

EXHIBIT 10

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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 ELON MUSK, et al.,

14 Plaintiffs,

15 v.

16 SAMUEL ALTMAN, et al.,

17 Defendants.
18
19

Case No. 4:24-cv-04722-YGR (TSH)

**DECLARATION OF
C. PAUL WAZZAN**

DECLARATION

I, C. Paul Wazzan, declare as follows:

1. I am a Managing Director at Berkeley Research Group. I am over the age of 18, have personal knowledge of the facts stated herein, and if called as a witness could and would testify competently thereto.

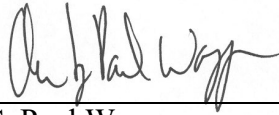
2. I have been retained by Plaintiff Elon Musk to provide expert testimony in this matter on Plaintiff's damages and equitable remedies.

3. Attached is a true and correct copy of my expert report dated October 29, 2025. That report contains a true and correct statement of my opinions in this matter to which I may testify if called as an expert witness at trial.

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 7, 2025

Los Angeles, California.


C. Paul Wazzan

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ELON MUSK, an individual; X.AI CORP., a
Nevada benefit corporation,

Plaintiffs,

v.

SAMUEL ALTMAN, et al.

Defendants.

Case No. 4:24-cv-04722-YGR

Expert Report of C. Paul Wazzan, Ph.D.

October 29, 2025

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Appendix A – Curriculum Vitae

Appendix B – Materials Considered

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I. INTRODUCTION

A. Qualifications

1. I am a Managing Director with Berkeley Research Group (“BRG”), a firm that provides analyses and consulting in matters involving economics, finance, and statistics. I received my Ph.D. in Finance from the Anderson Graduate School of Management at the University of California, Los Angeles in 1996. I received my B.A. in Economics from the University of California, Berkeley in 1989.

2. I have been an Adjunct Assistant Professor of Business and Economics at California State University, Los Angeles, and have also taught option pricing classes at the University of Southern California, Marshall School of Business.

3. I am President and CEO of Wazzan & Co. Investment LLC, a venture capital firm providing seed-level funding to firms specializing in semiconductor, optical networking, bio-mechanical, bio-medical, and related technologies.

4. My research has been published in peer-reviewed economics journals and law reviews, and I have testified in a wide range of matters in federal, state and bankruptcy courts, the federal court of claims, the International Trade Commission, before the Copyright Royalty Judges at the Library of Congress, domestic and international arbitration proceedings, and in front of legislative bodies.

5. My analyses have covered a wide range of industries, including high-tech industries, such as aircraft and avionics, semiconductors, digital signal processors, computer peripherals, basic manufacturing industries, such as automotive, mining, oil and gas, steel, food processing, and distribution; real estate; financial services; and pharmaceuticals.

6. I have provided financial, economic and statistical expertise in the areas of complex damages, finance (e.g., valuation, corporate finance, securities fraud/10b-5, option valuation, class certification, pricing of mortgage risk and MBS/CDOs, commodities price manipulation), intellectual property (e.g., patent and trademark infringement, theft of trade secrets), labor and employment (e.g., class certification, managerial misclassification, wage and hour, discrimination, disparate impact), antitrust and competition policy (e.g., market definition, merger analysis, predatory pricing, price-fixing, exclusionary conduct, price discrimination,

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attempted monopolization) and public policy. I also specialize in large-scale (i.e., millions of records) data analytics (e.g., data acquisition, database design and development and statistical/econometric analysis).

7. My curriculum vitae, including testimony provided in the last four years and any publications in the previous 10 years, is attached as Appendix A.

B. Assignment

8. I have been asked to determine the amount by which the OpenAI Defendants and Microsoft wrongly profited or were unjustly enriched by operating OpenAI as a commercial venture despite having received charitable contributions from Elon Musk on the understanding that OpenAI would remain a nonprofit dedicated to the public good. My analysis assumes that Mr. Musk has established Defendants' liability on his claims and merely seeks to quantify the portion of Defendants' profits or enrichment that may fairly be attributed to Mr. Musk's contributions. I further understand that "profit" or "enrichment" for these purposes includes not only realized profits but also unrealized gains in the form of increases in valuation of OpenAI or Microsoft's investment in OpenAI.¹ I therefore proceed by determining the value of the OpenAI for-profit entity as it exists today; determining the share of that value that is held by the OpenAI nonprofit; and then determining the share of the nonprofit's value that is attributable to Musk's contributions as opposed to contributions from other parties.

9. In reaching my conclusions, I have been asked to consider that Mr. Musk's involvement with OpenAI included not only financial contributions but also highly valuable non-monetary benefits to OpenAI (e.g., recruiting and attracting talent; attracting additional investors; attracting business partners; teaching and contributing business-building skills; conveying legitimacy upon the venture; etc.).

C. Materials Considered

10. The opinions in this report are my own and are based upon my education, professional experience, the references cited in this report, an examination of the documents and other information provided by the parties in this dispute, and my analysis of those

¹ Consistent with this understanding, my use of "gain" or "gains" in this report should be understood as including both realized profits and unrealized gains.

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materials. The specific materials that I have considered in forming my opinions are listed in Appendix B and the footnotes of this report. I reserve the right to update my analyses and opinions based on new materials or information that may become available, including data, testimony, additional reports (if any), produced materials, and other additional testimony in this matter. Additional demonstrative exhibits may be prepared for use at trial to summarize my opinions and analyses.

D. Compensation

11. In preparing this report, I have been assisted by staff at BRG working under my supervision. My billing rate is \$900 per hour. The hourly rates of BRG personnel working under my supervision range from \$320 to \$725 per hour. Neither my nor BRG's compensation in this matter is dependent on, or in any way contingent upon, my findings or opinions or the outcome of the litigation.

II. BACKGROUND

12. OpenAI, Inc. ("OpenAI Nonprofit") was founded in 2015 as a nonprofit corporation.² When registering as a nonprofit in California, OpenAI stated its mission was to "advance digital intelligence in the way that is most likely to benefit humanity as a whole, unconstrained by a need to generate financial return."³ Mr. Musk contributed to the nonprofit's success by providing money, advice, and assistance with recruiting, among other valuable contributions.⁴ In total, Mr. Musk contributed approximately \$38 million to the nonprofit and maintained a seat on the board of directors until February 2018.⁵ Mr. Musk's association with the nonprofit resulted in prestige within the tech community, generated media attention, and

² OpenAI, "Our Structure," May 5, 2025, available at <https://web.archive.org/web/20251011012014/https://openai.com/our-structure/>.

³ Initial Registration Form for OpenAI, Inc., State of California Office of the Attorney General Registry of Charitable Trusts, filed August 28, 2017, available at <https://gwern.net/doc/reinforcement-learning/openai/2017-openai-bylaws.pdf>.

⁴ Second Amended Complaint, May 22, 2025, ¶¶ 90-91.

⁵ September 25, 2025 Plaintiff Musk's Supplemental Responses and Objections to OpenAI Defendants' First Set of Interrogatories, Exhibit 1. In February 2018, Mr. Musk resigned from OpenAI's board to "eliminate a potential future conflict" with Tesla's AI efforts. Novet, Jordan, and Lora Kolodny, CNBC, "Elon Musk, who has sounded the alarm on AI, leaves the organization he co-founded to make it safer," February 21, 2018, available at <https://www.cnbc.com/2018/02/21/elon-musk-is-leaving-the-board-of-openai.html>.

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helped to elevate the stature of the nonprofit and its mission.⁶ Moreover, Mr. Musk successfully leveraged his experience and reputation to recruit top talent to the nonprofit and to establish and build business relationships.⁷

13. After Mr. Musk's departure, the structure of OpenAI changed substantially, including by the creation of a new for-profit subsidiary, OpenAI LP ("OpenAI For-Profit"), which has been the vehicle through which most of OpenAI's subsequent product development, investment, and revenue has flowed.⁸ Microsoft accounts for a large portion of the investment in OpenAI For-Profit.⁹ I understand OpenAI has restructured OpenAI For-Profit into a Public Benefit Corporation (with the consent of Microsoft).¹⁰ In spite of Mr. Musk's substantial contributions to the success of OpenAI, Mr. Musk does not stand to benefit financially from this restructuring.

14. I understand that Mr. Musk alleges his contributions were made with the understanding that OpenAI would act "in good faith as a charity committed to safety and transparency above profit, organized for public rather than private benefit, and working to avoid the undue concentration of powerful AI technology."¹¹ Mr. Musk alleges Mr. Altman and others have "established an opaque web of for-profit OpenAI affiliates, the only value of which came from looting OpenAI of the intellectual property, employees, and relationships developed by

⁶ Second Amended Complaint, May 22, 2025, ¶ 92; and, for example, Mack, Eric, Forbes, "Elon Musk, Silicon Valley Elite Launch 'Open' Artificial Intelligence With \$1 Billion," December 11, 2015, available at <https://www.forbes.com/sites/ericmack/2015/12/11/elon-musk-sam-altman-peter-thiel-others-launch-open-a-i-with-1-billion-donation/>.

⁷ October 1, 2025 Deposition of Ilya Sutskever (Co-founder, OpenAI), 40:7-41:2; *See, e.g.*, Mr. Musk's roles in securing first-of-their-kind GPUs from NVIDIA (2024MUSK-0004103 "April 20, 2016 email from Elon Musk to Jensen H. Huang" and SPX-003210-SPX-003211 at SPX-003210 "July 26, 2016 email from Jensen H. Huang to Emma at SpaceX) and obtaining Azure credits from Microsoft (September 26, 2026 Deposition of Elon Musk (Co-Founder OpenAI), 43:20-24; September 24, 2025 Deposition of Satya Nadella (CEO, Microsoft) 27:17-28:6; and 2024MUSK-000669-2024MUSK-000671 "August 11, 2017 email from Elon Musk to Satya Nadella").

⁸ October 3, 2025 Deposition of Robert Wu (Deputy General Counsel, OpenAI), 102:5-103:25; and "Our Structure," *OpenAI*, May 5, 2025, available at <https://web.archive.org/web/20251011012014/https://openai.com/our-structure/>. For expositional convenience, I use "OpenAI For-Profit" throughout the report to refer to OpenAI LP and its successor for-profit entities like OpenAI PBC.

⁹ MSFT_MUSK000051910-MSFT_MUSK000052399 at Schedule A (MSFT_MUSK000052301-52304) ("January 23 2023 MS Third Investment in OpenAI LP Agreement").

¹⁰ OpenAI Press Release, October 28, 2025, available at <https://openai.com/index/built-to-benefit-everyone/>; Microsoft Press Release, October 28, 2025, available at <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/>; and Capoot, Ashley, "OpenAI Completes restructure, solidifying Microsoft as a major shareholder," CNBC, October 28, 2025, available at <https://www.cnbc.com/2025/10/28/openai-for-profit-microsoft.html>.

¹¹ Second Amended Complaint, May 22, 2025, ¶ 3.

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exploiting Mr. Musk's name and contributions, the charity's tax status, and the goodwill generated by its supposed philanthropic commitment."¹² In short, Mr. Musk alleges he was misled into being a donor to a nonprofit and that his significant monetary and non-monetary contributions were later repurposed to support a start-up with transformational technology.

A. A Primer on Artificial Intelligence

15. As this report focuses on the artificial intelligence industry, a brief primer is warranted. Artificial intelligence ("AI") is a relatively broad term, but it is generally understood as the ability for computers to simulate the human learning process, make decisions, solve problems, be creative, and, in some cases, act independently.¹³ Some applications for AI include chatbots and recommendation engines.¹⁴ These applications are often referred to as "generative AI" because they can generate original content in response to a user's prompt or request.¹⁵ According to IBM, "Generative AI offers enormous productivity benefits for individuals and organizations, and while it also presents very real challenges and risks, businesses are forging ahead, exploring how the technology can improve their internal workflows and enrich their products and services."¹⁶ OpenAI's ChatGPT is an example of generative AI.¹⁷ Other examples of commercial generative AI products include Google's Gemini,¹⁸ Anthropic's Claude,¹⁹

¹² Second Amended Complaint, May 22, 2025, ¶ 5.

¹³ Stone, Peter, Rodney Brooks, Erik Brynjolfsson, et al. "Artificial Intelligence and Life in 2030." *One Hundred Year Study on Artificial Intelligence: Report of the 2015 Study Panel*, Stanford University, Stanford, CA, September 2016, available at

https://ai100.stanford.edu/sites/g/files/sbiybj18871/files/media/file/ai100report10032016fnl_singles.pdf, p.12; and Stryker, Cole, and Eda Kavlakoglu, "What is AI?" *IBM*, available at <https://www.ibm.com/think/topics/artificial-intelligence>.

¹⁴ Microsoft, "What is artificial intelligence?," available at <https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-is-artificial-intelligence#self-driving-cars>.

¹⁵ Scapicchio, Mark and Cole Stryker, "What is generative AI?," *IBM*, available at <https://www.ibm.com/think/topics/generative-ai>.

¹⁶ Scapicchio, Mark and Cole Stryker, "What is generative AI?," *IBM*, available at <https://www.ibm.com/think/topics/generative-ai>.

¹⁷ Reuters - Explainer: What is Generative AI, the Technology behind OpenAI's ChatGPT?, March 17, 2023, available at <https://www.reuters.com/technology/what-is-generative-ai-technology-behind-openais-chatgpt-2023-03-17/>.

¹⁸ Pichai, Sundar and Demis Hassabis, Google, "Introducing Gemini: our largest and most capable AI model," December 6, 2023, available at <https://blog.google/technology/ai/google-gemini-ai/#sundar-note>.

¹⁹ "Introducing Claude," *Anthropic*, March 14, 2023, available at <https://www.anthropic.com/news/introducing-claude>.

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Meta's Llama,²⁰ and Grok²¹ from x.AI which was founded by Mr. Musk in 2023.²² Microsoft's Copilot is currently based on OpenAI's GPT-5.²³

16. Generative AI models are expensive to develop and maintain. They leverage sophisticated machine learning algorithms written by programmers, data scientists, computer scientists, and other specialists. The models also leverage computer hardware that can quickly process substantial amounts of data. Currently, I understand competition among several AI companies has allowed qualified personnel to seek and receive salaries in excess of \$100 million annually.²⁴ Cloud computing services like Microsoft Azure, Google Cloud, and Amazon Web Services provide the hardware with storage capacity and compute speed sufficient to train the algorithms and to generate results.²⁵ Given the capacity and speed required, these compute costs are estimated to be in excess of \$5 billion annually at OpenAI alone.²⁶

17. Generative AI is not the aspiration, however. Instead, OpenAI seeks to develop Artificial General Intelligence ("AGI"). AGI is not a formally defined concept except that it represents a system that is "generally smarter than humans."²⁷ AGI has been described as "a hypothetical stage in the development of machine learning in which an artificial intelligence system can match or exceed the cognitive abilities of human beings across any task."²⁸ Many perceive AGI to be a threat to humanity. Indeed, Mr. Musk's initial support for OpenAI and its nonprofit status was predicated on his assessment that he believes "we should be very careful

²⁰ Meta, "Introducing LLaMA: A foundational, 65-billion-parameter large language model," February 24, 2023, available at <https://ai.meta.com/blog/large-language-model-llama-meta-ai/>.

²¹ x.AI, "AI for all humanity," available at <https://x.ai/>.

²² Reuters, "Elon Musk launches AI firm x.AI as he looks to take on OpenAI," July 12, 2023, available at <https://www.reuters.com/technology/elon-musks-ai-firm-x.ai-launches-website-2023-07-12/>.

²³ Smith, Elliot, "Microsoft incorporates OpenAI's GPT-5 into consumer, developer and enterprise offerings," *Microsoft*, August 7, 2025, available at <https://news.microsoft.com/source/features/ai/openai-gpt-5/>.

²⁴ Reuters, "Sam Altman says Meta offered \$100 million bonuses to OpenAI employees," June 18, 2025, available at <https://www.reuters.com/business/sam-altman-says-meta-offered-100-million-bonuses-openai-employees-2025-06-18/>.

²⁵ Anthropic, "The Claude 3 Model Family: Opus, Sonnet, Haiku," available at https://www-cdn.anthropic.com/de8ba9b01c9ab7cbabf5c33b80b7bbc618857627/Model_Card_Claude_3.pdf, p.1; "OpenAI and Microsoft," *OpenAI*, November 15, 2016, available at <https://openai.com/index/openai-and-microsoft/>.

²⁶ OPENAI_MUSK00028559-OPENAI_MUSK00028601 at OPENAI_MUSK00028592 ("OpenAI Management Presentation"). See also You, Josh, "Most of OpenAI's 2024 compute went to experiments," *Epoch AI*, October 10, 2025, available at <https://epoch.ai/data-insights/openai-compute-spend>.

²⁷ OpenAI, "Planning for AGI and beyond," February 24, 2023, available at <https://openai.com/index/planning-for-agi-and-beyond/>.

²⁸ Bergmann, Dave and Cole Stryker, "What is artificial general intelligence (AGI)," *IBM*, available at <https://www.ibm.com/think/topics/artificial-general-intelligence> (parentheticals omitted).

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about artificial intelligence” and that if he “had to guess at what our biggest existential threat is, it’s probably that.”²⁹

B. Origins of OpenAI

18. OpenAI Nonprofit was founded in 2015 by Elon Musk, Sam Altman, Greg Brockman, and Ilya Sutskever as a nonprofit organization. Messrs. Altman and Musk co-chaired the board while Ilya Sutskever, a world expert in machine learning, served as research director and Greg Brockman (formerly the CTO of Stripe) served as CTO.³⁰ Mr. Musk was instrumental in recruiting Mr. Sutskever to OpenAI.³¹ At the time of OpenAI’s founding, artificial intelligence as a commercial endeavor was in its infancy and existed primarily within established big tech companies wanting to fund their own research on the subject. IBM had been a pioneer in AI – their Deep Blue supercomputer beat chess grandmaster Garry Kasparov in 1997,³² and their Watson system defeated Jeopardy! champions Brad Rutter and Ken Jennings in 2011.³³ Meta, formerly Facebook, established its Facebook Artificial Intelligence Research (FAIR) group in 2013 “to advance the state of the art of AI through open research for the benefit of all.”³⁴ Google had invested heavily in Google Brain, a group which was influential in “catapulting ‘deep learning’ from the academic arena to the commercial prime time”³⁵ in 2012, before acquiring the London based AI startup DeepMind in 2014. Google’s DeepMind would go on to develop AlphaGo, a program that beat a human world champion in the board game Go in 2016.³⁶ However, I am not aware of any major standalone players in the AI space at that time.

²⁹ Gibbs, Samuel, The Guardian, “Elon Musk: artificial intelligence is our biggest existential threat,” October 27, 2014, available at <https://www.theguardian.com/technology/2014/oct/27/elon-musk-artificial-intelligence-ai-biggest-existential-threat>.

³⁰ OpenAI, “Introducing OpenAI,” December 11, 2015, available at <https://openai.com/index/introducing-openai/>.

³¹ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 26:9-17, 27:11-28:5 (testifying that he was “excited at the prospect of Elon Musk working with [him],” that he “spent a lot of time studying Elon and his company” and “looked up a lot to his achievements and capabilities,” and that he was “incredibly in awe [and] impressed with Elon Musk’s involvement”). September 26, 2026 Deposition of Mr. Elon Musk (Co-Founder OpenAI), 46:3-4 (“Obviously, many others participated in this. But without me, he would not have joined.”).

³² IBM, “Deep Blue,” available at <https://www.ibm.com/history/deep-blue>.

³³ IBM, “Watson, ‘Jeopardy!’ champion,” available at <https://www.ibm.com/history/watson-jeopardy>.

³⁴ LeCun, Yann, Jerome Pesenti, and Mike Schroepfer, “FAIR turns five: What we’ve accomplished and where we’re headed,” *Engineering at Meta*, December 5, 2018, available at <https://engineering.fb.com/2018/12/05/ai-research/fair-fifth->.

