

DAC MARKETPLACE
MERCHANT TERMS FOR APPLICATION
(v. 1.0. 2024-06-27)

These Merchant Terms together with any attachments applicable hereto (hereinafter the “**Agreement**”) govern the use of the software application delivered as a subscription service and listed in Annex 1 (hereinafter “**Application**”), as well as any documentation, patches, bug fixes, corrections, updates, upgrades, and support service of the same. This Agreement is a legal and enforceable agreement between the Application licensor company as identified in applicable quotation, offer, order form or similar document (hereinafter the “**Merchant**”) and you as the individual, the company, or the legal entity that will be using the Application (hereinafter “**You**” or “**Your**”). By downloading, installing, copying, clicking on “I agree”, or otherwise indicating assent electronically, or using the Application, You agree to the terms of the Agreement.

Capitalized terms of this Agreement will have the meaning given when they first time appear and may be used in the singular or in the plural, as the context requires.

Annex 1 hereto lists the Merchant and Application to which this Agreement applies. Furthermore, Annex 1 may contain certain variations to the terms of this Agreement applicable to specific Merchant’s Application. Such variation terms in Annex 1 shall take precedence for the purposes of this Agreement.

In this Agreement, Merchant and You will individually be referred to as a “**Party**” and jointly as “**Parties**”.

1. APPLICABILITY

This Agreement forms part of and is applicable to any quotation, offer, order form or similar document (hereinafter “**Offer**”) containing the Application, and any purchase order issued by You as a response to a firm and valid Offer. The terms and conditions of any written contract between the Parties specifically concerning the Application shall always supersede any conflicting terms in this Agreement. Any pre-printed terms of any purchase orders and/or Your standard terms and conditions of purchase do not apply. The provisions of this Agreement may only be supplemented or amended by written agreement between the Parties.

2. RIGHT TO USE

Subject to Your timely payments of applicable subscription fees, and subject to Your compliance with this Agreement, Merchant hereby provides You a non-exclusive and non-transferable access and right to use the Application and its associated documentation during the subscription period stated in the applicable order confirmation for the intended purpose as specified in the associated documentation.

3. OWNERSHIP

All rights, title, and interest in and to the Application and accompanying documentation (including, without limitation, ownership and all intellectual property rights in and to the same), other than those expressly granted to You herein, shall remain vested with the Merchant (or its third-party licensors, as applicable). No rights or licenses to the Application or to such intellectual property rights are granted to You except as expressly otherwise stated in this Agreement.

4. RESTRICTIONS

Unless otherwise permitted by the Merchant, You may not transfer, distribute, sublicense, or make the Application available to any third parties. The use of the Application may be subject to user or other restrictions as set forth in order confirmation. You may not (i) copy, translate, modify, disassemble, reverse engineer, or otherwise attempt to derive the source code of, or create derivative works of the Application or any part thereof; or (ii) use, or facilitate the use of, the Application in a way violation of any applicable laws or regulations. You must maintain and reproduce all Merchant logos, notices and legends found on the Application or on the media containing such Application.

5. PAYMENT OF FEES

You will be charged for use of the Application based on the criteria set forth in the applicable order confirmation. You may not use or otherwise access the Application if You do not have a valid subscription.

6. UPDATES, UPGRADES, AND RELATED SERVICES

Merchant may, but is not obliged to, provide You with updates, upgrades, or the like in relation to the Application. Any additional maintenance, installation, support, professional services, or other services to be performed by the Merchant will be subject to a separate fee as well as written agreement, statement of work, or change order between the Parties.

7. DATA AND CONTENT

Merchant may, from time to time, collect and use technical data and related information about Your use of the Application and its functioning as well as about Your devices and systems (“**App Data**”) to facilitate application development, support, and other services. App Data excludes content that You upload to or generate in using

the Application ("**Your Content**"), information relating to an identified or identifiable natural person ("**Personal Data**"), as well as any confidential information. App Data is owned by and confidential information of the Merchant. You agree to such collection and use.

8. PERSONAL DATA

In the event Merchant collects and processes any Personal Data from You, the Merchant will enter into a separate agreement with You governing the Merchant's processing of Personal Data.

