



ambiWAN contract for order data processing

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Contract for commissioned data processing

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- in the following called **provider**

the following agreement on commissioned data processing is concluded in accordance with Art. 28 Para. 3 DS-GVO:

This Annex specifies the obligations of the Parties to the Agreement on data protection. It applies to all activities in connection with the contract / the order and in which employees of the Provider or persons authorized by the Provider process personal data ("Data") of the Customer.

§ 1 Subject, duration and specification of the order processing

This agreement on data protection is to be understood as a supplement to the existing supply contract, service contract or other contractual relationship. The subject matter of the order, the duration of the order and the purpose of the data processing are not listed here again separately. This information results from the existing contractual relationship. The type of personal data are all types of personal data that the provider processes on behalf of the customer. Categories of affected persons can be in particular: customers, prospective customers, employees of customers and prospective customers, business partners (creditors, debtors).

1.1

Personal data is individual information about personal or factual circumstances of a certain or determinable natural person.

1.2

Data processing on behalf is the storage, modification, transmission, blocking or deletion of personal data by the provider on behalf of the customer.

1.3

Instruction is the written instruction of the customer directed to a certain data protection handling (for example anonymization, blocking, deletion, publication) of the provider with personal data. The instructions are initially set out in the main contract and may subsequently be amended, supplemented or replaced by the customer in writing by individual instructions (individual instruction).

§ 2 Scope of application and responsibility

2.1

The provider processes personal data on behalf of the customer. This includes activities that are specified in the contract, in the order and/or in the service description. Within the scope of this contract, the customer is solely responsible for compliance with the legal provisions of the data protection laws, in particular for the lawfulness of the data transfer to the provider as well as for the lawfulness of the data processing ("responsible party" in the sense of Art. 4 No. 7 DS-GVO).



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2.2

The instructions are initially set out in the contract and may subsequently be amended, supplemented or replaced by individual instructions by the customer in writing or in an electronic format (text form) to the office designated by the provider (individual instruction). Instructions that are not provided for in the contract are treated as a request for a change of service. Oral instructions must be confirmed immediately in writing or in text form.

§ 3 Obligations of the provider

3.1

The provider may process data of data subjects only within the scope of the order and the instructions of the customer, unless there is an exceptional case in the sense of Article 28 (3) a) DS-GVO. The provider shall inform the customer without delay if it believes that an instruction violates applicable law. The provider may suspend the implementation of the instruction until it has been confirmed or amended by the customer.

3.2

The provider shall design the internal organization within his area of responsibility in such a way that it meets the special requirements of data protection. He will take technical and organizational measures for the appropriate protection of the customer's data that meet the requirements of the basic data protection regulation (Art. 32 DS-GVO). The provider shall take technical and organizational measures to ensure the confidentiality, integrity, availability and resilience of the systems and services in connection with the processing in the long term. The customer is aware of these technical and organizational measures and is responsible for ensuring that they provide an adequate level of protection for the risks of the data to be processed. The measures established by the provider are documented in a data protection declaration and are updated continuously. The provider reserves the right to change the security measures taken, although it must be ensured that any security measures correspond to the state of the art and do not fall below the contractually agreed level of protection.

3.3

If agreed, the provider shall support the customer within the scope of its possibilities in fulfilling the requests and claims of affected persons in accordance with Chapter III of the DS-GVO and in complying with the obligations set out in Articles 33 to 36 DS-GVO.

3.4

The Provider guarantees that the employees involved in processing the Customer's data and other persons working for the Provider are prohibited from processing the data outside of the instruction. Furthermore, the Provider shall ensure that the persons authorized to process the personal data have undertaken to maintain confidentiality or are subject to an appropriate statutory duty of confidentiality. The confidentiality/discretion obligation shall continue to apply even after termination of the order.

3.5

The provider shall inform the customer immediately if he/she becomes aware of any violations of the protection of personal data of the customer. The Provider shall take the necessary measures to secure the data and to reduce the possible adverse consequences of the persons concerned and shall consult with the Customer without delay.

3.6

The provider has appointed a data protection officer if there is a legal obligation to do so. This can be reached by the customer via the following contact details:

Markus Olbring, external data protection officer
comdati it-consulting, Deventer Weg 8, 48683 Ahaus
e-mail: datenschutz@ambifox.de
Phone: 02561-7569986 or 0173-9799897

3.7

The provider guarantees to comply with its obligations under Art. 32 Para. 1 lit. d) DS-GVO to implement a procedure to regularly check the effectiveness of the technical and organisational measures to ensure the security of the processing.



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3.8

The Provider corrects or deletes the contractual data if the Customer instructs him to do so and this is covered by the scope of instructions. If a data protection-compliant deletion or a corresponding restriction of data processing is not possible, the Provider shall undertake the data protection-compliant destruction of data carriers and other materials on the basis of an individual order by the Customer or return these data carriers to the Customer, unless already agreed in the contract. In special cases, to be determined by the customer, a storage or handover will take place. Remuneration and protective measures for this are to be agreed separately, if not already agreed in the contract.

3.9

Data, data carriers as well as all other materials must either be surrendered or deleted at the customer's request after the end of the order. In the case of test and reject materials, an individual order is not necessary. If additional costs are incurred due to deviating specifications for the surrender or deletion of the data, these shall be borne by the customer.

3.10

In the event of a claim against the customer by a person affected with regard to any claims under Art. 82 DS-GVO, the provider undertakes to support the customer in defending the claim within the scope of his possibilities.