³⁵ Google X, “Brain,” 2012, <https://x.company/projects/brain/>.

³⁶ Google DeepMind, “AlphaGo,” available at <https://deepmind.google/research/projects/alphago/>.

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19. OpenAI's first commercial product, OpenAI Gym, was released in April 2016 as a tool to accelerate its own research.³⁷ In December of that same year, OpenAI released Universe, a "software platform for measuring and training an AI's general intelligence."³⁸ In 2017, the gaming emphasis began to garner results, as OpenAI started deploying models able to defeat some of the world's top players in 1v1 Dota 2 matches³⁹ – culminating in 2018 with the "OpenAI Five," a team of five neural networks which were trained to collaborate and take on teams of top human players together.⁴⁰

20. By 2017, Mr. Musk believed that OpenAI needed additional resources to support its mission.⁴¹ It is for this reason that he (along with Messrs. Altman, Brockman, and Sutskever) began to discuss alternatives. One discussed option was to establish a for-profit entity.⁴² Another discussed option was to have OpenAI associate with Tesla, one of Mr. Musk's companies.⁴³ By Fall 2017, discussions broke down as the parties could not agree on equity share and control of the board of directors of the proposed for-profit entity.⁴⁴ Mr. Musk insisted he should have no less than a 50% equity stake at the outset, subject to later dilution, and half of the seats on the board of directors of a for-profit subsidiary, in part because he contributed two-thirds of OpenAI's funding.⁴⁵ Messrs. Brockman and Sutskever were uncomfortable with this condition and stated as much in an email to Mr. Musk.⁴⁶ This email caused Mr. Musk to withdraw from discussions.⁴⁷

³⁷ OpenAI, "OpenAI Gym Beta," April 27, 2016, available at <https://openai.com/index/openai-gym-beta/>.

³⁸ OpenAI, "Universe," December 5, 2016, available at <https://openai.com/index/universe/>.

³⁹ OpenAI, "Dota 2," August 11, 2017, available at <https://openai.com/index/dota-2/>.

⁴⁰ OpenAI, "OpenAI Five," June 25, 2018, available at <https://openai.com/index/openai-five/>.

⁴¹ September 26, 2025 Deposition of Elon Musk (Co-founder, OpenAI), 70:25-71:15.

⁴² September 16, 2025 Deposition of Sam Altman (CEO, OpenAI), 303:15-19.

⁴³ September 26, 2025 Deposition of Elon Musk (Co-founder, OpenAI), 95:8-16.

⁴⁴ September 26, 2025 Deposition of Elon Musk (Co-founder, OpenAI), 79:15-22; and September 23, 2024 Deposition of Greg Brockman (President, OpenAI), at Exhibit 23 ("September 20th, 2017 email from Musk responding to Messrs. Brockman and Sutskever's concerns," OPENAI_MUSK00000741-OPENAI_MUSK00000743 at OPENAI_MUSK00000741).

⁴⁵ September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 12 ("September 11, 2017 Cap Table"), EXMF-0003257-EXMF-0003258; at Exhibit 15 ("September 27, 2017 email from Elon Musk to Sam Teller"), 2024MUSK-0008757; and at Exhibit 16 ("September 7, 2017 email from Shvon Zilis to Sam Teller"), OPENAI_MUSK00003854-OPENAI_MUSK00003856 at OPENAI_MUSK00003856. *See also* ZILIS-0007027-7028 ("September 11, 2017 email from Ms. Zilis on Mr. Musk's split").

⁴⁶ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), at Exhibit 18 ("September 20, 2017 email from Ilya Sutskever and Greg Brockman,," 2024MUSK-0005100-2024MUSK-0005101).

⁴⁷ September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 14 ("September 20, 2017 email thread between Elon Musk and Ilya Sutskever"), SPX-003903-SPX-003905 at SPX-003903.

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21. In February 2018, OpenAI announced that Mr. Musk was resigning from OpenAI's board to "eliminate potential future conflict" with Tesla.⁴⁸ Messrs. Altman, Brockman, and Sutskever remained with OpenAI. OpenAI announced a new for-profit subsidiary, OpenAI LP, in March 2019 to allow investors to get a capped financial return from OpenAI's activities.⁴⁹ This new structure enabled OpenAI to raise investment capital and attract employees with start-up like equity, while any financial return above the cap would flow to OpenAI Nonprofit.⁵⁰ Around the same time, Mr. Altman transitioned to CEO of OpenAI, and stepped down as President of YCombinator.⁵¹

22. Shortly after these structural changes, OpenAI announced in July 2019 that it had entered into a strategic partnership with Microsoft, whereby Microsoft committed \$1 billion to OpenAI in exchange for a limited partnership interest in OpenAI For-Profit, the entirety of which was called and received as of December 31, 2020.⁵² OpenAI was required to spend 75% of the \$1 billion commitment on Microsoft's cloud computing services through 2024.⁵³ At the same time, Microsoft and OpenAI entered into a Joint Development and Collaboration Agreement ("JDCA") that granted Microsoft certain IP rights and other benefits.⁵⁴ Later, OpenAI unveiled GPT-3, which would lay the groundwork for the consumer-focused application, ChatGPT.⁵⁵

23. In March 2021, Microsoft and OpenAI entered into another investment agreement and an amended JDCA whereby Microsoft committed \$2 billion to OpenAI in exchange for

⁴⁸ OpenAI, "OpenAI supporters," February 20, 2018, <https://openai.com/index/openai-supporters/>.

⁴⁹ MSFT_MUSK000055092- MSFT_MUSK000055098 at MSFT_MUSK000055092, ("Feb 2023 Weil MS Memo re MS-OAI governance"), ¶ 2.2.

⁵⁰ MSFT_MUSK000055092-MSFT_MUSK000055098 ("Feb 2023 Weil MS Memo re MS-OAI governance"), ¶ 2.2.

⁵¹ Carson, Biz and Alex Conrad, "Y Combinator President Sam Altman to Step Down Amid Wider Changes at Famed Startup Accelerator," *Forbes*, March 8, 2019, available at <https://www.forbes.com/sites/bizcarson/2019/03/08/y-combinator-president-sam-altman-to-step-down-amid-wider-changes-at-famed-startup-accelerator/>.

⁵² MSFT_MUSK000090724-MSFT_MUSK000090749 at MSFT_MUSK000090739 and MSFT_MUSK000090748, ("OpenAI, LP 2022 Consolidated Financials").

⁵³ MSFT_MUSK000090697-MSFT_MUSK000090723, at MSFT_MUSK 000090722 ("OpenAI LP 2021 Consolidated Financials").

⁵⁴ MSFT_MUSK000018513-MSFT_MUSK000018548 at MSFT_MUSK000018522- MSFT_MUSK000018526 ("2019 executed JDCA").

⁵⁵ Heaven, Will, "ChatGPT is OpenAI's latest fix for GPT-3. It's slick but still spews nonsense," MIT Technology Review, November 30, 2022, available at <https://www.technologyreview.com/2022/11/30/1063878/openai-still-fixing-gpt3-ai-large-language-model/>.

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another limited partnership interest.⁵⁶ OpenAI was required to spend \$1.6 billion of the \$2 billion commitment on Microsoft's cloud computing services through 2023.⁵⁷

24. In January 2023, OpenAI's relationship with Microsoft evolved further as the two companies agreed to terms for a \$10 billion Microsoft investment in OpenAI For-Profit.⁵⁸ OpenAI and Microsoft agreed that \$10 billion investment would be allocated as \$2 billion for general corporate purposes and \$8 billion for compute services provided by Microsoft over a seven year period.⁵⁹

C. OpenAI's Evolving Corporate Structure

25. As described in the preceding section, OpenAI's corporate structure has evolved since its founding in 2015. Two of the more substantial evolutions occurred contemporaneously with Microsoft's increased economic interests in OpenAI For-Profit, first in July 2019 and again in January 2023.⁶⁰ These new organizational structures are illustrated in Exhibit 1 and Exhibit 2 below.

⁵⁶ MSFT_MUSK000090697-MSFT_MUSK000090723 at MSFT_MUSK000090722-23 ("OpenAI LP 2021 Consolidated Financials").

⁵⁷ MSFT_MUSK000090697-MSFT_MUSK000090723, at MSFT_MUSK000090723 ("OpenAI LP 2021 Consolidated Financials"); OPENAI_MUSK00010268-OPENAI_MUSK00010331 at OPENAI_MUSK00010282 ("March 5, 2021 Amended and Restated Joint Development and Collaboration Agreement").

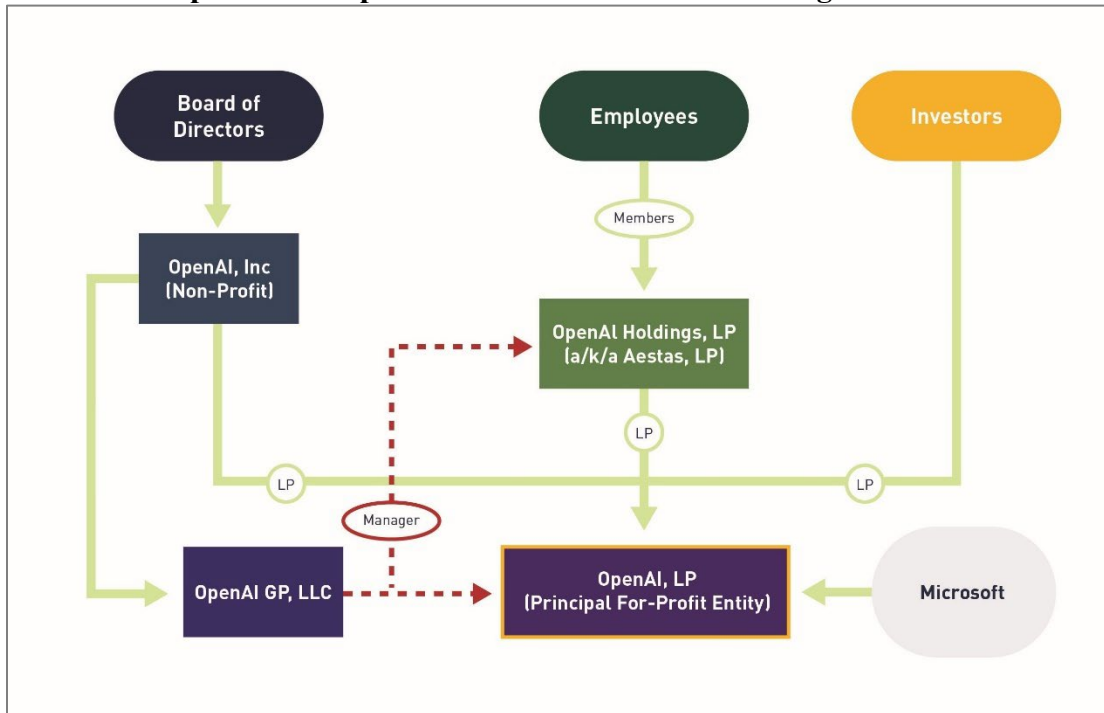
⁵⁸ MSFT_MUSK000055092-MSFT_MUSK000055098 at MSFT_MUSK000055093-MSFT_MUSK000055094 ("Feb 2023 Weil MS Memo re MS-OAI governance"), ¶ 2.5.

⁵⁹ MSFT_MUSK000055092-MSFT_MUSK000055098 at MSFT_MUSK000055093-MSFT_MUSK000055094 ("Feb 2023 Weil MS Memo re MS-OAI governance"), ¶ 2.5.

⁶⁰ MSFT_MUSK000055092-MSFT_MUSK000055098 at MSFT_MUSK000055093-MSFT_MUSK000055094 ("Feb 2023 Weil MS Memo re MS-OAI governance"), ¶ 2.5.

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Exhibit 1
OpenAI's Corporate Structure After 2019 Reorganization



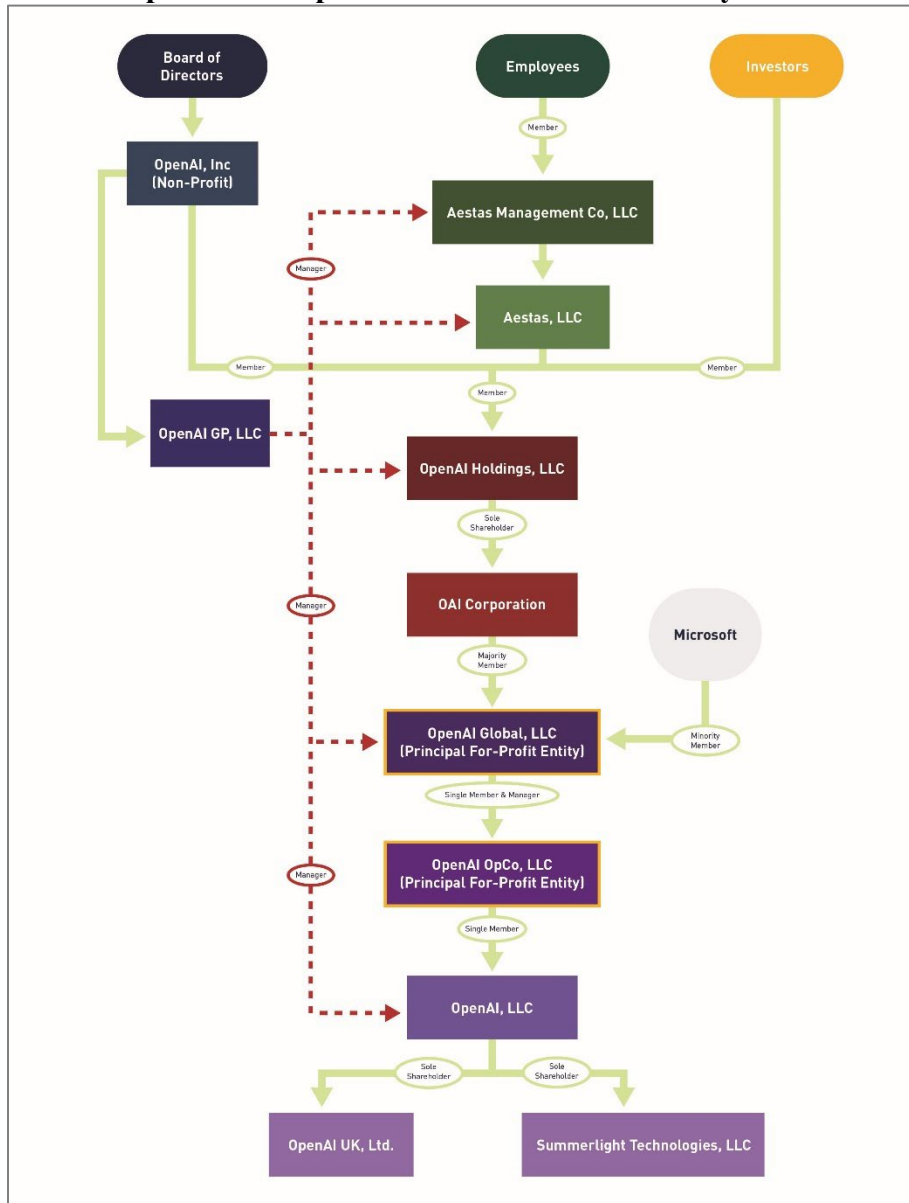
Notes and Sources:

MSFT_MUSK000067597 (“OpenAI – Restructuring Step Plan”), November 7, 2022, p.3; MSFT_MUSK000055092 - MSFT_MUSK000055098 at MSFT_MUSK000055093 (“February 1, 2023 Microsoft / OpenAI CMA Briefing Paper”); MSFT_MUSK000090724 - MSFT_MUSK000090749 at MSFT_MUSK000090737 (“Consolidated Financial Statement as of Year End December 31, 2022”); MSFT_MUSK000085016 - MSFT_MUSK000085084 at MSFT_MUSK000085040 (“February 15, 2019 LP Agreement for OpenAI Holdings, LP”).

[1] OpenAI GP, LLC manages OpenAI, LP and OpenAI Holdings, LP (also known as Aestas, LP). Microsoft’s Tranche I investment in OpenAI For-Profit occurred in July 2019.

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Exhibit 2
OpenAI's Corporate Structure as of January 2023

*Notes and Sources:*

MSFT_MUSK000057454 - MSFT_MUSK000057473 at MSFT_MUSK000057456 ("August 20, 2023 Microsoft / OpenAI Response to the CMA's Request for Information dated June 26, 2023"); MSFT_MUSK000090805 ("OpenAI Structure Chart"); MSFT_MUSK000090804 ("OpenAI Structure Overview"); MSFT_MUSK000079417 ("OpenAI Proposed Structure"); MSFT_MUSK000091126 - MSFT_MUSK000091147 at MSFT_MUSK000091126 ("OpenAI UK, Ltd. Article of Association"); MSFT_MUSK000091156 - MSFT_MUSK000091159 at MSFT_MUSK000091156 ("Summerlight Technologies Ltd. Certificate of Incorporation"); MSFT_MUSK000056517 - MSFT_MUSK000056536 at MSFT_MUSK000056525 ("December 18, 2023 Microsoft / OpenAI Response to the CMA's Request for Information dated December 8, 2023").

[1] OpenAI GP LLC manages Aestas Management Co LLC, Aestas, LLC, OpenAI Holdings, LLC, OpenAI Global, LLC, and OpenAI, LLC.

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26. With the March 2019 restructuring that created OpenAI LP, OpenAI Nonprofit transferred a majority of its assets, valued at \$47.8 million, to OpenAI LP, and OpenAI LP raised an additional \$133 million in investment from various investors who became First Close Limited Partners (“FCLP”).⁶¹ In exchange, OpenAI Nonprofit and the FCLPs received the right to capped financial returns that are 100x their initial investment.⁶² This restructure effectively made OpenAI Nonprofit an investor in OpenAI For-Profit, along with the FCLPs and an entity later named Aestas LP through which employees held equity (the “Employee Vehicle”). Microsoft made its first investment in OpenAI For-Profit in July 2019.⁶³

27. Around the time of Microsoft’s third investment in January 2023, OpenAI LP was converted from a limited partnership to a limited liability company called OpenAI OpCo, LLC (“OpenAI OpCo”), which owned all the operating assets that OpenAI Nonprofit previously transferred to OpenAI LP. The FCLPs, OpenAI Nonprofit, the Employee Vehicle, and Microsoft all had their interests in OpenAI OpCo moved up, in the same proportions, to a newly formed holding entity named OpenAI Global, LLC (“OpenAI Global”), which functions as the parent of OpenAI’s for-profit companies.⁶⁴ OpenAI Global remained governed by the manager, OpenAI GP, LLC.⁶⁵ Two additional intermediate holding companies were created, OAI Corporation and OpenAI Holdings LLC, which are the entities through which the FCLPs, OpenAI Nonprofit, and the Employee Vehicle all hold their interests in OpenAI Global.⁶⁶ In addition, Aestas LP was converted to a limited liability company, Aestas LLC (both “Aestas”), and a new holding company, a nominee entity that is the direct issuer of employee equity, was created above it called Aestas Management Company.⁶⁷ With this restructure, the Target

⁶¹ MSFT_MUSK000059951-MSFT_MUSK000060043, at MSFT_MUSK000059971-59973 and MSFT_MUSK000060024-25 (“July 2, 2019 Amended and Restated Limited Partnership Agreement of OpenAI, L.P., 3.1(c) and Schedule A”).

⁶² MSFT_MUSK000064573-MSFT_MUSK000064684, at MSFT_MUSK000064658-64660 (“March 6, 2021 Second Amended and Restated Limited Partnership Agreement of OpenAI, L.P., Schedule A”).

⁶³ MSFT_MUSK000059951-MSFT_MUSK000060043, at MSFT_MUSK000060024-25 (“July 2, 2019 Amended and Restated Limited Partnership Agreement of OpenAI, L.P., Schedule A”).

