

Data Protection Agreement & GDPR

Data Processing Agreement

BETWEEN

1/ The limited liability company "UBench International", with its registered offices at Antoine Coppenslaan 27 box 3, 2300 Turnhout, VAT BE0860.448.495, registered in Antwerp, division Turnhout, duly represented by **Manuel Medinger, CEO**;

Hereinafter referred to as the **"Processor"**

AND

2/ [Company Name], with its registered offices at [Address], [Country], VAT,

[Tel] _____

[E-mail] _____

Hereinafter referred to as the **"Controller"**

The Processor and the Controller are hereinafter collectively referred to as the **"Parties"** and individually as a **"Party"**.

CONSIDERATIONS

Within the context of the performance of certain activities and services for the Controller, the Processor shall have access to Personal Data (as defined hereinafter) and/or will have to process these Personal Data, for which the Controller is responsible in accordance with the Privacy Legislation (as defined hereinafter). The Controller determines the purposes and means of the Processing of Personal Data, while the Processor processes Personal Data on behalf of the Controller.

Through this agreement Parties wish to determine in writing their mutual agreements with regard to (i) managing, securing and/or processing of such personal data and (ii) Parties' obligation to comply with the Privacy Legislation.

THEREFORE, PARTIES HAVE AGREED AS FOLLOWS

1. DEFINITIONS

In this agreement, the following concepts have the meaning described in this article (when written with a capital letter):

- **Data Subject:** A natural person to whom the Personal Data relates;
- **Data Breach:** Unauthorized disclosure, access, abuse, loss, theft or accidental or unlawful destruction of Personal Data, which are Processed by the Processor on behalf of the Controller;
- **Services:** All services, provided by the Processor to the Controller within the framework of the Assignment, implying the Processing of Personal Data by the Processor;
- **Assignment:** All activities, performed by the Processor on behalf of the Controller, and any other form of cooperation whereby the Processor Processes Personal Data for the Controller, regardless of the legal nature of the agreement under which this Processing takes place;
- **Personal Data:** Any information relating to an identified or identifiable natural person;
- **Privacy Legislation:** (i) the Belgian Privacy Act of December 8, 1992 regarding the protection of privacy in relation to the processing of personal data and/or (ii) the General Data Protection Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC and/or (iii) the (future) Belgian legislation regarding the implementation of the General Data Protection Regulation;
- **Sub-processor:** Any processor engaged by the Processor.

- **Process/Processing:** Any operation or set of operations which is performed upon Personal Data or sets of Personal Data, whether or not by automated means, including, but not limited to: collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Personal Data;

The agreement includes the following annexes:

Annex I: Overview of (i) the Personal Data, which Parties expect to Process, (ii) the categories of personal data of the data subject, which Parties expect to Process, (iii) the use (i.e. the way(s) of Processing) of the Personal Data, the purpose and means of such Processing and (iv) the term(s) of use and retention of the (different types of) Personal Data;

Annex II: Overview and description of the security measures taken by the Processor.

Annex III – Sub-processors

ROLES OF THE PARTIES

Parties acknowledge and agree that with regard to the Processing of Personal Data, the Controller shall be considered 'controller' and the Processor 'processor'. Further, the Processor is allowed to engage Sub-processor(s) pursuant to the requirements set forth in **Article 6**.

2. USE OF THE SERVICES

2.1. The Controller acknowledges explicitly that:

- The Processor purely acts as a facilitator of the Services. Hence, the Controller shall be solely responsible on how it makes use of the Services;
- The Processor bears no responsibility with regard to adjustments and/or changes made at the explicit request of the Controller;
- The Controller is solely liable and responsible for the material and/or data provided by the Controller, as the Controller is solely liable for complying with the Privacy Legislation and/or any other regulations with regard to aforementioned material and/or data;
- The Controller shall be solely responsible to comply with all laws and regulations (such as but not limited with regard to the retention period) imposed on it by making use of the Services.

2.2. In case of misuse by the Controller of the Services, the Controller agrees that the Processor can never be held liable in this respect nor for any damage that would occur from such misuse.

2.3. The Controller therefore undertakes to safeguard the Processor when such misuse would occur as well as for any claim from a Data Subject and/or third party due to such misuse by the Controller.

3. OBJECT

3.1. The Controller acknowledges that as a consequence of making use of the Services of the Processor, the latter shall Process Personal Data as collected by the Controller.