9. IP INDEMNITY

Subject to the conditions and exceptions stated herein, the Merchant (a) will defend any third party claim against You alleging that Your use of the Application as authorized under this Agreement infringes such third party's patent, copyright, trademark or trade secret (a "**Claim**"), and (b) will reimburse You for damages awarded in a final judgement against You or agreed in a settlement by the Merchant that are attributable to such Claim; provided that You (a) promptly notify the Merchant in writing of the Claim; (b) give the Merchant sole control over the defense and settlement of the Claim using counsel of the Merchant's choice; and (c) reasonably cooperate with the Merchant in the defense and settlement of the Claim. The Merchant will not be bound by any settlement or compromise that You enter into without the Merchant's prior written consent. If the Merchant reasonably believes that a Claim may bar Your use of the Application, the Merchant may seek, at its option and expense, to: (i) obtain the right for You to keep using the Application; (ii) modify or replace the Application to become non-infringing; or (iii) if the Merchant determines that options (i) and (ii) are not commercially reasonable, discontinue Your use of the Application and credit to You any unused prepaid fees for such Application.

The Merchant's obligation under this Section 9 shall not apply to the extent any Claim results from or is based on: (i) the Merchant's compliance with Your requirements, designs, specifications, or instructions; (ii) any adjustment, modification, or configuration of the Application not made by the Merchant; (iii) combination, operation, or use of the Application with non-Merchant products, data or business process (unless the Application would be infringing when viewed alone); (iv) failure to use a replacement, correction, patch, or new version of the Application provided by the Merchant to address such Claim; (v) Your Content or third party content; or (vi) Your use of the Application or Your Content not in compliance with this Agreement.

Section 9 herein set forth the Merchant's entire liability and Your sole and exclusive remedy for infringement of third-party intellectual property rights.

10. AUTOMATIC RENEWAL

Subscription will automatically renew for the same length as the preceding term, with the same scope as the expiring subscription, unless (i) You notify the Merchant in writing at least thirty (30) days before the end of Your then-current subscription term of Your intention not to renew; or (ii) You elect not to auto-renew at the time of the initial order placed. Your access to the Application through the renewal subscription is subject to Your acceptance and payment of the Merchant's then-current subscription fees. This Section is only applicable to commercial subscriptions. Any subscription purchased by You for the trial, evaluation, testing, and/or proof of concept purpose will not renew automatically, when the applicable trial subscription term ends.

11. NO WARRANTY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NEITHER MERCHANT NOR ITS THIRD PARTY LICENSORS MAKE ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR CONDITIONS OF ANY KIND BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE WITH RESPECT TO THE APPLICATION, AND MERCHANT DISCLAIMS ANY AND ALL WARRANTIES RELATING THERETO INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. MERCHANT MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE APPLICATION, ITS UPDATES OR UPDATES WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE SAME WILL BE UNINTERRUPTED OR ERROR-FREE. MERCHANT SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT YOUR PROPOSED OR ACTUAL USE OF THE APPLICATION COMPLIES WITH APPLICABLE LAWS. YOU ACKNOWLEDGE AND AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR SELECTING CONFIGURATIONS, POLICIES AND PROCEDURES IN THE APPLICATION THAT ARE CONFIGURABLE AND FOR ASSURING THAT THE SELECTION (A) CONFORMS TO YOUR POLICIES AND PROCEDURES AND (B) COMPLIES WITH ALL APPLICABLE LAWS.

12. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, REGARDLESS OF THE FORM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT OR THE NUMBER OF CLAIMS, AND WHETHER IN RESPECT OF A BREACH OR DEFAULT IN THE NATURE OF A BREACH OF A CONDITION OR A FUNDAMENTAL TERM OF THIS AGREEMENT: (A) MERCHANT SHALL HAVE NO LIABILITY TO YOU FOR ANY ECONOMIC, CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF REVENUES, SAVINGS OR PROFITS OR LOSS OF DATA ANY KIND OF) ARISING OUT OF THIS AGREEMENT OR THE APPLICATION, AND (B) EXCEPT FOR THE IP INDEMNITY OBLIGATION OF THE MERCHANT IN SECTION 9 AND LIABILITY FOR PERSONAL INJURY CLAIMS, MERCHANT'S

LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO DIRECT PROVABLE DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEES PAID BY YOU FOR THE APPLICATION GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT FROM OR THROUGH WHICH THE LIABILITY AROSE, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT MERCHANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. SUSPENSION

The Merchant may, directly or through its agent, suspend Your access to or use of any portion or all of the Application upon reasonable prior notice to You, if (i) You fail to pay the applicable fees in connection with this Agreement; (ii) Your use of the Application in violation of the Agreement; or (iii) required by law or regulations. The suspension will not relieve Your obligation to pay fees, and will be lifted when the reason for such suspension no longer exists.

14. TERM AND TERMINATION

This Agreement is effective until terminated in accordance with this Section. This Agreement will terminate automatically if You fail to comply with any of its terms or Your subscription to the Application expires or terminates for any reason. Upon termination of this Agreement, all rights granted to You under this Agreement shall immediately cease and You shall cease Your use of the Application and the Confidential Information.