⁶⁴ MSFT_MUSK000056517-MSFT_MUSK000056536 (“December 18, 2023 Microsoft / OpenAI Response to the CMA’s Request for Information dated December 8, 2023”), at MSFT_MUSK000056525.

⁶⁵ MSFT_MUSK000057454-MSFT_MUSK000057473 (“August 20, 2023 Microsoft / OpenAI Response to the CMA’s Request for Information dated June 26, 2023”), at MSFT_MUSK000057456. As mentioned previously, I use “OpenAI For-Profit” to refer to OpenAI LP’s for-profit successors, including OpenAI Global.

⁶⁶ MSFT_MUSK000090804 (“OpenAI Corporate Structure Overview”).

⁶⁷ MSFT_MUSK000090804 (“OpenAI Corporate Structure Overview”).

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Redemption Amount (“TRA”) for the Employee Vehicle was increased from \$100 billion to \$150 billion.⁶⁸

28. In December 2024 OpenAI announced its intention to restructure once again into a public benefit corporation with ordinary shares of stock issued to each stakeholder.⁶⁹ On October 28, 2025, Microsoft and OpenAI jointly announced the formation of a new public benefit corporation.⁷⁰ Under the new structure, Microsoft owns 27% of OpenAI Group PBC (“OpenAI PBC”) and OpenAI Nonprofit (now called “OpenAI Foundation”) owns 26% of OpenAI PBC, valued at \$135 billion and \$130 billion, respectively.⁷¹ The implied valuation of OpenAI PBC arising from the deal is \$500 billion. I note that the percentage of shares held by Microsoft and OpenAI Nonprofit in OpenAI PBC are lower than the parties agreed to in their recent negotiations regarding the restructuring. Lower shares can arise under numerous scenarios, including dilution from new investors. As of the date of this report, the full legal and financial terms underpinning the restructuring have not been disclosed publicly by the parties nor have I received such documents in this litigation. That said, the implied valuation is consistent with my own analysis described below. I reserve the right to update my analyses should relevant additional material be provided to me that would affect my opinions.

III. OVERVIEW OF DAMAGES METHODOLOGY

29. I understand that, if Mr. Musk proves that OpenAI and Microsoft are liable on his claims, Mr. Musk is entitled to recover the wrongful gains that OpenAI and Microsoft obtained by misusing the charitable contributions he made to OpenAI Nonprofit. I further understand that these wrongful gains include any increases in the valuation of OpenAI For-Profit or Microsoft’s stake in OpenAI For-Profit that are attributable to Mr. Musk’s contributions to OpenAI Nonprofit. Thus, the first step of my damages analysis is to calculate the current value of

⁶⁸ MSFT_MUSK000059951-MSFT_MUSK000060043, at MSFT_MUSK000060024 (“July 2, 2019 Amended and Restated Limited Partnership Agreement of OpenAI, L.P., Schedule A”); and MSFT_MUSK000063039-MSFT_MUSK000063131, at MSFT_MUSK000063126 (“April 10, 2023 Second Amended and Restated Limited Liability Agreement”).

⁶⁹ OpenAI, “Why OpenAI’s structure must evolve to advance our mission,” December 27, 2024, available at <https://openai.com/index/why-our-structure-must-evolve-to-advance-our-mission/>.

⁷⁰ OpenAI Press Release, October 28, 2025, available at <https://openai.com/index/built-to-benefit-everyone/> and Microsoft Press Release, October 28, 2025, available at <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/>.

⁷¹ Capoot, Ashley, “OpenAI Completes restructure, solidifying Microsoft as a major shareholder,” *CNBC*, October 28, 2025, available at <https://www.cnbc.com/2025/10/28/open-ai-for-profit-microsoft.html>.

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OpenAI For-Profit (Section IV). I then calculate the portion of this value that should be attributed to OpenAI Nonprofit's stake in OpenAI For-Profit (Section V) and, in turn, the portion of OpenAI Nonprofit's value that should be attributed to Mr. Musk's contributions (Section VI). I use a similar methodology to determine the portion of Microsoft's gains from its investment in OpenAI For-Profit that should be attributed to Mr. Musk's contributions to OpenAI Nonprofit. Using this methodology, I estimate OpenAI's wrongful gains to be between \$83.03 billion and \$212.59 billion. I estimate Microsoft's wrongful gains to be between \$14.36 billion and \$60.08 billion. The ranges are a result of different estimates of OpenAI For-Profit's value and the size of Mr. Musk's attributed stake in OpenAI Nonprofit.

30. I provide further detail regarding these calculations in Sections IV – VIII. At the request of Mr. Musk's counsel, in Section IX, I describe the apportionment of these damages to three periods of time. In Section X, I estimate the wrongful gains using the most recent available information on the OpenAI PBC restructuring.

IV. VALUING OPENAI FOR-PROFIT

31. There are a number of ways in which OpenAI For-Profit can be valued. Particularly reliable methods use observable market prices, which are a strong reflection of the market's assessment as to the value of OpenAI For-Profit. I also review other approaches and sources of information on the issue of value in this section. Collectively, this information leads me to conclude OpenAI For-Profit's valuation is at least \$510 billion as of October 15, 2025.

A. The September 2025 SoftBank Tender Offer

32. The most recent OpenAI For-Profit market transaction occurred in September 2025. With this transaction, OpenAI For-Profit allowed current and former employees to sell company shares to SoftBank, Thrive Capital, and other investors.⁷² The implied valuation of OpenAI For-Profit from that deal was \$500 billion.⁷³ OpenAI's senior officers endorsed that valuation. Mr. Altman stated, "that was the willing buyer-willing seller market price, so I won't

⁷² September 23, 2025 Deposition of Greg Brockman (President, OpenAI), at Exhibit 31 (August 19, 2025 "OpenAI in Deal Talks That Would Value the Company at \$500 Billion," 2024MUSK-0011867-2024MUSK-0011870 at 2024MUSK-0011867-2024MUSK-0011868).

⁷³ September 23, 2025 Deposition of Greg Brockman (President, OpenAI), at Exhibit 31 (August 19, 2025 "OpenAI in Deal Talks That Would Value the Company at \$500 Billion," 2024MUSK-0011867-2024MUSK-0011870 at 2024MUSK-0011867-11868).

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argue with it.”⁷⁴ Mr. Brockman testified that he personally valued his shares in OpenAI For-Profit based on the share price corresponding to that \$500 billion valuation.⁷⁵

33. The transaction was reported in the press and by Wall Street analysts. For example, Reuters noted the implied valuation of this deal represented a “bump-up from its current valuation of \$300 billion, underscoring OpenAI’s rapid gains in both users and revenue.”⁷⁶ As another example, TD Cowen similarly observed “The sale would mark a sizeable jump from its prior \$300b valuation during its \$8.3b raise just a few weeks ago.”⁷⁷

34. There are some indications that the value of OpenAI For-Profit is even higher than \$500 billion. First, an article published in *Fast Company* pointed out that “While \$6.6 billion in shares changed hands during the secondary market sale, OpenAI reportedly authorized the sale of more than \$10 billion in stock. The discrepancy suggests that plenty of shareholders are confident holding on to their shares and opted not to sell.”⁷⁸ Second, after the employee share purchase agreement with SoftBank, OpenAI signed strategic partnership agreements NVIDIA, AMD and Broadcom to expand compute infrastructure.⁷⁹ The share prices of NVIDIA, AMD, and Broadcom all increased after the partnerships were announced.⁸⁰ This

⁷⁴ September 16, 2025 Deposition of Sam Altman (CEO, OpenAI), 344:5-6.

⁷⁵ September 23, 2025 Deposition of Greg Brockman (President, OpenAI), 301:17-25.

⁷⁶ See, e.g., Hu, Krystal, “OpenAI hits \$500 billion valuation after share sale to Softbank, others, source says,” *Reuters*, October 2, 2025, available at <https://www.reuters.com/technology/openai-hits-500-billion-valuation-after-share-sale-source-says-2025-10-02/>.

⁷⁷ Wood, Derrick et al., “Woody’s Software Happy Hour: OpenAI Releases GPT-5 & More,” *TD Cowen (a division of TD Securities)*, August 17, 2025, p. 6.

⁷⁸ Hatmaker, Taylor, “ChatGPT maker OpenAI becomes world’s most valuable startup at \$500B,” *Fast Company*, October 2, 2025, available at <https://www.fastcompany.com/91415114/chatgpt-maker-openai-becomes-worlds-most-valuable-startup-at-500b>. Mr. Altman stated in his deposition that he did not believe all \$10 billion worth of shares would be sold (September 16 2025 Deposition of Sam Altman (CEO, OpenAI), 343:16-23).

⁷⁹ NVIDIA, “OpenAI and NVIDIA Announce Strategic Partnership to Deploy 10 Gigawatts of NVIDIA Systems,” September 22, 2025, available at <https://nvidianews.nvidia.com/news/openai-and-nvidia-announce-strategic-partnership-to-deploy-10gw-of-nvidia-systems>; AMD, “AMD and OpenAI Announce Strategic Partnership to Deploy 6 Gigawatts of AMD GPUS,” October 6, 2025, available at <https://ir.amd.com/news-events/press-releases/detail/1260/amd-and-openai-announce-strategic-partnership-to-deploy-6-gigawatts-of-amd-gpus>; “OpenAI and Broadcom announce strategic collaboration to deploy 10 gigawatts of OpenAI-designed AI accelerators,” *Broadcom*, October 13, 2025, available at <https://investors.broadcom.com/news-releases/news-release-details/openai-and-broadcom-announce-strategic-collaboration-deploy-10>.

⁸⁰ NVIDIA, “Stock Quote & Chart,” available at <https://investor.nvidia.com/stock-info/stock-quote-and-chart/default.aspx>; AMD - Price History, available at <https://ir.amd.com/stock-data/price-history>; Broadcom, Stock Quote & Chart, available at <https://investors.broadcom.com/financial-information/stock-information/stock-chart>. See also, Berber, Jin, “How Sam Altman Tied Tech’s Biggest Players to OpenAI,” *The Wall Street Journal*, October 22, 2025, available at <https://www.wsj.com/tech/ai/sam-altman-open-ai-nvidia-deals-d10a6525>; and Hagey, Keach and Herrera, Sebastian, “OpenAI Completes For-Profit Transition, Pushing Microsoft Above \$4 Trillion Valuation,” *The Wall Street Journal*, October 28, 2025, available at <https://www.wsj.com/tech/ai/openai-converts-to-public-benefit-corporation-with-microsoft-taking-27-stake-714a6c05>.

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suggests the market is responding favorably to OpenAI's newly announced expansion plans which may also have implications for OpenAI's valuation. Given these facts, OpenAI For-Profit's value is likely greater as of October 15, 2025 than it was in early September 2025.

B. Over-the-Counter Trades

35. Current and former OpenAI For-Profit employees hold shares of OpenAI For-Profit through Aestas LLC.⁸¹ Unlike shares of public companies like Microsoft and Amazon, OpenAI employee shares are not traded on a public exchange. But they are traded on secondary markets. Secondary markets exist to facilitate the trade of private company securities, providing some liquidity to an otherwise illiquid asset.⁸² Given their relative illiquidity, the share prices of companies traded on secondary markets are below what would be expected had the shares been traded publicly on an exchange. Moreover, there is less trade volume and trade frequency on secondary markets than on public markets. This means, at any point in time, the share prices on secondary markets may be stale and may not reflect the real market price on a given day or time. To overcome these limitations, some secondary market participants develop proprietary price algorithms that attempt to account for additional information that may exist about the company that is not reflected in the most recent trading price.

36. Forge Global ("Forge") is a secondary market platform for shares in venture capital backed private companies.⁸³ Forge was founded in 2014 and is a publicly traded company listed on the New York Stock Exchange.⁸⁴ In addition to matching shareholders and

⁸¹ October 3, 2025 Deposition of Robert Wu (Deputy General Counsel, OpenAI), 95:12-15 ("OpenAI Holdings, LP, which is now Aestas LLC was originally formed to issue equity to employees of OpenAI's for-profit subsidiary.") and September 16, 2025 Deposition of Sam Altman (CEO, OpenAI), 337:19- 21 ("Q. And Aestas is the vehicle that's used to hold employee and former employee interests? A. Yes."). OpenAI Holdings, LP was formed in 2019 and renamed to Aestas, LP in 2022, before becoming Aestas LLC in 2023. MSFT_MUSK000062740-MSFT_MUSK000062826 at MSFT_MUSK000062745 ("April 10, 2023 Amended and Restated Limited Liability Company Agreement of Aestas, LLC").

⁸² Blackrock, "The Case for Secondaries," 2024, available at <https://www.blackrock.com/institutions/en-us/insights/the-case-for-secondaries>. Nasdaq Private Market, EquityZen, Hiive, Forge Global, and Notice are all examples of secondary market platforms that facilitate trades in pre-IPO shares. Nasdaq Private Market, EquityZen and Hiive restrict access to, for example, pre-IPO company employees, accredited investors, or people with active professional licenses (e.g., Series 7, 65, or 82). As such, my analysis is limited to data from Forge Global and Notice which do not similarly restrict their data.

⁸³ Forge Global, "Forge – FAQs for Investors, Companies, and Shareholders," available at <https://forgeglobal.com/faqs/>; Safane, Jake, "Insights: Secondary Marketplace," available at <https://forgeglobal.com/insights/secondary-marketplace>.

⁸⁴ Barron's, "Forge Global Holdings Inc., Stock Overview (US: NYSE)," accessed October 23, 2025, available at <https://www.barrons.com/market-data/stocks/frge>.

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investors, Forge uses data from its platform to provide more up to date share price and company valuation information for private companies than could be found solely from public information, such as financing rounds.⁸⁵

37. Notice, Inc. (“Notice”) was founded in 2021 as a data provider for secondary markets.⁸⁶ Notice aggregates data from multiple sources and weights it by the “context” of the information to create its proprietary “Notice Price.”⁸⁷ Although Notice does not have the same public profile as Forge, I consider Notice prices to determine the valuation of OpenAI For-Profit.

38. Exhibit 3 summarizes the price and implied valuation published by Forge and Notice at certain dates in time.⁸⁸ The price per share and implied valuation reported by Forge and Notice may differ given the proprietary approach each uses to estimate the price per share. Nevertheless, both series exhibit an exponential rise in price and value. As of October 15, 2025, Forge reports an implied valuation of \$500 billion and Notice reports an implied valuation of \$581.2 billion.

⁸⁵ Manciocchi, Jay, “Unlocking liquidity: How Forge helps shareholders sell private shares,” *Forge*, June 2, 2025, available at <https://forgeglobal.com/insights/private-market-education/unlocking-liquidity-how-forge-helps-shareholders/>.

⁸⁶ Notice, “About,” available at <https://notice.co/about>. (“We are a data provider, not a marketplace. That means we do not make money when you buy or sell stock. Our goal is to make the private markets run more efficiently, benefiting everyone.”)

⁸⁷ Hendricksen, Tyson, “How we build the Notice Price,” *Medium*, March 7, 2023, available at <https://blog.notice.co/how-we-think-about-pricing-d1ed063a9ef3>.

⁸⁸ The dates selected represent the days where the pricing and valuation data changed on the Forge website.

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Exhibit 3
Implied Valuation of OpenAI Based on Secondary Markets Forge and Notice

Date	Forge		Notice	
	Price	Implied Valuation (\$ billions)	Price	Implied Valuation (\$ billions)
4/28/2023	\$48.28	\$28.0	\$67.00	\$29.0
12/20/2023	150.00	87.0	150.00	86.0
3/27/2024	180.00	104.4	174.41	100.0
6/13/2024	177.68	103.1	175.92	100.9
8/6/2024	289.50	167.9	163.45	93.7
10/17/2024	287.46	172.3	261.37	157.2
12/12/2024	285.57	171.1	228.16	137.2
2/21/2025	288.19	172.7	269.29	162.0
4/1/2025	433.87	300.0	255.81	153.9
4/10/2025	468.58	324.0	234.80	141.2
9/19/2025	723.12	500.0	470.15	546.7
10/15/2025	723.12	500.0	499.81	581.2

Notes and Sources:

Forge Global, available at <https://marketplace.forgeglobal.com/marketplace/companies/openai>; Notice, available at <https://notice.co/c/openai>.

[1] The dates selected represent the days where the pricing and valuation data changed on the Forge website.

39. Exhibit 4 is a screen capture from Notice which identifies the OpenAI price per share from March 13, 2023 through October 23, 2025. The blue line reflects Notice's algorithmically determined price per share which is based on actual trades (black dots), offers to buy (green crosses), offers to sell (red crosses), and other factors.⁸⁹ Notice's price data is calibrated to certain events such as actual trades and valuations that are shared publicly, including the September 2025 SoftBank transaction discussed above.⁹⁰

⁸⁹ Hendricksen, Tyson, "How we build the Notice Price," *Medium*, March 7, 2023, available at <https://blog.notice.co/how-we-think-about-pricing-d1ed063a9ef3>.

⁹⁰ Hendricksen, Tyson, "How we build the Notice Price," *Medium*, March 7, 2023, available at <https://blog.notice.co/how-we-think-about-pricing-d1ed063a9ef3>; Notice, "OpenAI (ChatGPT) Stock," accessed October 23, 2025, available at <https://notice.co/c/openai>.

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Exhibit 4
Estimated Notice Price Per Share for OpenAI
March 13, 2023 – October 23, 2025



Notes and Sources:

Notice, available at <https://notice.co/c/openai>, last accessed October 23, 2025.

C. Discounted Cash Flow Analysis

40. As another datapoint, I estimate the market value of OpenAI For-Profit using a standard discounted cash flow analysis. The Income or Discounted Cash Flow Approach (“DCF Approach”) involves calculating the cash flows which may be derived from an asset or business and discounting them at a rate of return that reflects the riskiness of the cash flows. The DCF Approach is implicitly a control-based model. In other words, it assumes that the owner controls the cash flows and has control of the firm when determining its value. If one wanted to value a minority interest in a firm using a DCF approach, one would typically apply a discount which reflects a lack of control.

41. To perform my DCF analysis, I relied on OpenAI’s management projections from early 2025 that forecast revenues and cash flows through 2030.⁹¹ For the 2025 cash flows, I adjusted the projection to account for the number of days now remaining in the year.⁹²

⁹¹ OPENAI_MUSK00028559- OPENAI_MUSK00028601 (“OpenAI Management Presentation”) at OPENAI_MUSK00028591.

⁹² Specifically, I counted the number of days remaining in 2025 as of October 15, 2025 and multiplied that fraction of the year by the 2025 forecasted cash flows to calculate the remainder of cash flows for 2025 as of October 15, 2025. I implemented this linear approach because I do not have information about OpenAI’s cash flow patterns—

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42. The DCF Approach uses the weighted average cost of capital (“WACC”) as the discount factor to calculate the present value of a company’s future cash flow. For public companies, WACC can be calculated using information contained in financial disclosures. However, OpenAI For-Profit is not a public company, and I do not have enough information to perform my own independent calculation of OpenAI For-Profit’s WACC.⁹³ Given this limitation, I use 22.5% as my weighted average cost of capital. This is the same discount rate utilized by Goldman Sachs and Morgan Stanley during the recent OpenAI restructuring negotiations⁹⁴ and by OpenAI for its own internal valuations.⁹⁵ This WACC is consistent with the academic literature on valuation of venture capital-backed startups, which indicates that discount rates for late-stage startups typically range between 20% and 35%.⁹⁶ Applying this WACC to OpenAI’s forecasted cash flows gives me a present value of cash flows through 2030 of -\$6.93 billion.

