

Partner Contract for Resellers

between **innovaphone AG**
Umberto-Nobile-Str. 15
71063 Sindelfingen
- hereinafter referred to as "*innovaphone*" -

and Company Name Reseller

Street

Zip Code City

Country

– hereinafter referred to as "*Reseller*" –

- together hereinafter referred to as "*Parties*" and/or "*Contracting Parties*"

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I. Partner Contract for Resellers

Preamble

- innovaphone develops and manufactures IP telephony systems, Unified Communications solutions and other future-oriented communication technology and products. The marketing and sales of innovaphone products (hereinafter referred to as "Contractual Products") to end customers is exclusively directed at business customers and is usually carried out via a partner network across the globe. Marketing and sales (hereinafter referred to as "Sales", "Sell", "Selling" or "Sale") of Contractual Products to end customers is generally carried out by authorized innovaphone partners, such as distributors and resellers. Due to the special knowledge and (technical) competence required to use the Contractual Products, innovaphone offers a Reseller Partner program (hereinafter: "Partner Program"), which enables companies to be trained and certified according to specialization levels (hereinafter: "Level(s)"). WHEREAS the innovaphone authorized Reseller participates in the Partner Program and provides primarily sales, marketing, service and support services for Contractual Products.

NOW THEREFORE, the Parties agree on the following:

1. Conclusion of the Partner Contract / Authorization as Partner / Right of Rescission

- 1.1. By submitting the signed Partner Contract, the Reseller is deemed to submit an offer to conclude a Partner Contract for Resellers.
- 1.2. In order to be authorized to market and sell Contractual Products and innovaphone services as well as other services in connection with Contractual Products (hereinafter: "**Services**") it is mandatory for the Reseller to participate in the Partner Program and to have gained at least the lowest level of certification (currently: Partner iP Connect Level). The lowest Level of certification gives the Reseller the status of "authorized" Reseller. The requirements for the qualifications and supporting documents that the Reseller has to provide for certification by innovaphone are specified in item 5 of this Partner Contract and the respective Partner Program as amended.
- 1.3. When the Reseller submits its offer, the Reseller shall enclose the proof of the qualifications as required for the Partner Program, especially concerning the respective certification Level.
- 1.4. The Reseller is legally bound to its offer for a period of 4 [four] weeks once innovaphone has received the signed Partner Contract. innovaphone shall review within the aforementioned time period whether it accepts the offer to conclude the contract.
- 1.5. innovaphone is not obliged to accept the offer. innovaphone shall inform the Reseller in case of rejection.
- 1.6. The Partner Contract is concluded if and as soon as innovaphone countersigns the Partner Contract within the aforementioned period. innovaphone shall send the Reseller a copy of the counter-signed Partner Contract.
- 1.7. If the Reseller does not meet or does not fully meet the requirements to become an authorized Reseller as per item 1.2 of the Partner Contract, innovaphone is entitled to accept the Partner Contract subject to the Reseller providing proof of the missing qualifications. To this end, innovaphone shall specify the missing qualifications. If innovaphone makes use of this right, the Reseller shall provide proof of the said qualifications within 2 [two] months after innovaphone's acceptance of the Partner Contract. **If proof is not provided within this period, innovaphone is entitled to rescind the Partner Contract (contractual right of rescission).** Instead of rescinding the contract, innovaphone may set a new deadline for the Reseller to present proof of its qualifications and, following expiry of such deadline without yielding the desired result, innovaphone may rescind the Partner Contract or may set a new grace period. If this grace period also expires without yielding the desired result, the previous sentence shall apply mutatis mutandis.

2. Subject Matter of the Contract

- 2.1. The subject matter of this Partner Contract is the Sale of the Contractual Products and provision of Services by the Reseller as well as participation of the Reseller in the Partner Program.
- 2.2. Sales refers exclusively to Contractual Products and Services that are released for sale by innovaphone. The Contractual Products that are released for sale are stated in the innovaphone price list as amended together with their recommended retail prices. The respective price list as amended listing the Contractual Products offered by innovaphone is provided by innovaphone to the Reseller either on the portal or on its website, whichever innovaphone prefers. innovaphone is entitled to add and/or remove Contractual Products from the price list at any time. The Reseller shall regularly check for changes in the Contractual Products and their prices.
- 2.3. In general, the Reseller shall procure Contractual Products through an authorized distributor, as innovaphone has granted such distributors special distribution rights and the Contractual Products are always marketed in a graduated, selective Sales procedure. The Reseller can check whether a partner has the status of "authorized distributor" on the innovaphone website (currently: www.innovaphone.com).
- 2.4. In exceptional cases, the Reseller may purchase Contractual Products, which must generally be purchased through distributors, directly from innovaphone if there are important reasons making it unreasonable for the Reseller to purchase the Contractual Products through a distributor. The Reseller shall state the important reason in writing. innovaphone shall verify the validity of the important reason and shall inform the Reseller without delay whether and to what extent the Contractual Products may be purchased directly from innovaphone.
- 2.5. In principle, this Partner Contract does not create an obligation for innovaphone to deliver Contractual Products or to conclude individual contracts. Upon conclusion of the Partner Contract, the Reseller only receives the **non-exclusive** right to Sell Contractual Products, to participate in the Partner Program and to provide Services in accordance with the provisions of this Partner Contract.
- 2.6. The Contractual Products may only be Sold to commercial end customers (B2B). This refers to entrepreneurs within the meaning of Section 14 German Civil Code (BGB), i.e. any natural or legal person or partnership with legal capacity who, in concluding a legal transaction, is acting within the scope of their business or activity as a self-employed professional. This includes, in particular, public authorities, institutions, schools and foundations. It is expressly forbidden to conclude contracts with consumers within the meaning of Section 13 of the German Civil Code (BGB), i.e. with natural persons who conclude a legal transaction for purposes that are neither predominately for their commercial nor their self-employed activity. The Reseller shall review the legal status of the end customer prior to conclusion of the contract.

3. Legal Position of the Reseller

- 3.1. The Reseller sells Contractual Products in its own name and for its own account and at its own risk.**
- 3.2. The Reseller is not entitled to act on behalf of innovaphone or to enter into obligations on behalf of or for the account of innovaphone or to enter into liability undertakings, express warranties or make any other declarations for innovaphone.
- 3.3. The Reseller shall not receive any remuneration, especially no commission, for the Services or the Sale of the Contractual Products. The Reseller generates economic profit by means of its pricing with regard to the Sale of the Contractual Products which it may freely decide upon (cf. item 6.4. of the Partner Contract), as well as by providing Services. The Parties therefore agree that the activities of the Reseller constitute neither a commercial agent relationship nor a shareholder relationship between the Parties.
- 3.4. If, instead of acting as the contracting partner of innovaphone when concluding contracts concerning Contractual Products, the Reseller acts only as a legal representative (with legal power of attorney) of the respective end customer (e.g. when renting software), the Reseller shall obtain a written power of attorney from the respective end customer in order to conclude the contract. If the respective contract also includes the processing of personal data (e.g. in the case of the myApps cloud service), the power of attorney must also include the authority to conclude a data processing contract in accordance with Art. 28 (3) General Data Protection Regulation (GDPR); see item 14.4. of the Partner Contract below. Upon innovaphone's request, the Reseller shall present the power of attorney(s) to prove that it may legally represent the end customer.

4. Contractual Territory

- 4.1. The agreed contractual territory is the country in which the Reseller has its registered office.**
- 4.2. The Reseller is not authorized to actively market or Sell, either directly or indirectly, itself or through third parties, the Contractual Products to other areas outside of its contractual territory as per item 4.1. as innovaphone has reserved the right for itself or, if applicable, third parties to sell the Contractual Products in certain contractual territories. Passive Sale of the Contractual Products to end customers who contact the contract partner without its active participation (possibly outside the contractual territory of the Reseller, e.g. via online trading) remains unaffected by this. The Reseller shall obtain the consent of innovaphone if it intends to market and Sell Contractual Products through branch offices or other representative offices or intermediaries outside of its contractual territory as per item 4.1. (in order to protect the territorial exclusivity of third parties). If innovaphone grants its consent, the Reseller is obliged to observe, in particular, the duties as per item 7.4. (Import and Export).
- 4.3. innovaphone is entitled to change or reduce the agreed contract territory if there is an objective reason for doing so, especially if amendments to territories are expected to result in a significant improvement in sales activities regarding the Contractual Products. innovaphone shall announce amendments to contractual territories in writing in due time and with a reasonable period of notice.
- 4.4. The Reseller does not have the exclusive right to be supplied with Contractual Products by innovaphone in the contractual territory. innovaphone is thus entitled to supply third parties, in particular

other resellers, with Contractual Products in the contractual territory.

- 4.5. The Reseller is not entitled to any compensation if additional resellers are appointed in the agreed contractual territory or if the contractual territory is reduced in size. The same applies if innovaphone uses a different sales model.

5. Partner Program and Keeping the Partner Status

- 5.1. The Partner Program designed by innovaphone provides Resellers with the necessary skills and specialization to Sell Contractual Products. The Reseller can achieve and pass through certain certification Levels to thus reach a certain partner status.
- 5.2. In order to maintain the Reseller Partner Program and as an incentive to Sell Contractual Products, innovaphone may grant the Reseller special advantages depending on the Reseller's certification Level (hereinafter: "**Partner Services**") (e.g. third-level support free of charge). As far as innovaphone provides Services to the Reseller that are assigned to a partner level that the Reseller has not reached, this is done without contractual obligation and the Reseller has no inherent right to the respective Partner Services.
- 5.3. **Participating in the Partner Program is the prerequisite for the Sale of Contractual Products and providing Services. In this respect, the Reseller is obliged to provide evidence of at least one certification at the lowest Level (currently: Partner iP Connect Level). This certification is the basis for being authorized to Sell the Contractual Products and entitles the Reseller to transfer the right to use rented Contractual Products to end customers (e.g. by subrenting).**
- 5.4. The Reseller must have a valid certification for the lowest Level for the entire duration of this Partner Contract unless innovaphone explicitly releases the Reseller from this obligation in writing.
- 5.5. The Reseller shall notify innovaphone without delay in writing if any of the requirements listed in the Partner Program are no longer met. The Reseller is responsible for proving that it meets the requirements of the respective partner Level for Resellers or that it has the necessary qualification.
- 5.6. The Partner Program as amended can be viewed on innovaphone's website (currently: www.innovaphone.com). innovaphone reserves the right to make changes to the Reseller Partner Program, in particular the partner Level and the required qualifications of authorized Resellers.
- 5.7. The Reseller must meet the duties and requirements of the respective partner Level for resellers as listed in the Partner Program and must provide proof of this to innovaphone by presenting the necessary qualifications or certifications according to its respective partner Level of the Partner Program. To this end, the Reseller shall, in particular, participate in training courses and any required re-certifications. In addition, it shall provide Services, in particular support services, to end customers and employ specially trained employees for marketing and for the Sale of Contractual Products (cf. item 9 below).
- 5.8. If one of the requirements for the partner status is no longer met and this results in a Reseller being relegated to a lower partner Level, innovaphone is entitled to withdraw the Reseller's existing certification.
- 5.9. If the requirements fall below the lowest partner Level for Resellers, innovaphone is entitled to either terminate the Partner Contract for cause and without notice after a period of at least 8 [eight]

weeks that was set by innovaphone to allow the Reseller to provide proof that it fulfils the missing requirements has expired, or to set a further period for the Reseller to prove it fulfils the necessary requirements, whichever innovaphone prefers. In case this period expires without yielding the desired result, item 1.7 of this Partner Contract shall apply mutatis mutandis, but with the proviso that instead of the right to rescind the contract, innovaphone is entitled to terminate the contract for cause without notice.

- 5.10. From the moment when the requirements for the lowest partner level are not met or the required qualification is lost, innovaphone is entitled at any time to prohibit the Reseller from presenting itself as an “authorized innovaphone partner” until it provides written proof that the aforementioned qualifications have been renewed. If the Reseller purchases Contractual Products directly from innovaphone for an important reason (see item 2.4. of the Partner Contract), innovaphone is entitled to stop further supply as soon as the requirements for the lowest partner Level are no longer met until the Reseller provides written proof that the aforementioned qualifications have been renewed.

