

## WHATFIX SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (“**SaaS Agreement**” or “**Agreement**”) is entered into between [Whatfix Limited] and its affiliates (“**Whatfix**”), a company organized and existing under the laws of England and having its principal place of business at 1 St. Peters Square, Manchester, England, M2 3DE and \_\_\_\_\_ (*insert name of the Company*) a company organized and existing under the laws of [insert] with its principal place of business at \_\_\_\_\_ (*insert address of the Company*) (“**Customer**”) on \_\_\_\_\_, 2020 (“**Effective Date**”). Whatfix and Customer agree that the following terms and conditions will apply to the services provided under this Agreement and Orders placed thereunder.

### 1. DEFINITIONS

- 1.1. “**Affiliate**” means, in relation to a Party, such Party’s holding companies and the direct or indirect subsidiaries of such holding companies from time to time
- 1.2. “**Application**” shall mean any software used by the Customer for its internal purposes.
- 1.3. “**Business Day**” refers to a working day in which normal business operations are conducted.
- 1.4. “**Customer Content**” means all data and materials created or provided by Platform User to Whatfix for use in connection with the SaaS Services, including, without limitation, flows, text snippets, images, and videos.
- 1.5. “**Data Protection Legislation**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and all other applicable data protection and privacy legislation in force from time to time including the EU General Data Protection Regulation (EU) 2016/279 and the Data Protection Act 2018, which apply to the processing of Personal Data pursuant to this SaaS Agreement.
- 1.6. “**Documentation**” means the user guides, online help, release notes, training materials and other documentation provided or made available by Whatfix to Customer regarding the use or operation of the SaaS Services.
- 1.7. “**End User(s)**” means an individual that uses the Customer Application & interacts with Whatfix widgets overlays & content on top of the Application and includes Platform users.
- 1.8. “**End User Data**” means any data or information of any End User that is provided to or obtained by any Party in the performance of its obligations under this Agreement, including but not limited to, all lists of End Users, former End Users, and all information relating to and identified with such End Users.
- 1.9. “**Intellectual Property Rights**” means all (i) copyrights (including, without limitation, the right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author’s rights, privacy rights, publicity rights, algorithms, rights in packaging, goodwill and other proprietary rights, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States Kingdom or any other state, country or jurisdiction; (ii) intangible legal rights or interests evidenced by or embodied in any idea, design, concept, technique, invention, discovery, enhancement or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; and (iii) all derivatives of any of the foregoing.
- 1.10. “**Order Form**” shall mean the Order Form executed by Whatfix and Customer, defining the scope of Customer’s subscription plan for use and access of the Software.
- 1.11. “**Personal Data**” has the meaning given to it in the Data Protection Legislation.
- 1.12. “**Platform User**” means each Customer employee designated by Customer to serve as user of the Whatfix SaaS platform on Customer’s behalf. Each Platform User must complete training and qualification requirements reasonably requested by Whatfix.
- 1.13. “**Professional Services**” means consulting, implementation or other services that may be provided by Whatfix to Customer hereunder and that may involve analysis, development, technical support, integration, and training, as set forth in more detail in the SOW or Order Form.
- 1.14. “**Software**” means the object code version of the Digital Adoption Platform (DAP) software to which Customer is provided access as part of the Service, including any updates or new versions under the brand name “Whatfix”

- 1.15. “**SaaS Services**” means the cloud-based Software as made available by Whatfix to Customer hereunder in a hosted, software-as-a-service format, and including all upgrades, updates and patches to the SaaS Services that Whatfix makes available for general release at no additional charge to its Customers.
- 1.16. “**Support Services**” means the technical support services for the SaaS Services available at <https://info.whatfix.com/legal/Support+Terms.pdf> (“**Support Terms**”).
- 1.17. “**Subscription Term**” shall mean that period specified in the applicable Order Form during which Customer will have on-line access and use of the Software through Whatfix’s SaaS Services.
- 1.18. “**Subscription Fees**” or “**Fees**” shall mean the amounts as mentioned in the applicable Order Form.
- 1.19. “**Flows**” Whatfix Flow or “**Walkthroughs**” are a series of steps that help users learn an objective or complete a task through a series of step-by-step actions. These steps display as a layer over your web application.

