

BuyBack Program Terms and Conditions

Last Updated: 01/25/2024

These BuyBack Program Terms and Conditions (“**Terms**”) are a legally binding contract between you and UsageAI, Inc. (“**UsageAI**,” “**us**,” “**we**,” or “**our**”) regarding your participation in, and access to and use of the Service in connection with, the BuyBack Program. References to “**Customer**,” “**you**,” and “**your**” refer to the individual, company, or other entity that accepts these Terms by participating in the BuyBack Program, accessing or using the Service in connection with the BuyBack Program, or otherwise affirmatively accepting these Terms through other means UsageAI offers you. If you are participating in the BuyBack Program on behalf of a company or other entity by an individual authorized to accept these Terms on its behalf, then all references to “Customer,” “you,” or “your” refer to such company or other entity. If you are a company or other entity, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms. If you are accepting these Terms on behalf of a company or other entity and an authorized representative of the entity has already accepted these Terms on behalf of the entity or entered into a separate agreement regarding the BuyBack Program (“**Separate Agreement**”) prior to the date upon which you accept these Terms (“**Effective Date**”), these Terms will not apply to you and your and the entity’s rights and obligations with respect to the BuyBack Program will at all times be governed by, and subject to, the Separate Agreement. If you are not eligible, or do not agree to the terms and conditions of these Terms, then you do not have our permission to participate in the BuyBack Program. Your participation in and our provision of the BuyBack Program to you, constitutes an agreement by UsageAI and by you to be bound by these Terms.

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in these Terms shall have the meanings assigned to them in the Agreement.
2. **Scope.** The BuyBack Program allows you to transfer eligible Cloud Resource capacity to UsageAI or to a third-party purchaser identified by UsageAI (each, a “**Purchaser**”). These Terms are incorporated by reference into the Terms of Service between you and UsageAI (available at <https://usage.ai/msa.pdf>) or such other agreement between you and UsageAI with respect to the Service (the “**Agreement**”).
3. **Eligible Cloud Resources.** In order for your unused Cloud Resource capacity to be eligible for the BuyBack Program and Non-Usage Credits (as defined below), it must satisfy each of the following requirements: (a) it was purchased directly from UsageAI; (b) it has a remaining term of at least one (1) month; (c) it has been active for at least thirty (30) days prior to the date a Purchaser purchases such unused capacity; (d) it is for a non-discounted and non-convertible AWS Reserved Instance that is not within the GovCloud region; and (e) it is fully-paid-up with no outstanding balances due or payable to Amazon Web Services. Any unused Cloud Resource capacity that meets all of these criteria qualifies for the BuyBack Program and is referred to herein as an “**AWS Reserved Instance**.”
4. **Transfer.**
 - 4.1. **Purchase Price.** Subject to Customer’s compliance with the terms and conditions of the Agreement (including, without limitation, the payment of all Fees due thereunder) and these

Terms, if the Purchaser is UsageAI, UsageAI will purchase the applicable AWS Reserved Instance from Customer for an amount equal to the fees paid by Customer to Amazon for the applicable AWS Reserved Instance, which shall be pro-rated for the number of unused months remaining for such AWS Reserved Instance's term, which will be rounded down to the nearest month.

4.2. **Assurances.** Customer hereby irrevocably sells, assigns, transfers, and conveys to the applicable Purchaser all right, title, and interest in and to the AWS Reserved Instance. Customer will promptly execute all documents (including the AWS Marketplace Seller Registration documentation), papers, forms, and authorizations, and take such other actions as are necessary to effectuate the transfer of ownership and control of the AWS Reserved Instance to the applicable Purchaser, and cause the AWS Reserved Instance to be registered in the name of the applicable Purchaser. If Customer fails to promptly complete the contemplated transfer, UsageAI may in addition to, and not in lieu of, all other remedies available at law or in equity, terminate Customer's participation in the BuyBack Program by written notice to Customer, which notice may be given via email. Customer agrees and acknowledges that it will remain liable and responsible for the performance of any obligations or liabilities under the registration agreement for the AWS Reserved Instance between Customer and Amazon until the AWS Reserved Instance is successfully sold and transferred to the applicable Purchaser.

