

Service Agreement

on the Designation as Representative in the Union pursuant to Art. 27 GDPR

Between

Attorney-at-Law (Rechtsanwalt) Cornelius Matutis, Berliner Straße 57, 14467 Potsdam, Germany
(hereinafter RA Matutis)

and

Company / name: _____

Address, country: _____

Register and registration number: _____

Represented by: _____

E-mail address for forwarding: _____

(hereinafter the Client)

Preamble

The Client has no establishment in the European Union and processes personal data of data subjects who are in the Union in the context of activities referred to in Art. 3 (2) GDPR. The Client is therefore obliged under Art. 27 (1) GDPR to designate in writing a representative in the Union, or designates such a representative voluntarily. To this end, the parties agree as follows.

§ 1 Subject Matter of the Agreement

(1) The Client designates RA Matutis as its representative in the Union pursuant to Art. 27 GDPR, established in Germany. The designation is made by the written power of attorney attached as Annex 1. RA Matutis accepts the designation.

(2) RA Matutis acts as the point of contact within the meaning of Art. 27 (4) GDPR which may be addressed in addition to or instead of the Client, in particular by supervisory authorities and data subjects, on all issues related to the processing of personal data. The Client is designated in the capacity in which it carries out the processing, i.e. as controller and, where applicable, as processor.

(3) The obligations of RA Matutis are limited to the tasks assigned to the representative by law as described in § 3. RA Matutis is not a data protection officer pursuant to Art. 37 GDPR, not a processor pursuant to Art. 28 GDPR, and does not owe any monitoring, auditing or ongoing advice regarding the Client's processing activities. Advice, representation in proceedings and any other support are provided by RA Matutis only upon separate request pursuant to § 6 (3).

(4) Communication between the parties takes place by e-mail to the Client's address stated above and, in urgent cases, also by telephone. The Client shall ensure that this address remains reachable throughout the term of the Agreement and is checked on every business day.

§ 2 Warranties and Notification Duties of the Client

(1) The Client warrants that, at the time of conclusion of this Agreement, it has no establishment in the European Union or the European Economic Area, that data subjects whose data it processes are also located in Germany (Art. 27 (3) GDPR), and that it is a business and obtains the services under this Agreement for its business.

(2) The Client shall notify RA Matutis without undue delay in text form if it establishes a presence in the Union or the European Economic Area, if it ceases to process data of persons in Germany, if its company

name, address, legal form or authorised representatives change, or if the e-mail address for forwarding changes.

(3) The Client alone is responsible for the accuracy and completeness of this information. If a warranty proves to be incorrect, the entitlement of RA Matutis to the remuneration remains unaffected.

§ 3 Duties of RA Matutis

(1) As point of contact, RA Matutis receives enquiries, notifications, complaints, orders, decisions and other correspondence from supervisory authorities and data subjects relating to the processing of personal data by the Client, by post, by e-mail to mail@matutis.de and by telephone during normal office hours.

(2) RA Matutis forwards incoming correspondence to the Client by e-mail without undue delay and no later than the second business day after receipt. Postal items are scanned and transmitted as files. Upon forwarding, RA Matutis has fulfilled his duty. RA Matutis does not owe any review of the content of the correspondence, any calculation or monitoring of deadlines, or any substantive reply.

(3) If the Client does not reply directly to the supervisory authority or the data subject, RA Matutis transmits the reply provided to him by the Client to the sender without alteration.

(4) RA Matutis cooperates with the supervisory authority on request pursuant to Art. 31 GDPR. This comprises answering simple queries regarding the identity of the representative, the existence of the designation and how the Client can be reached, as well as forwarding requests of the authority. Any further cooperation, in particular the submission of substantive statements, is provided only upon request as an additional service pursuant to § 6 (3).

(5) RA Matutis keeps the record of processing activities transmitted to him by the Client pursuant to § 4 (3) in the version most recently transmitted and makes it available to the supervisory authority on request pursuant to Art. 30 (4) GDPR. The Client alone is responsible for the content and currency of the record.

(6) RA Matutis is not obliged to make declarations binding on the Client, to make acknowledgements, to enter into obligations or to make payments. He is entitled to refuse to do so.

§ 4 Obligations of the Client

(1) Upon signing this Agreement, the Client grants RA Matutis the power of attorney pursuant to Annex 1 in original form and provides on request further copies, translations or evidence of its authority to represent that supervisory authorities may require.