## 2. SAAS SERVICES

- 2.1 Subject to the Customer paying the Subscription Fees in accordance with this Agreement, during the Subscription Term, Customer will receive a non-exclusive, non-assignable, non-sublicensable, royalty free, worldwide right to access and use the SaaS Services solely for its internal business operations subject to the terms of this Agreement and up to the number of application users documented in the Order Form.
- 2.2 Whatfix will provide Customer with Support Services with respect to the SaaS Services so long as Customer has paid all outstanding Subscription Fees at the time such Support Services are required.
- 2.3 Customer acknowledges that this Agreement is a services agreement and Whatfix will not be delivering copies of the Software to Customer as part of the SaaS Services. In case of a self-hosted deployment, Whatfix will provide the Customer the capability to host the Customer Content and the SaaS service on the Customer’s servers.
- 2.4 Whatfix shall work with the Customer and provide the onboarding and training assistance for the creation of Flows and Customer Content for the SaaS services to be availed by the Customer.

## 3. PROFESSIONAL SERVICES

The Professional Services shall be provided in accordance to the Statement of Work (“**SOW**”) or the Order Form executed by the Customer, if applicable and shall be provided remotely (and not at Customer’s premises), unless otherwise agreed in writing between the Parties in the SOW or Order Form.

## 4. RESTRICTIONS

Customer shall not, and shall not permit anyone to: (i) copy or republish the SaaS Services or Software, (ii) make the SaaS Services available to any person other than authorized End User, (iii) use or access the SaaS Services to provide service bureau, time-sharing or other computer hosting services to third parties, (iv) modify or create derivative works based upon the SaaS Services or Documentation or copy, modify, transmit, distribute, frame or mirror any of the Software in any form or media or by any means, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the Software used to provide the SaaS Services or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software used to provide the SaaS Services, except and only to the extent such activity is expressly permitted by applicable law, (vii) license, sell, resell, transfer, rent, lease, distribute, exploit or otherwise make the SaaS Services or Software available to anyone other than the End Users or (viii) access the SaaS Services or use the Documentation in order to build a similar product or competitive product. Subject to the limited licenses granted herein, Whatfix shall own all right, title and interest in and to the Software, Services, Documentation, and other deliverables provided under this SaaS Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and Intellectual Property Rights therein. Customer agrees to assign all right, title and interest it may have in the foregoing to Whatfix.

## 5. CUSTOMER RESPONSIBILITIES

- 5.1 **Assistance:** Customer shall provide commercially reasonable information and assistance to Whatfix to enable Whatfix to deliver the SaaS Services. Upon request from Whatfix, Customer shall promptly deliver Customer Content to Whatfix in an electronic file format specified and accessible by Whatfix and provide access to training/development environment of the Application, Customer shall make necessary connections with business/technical teams and shall explain business objectives and process to Whatfix. Customer acknowledges that Whatfix's ability to deliver the SaaS Services in the manner provided in this SaaS Agreement may depend upon the accuracy and timeliness of such information and assistance
- 5.2 **Compliance with Laws:** Customer shall comply with all applicable laws in connection with its use of the SaaS Services, including those laws related to data privacy, international communications, and the transmission of technical or Personal Data. Customer acknowledges that Whatfix exercises no control over the content of the information transmitted by Customer or the End User through the SaaS Services. Customer shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other Intellectual Property Right without first obtaining the permission of the owner of such rights.
- 5.3 **Platform Access:** Customer shall be solely responsible for the acts and omissions of its Platform Users. Whatfix shall not be liable for any loss of data or functionality caused directly or indirectly by the Platform Users.
- 5.4 **Customer Content:** Customer is solely responsible for collecting, inputting and updating all Customer Content stored on the Software, and for ensuring that the Customer Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. Customer shall: (i) notify Whatfix immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to Whatfix immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by Customer or any End User and (iii) not provide false identity information to gain access to or use the Service. Customer owns and shall retain all right title and interest in and to the Customer Content which is (i) provided by Customer to Whatfix for the purpose of the provision of the Service and/or the Professional Services; (ii) created by Customer using the Service; and/or (iii) to the extent applicable, created by Whatfix specifically for Customer under the provision of Professional Services, and which incorporates or is based on Customer's copyrighted work and/or Customer's Confidential Information. Customer Content specifically excludes Content provided by Whatfix which does not use Customer Content, the Software' "look and feel", and Whatfix's Confidential Information and Intellectual Property.
- 5.5 **License from Customer:** Subject to the terms and conditions of this SaaS Agreement, Customer shall grant to Whatfix a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Customer Content solely as necessary to provide the SaaS Services to Customer pursuant to this Agreement and the applicable Order Form.
- 5.6 **Ownership and Restrictions:** Customer retains ownership and Intellectual Property Rights in and to its Customer Content. Whatfix or its licensors retain all ownership And Intellectual Property Rights to the services, Software programs, and anything developed and delivered under the Agreement. Third party technology, if any, that may be appropriate or necessary for use with some Whatfix programs is specified in the program Documentation or ordering document as applicable. Customer's right to use such third party technology is governed by the terms of the third party technology license agreement and not under the Agreement.
- 5.7 **Suggestions:** Whatfix shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the SaaS Services any suggestions, enhancement requests, recommendation or other feedback provided by Customer, including End Users, relating to the operation of the SaaS Services.