6. Purchase of the Contractual Products, General Terms and Conditions

- 6.1. Whenever innovaphone supplies the Reseller with Contractual Products, individual contracts are concluded between the Parties which are subject to innovaphone’s General Terms and Conditions (hereinafter referred to as “GTC”) as amended. The current version of the GTC as amended, consisting of the general provisions and the product-specific special provisions, is available on the innovaphone website (currently: www.innovaphone.com). The current version of the GTC is attached to this Partner Contract as **Annex 1**.
- 6.2. In the event that hardware is provided on a rental basis, the Reseller shall enter into a framework rental contract for renting hardware which entitles the Reseller to rent and (sub)rent hardware units. Any individual rental contracts concluded on this basis are subject to innovaphone’s GTC as amended, especially the Special Provisions for Hardware Rental.
- 6.3. If the Reseller refers to its own general terms of purchase and delivery or other terms not confirmed by innovaphone, these shall not become part of the contract, not even with regard to (individual) contracts yet to be concluded.
- 6.4. The Reseller is free to set its own prices vis-à-vis end customers. innovaphone recommends net prices for end customers (non-binding recommended retail price).
- 6.5. For important reasons, innovaphone can also prohibit the Sale of Contractual Products that have already been delivered or are still to be delivered to the Reseller (e.g. in the event the Contractual Products cannot be put on the market for legal or (security-based) technical reasons). In this case, innovaphone shall reimburse the Reseller for payments made or fees paid by the Reseller regarding the Contractual Products concerned after the Contractual Products have been returned or the Services performed have been reversed. Any further claims of the Reseller vis-à-vis innovaphone are excluded in case the Sale of Contractual Products that have already been delivered or are still to be delivered to the Reseller is prohibited for an important reason, provided the important reason is not based on a grossly negligent or intentional breach of duty by innovaphone.

7. General and Special Duties concerning the Sale of Contractual Products

- 7.1. The Reseller offers the Contractual Products to strengthen innovaphone's products and services (co-marketing) with reference to innovaphone as the manufacturer, including the use of trademarks and property right notices (e.g. through copyright notices and/or by stating "powered by innovaphone"). Furthermore, the Reseller shall provide end customers with all information and documents provided by innovaphone, in particular operating and installation manuals. Information on Contractual Products can be viewed on the innovaphone website (currently: www.innovaphone.com) .
- 7.2. The Reseller shall observe product-specific instructions from innovaphone for Sales (e.g. special notes for using the innovaphone cloud service or renting innovaphone software and hardware products), especially
 - the duty to register on the innovaphone platform and to keep a customer/user account for the use of certain Contractual Products (e.g. when purchasing and renting software);
 - innovaphone's right to temporarily/permanently block access to platforms under certain circumstances (e.g. non-conforming contractual behaviour);
 - the prohibition to relocate rented hardware to a country outside of the country of delivery as stated in the order without innovaphone's consent;

Furthermore, it is recommended to inform the end customer about the necessity of using innovaphone Service Credits (iSC) and Software Service Credits (SSC) for certain Contractual Products and how to use such credits.

- 7.3. Any innovaphone Contractual Products that have CE marking meet the requirements of the respective EU provisions. Notwithstanding the above, the Reseller shall review and comply with all the statutory and/or official provisions, legislation, regulations and orders that apply to the Reseller as well as the admissibility of Selling the Contractual Products and placing them on the market. The Reseller is obliged at its own expense to review the respective national statutory and/or official product labelling obligations and product approval restrictions for placing Contractual Products on the market that might be required in specific countries (e.g. due to technical safety standards for placing products on the market under national legislation) and to apply for any official permits that might be required in this respect.
- 7.4. The Reseller shall comply with the applicable provisions under national and international (re-) export laws whenever it delivers innovaphone's Contractual Products to end customers. The Reseller shall, upon request, provide without delay any information regarding the recipient, the final destination and the intended purpose of the delivery made by innovaphone or a distributor if this is required for authorities or innovaphone to carry out export control measures.
- 7.5. The Reseller shall bear all taxes and approval fees and other charges and costs associated with the Sale of the Contractual Products.
- 7.6. The Reseller shall use its best endeavours to promote and expand the Sale to end customers at its own cost and shall make available the organisational structures, in particular qualified sales and service staff, required to do so. This also includes support services that the Reseller provides in

the scope of its participation in the Partner Program as per item 5 of the Partner Contract. The Reseller shall refrain from all actions that could directly or indirectly impede or impair the Sale of the Contractual Products.

- 7.7. The Reseller shall perform all support service that it renders to end customers, for instance in the scope of the innovaphone Partner Program, autonomously at its own risk and cost.
- 7.8. The Reseller is obliged, in connection with the purchase of hardware products, to take back old units within the meaning of Section 3 No. 3 German Waste Electrical and Electronic Equipment Act (ElektroG)/Directive 2012/19/EU – WEEE 2 of the European Parliament and Council from end customers and to properly dispose of them or have them disposed of by third parties in accordance with the statutory provisions.
- 7.9. As such, the Reseller assumes all the statutory obligations innovaphone might have as the party responsible for disposal within the meaning of Section 19 (1) German Waste Electrical and Electronic Equipment Act (ElektroG). The Reseller shall inform the end customer that either itself or a private regional waste disposal company will take back the Contractual Products on its behalf or shall oblige the buyer to take responsibility for the disposal upon selling the products. **In this respect, the Reseller hereby exempts innovaphone against all obligations under Section 19 German Waste Electrical and Electronic Equipment Act (ElektroG) and indemnifies all third-party claims therefrom and in connection therewith.**

8. Obligations when Selling Software

- 8.1. If the Reseller sells software to end customers, innovaphone holds the exclusive rights of use for any software developed in-house or purchased. The Reseller is entitled to sell it to commercial end customers (cf. item 2.6.). Restrictions and/or more detailed descriptions of the right of use are provided in the respective (individual) contract, the framework rental contract, the General Terms and Conditions of innovaphone or a separate (individual) agreement with innovaphone or, if applicable, the **price list** of innovaphone as amended, which innovaphone may provide on the portal or its website (www.innovaphone.com), whichever innovaphone prefers. The Reseller is entitled in this context to grant to end customers the rights to use the software for the intended use (hereinafter: "**Licenses**") in accordance with its own rights of use. The Reseller shall specify restrictions and/or details on the rights of use in its contract with the end customer or shall inform the end customers thereof.
- 8.2. This Partner Contract entitles the Reseller to use the contractual software itself if the Reseller purchases it from innovaphone for its own business operations. In the event that the Reseller informs innovaphone that it intends to use Contractual Products for its own business operations, innovaphone might grant the Reseller special purchase conditions.
- 8.3. The Reseller is not entitled to decompile software or to extract program parts or carry out reverse engineering or any other measures to derive the source code of the contractual software unless this is permitted pursuant to Section 69d (2) and (3) German Act on Copyright and Related Rights (UrhG) and Section 69e German Act on Copyright and Related Rights (UrhG).
- 8.4. Further, the Reseller is not entitled to remove any trademarks, emblems, copyright notices or other labels on innovaphone's software.

- 8.5. Usually, the software is activated by means of an activation key that the Reseller must pass on to the customer after the product has been purchased.
- 8.6. The Reseller must document its compliance with the provisions of this Partner Contract, in particular in connection with granting the license for the software and the passing on of activation keys. innovaphone is entitled to copy and inspect any documents, data and files that refer to the use and licensing of software. innovaphone retains this right for a duration of two [2] years after this Partner Contract ends.

9. Participation in Training Courses; Trained Staff

One of the prerequisites for obtaining Reseller authorization and to receiving and maintaining additional certification Levels (cf. item 5. of the Partner Contract) is to have specially trained staff for the Sales and support of Contractual Products. Therefore, it is essential to participate in training courses and re-certification measures. The Partner Program as amended can be viewed on innovaphone's website (currently: www.innovaphone.com). innovaphone reserves the right to make changes to the Reseller Partner Program, in particular the partner Levels and the required qualifications of authorized Resellers.

10. Intellectual Property, Advertising and Marketing

- 10.1. Any intellectual property, in particular rights to expertise that can or cannot be protected, inventions, patents, utility models, designs, trademarks and similar rights to use copyrights, including copyrights to software, existing at the time of contract conclusion shall remain the property of innovaphone or, if applicable, shall be held by innovaphone.
- 10.2. innovaphone shall provide the Reseller with a reasonable degree of Sales support by, in particular, providing the information required for Selling and the materials for marketing the Contractual Products, such as operating manuals, brochures, catalogues, price lists and advertising materials in an adequate quantity, electronically and/or online. innovaphone reserves the right to make changes to the aforementioned documents. The Reseller is obliged to always use the most recent documents. The most recent documents can be viewed and downloaded on the innovaphone website (currently: www.innovaphone.com).
- 10.3. The Reseller is entitled during the contract period to identify itself as an innovaphone Reseller on its website by using the innovaphone name/trademark together with the innovaphone company logo (identification) and to advertise the Contractual Products on such website. If it also mentions other manufacturers on its website, the Reseller is obliged to make this information visible on its website. Whenever the Reseller advertises a partner Level it must state which partner Level it holds and may only use the corresponding certification logo. If the requirements for the lowest partner status Level are no longer met, the Reseller is no longer entitled to call itself an innovaphone partner (cf. item 5.10 of the Partner Contract).
- 10.4. innovaphone clarifies that "innovaphone" is a registered trademark and may therefore only be used with innovaphone's consent. innovaphone is entitled to withdraw its consent to the "innovaphone" name and logo being used on the Reseller's website at any time without stating any reasons. In this

case, innovaphone shall grant the Reseller a reasonable period for removing the “innovaphone” name and logo from the Reseller’s website.

- 10.5. While carrying out advertising and marketing measures and using advertising materials for innovaphone’s Contractual Products, the Reseller must ensure that the applicable statutory provisions as amended, in particular the advertising-related provisions under competition law, are complied with. The Reseller shall ensure in this respect that it does not infringe on any third-party rights when advertising Contractual Products. In the event that claims are filed against innovaphone because the Reseller used inadmissible advertising measures for the Contractual Products, the Reseller shall, at first request, indemnify innovaphone against all third-Party claims that third parties might file against innovaphone. Furthermore, innovaphone has the right to prohibit advertising for cause in individual cases, in particular in case advertising measures may be legally classified as anti-competitive practice and/or unfair competition.
- 10.6. The Reseller is prohibited from using any advertising materials, documents and samples produced by innovaphone for business transactions that do not refer to the Sale of Contractual Products.
- 10.7. The Reseller has no right to claim vis-à-vis innovaphone to remuneration and/or reimbursement of expenses for Sales and advertising measures. The same applies to innovaphone vis-à-vis the Reseller with respect to the provision of copyrighted works for marketing Contractual Products (e.g. advertising materials).

11. Internet-based Platforms/Portals

- 11.1. innovaphone shall, in connection with its services, provide Internet-based platforms or portals (hereinafter: “**Platforms**”) free of charge (e.g. my.innovaphone.com, Devices App, Partner Portal). In this respect, Special Conditions for Using innovaphone Platforms that can be viewed and downloaded on the innovaphone website (currently: <https://www.innovaphone.com/en/policy.html>) shall apply.
- 11.2. In order to use certain Contractual Products, it is required to register on an innovaphone Platform where the Reseller, provided the Reseller itself enters into a contractual relationship with innovaphone, must register and set up a customer/user account (e.g. for the configuration and management of software licenses, for storing and using innovaphone Service Credits (iSC) as remuneration for the rental of hardware and software or for using Software Service Credits (SSC) as remuneration for software service). This is governed by Special Conditions for Using innovaphone Platforms that can be viewed and downloaded on the innovaphone website (currently: www.innovaphone.com).
- 11.3. The Reseller is responsible for the registration of users in the customer/user account that it created for itself. The Reseller shall ensure that employees are only granted rights to the account to the extent that they are authorized to make the corresponding declarations and carry out actions. The Reseller is obliged to block access or restrict the rights of employees who do not (or no longer) have the appropriate access authorization or an authorization to carry out actions and make declarations within its innovaphone customer/user account, so that the authorization is always in accordance to the granted rights.
- 11.4. The Reseller shall ensure that all the declarations made and information provided by its employees on the Platforms are truthful. In this context, the Reseller shall ensure, in particular when concluding online contracts via the Platforms (e.g. for software and hardware rentals), that true

information is provided regarding its own identity and the identity of the company or the company's contact person to be stated. The Reseller is obliged, in this context, to provide a real name rather than an alias or name of the department. It is further obliged to provide a valid e-mail address with the company domain and not to use any fictitious or private e-mail addresses.