15. GOVERNING LAW AND DISPUTE RESOLUTION

If You are located in the Americas, this Agreement will be governed by the laws of the State of New York, United States of America. Otherwise, this Agreement will be governed by the laws of England and Wales. Such governing laws are exclusive of any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any applicable amendments, and without regard to principles of conflicts of law. Any dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, or validity thereof (including the determination of the scope of the agreement to arbitrate), will be adjudicated and finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("**ICC Rules**") by one (1) arbitrator designated in conformity with the ICC Rules. In cases where the laws of the State of New York apply, the seat of arbitration shall be New York, the United States. In cases where the laws of England and Wales apply, the seat of arbitration shall be London, England. The arbitral proceedings shall be confidential. The award shall be final and binding on the Parties hereto and enforceable in any court of competent jurisdiction. The arbitration will be held exclusively in the English language.

16. CONFIDENTIALITY

The Application and any information or material provided to You by the Merchant for use with the Application ("**Confidential Information**") constitute and contain the Merchant's confidential and proprietary information. You shall not disclose Confidential Information to any third party or use it for any purpose other than the use permitted by this Agreement. You may disclose Confidential Information which is requested pursuant to a judicial or governmental request, requirement, or order under law, if You provide the Merchant sufficient prior notice and reasonable assistance to contest such request, requirement or order and to seek protective measures. You may grant access to the Confidential Information only to Your employees, consultants and contractors who have a need to know to the extent of the use permitted by this Agreement, who agree in writing to be bound to confidentiality terms at least as restrictive as those stated in this Agreement and who You cause to comply with the provisions of this Agreement. You will promptly report to the Merchant any actual or suspected violation of confidentiality obligations in the Agreement and shall take all reasonable steps requested by the Merchant to prevent and remedy any such violation.

17. ASSIGNMENT

Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, except that either Party may assign or otherwise transfer the Agreement or any of its rights or obligation hereunder to its affiliates without the consent of the other Party. Any purported assignment of rights or delegation of performance in violation of this paragraph is void.

18. NOTICE

The Parties' contact information, including address and contact person, will be specified in the order confirmation. All notices under this Agreement shall be communicated in writing to the Party by using the above contact information, and will become effective upon receipt.

19. FORCE MAJEURE

Neither Party will be liable for delay or failure to perform any obligations under this Agreement (except with respect to non-disclosure obligations) due to any cause beyond its reasonable control. The delayed party will promptly notify the other party of any such event.

20. SUGGESTIONS

If You make any suggestion about Application or related features to Merchant, Merchant is free to use, disclose, reproduce, modify, license, transfer and otherwise distribute and exploit such information or materials without restrictions.

21. COMPLIANCE AND EXPORT REGULATION

Each Party will comply with all laws, legislation, rules, regulations, and governmental requirements applicable to the exercise of its rights and performance of its obligations under this Agreement. You acknowledge that the Application may be subject to the export laws and regulations of the United States, the European Union and/or other countries (cumulatively, "**Export Laws**"). You shall not use, distribute, assign, sell, export, reexport, transfer, or transmit the Application (or any part thereof) to, or for use in, a sanctioned country or region (by way of example, as of the effective date of this Agreement, the following countries/regions are subject to sanctions: Belarus, Crimea, Cuba, Donetsk, Iran, Luhansk, North Korea, Russian Federation, Syria). Breach of this provision constitutes a material breach of this Agreement. If requested by Merchant, You shall sign written assurances and other export-related documents as may be required for Merchant to comply with the Export Laws.

22. MISCELLANEOUS

A Party's failure to enforce any rights under this Agreement will not be deemed a waiver of the same right on another occasion, or of the right to enforce any other right under this Agreement. This Agreement is nonexclusive, and nothing in this Agreement restricts the Merchant or You from entering into other, similar agreements with partners, or from acquiring, licensing, developing, manufacturing, or distributing similar or competing technologies. If any part of this Agreement is held to be unenforceable, the rest of this Agreement will remain in full force and effect. Neither this Agreement, nor any terms and conditions contained herein, create a partnership, joint venture, employment relationship, or franchise relationship. This Agreement does not grant any right or cause of action to any third party. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies will be without prejudice to any other remedies under this Agreement or otherwise.

**** END OF DOCUMENT ****

Annex 1 To The DAC Marketplace Merchant Terms For Application - (2024-06-27)

Merchant	Applicable Application	Variation terms to the Agreement
Taqtile	Taqtile Manifest	n/a
OneLayer	OneLayer BRIDGE	n/a