

DATA PROCESSING AGREEMENT

Effective Date: 01 June 2020

This Data Processing Agreement (the “**DPA**”) constitutes a legally binding agreement between You (the “**Customer**”, “**You**”, “**Your**”) and Us (“**Whatfix**”, “**Us**”, “**We**”, “**Our**”). You are required to read this DPA carefully as this DPA forms an integral part of the Terms of Service available at <https://whatfix.com/terms-services/> (the “**Terms**”) and is applicable where We are the Processors of Your Personal Data. In the event of a conflict between this DPA and the Terms, this DPA shall prevail.

1. Definitions

Terms not specifically defined herein shall have the meaning ascribed thereto in the Terms.

In this DPA, the following terms shall have the following meanings:

“**CCPA**” shall mean the California Consumer Privacy Act of 2018.

“**Data Protection Laws**” shall mean the data protection laws of the country in which You are established, including the GDPR, and any data protection laws applicable to You in connection with the Terms.

“**GDPR**” shall mean the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

“**Personal Data**” shall mean any information relating to an identified or identifiable natural person as defined by the General Data Protection Regulation of the European Union (“GDPR” EC-2016/679) that is Processed by Processor as part of providing the services to You as described in an Appendix.

“**Model Clauses**” means the standard contractual clauses for Processors as approved by the European Commission (Decision C(2010)593) and available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32010D0087> (as amended or updated from time to time).

“**Controller**”, “**Data Subject**”, “**Personal Data Breach**”, “**Processor**” and “**Process**” shall have the meaning given to them in the GDPR.

2. Scope and Responsibilities

2.1 This DPA applies to Processing of Personal Data forming part of Customer Content.

2.2 Whatfix shall process Personal Data only on Your behalf and at all times only in accordance with this DPA, especially the respective Appendix. For the avoidance of doubt, Whatfix shall be the Processor and You shall be the Controller of the Personal Data.

2.3 Within the scope of the Terms, each party shall be responsible for complying with its respective obligations as Controller and Processor under Data Protection Laws.

3. Term and Termination

3.1 This DPA becomes effective upon signature. It shall continue to be in full force and effect as long as Whatfix is Processing Personal Data pursuant to the Terms and shall terminate automatically thereafter.

- 3.2 Where amendments are required to ensure compliance of this DPA or an Appendix with Data Protection Laws, the parties shall make reasonable efforts to agree on such amendments upon Your request. Where the parties are unable to agree upon such amendments, either party may terminate the Terms with 90 days written notice to the other party.

4. Processing Instructions

- 4.1 Whatfix will Process Personal Data in accordance with Your instructions. This DPA contains Your initial instructions to Whatfix. The parties agree that You may communicate any change in its initial instructions to Whatfix by way of amendment to this DPA.
- 4.2 For the avoidance of doubt, any instructions that would lead to Processing outside the scope of this DPA (e.g. because a new Processing purpose is introduced) will require a prior agreement between the parties and, where applicable, shall be subject to the contract change procedure under the respective Agreement.
- 4.3 Whatfix shall without undue delay inform You in writing if, in Whatfix's opinion, an instruction infringes Data Protection Laws, and provide a detailed explanation of the reasons for its opinion in writing.

5. Processor Personnel

Whatfix will restrict its personnel from Processing Personal Data without authorisation. Whatfix will impose appropriate contractual obligations upon its personnel, including relevant obligations regarding confidentiality, data protection and data security.