43. Companies can maintain high valuations despite negative current cash flows because investors focus on future potential rather than current profitability. When a company is rapidly reinvesting revenue into growth—for example, to expand infrastructure, enter new markets, or improve its products—the company often depletes cash in the short term while building brand awareness and customer loyalty for the long term.⁹⁷ Amazon, for example, famously operated with minimal or negative profits for many years during the 1990s and early

i.e., whether they are increase, decreasing, or following a linear trajectory over the course of the year. As sensitivities, I tested what would happen to the valuation if all of the cash flows occurred before October 15, 2025 or if all the cash flows occurred after October 15, 2025. Neither alternative substantially changed the valuation of OpenAI For-Profit compared to the linear assumption.

⁹³ I only have OpenAI’s financial information through 2024 which is insufficient given OpenAI’s rapidly evolving valuation in 2025.

⁹⁴ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037440 (“Summary of Watershed Presentations”).

⁹⁵ September 25, 2025 Deposition of Microsoft Representative (Michael C. Wetter), at Exhibit 24 (“February 2025 OpenAI Update”), at p. 5

⁹⁶ Sahlman, William A., and Daniel R Scherlis. *A Method For Valuing High-Risk, Long-Term Investments: The “Venture Capital Method.”* Harvard Business School Background Note 288-006, July 1987. (Revised October 2009.), p. 7.; Sahlman, William A., *The structure and governance of venture-capital organizations*, Journal of Financial Economics, Volume 27, Issue 2, 1990, Pages 473-521 at p. 511, available at [https://doi.org/10.1016/0304-405X\(90\)90065-8](https://doi.org/10.1016/0304-405X(90)90065-8).

⁹⁷ Puri, Manju and Rebecca Zarutskie, “On the Life Cycle Dynamics of Venture-Capital and Non-Venture-Capital-Financed Firms,” *The Journal of Finance*, December 2012, Vol. 67(6), 2247-2293; Hand, John, “The Value Relevance of Financial Statements in the Venture Capital Market,” *The Accounting Review*, (2005), Vol. 80(2), 613-648; Armstrong, Chris, Antonio Davila, & George Foster, “Venture-backed private equity valuation and financial statement information,” *Review of Accounting Studies*, (2006), Vol. 17, 119-154.

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2000s, pouring money into warehouses, technology, and aggressive pricing to capture market share. Investors tolerated this because they understood Amazon was prioritizing growth and market share over immediate returns.⁹⁸

44. My terminal value for the DCF model is based on OpenAI's 2030 revenue forecast using a revenue multiple approach. I calculate the forecasted enterprise value to revenue ratio for twenty peer companies of OpenAI from 2026 to 2030, with median multiples ranging from 8.1 to 12.5.⁹⁹ Additionally, I reviewed the February 2025 DCF analysis of M. Klein & Company, who recommend a multiple range of 6.5 to 8.5.¹⁰⁰ Based on the overlapping ranges from both analyses, I apply a terminal value multiple of 8.5. I assume OpenAI's cash balance is \$0. The resulting terminal value is \$1,477.3 billion, which discounted to present value is \$513.09 billion. Subtracting OpenAI's present value of cash flows from the present value of the terminal value results in a present value of equity of \$506.2 billion, as shown in Exhibit 5.

⁹⁸ BBC News, ("Amazon finally flows into Profit"), January 27, 2004 available at <http://news.bbc.co.uk/2/hi/business/3435965.stm>; Price III, Richard. "Cash Flows at Amazon.com," Issues In Accounting Education, Vol.28, No. 2, 2013, pp. 353-374, available at <https://publications.aaahq.org/iae/article-abstract/28/2/353/7867/Cash-Flows-at-Amazon-com?redirectedFrom=fulltext>.

⁹⁹ See Wazzan Workpapers.

¹⁰⁰ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037431 ("Discounted Cash Flow Analysis – M. Klein").

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Exhibit 5
Discounted Cash Flow Analysis of OpenAI

DCF Analysis		Calculation (\$ billions)
2030 Revenue Forecast	[a]	\$173.80
x Revenue Multiple [1]	[b]	8.5
Terminal Value	$[c] = [a] \times [b]$	\$1,477.30
WACC [2]	[d]	22.5%
Time (years)	[e]	5.21
PV Terminal Value	$[f] = [c] / (1 + [d])^{[e]}$	\$513.09
PV Cash Flows	[g]	-\$6.93
Cash Balance [3]	[h]	\$0.00
Equity Value	$[i] = [f] + [g] + [h]$	\$506.16

Notes & Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00028559-OPENAI_MUSK00028601 at OPENALMUSK00028591, (“OpenAI Management Presentation”); OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037430 – 31, “Discounted Cashflow Analysis – M. Klein”); OPENAI_MUSK00037265-037448 at OPENAI_MUSK00037440 (“Summary of Watershed Presentations”); September 25, 2025 Deposition of Microsoft Representative (Michael C. Wetter), at Exhibit 24 (“February 2025 OpenAI Update”), p. 5.

[1] My calculated median enterprise value to revenue ratio for 2026 – 2030 is between 8.1 and 12.5. M. Klein & Company recommended a revenue multiple between 6.5 – 8.5. I selected a revenue multiple that is overlapping both analyses at 8.5x.

[2] WACC utilized by Goldman Sachs and Morgan Stanley in Project Watershed analysis is 22.5%. OpenAI also utilized a 22.5% WACC for their own internal valuation in 2025.

[3] Cash balance at end of 2024 was \$7.6B, assuming cash balance is \$0 as of October 15, 2025.

[4] “t” for 2025 is the number of days remaining in 2025 as of October 15, 2025 (e.g., $1 - (288 \text{ days} / 365 \text{ days}) = .21$).

D. Other Valuations of OpenAI For-Profit

45. Documents I have reviewed provide additional indications of OpenAI For-Profit’s valuation over time. These documents include: (i) summaries of valuation analyses performed by investment banks; (ii) investment term sheets that include valuations for agreed upon transactions; and (iii) news articles discussing the implied valuations associated with different transactions. Collectively, those sources provide a historical record of the growth in value of OpenAI For-Profit. I summarize this information in Exhibit 6 and describe the context around the valuations below.

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1. Project Watershed Valuations

46. In December 2024, OpenAI announced its intention to restructure OpenAI For-Profit into a public benefit corporation with ordinary shares of stock issued to each stakeholder (i.e., OpenAI Nonprofit, Microsoft, Aestas, and FCLPs) pursuant to their revenue claims. This effort was named “Project Watershed.”¹⁰¹ OpenAI retained Goldman Sachs and Microsoft retained Morgan Stanley to perform valuation analyses of OpenAI For-Profit. These analyses also quantified the capped-profit stakes used to determine equity stakes in the proposed public benefit corporation.¹⁰² M. Klein & Company served in an advisory role for the project on behalf of OpenAI and performed a third valuation.¹⁰³ The first step to valuing each stakeholder’s equity stake was to perform a valuation of OpenAI For-Profit.¹⁰⁴

47. In August/September 2024, Morgan Stanley, Goldman Sachs, and M. Klein & Company estimated the value of OpenAI For-Profit. The valuations of each of the companies varied substantially. M. Klein & Company’s initial valuation was the highest (\$170.0 billion) followed by Goldman Sachs (\$159.0 billion) and then Morgan Stanley (\$123.0 – \$159.0 billion).¹⁰⁵ After the initial valuations were shared, the parties (through their respective investment banks) discussed and debated the correct modeling methodology and other details, including whether OpenAI Nonprofit should receive warrants. Communications amongst the parties culminated in a new round of valuations shared around February/March 2025. All three investment banks prepared revised valuation estimates. Goldman Sachs (retained by OpenAI) estimated a valuation of \$353 billion.¹⁰⁶ Morgan Stanley (retained by Microsoft) estimated a

¹⁰¹ OpenAI, “Why OpenAI’s structure must evolve to advance our mission,” December 27, 2024, available at <https://openai.com/index/why-our-structure-must-evolve-to-advance-our-mission/>; and September 8, 2025 Deposition of Microsoft Representative (Michael C. Wetter), 241:1-5.

¹⁰² September 8, 2025 Deposition of Microsoft Representative (Michael C. Wetter), 247:21-23, 250:4-10; and September 25, 2025 Deposition of Microsoft Representative (Michael C. Wetter), 309:24-310:2.

¹⁰³ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037278 (“Proposed Ongoing Channels of Communication”).

¹⁰⁴ I discuss the determination of each stakeholder’s equity stake in Section VI.

¹⁰⁵ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037430 (“Discounted Cash Flow Analysis – M. Klein”) and OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037440 (“Summary of Watershed Presentations”).

¹⁰⁶ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037440 (“Summary of Watershed Presentations”).

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valuation between \$122 billion and \$177 billion.¹⁰⁷ M. Klein & Company (retained by OpenAI) estimated a valuation of \$308 billion.¹⁰⁸

2. Investment Term Sheets

48. I also received and reviewed investment term sheets associated with two transactions. The first transaction was between OpenAI For-Profit and Thrive Capital.¹⁰⁹ On August 8, 2024, Thrive and OpenAI For-Profit agreed that Thrive would invest up to \$5 billion into OpenAI For-Profit in exchange for shares.¹¹⁰ Per the term sheet, the price per share was to be calculated assuming a valuation of \$150 billion for OpenAI For-Profit.¹¹¹ This valuation is in line with the 2024 estimates by the three investment banks discussed above. Several months later, on January 20, 2025, SoftBank and OpenAI For-Profit agreed that SoftBank would invest up to \$40 billion in OpenAI For-Profit assuming a pre-money valuation of \$260 billion (implying a post-money valuation of \$300 billion).¹¹² This valuation is slightly lower than the 2025 valuations prepared by the three investment banks I discuss above.

3. Industry and Media Reports

49. Industry and media reports are two other potential sources of information on OpenAI's valuation. Pitchbook is a research company and data provider that focuses on private capital markets.¹¹³ OpenAI is one of the companies that Pitchbook tracks. In a recent report, Pitchbook identified the date, amount, cumulative capital raise and, in some cases, the pre- and post-transaction valuations associated with an OpenAI transaction.¹¹⁴ In total, Pitchbook identified twenty deals involving OpenAI. Seven of the twenty included post-transaction valuations but only one was unique to Pitchbook.¹¹⁵ That transaction occurred on January 13,

¹⁰⁷ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037440 ("Summary of Watershed Presentations").

¹⁰⁸ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037430 ("Discounted Cash Flow Analysis – M. Klein").

¹⁰⁹ MSFT_MUSK000091184 – MSFT_MUSK000091186 ("August 8, 2024 OpenAI Investment Term Sheet").

¹¹⁰ MSFT_MUSK000091184 – MSFT_MUSK000091186 ("August 8, 2024 OpenAI Investment Term Sheet") at MSFT_MUSK000091186.

¹¹¹ MSFT_MUSK000091184 – MSFT_MUSK000091186 ("August 8, 2024 OpenAI Investment Term Sheet") at MSFT_MUSK000091184.

¹¹² MSFT_MUSK000084243 – MSFT_MUSK000084251 ("January 20, 2025 OpenAI Investment Term Sheet").

¹¹³ PitchBook, "Empowering the evolving private market ecosystem," available at <https://pitchbook.com/>.

¹¹⁴ PitchBook, "OpenAI | Private Company Profile, Deal History," October 10, 2025, pp. 13-14.

¹¹⁵ PitchBook, "OpenAI | Private Company Profile, Deal History," October 10, 2025, pp. 13-14 and Exhibit 6.

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2023. OpenAI received a \$25 million investment with a reported post-close valuation of \$4 billion.¹¹⁶

50. The news media also reports on OpenAI transactions and valuations. One reported transaction occurred on April 28, 2023, with a media source noting, “VC firms including Sequoia Capital, Andreessen Horowitz, Thrive and K2 Global... put in just over \$300 million at a valuation of \$27 billion – \$29 billion.”¹¹⁷ Similarly, in October 2024, the media reported that OpenAI For-Profit received another \$6.6 billion investment by Thrive Capital, Microsoft, NVIDIA, SoftBank Group, Altimeter Capital, Khosla Ventures, Fidelity, and MGX,¹¹⁸ valuing OpenAI at \$157 billion.¹¹⁹ Shortly thereafter, on November 27, 2024 several news outlets reported that OpenAI For-Profit agreed to allow Softbank to acquire \$1.5 billion worth of employee shares.¹²⁰ The pre-money valuation of OpenAI For-Profit for this transaction was reportedly \$157 billion.¹²¹ The news media also reported recent SoftBank transactions that valued OpenAI For-Profit at \$300 billion and \$500 billion.¹²² All told, the industry and media reports show the valuation of OpenAI For-Profit was rapid and accelerating, especially in 2025.

¹¹⁶ PitchBook, “OpenAI | Private Company Profile, Deal History,” October 10, 2025, p. 14.

¹¹⁷ Singh, Jagmeet and Ingrid Lunden, “OpenAI closes \$300M share sale at \$27B-29B valuation,” *TechCrunch*, April 28, 2023, available at <https://techcrunch.com/2023/04/28/openai-funding-valuation-chatgpt/?tpcc=tcplustwitter>.

¹¹⁸ Metinko, Chris, “OpenAI Raises \$6.6B At \$157B Valuation,” *Crunchbase*, October 2, 2024, available at <https://news.crunchbase.com/ai/venture-openai-raises-billions-thrive/>.

¹¹⁹ OpenAI, “New funding to scale the benefits of AI,” October 2, 2024, available at <https://openai.com/index/scale-the-benefits-of-ai/>.

¹²⁰ Jaiswal, Rishabh, Gnaneshwar Rajan and Angela Christy M., “OpenAI allows employees to sell \$1.5 billion stock to SoftBank, sources say,” *Reuters*, November 26, 2024, available at <https://www.reuters.com/technology/openai-allows-employees-sell-15-bln-stock-softbank-cnbc-reports-2024-11-27/>. *See also*, Field, Hayden and Kate Rooney, “OpenAI gets new \$1.5 billion investment from SoftBank, allowing employees to sell shares in a tender offer,” *CNBC*, November 27, 2024, available at <https://www.cnn.com/2024/11/26/openai-gets-1point5-billion-investment-from-softbank-in-tender-offer.html>.

¹²¹ Jaiswal, Rishabh, Gnaneshwar Rajan and Angela Christy M., “OpenAI allows employees to sell \$1.5 billion stock to SoftBank, sources say,” *Reuters*, November 26, 2024, available at <https://www.reuters.com/technology/openai-allows-employees-sell-15-bln-stock-softbank-cnbc-reports-2024-11-27/>. *See also*, Field, Hayden, and Kate Rooney, “OpenAI gets new \$1.5 billion investment from SoftBank, allowing employees to sell shares in a tender offer,” *CNBC*, November 27, 2024, available at <https://www.cnn.com/2024/11/26/openai-gets-1point5-billion-investment-from-softbank-in-tender-offer.html>.

¹²² *See, e.g.*, Metz, Cade, “OpenAI Completes Deal That Values Company at \$300 Billion,” *The New York Times*, March 31, 2025, available at <https://www.nytimes.com/2025/03/31/technology/openai-valuation-300-billion.html>; Metz, Cade, “OpenAI Completes Deal That Values It at \$500 Billion,” *The New York Times*, October 2, 2025, available at <https://www.nytimes.com/2025/10/02/technology/openai-deal-500-billion.html>. *See also*, “Announcement Regarding Follow-on Investments in OpenAI,” *SoftBank Group Corp.*, April 1, 2025, available at <https://group.softbank/en/news/press/20250401>.

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Exhibit 6
Summary of Third Party Valuations and Implied Valuations

Source	Date	Valuation (\$ billions)
Project Watershed Valuations		
Goldman Sachs	8/1/2024	\$159.0
M. Klein & Company	8/1/2024	170.0
Morgan Stanley	9/1/2024	123.0 - 159.0
M. Klein & Company	2/13/2025	308.0
Goldman Sachs	3/1/2025	353.0
Morgan Stanley	3/1/2025	122.0 - 177.0
Investment Term Sheets		
Thrive Capital	8/8/2024	150.0
Soft Bank	1/20/2025	260.0
Industry and Media Reports		
Unknown investor	1/13/2023	4.0
Microsoft Investment	1/23/2023	29.0
Venture Capital Investment	4/28/2023	27.0 - 29.0
Thrive Capital Tender Offer	2/16/2024	80.0 - 86.0
Thrive Capital Led Funding Round	10/2/2024	157.0
SoftBank Tender Offer	11/26/2024	157.0
SoftBank Led Funding Round	3/31/2025	300.0
SoftBank Tender Offer	10/3/2025	500.0

Notes & Sources:

See Wazzan Workpapers.

[1] I understand the 2025 Softbank Tender offer allowed for a window of time in which the employee shares could be sold. I do not know the precise dates; however I understand that window began in early September and ended in early October 2025.

E. Conclusion

51. Given the above, the current value of OpenAI For-Profit is at least \$500 billion and perhaps as high as \$581.2 billion. The lower end of this range is established by the September 2025 SoftBank tender offer, a market transaction, as well as the OpenAI PBC restructuring. The upper end of this range is Notice's algorithmically estimated price as of October 15, 2025. While numerous sources discussed above demonstrate OpenAI For-Profit's valuation grew substantially over time and suggest the valuation is in excess of \$500 billion, I cannot independently validate the \$581.2 billion Notice valuation. Yet, it is clear from the research described above that some positive adjustment to the \$500 billion is appropriate.

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Therefore, it is my opinion that \$510 billion is a reasonable estimate of OpenAI For-Profit's value as it reflects some moderate growth in value that likely occurred in the six weeks between the September 2025 SoftBank transaction and October 15, 2025. This valuation implies a compound weekly growth rate of 0.32% which is nearly one-tenth of the compound weekly growth rate between the April SoftBank Transaction and the September 2025 SoftBank Tender offer (2.36%).¹²³

V. ALLOCATING THE VALUE OF OPENAI FOR-PROFIT AMONG OPENAI NONPROFIT AND OTHER STAKEHOLDERS

52. For the next step in my analysis, I allocate the current value of OpenAI For-Profit among its various stakeholders, including OpenAI Nonprofit. This step is necessary because Mr. Musk contributed only to OpenAI Nonprofit whereas other parties also had stakes in OpenAI For-Profit. As explained below, I calculate OpenAI Nonprofit's share of OpenAI For-Profit's value two different ways, one using the negotiated shares from the September 2025 Memorandum of Understanding and the other using my own Black-Scholes analysis.

53. As mentioned above in Section IV, OpenAI and Microsoft, recently negotiated over the equity shares that each stakeholder (FCLPs, Microsoft, OpenAI Nonprofit, and Aestas) would have upon the conversion of OpenAI For-Profit into a public benefit corporation. Both parties sought to justify their proposed stakes by valuing their shares of the gains that would be generated by OpenAI For-Profit under the existing capped for-profit structure. That structure involved a four-step process:

- First, OpenAI Nonprofit and FCLPs receive their capital contribution back.¹²⁴
- Second, Microsoft receives 75% of the distribution towards their capital contribution. The remaining 25% is divided among Aestas, FCLPs, and OpenAI Nonprofit in proportion to their TRA.¹²⁵ The TRA represents the maximum distribution a stakeholder is entitled to receive and is a predetermined agreed upon multiple of each stakeholder's

¹²³ See Wazzan Workpapers.

¹²⁴ MSFT_MUSK000063039-MSFT_MUSK000063131 ("April 10, 2023 Second Amended and Restated Limited Liability Company Agreement") at MSFT_MUSK000063079.

¹²⁵ MSFT_MUSK000063039-MSFT_MUSK000063131 ("April 10, 2023 Second Amended and Restated Limited Liability Company Agreement") at MSFT_MUSK000063079.

