

Dataweavers Terms of Service

1. Introduction to Dataweavers and the Platform

- (a) Dataweavers assists customers that create complex and personalized websites on top of digital experience platforms to enhance the reliability of digital service delivery by reducing cost, increasing security and improving compliance of technology operations.
- (b) The core element of the Dataweavers solution is our Platform-as-a-Service that simplifies the operational management of digital experience environments (**Platform**). The Platform automates digital experience management, eliminating the need for manual processes, and creates a cloud-based, end-to-end operating environment that combines the Customer's existing, standalone enterprise software solutions, and enables the Customer to access them through an 'as a service' subscription model with support and service level overlays.

2. Structure of Agreement

- (a) The agreement between Dataweavers and the Customer is comprised of:
 - (i) the relevant Order Form – the ordering document executed by both parties that incorporates all of the components to form a binding contract,
 - (ii) these Dataweavers Terms of Service – which set out the structure of the Agreement and key aspects of the relationship between Dataweavers and the Customer;
 - (iii) the [Hosting Services Module](#) – which describes the key obligations in relation to the hosting services that underpin the Platform;
 - (iv) the [Platform Module](#) – which describes the subscription service that combines the Customer's existing enterprise applications;
 - (v) the [Data Processing Addendum](#) – which outlines how Dataweavers handles Customer Data;
 - (vi) the [Service Level Agreement](#) – which outlines the Dataweavers service levels;
 - (vii) the [Service Catalogue](#) – which outlines optional additional services that the Customer may order from time to time as 'Additional Services'; andtogether, being the "**Agreement**".
- (b) In the event of any conflict or inconsistency among the components of the Agreement, the order of precedence is: (1) the Order Form, (2) these Dataweavers Terms of Service; (3) the Modules; (4) the Data Processing Addendum; (5) the Service Level Agreement; and (6) the Service Catalogue.
- (c) Each Order Form, when executed, creates a separate Agreement comprising each of the elements listed above, governing the service(s) identified in that Order Form.
- (d) Dataweavers may amend any element of the Agreement by notifying the Customer in writing and where relevant, by posting on the Dataweavers website at <https://www.dataweavers.com> but any amendments will only take effect:

- (i) for existing Agreements, upon the expiry of the then-current Initial Term or Further Period, outlined in the Order Form (if Dataweavers agrees to extend the Agreement in accordance with its terms); and
- (ii) for new Agreements entered into on or after the date of notification of the changes, from the Agreement Date.

3. Platform and Additional Services

3.1 General

- (a) Subject to payment of the Fees, Dataweavers will provide the Platform, and any Additional Services, to the Customer during the Agreement Term.
- (b) Dataweavers will provide the Platform, and any Additional Services (as applicable), with due care, skill and diligence and in a professional manner.
- (c) In order to take the Platform, the customer must have in place underlying hosting arrangements, either arranged by Dataweavers, or arranged by a third party provider. The obligations in relation to hosting are further set out in the Hosting Module.

3.2 Availability

- (a) Dataweavers will ensure that the Platform and Additional Services are available to the Customer in accordance with the relevant parts of the Service Level Agreement.
- (b) Despite paragraph (a), Dataweavers may, without notice, suspend access to the Platform and Additional Services immediately where and to the extent reasonably necessary to address any of the following:
 - (i) maintenance and repair;
 - (ii) fraud, interference or misuse of the Platform and Additional Services;
 - (iii) compliance with an order, instruction or request of a Government Authority, or other such competent body; or
 - (iv) unpaid Fees.

3.3 Subscription Tiers

Dataweavers will provide the Platform and Additional Services in accordance with the applicable Subscription Tier chosen by the Customer in the applicable Order Form. The Customer may request to change Subscription Tiers from time to time where available for the Platform or Additional Services. If Dataweavers agrees to the change, then Dataweavers will implement the arrangements for the new Subscription Tier from an agreed date, and will pro-rate charges accordingly.