- 11.5. The obligations as per items 11.3 and 11.4 above of the Partner Contract shall apply mutatis mutandis to any customer/user accounts the Reseller sets up for end customers on their behalf (after having been granted power of attorney to carry out such legal transactions).
- 11.6. **The Reseller bears the full responsibility for the user/customer account vis-à-vis innovaphone. The Reseller is fully liable for all and any use and activity that is carried out under its login to the user/customer account and the respective Platform.**

12. Cooperative Relationship

- 12.1. innovaphone shall give the Reseller a designated contact person in order to coordinate the co-operation. If the contact person changes, innovaphone shall name a new contact person to the Reseller. The Reseller and its designated contact person shall evaluate their cooperation at regular intervals and, if applicable, agree on measures to improve the results.
- 12.2. innovaphone shall inform the Reseller if innovaphone obtains knowledge of any complaints regarding the Reseller's quality, in particular with regard to the marketing of the Contractual Products to end customers and innovaphone shall also inform the Reseller of the nature of such complaint.

13. Confidentiality

- 13.1. None of the Contracting Parties may use or disclose to third parties any trade or business secrets or other confidential information or documents of the respective other party that become known during the term of this Contract without the respective other party granting its consent in writing to such use or disclosure. The Parties agree that, in particular, the contents of the Partner Contract constitute confidential information that obliges the Parties to maintain secrecy. Furthermore, each party shall take adequate preventative and technical and organizational measures to prevent third-party access to such information.
- 13.2. The aforementioned obligation to maintain secrecy does not apply to information disclosed to third parties that are obliged by their professional rules to maintain confidentiality in the scope of a business relationship or to information disclosed to the courts or authorities that request disclosure of such confidential information from either party.
- 13.3. Trade and business secrets and confidential information or documents within the meaning of item 13.1 of the Partner Contract are defined as all and any information, data and documents that either party discloses to the respective other party in the scope of the mutual business relationship or that becomes otherwise known to the other party in the scope of the business relationship and that is marked as "**confidential**" at the time of disclosure unless such information, data or documents are publicly known. The information, data or documents are no longer deemed confidential when a party makes previously confidential information, data or documents publicly known.
- 13.4. Every individual violation of the confidentiality obligations is subject to a reasonable contractual penalty to be paid by the violating party to the respective other contracting party. If the Contracting

Parties fail to agree on a reasonable amount of the contractual penalty to be imposed, the amount of the contractual penalty shall be determined by a German court. This shall not affect any other rights to claim compensation for damages as well as the prohibition of future offences against the obligation of secrecy remain unaffected. The contractual penalty shall, however, be offset against any damages that might be additionally awarded.

- 13.5. The confidentiality obligation comes into force as soon as this Contract is signed and shall be valid indefinitely. The confidentiality obligations under this Contract shall remain in force, specifically after the Partner Contract and the contractual relationship have terminated.

14. Data Privacy and Data Processing Agreement

- 14.1. The Parties are obliged to protect their communication equipment by means of start-of-the-art measures as usual in the IT sector against unauthorized third-party access, against unauthorized sending of messages or similar abuse and against the loss of input and output data.
- 14.2. Further, when processing personal data, the Parties are obliged to comply with the statutory provisions of the GDPR and the German Federal Data Protection Act (BDSG) and any other applicable data privacy provisions. Each party is responsible for the data privacy compliance of its own processing operations. This includes, in particular, adopting suitable state-of-the-art technical and organizational measures as per Art. 32 GDPR to ensure that the processing procedures are secure and that the employees are obliged to maintain confidentiality (data secrecy).
- 14.3. The Reseller confirms that it has received innovaphone's privacy policy. The Reseller undertakes to submit a copy of the privacy policy to its shareholders, members of the board, managing directors and authorized signatories (Prokuristen) and the employees that it designated or designates as a contact person if such persons have not received the privacy policy from innovaphone itself. The applicable privacy policy of innovaphone as amended is available for the Reseller on the innovaphone website (www.innovaphone.com) .
- 14.4. In connection with the rendering of services by innovaphone to the Reseller, personal data within the meaning of Art. 28 General Data Protection Regulation (GDPR) might be processed on behalf and on instructions of the controller (e.g. when rendering PBX support services or providing maintenance for Contractual Products/RMA and services in connection with partner certification and qualification via Platforms).

This item 14.4 of the Partner Contract contains contractual provisions regarding processing within the meaning of Art. 28 GDPR. By signing this Partner Contract, the Parties are thus simultaneously entering into a data processing agreement within the meaning of Art. 28 (3) GDPR. The subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller are specified in the Special Provisions for Data Processing that are attached to this Contract as Annex 1 (Part K). The data processing contract concerns services of innovaphone, which include the processing of personal data carried out on behalf of the reseller (controller) according to the applicable data protection law. This data processing agreement applies mutatis mutandis to remote maintenance and (remote) reviews of automated procedures whenever it cannot be excluded that access to personal data might be obtained (e.g. in case of remote access). The data processing agreement has an ex nunc effect and replaces any previous contracts between the Parties that might exist in respect of data processing.

- 14.5. In case the Reseller processes personal data on behalf and on instruction of its customers or the end customers, respectively, it shall also conclude a data processing agreement with them; in this case, innovaphone is deemed to be the sub-contractor. In the event of such data processing, the Reseller shall remain the controller within the meaning of the GDPR and is thus responsible vis-à-vis its customers (the Reseller's contractual partners) for complying with the provisions of the GDPR and national data privacy legislation.

15. Liability, Liability Limitations

- 15.1. Unless explicitly otherwise provided for by provisions in the (individual) contracts on the purchase of Contractual Products or the framework rental agreement and the applicable General Terms and Conditions of innovaphone as amended or a separate (individual) agreement between the Parties, any liability on the part of innovaphone, its legal representatives and vicarious agents is limited to intentional or grossly negligent breaches of duty.
- 15.2. The aforementioned exclusions of liability shall not apply in the event of a breach of material contractual obligations and for claims arising from the German Product Liability Act (ProdHaftG). In this case, innovaphone is already liable in case of ordinary negligence, but in this case the liability for compensation is limited to foreseeable damage. Liability for indirect consequential damages is excluded. This also applies to contract-typical consequential damages.
- 15.3. Claims from injury to life, limb or health are excluded from all exclusions and limitations of liability.

16. Term and Termination

- 16.1. In accordance with the provision in item 1.6 of the Partner Contract, this Contract comes into force as soon as it is signed by innovaphone and is concluded for an indefinite period of time.
- 16.2. Within the first period of 12 months after the Partner Contract comes into force, the Contract cannot be terminated for ordinary reasons. After this period, the Partner Contract may be terminated by either party subject to a notice period of six [6] months to the end of any calendar month; notice of termination must be given in writing without having to state any reason. Receipt of the notice by the respective other party shall be deemed decisive in determining the timeliness of the termination.
- 16.3. The right to terminate the contract for cause shall remain unaffected thereby. Either party is deemed to have cause if
- the respective other contracting party's personally liable shareholder leaves the company;
 - the legal status or shareholding structure or the managing directors of the other Contracting Party change and it can therefore no longer be reasonably expected of both Parties to adhere to this Partner Contract;
 - a force majeure event or other circumstances outside of the respective other party's control occur that prevent such party from fulfilling this Partner Contract for a period of more than six months;
 - a material deterioration of the economic circumstances of the respective other party occurs after conclusion of the Partner Contract;
 - the respective other party or its personally liable shareholder files for insolvency proceedings regarding the party's or its personally liable shareholder's assets or if comparable proce-

- dings are opened with regard to the party's or its personally liable shareholder's assets or if such proceedings are refused for lack of assets, if the respective other party has ceased making payments or if proceedings are initiated against the contracting party or its personally liable shareholder to make an affidavit;
- the respective other contracting party violates essential contractual obligations that are incumbent upon such party under the Partner Contract and does not refrain from violating these contractual obligations despite a written warning or does not immediately eliminate consequences of contract violations that have already occurred and thereby violates the rights of the respective other contracting party to a more than insignificant extent;
 - the contracting party becomes aware that the respective other party does not fulfil its contractual obligations or only insufficiently fulfils such obligations and continues to fail to provide the contractual services in accordance with this Partner Contract despite having received a written warning with a reasonable deadline to cease such conduct;
 - facts or circumstances were withheld from one of the contracting parties upon conclusion of the Partner Contract, the knowledge of which would have prevented such party from concluding the Partner Contract on the basis of an objectively reasonable evaluation;
 - the qualifications for the lowest level of certification as an authorized Reseller pursuant to items 5.8 and 5.9 of the Partner Contract are no longer met.

17. Consequences of Termination

- 17.1. Upon termination of the Partner Contract, the Reseller's right of use under item 10 of this Partner Contract (advertisement and marketing) is no longer valid. Furthermore, upon termination, the release for Sale granted as per item 2.2. and the Reseller's right to call itself an authorized innovaphone reseller and the partner status as well as the authorization to Sell Contractual Products no longer apply.
- 17.2. Any individual contracts concluded by the Contracting Parties during the term of the Partner Contract shall remain in force after this Partner Contract has terminated. The forfeiture of the authorization could, however, lead to restrictions for the Reseller, e.g. with respect to the Reseller's right to transfer the right to use rented Contractual Products to end customers or with respect to the conclusion of new contracts that require the authorization as an innovaphone partner. In this respect, the provisions of the respective (individual) contract and the GTC or the provisions of the relevant framework rental agreement, if applicable, shall apply and must be observed by the Reseller.
- 17.3. The Reseller shall return to innovaphone any documents, data and sales materials (advertising materials, training documents, etc.) that are the property of innovaphone within a period of ten [10] working days after the contract ends without requiring any further request to do so.
- 17.4. The Reseller is not entitled to any compensation or damages, for any legal grounds whatsoever, due to the termination of the Partner Contract.
- 17.5. **The liability limitations as per item 15. of the Partner Contract continue to apply after its termination.**
- 17.6. The term and termination of the data processing contract are governed by the provisions of the Special Provisions for Data Processing (**Annex 1, Part K**).

18. Formal Requirements

- 18.1. This Partner Contract shall replace all the previous oral or written arrangements and agreements between the Contracting Parties on the Sale and the marketing of the Contractual Products.
- 18.2. The Parties have not concluded any side agreements to this Partner Contract. In the event that a contract regarding the marketing and Sale of Contractual Products is already in force between innovaphone and the Reseller at the time this Partner Contract is concluded, this Partner Contract shall replace any partner agreements, including all side agreements and other arrangements between the Parties already in force at the time this Partner Contract is signed.
- 18.3. Modifications and amendments to this Partner Contract must be made in writing to be valid. The same applies to any amendment to the written form requirement itself.
- 18.4. Whenever written form with a signature is required in this Partner Contract (e.g. for the rescission or termination of the Partner Contract), this requirement is binding and cannot be replaced by an informal written document (Section 126b German Civil Code (BGB), notably facsimile or email). The requirement for a written letter with a signature cannot be replaced by an electronic document (Sections 126 (3) and 126a German Civil Code (BGB)). If no written document with a signature is required, an informal unsigned written document shall suffice.