3.11

The provision of the contractually agreed data processing takes place exclusively in a member state of the European Union or in another state that is a party to the Agreement on the European Economic Area. Any relocation to a third country requires the prior consent of the customer.

§ 4 Duties of the customer

4.1

The customer has to inform the provider immediately and completely if he finds errors or irregularities in the order results regarding data protection regulations.

4.2

In the event of a claim against the customer by a person affected with regard to any claims under Art. 82 DS-GVO, §3 para. 10 shall apply accordingly.

4.3

The customer names the contact person for data protection issues arising within the scope of the contract to the provider.

4.4

The customer and the provider are responsible for compliance with the relevant data protection laws with regard to the data to be processed.

4.5

The customer accepts the procedures standardized by the provider for the surrender and deletion of data after completion of the order.

4.6

If additional costs are incurred after termination of the contract due to the surrender or deletion of the data, these shall be borne by the customer.

4.7

If the customer issues individual instructions that go beyond the contractually agreed scope of services, the costs incurred as a result shall be borne by the customer.

§ 5 Requests of affected persons to the customer

5.1

If a person concerned turns with demands for correction deletion or information to the offerer, the offerer will refer the person concerned to the customer, if an allocation to the customer is possible according to data of the person concerned. The provider will immediately forward the request of the person concerned to the customer. The provider supports the customer within the scope of his possibilities on instruction as far as agreed. The provider is not liable if the request of the person concerned is not, not correctly or not timely answered by the customer.



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§ 6 Evidence and control rights

6.1

The Provider shall prove to the Customer that the obligations set out in this Agreement have been fulfilled by suitable means.

6.2

The customer has the right, in agreement with the provider, to carry out inspections or have them carried out by an inspector to be named in individual cases. These will be carried out during normal business hours without disturbing the operating procedure after registration, taking into account an appropriate lead time. The Provider may make this dependent on prior registration with an appropriate lead time and on the signing of a confidentiality agreement with regard to the data of other customers and the technical and organizational measures set up. If the auditor commissioned by the customer is in a competitive relationship with the provider, the provider has a right of objection against the customer. The provider may demand an appropriate fee for the assistance in carrying out an inspection. The expenditure of an inspection is for the offerer and customer in principle limited to one day per calendar year. The offerer receives an appropriate remuneration for inspections.

6.3

Should a data protection supervisory authority or any other sovereign supervisory authority of the Customer carry out an inspection, paragraph 2 shall apply accordingly. It is not necessary to sign a confidentiality agreement if this supervisory authority is subject to a professional or legal obligation of confidentiality, where a violation is punishable under the Criminal Code.

§ 7 Subcontractors (further processors)

7.1

The customer agrees that the provider may call in subcontractors. The provider shall inform the customer before calling in or replacing subcontractors. The customer may object to the change - within a reasonable period of time and for good cause - to the body designated by the provider. If no objection is made within the period, the customer is deemed to have agreed to the change. If there is an important reason under data protection law and if an amicable solution cannot be found between the parties, the customer and the Provider shall be granted a special right of termination. Depending on the specific contractual relationship, subcontractors may work for the provider. At the time of signing this agreement the following subcontractors are active:

Company	Activity
128 Technology Germany GmbH	Maintenance, error analysis
128 Technology USA	Maintenance, error analysis
ambiFOX GmbH	Invoicing and customer management
Datahaus GmbH	Data center services (on-site maintenance, error analysis)
DATEV eG	Software & Invoicing
Stellaneo AG	Market analysis (market research), distribution
IT-Consulting de Niet	Roll-Out, maintenance on site
ALSO Enterprise Services GmbH	Roll-Out, maintenance on site

7.2

A subcontracting relationship requiring approval exists if the Provider commissions further providers with the complete or partial performance of the agreed service. The Provider shall enter into agreements with these third parties to the extent necessary to ensure appropriate data protection and information security measures.

7.3

If the Provider places orders with subcontractors, it is incumbent upon the Provider to transfer its data protection obligations from this contract to the subcontractor.



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7.4

The customer agrees that the provider may call in subcontractors in emergency situations if this becomes absolutely necessary in such exceptional situations to ensure system operation. The prior information referred to in paragraph 1 may be waived in emergency situations. However, the provider must ensure that data protection requirements are complied with.

7.5

The customer agrees that the Provider may use affiliated companies of the Provider to perform its contractually agreed services or subcontract affiliated companies with the listed services. Paragraph 3 applies accordingly also to affiliated companies.

§ 8 Duty to inform, written form clause, choice of law

8.1

Should the customer's data be endangered at the provider by seizure or confiscation, by insolvency or composition proceedings or by other events or measures of third parties, the provider has to inform the customer immediately. The Provider shall immediately inform all persons responsible in this context that the sovereignty and ownership of the data lies exclusively with the Customer as the "responsible person" within the meaning of the Basic Data Protection Regulation.

8.2

Amendments and supplements to this appendix and all its components - including any warranties given by the provider - require a written agreement, which may also be in electronic format (text form), and the express indication that these terms and conditions are amended or supplemented. This also applies to the waiver of this formal requirement.

8.3

In the event of any contradictions, the provisions of this Annex on data protection shall take precedence over the provisions of the Agreement. Should individual parts of this appendix be invalid, this shall not affect the validity of the remaining parts of the appendix.

8.4

German law applies.