4. Customer Obligations

- (a) When accessing and using the Platform or the Additional Services, the Customer must not (and must ensure that its End Users do not):

- (i) attempt to undermine the security or integrity of Dataweavers' or any third party's computing systems or networks;
 - (ii) use, or misuse, the Platform or the Additional Services in any way which may impair their functionality or the functionality of other systems used to deliver those services;
 - (iii) attempt to gain unauthorised access to any materials other than those to which the Customer has been given express permission to access;
 - (iv) attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs or systems used to deliver the Platform or the Additional Services or attempt to do so, except as strictly necessary to use the Services for their normal operation (or to the extent expressly permitted by non-excludable law);
 - (v) remove or modify any program markings or any notice of proprietary rights, or rebadge the Platform or the Additional Services or any part of them in any way, irrespective of whether such markings or notices are those of Dataweavers or a third party;
 - (vi) sublicense, rent, assign, communicate to the public or otherwise deal (wholly or in part) with the Platform without the express permission of Dataweavers; and
 - (vii) use the Platform or the Additional Services in any way that could damage the reputation of Dataweavers, or which could violate any laws or cause damage to any other party's computer devices or software.
- (b) The Customer must provide Dataweavers' support personnel with:
 - (i) all information and assistance reasonably required by Dataweavers; and
 - (ii) a suitably qualified representative,to allow Dataweavers comply with its obligations under the Agreement, which may include requiring access to Customer's Environment.
- (c) The Customer must ensure that all End Users keep their account credentials secure and must immediately notify Dataweavers of any unauthorised use of the Customer's user credentials or any other breach of security.
- (d) The Customer must use the Platform and the Additional Services only with the Approved Applications and Version Matrix as set out in the Order Form (and as updated by Dataweavers from time to time).
- (e) Dataweavers is unable to provide the Platform or the Additional Services if Service Principal access to the Hosting Services Subscription is revoked. If for any reason Service Principal access is revoked, the Customer must immediately notify Dataweavers and must do all things necessary to restore that access (and Dataweavers is excused from performing its obligations under the Agreement until such access is restored).

5. Variations in Scope

- (a) Where changes to the Scope, timeline, or deliverables that have been agreed upon by the Customer. Dataweavers reserves the right to propose a variation to the contract **(Variation)**. Any proposed Variation will be documented, detailing the impact on costs, timelines, and deliverables. Such Variations will only be effective upon mutual written agreement between the Customer and Dataweavers.
- (b) Variations may arise during onboarding:
 - (i) Where significant additional components or configurations are identified which deviate from the initial Scope captured in the Order Form;
 - (ii) Where additional components or configurations are identified that require a material change to the project execution plan after design is accepted (**Design Acceptance**)
 - (iii) Where cumulative delays or deviations caused by the Customer or its contracted parties that would reasonably require an adjustment of more than 10% to the planned time or resources. Causes may include, but are not limited to:
 - (A) Failure to complete dependent works within agreed timelines.
 - (B) Failure to provide Dataweavers with the necessary access permissions.
 - (C) Failure to provide Dataweavers with requested information.
- (c) Variations that may arise during ongoing operations:
 - (i) Changes in in the implemented design including additional components and / or new configurations that are required to be managed.
 - (ii) Changes to systems or processes not managed by Dataweavers that the Customer solution is dependent on.
 - (iii) Changes to traffic volumes, number of top-level domains, number of environments, number of hosted integration services or functions, number of DevOps pipelines, the required page load times or time to first byte or increase data volumes.

6. Additional Services

- (a) The Customer may request Dataweavers to perform services from the Service Catalogue, in addition to providing access to the Platform (**Additional Services**).
- (b) If Dataweavers agrees to provide any Additional Services (at its discretion), Dataweavers will provide the Additional Services at the rates as specified for the specific Additional Service(s) set out in the Service Catalogue, or where a rate is not specified in the Service Catalogue, at the rate advised by Dataweavers to the Customer at the time the relevant Additional Service is requested.
- (c) The Customer acknowledges that Dataweavers may add or remove services from the Service Catalogue, or amend or alter the rates specified for the Additional Services in the Service Catalogue, at its discretion from time to time. Any such changes will only apply to

Additional Services ordered after the effective date of the applicable change (that is, not during the existing term for an Additional Service ordered before the date of the change).

7. Intellectual Property

7.1 Licence

- (a) Subject to payment of the Fees, Dataweavers grants to the Customer a non-exclusive, non-transferrable licence for the Agreement Term to use and access the Platform and the Additional Services in accordance with the Agreement.