6. Disclosure to Third Parties; Data Subjects Rights

- 6.1 Whatfix will not disclose Personal Data to any government agency, court, or law enforcement except with Your written consent or as necessary to comply with applicable mandatory laws. If Whatfix is obliged to disclose Personal Data to a law enforcement agency Whatfix agrees to give You reasonable notice of the access request prior to granting such access, to allow You to seek a protective order or other appropriate remedy. If such notice is legally prohibited, Whatfix will take reasonable measures to protect the Personal Data from undue disclosure as if it were Whatfix's own confidential information being requested and shall inform You promptly as soon as possible if and when such legal prohibition ceases to apply.
- 6.2 In case You receive any request or communication from Data Subjects which relates to the Processing of Personal Data ("**Request**"), Whatfix shall reasonably provide You with full cooperation, information and assistance ("**Assistance**") in relation to any such Request where instructed by You.
- 6.3 Where Whatfix receives a Request, Whatfix shall (i) not directly respond to such Request, (ii) forward the Request to You within five (5) business days of identifying the Request as being related to You and (iii) provide Assistance according to further instructions from You.

7. Technical and Organizational Measures

- 7.1 Whatfix shall implement and maintain appropriate technical and organizational security measures to ensure that Personal Data is Processed according to this DPA, to provide Assistance and to protect Personal Data against a Personal Data Breach ("**TOMs**"). Such measures shall include the measures set out in Appendix 2.

8. Assistance with Data Protection Impact Assessment

- 8.1 Where a Data Protection Impact Assessment ("DPIA") is required under applicable Data Protection Laws for the Processing of Personal Data, Whatfix shall provide upon request to You any information and assistance reasonably required for the DPIA and assistance for any communication with data protection authorities, where required, unless the requested information or assistance is not pertaining to Whatfix's obligations under this DPA.
- 8.2 You shall pay Whatfix reasonable charges for providing the assistance in clause 7, to the extent that such assistance is not reasonably able to be accommodated within the normal provision of the Services.

9. Information Rights and Audit

- 9.1 Whatfix shall, in accordance with Data Protection Laws, make available to You on request in a timely manner such information as is necessary to demonstrate compliance by Whatfix with its obligations under Data Protection Laws.
- 9.2 Whatfix shall, upon reasonable notice, allow for and contribute to audits of Whatfix's Processing of Personal Data, as well as the TOMs (including data Processing systems, policies, procedures and records), during regular business hours and with minimal interruption to Whatfix's business operations. Such audits shall be conducted by You, Your affiliates or an independent third party on Your behalf (which will not be a competitor of Whatfix) that is subject to reasonable confidentiality obligations.
- 9.3 You shall pay Whatfix reasonable costs of allowing or contributing to audits or inspections in accordance with clause 10.2 where You wish to conduct more than one audit or inspection every 12 months. Whatfix will immediately refer to You any requests received from national data protection authorities that relate to Whatfix's Processing of Personal Data.
- 9.4 Whatfix undertakes to cooperate with You in its dealings with national data protection authorities and with any audit requests received from national data protection authorities.

10. Personal Data Breach Notification

In respect of any Personal Data Breach (actual or reasonably suspected), Whatfix shall:

- 10.1 notify You of a Personal Data Breach involving Whatfix or a subcontractor without undue delay and it shall be Your responsibility to inform the Supervisory Authority of such breach within 72 hours of notice by Whatfix;
- 10.2 provide reasonable information, cooperation and assistance to You in relation to any action to be taken in response to a Personal Data Breach under Data Protection Laws, including regarding any communication of the Personal Data Breach to Data Subjects and national data protection authorities.

11. Subcontracting

- 11.1 You consent to Whatfix engaging third party sub-processors as indicated in Appendix 1 to Process Personal Data to fulfil its obligations under the Agreement provided that, Whatfix will provide at least fifteen (15) days' notice to Your account administrator prior to the appointment or replacement of any sub-processor. You may object to Whatfix's appointment or replacement of a sub-processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, Whatfix will either not appoint or replace the sub-processor or, if this is not possible You may suspend or terminate the Service(s) (without prejudice to any fees incurred by You prior to such suspension or termination).

- 11.2 Where Whatfix, with Your consent, subcontracts its obligations and rights under this DPA it shall do so only by way of a binding written contract with the sub-processor which imposes essentially the same obligations according to Art. 28 GDPR especially with regard to instructions and TOMs on the sub-processor as are imposed on Whatfix under this DPA.
- 11.3 Where the sub-processor fails to fulfil its data protection obligations under the subcontracting agreement, Whatfix shall remain fully liable to You for the fulfilment of its obligations under this DPA and for the performance of the sub-processor 's obligations.