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commitment¹²⁶ except for the Employee Vehicle whose TRA is set at \$150 billion.¹²⁷

The TRA increases annually by the inflation rate and starting January 1, 2025 the TRA increases by an additional 20 percent annually.¹²⁸

- Third, Microsoft receives 49% of the distribution and Aestas, FCLPs, and OpenAI Nonprofit receive 51% of the distribution. Distributions under this step continue until Microsoft, Aestas, FCLPs, and OpenAI Nonprofit receive aggregate distributions equal to its TRA.¹²⁹
- Finally, OpenAI Nonprofit receives 100% of the remaining distributions in the form of residual value.¹³⁰

54. The concept is relatively straightforward. Imagine a pie that is being divided amongst four participants. In a static world (where the profits and hence value of the company are fixed) we could simply allocate fixed percentages to each of the four recipients such that they add up to 100%. The difference here is that the pie is growing such that the percentages allocated to each of the recipients change over time. As the pie gets bigger and bigger, caps come into play such that the residual claimant gets a bigger and bigger percentage of the pie while the others get smaller and smaller percentages.

55. Exhibit 7 is a stylized representation of this process with lines E₁ – E₄ representing each step. In this distribution waterfall, each stakeholder has a claim that is **contingent** on OpenAI For-Profit's performance and value. The portion of OpenAI For-Profit's

¹²⁶ MSFT_MUSK000090697-MSFT_MUSK000090723 at MSFT_MUSK000090718 (“OpenAI, LP Consolidated Financial Statements, As Of and For The Year Ended December 31, 2021, Notes to Consolidated Financial Statements”).

¹²⁷ MSFT_MUSK000063039-MSFT_MUSK000063131 at MSFT_MUSK000063053 (“April 10, 2023 Second Amended and Restated Limited Liability Company Agreement, Schedule A”).

¹²⁸ MSFT_MUSK000063039-MSFT_MUSK000063131 (“April 10, 2023 Second Amended and Restated Limited Liability Company Agreement”) at MSFT_MUSK000063060- MSFT_MUSK000063062.

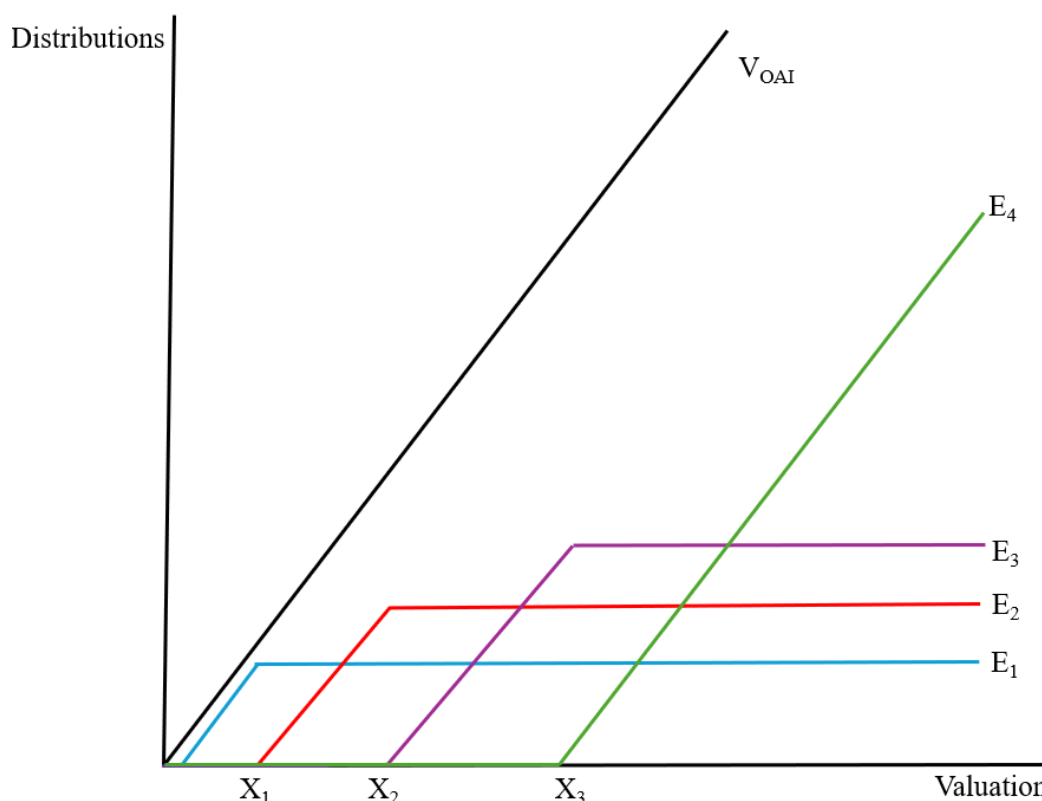
¹²⁹ MSFT_MUSK000091818-MSFT_MUSK000091826 (“Watershed Considerations for Microsoft”) at MSFT_MUSK000091823 (“Watershed Considerations for Microsoft”). For the purposes of their Project Watershed model, Goldman Sachs split this step into two parts to ensure FCLPs, OpenAI Nonprofit, and Aestas all received their full TRAs. *See* MSFT_MUSK000091818-MSFT_MUSK000091826 (“Watershed Considerations for Microsoft”) at MSFT_MUSK000091823.

¹³⁰ MSFT_MUSK000063039-MSFT_MUSK000063131 (“April 10, 2023 Second Amended and Restated Limited Liability Company Agreement”) at MSFT_MUSK000063079-MSFT_MUSK000063080.

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value is capped at steps E_1 , E_2 , and E_3 whereas the share of OpenAI For-Profit's value attributable to the residual claimant, E_4 , is uncapped. The capping is reflected in the horizontal portion of each line $E_1 - E_3$. For example, E_1 (blue line) is able to claim the full value of OpenAI For-Profit until the valuation is equal to X_1 , after which E_1 's claims of OpenAI For-Profit is capped and remains constant. The same is true for E_2 (until valuation X_2), and E_3 (until valuation X_3), but not E_4 . E_4 is the residual claim of OpenAI For-Profit value that exceeds X_3 . At any point on the figure, the sum of E_1 , E_2 , E_3 , and E_4 is equal to the value of OpenAI For-Profit (V_{OAI}).

Exhibit 7
Illustration of How OpenAI For-Profit Revenues are Attributed to Stakeholders



56. Each stakeholder's claim can be modeled using call options based on the value of OpenAI For-Profit (V_{OAI}). A call option gives its owner the right but not the obligation to purchase an asset at a pre-specified cost (the strike price) at a pre-specified time. In the waterfall above, the strike prices are X_1 , X_2 , and X_3 . In finance, call options are commonly valued using

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the Black-Scholes Option Pricing Model.¹³¹ Goldman Sachs, Morgan Stanley, and M. Klein & Company used similar Black-Scholes approaches to value stakeholder interests in OpenAI For-Profit, as described in their Project Watershed models.¹³²

57. Because OpenAI Nonprofit's residual stake (E_4) has a payment stream corresponding to a pure call option, OpenAI Nonprofit's ownership can be valued using the Black-Scholes equation directly based on OpenAI For-Profit's value (V_{OAI}) as the spot price and the other stakeholders' combined profit caps (X_3) as the strike price. The other stakeholders, by contrast, have payment streams that begin once OpenAI For-Profit's value reaches a specific threshold and end once the stakeholder reaches its profit cap. Those payouts can be modeled as the difference between two options. For example, E_1 has a payoff that may be replicated by owning V_{OAI} and forfeiting a call option to other claimants with a value that is dependent on the strike price X_1 . E_2 owns a call option with strike price X_1 and forfeits a call option with strike price X_2 . Similarly, E_3 owns a call option with strike price X_2 and forfeits a call option with strike price X_3 .

58. Defining the function $C(X)$ as the value of a call option with a strike price X , we can list the claims of all four claimants as:

$$E_1 = V_{\text{OAI}} - C(X_1)$$

$$E_2 = C(X_1) - C(X_2)$$

$$E_3 = C(X_2) - C(X_3)$$

$$E_4 = C(X_3)$$

It is clear that $V_{\text{OAI}} = E_1 + E_2 + E_3 + E_4$.

59. The value of a call option changes based on other variables in the Black-Scholes equation, such as the value of the underlying asset, its return volatility, the risk-free rate, and the maturity of the option. Because the value of the claims depends on all of these parameters, the relative shares of V_{OAI} that each party can claim will depend on the market conditions that exist.

¹³¹ Capinski, Marek and Ekkehard Kopp, *The Black-Scholes Model (Mastering Mathematical Finance)*, Cambridge University Press, November 12, 2012.

¹³² OPENAI_MUSK00037449-OPENAI_MUSK00037482 at OPENAI_MUSK00037482 ("Annex A. Pro Forma Cap Table - Waterfall"); OPENAI_MUSK00037265-OPENAI_MUSK00037448 ("Valuation Presentations, Watershed Documents"), at OPENAI_MUSK00037307-OPENAI_MUSK00037308.

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60. The three investment banks all used this approach, but they used different assumptions in their models which resulted in different valuations and proposed equity stakes.¹³³ After over a year of back and forth negotiations, on September 11, 2025 OpenAI and Microsoft executed a non-binding Memorandum of Understanding (“MOU”) outlining their agreed upon equity stakes.¹³⁴ The MOU described at a high level the governance and capital structure for the proposed recapitalization of OpenAI’s for-profit entity.¹³⁵ Annex A of that document outlines the Pro Forma capitalization tables, with OpenAI Nonprofit receiving a 31.5% equity stake (plus warrants) and Microsoft, Aestas, and FCLPs receiving 32.5%, 33.0%, and 3.0% equity stakes, respectively.¹³⁶ The equity stakes would change if OpenAI Nonprofit meets the terms for exercising the warrants. The warrants are designed to have a present value of \$22.4 billion.¹³⁷

A. Allocation of OpenAI For-Profit Value Using MOU Pro Forma Cap Table

61. As one method to determine the portion of OpenAI For-Profit’s \$510 billion valuation attributable to OpenAI Nonprofit, I use the negotiated equity stakes from the Pro Forma Cap Table as outlined in the MOU (after adjusting for warrants). This approach is reliable because those equity stakes were negotiated by sophisticated contracting parties represented by prominent investment banks who spent a year analyzing and negotiating over these figures in order to consummate a commercial transaction worth hundreds of billions of dollars. Moreover, those parties used similar analytical tools to the ones I use below.

62. Under this approach, I multiplied the ownership percentages from the Pro Forma Cap Table to allocate my \$510 billion valuation of OpenAI For-Profit. I then added the \$22.4 billion in warrants to the OpenAI Nonprofit allocation and diluted all other public benefit corporation stakeholders on a pro rata basis. The arithmetic used is shown in Exhibit 8 and

¹³³ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037321-322 (“Project Watershed, MS Analysis Response”), OPENAI_MUSK00037440-41 (“Appendix A: Detailed Presentation Comparison”).

¹³⁴ OPENAI_MUSK00037469 – OPENAI_MUSK00037481 (“Memorandum of Understanding, Proposed Recapitalization of the OpenAI For-Profit Enterprise”)

¹³⁵ October 3, 2025 Deposition of Robert Wu (Deputy General Counsel, OpenAI), 234:11-15

¹³⁶ OPENAI_MUSK00037449-OPENAI_MUSK00037482 at OPENAI_MUSK00037482 (“Annex A, Pro Forma Cap Table – Waterfall”).

¹³⁷ October 3, 2025 Deposition of Robert Wu (Deputy General Counsel, OpenAI), 241:25- 242:21.

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yields OpenAI Nonprofit's allocation as \$183.05 billion (35.9%) and Microsoft's allocation as \$155.12 billion (30.4%).

Exhibit 8
Allocation of OpenAI For-Profit \$510 Billion Valuation to Stakeholders
Using Equity Shares Outlined in MOU Pro Forma Cap Table after Adjusting for Warrants

Stakeholder	Pro Forma Ownership Percent [1]	Pro Forma Allocation (\$ billions)	Dilution for OpenAI Nonprofit Warrants (\$ billions) [2]	Post- Dilution Ownership Percentage
Valuation of OpenAI For-Profit		\$510.00	\$510.00	
Apportionment	100.0%			100.0%
OpenAI Nonprofit	31.5%	160.65	183.05	35.9%
FCLP	3.0%	15.30	14.32	2.8%
Microsoft	32.5%	165.75	155.12	30.4%
Aestas	33.0%	168.30	157.51	30.9%
OpenAI Nonprofit Warrants		22.40		

Notes and Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00037449 - OPENAI_MUSK00037482 at OPENAI_MUSK00037482 ("Annex A, Pro Forma Cap Table – Waterfall").

[1] Ownership percentage as outlined in Annex A of the Pro Form Cap Table.

[2] Per the Pro Forma Cap Table, OpenAI Nonprofit warrants dilute all public benefit corporation shareholders on a pro rata basis. For example, Microsoft's dilution is Microsoft's share divided by the sum of Aestas, Microsoft, and FCLPs shares times \$22.4 billion. (e.g. $(32.5\% / (33\% + 32.5\% + 3\%)) \times \$22.4B = \$10.63B$). The \$10.63B is subtracted from the Pro Forma Allocation, resulting in Microsoft's Post-Dilution Allocation of \$155.12B (e.g., $\$165.75B - \$10.63B = \$155.12B$).

B. Allocation of OpenAI For-Profit Value Using a Black-Scholes Model

63. As a second method, I construct my own Black-Scholes model following the steps and logic described above. As noted above, the distribution waterfall structure can be modeled as a series of call options. The Black-Scholes model enables those options to be valued based on five inputs: time to maturity, strike price, volatility, current (spot) price, and risk free rate.¹³⁸

¹³⁸ Hull, John. *Options, Futures, and Other Derivative Securities*, Prentice Hall, (1989), pp. 260-261.

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64. *Time to Maturity*: My time to maturity parameter is ten years, which mirrors standard employee stock options which are subject to vesting restrictions, cannot be monetized for extended periods of time, and are typically structured with a ten-year term.¹³⁹

65. *Strike Price*: The strike price for each option represents the cumulative capital threshold that must be achieved before distributions at that level commence. The strike prices reflect the aggregate return of capital contributions and TRAs at each phase and are adjusted annually by 20% plus inflation. Assuming a ten year duration, at the strike prices are \$194 million, \$17.5 billion, \$1.8 trillion, and \$3.6 trillion, respectively.¹⁴⁰

66. *Volatility*: The analysis employs a volatility range bounded by a floor of 50% and a ceiling of 70%. The floor of 50% represents the volatility parameter that OpenAI and Microsoft agreed upon to value OpenAI Nonprofit's warrants as outlined in the MOU.¹⁴¹ The ceiling of 70% is derived from the simple average of one-month implied volatilities across a peer group of five companies exhibiting similar market capitalization-to-revenue ratios exceeding 20x. The companies are as follows: NVIDIA (42% volatility), Palantir (71% volatility), Soundhound (123% volatility), CrowdStrike (40% volatility), and Cloudflare (70% volatility).¹⁴² Of these five, Goldman Sachs describes Palantir (with 71% volatility) as OpenAI For-Profit's "closest peer" in size, growth, and industry focus.¹⁴³

67. *Current (Spot) Price*: The spot price is the current market price of the asset on which the option is based. For my analysis, the spot price is equal to the \$510 billion valuation of OpenAI For-Profit.

68. *Risk-Free Rate*: The risk-free rate is defined as the market yield on U.S. Treasury Securities at 10-year constant maturity, which stood at 4.05% as of October 15, 2025.¹⁴⁴ Given

¹³⁹ Aboody, David, "Market valuation of employee stock options," *Journal of Accounting and Economics*, Volume 22, Issues 1–3, 1996, 357 – 391 and Rubinstein, Mark, "On the Accounting Valuation of Employee Stock Options," *Journal of Derivatives*, Fall 1995

¹⁴⁰ See Wazzan Workpapers.

¹⁴¹ OPENAI_MUSK00037449-OPENAI_MUSK00037482 at OPENAI_MUSK00037482 ("Annex A, Pro Forma Cap Table - Waterfall").

¹⁴² Based on one-month implied volatility data as of October 15, 2025, sourced from LSEG Workspace.

¹⁴³ OPENAI_MUSK00037265-OPENAI_MUSK00037448 at OPENAI_MUSK00037423 ("Palantir, Olympus' Closest Peer in Size/Growth/Industry Focus, Implies Volatility Above 60%").

¹⁴⁴ FRED, "Market yield on U.S. Treasury Securities at 10-Year Constant maturity, Quoted on an Investment Basis, available at <https://fred.stlouisfed.org/series/DGS10>.

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that the Black-Scholes model employs a 10-year time to maturity, the 10-year U.S. Treasury yield serves as the appropriate risk-free rate for this valuation.

69. Assuming the parameters outlined above, OpenAI Nonprofit's stake at 50% and 70% volatility is valued at \$166.06 billion and \$283.45 billion, respectively. Microsoft's stake is valued at \$101.23 billion and \$157.14 billion for volatility of 50% and 70%, respectively.

C. Conclusion

70. The above two methods yield three different estimates of OpenAI Nonprofit's share of OpenAI For-Profit's value: \$166.06 billion, \$183.05 billion, and \$283.45 billion, representing allocations between 32.6% and 55.6%. Similarly, the above two methods yield three different estimates of Microsoft's share: \$101.23 billion, \$155.12 billion, and \$157.14, representing allocations between 19.8% and 30.8%. The primary driver of the breadth of these ranges is the volatility used as an input (50% or 70%). Notably, the values that OpenAI and Microsoft negotiated and agreed on in the MOU fall within the ranges that I calculated using my Black-Scholes analysis.

VI. ALLOCATING OPENAI NONPROFIT'S VALUE AMONG MR. MUSK AND OTHER CONTRIBUTORS

71. For the final step in my analysis, I allocate the value of OpenAI Nonprofit among Mr. Musk and other contributors. As described below, Mr. Musk made many monetary and non-monetary contributions to OpenAI Nonprofit. However, Sam Altman and other parties also made certain contributions. To determine the share of OpenAI's wrongful gains attributable to Mr. Musk, it is necessary to estimate those relative shares. In conducting this analysis, I find particularly relevant the equity stakes that the parties themselves proposed during restructuring discussions in 2017, which can be taken as a reflection of the parties' own assessments of their relative contributions. Those proposed stakes are consistent with my own assessment of Mr. Musk's history of monetary and non-monetary contributions.

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A. Mr. Musk's Contributions to OpenAI**1. Mr. Musk's Monetary Contributions to OpenAI**

72. Mr. Musk was by far OpenAI's largest financial contributor in the nonprofit's earliest stages. According to OpenAI's 2016 IRS filing, Mr. Musk contributed \$10 million (72.5%) and Mr. Altman contributed \$3.8 million (27.5%) to OpenAI.¹⁴⁵ According to OpenAI's 2017 IRS filing, Mr. Musk contributed \$18.1 million and other donors contributed a total of \$15.1 million.¹⁴⁶ Mr. Musk's 2017 contribution included four Tesla Founder Series Model 3 – the earliest cars produced by Tesla which were not then available to the public – provided to Messrs. Brockman, Schulman, Sutskever, and Wojciech as a bonus “for the team's great work.”¹⁴⁷ All told, before he left OpenAI, Mr. Musk was responsible for approximately 60% of all financial contributions.

73. Despite his public departure in February 2018, Mr. Musk continued to contribute monetarily (though more modestly) through September 2020.¹⁴⁸ In total, Mr. Musk made approximately \$38 million in monetary contributions to OpenAI.¹⁴⁹ Other donors made approximately \$100 million in contributions over the years through 2023, meaning that Mr. Musk was responsible for just under 30% of monetary contributions overall.¹⁵⁰

74. For several reasons, that 30% figure substantially understates the importance of Mr. Musk's financial contributions. The 60% of contributions that Mr. Musk made in OpenAI's early years represented OpenAI's initial seed funding and were much more important to OpenAI's success than amounts contributed later, once OpenAI was established. Moreover,

¹⁴⁵ OPENAI_MUSK00004677-OPENAI_MUSK00004719 at OPENAI_MUSK00004698 (2016 OpenAI Inc. Form 990, Schedule B).

