

Data Processing Agreement (DPA)
pursuant to the EU General Data Protection Regulation

between

innovaphone AG

Umberto-Nobile-Str. 15
71063 Sindelfingen
– hereinafter referred to as “*innovaphone*” –

and

Company name

Street

Zip Code City

– hereinafter “*Customer*” –

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as “*innovaphone*”) and the Customer, who is the controller in terms of Art. 4 (7) General Data Protection Regulation (GDPR).

2. Scope of Application and Subject Matter of the Agreement

- 2.1. This Data Processing Agreement (hereinafter also referred to as the “DPA”) applies to and forms part of the main agreement (hereinafter referred to as the “Main Agreement”) between innovaphone and the Customer, where and to the extent that the Customer processes personal data of the controller in the course of providing services under the Main Agreement and to the extent that GDPR, as well as any other applicable data protection laws, apply to such processing.
- 2.2. The subject matter of the Agreement is to specify the rights and obligations of the controller (hereinafter “*Customer*”) and the processor (hereinafter “*innovaphone*”) whenever personal data is processed by innovaphone on behalf of the Customer within the meaning of applicable data privacy legislation when rendering services on the basis of a contract and the applicable General Terms and Conditions as amended (GTC), e.g. for the myApps Cloud Service. The agreement applies mutatis mutandis to remote services (remote access) and/or maintenance performed in connection with such services whenever it cannot be excluded that access to personal data might be obtained.
- 2.3. The respective agreement, the GTC, this DPA and the Annex to this DPA define the legal grounds, subject-matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects.
- 2.4. The Customer’s general terms and conditions do not form part of the contractual agreement between the contracting parties unless otherwise confirmed in writing by innovaphone.
- 2.5. The data processing agreement does not become binding until confirmed in writing by innovaphone. If the contract is concluded by means of an electronic legal transaction, the Customer makes an electronic offer to conclude a contract by clicking the confirmation button (legally binding declaration) and furthermore accepts this DPA.
- 2.6. The Customer receives the electronically concluded data processing agreement from innovaphone either by e-mail to the e-mail address specified by the Customer or via its Customer account in the innovaphone portal.

3. Agreement Duration/Term of the Data Processing Agreement

The term of the data processing agreement is governed by the duration of the Main Agreement and ends at the latest when innovaphone actually ceases to render the services.

4. Customer's/Controller's Rights and Obligations

- 4.1. In its capacity as the controller within the meaning of Art. 4 (7) GDPR, the Customer is solely responsible for complying with the statutory provisions under data privacy legislation, including in particular the lawfulness of data transmission and the lawfulness of processing. The Customer is thus responsible for assessing the reliability of the processor and for verifying the lawfulness of processing and for observing the rights of the data subjects. In its area of responsibility, the Customer ensures that the legally prescribed requirements are met so that innovaphone can render the agreed services without violating any legal provisions.
- 4.2. Furthermore, the Customer informs innovaphone without delay if it identifies errors or irregularities when reviewing the processing performed by innovaphone.

5. innovaphone's Obligations as the Processor

- 5.1. Unless an exception as specified in Art. 28 (3) point (a) GDPR applies, innovaphone may only process personal data on the basis of the Customer's documented instructions. innovaphone informs the Customer without delay if, in its opinion, an instruction violates applicable law. innovaphone may suspend the implementation of such instruction until it has been either confirmed or amended by the Customer.
- 5.2. innovaphone organizes its internal business operations within its own area of responsibility in such a way that they meet the special requirements under data privacy law. innovaphone implements technical and organizational measures that meet the requirements of the General Data Protection Regulation (Art. 32 GDPR) to ensure that the Customer's data is adequately protected. innovaphone implements technical and organizational measures that ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.
- 5.3. The measures that are currently considered to be adequate ("TOM") are specified in the Annex to this DPA. The Customer has evaluated innovaphone's technical and organizational measures on the basis of the actual data processing procedures to establish whether they provide an adequate level of protection and has accepted them as being adequate. innovaphone reserves the right to change the IT security measures in place, but must ensure that the level of protection does not fall below the level of protection deemed appropriate at the time the agreement was concluded. innovaphone warrants that it will meet its obligations under Art. 32 (1) point (d) GDPR to establish a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.
- 5.4. innovaphone uses reasonable endeavours to support the Customer in meeting the requests and rights of data subjects pursuant to Chapter III GDPR and in fulfilling the obligations as per Art. 33 to 36 GDPR.
- 5.5. innovaphone warrants that employees and other persons working for innovaphone and involved in the processing of the Customer's data are prohibited from processing such data in any other way than on the Customer's instructions. innovaphone further warrants that the persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. The confidentiality/secretcy obligation continues to be in force even after the order has been completed or the services are no longer rendered.
- 5.6. The processing and use of data takes place exclusively on the territory of the Federal Republic of Germany, a member state of the European Union or another signatory state to the Agreement on the European Economic Area. Any transfer to a third country requires the Customer's prior consent and may take place only if the special conditions laid down in Art. 44 et seqq. GDPR are complied with.
- 5.7. innovaphone designates a data protection officer if this is required under applicable Union law or the applicable law of a member state to which innovaphone is subject. The contact details of the

data protection officer are available for inspection in the privacy policy on the innovaphone website (Art. 13, 14 GDPR).