(2) The Client names RA Matutis as its representative in the Union in all privacy notices and information pursuant to Art. 13 (1) (a) and Art. 14 (1) (a) GDPR with the following details: Rechtsanwalt Cornelius Matutis, Berliner Straße 57, 14467 Potsdam, Germany, e-mail mail@matutis.de. Further details, in particular telephone numbers, may be published only with the consent of RA Matutis. Beyond naming him as representative, the Client shall not use the name of RA Matutis, in particular not for advertising purposes or as an indication that its processing has been reviewed or approved.

(3) Within four weeks of the conclusion of this Agreement, the Client transmits to RA Matutis its record of processing activities pursuant to Art. 30 (1) or (2) GDPR in German or English and sends the updated version without being asked whenever it changes. If RA Matutis holds no record, he informs the requesting supervisory authority accordingly.

(4) The Client replies to forwarded enquiries itself, completely and within the statutory deadlines or those set by the authority, and in the case of requests from data subjects in particular within the period under Art. 12 (3) GDPR. The Client confirms receipt of each forwarded item to RA Matutis without undue delay and informs him within ten business days whether and how the enquiry has been answered. In the case of enquiries from supervisory authorities, the Client sends RA Matutis a copy of its reply.

(5) The notification of personal data breaches pursuant to Art. 33 and Art. 34 GDPR, the maintenance of the record pursuant to Art. 30 GDPR, the designation of a data protection officer pursuant to Art. 37 GDPR and compliance with all other obligations under the GDPR rest solely with the Client. The Client bears responsibility for the lawfulness of its processing and is liable for infringements of the GDPR.

(6) The Client ensures that the transfer of the personal data forwarded to it to its seat outside the Union is permissible under Art. 44 et seq. GDPR and takes the measures required for this purpose.

§ 5 Indemnification

(1) Pursuant to Recital 80 GDPR, the representative may be subject to enforcement proceedings in the event of non-compliance by the controller or processor. The Client therefore indemnifies RA Matutis against all claims, proceedings, measures, administrative fines, penalty payments, claims for damages and costs that supervisory authorities, data subjects or other third parties assert against or impose on RA Matutis in his capacity as representative in connection with the processing of personal data by the Client or with infringements by the Client of the GDPR or of this Agreement.

(2) The indemnification includes the costs of a reasonable legal defence. If RA Matutis conducts his own defence, the Client reimburses the time spent at the firm's standard hourly rate of EUR 500 net without discount. On request, the Client makes reasonable advance payments.

(3) The indemnification does not apply to the extent that RA Matutis has himself caused the claim or measure intentionally or by gross negligence. It continues to apply after termination of this Agreement with respect to circumstances that arose during its term.

(4) RA Matutis informs the Client without undue delay of proceedings and claims covered by this indemnification and coordinates the defence with the Client insofar as this is reasonable for him.

§ 6 Remuneration

(1) The base fee for the designation and the services under § 3 amounts to EUR 350 net per contract year. It is payable annually in advance, for the first time upon conclusion of this Agreement, in each case within 14 days of receipt of the invoice.

(2) The base fee includes the designation, the function as point of contact, the receipt, scanning and forwarding of correspondence by e-mail, the transmission of replies pursuant to § 3 (3), the keeping and provision of the record pursuant to § 3 (5), and the cooperation pursuant to § 3 (4) sentence 2.

(3) All other services requested by the Client, such as immediate support in the event of data breaches, substantive review of enquiries, drafting of letters to data subjects or supervisory authorities, substantive statements to authorities, representation in proceedings, advice or on-site appointments, are billed on a time basis at the firm's standard hourly rate with a discount of 50 %, currently EUR 250 net per hour instead of EUR 500 net per hour, billed in increments of 15 minutes. For on-site appointments, an additional EUR 0.30 net per kilometre driven is charged. Additional services are invoiced after performance and are payable within 14 days of receipt of the invoice. Deviating agreements in individual cases remain possible.

(4) For the physical forwarding of letters, a handling fee of EUR 2 net plus postage applies. For items that cannot be scanned, such as parcels, packages or documents exceeding 30 pages, the handling fee amounts to EUR 5 net plus postage.

(5) All amounts are net amounts. As the Client is a business established outside the Union, the place of supply is at the Client's seat pursuant to Section 3a (2) of the German VAT Act (UStG). The services are not taxable in Germany and are invoiced without German VAT. Taxes, levies or withholding taxes arising in the Client's country of establishment are borne by the Client. Payments shall be made such that RA Matutis receives the agreed amounts in full. Bank charges are borne by the Client.