3.2. The Processor shall Process the Personal Data in a proper and careful way and in accordance with the Privacy Legislation and other applicable rules concerning the Processing of Personal Data.

More specifically, the Processor shall – during the performance of the Assignment – provide all its know-how in order to perform the Assignment according to the rules of art, as it fits a specialized and 'good' processor.

3.3. Nonetheless, the Processor shall only Process the Personal Data upon request of the Controller and in accordance with its instructions, as described in Annex I, unless any legislation states otherwise.

3.4. The Controller owns and retains full control concerning (i) the Processing of Personal Data, (ii), the types of Personal Data collected, (iii), the purpose of Processing and (iv) the fact whether such Processing is proportionate (non-limitative).

Moreover, the Controller shall be solely responsible to comply with all (legal) obligations in its capacity as

Controller (such as but not limited to the retention period) and shall have the sole responsibility for the accuracy, quality, and legality of the Personal Data, disclosed to the Processor in the performance of the Assignment, and the means by which it acquired such Personal Data.

The responsibility and control concerning the Personal Data, subject to this Agreement, shall thus never be vested with the Processor.

4. SECURITY OF PROCESSING

- 4.1. Taking into account the state of the art, the Processor implements appropriate technical and organizational measures for the protection of Personal Data – including protection against careless, improper, unauthorized or unlawful use and/or

Processing and against accidental loss, destruction or damage – as well as the confidentiality and integrity of Personal Data, as set forth in **Annex II**.

5. SUB-PROCESSORS

- 5.1. The Controller acknowledges and agrees that the Processor may engage third-party Sub-processors for the performance of the Assignment. In such case, the Processor shall ensure that the Sub-processors are at least bound by the same obligations by which the Processor is bound under this agreement.
- 5.2. Annex III covers a list of the Sub-processors engaged by the Processor for the performance of the Assignment.
- 5.3. This list includes the identities of the Sub-processors as well as their country of establishment.
- 5.4. The Processor undertakes to inform the Controller of any change to the aforementioned list (such as but not limited to adding or replacing a Sub-processor).
- 5.5. The Controller is entitled to oppose a new Sub-processor appointed by the Processor. If the Controller wishes to exercise its right to object, the Controller shall notify the Processor in writing and in a reasoned manner by the latest within ten (10) days upon receipt of the Processor's notice (cfr. Article 6.3).
- 5.6. In the event the Controller objects to a new Sub-processor and such objection is not found unreasonable, the Processor will use reasonable efforts to (i) make available to the Controller a change in the Services or (ii) recommend a commercially reasonable change to the Controller's use of the Services to avoid Processing of Personal Data by the objected new Sub-processor without unreasonably burdening the Controller. If the Processor is, however, unable to make available such change within a reasonable period of time (which shall not exceed thirty (30) days following the objection of the Controller), the Controller may terminate the agreement with the Processor, under the following conditions:
- 5.7. The Services cannot be used by the Controller without appealing to the objected new Sub-processor; and/or
- 5.8. Such termination solely concerns the Services which cannot be provided by the Processor without appealing to the objected new Sub-processor; And this by informing the Processor by registered letter within a reasonable time.
- 5.9. The Processor shall be liable for the acts and omissions of its Sub-processors to the same extent as it would be liable if performing the Services of each Sub-processor by herself, directly under the terms of this agreement.

6. DATA PROTECTION OFFICER

- 6.1. The Processor has appointed a data protection officer ('DPO').
- 6.2. The appointed data protection officer may be reached at the following e-mail address: dpo@UBench.com.

7. TRANSFER OF PERSONAL DATA OUTSIDE THE EEA

- 7.1. Any transfer of Personal Data outside the EEA to a recipient whose residence or registered office is not located in a country for which an adequacy decision was issued by the European Commission, shall be governed by the terms of a data transfer agreement, which shall contain: (i) standard contractual clauses as published in the Decision of the European Commission of February 5, 2010 (Decision 2010/87/EC) or (ii) any other mechanism foreseen by the Privacy

Legislation and/or and other applicable rules concerning the Processing of Personal Data.

