Flex Commitment Program Terms and Conditions

Last Updated: 08/16/2024

These Flex Commitment 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 Flex Commitment Program. References to "**Customer**", "**you**", and "**your**" refer to the individual, company, or other entity that accepts these Terms by participating in the Flex Commitment Program, accessing or using the Service in connection with the Flex Commitment Program, or otherwise affirmatively accepting these Terms through other means UsageAI offers you. If you are participating in the Flex Commitment 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 Flex Commitment 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 Flex Commitment 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 Flex Commitment Program. Your participation in and our provision of the Flex Commitment Program to you, constitutes an agreement by UsageAI and by you to be bound by these Terms.

1. **Definition**s. Unless otherwise defined herein, capitalized terms used in these Terms shall have the meanings assigned to them in the Agreement.

2. **Scope.** The Flex Commitment Program allows you to request a rebate from UsageAI for the cost of certain of your unused Cloud Resource capacity. These Terms are incorporated by reference into the Terms of Service between you and UsageAI (available at https://usage.ai/UsageAI-Flex-Commitment-Program-TC.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 Flex Commitment Program and Non-Usage Rebates (as defined below), it must: (a) have been purchased directly from UsageAI and designated as Flex Commitment Program-eligible at the time of purchase; (b) have a remaining term of at least one (1) month; (c) have been active for at least thirty (30) days prior to the date a Purchaser purchases such unused capacity; Flex-Eligible Cloud Resource and (d) be fully paid up with no outstanding balances due or payable to the applicable cloud provider. Any such unused Cloud Resource capacity qualifying for the Flex Commitment Program is referred to herein as an "**Flex-Eligible Cloud Resource**."

4. **Disqualifying Activities**. Notwithstanding anything to the contrary in these Terms, you are not eligible for the Flex Commitment Program or any Non-Usage Rebates (as defined below) during any calendar month where UsageAI determines in its sole discretion that (a) you have underutilized Flex-Eligible Cloud Resources because of your use of Cloud Resources that you

did not purchase directly from UsageAI; or (b) you substantially reduced your use of Cloud Resources without notifying UsageAI in advance of such reduction and providing UsageAI with a reasonable justification for such reduction.

5. **Additional Terms**. Customer's participation in, and rights under, the Flex Commitment 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 Flex Commitment Program that UsageAI may post on or link to from or through the Service ("**Additional Flex Commitment Terms**"). All Additional Flex Commitment Terms are incorporated by this reference into, and made a part of, these Terms.

6. **Non-Usage Rebates**.

6.1. Rebate. We will issue you rebates if you do not use any Flex-Eligible Cloud Resource(s) during a month during which UsageAI is managing the applicable Flex-Eligible Cloud Resource ("**Non-Usage Rebates**"). Non-Usage Rebates will be rebated to you as credits in an amount equal to the difference between your aggregate costs, during such month, for the applicable Flex-Eligible Cloud Resource and the then-current fees charged by applicable cloud provider for the applicable Flex-Eligible Cloud Resource as if it had been charged to you on an on-demand basis during such month. Non-Usage Rebates are assessed on a monthly basis. UsageAI will provide applicable rebate amounts to you ninety (90) days after the calendar month during which the rebate accrued, as follows: (a) the rebate will first be automatically applied to and credited against any Fees that you owe (including any outstanding past or current unpaid Fees) and any Fees that you owe ninety (90) days following the date the rebate is credited, and (b) the remainder (if any) will be refunded to you. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT NON-USAGE REBATES ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE USAGEAI'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY UNUTILIZED FLEX-ELIGIBLE CLOUD RESOURCES.

6.2. **Exclusions**. For the avoidance of doubt, any unused capacity for an Flex-Eligible Cloud Resource arising from any of the following circumstances will not be included for purposes of calculating Non-Usage Rebates: (a) any purchase by Customer, or any third party acting on its behalf, of the applicable Flex-Eligible Cloud Resource; (b) any suspension, termination, or expiration of UsageAI's provision of the Service to Customer; or (c) the Customer's account(s) with the cloud provider for the applicable Flex-Eligible Cloud Resource are terminated or otherwise excluded from, or do not otherwise qualify for, any discounts generally afforded by the cloud provider to the applicable Flex-Eligible Cloud Resource or its other cloud service account(s), savings plan(s), and environment(s).

7. **Effect of Termination**. Upon termination of this Agreement, you are no longer eligible to participate in the Flex Commitment Program nor to receive any Non-Usage Rebates, including for any underutilization that may have occurred during the Term.

8. **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 FLEX COMMITMENT PROGRAM, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. WE DO NOT WARRANT THAT CUSTOMER'S PARTICIPATION IN THE FLEX COMMITMENT 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.