## 6. ORDERS AND PAYMENT

- 6.1 **Orders:** Customer shall order SaaS Services pursuant to the Order Form. All services acquired by Customer shall be governed exclusively by this SaaS Agreement and the applicable Order Form. In the event of a conflict between the terms of an Order Form and this Agreement, the terms of the Order Form shall take precedence.
- 6.2 **Invoicing and Payment:** Unless otherwise provided in the Order Form, Whatfix shall invoice Customer for all Fees on the Order Form effective date. Customer shall pay all undisputed invoices within 30 days after Customer receives the invoice. Except as expressly provided otherwise, fees are non-refundable. All Fees are stated in and payable in the currency detailed in the Order Form, and must be paid by Customer to Whatfix in such currency.
- 6.3 **Expenses:** Customer will reimburse Whatfix for its reasonable, out-of-pocket travel and related expenses incurred in performing the Other Services. Whatfix shall notify Customer prior to incurring any such expense. Whatfix shall comply with Customer's travel and expense policy if made available to Whatfix prior to the required travel.
- 6.4 **Taxes:** All payments under this Agreement are exclusive of taxes, including but not limited to VAT or any withholding taxes (where applicable). However, it is agreed between the Parties, that the Fees Payable by the Customer shall be subject to deduction of taxes, as per applicable laws.

## 7. TERM AND TERMINATION

- 7.1 **Term of SaaS Agreement:** The term of this SaaS Agreement shall begin on the Effective Date and shall continue until terminated by either party in accordance with Section 7.2 of this Agreement.
- 7.2 **Termination:** The Subscription Term shall renew for successive Subscription Terms unless either party delivers written notice of non-renewal to the other party at least 30 days prior to the expiration of the then-current Subscription Term.
- 7.3 **Suspension for Non-Payment:** Whatfix reserves the right to suspend delivery of the SaaS Services if Customer fails to timely pay any undisputed amounts due to Whatfix under this SaaS Agreement, but only after Whatfix notifies Customer of such failure and such failure continues for fifteen (15) days. Suspension of the SaaS Services shall not release Customer of its payment obligations under this SaaS Agreement. Customer agrees that Whatfix shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the SaaS Services resulting from Customer's non-payment. Interest shall accrue on a daily basis on any overdue amounts at an annual rate equal to 4% above the Bank of England's base rate, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.4 **Suspension for Ongoing Harm:** Whatfix reserves the right to suspend delivery of the SaaS Services if Whatfix reasonably concludes that Customer or an End User user's use of the SaaS Services is causing immediate and ongoing harm to Whatfix or others. In the case that Whatfix must suspend delivery of the SaaS Services, Whatfix shall immediately notify Customer of the suspension and the parties shall attempt to resolve the issue. Whatfix shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the SaaS Services in accordance with this Section 7.4. Nothing in this Section 7.4 will limit Whatfix's rights under Section 7.5 below. This SaaS Agreement may be terminated (i) by Whatfix if Customer breaches a term of this SaaS Agreement that remains uncured for 30 days (or, in the case of non-payment, five days) after delivery of notice of such breach, or (ii) if Customer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors not dismissed within 30 days.
- 7.5 Notwithstanding the foregoing, without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) if the other party commits a material breach of any term of this Agreement, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within thirty (30) days after being notified in writing to do so; or
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction, or it ceases or threatens to cease to carry on business.