7.2 Ownership

- (a) Dataweavers warrants that, at the commencement of the Agreement, it is entitled to grant the rights and licenses in respect of the Platform and Additional Services, subject to the terms and conditions of the Agreement.
- (b) All Intellectual Property Rights subsisting in the Platform and the Additional Services are either owned by Dataweavers or licensed from third parties by Dataweavers (as the case may be). Nothing in the Agreement has the effect of passing ownership of such Intellectual Property Rights to any person, including the Customer.
- (c) Dataweavers retains ownership of all Intellectual Property Rights in any modifications to the Platform and the Additional Services created by or for Dataweavers whether before or after the date of the Agreement.

7.3 Continued development

- (a) Dataweavers may solicit comments, information, requests, data, ideas, enhancement requests, recommendations, description of processes, or other information concerning Platform and Additional Services from End Users or the Customer (**Feedback**).
- (b) Dataweavers owns all Intellectual Property Rights in any Feedback and may use such Feedback for purpose related to the Platform and Additional Services or the carrying out of services generally in its business activities without further approval, acknowledgment or payment of any sort, and the Customer hereby assigns to Dataweavers any Intellectual Property Rights in any such Feedback immediately from creation (and will procure any necessary assignment from any End User).

7.4 Marketing Rights

- (a) The Customer grants to Dataweavers the Marketing Rights and acknowledges that the grant of the Marketing Rights to Dataweavers survives the termination of the Agreement.

7.5 Customer Materials

- (a) All Intellectual Property Rights subsisting in the Customer Materials are either owned or licensed from third parties by the Customer (as the case may be). Nothing in the Agreement has the effect of passing ownership of any Intellectual Property Rights in the Customer Material to any person.
- (b) The Customer hereby grants to Dataweavers a perpetual, royalty free, non-exclusive, non-transferable licence to use, operate, modify, support and maintain the Customer Materials

in order to perform its obligations and exercise its rights under or in connection with the Agreement.

7.6 Licence to third party products

If set out in the applicable Order Form, Dataweavers will procure for the Customer licences to third party product(s). The third party products are licensed by the applicable third party vendor (not Dataweavers) in accordance with the EULA, and the Customer must accept and comply with the EULA as a condition of using the third party product(s).

7.7 No exclusivity

Dataweavers may supply products or services similar to or the same as the Platform and Additional Services to its customers or other third parties.

8. Customer Data

8.1 Provision of information

In using the Platform or the Additional Services, the Customer and End Users will provide Customer Data to Dataweavers. Customer Data is handled in accordance with the Data Protection Addendum, which is incorporated into and expressly forms part of the Agreement.

9. Term

9.1 Agreement Term

- (a) Subject to clause 8.1(b), the Agreement will commence on the Agreement Date and will remain in force until the expiry of the Initial Term, unless terminated earlier in accordance with the Agreement.
- (b) The Customer may request an extension to the Agreement for a Further Period commencing on the expiry of the Initial Term (or then-current Further Period), by giving Dataweavers at least 30 days' written notice before the expiry of the then-current term. Dataweavers may agree to or decline any such request in its discretion, and may agree subject to amendments to the then-current terms of the Agreement (including changes to the Fees). No extension will take effect until agreed in writing by both parties.
- (c) Together, the Initial Term and any Further Period(s) are the '**Agreement Term**'.

9.2 Termination by Dataweavers

Dataweavers may terminate the Agreement in whole or in part if:

- (a) the Customer fails to pay any amount of Fees as and when due, and fails to remedy the non-payment within 10 days of receiving notice to do so;
- (b) the Customer commits a material breach of the Agreement (other than a payment breach covered by paragraph (a)) which is capable of being remedied and which is not remedied within 14 days after receiving written notice of the breach;
- (c) the Customer commits a material breach of the Agreement which is not capable of being remedied;
- (d) the Customer becomes Insolvent (subject to applicable law); or

- (e) the Customer infringes Dataweavers' Intellectual Property Rights.

9.3 Termination by Customer

The Customer may terminate the Agreement in whole or in part if:

- (a) Dataweavers commits a material breach of the Agreement which is capable of being remedied and does not remedy that breach within 14 days after receiving written notice of the breach from the Customer;
- (b) Dataweavers commits a material breach of the Agreement which is not capable of being remedied; or
- (c) Dataweavers becomes Insolvent (subject to applicable law).