19. Choice of Law and Place of Jurisdiction

- 19.1. All legal relationships arising from this Partner Contract, its preparation and its performance are subject to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 19.2. The place of jurisdiction for any legal disputes arising from and in connection with this Partner Contract is Stuttgart (Germany). innovaphone is also entitled to take legal action before the competent court at the Reseller's registered office.

20. Contract Language; German Language Prevails

This Partner Contract was drafted in German. If this Partner Contract is translated into other languages and provided to the Reseller, the German version shall prevail if there are any discrepancies between the different language versions.

21. Partial Invalidity/Severability Clause

If one or several provisions in this Partner Contract are or become void, invalid or unenforceable, the legal validity of the remaining provisions herein shall remain unaffected. The Contracting Parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall also apply mutatis mutandis if this Partner Contract should fail to cover a specific aspect.

› **Annexes to the Partner Contract**

Annex 1: General Terms and Conditions of innovaphone AG
(as at 1 January 2020)

Place, date

Place, date

Signature and company stamp
innovaphone

Signature and company stamp
Reseller

Name

Name

Position

Position

General Terms and Conditions of innovaphone AG

➤ These General Terms and Conditions of innovaphone AG (hereinafter "innovaphone") are structured as follows:

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The General Terms and Conditions (hereinafter GTC) of innovaphone AG are divided into the general provisions (A.) and several special provisions (B et seq.).

A. General Provisions

1. Scope of Application and Subject Matter of the Contract

1. By placing an order or awarding a contract, the customer acknowledges the GTC of innovaphone. In its order acceptance, innovaphone explicitly states that the GTC, which are available on the innovaphone website (www.innovaphone.com), shall apply. The GTC also apply to all future legal transactions and/or contracts concluded with the customer.
2. The customer's rights and obligations arise, in the following order, first of all from the customer's order as accepted by innovaphone in its order acceptance, the arrangements made in the respective service and/or product specifications and price lists, the General and Special Provisions of the GTC. The provisions in the general section of the GTC apply to all legal transactions with the customer. The sections of the Special Provisions stipulate special conditions specific to services or products. If sections in the respective Special Provisions deviate from the sections in the General Provisions, the provisions of the respective Special Provisions take precedence. The provisions in service and/or product specifications and price lists take precedence over any existing contradicting regulations which are laid out in the General Terms and Conditions. Agreements made between the parties that deviate from the General Terms and Conditions shall be deemed individual agreements and shall take precedence over the provisions of the General and Special Provisions.
3. 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.
4. Oral commitments and side agreements require written confirmation by innovaphone.

2. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

3. Offer and Conclusion of Contracts

1. An invitation to customers to purchase products and services is directed exclusively at companies (Section 14 German Civil Code (BGB), not at consumers within the meaning of Section 13 German Civil Code (BGB)). Within the meaning of Section 14 German Civil Code (BGB), an entrepreneur is any natural or legal person or partnership with legal capacity who, in concluding a legal transaction, is acting within the scope of their business or activity as a self-employed professional. This includes, in particular, public authorities, institutions, schools and foundations. It is expressly forbidden to conclude contracts with consumers within the meaning of Section 13 of the German Civil Code (BGB), i.e. with natural persons who conclude a legal transaction for purposes that are neither predominately for their commercial nor their self-employed activity.
2. innovaphone's offer of services and products only represents an invitation to the customer to submit an offer to innovaphone to purchase products, i.e. an invitation to place an order (invitation ad offerendum). This also applies to products which are presented on innovaphone's website and which can be ordered online, unless innovaphone explicitly declares in its presentation on the website that it is a legally binding offer which the customer has to accept for the (online) contract to be concluded.
3. When placing an order via an innovaphone website, the customer makes legal declarations electronically by clicking on the respective button. By clicking the respective button, the customer makes an offer to conclude a contract, i.e. declares its acceptance of an offer.
4. innovaphone is entitled to reject the customer's order (offer to conclude a contract) without stating a reason.
5. When ordering via a website, the customer receives a confirmation that the order has been received by e-mail and in the case of online contracts or when concluding contracts in electronic business transactions, the customer receives an e-mail with the respective contract content and innovaphone's GTC for informational purposes. Email confirmations from innovaphone that the order has been received do not constitute an acceptance of contract, they simply summarize the customer's order.
6. In principle, a confirmation that the order has been received does

- not constitute an acceptance of an offer to conclude a contract, unless innovaphone explicitly states in the order confirmation that it confirms the conclusion of said contract.
3. 7. The contract is concluded upon receipt of innovaphone's order acceptance (acceptance of the contract offer), at the latest when innovaphone provides the service and/or delivers the products.
- #### 4. Fees and General Payment Terms
4. 1. Fees and incidental costs are stated in euro as net prices.
4. 2. Prices are stated in euro and ex warehouse (Sindelfingen, Germany) plus packaging, statutory value added tax, and in the case of export deliveries, customs duties and fees and other public charges.
4. 3. The respective prices are stated in the price list valid at the time of the order.
4. 4. In case of sales shipment, when the seller ships the goods at the request of the buyer, the buyer bears the transportation costs ex warehouse. The transportation costs do not include insurance costs for the transportation. Should the customer wish to have transportation insurance, he must take out such insurance himself. The costs incurred for the shipment are charged as a flat fee as per innovaphone's current price list or are invoiced to the customer in the amount actually incurred. Any customs duties, fees, taxes and other public charges shall be borne by the customer.
- 4. 5. The customer is obliged to pay in advance; deliveries by innovaphone are only carried out against payment in advance, i.e. only after the customer has paid the fees including transport and other incidental costs, if applicable.**
4. 6. The amount stated in the order acceptance or in an invoice must be transferred to the account indicated by innovaphone within 10 [ten] calendar days upon receipt.
4. 7. Bills of exchange and cheques are only accepted subject to the condition that said cheque or bill of exchange is honored. If bills of exchange or cheques are protested, the costs shall be borne by the customer.
4. 8. In case of default, innovaphone is entitled, without further warning, to claim interest on arrears as per Section 288 (2) German Civil Code (BGB) for the period from the date when the products were dispatched. The right to claim further damages resulting from said default remains unaffected therefrom.
4. 9. If the customer is in arrears with the payment of several claims, innovaphone is entitled, notwithstanding contrary repayment provisions made by the customer, to off-set payments by the customer against its older debts first. If costs and interests have already been incurred due to the delay, innovaphone shall be entitled to credit the payment first against the costs, then against the interests and finally against the principal invoice amount. Furthermore, any default of payment by the customer shall result in all payment claims of innovaphone that result from the business relationship with the customer, for which innovaphone accepted bills for collection or agreed to payment by instalments, falling due immediately.
4. 10. The customer is only entitled to a right to offset insofar as the customer's claims are legally established or undisputed.
4. 11. The customer is only entitled to assert a right of retention on the grounds of counterclaims arising from and in connection with an order or a contract between the contracting parties.
- #### 5. Delivery/Partial Delivery
5. 1. Place of performance for the obligations of both parties is the registered office of innovaphone (Sindelfingen, Germany).
5. 2. The delivery of services and products (physical goods) is exw, i.e. ex works Sindelfingen (place of delivery). If, notwithstanding the above, the parties agree on a sale involving carriage of goods, the place of performance remains the registered office of innovaphone (Sindelfingen). A sale involving carriage of goods is deemed to exist in particular if the customer wishes the goods to be shipped, e.g. by selecting the option of the sale involving carriage of goods by indicating the respective article number for the shipment.
5. 3. Deliveries require that the customer has met its obligations in a timely and proper manner, in particular that the amount stated in the order acceptance or in the invoice has been received if the customer was obliged to pay in advance.
5. 4. Agreed delivery dates are deemed to have been met when the services and/or the contractual product are made available at the Sindelfingen warehouse on the agreed delivery date or – in the case of sales shipment – when the seller ships the goods at the request of the buyer, and the goods have been delivered to the forwarding agent, the carrier or the person otherwise designated to carry out the shipment.
5. 5. innovaphone reserves the right to make minor amendments and changes to the order regarding the services and products offered by innovaphone even after the acceptance of the customer's offer, provided that no fundamental changes are involved, the contractual purpose is only insignificantly restricted and the deviation is deemed reasonable for the customer. An immaterial impact is to be assumed if the technical performance and/or the agreed functional capability of the contractual product and/or – if a specific design has been agreed – the external appearance of the contractual product is not significantly impaired. Furthermore, amendments and changes to the order only become part of the contract if they are confirmed by the customer. innovaphone is entitled to deliver partial services, if partial delivery is possible and is deemed reasonable for the customer.
5. 6. innovaphone is entitled to deliver partial services, if partial delivery is possible and is deemed reasonable for the customer.
- #### 6. Delivery Dates, Force Majeure
6. 1. Delivery and performance dates that are stated in the order acceptance are only binding if innovaphone has explicitly stated in writing that they are binding and on the proviso that the customer has met its obligations properly, especially regarding the customer's punctual advance payment obligation. If a delivery date is not specified or if such delivery date is expressly not identified as a binding delivery date, this means that it is currently not possible to reliably state a delivery date (for instance, when the upstream supplier has not specified a delivery date). If a delivery date is not communicated within 8 weeks of receipt of the order acceptance, both parties are entitled to withdraw from the relevant (individual) contract for the undeliverable item(s) (contractual right of rescission). The assertion of claims against innovaphone, especially the assertion of claims for damages, is excluded in this respect.
6. 2. Delivery dates may be postponed to a reasonable extent in case of unforeseen circumstances and delivery difficulties which are not innovaphone's fault, irrespective of whether they occur at innovaphone or at a manufacturer or upstream supplier, such circumstances include force majeure, governmental measures, non-granting of official permits, labor disputes (strike, lockout), sabotage, shortage of raw materials. innovaphone shall immediately inform the customer about the occurrence of such circumstances and agree on a new delivery date. If the aforementioned circumstances lead to the delivery date being postponed by more than twelve [12] weeks, both contracting parties are entitled to withdraw from the contract with regard to the affected scope of performance (contractual right of rescission). The assertion of claims against innovaphone, especially the assertion of claims for damages, is excluded.
6. 3. Subsequent changes to agreed delivery dates is only possible with innovaphone's consent. The consent must be given in writing.
6. 4. If the shipment of goods that are ready for dispatch is delayed for reasons for which innovaphone is not responsible, the products may be put into storage at the customer's cost and risk. In doing so, innovaphone is entitled to charge at least 0.5% of the order value of the invoice amount, unless it can be proven that the damage incurred is considerably lower or does not exist. innovaphone is entitled to this claim as from the first month after notification of the products being ready for dispatch.
- #### 7. Transfer of Risk, Dispatch and Requirement to Make a Complaint in Respect of a Defect Immediately on Receipt of the Goods
7. 1. The risk of accidental loss shall pass to the customer at the time the services and/or products (physical goods) are made available for collection at the warehouse (Sindelfingen, Germany); in the case of a sales shipment, the risk shall pass to the customer upon handover to the forwarding agent, the carrier or the person otherwise designated to carry out the shipment. innovaphone shall inform the customer that the goods are ready for collection.
7. 2. The customer is responsible for the transportation of services and/or products (physical goods) that are ready for collection to the place of delivery requested by the customer. If the customer commissions innovaphone to ship the goods, the customer has to pay the costs for packaging and shipping.
7. 3. The customer is responsible for checking and carrying out any export and import formalities and the costs incurred (e.g. customs duties). The customer is also responsible for concluding any transport and insurance contracts.
7. 4. The customer must ensure that the delivery is received at the agreed time and at the desired destination.
7. 5. The customer must check immediately after receipt of the de-

livery whether it is in compliance with the order acceptance regarding the quantity/number and type of the products (physical goods) and whether there are any visible transport damages to the packaging or other visible defects. Any such damage must be documented in writing by the customer on the receipt or the consignment note directly upon receipt of the goods. The inspection of products to be installed must be carried out before installation. **The goods shall be deemed to have been accepted if no notice of apparent defects is given within a period of 3 [three] calendar days after receipt of the services and/or products (physical goods). Notice of any hidden defects is to be given immediately after such hidden defects have been noticed; otherwise the notice shall be considered delayed.**

8. Default of Delivery

If innovaphone defaults on a delivery, the customer is entitled to withdraw from the contract completely or partially after a reasonable grace period set by the customer in writing has expired. Such grace period for innovaphone shall be at least four weeks. If a reasonable period of grace granted in writing expires to no avail, the customer shall be entitled (if it has suffered damages due to the delay) to claim a contractual penalty of 0.5% for each completed week of delay, but no more than 5% of the amount as stated in the invoice or order acceptance (order value) of the goods and services affected by the delay. The contractual penalty does not apply if innovaphone is not responsible for the delay in performance. Further claims for damages due to delayed delivery are excluded - under consideration of the limitation of liability in section 10.