#### **7.6 Effect of Termination:**

- (a) Upon termination of this SaaS Agreement or expiration of the Subscription Term, Whatfix shall immediately cease providing the SaaS Services and all licences and usage rights granted under this SaaS Agreement shall immediately terminate.
- (b) If Whatfix terminates this SaaS Agreement due to a breach by Customer, then Customer shall immediately pay to Whatfix all amounts then due under this SaaS Agreement and to become due during the remaining term of this SaaS Agreement, but for such termination. If Customer terminates this SaaS Agreement due to a breach by Whatfix, then Whatfix shall immediately repay to Customer all unearned, pre-paid amounts for any unperformed SaaS Services scheduled to be delivered after the termination date on a pro rata basis.
- (c) Upon termination of this SaaS Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction, provided that the receiving party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.

#### **8. SERVICE LEVEL AGREEMENT**

The Service Level Agreement (“SLA”) for the SaaS Services is set forth under the [Support Terms](#). The SLA sets forth Customer’s sole remedies for availability or quality of the SaaS Services including any failure to meet any guarantee set forth in the SLA.

#### **9. WARRANTIES**

- 9.1 **Warranty:** Whatfix warrants that it will provide the SaaS Services in a professional manner consistent with general industry standards and that the SaaS Services will perform substantially in accordance with the Documentation. For any breach of a warranty, Customer’s exclusive remedy shall be as provided in Section 7 Term and Termination.
- 9.2 WHATFIX WARRANTS THAT THE SAAS SERVICES WILL BE PERFORMED IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE DOCUMENTATION. WHATFIX DOES NOT GUARANTEE THAT THE SAAS SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT WHATFIX WILL CORRECT ALL SAAS SERVICES ERRORS. WHATFIX MAKES NO WARRANTIES RELATING TO THE SOFTWARE OR SAAS SERVICES AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT WHATFIX DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY WHATFIX (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS

AGREEMENT. NEITHER WHATFIX NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, NOR SHALL WHATFIX OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S OR ANY USER'S DATA, FILES, OR PROGRAMS. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 10. LIMITATIONS OF LIABILITY

10.1 NOTHING IN THIS AGREEMENT EXCLUDES EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, FRAUD OR FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITIES THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

10.2 SUBJECT TO SECTION 10.1, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, LOSS CAUSED OR CONTRIBUTED TO BY ANY EMPLOYEE, AGENT, CONTRACTOR OR REPRESENTATIVE OF CUSTOMER, LOSS CAUSED AS A RESULT OF THE SERVICES BEING UNAVAILABLE AS A RESULT OF PLANNED DOWNTIME FOR THE SERVICES AS NOTIFIED TO CUSTOMER, LOSS ARISING FROM ANY FAILURE OF CUSTOMER'S INFRASTRUCTURE AND/OR UTILITIES, LOSS CAUSED AS A RESULT OF THE SERVICES BEING UNAVAILABLE CAUSED BY ANY EVENT OR CIRCUMSTANCE OUTSIDE OF WHATFIX'S CONTROL, LOSS CAUSED BY THE FAILURE OR DELAY OF ANY THIRD PARTY APPLICATION OR SERVICE OR NETWORK, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE OR STATUTORY DUTY), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE OR STATUTORY DUTY), SHALL EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS SAAS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE.

## 11. INDEMNIFICATION

11.1 **Indemnification by Whatfix:** If a third party makes a claim against Customer that the SaaS Services infringes any third party Intellectual Property Right, Whatfix shall defend Customer and its directors, officers and employees against the claim at Whatfix's expense and Whatfix shall pay all losses, damages and expenses (including reasonable legal fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Whatfix, to the extent arising from the claim. Whatfix shall have no liability for any claim based on (a) the Customer Content, (b) modification of the SaaS Services not authorized by Whatfix, or (c) use of the SaaS Services other than in accordance with the Documentation and this SaaS Agreement. Whatfix may, at its sole option and expense, procure for Customer the right to continue use of the SaaS Services, modify the SaaS Services in a manner that does not materially impair the functionality, or terminate this Agreement and repay to Customer any unearned, prepaid amounts paid by Customer with respect to the Subscription Term following the termination date on a pro rata basis.

11.2 **Indemnification by Customer:** If a third party makes a claim against Whatfix that the Customer Content infringes any third party Intellectual Property Rights, Customer shall defend Whatfix and its directors, officers and employees against the claim at Customer's expense and Customer shall pay all losses, damages and expenses (including reasonable legal fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Customer, to the extent arising from the claim.