If the Customer terminates the Agreement within 24 months from the Agreement Date (or 24 months from the start of a Further Period, if relevant), it will be liable for an early termination fee, payable immediately, consisting of:

- (d) If waived initially or not already paid, the Onboarding Fees; and
- (e) Any outstanding or unpaid Fees due for the balance of the Initial Term or relevant Further Period (as relevant).

9.4 Preservation of rights

Termination of the Agreement for any reason (including but not limited to termination pursuant to any provision of this clause 7) will not extinguish or otherwise affect:

- (a) any rights or remedies of either party against the other which:
 - (i) accrued prior to the time of the termination;
 - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under the Agreement which arose prior to the time of the termination; or
- (b) the provisions of the Agreement which expressly or by their nature survive termination.

9.5 Post-termination or expiry

- (a) Upon termination or expiry of the Agreement:
 - (i) Dataweavers will remove the Platform from the Hosting Services Subscription and ensure the Customer Code and Digital Experience Platform are able to serve web pages and content;
 - (ii) Customer Data will remain in the Customer's Hosting Services Environment and is not accessible by Dataweavers;
 - (iii) it is the Customer's responsibility to transfer control, or migrate to another Provider:
 - (A) the Customer Code;
 - (B) the Digital Experience Platform; and

(C) the Hosting Services Environment,

if it wishes to do so.

- (b) At the expiry of the Agreement Term, if the Customer would like Dataweavers to assist with the migration of the Customer Data from the Hosting Services Environment to another provider, it may request Dataweavers to provide a quote for that work in connection with the relevant Service Catalogue item. Dataweavers may choose whether or not to provide the quote, but in any case, Dataweavers will not be required to perform the work until the parties have agreed the quote (if any) in writing.

10. Fees, invoicing and payment

10.1 Fees

- (a) The Customer must pay the Fees in the amounts and at the frequencies set out in the Order Form.
- (b) With effect from the end of the Initial Term (and any Further Period), Dataweavers may revise the Fees. If the Customer does not agree to the revised Fees, it may terminate the Agreement with effect from the end of the Initial Term (or relevant Further Period, as applicable).
- (c) To the maximum extent permitted by law, any Fees paid are non-refundable and no credits or refunds will be provided in respect of partially used periods.

11. Liability and Indemnity

11.1 Exclusion of Implied Terms

- (a) Except as expressly provided by the Agreement, and to the maximum extent permitted by law, the Platform and Additional Services are provided on an "as is" basis without any representation, warranty, condition or guarantee, whether express or implied, statutory, out of a course of dealing or usage, trade or otherwise, including any implied warranty or condition of merchantability quality or fitness for any particular purpose or use (**Implied Terms**).
- (b) To the maximum extent permitted by law, Dataweavers does not warrant that the Platform or Additional Services will be free of defects, uninterrupted, accurate, complete, current, stable, bug free, error free or available at any particular time in respect of its operation.
- (c) To the extent any liability of Dataweavers in connection with any Implied Terms cannot be excluded but can be limited, Dataweavers limits its liability in respect of such Implied Terms to the maximum extent possible, including where relevant, to the resupply or payment of the cost of the resupply of the applicable Platform or Additional Service.

11.2 Excluded losses

- (a) Subject to 10.1(c), in no event will any party be liable to another for:
 - (i) a loss of profits, business, business opportunity, loss of use, loss or corruption of data, revenue, goodwill or anticipated savings; or

- (ii) indirect or consequential Loss or damage, being any loss or damage that does not flow naturally, that is, according to the usual course of things, from the relevant breach, act or omission,
- (b) Dataweavers is not liable to the Customer for any losses to the extent caused or contributed to by elements of the Customer Environment not provided by Dataweavers.

11.3 Caps on Liability

Subject to 10.1(c) and 10.4, Dataweavers' liability to another party for all Claims under or in connection with the Agreement is, in aggregate, capped at the amount paid by the Customer to Dataweavers under the Agreement in the 6 months prior to the event occurring which gives rise to the Claim.