8. CONFIDENTIALITY

- 8.1. The Processor shall maintain the Personal Data confidential and thus not disclose nor transfer any Personal Data to third parties, without the prior written agreement of the Controller, unless: Explicit written deviation;
- 8.2. Such disclosure and/or announcement is required by law or by a court or other government decision (of any kind). In such case the Processor shall, prior to any disclosure and/or announcement, discuss the scope and manner thereof with the Controller
- 8.3. The Processor ensures that its personnel, engaged in the performance of the Assignment, are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. The Processor ensures that such confidentiality obligations survive the termination of the employment contract.
- 8.4. The Processor ensures that its access to Personal Data is limited to such personnel performing the Assignment in accordance with the agreement.

9. NOTIFICATION

- 9.1. The Processor shall use its best efforts to inform the Controller within a reasonable term when it:
- 9.2. Receives a request for information, a subpoena or a request for inspection or audit from a competent public authority in relation to the Processing of Personal Data;
- 9.3. Has the intention to disclose Personal Data to a competent public authority;
- 9.4. Determines or reasonably suspects a Data Breach has occurred in relation to the Personal Data.
- 9.5. In case of a Data Breach, the Processor engages to:
- 9.6. Notify the Controller without undue delay after becoming aware of a Data Breach and provide – to the extent possible – assistance to the Controller with respect to its reporting obligation under the Privacy Legislation;
- 9.7. Undertake – as soon as reasonably possible – to take appropriate remedial actions to make an end to the Data Breach and to prevent and/or limit any future Data Breach.

10. RIGHTS OF DATA SUBJECTS

- 10.1. To the extent the Controller – in its use of the Services – does not have the ability to correct, amend, block or delete Personal Data, as required by Privacy Legislation, the Processor shall – to the extent it is legally obliged to do so – comply with any commercially reasonable request by the Controller to facilitate such actions.

To the extent legally permitted, the Controller shall be responsible for any costs arising from the Processor's provision of such assistance.

The Processor shall, to the extent legally permitted, promptly notify the Controller if it receives a request from a Data Subject for access to, correction, amendment or deletion of that Data Subject's Personal Data. The Processor shall, however, not respond to any such Data Subject request without Controller's prior written consent except to confirm that the request relates to the Controller to which the Controller hereby agrees.

The Processor shall provide the Controller with commercially reasonable cooperation and assistance in relation to the handling of a Data Subject's request for access, amendment or deletion of that person's Personal Data, to the extent legally permitted and to the extent the Controller does not have access to such Personal Data through its use of the Services.

To the extent legally permitted, the Controller shall be responsible for any costs arising from the Processor's provision of such assistance.

- 10.2. Should the Processor - in the scope of aforementioned assistance – have to delete the Data Subject's Personal Data, the Controller acknowledges that the Processor can not be held responsible if, after deletion of the Personal Data of the particular Data Subject, the same Personal Data will need to be Processed by the Processor in the scope of an agreement concluded with the Controller.

11. RETURN AND DELETION OF PERSONAL DATA

- 11.1. Upon termination of the Assignment and/or termination of this agreement, the Processor shall notify the Controller that it has the possibility, during the period as mentioned in such notification, to export the Personal Data through the available export tools.
- 11.2. The Processor shall, on explicit request of the Controller and within a reasonable time after receipt of aforementioned notice, delete the Personal Data resp. anonymize it.

12. CONTROL

- 12.1. The Processor undertakes to provide the Controller with all information, required by the Controller to allow verification whether the Processor complies with the provisions of the agreement.
- 12.2. In this respect the Processor shall allow the Controller (or a third party on which the Controller appeals) to undertake inspections – such as but not limited to an audit – and to provide the necessary assistance thereto.

13. TERM

- 13.1. The agreement lasts as long as the Assignment has not come to an end.
- 13.2. The provisions of this agreement shall apply to the extent necessary for the completion of this agreement and to the extent intended to survive the end of this agreement (such as but not limited to Article 9 and 16).

14. MISCELLANEOUS

- 14.1. If one or more provisions of this agreement are found to be invalid, illegal or unenforceable, in whole or in part, the remainder of that provision and/or of this agreement shall remain in full force. Moreover, in such event, Parties shall negotiate to replace the invalid provision by an equivalent provision in accordance with the spirit of this agreement. If Parties do not reach an agreement, then the competent court may mitigate the invalid provision to what is (legally) permitted.
- 14.2. Deviations, alterations and/or additions to this agreement shall only be valid and binding to the extent that they have been accepted in writing by both Parties.
- 14.3. This agreement and the corresponding rights and obligations that exist in respect of the Parties, cannot be transferred, directly or indirectly, without the prior written consent of the other Party.
- 14.4. (Repeated) non-enforcement by any Party of any right, can only be regarded as a toleration of a certain state, and does not lead to forfeiture
- 14.5. This agreement prevails to any other agreement between the Parties on the same subject matter.