5. **Additional Terms.** Customer's participation in, and rights under, the BuyBack Program is at all times subject to Customer's compliance with the terms and conditions of the Agreement (including, without limitation, the payment of all Fees due thereunder), these Terms, and any other additional terms, policies, rules, or guidelines applicable to the BuyBack Program that UsageAI may post on or link to from or through the Service ("**Additional BuyBack Terms**"). All Additional BuyBack Terms are incorporated by this reference into, and made a part of, these Terms.

6. **Non-Usage Credits.**

6.1. **Credit.** We will issue you credits if you do not use your AWS Reserved Instance(s) at any point during an applicable month during which UsageAI is managing the applicable AWS Reserved Instance ("**Non-Usage Credits**"). UsageAI will credit Non-Usage Credits to you in an amount equal to the difference between your aggregate costs, during such month, for the applicable AWS Reserved Instance and the then-current fees charged by Amazon Web Services for the applicable AWS Reserved Instance as if it had been charged to you on an on-demand basis during such month. Non-Usage Credits (a) are assessed on a monthly basis; (b) may not be redeemed, converted, or exchanged for monetary amounts; (c) will be automatically applied to any Fees that are owed by the Customer following the date upon which such Non-Usage Credits accrue; and (d) will not exceed the Fees paid by Customer to UsageAI under the Agreement during the applicable month. **THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT NON-USAGE CREDITS ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE USAGEAI'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY UNUTILIZED AWS RESERVED INSTANCES.**

6.2. **Exclusions.** For the avoidance of doubt, any unused capacity for an AWS Reserved Instance arising from any of the following circumstances will not be included for purposes of

calculating Non-Usage Credits: (a) any purchase by Customer, or any third acting on its behalf, of the applicable AWS Reserved Instance; (b) any suspension, termination, or expiration of UsageAI's provision of the Service to Customer; or (c) the Customer's account(s) with Amazon Web Services for the applicable AWS Reserved Instance are terminated or otherwise excluded from, or do not otherwise qualify for, any discounts generally afforded by Amazon Web Services to the applicable AWS Reserved Instance or its other cloud service account(s), savings plan(s), and environment(s).

7. **Representations and Warranties.** Customer represents and warrants that: (a) the AWS Reserved Instance will be free and clear of all liens, security interests, or other encumbrances; (b) the registration agreement for the AWS Reserved Instance between Customer and Amazon is in full force and effect and all associated fees are paid in full; (c) Customer has at all times been and remains in full compliance with the terms and conditions of such registration agreement; and (d) Customer has not taken any action or entered into any agreement (i) for Customer to, or requiring UsageAI to, assign, transfer, license, or grant to any other person or entity the right to use the AWS Reserved Instance or (ii) that otherwise encumbers the AWS Reserved Instance.

8. **Indemnification.** Customer will defend UsageAI from and against any third-party claim to the extent arising from: (a) the purchase, sale, or other transfer of the AWS Reserved Instance under the BuyBack Program, or (b) allegation of facts that, if true, would constitute Customer's breach of any of the representations, warranties, covenants, or obligations under these Terms. Customer will indemnify and hold UsageAI harmless against any damages and costs awarded against UsageAI (including reasonable attorneys' fees) or agreed in a settlement by Customer resulting from any such claim. The indemnification procedures set forth in the Agreement will apply to any indemnifiable claim arising under this Section.

9. **Disclaimer.** USAGEAI, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS AND LICENSORS, MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE BUYBACK PROGRAM, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. WE DO NOT WARRANT THAT CUSTOMER'S PARTICIPATION IN THE BUYBACK PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE. USAGEAI IS NOT LIABLE FOR DELAYS, FAILURES, OR PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE USAGEAI'S CONTROL. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE PERFORMANCE TO THE SHORTEST LEGALLY PERMITTED PERIOD. THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. UsageAI does not disclaim any warranty or other right that it is prohibited from disclaiming under Law.