12. International Data Transfers

Whatfix shall at all times provide an adequate level of protection for the Personal Data, wherever processed, in accordance with the requirements of Data Protection Laws. Where Whatfix processes Personal Data under this Agreement that originates from the EEA (including United Kingdom) and/or Switzerland, any such processing shall be conditional on Whatfix complying with (and procuring any sub-processor comply with) the Model Clauses, which are incorporated by reference and form an integral part of this Agreement. Purely for the purposes of the descriptions in the Model Clauses and only as between Whatfix and You, Whatfix agrees that it is a “data importer” and Controller is the “data exporter” under the Model Clauses (notwithstanding that Controller is located outside the EEA). Further, Appendix 1 and 2 of this Agreement will take the place of Appendixes 1 and 2 of the Model Clauses respectively.

13. Deletion or Return of Personal Data

Upon termination or expiry of the Terms, Whatfix shall delete all Customer Content, including Personal Data within 30 days of effective termination of Your account. Within such retention period, You may export the Customer Content by writing to Whatfix at [●]. This requirement shall not apply to the extent that Whatfix is required by applicable law to retain some or all of the Personal Data, in which event Whatfix shall isolate and protect the Personal Data from any further processing except to the extent required by such law.

14. CCPA undertaking

You acknowledge and agree that You are the Business and Whatfix the Service Provider with respect to any Personal Information of Consumers (as those terms are understood under the CCPA) forming part of Customer Content. Whatfix will not sell, retain, use, or disclose Personal Information of Consumers that Whatfix processes on Your behalf when providing the SaaS Services under the Terms for any purpose other than for the specific purpose of providing the SaaS Services in accordance with the Terms and as part of the direct relationship between Whatfix and the Customer. Whatfix certifies that it understands the restrictions in this clause 14 and will comply with such restrictions.

15. Miscellaneous

- 15.1 Whatfix may perform analytics on Customer Content to improve, enhance, support and operate the Service and compile statistical reports and record insights into usage patterns. You acknowledge that Whatfix uses Customer Content for the aforementioned purpose in compliance with applicable laws.
- 15.2 In case of any conflict, the provisions of this DPA shall take precedence over the provisions of any other agreement with Whatfix.

- 15.3 No party shall receive any remuneration for performing its obligations under this DPA except as explicitly set out herein or in another agreement.
- 15.4 Where this DPA requires a “written notice” such notice can also be communicated per email to the other party. Notices shall be sent to the contact persons set out in Appendix 1.
- 15.5 Any supplementary agreements or amendments to this DPA must be made in writing and signed by both parties.
- 15.6 Should individual provisions of this DPA become void, invalid or non-viable, this shall not affect the validity of the remaining conditions of this Agreement.

The following Appendices forms an integral part of this DPA:

APPENDIX 1

DETAILS OF THE PROCESSING OF PERSONAL DATA

1. Data subjects

Data Subjects are those individuals whose Personal Data is transferred to the Processor pursuant to the Terms.

2. Categories of data

Categories of data include Personal Data of the Users or the End-users of the Service(s) forming part of the Customer Content.

3. Processing operations

Processor must process the data collected from or for the Controller or in connection with its services provided to the Controller solely to provide the services specified in the Service Agreement. The duration of processing will be as designated in the Service Agreement.

4. List of Sub-processors

SUB-PROCESSOR NAME	PURPOSE OF PROCESSING	TYPE OF DATA PROCESSED
AWS	For managing our cloud infrastructure (backup for DigitalOcean)	Name, Email id, Phone number, Company Name, IP Address, Geographical data, Platform Activity Data
DigitalOcean	For managing our cloud infrastructure	Name, Email id, Phone number, Company Name, IP Address, Geographical data, Platform Activity Data
Google Analytics	For better understanding our customers	Name , Email Id, User Id