¹⁴⁶ OPENAI_MUSK00006040-00006083 at OPENAI_MUSK00006061 (2017 OpenAI Inc. Form 990, at Schedule B)

¹⁴⁷ September 23, 2025 Deposition of Greg Brockman (President, OpenAI), at Exhibit 13 (“July 21, 2017 email from Elon Musk offering OpenAI founders each a Tesla Model 3”), 2024MUSK-0006120-2024MUSK-0006121, at 2024MUSK-0006120; September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 02 (“September 8, 2017 email from Jared Birchall to Chris Clark re: Model 3 Priority”), OPENAI_MUSK00008795-OPENAI_MUSK00008796 at OPENAI_MUSK00008795.

¹⁴⁸ September 25, 2025 Plaintiff Musk's Supplemental Responses and Objections to OpenAI Defendants' First Set of Interrogatories, Exhibit 1.

¹⁴⁹ September 25, 2025 Plaintiff Musk's Supplemental Responses and Objections to OpenAI Defendants' First Set of Interrogatories, Exhibit 1.

¹⁵⁰ 2016-2023 OpenAI Inc. Form 990. OPENAI_MUSK00004677- OPENAI_MUSK00004719, OPENAI_MUSK00006040-OPENAI_MUSK00006083, OPENAI_MUSK00005412-OPENAI_MUSK00005453, OPENAI_MUSK00005462-OPENAI_MUSK00005505, and OPENAI_MUSK00005617-OPENAI_MUSK00005661. The 2021-2023 990s are publicly available through GuideStar.

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most of the other donors had no role in founding OpenAI and were not involved with the management and strategic aspects of creating OpenAI from nothing.¹⁵¹ While Mr. Musk contributed \$38 million to OpenAI, his co-founder Sam Altman contributed only \$3.8 million, and the other two co-founders, Greg Brockman and Ilya Sutskever, never contributed anything financially at all.¹⁵² Mr. Musk's financial contributions thus dwarfed the contributions of other members of the founding team. Under these circumstances, the 60% figure is a better representation of the actual significance of Mr. Musk's financial contributions to OpenAI.

2. Mr. Musk's Non-Monetary Contributions to OpenAI

75. Mr. Musk is a leading figure in the world of business and influential in the tech industry.¹⁵³ Mr. Musk co-founded OpenAI and has been involved with OpenAI since its inception.¹⁵⁴ In addition to his contributions of nearly \$40 million, Mr. Musk used his time, insights, and personal brand to OpenAI's benefit.¹⁵⁵ To appreciate how important Mr. Musk's prestige and industry prominence were to OpenAI's successful launch, it is helpful to review the finance literature examining a closely analogous context: prominent investor participation in start-up companies.

76. Early-stage startups face significant challenges in attracting capital, talent, and strategic partners. Information asymmetry between founders and potential stakeholders often creates uncertainty, making it difficult for ventures to secure resources.¹⁵⁶ High-profile investors such as Mr. Musk with established reputations, industry influence, celebrity status, and track records of success play a critical role in mitigating these early challenges. Their involvement signals quality and legitimacy, which can accelerate growth and improve firm survival prospects.

¹⁵¹ 2016-2023 OpenAI Inc. Form 990. OPENAI_MUSK00004677-OPENAI_MUSK00004719, OPENAI_MUSK00006040-OPENAI_MUSK00006083, OPENAI_MUSK00005412-OPENAI_MUSK00005453, OPENAI_MUSK00005462-OPENAI_MUSK00005505, and OPENAI_MUSK00005617-OPENAI_MUSK00005661. The 2021-2023 990s are publicly available through GuideStar.

¹⁵² September 23, 2025 Deposition of Greg Brockman (President, OpenAI), at 243:9-21.

¹⁵³ See, for example, October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 35:24-36:6 45:16-46:7.

¹⁵⁴ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 95:14 - 96:3.

¹⁵⁵ September 26, 2025 Deposition of Elon Musk (Co-Founder, OpenAI) 33:4-35:12, 43:20-24, 44:7-10, and 44:24-25.

¹⁵⁶ See, e.g., Myers, Stewart C., and Nicholas S. Majluf. 1984. "Corporate Financing and Investment Decisions When Firms Have Information That Investors Do Not Have." *Journal of Financial Economics* 13 (2): 187-221.

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77. Signaling theory provides a framework for understanding why investor reputation matters in early-stage financing. Svetek (2022) emphasizes that investor reputation acts as a strong signal of venture quality, reducing uncertainty and increasing the likelihood of attracting additional resources.¹⁵⁷ This reduction in perceived risk encourages other investors, partners, and recruits to engage with the startup. Bernstein et al. (2022) conducted a randomized field experiment and found that startups associated with top-tier investors receive “significantly more interest when information about top-tier investors is provided,” confirming the signaling advantage of reputable backers.¹⁵⁸

78. High-profile investors contribute more than financial resources. Lange et al. (2024) conclude that prominent investors add value through expertise, networks, and mentorship, amplifying these effects through their social capital. This influence extends to strategic guidance which is critical for early-stage ventures.¹⁵⁹

79. Empirical evidence supports the notion that fame enhances investor impact. Shi et al. (2025) report that investor fame is positively correlated with higher project survival rates, even when founders do not pay a celebrity premium, suggesting reputational benefits beyond financial input.¹⁶⁰

80. In some settings, the “talent” receive equity in exchange for the non-monetary contributions that their involvement brings to a firm or product. Investment banks such as Morgan Stanley have recognized this dynamic.¹⁶¹ While direct empirical studies on discount mechanisms are limited, practitioner literature confirms that strategic investors often negotiate preferential terms. Operator Collective (2020) explains that convertible notes and Simple

¹⁵⁷ Svetek, Mojca. 2022. “Signaling in the context of early-stage equity financing: review and directions,” *Venture Capital* 24(1): 71–104.

¹⁵⁸ Bernstein, S., Mehta, K., Townsend, R., & Xu, T. (2022). *Do Startups Benefit from Their Investors’ Reputation? Evidence from a Randomized Field Experiment*. Harvard Business School Working Paper No. 22-060.

¹⁵⁹ Lange, J., Rezepa, S., & Zatrochová, M.. *The Role of Business Angels in the Early-Stage Financing of Startups: A Systematic Literature Review*. Administrative Sciences, 14(247), 1-21.

¹⁶⁰ Shi, Z., Smirnova, E., Simms, S., & Castro-Andrade, C.. *Becker Meets Sharks: Angel Financing and Venture Performance*. Eastern Economic Journal, 51, 2025, 340–372.

¹⁶¹ The Schenk Group, 2025, “Equity for Endorsement? What to Know,” Morgan Stanley, available at <https://advisor.morganstanley.com/the-schenk-group/articles/global-sports-and-entertainment/equity-for-endorsement>.

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Agreements for Future Equity or “SAFEs” frequently include discounts for prominent investors.¹⁶²

81. In sum, the literature consistently demonstrates that high-profile investors provide a multifaceted advantage to startups. Their involvement reduces information asymmetry, enhances legitimacy, and attracts complementary resources such as talent and follow-on funding. These benefits justify preferential investment terms, as the strategic value they bring often exceeds the nominal capital contribution. Prominent investors can be a catalyst for growth, with their reputations becoming a form of currency that commands better deal structures.

82. Mr. Musk brought precisely that sort of prestige and reputation to OpenAI. Mr. Musk sold his first company, zip2 Corporation, to Compaq in 1999 for approximately \$300 million.¹⁶³ His next company, an online bank, merged with the company behind PayPal.¹⁶⁴ With this experience, Mr. Musk became part of the so-called “PayPal Mafia,” a group of well-connected serial entrepreneurs including Peter Thiel and Reid Hoffman who represented “a new generation of wealth and power” in Silicon Valley.¹⁶⁵ PayPal was acquired by eBay for \$1.5 billion in 2002.¹⁶⁶ After PayPal, Mr. Musk used his wealth to found (or fund) other companies including SpaceX, Tesla, and SolarCity. In 2007 he was recognized by *Inc.* magazine as Entrepreneur of the Year for his work on Tesla and SpaceX.¹⁶⁷ Mr. Musk was recognized by *Time* magazine as one of their most influential people in 2010 and 2013 and was a member of Forbes’ Billionaire list by 2012.¹⁶⁸

¹⁶² Yen, Mallum. “The Financial Instruments of Angel Investing,” Operator Collective, 2020, available at <https://www.operatorcollective.com/blog-posts/the-financial-instruments-of-angel-investing>.

¹⁶³ Napoli, Lisa, “Compaq Buys Zip2 to Enhance Altavista, *The NY Times*, February 17, 1999, available at <https://www.nytimes.com/1999/02/17/business/compaq-buys-zip2-to-enhance-altavista.html>.

¹⁶⁴ Bruner, Raisa, “A Complete Timeline of Elon Musk’s Business Endeavors,” *Time*, April 27, 2022, available at <https://time.com/6170834/elon-musk-business-timeline-twitter/>.

¹⁶⁵ O’Brien, Jeffrey, “The PayPal Mafia,” *Fortune*, November 26, 2007, available at <https://fortune.com/article/paypal-mafia/>.

¹⁶⁶ Vries, Lloyd, “eBay Buys PayPal Payments Service,” *CBS News*, July 8, 2002, available at <https://www.cbsnews.com/news/ebay-buys-paypal-payments-service/>.

¹⁶⁷ Chafkin, Max, “Entrepreneur of the Year, 2007: Elon Musk,” December 1, 2007, available at <https://www.inc.com/magazine/20071201/entrepreneur-of-the-year-elon-musk.html>.

¹⁶⁸ Branson, Richard, “The 2013 TIME 100 – Elon Musk,” *TIME*, April 18, 2013, available at <https://time100.time.com/2013/04/18/time-100/slide/elon-musk/>; Favreau, Jon, “The 2010 TIME 100 – Elon Musk,” *TIME*, April 29, 2010, available at https://content.time.com/time/specials/packages/article/0,28804,1984685_1984745_1985495,00.html; Forbes

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83. With business successes came media attention. Mr. Musk was featured in *Esquire* magazine, *CNN*, and the *New Yorker*.¹⁶⁹ He also guest starred in episodes of *The Simpsons* and *Big Bang Theory*.¹⁷⁰ Mr. Musk had cameos in *Iron Man 2* and *Machete Kills*.¹⁷¹

84. It is within this context that Mr. Musk and Mr. Altman discussed the idea that would become OpenAI. Mr. Altman asked “Will you be involved somehow in addition to just governance? I think that would be really helpful for getting work pointed in the right direction getting the best people to be part of it.” He went on to say, “Even if you can’t really spend time on it but can be publicly supportive, that would still probably be really helpful for recruiting.”¹⁷² Mr. Altman thus recognized that Mr. Musk’s mere involvement in the project would have substantial non-monetary benefits for OpenAI.

85. By October 2015, Mr. Altman had more concrete requests for Mr. Musk:

- 1) Can you donate \$30MM over the next 5 years?
- 2) Can we call you an “advisor” but leave unspecified what you’ll do in detail and figure it out as we go?
- 3) Will you be on the Safety Board with me? I’d like it to eventually be 5 of us, adding the next 3 over the year or so. This will be the “second key” for releasing anything that could be dangerous.¹⁷³

Billionaires as of September 2012 – Elon Musk, accessed October 27, 2025, available at <https://web.archive.org/web/20121129120326/http://www.forbes.com/profile/elon-musk/>.

¹⁶⁹ McCray, Patrick, “A pioneer in space and on Earth,” *CNN*, June 11, 2012, available at <https://edition.cnn.com/2012/06/10/opinion/mccray-elon-musk>; Junod, Tom, “Elon Musk: Triumph of His Will,” *Esquire*, November 14, 2012, available at <https://www.esquire.com/news-politics/a16681/elon-musk-interview-1212/>; Friend, Tad, “Plugged In: Can Elon Musk lead the way to an electric-car future?,” *The New Yorker*, August 17, 2009, available at <https://www.newyorker.com/magazine/2009/08/24/plugged-in>

¹⁷⁰ “Elon Musk,” IMDB, available at <https://www.imdb.com/name/nm1907769/>.

¹⁷¹ “Elon Musk,” IMDB, available at <https://www.imdb.com/name/nm1907769/>; “Elon Musk Cameo Scene - Iron Man (2010) Movie Clip HD,” YouTube, available at https://www.youtube.com/watch?v=nfIRd4Y5z_g; Elon Musk Cameo in Machete Kills – YouTube, accessed October 27, 2025, available at <https://www.youtube.com/watch?v=ZHfLjsXmwYw>. Mr. Musk is also rumored to be an inspiration for Robert Downey Jr.’s portrayal of Tony Stark in the 2008 movie, *Iron Man* (Favreau, Jon, “The 2010 TIME 100 – Elon Musk,” *TIME*, April 29, 2010, available at https://content.time.com/time/specials/packages/article/0,28804,1984685_1984745_1985495,00.html).

¹⁷² September 16, 2025 Deposition of Sam Altman (CEO, OpenAI), at Exhibit 7, (“Jun 25, 2015 email from Sam Altman to Elon Musk”), 2024MUSK-0008261.

¹⁷³ September 16, 2025 Deposition of Sam Altman (CEO, OpenAI), at Exhibit 8, (“October 19, 2015 email from Sam Altman to Elon Musk”), 2024MUSK-0005439-2024MUSK-0005440.

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The request was later revised to \$20 million per year over the next three years.¹⁷⁴

86. Mr. Musk also supported OpenAI through recruiting.¹⁷⁵ He helped to recruit Mr. Sutskever away from Google. In an email exchange between Messrs. Musk and Altman, Mr. Musk explained “I had a good conversation with Ilya yesterday. We definitely need to do more on comp and he asked for a commitment on my part to be involved, which I agreed to.”¹⁷⁶ Mr. Sutskever testified at his deposition that he was “excited at the prospect of Elon Musk working with [him],” that he “spent a lot of time studying Elon and his company” and “looked up a lot to his achievements and capabilities,” and that he was “incredibly in awe [and] impressed with Elon Musk’s involvement.”¹⁷⁷ While other tech companies were just building “sophisticated websites,” Sutskever explained, Mr. Musk was building companies like Tesla and SpaceX, “companies of very different categories in terms of their difficulty and scope and impact.”¹⁷⁸ Mr. Musk’s commitment to his businesses was “incredibly inspiring.”¹⁷⁹ Mr. Musk was also active in recruiting Mr. Diederik “Durk” Kingma, a “world-class” research engineer and scientist and founding member of the OpenAI research team, who noted “Elon’s involvement is awesome.”¹⁸⁰

87. After founding, Mr. Musk’s involvement with OpenAI included meetings with key personnel:

Greg and I think it will be useful for OpenAI’s long term success if the two of us had a 30 minute meeting with Elon every two weeks. Elon has built incredible

¹⁷⁴ September 16, 2025 Deposition of Sam Altman (CEO, OpenAI), at Exhibit 14, (“February 25, 2016 email from Sam Altman to Elon Musk”), BMO_00000465-BMO_00000466; and September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 5, (“May 23, 2016 email from Teresa Holland to Jared Birchall”), BMO_00000133-BMO00000141 at BMO_00000133.

¹⁷⁵ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 40:17 – 41:2; September 23, 2025 Deposition of Greg Brockman (CTO, OpenAI), 49:5-51:13. *See also*, September 24, 2025 Deposition of Satya Nadella (CEO, Microsoft) 57:12-16 and September 26, 2025 Deposition of Elon Musk (Co-Founder, OpenAI), 43:20-24, 44:7-10, 45:5-17, 46:3-4, 46:13-47:4

¹⁷⁶ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), at Exhibit 5, (“November 20, 2015 email from Elon Musk to Sam Altman”), 2024MUSK-0005266.

¹⁷⁷ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 26:9-17, 27:11-28:5.

¹⁷⁸ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 45:10-46:7.

¹⁷⁹ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 45:10-46:7.

¹⁸⁰ OpenAI, “Introducing OpenAI,” December 11, 2015, available at <https://openai.com/index/introducing-openai/>; and October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), at Exhibit 7, (“December 6, 2015 email from Diederik Kingma to Greg Brockman”), OPENAI_MUSK00016951-OPENAI_MUSK-00016956 at OPENAI_MUSK-00016951.

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organizations before, and the more of his lessons and experience could be applied to OpenAI, the more effective we will be.¹⁸¹

88. In a September 2017 email to Mr. Musk and others, Mr. Brockman and Mr. Sutskever expressed how important Mr. Musk was to the success of OpenAI:

Elon:

We really want to work with you. We believe that if we join forces, our chance of success in the mission is the greatest. Our upside is the highest. There is no doubt about that. Our desire to work with you is so great that we are happy to give up on the equity, personal control, make ourselves easily firable — whatever it takes to work with you.

Source: OPENAI_MUSK00000741-0743 at 0742. See also, OPENAI_MUSK00007198 and OPENAI_MUSK00000814.

89. Mr. Musk's guidance and mentorship were crucial for OpenAI's other founders and employees. Mr. Sutskever considered Mr. Musk to be "the most overwhelmingly competent person in the world."¹⁸² Mr. Sutskever's meetings with Mr. Musk were "very helpful for running OpenAI and for figuring out the right medium term goals."¹⁸³ Mr. Sutskever testified that Mr. Musk made other employees better at their jobs.¹⁸⁴

90. Mr. Musk's industry connections and prestige also helped OpenAI open doors with business partners. For example, Mr. Musk's personal involvement and intervention with Microsoft CEO Satya Nadella helped OpenAI obtain access to Microsoft's Azure services, a critical resource for OpenAI's computing needs.¹⁸⁵ Similarly, Mr. Musk's personal outreach to NVIDIA founder Jensen Huang enabled OpenAI to secure first-of-their-kind DGX-1 processing units that offered "a faster path to AI."¹⁸⁶

¹⁸¹ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), at Exhibit 9, ("February 18, 2016 email from Ilya Sutskever to Elon Musk, Greg Brockman, and Sam Teller"), 2024MUSK-0006119.

¹⁸² October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), at Exhibit 11, ("January 1, 2018 email from Ilya Sutskever to Elon Musk"), OPENAI_MUSK00007198.

¹⁸³ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), at Exhibit 10, ("September 24, 2016 email from Ilya Sutskever to Elon Musk"), OPENAI_MUSK00000214.

¹⁸⁴ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI), 58:1-12.

¹⁸⁵ September 24, 2025 Deposition of Satya Nadella (CEO, Microsoft), 27:17-28:6, 56:21-57:16; September 26, 2025 Deposition of Elon Musk (Co-Founder, OpenAI), 43:17-24.

¹⁸⁶ 2024MUSK-0004103 ("April 20, 2016 email from Elon Musk to Jensen Huang"); SPX-003210-SPX-003211 at SPX-003210 ("July 26, 2016 email from Jensen Huang to Elon Musk"); and NVIDIA, "NVIDIA DGX-1 Essential Instrument for AI Research," available at <https://www.nvidia.com/content/dam/en-zz/Solutions/Data-Center/dgx-1/NVIDIA-DGX-1-Volta-AI-Supercomputer-Datasheet.pdf>.

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91. Mr. Altman acknowledged how critical Mr. Musk's contributions had been in a 2023 text message: "BTW, good idea for me to tweet something nice about Elon? Have been meaning to do this after he DMd about not being in the photo from the first day of OpenAI. Just about how much I and others look up to him, how critical his early contributions to OpenAI are, etc."¹⁸⁷ Mr. Altman also expressed this thought directly to Mr. Musk, stating "I am tremendously thankful for everything you've done to help—I don't think OpenAI would have happened without you."¹⁸⁸

92. As discussed earlier, Mr. Musk's involvement with OpenAI, Inc. began to decline towards the end of 2017. By November 2018 he described his role with the nonprofit as "very limited" and "I still provide some financial support and get verbal and email updates every few weeks from Sam Altman, but don't spend time there. I lost confidence that OpenAI could muster the resources to serve as an effective counterweight to Google/Deepmind and decided to attempt that through Tesla instead."¹⁸⁹ In spite of this concern, Mr. Musk continued to provide funding to OpenAI through September 2020.