11.3 **Conditions for Indemnification:** A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the

claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

## 12. CONFIDENTIALITY

- 12.1 **"Confidential Information"** means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as "confidential" or "proprietary," (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be "confidential" or "proprietary" within 30 days of such disclosure, (c) is specifically deemed to be confidential by the terms of this SaaS Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of Customer Content as contemplated by this SaaS Agreement, Customer Content is deemed Confidential Information of Customer. Whatfix software and Documentation are deemed Confidential Information of Whatfix.
- 12.2 **Confidentiality Restrictions:** During the term of this SaaS Agreement and for 5 years thereafter (perpetually in the case of Software), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this SaaS Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each Party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party.
- 12.3 **Exceptions:** Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each party may disclose the existence of this SaaS Agreement and the relationship of the parties, but agrees that the specific terms of this SaaS Agreement will be treated as Confidential Information; provided, however, that each party may disclose the terms of this SaaS Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and investors.

## 13. PRIVACY, DATA PROTECTION AND SECURITY

Customer understands and acknowledges that, in connection with the use of the SaaS Services by Customer, Whatfix may process Personal Data only on Customer's behalf and Whatfix and Customer hereby agree that Customer shall be deemed to be the data controller and Whatfix shall be deemed to be the data processor as those terms are understood under the Data Protection Legislation and any Personal Data shall be processed in accordance with the Data Protection Agreement linked [here](#).



**Customer's Undertakings:** Customer shall be solely responsible for obtaining all consents and authorisations as may be required by any applicable law, for the collection, storage and processing of information and/or sensitive information by Whatfix according to Customer's instructions, including that such processing according to Customer's instructions will not place Whatfix in breach of Data Protection Legislation. Prior to processing, Customer will inform Whatfix about any special categories of data contained within Customer personal data and any restrictions or special requirements in the processing of such special categories of data, including any cross border transfer restrictions.

**Security:** Whatfix complies with security standards, such as encryption of data in motion over public networks and auditing standards (such as SOC 2 Type 2 and ISO 27001:2013). Furthermore, Customer's information is stored with logical separation from information of other customers. In addition, Whatfix shall have in place and shall comply with documented written policies and procedures, periodically reviewed, covering the administrative, physical and technical safeguards in place and relevant to the access, use, loss, alteration, disclosure, storage, destruction and control of information. Such policies and procedures will include encryption of data, virus detection and firewall utilization.

## 14. GENERAL PROVISIONS

14.1 **Non-Exclusive Service:** Customer acknowledges that SaaS Services are provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict Whatfix's ability to provide the SaaS Services or other technology, including any features or functionality first developed for Customer, to other parties.

14.2 **Assignment:** Neither party may assign this SaaS Agreement or any right under this SaaS Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however, that either party may assign this SaaS Agreement to an acquirer of all or substantially all of the business of such party to which this SaaS Agreement relates, whether by merger, asset sale, a transfer of undertakings or otherwise. This SaaS Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Either party may employ subcontractors in performing its duties under this SaaS Agreement, provided, however, that such party shall not be relieved of any obligation under this SaaS Agreement.

14.3 **Notices:** All communications relating to this SaaS Agreement shall be in writing and delivered by recorded delivery only to the party concerned at the relevant address shown at the top of this Agreement (or such other address as may be notified from time to time in accordance with this section 14.3). Any such communication shall take effect at 9.00 am on the second Business Day after posting or if by email, 24 hours after transmission, in the absence of a failed delivery receipt.

14.4 **Force Majeure:** Each party will be excused from performance for any period during which, and to the extent that, such party or any subcontractor is prevented from performing any obligation or Service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, and power failures.

14.5 **Waiver:** No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this SaaS Agreement shall not constitute a waiver of any other or subsequent breach.

14.6 **Severability:** If any term of this SaaS Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this SaaS Agreement shall remain in full force.

14.7 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.8 **Entire Agreement:** This SaaS Agreement (including all exhibits) contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties, concerning the subject



matter of this SaaS Agreement. This SaaS Agreement may be amended solely in a writing signed by both parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.

14.9 **Survival:** Sections 4, 7, and 9 through 14 of this SaaS Agreement shall survive the expiration or termination of this SaaS Agreement for any reason.

14.10 **Publicity:** Both Parties agree to jointly work towards the publicity and marketing of this arrangement., Whatfix shall be able to carry out the following activities:

(a) Whatfix shall issue a press release within a timeframe mutually agreed by both the parties not exceeding 2(two) months from the Effective Date, announcing that Customer has selected Whatfix as its SaaS Service Provider. The Customer shall have the right to edit and approve the press release prior to its publication.