9. Liability for Cancellation and Non-Acceptance of Services by the Customer

If the customer cancels an order confirmed by innovaphone, in whole or in part, or declares in any other way that it does not want to adhere to the contract without being entitled to do so, or refuses to accept ordered products and/or other services, in whole or in part, without justification despite a period of grace of 10 [ten] calendar days, innovaphone is entitled to withdraw from the contract, in whole or in part, and the customer has to pay damages. Further rights remain unaffected.

10. Liability/Exclusion of Liability

10. 1. If the respective contract or the special provisions of the GTC do not explicitly state otherwise, any liability by innovaphone, its representatives and vicarious agents is limited to intentional or grossly negligent breaches of duty.
10. 2. Exclusions of liability shall not apply in the event of a breach of material contractual obligations and for claims arising from the German Product Liability Act (ProdHaftG). In this case, innovaphone is already liable in case of ordinary negligence, but in this case the liability for compensation is limited to foreseeable damage.
10. 3. Liability for indirect consequential damages is excluded. This also applies to contract-typical consequential damages.
10. 4. Claims from injury to life, limb or health are excluded from all exclusions and limitations of liability.

11. Amendments to the GTC

11. 1. innovaphone is entitled to amend the GTC with a reasonable period of notice of at least four [4] weeks provided that the material provisions of the respective contractual relationship are not affected and this is necessary to adapt to developments that were not foreseeable at the time the contract was entered into and the non-consideration of which would notably disturb the balance of the contractual relationship. Material provisions are, in particular, those concerning the type and scope of the contractually agreed services and the contract term, including the termination provisions.
11. 2. The customer shall be informed of any amendments by letter, e-mail or fax. If the customer does not object to amendments within four [4] weeks of receiving the notification of amendment or change, the announced amendments or changes shall become valid. If the customer objects in a timely manner, the previous conditions shall continue to apply. innovaphone shall inform the customer accordingly in the notification.

12. Import/Export Compliance

12. 1. Services provided and/or products and the technical expertise delivered by innovaphone are intended for use in the delivery country agreed with the customer and are intended to stay there. Re-export of Products, either individually or integrated into a system, may be subject to official permits for the customer and is subject to the regulations on foreign trade by the Federal Republic of Germany or the delivery country agreed upon with the customer. The customer shall enquire about these regulations himself. Information about the German regulations is available from the Bundesamt für Wirtschaft, 65760 Eschborn/Ts 1, whereas information about the US regulations is available from the US-Department of Commerce, Office of Export Administration, Washington, D.C. 20230. Irrespective of whether the customer states the final place of destination for the delivered products, the customer himself is responsible for obtaining any approvals required from the respective competent foreign trade authorities before exporting such products.
12. 2. Any delivery of products to third parties by the customer, with or without innovaphone's knowledge, requires transfer of the export permit conditions at the same time. The customer is liable for proper observance of these conditions vis-à-vis innovaphone.

13. Applicable Law, Place of Jurisdiction and Side Agreements

13. 1. All legal relationships arising from this contract and the General Terms and Conditions as well as the preparation and performance of the contract are subject to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
13. 2. The place of jurisdiction for any legal disputes arising from and in connection with contracts between the parties and these GTC is Stuttgart (Germany). innovaphone is also entitled to take legal action at the customer's registered office.
13. 3. Side agreements, amendments or supplements of contracts 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. This shall not affect amendments to the GTC pursuant to item 11. The parties accept signatures on side agreements, amendments or supplements of contracts transmitted via e-mail or facsimile as binding.

14. Contract Language; German Language Prevails

These GTC were written in German. If the GTC are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

15. Partial Invalidity/Severability Clause

If individual provisions in these GTC are or become invalid, void or unenforceable, the validity of the remaining provisions in these GTC shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall also apply mutatis mutandis if these GTC should fail to cover a specific aspect.

B. Special Provisions for Purchasing Hardware

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Subject Matter of the Agreement

2. 1. In addition to the general provisions of innovaphone's General Terms and Conditions, these Special Provisions regulate the special provisions for the sale of hardware to the customer.
2. 2. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions.

- 2. 3. 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. 4. Unless otherwise confirmed to the customer in writing, innovaphone does not assume any special express warranty for certain hardware characteristics pursuant to Section 443 German Civil Code (BGB) beyond the statutory warranty for defects. The Special Provisions regarding Express Warranty for Hardware Products shall apply if the parties conclude a contract concerning an express warranty against payment.

3. Scope of Service and Delivery

- 3. 1. Installation, deployment and configuration of the hardware is not included in the hardware purchase agreement.**
- 3. 2. The scope of service and delivery of the hardware is specified in the pertinent product specifications and, if applicable, in the manual and/or installation instructions, the CE datasheet and short user guides and/or assembly instructions in the manufacturer's language (German and English). The most recent documents are delivered with the hardware or are available on the innovaphone website.
- 3. 3. In the event that the hardware delivery includes software that is absolutely essential to operating the hardware (e.g. operating software or firmware/configuration software), the customer receives a right of use for that software under the hardware purchase that refers only to that specific unit. innovaphone software products are subject to the Special Provisions for Purchasing Software.
- 3. 4. The customer must obtain the innovaphone software products or software licenses required to effectively apply or use and operate the hardware at its own expense. If the hardware is resold, the customer shall inform the purchaser thereof.

4. Customer Obligations and Duties

- 4. 1. The customer is obliged to inspect the external condition of the hardware without undue delay after receipt and shall inform innovaphone of any defects in writing without undue delay. Defects that are identified in retrospect must also be reported in writing without undue delay after being detected (obligation to inspect and report defects pursuant to Section 377 German Commercial Code (HGB)). Notice of defects must be made in writing, but does not require a signature.
- 4. 2. The customer is responsible for setting up, installing, deploying and, if required, configuring the hardware.
- 4. 3. The customer shall make available at its own cost all the technical requirements for setting up, installing and deploying the hardware, such as for instance the telephone, network and internet connections, as well as the required system equipment and environment.
- 4. 4. The customer may only use resources and accessories for operating the hardware that were specified by innovaphone in the product specifications, otherwise the operability of the hardware cannot be guaranteed.
- 4. 5. If the contractual products are resold, the customer shall inform the purchaser of the aforementioned obligations.

5. Retention of Title

- 5. 1. All the hardware delivered by innovaphone (hereinafter referred to as "Goods") remains the property of innovaphone until all future or conditional, primary or ancillary claims under the business relationship with the customer have been paid. At the customer's request, innovaphone shall release a part of its security interest if and to the extent that the value of all innovaphone's security interests exceeds the value of the secured claims by more than 20%.
- 5. 2. The customer is entitled to resell the Goods in the ordinary course of business, provided the customer retains the title to the Goods. The customer hereby assigns all the claims and ancillary claims arising from the resale of the hardware to innovaphone in full. The assigned claims serve to secure innovaphone's claims as per item 5.1. The customer is entitled to collect the assigned claims. innovaphone may revoke the customer's rights under this item if the ordering party fails to fulfil its payment obligations to innovaphone as agreed, defaults on its payments or if the customer's financial situation is materially impaired or threatened to be impaired. The customer is not entitled to conduct any other type of legal act in this respect. The customer must inform innovaphone of seizures or other impairments of rights in writing without undue delay. The customer shall bear all costs incurred

in reversing the third-party access and to retrieve the Goods to the extent that such costs cannot be collected from third parties. If third parties take hold of the hardware, the customer shall immediately notify such third party that these are the property of innovaphone and inform innovaphone thereof immediately. If the software is sold to a third party, the customer is responsible for ensuring that the purchaser observes innovaphone's rights. innovaphone may request the customer to immediately inform innovaphone in writing to whom the goods owned by innovaphone was sold and what claims the customer has on the grounds of such resale.

- 5. 4. In the event of a breach of duty on the part of the customer, in particular payment default, innovaphone is, following unsuccessful expiry of a reasonable grace period set by innovaphone for the customer to remedy such breach, entitled to rescind the contract and to retrieve the Goods; in this case the customer is obliged to hand over the Goods.

6. Liability for Defects

6.1 Defects in Quality (New Goods)/Limitation Period

- 6.1.1 If the hardware is defective, the customer is entitled to claim subsequent performance. In this context, the customer is entitled to either have the defect remedied (repair) or to a replacement delivery, whichever innovaphone prefers.
- 6.1.2 Place of subsequent performance is the innovaphone warehouse in Sindelfingen.
- 6.1.3 The customer shall grant innovaphone remote access and shall permit innovaphone to carry out an automatic configuration, including a firmware update, to the extent that such measures are technically feasible and required for repairing the defect.
- 6.1.4 If the customer has the corresponding authorization rights, the customer may report defects in the so-called RMA procedure (Return Material Authorization) If the customer does not have the corresponding authorization rights, the customer must contact an authorized innovaphone partner.
- 6.1.5 The customer shall bear the cost for sending the Goods, like for instance packaging and transport costs, to the place of performance (Sindelfingen warehouse) in order to carry out the subsequent performance.
- 6.1.6 The cost required for remedying the defect shall be borne by innovaphone, including in particular cost of labor and materials, including the packaging and transport costs required to return the hardware to the customer.
- 6.1.7 In the event that innovaphone delivers a replacement unit to the customer in the scope of subsequent performance that comes with hardware-related software licenses (e.g. gateways), the corresponding software license shall only be valid for the replacement unit. The customer can track the change of unit in the respective portal (e.g. my.innovaphone). It is no longer permitted to use the software and the old unit.
- 6.1.8 If the customer has set innovaphone a reasonable time limit for subsequent performance and innovaphone refuses subsequent performance or if the subsequent performance fails, the customer has the right to demand either that the contract is rescinded or the fee is reduced (reduction of the agreed fee). Subsequent fulfilment is not considered to have failed definitely after the second unsuccessful attempt to rectify the defect, rather there is no limitation as to the number of attempts innovaphone may undertake to meet its obligations during the period set by the customer, as far as this is reasonable for the customer.
- 6.1.9 If there is an insignificant deviation from the contractually agreed quality of the hardware which does not restrict the functionality, or if the usability of the hardware is only impaired to an insignificant degree and this was not explicitly provided for in the contract, the customer may only demand the fee to be reduced (reduction of the agreed fee).
- 6.1.10 The liability for quality defects does not apply to defects caused after the passing of risk by improper handling or use by the customer or another person after receipt of the purchased item (e.g. when using unsuitable power sources that lead to excess voltage or excessive exposure of the hardware to heat at the place where it is positioned), unless the customer can prove when reporting the defect that it did not cause the defect. This shall not apply if innovaphone fraudulently concealed the defect. The rights regarding defects further do not apply in case of common or usual age or use-related wear and tear and defects due to external influences like fire, lightning or explosion.
- 6.1.11 **The liability for defects in quality does not apply to defects that the customer does not notify innovaphone of in good time after receipt of the goods or, in case a defect is detected later, does not notify innovaphone in writing immedi-**