B. Valuing Mr. Musk's Contributions Based on His Equity Stake in the Proposed OpenAI For-Profit

93. Mr. Musk has been and continues to be involved with numerous publicly held ventures (e.g., Tesla, PayPal, and SolarCity) and privately held ventures (e.g., x.AI, SpaceX, Neuralink, The Boring Company). Mr. Musk tends to own a large share of companies to which he is an active and founding investor, even after the company has existed for many years and dilution from adding new investors.¹⁹⁰ For example, at the time of their initial public offerings, Mr. Musk owned 35.6% of Tesla, 13.0% of PayPal (which had several other founders with

¹⁸⁷ September 16, 2025 Deposition of Sam Altman (CEO, OpenAI), at Exhibit 18, ("February 9, 2023 text from Sam Altman to Shivon Zilis"), ZILIS-0000371-ZILIS-0000372.

¹⁸⁸ 2024MUSK-0006237–2024MUSK-0006238 at 2024MUSK-0006238.

¹⁸⁹ September 26, 2025 Deposition of Elon Musk (Co-Founder, OpenAI), at Exhibit 16, ("November 2, 2018 email from Elon Musk to Gabe Newell"), 2024MUSK-0009544.

¹⁹⁰ For comparison purposes, at the IPO of their respective companies, Peter Thiel owned 20.33% of Palantir, Thomas Siebel owned 49.17% of C3.ai, and Roy Mann owned 15.3% of monday.com. Palantir Technologies Inc., SEC Form 424B4 (Prospectus), filed September 30, 2020, at pp. 212-213; C3.ai Inc., SEC Form 424B4 (Prospectus), filed December 9, 2020, at pp. 153-154; and monday.com Ltd., SEC Form 424B4 (Prospectus), filed June 11, 2021, at p. 151.

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significant stakes), and 30.6% of SolarCity.¹⁹¹ Currently, Mr. Musk owns 53% and 42% of x.AI and SpaceX, respectively.¹⁹²

94. When OpenAI began, Mr. Musk was its co-founder and primary financial contributor. Mr. Musk's substantial monetary contributions to OpenAI were part of his rationale for owning a majority of the for-profit company that he and Messrs. Brockman and Sutskever discussed (but did not create) in late 2017: "I put the majority of the funds, I should have a majority of the equity."¹⁹³

95. Around the same time, Ms. Shivon Zilis and Mr. Jared Birchall discussed in a text exchange Mr. Musk's equity stake in a potential for-profit. In that exchange, Mr. Birchall indicated Mr. Musk's equity stake would likely be "60%+" while Ms. Zilis proposed "maybe 70% threshold for major changes."¹⁹⁴ The share discussion involved at least two capitalization tables indicating Mr. Musk's equity interest would have been either 51.2% or 52.5%.¹⁹⁵ These tables assume that Messrs. Altman, Brockman, and Sutskever each contribute, financially, to the for-profit in exchange for shares. The tables also assume that Messrs. Altman, Brockman, Sutskever and other employees would be granted some shares without any associated financial contributions. The amount of the grant and the contribution vary depending upon the capitalization table proposed. Mr. Musk's shares were only based on his financial contributions, not on granted shares.

96. I understand the parties agreed, after some discussion, that Messrs. Altman, Brockman, and Sutskever would each receive equity of 20 million shares and Mr. Musk would

¹⁹¹ Tesla Motors Inc., Form 424B4 (Prospectus), filed June 29, 2010, at p. 175; PayPal Inc., Form 424B4 (Prospectus), filed February 15, 2002, at pp. 93-94; and SolarCity Corp., Form 424B4 (Prospectus), filed December 13, 2012, at p. 135. Mr. Musk was one of several co-founders of PayPal.

¹⁹² Durot, Matt, "Elon Musk Just Became the First Person Ever Worth \$500 Billion," *Forbes*, October 1, 2025, available at <https://www.forbes.com/sites/mattdurot/2025/10/01/elon-musk-just-became-the-first-person-ever-worth-500-billion/>.

¹⁹³ October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI) at Exhibit 16 ("Ilya Sutskever Notes on Restructuring Meetings"), SUTSKEVER_MUSKSUB_00000430-SUTSKEVER_MUSKSUB_00000432 at SUTSKEVER_MUSKSUB_00000432).

¹⁹⁴ September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 10 ("August 22, 2017 texts between Shivon Zilis and Jared Birchall"), ZILIS-0000955-ZILIS-0000958 at ZILIS-0000957. *See also*, September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), pp. 95-99.

¹⁹⁵ September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 12 ("September 11, 2017 Cap Table"), EXMF-0003257-EXMF-0003258, and at Exhibit 16 ("September 7, 2017 email from Shivon Zilis to Sam Teller"), OPENAI_MUSK00003854-OPENAI_MUSK00003856 at OPENAI_MUSK00003856. *See also*, September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), 103:1 - 104:23.

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receive equity of 100 million shares.¹⁹⁶ But that agreement unraveled when Messrs. Brockman and Sutskever expressed continued concern about Mr. Musk's control of and equity in the for-profit entity.¹⁹⁷

97. The proposed capitalization tables provide important insights into the values that the founding team themselves ascribed to their relative contributions to OpenAI. Exhibit 9 provides the capitalization table based on my understanding of the agreement in principle, under which Mr. Musk would receive a 52.41% share in the proposed for-profit entity. Exhibit 9 also includes three alternative scenarios for allocating shares. The first scenario attempts to put Mr. Musk and Messrs. Altman, Brockman, and Sutskever on equal footing by ignoring any grants provided. Under this scenario, Mr. Musk would achieve a 78.13% share of the proposed OpenAI for-profit. The second scenario provides Mr. Musk with a grant of 10 million shares, the same as was provided to Messrs. Altman and Brockman. Under this scenario, Mr. Musk would achieve a 54.78% share of the proposed for-profit. However, as discussed above in Section VI, Mr. Musk's involvement in OpenAI plausibly had a larger impact than any other individual. Therefore, the third scenario assumes that Mr. Musk would have been granted 32 million shares, which is equal to the combined granted shares of Messrs. Altman, Brockman, and Sutskever, resulting in a 59.24% share. Exhibit 9 provides a range of between 52.41% and 78.13%.

¹⁹⁶ Messrs. Brockman and Altman were to receive their 20 million shares based on an even split of investments and grants. Mr. Sutskever was less liquid than the other founders and received a slightly larger grant (12 million shares) and received the remainder based on a personal investment (2.5 million shares) and a loan from Mr. Brockman (5.5 million shares). October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI) at Exhibit 17, ("September 12, 2017 email from Ilya Sutskever to Elon Musk") 2024MUSK-0009240-2024MUSK-0009241 at 2024MUSK-0009240; OPENAI_MUSK00023700 ("September 19, 2017 email from Greg Brockman to Elon Musk"); and September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 12 ("September 11, 2017 Cap Table"), EXMF-0003257-EXMF-0003258.

¹⁹⁷ September 23, 2025 Deposition of Greg Brockman (President, OpenAI), at Exhibit 23 ("September 20, 2017 email from Elon Musk ending for-profit discussions," OPENAI_MUSK00000741-0743 at 0741).

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Exhibit 9

Calculation of Mr. Musk's Economic Interest Percent in OpenAI based on Capitalization Tables and Alternative Scenarios

Description	As Agreed		Scenario 1		Scenario 2		Scenario 3	
	Shares	Percent	Shares	Percent	Shares	Percent	Shares	Percent
Musk Investment	100,000,000	52.4%	100,000,000	78.1%	100,000,000	49.8%	100,000,000	44.9%
Musk Grant	-	0.0%	-	0.0%	10,000,000	5.0%	32,000,000	14.4%
Altman Investment	10,000,000	5.2%	10,000,000	7.8%	10,000,000	5.0%	10,000,000	4.5%
Altman Grant	10,000,000	5.2%	-	0.0%	10,000,000	5.0%	10,000,000	4.5%
Sutskever Investment	8,000,000	4.2%	8,000,000	6.3%	8,000,000	4.0%	8,000,000	3.6%
Sutskever Grant	12,000,000	6.3%	-	0.0%	12,000,000	6.0%	12,000,000	5.4%
Brockman Investment	10,000,000	5.2%	10,000,000	7.8%	10,000,000	5.0%	10,000,000	4.5%
Brockman Grant	10,000,000	5.2%	-	0.0%	10,000,000	5.0%	10,000,000	4.5%
Schulman Grant	3,906,250	2.0%	-	0.0%	3,906,250	1.9%	3,906,250	1.8%
Zaremba Grant	3,906,250	2.0%	-	0.0%	3,906,250	1.9%	3,906,250	1.8%
Employees	14,589,843	7.6%	-	0.0%	14,589,843	7.3%	14,589,843	6.5%
Pools	8,410,156	4.4%	-	0.0%	8,410,156	4.2%	8,410,156	3.8%
Total	190,812,499	100.0%	128,000,000	100.0%	200,812,499	100.0%	222,812,499	100.0%
Musk Share	100,000,000	52.4%	100,000,000	78.1%	110,000,000	54.8%	132,000,000	59.2%
Altman Share	20,000,000	10.5%	10,000,000	7.8%	20,000,000	10.0%	20,000,000	9.0%
Sutskever Share	20,000,000	10.5%	8,000,000	6.3%	20,000,000	10.0%	20,000,000	9.0%
Brockman Share	20,000,000	10.5%	10,000,000	7.8%	20,000,000	10.0%	20,000,000	9.0%

Notes & Sources:

October 1, 2025 Deposition of Ilya Sutskever (Co-Founder, OpenAI) at Exhibit 17 ("September 12, 2017 email from Mr. Sutskever to Mr. Musk"), 2024MUSK-0009240-2024MUSK-00009241 at 2024MUSK-0009240; and September 10, 2025 Deposition of Jared Birchall (CEO, Neuralink), at Exhibit 12 ("2017 OpenAI Cap Table"), EXMF-0003257- EXMF-0003258.

98. The foregoing range from 52.41% to 78.13% is consistent with the equity stake that Mr. Musk currently has in x.AI (53%) as well as Mr. Musk's share of total financial contributions to OpenAI prior to his departure at the start of 2018 (60%). This range is also consistent with the qualitative accounts of Mr. Musk's critical non-monetary contributions to OpenAI described above. Considering all these factors, I conclude that a reasonable estimate for the share of OpenAI Nonprofit's value that is attributable to Mr. Musk's contributions is in the range of 50% to 75%.

VII. SUMMARY OF OPENAI'S WRONGFUL GAINS ATTRIBUTABLE TO MR. MUSK'S CONTRIBUTIONS

99. In the preceding sections I described how I arrived at the three components of my damages calculation: (i) the value of OpenAI For-Profit (Section IV); (ii) the portion of that value of OpenAI For-Profit attributable to OpenAI Nonprofit (Section V); and (iii) the portion of OpenAI Nonprofit's value attributable to Mr. Musk's contributions (Section VI). The tables below summarize these results.

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100. Exhibit 10 shows the total wrongful gains to OpenAI using OpenAI Nonprofit's share from the negotiated pro forma cap table in the MOU. This approach results in a range of wrongful gains from \$91.53 billion to \$137.29 billion.

Exhibit 10
OpenAI's Wrongful Gains Based on MOU Pro Forma Allocation

Description		Estimate 1	Estimate 2
Valuation of OpenAI For-Profit	[a]	\$510.00	\$510.00
OpenAI Nonprofit Share (%)	[b]	35.9%	35.9%
OpenAI Nonprofit Economic Interest (\$) in OpenAI For-Profit	[c] = [a] × [b]	183.05	183.05
Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	[d]	50.0%	75.0%
Mr. Musk's Economic Interest (\$) in OpenAI For-Profit	[e] = [c] × [d]	91.53	137.29

Notes and Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00037449 - OPENAI_MUSK00037482 at OPENAI_MUSK00037482 ("Memorandum of Understanding, Annex A, Pro Forma Cap Table").

[1] \$510 billion is my valuation as outlined in Section IV.

[2] OpenAI Nonprofit share is after accounting for OpenAI Nonprofit's \$22.4 billion in warrants, see Exhibit 8 for calculation.

101. Exhibit 11 shows the total wrongful gains to OpenAI using OpenAI Nonprofit's share from my independent Black-Scholes analysis. This approach results in a range from \$83.03 billion to \$212.59 billion.

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Exhibit 11
OpenAI's Wrongful Gains Based on Black-Scholes Analysis

Description		Estimate 1	Estimate 2	Estimate 3	Estimate 4
Valuation of OpenAI For-Profit	[a]	\$510.00	\$510.00	\$510.00	\$510.00
OpenAI Nonprofit Share (%)	[b]	32.6%	32.6%	55.6%	55.6%
OpenAI Nonprofit Economic Interest (\$) in OpenAI For-Profit	[c] = [a] × [b]	166.06	166.06	283.45	283.45
Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	[d]	50.0%	75.0%	50.0%	75.0%
Mr. Musk's Economic Interest (\$) in OpenAI For-Profit	[e] = [c] × [d]	83.03	124.55	141.72	212.59

Notes and Sources:

Dollars in billions unless otherwise indicated.

MSFT_MUSK000091818-MSFT_MUSK000091826 at MSFT_MUSK000091823 (“Watershed Considerations for Microsoft”); MSFT_MUSK000091795-MSFT_MUSK000091809 at MSFT_MUSK000091804 - 805 “Future Value Analysis Using Black-Scholes Based Valuation Framework”; OPENAI_MUSK00037449-OPENAI_MUSK00037482 at OPENAI_MUSK00037482 (“Memorandum of Understanding, Annex A, Pro Forma Cap Table – Waterfall”)

[1] “OpenAI Nonprofit Share” for Estimate 1-2 and Estimates 3-4 are calculated using Black-Scholes Model at 50% and 70% volatility. My calculated OpenAI Nonprofit share for Estimates 1-2 and 3-4 are 32.6% and 55.6%, respectively.

VIII. MICROSOFT’S WRONGFUL GAINS

102. Separate from the wrongful gains that OpenAI has unjustly earned from Mr. Musk’s contributions, counsel has also asked me to calculate the wrongful gains that Microsoft has unjustly earned. This section addresses that issue.

103. In the aggregate, Microsoft’s wrongful gains include the return on its investment in OpenAI For-Profit as well as the gains it has received by incorporating OpenAI technologies into Microsoft’s products. To be conservative, I do not include the latter component of Microsoft’s wrongful gains in my calculation. Rather, I limit my calculation to the (unrealized) return to Microsoft as a result of its investments in OpenAI For-Profit.

104. Similar to the OpenAI calculations above, Microsoft’s share in OpenAI For-Profit can be estimated either by using the negotiated pro forma cap table from the September 2025 Memorandum of Understanding or by conducting an independent Black-Scholes analysis. I present both approaches below. In either case, the resulting increases in value for Microsoft’s investment are discounted to account for OpenAI Nonprofit’s stake in OpenAI For-Profit and

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Mr. Musk's share of contributions to OpenAI Nonprofit, in order to determine the portion of Microsoft's gains that wrongfully derive from Mr. Musk's contributions.

105. As with my OpenAI damages calculation, I start with the value of OpenAI For-Profit (\$510 billion). I multiply the value of OpenAI For-Profit by Microsoft's share in the public benefit corporation and dilute the returns on a pro rata basis to account for OpenAI Nonprofit's warrants (\$155.12 billion). I further reduce Microsoft's call option value by subtracting Microsoft's \$13 billion in capital contribution to OpenAI For-Profit, resulting in Microsoft's Economic Interest of \$142.12 billion. I multiply Microsoft's Economic Interest by OpenAI Nonprofit's share and, as outlined in previous sections, Mr. Musk's share of either 50% or 75% in OpenAI Nonprofit. As shown in Exhibit 12, this analysis results in a wrongful gain ranging from \$25.51 billion to \$38.26 billion.

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Exhibit 12
Microsoft's Wrongful Gains Based on MOU Pro Forma Allocation

Description		Estimate 1	Estimate 2
Valuation of OpenAI For-Profit	[a]	\$ 510.00	\$ 510.00
Microsoft's Share (%)	[b]	30.4%	30.4%
Microsoft's Economic Interest (\$) in OpenAI For-Profit	$[c] = [a] \times [b]$	155.12	155.12
Microsoft Investments			
Microsoft Tranche I	[d]	1.00	1.00
Microsoft Tranche II	[e]	2.00	2.00
Microsoft Tranche III	[f]	10.00	10.00
Total	$[g] = \text{sum}([d]:[f])$	13.00	13.00
Microsoft's Economic Interest (\$) in OpenAI For-Profit, Net of Capital Contributions	$[h] = [c] - [g]$	142.12	142.12
OpenAI Nonprofit Share (%)	[i]	35.9%	35.9%
Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	[j]	50.0%	75.0%
Mr. Musk's Economic Interest (\$) in OpenAI For-Profit	$[k] = [h] \times [i] \times [j]$	25.51	38.26

Notes and Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00037449- OPENAI_MUSK00037482 at OPENAI_MUSK00037482 ("Memorandum of Understanding, Annex A, Pro Forma Cap Table")

[1] See Exhibit 8 for calculation, per the Pro Forma Cap Table, Nonprofit warrants dilute all public benefit corporation shareholders on a pro rata basis. For example, Microsoft's dilution is Microsoft's share divided by the sum of Aestas, Microsoft, and FCLPs shares times \$22.4 billion. (e.g. $(32.5\% / (33\% + 32.5\% + 3\%)) \times \$22.4B = \$10.63B$). The \$10.63B is subtracted from the Pro Forma Allocation, resulting in "Microsoft's Share" of \$155.12B (e.g., $\$165.75B - \$10.63B = \$155.12B$), or 30.42%

[2] "OpenAI Nonprofit Share" is the share after accounting for OpenAI Nonprofit's warrants, see Exhibit 8 for calculation.

[3] As discussed in Section II, Microsoft Tranche I, II, and III capital contributions occurred in July 2019, March 2021, and January 2023, respectively.

106. I adopt a similar methodology under my Black-Scholes model approach.

However, when using this approach there are eight different scenarios that represent the set of all combinations of: (i) Microsoft's share of the \$510 billion valuation, (ii) OpenAI Nonprofit's share of the \$510 billion valuation; and (iii) Mr. Musk's share of contributions in OpenAI Nonprofit. Across these eight scenarios I estimate damages of between \$14.36 billion and \$60.08 billion, as shown in Exhibit 13.

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Exhibit 13
Microsoft's Wrongful Gains Based on Black-Scholes Analysis

Description		Estimate 1	Estimate 2	Estimate 3	Estimate 4	Estimate 5	Estimate 6	Estimate 7	Estimate 8
Valuation of OpenAI For-Profit	[a]	\$510.00	\$510.00	\$510.00	\$510.00	\$510.00	\$510.00	\$510.00	\$510.00
Microsoft's Share (%)	[b]	30.8%	30.8%	30.8%	30.8%	19.8%	19.8%	19.8%	19.8%
Microsoft's Economic Interest (\$) in OpenAI For-Profit	[c] = [a] × [b]	157.14	157.14	157.14	157.14	101.23	101.23	101.23	101.23
Microsoft Investments									
Microsoft Tranche I	[d]	1.00	1.00	1.00	1.00	1	1	1.00	1.00
Microsoft Tranche II	[e]	2.00	2.00	2.00	2.00	2	2	2.00	2.00
Microsoft Tranche III	[f]	10.00	10.00	10.00	10.00	10	10	10.00	10.00
Total	[g] = sum([d]:[f])	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00
Microsoft's Economic Interest (\$) in OpenAI For-Profit, Net of Capital Contributions	[h] = [c] - [g]	144.14	144.14	144.14	144.14	88.23	88.23	88.23	88.23
OpenAI Nonprofit Share (%)	[i]	32.6%	32.6%	55.6%	55.6%	32.6%	32.6%	55.6%	55.6%
Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	[j]	50.0%	75.0%	50.0%	75.0%	50.0%	75.0%	50.0%	75.0%
Mr. Musk's Economic Interest (\$) in OpenAI For-Profit	[k] = [h] × [i] × [j]	23.47	35.20	40.06	60.08	14.36	21.55	24.52	36.78

Notes and Sources:

Dollars in billions unless otherwise indicated.