- 5.8. In the event that a data subject asserts claims against the Customer under Art. 82 GDPR, innovaphone undertakes to use reasonable endeavours to support the Customer in refuting such claims.

6. Erasure and Return of Data

- 6.1. innovaphone rectifies or erases any personal data that is no longer needed if the Customer instructs it to do so and this is covered by the scope of instructions.
- 6.2. Personal data will be erased at the latest once the order has been completed. The Customer is responsible for ensuring that the required data backups are performed. The Customer furthermore exports data in a timely manner, especially if there is a statutory obligation to store data and/or retain it for a specific period.

7. Requests by Data Subjects

Whenever data subjects address innovaphone with requests to rectify or erase data or to provide information on a data subject's personal data, innovaphone refers such data subjects to the Customer. innovaphone passes on the requests of data subjects to the Customer without delay and uses reasonable endeavours to support the Customer in complying with the requests as per Chapter III GDPR (Rights of the data subjects).

8. Obligations to Demonstrate and Monitor

- 8.1. At the customer's request, innovaphone makes available to the Customer all information necessary to demonstrate compliance with the obligations laid down in Art. 28 GDPR and allows for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
- 8.2. innovaphone informs the Customer without delay whenever it becomes aware of any personal data breaches with respect to the Customer's data or if, in its opinion, an instruction by the Customer infringes the GDPR or other Union or member state data protection provisions. innovaphone takes the necessary measures to secure the data and to mitigate the potential damage suffered by the data subjects and consults with the Customer on such measures without delay.
- 8.3. If inspections by the Customer or another auditor mandated by the Customer are required in individual cases, such inspections will be conducted during the usual business hours without interruptions to the business operations and are subject to prior notice with a reasonable notice period. innovaphone may subject its approval of such inspection to the prior notice with a reasonable notice period and the execution of a non-disclosure agreement regarding its internal business data. If there is a competitive relationship between the auditor mandated by the Customer and innovaphone, innovaphone may object to such auditor being mandated.

9. Subcontractors/Engaging Another Processor

- 9.1. The provisions in Article 28 (4) Sentence 1 GDPR apply whenever subcontractors are involved as sub-processors. In this case, the same data protection obligations as set out in the Data Processing Agreement are imposed on that sub-processor by way of a contract or other legal act under Union or Member State law.
- 9.2. The Annex to this DPA includes a list of sub-processors used by innovaphone.
- 9.3. The Customer grants innovaphone its general consent to involving other processors. innovaphone informs the Customer whenever new processors are involved and/or processors are replaced. The Customer may object to them within a period of 14 days after receiving the notification. If the Customer fails to object, the (new) subcontractor is deemed to have been approved.

10. Liability/Indemnification

- 10.1. The Customer warrants that the obligations in connection with the processing of personal data, as stipulated in the applicable and relevant statutory provisions, are implemented in its area of responsibility.
- 10.2. In the event that third parties assert claims against innovaphone on the grounds of the violation of data privacy provisions that are based on the Customer's violation of data privacy provisions and/or provisions in this contract, the Customer bears all the cost, including legal costs, i.e. the cost of defense in extrajudicial proceedings, a legal dispute and/or administrative proceedings and indemnifies innovaphone against all claims at first request. All other aspects of contractual liability limitations agreed for the benefit of innovaphone (e.g. as per the General Terms and Conditions) remain unaffected thereby.

11. Applicable Law, Place of Jurisdiction

- 11.1. This DPA is governed by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 11.2. The place of performance for deliveries and services and the place of subsequent performance is Stuttgart.
- 11.3. Side agreements, amendments or supplements to this DPA require the signature of both parties or their authorised legal representatives to be effective. The same applies to any modification of this written form requirement.
- 11.4. The place of jurisdiction for all and any disputes arising from or in connection with data processing on behalf of the controller is Stuttgart. Any exclusive place of jurisdiction takes priority.

12. Contract Language; German Language Prevails

This DPA has been written in German. If this DPA and the Main Agreement are translated into other languages and provided to the Customer, the German version prevails if there are any discrepancies between the different language versions.

13. Partial Invalidity/Severability Clause

If individual provisions in this DPA are or become invalid, void or unenforceable, the validity of the remaining provisions herein remain unaffected. The parties agree that in such a case, the provision applies that, within the scope of an interpretation based on meaning and purpose, is closest to expressing the intended economic purpose of the invalid, void, or unenforceable provision. The above provision also applies mutatis mutandis if this DPA should fail to cover a specific aspect.

