granted by the Agency or by other relevant federal government authority. Company may list the Agency's name in a publicly available customer list on its homepage or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third-party name.
- I. **No business relationship created:** The Parties are independent entities and nothing in the TOS as modified by this Amendment creates a partnership, joint venture, agency, or employer/employee relationship.
- J. **No cost agreement:** Nothing in the TOS as modified by this Amendment obligates Agency to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from the TOS as modified by this Amendment are contingent upon the payment

of fees by one party to the other.

- K. **Separate future action for fee based Services:** Company provides certain Services at a basic level free of charge to the public, but this may change in the future. Agency acknowledges that while Company will provide Agency with some Services and features for free, Company reserves the right to revise pricing for paid Services and begin charging for currently free Services and features at some point in the future. Company will provide Agency with at least 30 days advance notice of a change involving the charging of fees for currently free services. For clarity, Company does not charge Agency for any paid services, and will not be able to do so unless and until the Agency and Company negotiate a payment agreement and agree to pay such fees. The payment agreement must be signed by an Agency official with actual authority to bind the Agency. Such an agreement may only be entered into following federal acquisition laws, regulations, and agency guidelines. After a payment agreement is in place, fees shall be billed in arrears . Agency also understands that Company may currently offer other premium and enterprise Services for a fee. The Parties understand that fee-based products and services are categorically different than free products and services and are subject to federal procurement rules and processes. Before an Agency decides to enter into a premium or enterprise subscription, or any other fee-based service that this Company or alternative providers may offer now or in the future, Agency agrees to determine if it has a need for those additional services for a fee, to consider the subscription's value in comparison with comparable services available elsewhere, to determine that Agency funds are available for payment, to properly use the Government Purchase Card or other means of payment , to review any then-applicable TOS for conformance to federal procurement law, and in all other respects to follow applicable federal acquisition laws, regulations, and agency guidelines when initiating that separate action.
- L. **Assignment:** Neither party may assign its obligations under the TOS as modified by this Amendment to any third party without prior written consent of the other; provided however, Company or its subsidiaries may assign the TOS as modified by this Amendment to a subsidiary or parent without written consent from the Agency provided that the successor assumes Company's obligations under the TOS as modified by this Amendment.
- M. **Termination rights:** Agency may close Agency user accounts and terminate this Amendment at any time. Company may close Agency user accounts and terminate this Amendment on 30 days written notice.
- N. **Deletion of Individual User Accounts:** If Agency determines that an individual agency user is violating agency policies and agency rules of behavior for using Company's user Services, Agency shall request and Company will make commercially reasonable efforts to terminate that agency user account's rights and access to Company's tools. Additionally, Agency user requests to delete Agency user accounts will be accepted and processed for deletion by the Company, including any personally identifiable information used to establish the account, in the same manner that Company handles ordinary account deletion request.

- O. **Usage, Sharing and Publication, and Privacy Policies:** Agency acknowledges that the Usage Policy, Sharing and Publication Policy, and Privacy Policy referenced in the Terms of Service apply.
- P. **Provision of Data and Privacy Safeguards:** Agency users are subject to policies and rules of behavior for use that prohibit the input of certain data into the Company Services. Accordingly, Agency may request and Company shall make commercially reasonable efforts to provide any agency user-provided content into the Services that is stored by the Company which Agency may consider in contravention of Agency user policies and rules of behavior. Data may be provided in a commonly used file or database format as Company deems appropriate. Further, Company agrees to comply with its privacy policy, available at [<https://openai.com/policies/privacy-policy>], usage policy, available at [<https://openai.com/policies/usage-policies>], and Sharing and Publication Policy, available at [<https://openai.com/policies/sharing-publication-policy>] unless it conflicts with other provisions in this agreement.
- Q. **Posting and availability of this Amendment:** Any provision of the TOS requiring modifications of its terms to be posted on Company's Site is inapplicable since this Amendment is of limited, not general, application, and is otherwise waived for this special circumstance. The Parties agree this Amendment contains no confidential or proprietary information, and either party may release it to the public upon request, with mutual consent of both parties and pursuant to applicable law, and to other agencies interested in using the Services.
- R. **Security:** Company will, in good faith, exercise due diligence using generally accepted commercial business practices for IT security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls are employed to ensure security of systems and data. An SOC 2 Type II audit certification will be conducted annually, and Company agrees to provide Agency with the current SOC 2 Type II audit certification upon the agency's request. Recognizing the changing nature of the Web, Company will continuously work with users to ensure that its Site and Services meet users' requirements for the security of systems and data. Company agrees to discuss implementing additional security controls as deemed necessary by Agency to conform to the Federal Information Security Management Act (FISMA), 44 U.S.C. 3541 et seq.
- S. **Federal Records:** Agency acknowledges that use of Company's Site and Services may require management of Federal records. Agency and user-generated content may meet the definition of Federal records as determined by the agency. For clarity, any Federal Records-related obligations are Agency's, not Company's. Company will work with Agency in good faith to ensure that Company's record management and data storage processes meet or exceed the thresholds required for Agency's compliance with applicable records management laws and regulations.
- T. **Intellectual property ownership:** Except as expressly allowed in the TOS, no rights to any derivative works, inventions, or Company product modifications are conferred on Agency or any other party. All such rights belong solely to Company.

U. **Changes to standard TOS:** Language in the TOS reserving to Company the right to change the TOS without notice at any time is hereby amended to grant Agency at least fourteen days advance notice of any material change to the TOS. A material change is defined as: (a) Terms that change Agency rights or obligations; (b) Terms that make previously free services paid or increase Agency prices; (c) Terms that decrease overall level of service; or (d) Terms that limit any other Agency right addressed elsewhere in the TOS or this Amendment. Company shall send this notice to the email address Agency designate at the time Agency sign up for service, and Agency shall notify Company of any change in the notification email address during the life of the Amendment. [Email to: OCIOExecSec@hq.dhs.gov and ogcgldocio@hq.dhs.gov].

V. **Point of Contact (Email Address):**

- a. Department of Homeland Security, Office of the Chief Intelligence Officer Executive Secretary, ocioexecsec@hq.dhs.gov
- b. OpenAI, contract-notices@openai.com

W. **Precedence; Further Amendments:** If there is any conflict between this Amendment and the TOS, or between this Amendment and other terms, rules or policies on the Company Site or related to its Services, this Amendment shall prevail. This Amendment constitutes an amendment to the TOS; any language in the TOS indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. Any further amendment must be agreed to by both Parties.

X. **Additional Items for discussion and possible inclusion in this Amendment:** Company understands current federal law, regulation and policy may affect Agency's use of the Company's products and Services in ways not addressed in the list of clauses above. Among the topics Agency may need to discuss with Company, and which may lead to a mutual agreement to insert additional clauses in this Amendment, are Privacy and Accessibility. Any additional modification to this Amendment will be agreed to in writing between the parties based on such discussions.

Approvals

ERIC N HYSEN Digitally signed by ERIC N HYSEN
Date: 2023.11.16 17:40:41 -05'00'

Eric Hysen,
Chief Information Officer and Chief Artificial Intelligence Officer
Department of Homeland Security

Ashley Pantuliano

Ashley Pantuliano
AGC

Date

11 / 14 / 2023

Date

OpenAI, L.L.C.