MSFT_MUSK000091818-MSFT_MUSK000091826 at MSFT_MUSK000091823 (“Watershed Considerations for Microsoft”); MSFT_MUSK000091795-MSFT_MUSK000091809 at MSFT_MUSK000091804-091 (“Future Value Analysis Using Black-Scholes Based Valuation Framework”); OPENAI_MUSK00037449-OPENAI_MUSK00037482 at OPENAI_MUSK00037482 (“Memorandum of Understanding, Annex A, Pro Forma Cap Table – Waterfall”).

[1] “Microsoft’s Share” for Estimate 1-4 and Estimates 5-8 calculated using Black-Scholes Model at 50% and 70% volatility. My calculated Microsoft share for Estimates 1-4 and Estimates 5-8 are 30.8% and 19.9%, respectively.

[2] OpenAI Nonprofit Shares are the percentages as calculated in Exhibit 11.

IX. APPORTIONMENT OF WRONGFUL GAINS OVER VARIOUS TIME PERIODS

107. Counsel has asked me to apportion the wrongful gains among three different time periods: (i) March 2019 – March 2021; (ii) March 2021 – January 2023; and (iii) January 2023 – present. Because my damages methodology is based on the valuation of OpenAI For-Profit, any further delineation of the damages is also contingent upon the valuation of OpenAI For-Profit at different points in time: March 2019, March 2021, January 2023, and present valuation (October 2025).

108. For this apportionment exercise, I rely upon valuation reports of OpenAI For-Profit conducted by PwC or Andersen on March 1, 2019, April 26, 2021, and December 31, 2022.¹⁹⁸ The reports provide me with valuations of OpenAI For-Profit and allocations for each entity based on Black-Scholes modeling as of the valuation date. In addition to the PwC and

¹⁹⁸ The dates of the valuations do not precisely correspond to the beginning or ending dates provided to me by counsel. Nevertheless, I believe them to represent reasonable proxies for the valuation of OpenAI For-Profit as of the beginning and ending dates.

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Andersen reports, I use my own valuation analysis above to determine the value of OpenAI Nonprofit's share of OpenAI For-Profit as of October 2025.

109. For the apportionment of OpenAI Nonprofit's damages using the pro forma cap table in the MOU, I first calculate the incremental change in OpenAI Nonprofit's value between the ending date and beginning date from each period. I then multiply the difference by Mr. Musk's economic interest in OpenAI Nonprofit (50% or 75%). As shown in Exhibit 14, the majority of Mr. Musk's economic interest in OpenAI Nonprofit originates between January 2023 and October 2025.

Exhibit 14
Apportionment of OpenAI's Wrongful Gains Across Time Periods
Based on MOU Pro Forma Allocation

Date Range	OpenAI Nonprofit Economic Interest (\$ in OpenAI For-Profit)		Incremental Change	Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	
	Beginning	Ending		50%	75%
	[a]	[b]	[c] = [b] - [a]	[d] = [c] × 50%	[e] = [c] × 75%
March 2019 - March 2021	\$0.23	\$0.50	\$0.27	\$0.14	\$0.20
March 2021 - January 2023	0.50	5.46	4.96	2.48	3.72
January 2023 - October 2025	5.46	183.05	177.59	88.79	133.19
Total			\$182.82	\$91.41	\$137.11

Notes and Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00025055-OPENAI_MUSK00025104 at OPENAI_MUSK00025103, ("PWC March 2019 Valuation"); OPENAI_MUSK00025684-OPENAI_MUSK00025733 at OPENAI_MUSK00025729, ("PWC April 2021 Valuation"); OPENAI_MUSK00026285-OPENAI_MUSK00026378 at OPENAI_MUSK00026349, ("Andersen December 2022 Valuation").

[1] The difference between the "Incremental Change" total and the October 2025 ending value of OpenAI Nonprofit's Economic Interest is the \$232 million initial value in March 2019.

110. I apply the same approach to the apportionment of Microsoft's wrongful gains. I use my valuation analysis to determine the value of Microsoft's share of OpenAI For-Profit as of October 2025. I reduce the valuation by the amount of capital contributions Microsoft made to OpenAI as of the valuation date. I reduce this value so as to only reflect Mr. Musk's share of Microsoft's enrichment. The results of my analysis are reflected in Exhibit 15.

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Exhibit 15
Apportionment of Microsoft's Wrongful Gains Across Time Periods
Based on MOU Pro Forma Allocation

Date Range	Microsoft's Economic Interest (\$) in			Mr. Musk's Share of OpenAI Nonprofit	
	OpenAI For-Profit		Incremental	Claim	
	Beginning	Ending		50%	75%
	[a]	[b]	Change [c] = [b] - [a]	[d] = [c] × 50%	[e] = [c] × 75%
March 2019 - March 2021		\$2.05	\$2.05	\$1.03	\$1.54
March 2021 - January 2023	2.05	-3.61	-5.66	-2.83	-4.25
January 2023 - October 2025	-3.61	142.12	145.73	72.87	109.30
Total			\$142.12	\$71.06	\$106.59

Notes and Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00025055-OPENAI_MUSK00025104 at OPENAI_MUSK00025103, (“PWC March 2019 Valuation”); OPENAI_MUSK00025684-OPENAI_MUSK00025733 at OPENAI_MUSK00025729, (“PWC April 2021 Valuation”); OPENAI_MUSK00026285-OPENAI_MUSK00026378 at OPENAI_MUSK00026349, (“Andersen December 2022 Valuation”).

[1] March 2019 is missing because Microsoft did not invest in OpenAI until July 2019.

[2] January 2023 value is negative because Andersen analysis allocates \$9.4 billion to Microsoft in the post-restructure analysis at a \$22.6 billion valuation. Subtracting Microsoft's \$13 billion in capital contributions results in a final value of -3.6 billion (e.g., \$9.4B - \$13B = -\$3.6B).

111. To supplement my analysis, I also use the values from my Black-Scholes model at 50% and 70% volatility from Section VI to determine the value of OpenAI Nonprofit's share of OpenAI For-Profit as of October 2025. The results of the analysis are reflected in Exhibit 16.

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Exhibit 16
Apportionment of OpenAI's Wrongful Gains Across Time Periods
Based on Black-Scholes Analysis

Date Range	OpenAI Nonprofit Economic Interest (\$ in OpenAI For-Profit		Incremental Change	Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	
	Beginning	Ending		50%	75%
	[a]	[b]		[c] = [b] - [a]	[d] = [c] × 50%
Volatility: 50%					
March 2019 - March 2021	\$0.23	\$0.50	\$0.27	\$0.14	\$0.20
March 2021 - January 2023	0.50	5.46	4.96	2.48	3.72
January 2023 - October 2025	5.46	166.06	160.60	80.30	120.45
Total			\$165.83	\$82.91	\$124.37
Volatility: 70%					
March 2019 - March 2021	\$0.23	\$0.50	\$0.27	\$0.14	\$0.20
March 2021 - January 2023	0.50	5.46	4.96	2.48	3.72
January 2023 - October 2025	5.46	283.45	277.99	138.99	208.49
Total			\$283.22	\$141.61	\$212.41

Notes and Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00025055-OPENAI_MUSK00025104 at OPENAI_MUSK00025103, (“PWC March 2019 Valuation”); OPENAI_MUSK00025684-OPENAI_MUSK00025733 at OPENAI_MUSK00025729, (“PWC April 2021 Valuation”); OPENAI_MUSK00026285-OPENAI_MUSK00026378 at OPENAI_MUSK00026349, (“Andersen December 2022 Valuation”).

[1] The differences between the “Incremental Change” totals and the October 2025 ending value of OpenAI Nonprofit’s Economic Interest is the \$232 million initial value in March 2019.

112. I repeat the process for the apportionment of Microsoft’s wrongful gains. I use my valuation analysis to determine the value of Microsoft’s share of OpenAI For-Profit as of October 2025, net of Microsoft’s contributed capital. This apportionment analysis includes all combinations of: (i) Microsoft’s share of the \$510 billion valuation, (ii) OpenAI Nonprofit’s share of the \$510 billion valuation; and (iii) Mr. Musk’s share of contributions in OpenAI Nonprofit, as shown in Exhibit 17.

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Exhibit 17
Apportionment of Microsoft's Wrongful Gains Across Time Periods
Based on Black-Scholes Analysis

Date Range	Microsoft's Economic Interest (\$) in OpenAI For-Profit		Incremental Change	OpenAI Nonprofit Share (%)	OpenAI Nonprofit Share (\$)	Mr. Musk's Economic Interest (\$) in OpenAI For-Profit	
	Beginning	Ending				50%	75%
	[a]	[b]	[c] = [b] - [a]	[d]	[e] = [c] × [d]	[f] = [e] × 50%	[g] = [e] × 75%
Volatility: 50% and OpenAI Nonprofit Share (%): 32.6%							
March 2019 - March 2021	n/a	\$2.05	\$2.05	32.6%	\$0.67	\$0.33	\$0.50
March 2021 - January 2023	2.05	-3.61	-5.66	32.6%	-1.84	-0.92	-1.38
January 2023 - October 2025	-\$3.61	\$144.14	147.75	32.6%	48.11	24.06	36.08
Total			\$144.14	32.6%	\$46.93	\$23.47	\$35.20
Volatility: 50% and OpenAI Nonprofit Share (%): 55.6%							
March 2019 - March 2021	n/a	\$2.05	\$2.05	55.6%	\$1.14	\$1.03	\$1.54
March 2021 - January 2023	2.05	-3.61	-5.66	55.6%	-3.15	-2.83	-4.25
January 2023 - October 2025	-\$3.61	\$144.14	147.75	55.6%	82.12	73.88	110.82
Total			\$144.14	55.6%	\$80.11	\$72.07	\$108.11
Volatility: 70% and OpenAI Nonprofit Share (%): 32.6%							
March 2019 - March 2021	n/a	\$2.05	\$2.05	32.6%	\$0.67	\$0.33	\$0.50
March 2021 - January 2023	2.05	-3.61	-5.66	32.6%	-1.84	-0.92	-1.38
January 2023 - October 2025	-\$3.61	\$88.23	91.84	32.6%	29.90	14.95	22.43
Total			\$88.23	32.6%	\$28.73	\$14.36	\$21.55
Volatility: 70% and OpenAI Nonprofit Share (%): 55.6%							
March 2019 - March 2021	n/a	\$2.05	\$2.05	55.6%	\$1.14	\$1.03	\$1.54
March 2021 - January 2023	2.05	-3.61	-5.66	55.6%	-3.15	-2.83	-4.25
January 2023 - October 2025	-\$3.61	\$88.23	91.84	55.6%	51.04	45.92	68.88
Total			\$88.23	55.6%	\$49.04	\$44.11	\$66.17

Notes and Sources:

Dollars in billions unless otherwise indicated.

OPENAI_MUSK00025055-OPENAI_MUSK00025104 at OPENAI_MUSK00025103, (“PWC March 2019 Valuation”); OPENAI_MUSK00025684-OPENAI_MUSK00025733 at OPENAI_MUSK00025729, (“PWC April 2021 Valuation”); OPENAI_MUSK00026285- OPENAI_MUSK00026378 at OPENAI_MUSK00026349, (“Andersen December 2022 Valuation”).

[1] March 2019 value is missing because Microsoft did not invest in OpenAI until July 2019.

[2] January 2023 value is negative because Andersen analysis allocates \$9.4 billion to Microsoft in the post-restructure analysis at a \$22.6 billion valuation. Subtracting Microsoft's \$13 billion in capital contributions results in a final value of -3.6 billion (e.g., \$9.4B - \$13B = -\$3.6B).

[3] OpenAI Nonprofit Shares are the percentages as calculated in Exhibit 11.

X. CALCULATION OF WRONGFUL GAINS BASED ON IMPLIED VALUATION OF OPENAI PBC

113. On October 28, 2025, the day before this report's filing, OpenAI and Microsoft announced they had consummated the transaction proposed in the MOU and provided some information about their new equity stakes. The precise terms of the final agreement are not public, and I have not received discovery materials showing those terms. Nonetheless, in this

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section, I update my calculations of wrongful gains based upon the limited information reported. I reserve the right to revise my analysis if and when additional details about the OpenAI PBC restructuring are made available to me.

114. Exhibit 18 summarizes the publicly disclosed terms of the restructuring. Microsoft and OpenAI Nonprofit own 27% (with a value of \$135 billion) and 26% (with a value of \$130 billion) of OpenAI PBC, respectively.¹⁹⁹ I understand the restructuring includes warrants but there is no information available as to their value. For purposes of my analysis, I assume the value of OpenAI Nonprofit's warrants is \$22.4 billion as outlined in the MOU. Given this, Microsoft and OpenAI Nonprofit own 25.4% (\$126.83 billion out of \$500 billion) and 30.5% (\$152.4 billion out of \$500 billion) of OpenAI PBC, respectively. The publicly available information does not identify the shares of OpenAI PBC held by other shareholders including Aestas or the FCLPs. I therefore include an "Other" category in Exhibit 18 to reflect the sum of shares held by all other stakeholders.

¹⁹⁹ OpenAI Press Release, October 28, 2025, available at <https://openai.com/index/built-to-benefit-everyone/>; Microsoft Press Release, October 28, 2025, available at <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/>; and Capoot, Ashley, "OpenAI Completes restructure, solidifying Microsoft as a major shareholder," CNBC, October 28, 2025, available at <https://www.cnbc.com/2025/10/28/open-ai-for-profit-microsoft.html>.

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Exhibit 18
Allocation of OpenAI For-Profit \$500 Billion Valuation to Stakeholders
Using Equity Shares in PBC Restructure Announcement

Stakeholder	Restructure Allocation (\$ billions)	Restructure Ownership Percent [1]	Dilution for OpenAI Nonprofit Warrants (\$ billions)	Post - Dilution Ownership Percentage
Valuation of OpenAI For-Profit	\$500.00	100.0%	\$500.00	100.0%
Apportionment				
OpenAI Nonprofit	130.00	26.0%	152.40	30.5%
Microsoft	135.00	27.0%	126.83	25.4%
Other	235.00	47.0%	220.77	44.2%
OpenAI Nonprofit Warrants	22.40			

Notes and Sources:

Dollars in billions unless otherwise indicated.

OpenAI For-Profit \$500 billion valuation is calculated as Microsoft's allocation amount divided by Microsoft's allocation percentage (i.e., \$135 billion/27% = \$500 billion).

[1] OpenAI Press Release, October 28, 2025, available at <https://openai.com/index/built-to-benefit-everyone/>; Microsoft Press Release, October 28, 2025, available at <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/>; and Capoot, Ashley, "OpenAI Completes restructure, solidifying Microsoft as a major shareholder," CNBC, October 28, 2025, available at <https://www.cnbc.com/2025/10/28/open-ai-for-profit-microsoft.html>. "Other" ownership percent is calculated as 100% - 26.0% - 27.0%.

[2] Per the MOU Pro Forma Cap Table, Nonprofit warrants dilute all PBC shareholders on a pro rata basis. For example, Microsoft's dilution is Microsoft's share divided by the sum of Microsoft, and All Other shareholders shares times \$22.4 billion. (e.g. $(27\% / (27\% + 47\%)) \times \$22.4B = \$8.17B$). The \$8.17B is subtracted from the Restructure Allocation, resulting in Microsoft's Post-Dilution Allocation of \$126.83B (e.g., \$135B - \$8.17B = \$126.83B).

115. Assuming the public information is accurate, I can quantify OpenAI's wrongful gains under the OpenAI PBC structure by adapting the methodology outlined above.²⁰⁰ Using this approach, the wrongful gains range from \$76.2 billion to \$114.3 billion (See Exhibit 19).

²⁰⁰ See Exhibit 10.

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Exhibit 19
OpenAI's Wrongful Gains Based on PBC Restructure Announcement

Description		Estimate 1	Estimate 2
Valuation of OpenAI For-Profit	[a]	\$500.00	\$500.00
OpenAI Nonprofit Share (%)	[b]	30.5%	30.5%
OpenAI Nonprofit Economic Interest (\$) in OpenAI For-Profit	[c] = [a] × [b]	152.40	152.40
Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	[d]	50.0%	75.0%
Mr. Musk's Economic Interest (\$) in OpenAI For-Profit	[e] = [c] × [d]	76.20	114.30

Notes and Sources:

\$500 valuation is calculated as Microsoft's allocation amount divided by Microsoft's allocation percentage (i.e., \$135B/27% = \$500B).

[1] OpenAI Press Release, October 28, 2025, available at <https://openai.com/index/built-to-benefit-everyone/>; Microsoft Press Release, October 28, 2025, available at <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/>; and Capoot, Ashley, "OpenAI Completes restructure, solidifying Microsoft as a major shareholder," CNBC, October 28, 2025, available at <https://www.cnbc.com/2025/10/28/open-ai-for-profit-microsoft.html>.

[2] "OpenAI Nonprofit Share" is the share after accounting for OpenAI Nonprofit's warrants, see Exhibit 18 for calculation.

116. Similar to the OpenAI wrongful gains calculation above, Microsoft's wrongful gains can be estimated using the same methodology.²⁰¹ I estimate a range of between \$17.35 billion and \$26.02 billion, as shown in Exhibit 20.

²⁰¹ See Exhibit 12.

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Exhibit 20
Microsoft's Wrongful Gains Based on PBC Restructure Announcement

Description		Estimate 1	Estimate 2
Valuation of OpenAI For-Profit	[a]	\$500.00	\$500.00
Microsoft's Share (%)	[b]	25.4%	25.4%
Microsoft's Economic Interest (\$) in OpenAI For-Profit	[c] = [a] × [b]	126.83	126.83
Microsoft Investments			
Microsoft Tranche I	[d]	1.00	1.00
Microsoft Tranche II	[e]	2.00	2.00
Microsoft Tranche III	[f]	10.00	10.00
Total	[g] = sum([d]:[f])	13.00	13.00
Microsoft's Economic Interest (\$) in OpenAI For-Profit, Net of Capital Contributions	[h] = [c] - [g]	113.83	113.83
OpenAI Nonprofit Share (%)	[i]	30.5%	30.5%
Mr. Musk's Economic Interest (%) in OpenAI Nonprofit	[j]	50.0%	75.0%
Mr. Musk's Economic Interest (\$) in OpenAI For-Profit	[k] = [h] × [i] × [j]	17.35	26.02

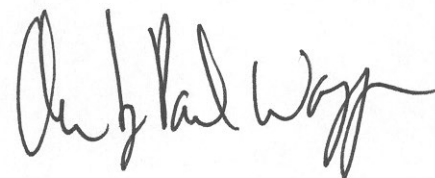
Notes and Sources:

\$500 valuation is calculated as Microsoft's allocation amount divided by Microsoft's allocation percentage (i.e., \$135B/27% = \$500B).

[1] OpenAI Press Release, October 28, 2025, available at <https://openai.com/index/built-to-benefit-everyone/>; Microsoft Press Release, October 28, 2025, available at <https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/>; and Capoot, Ashley, "OpenAI Completes restructure, solidifying Microsoft as a major shareholder," CNBC, October 28, 2025, available at <https://www.cnn.com/2025/10/28/open-ai-for-profit-microsoft.html>.

[2] "OpenAI Nonprofit Share" is the share after accounting for OpenAI Nonprofit's warrants, see Exhibit 18 for calculation.

Respectfully submitted,



C. Paul Wazzan, Ph.D.
October 29, 2025