(6) RA Matutis may adjust the base fee and the hourly rate with effect from the beginning of a new contract year if he notifies the Client thereof in text form no later than four months before the end of the current contract year. In this case the Client may terminate the Agreement by ordinary termination pursuant to § 9 (1).

(7) In the event of default in payment, Section 288 (2) and (5) of the German Civil Code (BGB) apply.

§ 7 Liability

(1) RA Matutis maintains the professional indemnity insurance pursuant to Section 51 of the German Federal Lawyers' Act (BRAO) for his legal practice and an additional financial loss liability insurance for his data protection activities.

(2) The liability of RA Matutis for financial losses caused by negligence under this Agreement is limited to EUR 1,000,000 per claim. This amount corresponds to four times the minimum insurance sum pursuant to Section 51 (4) BRAO (Section 52 (1) no. 2 BRAO). Insurance cover exists to this extent.

(3) Liability for intent and gross negligence, for damage arising from injury to life, body or health, and for the breach of material contractual obligations remains unaffected, in the latter case, however, limited to the foreseeable damage typical of the contract.

(4) RA Matutis is not liable for the content of replies given by the Client, for the Client's failure to meet deadlines, for the consequences of incorrect or incomplete information provided by the Client, for infringements of the GDPR by the Client, or for the e-mail address designated by the Client being unreachable. The indemnification under § 5 remains unaffected.

§ 8 Confidentiality and Data Processing

(1) RA Matutis treats all information of the Client that becomes known to him under this Agreement as confidential and uses it solely for the performance of his duties as representative. This obligation continues after termination of the Agreement.

(2) Confidentiality does not preclude disclosure to supervisory authorities and data subjects insofar as RA Matutis is obliged thereto under Art. 27, Art. 30 (4) or Art. 31 GDPR or insofar as this is necessary for the performance of his duties as point of contact. To this extent, the Client releases RA Matutis from his professional duty of confidentiality as a lawyer.

(3) Personal data that RA Matutis receives when receiving and forwarding enquiries are processed by him as an independent controller for the performance of this Agreement and of his duties under Art. 27 GDPR. No processing on behalf of a controller pursuant to Art. 28 GDPR takes place. The documents are deleted after expiry of the retention periods applicable to RA Matutis.

§ 9 Term and Termination

(1) The Agreement commences upon signature by both parties and has a term of one year. It is extended by a further year in each case unless terminated by either party in text form (Section 126b BGB) no later than three months before the end of the respective contract year.

(2) The right to terminate for good cause remains unaffected. Good cause exists for RA Matutis in particular if the Client is in default with payment of the base fee for more than 14 days despite a reminder, if a warranty under § 2 (1) is or becomes incorrect, if the Client repeatedly fails to reply to forwarded enquiries from supervisory authorities in due time, if proceedings are initiated against RA Matutis on account of the Client's processing, or if insolvency proceedings or comparable proceedings are applied for in respect of the Client's assets.

(3) If the Client's obligation to designate a representative ceases to apply, for example because it establishes a presence in the Union, the Client may terminate the Agreement in text form with one month's notice to the end of a month. Base fees already paid are not refunded.

(4) Upon termination of the Agreement, the designation ends and the power of attorney pursuant to Annex 1 expires. The Client removes the reference to RA Matutis from all privacy notices and other documents within 14 days after the end of the Agreement and, insofar as it remains obliged to do so, designates a new representative. RA Matutis is entitled to inform supervisory authorities, data subjects and other senders of the termination of the designation. Correspondence received after the end of the Agreement may be returned by RA Matutis to the sender with a note on the termination or forwarded to the Client without obligation.

§ 10 Final Provisions

(1) This Agreement and the power of attorney pursuant to Annex 1 are governed by the laws of the Federal Republic of Germany.

(2) The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement is Potsdam, Germany (Art. 25 Regulation (EU) No 1215/2012). RA Matutis is additionally entitled to bring proceedings against the Client at the Client's seat.

(3) The language of the Agreement is German. Translations serve information purposes only. In the event of discrepancies, the German version alone prevails.

(4) Amendments and supplements to this Agreement must be made in text form. There are no oral side agreements.

(5) Should any provision of this Agreement be or become invalid, the validity of the remaining provisions remains unaffected.

(6) Annex 1 (Designation and Power of Attorney pursuant to Art. 27 GDPR) forms an integral part of this Agreement.

Place, date, signature RA Matutis

Place, date, signature Client