- tely after detecting the defect (Section 377 German Commercial Code (HGB)). This shall not apply if innovaphone fraudulently concealed the defect.**
- 6.1.12 Claims for fulfilment, withdrawal or reduction of the agreed fee due to defects in quality become statute-barred 12 months after the statutory limitation period begins. This period shall not apply where longer periods are prescribed by law, in the event of fraudulent conduct concealing a defect or failure to comply with an express warranty regarding quality characteristics (§ 443 German Civil Code (BGB)). This limitation also does not apply to claims for damages that are based on innovaphone's violation of claims for subsequent performance in case of defects. Claims for damages based on refused subsequent performance may only be asserted within the statutory period of limitation if the claim for subsequent performance has been asserted by the customer within the shortened period for claims for defects in quality.
- 6.1.13 If innovaphone has provided services to search for a defect after having received notification of a defect in quality and there is no defect in quality and if the customer could have recognised this, then the customer shall bear the costs incurred. The calculation of costs is based on innovaphone's fee rates that apply at the time the service was provided.
- ## 6.2 Defects in Quality (Used Hardware)
- innovaphone does not assume any implied warranty for the condition and usability or defects in case of used hardware purchases. The warranty exclusion shall also cover claims for damages and contract rescission due to hardware defects. The warranty exclusion further applies to ordinary negligence unless innovaphone violates a material contractual obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Such liability is, in the case of property and economic damage, limited to the foreseeable damage typical of such type of contract. This also applies to loss of earnings or savings. The warranty exclusion does not apply to damages from injuries to life, limb or health culpably caused by innovaphone, its legal representatives or vicarious agents, or to liability under the German Product Liability Act (ProdHaftG).
- ## 6.3 Defects in Title/Limitation Period
- 6.3.1 In the event that the rights of third parties are infringed in connection with hardware sales to the customer and the holders of such rights assert claims vis-à-vis the customer, the customer shall inform innovaphone thereof in writing without undue delay after receiving such claim. innovaphone shall either obtain the right to use the service on behalf of the customer at innovaphone's own cost or design the service in such a way that it does not infringe on third-party rights or take back the service at the invoice price less reasonable compensation for the use of the service, whichever innovaphone prefers. The third option shall only be available if innovaphone cannot remedy the infringement at a reasonable cost in any other way or if it cannot be expected to take other remedial action. innovaphone shall be released from these obligations if the customer fails to coordinate its defence against such third-party claims with innovaphone.
- 6.3.2 innovaphone shall inform the customer without undue delay if any claims are asserted vis-à-vis innovaphone due to infringement of third-party rights with respect to the use of the hardware.
- 6.3.3 Any claims by the customer caused by a defect in title are subject to a period of limitation of 12 months from the beginning of the statutory limitation period.
- ## 7. Liability
7. 1. innovaphone shall always be liable for
- damages caused intentionally or by gross negligence by innovaphone, its legal representatives or vicarious agents,
 - claims under the German Product Liability Act (ProdHaftG), and
 - damages on the grounds of injury to life, limb or health caused by innovaphone, its legal representatives or vicarious agents.
7. 2. innovaphone shall not be liable in case of ordinary negligence, unless innovaphone violated a material contractual obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Such liability is, in the case of property and economic damage, limited to the foreseeable damage typical of such type of contract. This also applies to loss of earnings or savings.
7. 3. innovaphone is only liable for paying damages under an express warranty if this is specified in the express warranty. In the event of ordinary negligence, this liability is subject to the restrictions set out in item 7.2.
7. 4. In the event that data is lost, innovaphone shall only be liable for those expenses that are required to restore the data on the basis that the customer performed proper backups. In the case of ordinary negligence on the part of innovaphone, this liability shall only apply if the customer carried out a proper data backup immediately before the measure leading to the data loss was implemented.
7. 5. Items 7.1. to 7.4. apply mutatis mutandis to customer claims vis-à-vis innovaphone for reimbursement of expenses and other liability claims.
- ## 8. Force Majeure
8. 1. innovaphone is not liable for events of force majeure, which considerably complicate innovaphone's contractual performance, temporarily hinder the proper execution of the contract or make it impossible. All circumstances independent of the will and influence of the contracting parties, such as natural disasters, decisions by authorities, military conflicts, strike, lockout and other labor unrest, confiscation, embargo or other circumstances which are unforeseeable, serious or are not the fault of the contracting parties and which occur after the conclusion of the purchase contract, shall be deemed to be force majeure.
8. 2. If a force majeure event prevents the parties from fulfilling their contractual obligations, this shall not be deemed a breach of contract, and the periods stipulated in or pursuant to the contract shall be reasonably extended in accordance with the duration of the event. The same applies if innovaphone requires prior input by third parties and such prior input is delayed due to force majeure.
8. 3. The party affected by the force majeure event shall immediately notify the other party in writing at the beginning and end of the event, respectively.
- ## 9. Import/Export Compliance
- The customer shall be responsible for observing the import and export regulations applicable to deliveries or services, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service.
- ## 10. Disposal of Hardware (Old Units)
- The customer is obliged to dispose of the hardware in accordance with the applicable provisions under waste disposal, environmental or public law as amended. If the hardware must be disposed of as an old appliance (Altgerät) within the meaning of the German Waste Electrical and Electronic Equipment Act (ElektroG) (Directive 2012/19/EU – **WEEE2** of the European Parliament and Council on waste electrical and electronic equipment), the customer may contact a certified innovaphone partner with regard to returning the old hardware in accordance with the aforementioned Act. When reselling the hardware, the customer must ensure that the purchaser either assumes the obligation to dispose of the hardware itself or must oblige the purchaser to assume responsibility for the disposal.
- ## 11. Applicable Law, Side Agreements and Place of Jurisdiction
11. 1. The contract for purchasing hardware and these Special Provisions for Purchasing Hardware are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
11. 2. Side agreements, amendments or supplements to these Special Provisions for Purchasing Hardware require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.
11. 3. The place of jurisdiction for all and any disputes arising from or in connection with the purchase of hardware is Stuttgart. Any exclusive place of jurisdiction takes priority.

12. Contract Language; German Language Prevails

These Special Provisions for Purchasing Hardware were prepared in German. If the Special Provisions for Purchasing Hardware are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

13. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions for Purchasing Hardware are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions for Purchasing Hardware shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions for Purchasing Hardware should fail to cover a specific aspect.

C. Special Provisions regarding Express Warranty for Hardware Products (EU/EEA)

1. Contracting Parties

1. 1. The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).
1. 2. The offer is addressed solely to customers who have purchased hardware products directly from innovaphone.

2. Subject matter of the Agreement

2. 1. In addition to innovaphone's General Terms and Conditions and the Special Provisions for Purchasing Hardware, these provisions regulate the special provisions for innovaphone's services for defects in quality that arise after the end of the implied warranty period which are available against payment.
2. 2. innovaphone offers an express warranty per hardware (unit) for any defects in the quality of the hardware arising after the end of the 12-month implied warranty period; such express warranty is available for a period of one (1) year up to a maximum of four (4) years (express warranty after implied warranty period). Claims under the express warranty can only be handled and settled for customers with a shipping address in countries belonging to the EU/EEA (please refer to items 3.1 and 5.5 below).
2. 3. The express warranty license is a product that may be purchased for specific types of units on the basis of the innovaphone price list. Once purchased, each license is bound to a specific unit. In order to comply with the deadlines specified in the following item 2.4., the date on which such licenses are bound to a specific unit is decisive not the date of purchase.
2. 4. An express warranty (express warranty license) may be bound to a specific unit either
 - immediately upon purchasing the hardware, or
 - within a maximum period of 12 months after delivery or collection from the warehouse, i.e. within the implied warranty period.

No express warranty licenses can be bound to any unit after the implied warranty period for such unit has expired. **innovaphone will not assume any express warranty for any express warranty licenses that were bound to a specific unit after the implied warranty period for such unit has expired.**

2. 5. An express warranty license covers a period of one (1) year after the implied warranty period has expired. When purchasing the express warranty license, the customer must simultaneously define the entire express warranty period (in advance) by selecting the number of express warranty licenses to be purchased (maximum of four (4) licenses).
2. 6. The express warranty only applies to innovaphone hardware products and their components, not to software products and not to the products of other manufacturers, unless innovaphone explicitly offers the customer to extend the express warranty to include other products.

3. Scope of Service and Delivery/Obligation to Register and to Assign the Express Warranty License to a Unit

3. 1. innovaphone also grants the express warranty to customers in countries outside of the EU/EEA. Claims handling outside of the EU/EEA requires that the customer states a shipping address within the EU/EEA, as innovaphone can only accept delivery of shipments from EU/EEA countries and can only return the hardware to EU/EEA countries (cf. item 5.5 below); it is not possible to state a shipping address outside of the EU/EEA.
3. 2. The express warranty can only be claimed if the customer registers with innovaphone (currently at my.innovaphone) and sets up a customer/user account.
3. 3. Upon payment of the fee, the customer receives an e-mail with an activation key sent to the e-mail address provided by the customer. The customer shall ensure that it provides a valid e-mail address when placing the order. The customer is responsible for ensuring that the aforementioned e-mail is properly received and the activation key is acknowledged. The activation key contains the respective express warranty license(s) for one year each.
3. 4. The express warranty is bound to a specific unit and the serial number of that hardware unit; it applies to a specific hardware product and can only be activated once for each unit for a term of one (1) to a maximum of four (4) years when the express warranty license is purchased (cf. item 2.4.). It is therefore not possible to initially purchase an express warranty or express warranty license for a term of one (1) year and to subsequently purchase an extension of the express warranty and to assign it to such unit.
3. 5. The express warranty license is activated by registering the hardware on the portal using the activation key.
3. 6. **The express warranty license must be bound to a unit when purchasing the hardware or within a maximum period of 12 months after delivery or collection from the warehouse. Once an express warranty license has been activated and assigned to a specific unit (hardware), it cannot be assigned to another unit.**
3. 7. The express warranty entitles the customer to claim that faultless quality and functionality of the hardware be restored during the term of the license in accordance with the provisions on claims handling set forth in item 5, unless an exclusion for honouring the warranty as specified in item 3.7. applies.
3. 8. The following circumstances are **not** covered by the express warranty:
 - replacement of parts subject to wear and tear and expendable parts and components that are expected to be replaced during the life of a unit (e.g. receiver cables, batteries or rechargeable batteries);
 - remedying defects caused by
 - a. common or usual wear and tear caused by the use or the age of the hardware,
 - b. improper handling or use of the hardware by the customer,
 - c. changes to the hardware made by the customer or third parties involved by the customer or other circumstances for which the customer is responsible, e.g. the use of unsuitable power sources that lead to excess voltage or excessive exposure of the hardware to heat at the place where it is positioned;
 - d. force majeure resulting from external influences (e.g. fire, lightning or explosion).
3. 9. **Place of performance for the handling and settlement of claims under the express warranty is the registered office of innovaphone in Sindelfingen.**

4. Prices

4. 1. The prices are specified in the price list for innovaphone products as amended; this is available on the innovaphone website. The price list differentiates between express warranty licenses that are bound to the unit immediately after the hardware is purchased and express warranty licenses that can be bound to the unit at a later time (up to a maximum of 12 months after delivery or collection from the warehouse) (cf. in particular items 2.3. and 2.4. in this respect).
4. 2. The (net) prices stated in the price list refer to the conclusion of an express warranty agreement or the purchase of an express warranty license for an express warranty period of one (1) year or a duration of one (1) year. The total price depends on the number of express warranty licenses selected by the customer (up to a maximum of four (4)).