15. APPLICABLE LAW AND JURISDICTION

- 15.1. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance and/or termination of this agreement shall be governed by and construed in accordance with Belgian law.
- 15.2. Any dispute concerning the validity, interpretation, enforcement, performance and/or termination of this agreement which cannot be settled amicable, shall be submitted to the exclusive jurisdiction of the courts competent for the place where the Processor has its registered office.

Annexes:

- Annex I – Overview of Personal Data
- Annex II – Description of security measures
- Annex III – Sub-processors

Executed in _____, on ___/___/_____ in two (2) original copies, each Party acknowledging receipt of one, by both parties, signed copy.

THE PROCESSOR

UBench International NV represented by
Manuel Medinger
Managing Director

_____ [date]

THE CONTROLLER

[Company name] [company form] represented by
[Name]
[Role]

_____ [date]

Annex I – Overview of Personal Data

I. Overview of the Personal Data, which Parties expect to Process:

- Name
- First name
- Account name
- Password
- Company name
- Home address
- Company address
- E-mail address
- Date of birth
- Telephone number (land line/mobile)
- Preferred means of communication
- Other, being:
 - ✓ License plate number
 - ✓ License plate vehicle
 - ✓ Camera footage of (damage to) the vehicle
 - ✓ Police reports
 - ✓ Any other Personal Data provided for Processing by the Controller

II. The categories of Data Subjects whose Personal Data shall be Processed:

- Employees
- Employees of business partners
- Clients of the Controller

III. The use (= way(s) of Processing) of the Personal Data and the purposes and means of Processing:

- In the scope of the performance of the Assignment/agreement personal data is used for:
 - ✓ UBClaims: Claim handling (management of practicalities with regard to an accident)
 - ✓ UBTech: Performance of maintenance agreements
 - ✓ UBSales: Sale of lease cars regarding which the lease has expired. (No Personal Data is used in this process)
 - ✓ UBFlex: Short-term car rental
 - ✓ UBScore: Generating of statistic data and reports.

IV. The term(s) during which the (different types of) Personal Data shall be stored:

All personal data is collected in the scope of the performance of the Assignment / Agreement. All Personal Data, including invoices, are retained until the moment the Controller formulates an explicit request towards UBench to delete the data.

Should the Controller terminate the agreement, the personal data will be kept for an additional period of 10 years and deleted afterwards.

Annex II – Description of security measures

I. Description of the technical and organizational security measures taken by the Processor.

Following security aspects are implemented:

- OWASP is used as guideline for the development of new features within the software.
- Pen tests are performed on a yearly basis to guarantee the security of the platform.
- All communication is encrypted.
- Password policies apply to the users of the platform as well as to the employees of the Processor.
- Differentiated access rights apply (with regard to employee functionalities as well as the data) on a need-to-know basis
- No shared accounts, account ID's are granted individually
- Two datacentres with replication between sites with 15 minutes data retention
- Datacentres are ISO 27001 certified
- Physical access controls on datacentres and at the office
- Access monitoring, logging and reporting
- Patching on a regular basis
- Anti-virus and anti-malware software is available
- IPS/IDS is available
- In case of a data breach there is a "Security Breach Response Plan" available.

UBench is ISO-27001 certified.

Annex III – Sub-processors

Identity Sub-processor	Address	Country of establishment	Remarks
Proximus nv	Carlistraat 2, 1140 EVERE	Belgium	Internet connectivity. Has no access to our data
Datacenter Unitted NV (DCU)	Rittwegerlaan 15, 1830 Machelen	Belgium	Datacenter housing services. Primary datacenter. Has no access to our data
Datacenter Unitted NV (DCU)	Carlistraat 2, 1140 EVERE	Belgium	Datacenter housing services. Secondary datacenter. Has no access to our data.
Ecorepairscore	Sparrenhofstraat 8, 9250 Waasmunster	Belgium	Only if selected option of sustainability assessment