(b) Within 2(two) months of successful implementation, the Customer shall assist Whatfix in providing a video or written testimonial, to be used as a marketing collateral. The video testimonial shall be recorded at the Customer's premises, at Whatfix's cost. The Customer shall have the right to edit and approve the testimonial prior to its publication.

(c) Customer agrees that Whatfix may use Customer's name and logo on the website located at [www.whatfix.com](http://www.whatfix.com) and for the purpose of marketing the Service.

14.11 **Export Compliance.** The Services, Content, other technology Whatfix makes available, and derivatives thereof may be subject to export laws and regulations issued by Bureau of Industry and Security. Each party represents that it is compliant with the same. The Customer shall not permit Users to access or use any Service or Content in violation of the aforesaid regulations.

14.12 **No Third Party Beneficiaries:** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

14.13 **Independent Contractor:** The parties have the status of independent contractors, and nothing in this SaaS Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this SaaS Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel.

14.14 **Statistical Information:** Whatfix may anonymously compile statistical information related to the performance of the Services for purposes of improving the SaaS service, provided that such information does not identify Customer's data or include Customer's name or any Personal Data.

14.15 **Governing Law and Jurisdiction:** This Agreement, including its exhibits, the Order Forms and SOWs, and any dispute arising out of or in connection with the foregoing, is governed by the laws of England and Wales, with the courts of England and Wales, having exclusive jurisdiction without reference to any conflict of laws rules, to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

14.16 **Compliance with Laws:** Whatfix shall comply with all applicable local, state, national and foreign laws in connection with its delivery of the SaaS Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data.

14.17 **Dispute Resolution:** Customer's satisfaction is an important objective to Whatfix in performing its obligations under this SaaS Agreement. Except with respect to intellectual property rights, if a dispute arises between the parties relating to the interpretation or performance of this SaaS Agreement or the grounds for the termination hereof, the parties agree to hold a meeting within fifteen (15) days of written

request by either party, attended by individuals with decision-making authority, regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within 15 days after such meeting, the parties have not succeeded in resolving the dispute, either party may protect its interests by any lawful means available to it.

14.18 **Signatures:** This SaaS Agreement may be executed in multiple counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this SaaS Agreement by facsimile or other electronic transmission (including via pdf) will be effective as delivery of a manually executed counterpart

**Accepted and Agreed:**

**Whatfix Limited**



Signature:

Signature:

Print Name: Khadim Hussain Ismail Batti

Print Name:

Designation: CEO

Designation:

Date (MM/DD/YY):

Date (MM/DD/YY):

**EXHIBIT-A  
WHATFIX SUBSCRIPTION ORDER FORM**

This Order Form is made as of \_\_\_\_\_, 2021 (the “**Effective Date**”) between Whatfix Limited, a company organized and existing under the laws of England and having its principal place of businesses at 1 St. Peters Square, Manchester, England, M2 3DE (“**Whatfix**”) and the Customer (identified below).

**Customer Information:**

<b>Company Name (“Customer”)</b>		<b>Billing Name</b>	
<b>Customer Address</b>		<b>Billing Address</b>	
<b>Customer Contact Name</b>		<b>Billing Contact Name</b>	
<b>Customer E-Mail Address</b>		<b>Billing Contact E-Mail Address</b>	
<b>Customer Phone Number</b>		<b>Billing Contact Phone Number</b>	

**Whatfix Contact:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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**Discounts (if any):**

<b>Subscription Fees (in GBP)</b>	
<b>Discount (%)</b>	
<b>Total Subscription Fees for the subscription term</b>	

**Subscription(s) Fee(s):**

<b>Product Name</b>	<b>Name of Application</b>	<b>No of Users</b>	<b>Payment Frequency</b>	<b>Subscription Start Date</b>	<b>Subscription End Date</b>	<b>Subscription Fees (for subscription term) in GBP</b>
Whatfix Digital Adoption Platform			Annual			

*Note: All Whatfix Plans by default include the training and support charges for the duration of the contract.*

**PROFESSIONAL SERVICE FEE:**

<b>Name of Application</b>	<b>Number of Flows</b>	<b>Service Fee</b>

**Accepted and Agreed:**

**Whatfix Limited**

Signature:  
Print Name: Khadim Hussain Ismail Batti  
Designation: CEO  
Date (MM/DD/YY):

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Signature:  
Print Name:  
Designation:  
Date (MM/DD/YY):