11.4 Indemnity

- (a) Subject to clause 10.4(b), Dataweavers will:
 - (i) defend the Customer and its employees and directors (in this clause referred to as 'those indemnified') against any Claim brought by a third party against any of those indemnified alleging the infringement of the Intellectual Property Rights of that third party, which infringement occurred by reason of the use of the Platform or Additional Services by the Customer in accordance with the Agreement; and
 - (ii) pay any agreed settlement amount, or final judgment awarded against those indemnified, in connection with such proceedings.
- (b) Dataweavers' obligation under (a) will be reduced to the extent that the relevant third party claim relates to or is caused or contributed to by:
 - (i) the breach of this agreement by the Customer;
 - (ii) the unlawful acts or omissions of the Customer;
 - (iii) the combination of the Platform or Additional Services with third party products or services not supplied by Dataweavers, where the alleged infringement would not arise but for that combination; or
 - (iv) Customer Data.

12. Confidentiality

12.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party (a **Discloser**) undertakes to keep the Confidential Information of the other party (a **Recipient**) secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

12.2 Use of Confidential Information

A Recipient may only use or reproduce the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under the Agreement.

12.3 Disclosure by Recipient

A Recipient disclosing information under the Agreement must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted under the Agreement.

12.4 Return of Confidential Information

At the request of a Discloser and subject to clause 11.5, a Recipient must:

- (a) return to the Discloser all Confidential Information of the Discloser; or
- (b) destroy the Discloser's Confidential Information and certify to the Discloser that it has been destroyed.

12.5 Exceptions

Nothing in the Agreement prohibits the use or disclosure of any Confidential Information to the extent that the Recipient can demonstrate that:

- (a) the information is received by the Recipient from a third party who is not under an obligation of confidence in relation to such information;
- (b) the information is generally and publicly available other than as a result of a breach of confidence by the person disclosing or receiving the information;
- (c) the information is independently developed by the Recipient's Personnel who do not have access to any of the Discloser's Confidential Information; or
- (d) the information was lawfully known to the Recipient prior to receipt of the information from the Discloser.

12.6 Damage and other remedies

Each party acknowledges that a breach of this clause 11 may cause the other party irreparable damage for which monetary damages may not be an adequate remedy. Accordingly, in addition to other remedies that may be available, each party may seek and obtain injunctive relief against such a breach or threatened breach.

13. Dispute Resolution

- (a) If a dispute (**Dispute**) arises between the parties to the Agreement (**Participants**) that arises out of or in connection with the Agreement (including any dispute as to the validity of the Agreement) which they cannot resolve, then the parties agree that before any court or arbitration proceedings (other than for urgent interlocutory or injunctive relief) are commenced with respect to the Dispute, the following steps must be taken to attempt to resolve the Dispute.
- (b) The party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).
- (c) During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Dispute Period**), the Participants must use their reasonable endeavours and act in good faith in an attempt to resolve the Dispute.

- (d) If the Participants cannot resolve the Dispute within the Initial Dispute Period, then unless they all agree otherwise, the Participants must refer the Dispute to the Resolution Institute for the facilitation of a mediation according to the Resolution Institute's Mediation Rules.
- (e) If within 10 Business Days after the referral of the Dispute to the Resolution Institute the parties have not agreed upon the mediator or any other relevant particular, the mediator and the particular not agreed will be determined in accordance with the Resolution Institute's Facilitation Rules.
- (f) All Participants must participate in the mediation in good faith and cooperate with the Resolution Institute as a facilitator.
- (g) Any Participant may initiate arbitration in the Jurisdiction with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire.
- (h) In the event of any dispute arising out of or relating to this Agreement, the substantially prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the substantially non-prevailing party.

14. General provisions

14.1 Assignment

- (a) Dataweavers may assign, novate or otherwise transfer any of its rights or obligations under the Agreement without further notice to the Customer provided the assignee has sufficient financial and operational capacity to perform the obligations of Dataweavers under the Agreement.
- (b) The Customer must not assign, novate or otherwise transfer any of its rights or obligations under the Agreement without first obtaining the express written consent of Dataweavers.

14.2 Costs

Each party will pay their respective costs and expenses of in connection with the negotiation, preparation, execution, and performance of the Agreement.

14.3 Force Majeure Event

Neither party is liable for any breach of its obligations under the Agreement to the extent that the breach resulted from any event that is outside the reasonable control of the affected party and could not have been prevented by that party taking reasonable steps or overcome by the exercise of reasonable diligence and at a reasonable cost (including lack of supply, industrial action, fire, riot, war, embargo, civil commotion for act of God) provided that the affected party:

- (a) promptly notifies the other party of the event (with appropriate details); and
- (b) takes all reasonable steps to work around or reduce the effects of the event.