Annex 1: Special Provisions for Data Processing as per Article 28 GDPR

Place, date

Place, date

Signature and company stamp
innovaphone AG

Signature and company stamp
Customer

Name:
Position:

Name:
Position:

Annex 1: Special Provisions for Data Processing as per Article 28 GDPR

1. Detailed Data Processing Information

- a) Information on the “Categories of Processing”:
- Services in the scope of the myApps Cloud Service and the operation of the PBX (telephone system) and the communications environment in the cloud
 - Support services in connection with the PBX (telephone system) and the Customer’s myApps communications environment (remote or on premise)
 - Maintenance services rendered in connection with hardware maintenance/RMA
 - Services in connection with partner or end customer certification and qualification (through platforms)
- b) Categories of Data Subjects:
- Subscribers to the controller’s telephone system/communications environment
 - External third parties in their capacity as the controller’s PBX (telephone system) administrator
 - External third parties to whom services are rendered (RMA, hardware maintenance and support)
 - External third parties that receive training courses
- c) Personal Data in Question:
- Contact and location data of subscribers to the telephone system/communications environment and external third parties in their capacity as the controller’s system administrator
 - Personal log data (e.g. user name/user ID, IP address)
 - Data from recorded messages/calls (e.g. voice mail) or audio messages (e.g. chat messages)
 - Contact data of parties to whom services are rendered (e.g. telephone number, name, e-mail, etc.)
 - Data on the qualifications of training course participants
- d) Special Categories of Personal Data:
- None

2. Access to Personal Data

innovaphone enables the Customer to use the PBX (telephone system) and communications environment in the cloud or to use platforms (e.g. for training courses). In this context, innovaphone processes Customer-related personal data in its capacity as a (hosting) provider and renders services on the basis of separate agreements in the field of support, maintenance/remote maintenance/IT error analysis in case of disruptions and, if applicable, hardware diagnosis by means of remote access to hardware products (like end devices, routers, gateways) and training courses.

The following is additionally agreed:

- Inspections, support and maintenance of the innovaphone components held by the Customer are, following prior request and approval, performed by the Customer’s corresponding beneficiary.
- innovaphone informs the controller of upcoming inspections and maintenance before the work commences.
- Upon request by the controller, innovaphone informs the controller of the specific tasks performed, including the time of execution, the employees involved, and the manner in which these individuals identify and authenticate themselves to the controller.
- innovaphone exercises the access rights granted to innovaphone, also with regard to the duration of access, to the extent required for proper performance of the commissioned maintenance and inspection activities.

3. Services/Purpose of the Agreement:

Provision of a PBX (telephone system) and communications environment in the cloud in accordance with the contract and the GTC, e.g. myApps Cloud Service and services on the basis of contracts in the field of maintenance/remote maintenance/IT error analysis and support and training courses.

4. Place of Processing:

Germany and locations in the EU/AEE (no third countries).

5. Technical and Organizational Security Measures

The following measures are agreed with respect to the commissioned collection and/or processing of personal data:

- a) Confidentiality (Art. 32 (1) point (b) GDPR)
 - Entrance Control
No unauthorized entry to data processing systems, e.g. magnet or chip cards, keys, electric door openers, security guards or gate keeper, alarm system, video surveillance.
 - Data Access Control
No unauthorized use of the system, e.g. (secure) passwords, automatic blocking mechanisms, two factor authentication if required, encrypted data carriers.
 - Data Manipulation Control
No authorized reading, copying, modifying or deleting within the system, e.g. authorization concepts and data access rights on a need-to-know basis, logging of data access.
 - Separation Control
Separate processing of data that are collected for different purposes, e.g. multi-client capability,
 - Pseudonymization and Encryption (Art. 32 (1) point (a) GDPR; Art. 25 (1) GDPR) as far as this is required to maintain an adequate level of protection in view of the risks involved.
- b) Integrity (Art. 32 (1) point (b) GDPR)
 - Transfer Control
No unauthorized reading, copying, modifying or deleting during electronic transfer or transport, e.g. encryption, Virtual Private Networks (VPN), traceability whether and by whom personal data was entered, modified or deleted in the data processing systems, e.g. logs, document management.
- c) Availability and Resilience (Art. 32 (1) point (b) GDPR)
 - Availability control
Protection against accidental or intentional destruction or loss, e.g. backup strategy (online/offline; on site/off site), uninterrupted power supply, virus protection, firewalls, reporting channels and emergency plans.
 - Ability to restore the availability and access in a timely manner (Art. 32 (1) point (c) GDPR)
- d) Process for Regularly Testing, Assessing and Evaluating the Effectiveness (Art. 32 (1) (d) GDPR; Art. 25 (1) GDPR)
 - Data protection management
 - Incident response management
 - Data protection by default (Art. 25 (2) GDPR);
 - Job control

No data processing within the meaning of Art. 28 GDPR without the corresponding instructions by the client, e.g. unambiguous contract design, formalized job management, strict supplier selection, vetting duty, follow-up inspections.

6. Documentation by innovaphone

innovaphone reserves the right to document the satisfactory fulfilment of its obligations under the contractual conditions, in particular the implementation of the technical and organizational measures (item 5) and measures that refer not only to the job at hand, by presenting one of the following documents:

- Compliance with approved rules of conduct
- Recent audits, reports or extracts from reports prepared by independent organs (e.g. auditors, internal auditors);
- Adequate certification obtained in an IT security or data protection audit; declaration by the processor.
-

7. Approved Subcontractors

innovaphone is entitled to involve subcontractors in rendering its services, which can be accessed via innovaphone's website.