5. Scope of Express Warranty and Claims Handling

5. 1. The customer shall grant innovaphone remote access and shall permit innovaphone to carry out an automatic configuration, including a firmware update, to the extent that such measures are technically feasible and required for rectifying the defect within the scope of the express warranty.
5. 2. If the customer has the corresponding authorization rights, the customer may report defects in the so-called RMA procedure (Return Material Authorization)
5. 3. The customer must send the hardware to innovaphone and shall bear the cost incurred by sending it to the registered office of innovaphone in Sindelfingen, such as the cost of packaging and transport.
5. 4. innovaphone may decide at its own discretion which measures to take in order to remedy the defect and reserves the right to, rather than replacing the defective part, replace the entire unit with a comparable replacement unit or a new unit with a comparable or larger scope of functionalities. innovaphone is entitled, but not obliged, to carry out technical alterations (e.g. firmware updates) in addition to the repair or replacement without prior announcement in order to update the unit to the current state of the art. Replaced parts or units become the property of innovaphone. The new parts or units or replacement parts or units become the property of the customer.
5. 5. The cost required for remedying the defect under the express warranty shall be borne by innovaphone, including in particular cost of labor and materials, including the packaging and transport costs required to return the hardware to the customer. **Deliveries are only made within the EU/EEA; it is not permitted to provide delivery addresses outside the EU/EEA.**
5. 6. In the event that innovaphone delivers a replacement unit to the customer that comes with hardware-related software licenses (e.g. gateways), the corresponding software license shall only be valid for the new unit/replacement. The customer can track the change of unit in the respective portal (e.g. my.innovaphone). It is no longer permitted to use the software and the old unit.
5. 7. If innovaphone has provided services under an express warranty to search for a defect after having received notification of a defect in quality and there is no defect in quality and if the customer could have recognised this, then the customer shall bear the costs incurred. The calculation of costs is based on innovaphone's fee rates that apply at the time the service was provided.
5. 8. **Any warranty for defects occurred while carrying out measures to settle claims under the express warranty is excluded.**

6. Liability

6. 1. innovaphone shall always be liable for
 - a. damages caused intentionally or by gross negligence by innovaphone and its legal representatives or vicarious agents,
 - b. claims under the German Product Liability Act (ProdHaftG), and
 - c. damages on the grounds of injury to life, limb or health caused by innovaphone, its legal representatives or vicarious agents.
6. 2. innovaphone shall not be liable in case of ordinary negligence unless innovaphone violated a material contractual obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Such liability is, in the case of property and economic damage, limited to the foreseeable damage typical of such type of contract. This also applies to loss of earnings or savings.
6. 3. innovaphone is only liable for paying damages under an express warranty if this is specified in the express warranty. In the event of ordinary negligence, this liability is subject to the restrictions set out in item 6.2.
6. 4. In the event that data is lost, innovaphone shall only be liable for those expenses that are required to restore the data on the basis that the customer performed proper backups. In the case of ordinary negligence on the part of innovaphone, this liability shall only apply if the customer carried out a proper data backup immediately before the measure leading to the data loss was implemented.
6. 5. Items 6.1. to 6.4. apply mutatis mutandis to customer claims vis-à-vis innovaphone for reimbursement of expenses and other liability claims.

7. Force Majeure

7. 1. innovaphone is not liable for events of force majeure, which considerably complicate innovaphone's contractual performance, temporarily hinder the proper execution of the contract or make it impossible. All circumstances independent of the will and influence of the contracting parties, such as natural disasters, decisions by authorities, military conflicts, strike, lockout and other labor unrest, confiscation, embargo or other circumstances which are unforeseeable, serious or are not the fault of the contracting parties and which occur after the conclusion of the purchase contract, shall be deemed to be force majeure.
7. 2. If a force majeure event prevents the parties from fulfilling their contractual obligations, this shall not be deemed a breach of contract, and the periods stipulated in or pursuant to the contract shall be reasonably extended in accordance with the duration of the event. The same applies if innovaphone requires prior input by third parties and such prior input is delayed due to force majeure.
7. 3. The party affected by the force majeure event shall immediately notify the other party in writing at the beginning and end of the event, respectively.

8. Transfer

8. 1. The customer has the right to sell the express warranty together with purchased hardware in accordance with items 3.2. and 3.3.
8. 2. The customer is entitled to transfer the rights under the express warranty to the purchaser of the hardware.
8. 3. The express warranty is always bound to a particular piece of hardware (unit/serial number). In case of resale and assignment of the express warranty, the fact that the express warranty licensee is bound to the hardware must be considered. The express warranty cannot be used for other hardware.
8. 4. In all other cases, it is prohibited to transfer rights resulting from the express warranty.

9. Import/Export Compliance

The customer shall be responsible for observing the import and export regulations applicable to deliveries or services, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the crossborder delivery or service.

10. Applicable Law, Side Agreements and Place of Jurisdiction

10. 1. The express warranty agreement and these Special Provisions regarding Express Warranty are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
10. 2. Side agreements, amendments or supplements to these Special Provisions regarding Express Warranty require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.
10. 3. The place of jurisdiction for all and any disputes arising from or in connection with the express warranty and these Special Provisions regarding Express Warranty is Stuttgart. Any exclusive place of jurisdiction takes priority.

11. Contract Language; German Language Prevails

These Special Provisions regarding Express Warranty were prepared in German. If these provisions and the contract are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

12. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions regarding Express Warranty are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions regarding Express Warranty shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply

mutatis mutandis if these Special Provisions regarding Express Warranty should fail to cover a specific aspect.

D. Special Provisions for Purchasing innovaphone Software

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Scope of Application and Subject Matter of the Contract

2. 1. In addition to the general provisions of innovaphone's General Terms and Conditions, the Special Provisions regulate the special provisions for the sale of software to the customer.
2. 2. **Installation, deployment and configuration of the software is not included in the software purchase agreement.**
2. 3. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions.
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.

3. Services and Delivery/Registration and Technical Protection Measure

3. 1. The scope of the software delivery and services and the associated rights of use ("licenses") as well as the operation environment that has been authorized and the restrictions on the scope of use are governed by the purchase contract and these Special Provisions for Purchasing Software and, if applicable, the current price list, the licensing guidelines and the supplementary operating and installation instructions; the most recent documents are available on innovaphone's website.
3. 2. Place of performance for the obligations of both parties is the registered office of innovaphone (Sindelfingen, Germany).
3. 3. The software is pre-installed on the innovaphone hardware and is delivered together with the innovaphone hardware when it is purchased. Additionally, the software is available for download in object code.
3. 4. The customer must activate the software via an activation key. The customer receives the activation key upon full payment of the purchase price.
3. 5. Permission to use the software also requires that the customer registers with innovaphone and sets up a customer/user account; this is where the activation key is entered to activate the software. The registration is subject to the terms of use for innovaphone platforms, which are available on the innovaphone website. It is not possible to use the products without registering. innovaphone is entitled to set up further appropriate technical measures in addition to the activation key to protect against non-contractual use of the software (e.g. blocking software functionalities).

4. Customer Obligations and Duties

4. 1. innovaphone and its vicarious agents shall be indemnified against all third-party claims based on illegal use of the software and the associated services connected by the customer or illegal use of the software and the associated services endorsed by the customer or resulting, in particular, from data protection, copyright or other legal disputes connected to the use of the software. The customer shall immediately inform innovaphone in writing if third parties claim the violation of their rights. The customer shall not acknowledge any infringement of rights claimed by third parties and shall either leave any disputes to innovaphone or shall only conduct them in agreement with innovaphone.
4. 2. Copyright notices, serial numbers and other features serving to identify the program may under no circumstances be removed or changed. The same applies to suppressing a similar notification on the screen, if applicable.
4. 3. The customer is also obliged to additionally store any data stored on the innovaphone software elsewhere outside the systems and to ensure adequate data backup.

5. Rights to Use the Software and Previous Versions

5. 1. After full payment has been made, innovaphone shall grant the customer for an indefinite period the non-exclusive and non-sub-licensable right to use the software (licensing rights) for its own internal purposes or for resale in connection with its business. Neither the software nor the rights to use the software ("Licenses") may be made available to third parties for temporary use, neither against payment nor free of charge (prohibition of further licensing), unless these provisions expressly permit such temporary granting of use or sublicensing (see item 5.6. financing authorization) or innovaphone has consented in writing.
5. 2. If the software is bound to hardware, the customer is entitled to use the software on one device only. Otherwise, the customer may use the software according to the number of licenses purchased (usually per user).
5. 3. **If the software has a version number (e.g. V13 Port-Lic, V12 Port-Lic, V11 Port-Lic), the customer is also entitled to use lower software versions of said software free of charge, provided that these are made available and released for use by innovaphone. The current version number is indicated by the activation key (e.g. PBX port 13 = software version number 13). innovaphone lists previous software versions that are available for the said software on its website. Previous versions may only be used to the extent of the number of licenses that have been purchased. innovaphone is only liable to a limited extent for the customer's use of previous versions that were provided free of charge and does not provide support, or only upon request by the customer against payment, for up to a maximum of the last two (2) prior versions. Further information and restrictions on the use of software versions are specified in the current licensing guidelines, which are available on the innovaphone website.**
5. 4. The customer may make a full copy of the software for backup purposes. The customer shall label this as a backup copy and include the copyright notice such as alphanumeric identifiers, trademarks and other copyright information. All further rights, in particular the right to distribute, translate, process, redesign and make the software publicly available, remain with innovaphone. The customer may not decompile or disassemble the software, extract program parts, carry out reverse engineering or otherwise attempt to derive the source code from the object code. This does not affect the customer's right to reverse engineer or decompile the software in accordance with mandatory legal provisions of the German Act on Copyright and Related Rights (UrhG), in particular if this is necessary to enable the contractual functionality or interoperability of the software with other computer programs. The customer shall request innovaphone beforehand in writing and with a reasonable period of time to provide the information and documents necessary to enable the contractual functionality or interoperability with other computer programs. Only after the fruitless expiry of this period is the customer entitled to carry out reverse engineering or to decompile the software within the scope of the legally binding regulations.
5. 5. When reselling the software, the customer may transfer software rights to the same extent as these rights were purchased from innovaphone or were transferred by innovaphone to fulfil the software purchase contract and these Special Provisions for purchasing software. **All of the customer's rights to use the software expire upon sale of the software to the purchaser.**
5. 6. Granting temporary or partial use of the software to third parties (e.g. via rental or as software as a service in the innovaphone myApps cloud) or granting use of the same software to multiple third parties is prohibited, except in cases expressly permitted by law. This does not include cases where the one-off right to use software or a license is granted to third parties temporarily for financing purposes or in order to refinance purchased software, e.g. by means of finance leasing or hire purchase (financing authorization). The customer shall inform the third parties of this restriction. The customer shall notify innovaphone whenever the right to use software is granted to third parties in accordance with this financing authorization.
5. 7. **For each culpable violation of the aforementioned obligations, the customer is obliged to pay a contractual penalty amounting to 125% of the license fee (purchase price) owed for the lawful acquisition (purchase) of a license. Each individual act or overuse of the software is considered an individual violation and triggers a separate contractual penalty. The customer has the right to prove that innovaphone has not incurred any damage or has incurred considerably lower damage due to the violation. innovaphone reserves the right to assert further claims for damages. If innovaphone is entitled to damages from the same facts, the contractual penalty shall be understood to be the minimum sum paid out for damages.**