14.4 Value Added Taxes

- (a) Unless otherwise expressly stated, all amounts stated to be payable under the Agreement are exclusive of sales, use, excise, services, value added or similar taxes. If taxes are imposed on any supply made under or in accordance with the Agreement, then the taxes payable must be paid to the supplier as an additional amount by the recipient of the supply, provided the supplier provides a tax invoice in respect of the taxable supply.
- (b) If a party is entitled to be reimbursed or receive compensation for any of its costs, expenses or liabilities then the amount to be paid is to be reduced by the input tax credits to which that party is entitled to receive in relation to those amounts.

14.5 Notices

- (a) Any notice given under or in connection with the Agreement must be in legible writing, in English and signed by the party giving the notice or (on its behalf) by an authorised agent and be delivered by email to the addressee. If the notice is for Dataweavers, such notice must be sent to legal@dataweavers.com; if the notice is for the Customer, such notice must be sent to the address specified in the Agreement or such other address as is notified from time to time for the purpose of receiving notices.
- (b) A notice will be deemed to be received by the addressee:
 - (i) if sent by electronic mail, 2 hours after the time of sending recorded on the sender's email logs (or if outside business hours in the location at which the recipient is located, the start of the next working day in that place), unless the sender has received a send failure receipt.

14.6 Other

- (a) Subject to 2(d) the Agreement may only be varied by a written agreement signed by or on behalf of each of the parties.
- (b) Unless the Agreement expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under the Agreement. To be effective any consent under the Agreement must be in writing.
- (c) The Agreement, including the Order Form, the Data Processing Addendum, the Service Level Agreement and the Service Catalogue contains the entire agreement between the parties about its subject matter in respect of the Services. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (d) Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to the Agreement.
- (e) The Agreement is governed by the law in force in the Jurisdiction and each party submits to the non-exclusive jurisdiction of the courts of the Jurisdiction, in relation to any proceedings that may be brought at any time relating to the Agreement. Each party irrevocably waives any objection to proceedings being commenced in the Jurisdiction.
- (f) No right or obligation of any party will merge on completion of any transaction contemplated by the Agreement. Any indemnity given in the Agreement survives the expiry

or termination of this document and a party may enforce a right of indemnity at any time, including before it has suffered loss.

- (g) Each party represents and warrants to the other that it has the power to enter into and perform its obligations under this Agreement, and the Agreement creates valid and binding obligations in accordance with its terms.
- (h) Any provision of the Agreement that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of the Agreement which remain in force.
- (i) The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.

15. Definitions and Interpretation

In the Agreement the following definitions apply unless the context requires otherwise:

- (a) **Additional Services** has the meaning given in clause 5(a).
- (b) **Agreement** has the meaning given in clause 2(a).
- (c) **Agreement Date** means the date the Order Form is executed by the Customer, or the Customer first accesses the Platform, whichever occurs first.
- (d) **Agreement Term** means the number of consecutive Monthly Periods set out in the Order Form that the relevant services are to be provided by Dataweavers to the Customer as part of the Initial Term, and any one or more Further Period(s) agreed by the parties in writing.
- (e) **Azure and Microsoft Azure** mean the cloud platform and associated services provided by Microsoft Ireland Operations Limited or its related companies (as the case may be).
- (f) **Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business in the jurisdiction set out in the applicable Order Form.
- (g) **Business Hours** mean 9:00 am to 5:00 pm, Monday through Friday, in the time zone of the customer's primary place of business, as specified in the Customer Details section of the Order Form.
- (h) **Claim** means, in relation to a person, any demand, claim, action, dispute, allegation or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.
- (i) **Confidential Information** means all information (regardless of form) belonging to a party or any related entity of that party which:
 - (i) can reasonably be inferred to be confidential from the circumstances in which it is disclosed;
 - (ii) is disclosed to or observed by another party for the purpose of the Agreement; and
 - (iii) includes all notes, compilations, analyses, extracts, summaries and other records prepared by or for the benefit of a party in connection with the performance of the Agreement,

but does not include information that is or becomes known or generally available to the public, except if this happens because of a breach of any obligation of confidence (in which case it remains confidential).

- (j) **Customer** means the person or entity identified as such in the Order Form.
- (k) **Customer Code** means code, libraries, modules, scripts or third-party software that the Customer has chosen to supply and use in connection with the Platform and/or Additional Services.
- (l) **Customer Data** means data owned or supplied by the Customer and stored on the systems of Dataweavers or a Hosting Service as a result of the Customer's usage of the Platform and/or Additional Services.
- (m) **Customer Materials** means any trademarks, images, content or other materials developed by the Customer prior to the Agreement Date or independently of the Agreement and includes any Customer Data.
- (n) **Dataweavers** means the contracting entity that is referred to in the Order Form.
- (o) **Data Processing Addendum** means the data processing addendum made available on Dataweavers website at <https://www.dataweavers.com/legal/dpa> , as amended from time to time.
- (p) **Defect** means a material failure of the Platform to comply with the requirements of the Agreement.
- (q) **DevOps Configuration** means the minimum DevOps configuration outlined in the Order Form.
- (r) **Design Acceptance** means the formal acceptance of the design by the Customer that is detailed in the Scope and Order Form.
- (s) **Digital Experience Platform** means the application software version that is provided by the relevant third-party platform provider to the Customer prior to Customer Code being implemented.
- (t) **Digital Experience Platform Environment** means the combination of the Platform, the DevOps Configuration, the Digital Experience Platform and Customer Code running together in Minimum Hosting Service Environment Details for the purposes serving web pages and content.
- (u) **End User** means the Personnel of the Customer, or third-party providers to the Customer, who are permitted to access the Platform on behalf of the Customer, as identified as such in the Order Form, or as amended with Dataweavers' approval from time to time.
- (v) **Environment** means the combination of the Customer's hardware, software, telecommunication links, devices, equipment and other material (or any of its constituent parts) to be used to access and use the Platform or Additional Services.
- (w) **Fair Use Policy** means the limits on usage of the service applied to monthly usage.
- (x) **Fees** means the amounts payable to Dataweavers in accordance with the terms of the Agreement, including those set out in the Order Form.

- (y) **Government Authority** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- (z) **Hosting Services** means the Azure hosting services provided by Microsoft Ireland Operations Limited or its related companies (as the case may be).
- (aa) **Hosting Services Fees** means the total fees that are paid by the Customer to the Provider for the Hosting Services Subscription outlined in the Order Form.
- (bb) **Hosting Services Subscription** means the Azure hosting services subscription identifier provided by Microsoft Ireland Operations Limited or its related companies (as the case may be).
- (cc) **Included Website URLs** means the websites, Top Level Domains and URLs that the Dataweavers contract is limited to as outlined in the Order Form. Any additions or changes to these may change the Scope of the commercial agreement with Dataweavers.
- (dd) **Insolvent** means if a person is insolvent or an insolvent under administration, or has a controller appointed (each as defined in applicable law, or their analogous definitions if not so defined), is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction whilst solvent) or otherwise unable to pay debts when they fall due. Insolvency and Insolvency Event have a comparable meaning.
- (ee) **Intellectual Property Rights** means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know-how and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organization of 14 July 1967 as amended from time to time.
- (ff) **Jurisdiction** means the jurisdiction set out in the Order Form.
- (gg) **Licensed Organization** means the organization identified as the licensed organization under the Order Form that has an active subscription to the Digital Experience Platform with active maintenance agreement.
- (hh) **Loss** includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.
- (ii) **Monthly Periods** means the number of months in the Agreement Term.
- (jj) **Marketing Rights** means the right of Dataweavers to use the Customer's name, logo and a brief description of the solution provided to the Customer on the Dataweavers website, articles and promotional materials for the purposes of advertising Dataweavers' products and services.

- (kk) **Minimum Hosting Service Environment Details** means the configuration detail outlined in the Hosting Services Module and Order Form, being the minimum specification of the Hosting Services Subscription.
- (ll) **Minimum SaaS Service Environment Details** means the configuration detail outlined is intended to be the minimum specification of the SaaS Services Subscription. Should the Customer change or delegate control from SaaS Services Subscription this may initiate a review of commercial costing to account for new policies, procedures and processes introduced as a result of the change.
- (mm) **Moral Rights** has the meaning given to that term in the Copyright Act 1968 (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes to exist anywhere in the world.
- (nn) **New Release** means an update to the Product which is provided primarily to implement an extension, alteration, improvement, or additional functionality to the Product or otherwise improve functionality or correct an error in the Product.
- (oo) **Onboarding Fees** means the fees payable for solution design, audit deployment and go-live of a Customer's environment.
- (pp) **Order Form** means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Dataweavers including any addenda and supplements to such order form.
- (qq) **Page Load Time** means the total load time of the Customer's webpage including the Response Time and all HTML, CSS, JSON and JavaScript as rendered by the Customer Code.
- (rr) **Patch** means software which has been produced primarily to overcome defects in the Product.
- (ss) **Partner Admin Link** connects the Customer subscription to Dataweavers as the nominated supporting Microsoft partner. This is required to provide Dataweavers support engineers access to log support tickets with Microsoft if required.
- (tt) **Personnel** includes officers, employees, agents, contractors, consultants and representatives.
- (uu) **Platform** means the solution delivered on an 'as a service' basis, as further described in clause 1.2, the Platform Module and Order Form, and includes:
 - (i) all Intellectual Property Rights in its components;
 - (ii) any enhancements, upgrades or modifications thereto; and
 - (iii) any content or material made available by Dataweavers for the purposes of the Agreement.
- (vv) **Production Performance Criteria** means the criteria Dataweavers uses to make operational decisions about the Customer's production Environment when an unexpected incident such as high Traffic results in a degraded Page Load Time, as set out in the Order Form.

- (ww) **Provider** means the organization that supplies the Hosting Services Subscription to the Customer.
- (xx) **Response Time** means the server-side response time for a given request to the Digital Experience Platform Environment as measured by Microsoft Azure application insights.
- (yy) **Resolution Institute** means the Resolution Institute, ABN 69 008 651 232, an Australian not-for-profit membership organization that promotes alternative dispute resolution including mediation.
- (zz) **Scaling** means Dataweavers making changes to increase the capacity of the Customer's environment to meet the needs of its customers, in accordance with the Production Performance Criteria.
- (aaa) **Scaling Horizontal** means the number of Azure app service instances, redis instances, sql servers / elastic pools and search units the Customer Digital Experience Platform solution is distributed across as per the Minimum Hosting Service Environment Details.
- (bbb) **Scaling Vertical** means the size of a given app service instance, number of DTUs / cores and search tier, redis instance size and/or tier and application insights storage (GB).
- (ccc) **Scope** means the Delivery of the Dataweavers Platform as set out in the Order Form.
- (ddd) **Service Level Agreement** means the service level agreement made available on Dataweavers website at <https://www.dataweavers.com/legal/sla> , as amended from time to time.
- (eee) **Service Catalogue** means the service catalogue made available on Dataweavers website at <https://www.dataweavers.com/legal/service-catalogue> , as amended from time to time.
- (fff) **Service Principal** means the reference from Microsoft Azure documentation located at <https://docs.microsoft.com/en-us/azure/active-directory/develop/app-objects-and-service-principals> (or as updated by Microsoft from time to time).
- (ggg) **Subscription Tiers** means the features and service level that are available in respect of the Platform and/or Additional Services, as set out in the Order Form.
- (hhh) **Time-to-first-byte (TTFB)** means the measurement of the time taken between a user's request for a webpage and the moment the first byte of data is received by the user's browser from the server.
- (iii) **Traffic** means the total number of page views in a given time period.
- (jjj) **Variation** means a change to the Scope, timeline, components, configurations or deliverables that have previously been agreed upon by the Customer in either the onboarding or the ongoing operations of this Agreement.

15.2 Interpretation

In interpreting the Agreement, unless the context provides otherwise:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a party means a party to the Agreement and includes the party's executors, administrators, successors, and permitted assigns;
- (d) a reference to a person includes a firm, individual, corporation, association, government body or other corporate body;
- (e) an obligation or liability assumed by two or more persons binds them jointly and severally and a right conferred on two or more persons benefits them jointly and severally;
- (f) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement or any part of it;
- (g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (h) a reference to a law or statute includes regulations under it, re-enactments and replacements; and
- (i) headings and table of contents are for ease of reference only and do not affect interpretation.