5. 8. Upon request, the customer shall provide innovaphone with all information necessary to assert claims against third parties, especially their name and address. Furthermore, the customer must immediately inform innovaphone of the type and scope of its claims against the third party arising from the unauthorized use of the software.
- 6. Open Source Software, Freeware and Third-party Software**
6. 1. As far as the software contains open source software, freeware or third-party software components or if it is software from a third party, other rights of use or licensing provisions may apply in addition to those granted to the customer by innovaphone according to the contract regarding the purchase of software and these Special Provisions. These are either shown by innovaphone as part of the installation process or described in the documentation on the portal or provided in any other suitable way. The customer must comply with the rights of use and/or licensing provisions of the respective manufacturer.
6. 2. If software from third-party manufacturers provides for a transfer of the source code, the source code is available on innovaphone's website.
- 7. Retention of Title**
7. 1. All the software sold and delivered by innovaphone remains the property of innovaphone until all future or conditional, primary or ancillary claims under the purchase contract with the customer have been paid.
7. 2. For the duration of the retention of title, the customer is not permitted to pledge, transfer by way of security or resell the software. The customer must inform innovaphone immediately if software is seized, confiscated or otherwise affected by legal acts or interventions by third parties.
7. 3. If third parties take hold of the software, the customer shall immediately notify such third party that these are the property of innovaphone and inform innovaphone thereof immediately. If the software is sold to a third party, the customer is responsible for ensuring that the purchaser observes innovaphone's rights. innovaphone may request the customer to immediately inform innovaphone in writing to whom the software owned by innovaphone was sold and what claims the customer has on the grounds of such resale.
7. 4. In the event of a breach of duty on the part of the customer, in particular payment default, innovaphone is, following unsuccessful expiry of a reasonable grace period set by innovaphone for the customer to remedy such breach, entitled to rescind the contract and to retrieve the software; in this case, innovaphone is entitled to deactivate the activation key or to deactivate the use of the software in any other way. Any program copies made by the customer must be deleted. The customer's right to continue using the software expires.
- 8. Implied Warranty**
- 8.1 Defects in Quality**
- 8.1.1 The software is of the agreed quality and is suitable for the contractually required or usual use. The software quality is of a standard that is common for this kind of software, but it is not error-free. The customer must notify innovaphone of defects without delay and must take the necessary measures to determine the defects and their causes. Defects must be determined in order for the implied warranty claim to be valid.
- 8.1.2 Concerning remedying defects, the customer shall first contact its respective innovaphone partner. If it is not successful and the defect cannot be remedied, the customer may contact innovaphone directly.
- 8.1.3 If the software has a defect, the customer has the right for the defect to be remedied or for new delivery (subsequent performance), whichever innovaphone prefers. In order to remedy a defect, innovaphone may choose to remove or circumvent the defect or to deliver a new product (make available a new software version or update).
- 8.1.4 Place of subsequent performance is the innovaphone warehouse in Sindelfingen.
- 8.1.5 Subsequent performance may be effected by electronic transmission (e.g. e-mail) unless this is not reasonable for the customer (e.g. for reasons of IT security). The customer shall grant innovaphone remote access and shall permit innovaphone to carry out an automatic configuration, including a firmware update, to the extent that such measures are technically feasible and required for remedying the defect.
- 8.1.6 If the customer has set innovaphone a reasonable time limit for remedying a defect and innovaphone refuses or if the remedy fails, the customer has the right to demand either that the contract is rescinded or the fee is reduced (reduction of the agreed fee). Subsequent fulfilment is not considered to have failed definitely after the second unsuccessful attempt to remedy the defect, rather there is no limitation as to the number of attempts innovaphone may undertake to meet its obligations during the period set by the customer, as far as this is reasonable for the customer.
- 8.1.7 If there is an insignificant deviation from the contractually agreed quality of the software which does not restrict the functionality, or if the usability of the software is only impaired to an insignificant degree and this was not explicitly provided for in the contract, the customer may only demand the fee to be reduced (reduction of the agreed fee).
- 8.1.8 **The liability for defects in quality does not apply to defects that the customer does not notify innovaphone of in good time after receipt of the goods or, in case a defect is detected later, does not notify innovaphone in writing immediately after detecting the defect (Section 377 German Commercial Code (HGB)). This shall not apply if innovaphone fraudulently concealed the defect.**
- 8.1.9 Claims for performance, rescission and reduction of the agreed fee due to defects in quality become statute-barred 12 months after the statutory limitation period begins. This period shall not apply where longer periods are prescribed by law, in the event of fraudulent conduct concealing a defect or failure to comply with an express warranty regarding quality characteristics (§ 443 German Civil Code (BGB)). This limitation also does not apply to claims for damages that are based on innovaphone's violation of claims for subsequent performance in case of defects. Claims for damages based on refused subsequent performance may only be asserted within the statutory period of limitation if the claim for subsequent performance has been asserted by the customer within the shortened period for claims for defects in quality.
- 8.1.10 If innovaphone has provided services to search for a defect after having received notification of a malfunction and there is no defect in quality and if the customer could have recognised this, then the customer shall bear the costs incurred. The calculation of costs is based on innovaphone's fee rates that apply at the time the service was provided.
- 8.2 Defects in Title**
- 8.2.1 A defect in title is deemed to exist if the rights required for the contractually intended use have not been effectively granted once use of the software has been granted.
- 8.2.2 In case of defects in title, innovaphone warrants that it shall provide the customer either with a legally sound possibility to use the software or take back the software at the invoice price less reasonable compensation for the use of the service, whatever innovaphone prefers. The latter is only permissible if innovaphone cannot reasonably be expected to find a remedy.
- 8.2.3 Any claims by the customer caused by a defect in title are subject to a period of limitation of 12 months from the beginning of the statutory limitation period.
- 9. Liability**
- 9.1 innovaphone shall always be liable for**
- a. damages caused intentionally or by gross negligence by innovaphone and its legal representatives or vicarious agents,
 - b. claims under the German Product Liability Act (ProdHaftG), and
 - c. damages on the grounds of injuries to life, limb or health caused by innovaphone, its legal representatives or vicarious agents..
9. 2. innovaphone shall not be liable in case of ordinary negligence unless innovaphone violates a material contractual obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Such liability is, in the case of property and economic damage, limited to the foreseeable damage typical of such type of contract. This also applies to loss of earnings or savings.
9. 3. innovaphone is only liable for paying damages under an express warranty if this is specified in the express warranty. In the event of ordinary negligence, this liability is subject to the restrictions set out in item 9.2.
9. 4. In the event of data loss, innovaphone shall only be liable for

- those expenses that are required to restore the data on the basis that the customer performed proper backups. In the case of ordinary negligence, this liability shall only apply if the customer carried out a proper data backup immediately before the measure leading to the data loss was implemented.
9. 5. Items 9.1. to 9.4. apply mutatis mutandis to customer claims vis-à-vis innovaphone for reimbursement of expenses and other liability claims.

10. Force Majeure

10. 1. innovaphone is not liable for events of force majeure, which considerably complicate innovaphone's contractual performance, temporarily hinder the proper execution of the contract or make it impossible. All circumstances independent of the will and influence of the contracting parties, such as natural disasters, decisions by authorities, military conflicts, strike, lockout and other labor unrest, confiscation, embargo or other circumstances which are unforeseeable, serious or are not the fault of the contracting parties and which occur after the conclusion of the purchase contract, shall be deemed to be force majeure.
10. 2. If a force majeure event prevents the parties from fulfilling their contractual obligations, this shall not be deemed a breach of contract, and the periods stipulated in or pursuant to the contract shall be reasonably extended in accordance with the duration of the event. The same applies if innovaphone requires prior input by third parties and such prior input is delayed due to force majeure.
10. 3. The party affected by the force majeure event shall immediately notify the other party in writing at the beginning and end of the event, respectively.

11. Import/Export Compliance

The customer shall be responsible for observing the import and export regulations applicable to deliveries or services, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service.

12. Applicable Law, Side Agreements and Place of Jurisdiction

12. 1. The contract for purchasing software and these Special Provisions for Purchasing Software are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
12. 2. Side agreements, amendments or supplements to these Special Provisions for Purchasing Software require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.
12. 3. The place of jurisdiction for all and any disputes arising from or in connection with the purchase of software is Stuttgart. Any exclusive place of jurisdiction takes priority.

13. Contract Language; German Language Prevails

These Special Provisions for Purchasing Software were prepared in German. If the Special Provisions for Purchasing Software are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

14. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions for Purchasing Software are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions for Purchasing Software shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intention of the economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions for Purchasing Software should fail to cover a specific aspect.

Credits (SSC)

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Subject Matter of the Agreement

2. 1. In addition to the general provisions of innovaphone's General Terms and Conditions, these Special Provisions regulate the special provisions for the sale of Software Service Credits (SSC) to the customer.
2. 2. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions.
2. 3. 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.

3. Prices

3. 1. The prices for SSC are stated as net prices in euro and are determined by the applicable innovaphone price list as amended. The net prices are subject to statutory VAT and, in the case of exports, customs as well as duties and other public charges.
3. 2. The customer shall check whether and what type of taxes, such as for instance, sales or value added tax, are incurred when (re) selling SSC credits. innovaphone is not responsible for reporting or withholding taxes resulting from the sale of SSC. If the legislation of a country prescribes that taxes be withheld, such taxes shall be charged additionally when purchasing SSC and shall be shown as statutory tax next to the SSC net sales price. innovaphone assumes no responsibility for additional taxes that may be incurred.

4. Scope of Service and Delivery, Limitations and Expansion of the Scope of Services

4. 1. The SSC are delivered by means of an activation key that the customer receives via e-mail sent to the e-mail address provided by the customer. The customer shall ensure that it provides a valid e-mail address when placing the order. The customer is responsible for ensuring that the aforementioned e-mail is properly received and the activation key is acknowledged.
4. 2. The customer shall activate the respective activation key in its customer/user account on an innovaphone platform (e.g. my.innovaphone). Therefore, the customer must previously register on the respective platform. The customer/user account is additionally governed by the terms of use of the respective innovaphone platform.
4. 3. The customer can use SSC to pay for the software service. The software service covers the delivery of updates (error correction) and upgrades (new releases) for purchased innovaphone software whenever such updates or upgrades are offered and/or released by innovaphone. It does **not** cover material expansions to the functionalities and/or partial or full reprogramming. The products of other manufacturers and so-called innovaphone interface licenses are likewise excluded from the software service. More information on the scope of the software service is provided in the **Guidelines for Software Service Agreement** that are available for inspection on the innovaphone website.
4. 4. In order to use the software service, the SSC must be bound to certain software licenses. The amount (quantity) of SSC to be used for the software service is determined by the number of software products or licenses (configuration) for which the customer intends to use the software service. The calculation tool or the applicable innovaphone price list as amended can be used to determine the amount of SSC required.
4. 5. The SSC can only be used for the innovaphone software service. SSC cannot be used for investments, speculation or other purposes. The activation key contains the ordered amount of SSC and only serves as proof of the credit balance on the respective innovaphone portals. It does not constitute a security, crypto currency or a financial instrument. innovaphone does not warrant a specific price (value in euro) or an inherent value and does not expressly guarantee that the SSC have a certain value.

E. Special Provisions for Purchasing Software Service

4. 6. innovaphone may expand the range of options for using SSC and shall inform the customers thereof in its product documentation. In this case, the Special Provisions shall apply mutatis mutandis.

4. 7. **innovaphone is not obliged to take SSC back from the holder of an activation key and to reimburse the value in money or any other means of payment. Exchange, reimbursement and/or compensation claims are excluded in this respect.**

5. Customer's Special Obligations, Expiry of SSC

5. 1. Each activation key can be used once and can be bound to a customer via a customer/user account. Activation keys are activated on the customer's customer/user account on an innovaphone platform that is provided to the customer by innovaphone. Unbound SSC can be stored in the so-called balance statement of this account and may be used for the purposes specified in item 4.3. (scope of service).

5. 2. **The customer is obliged to activate the activation key within 12 months after receipt.** This can be done by uploading the SSC into the so-called balance statement on the customer/user account.

5. 3. It is possible to transfer the SSC in the balance statement to another customer/user account as long as such SSC have not been bound to certain software licenses.

5. 4. The customer's unbound and bound SSC available on a customer/user account may expire if the customer requires that its customer/user account be deleted or if the contract for the use of the innovaphone platform is terminated; in these cases, the SSC expire immediately. **The expiry cancels the entire credit; the value of the SSC is not reimbursed in euro or any other way. Therefore, the customer must ensure when deleting its customer/user account that the SSC are transferred to another customer/user account beforehand.**

5. 5. When reselling SSC, the customer shall inform the purchaser of these Special Provisions and shall point out in particular that

- SSC may only be used for the software service and that SSC can only be managed through a customer/user account or in the balance statement of an innovaphone platform and that the SSC are therefore useless and without value for any other purposes and/or if they are not managed in a customer account or in a balance statement on an innovaphone platform;
- SSC cannot be exchanged for money or any other means of payment;
- the activation key must be activated within a certain period of time and must be bound to a customer/user account and cannot be activated after such period has expired;
- the SSC expire once the conditions specified in item 5.4. are met.

Furthermore, the customer may not grant the purchaser more rights than the customer is entitled to under the agreement regarding the purchase of SSC and their use. SSC can only be used for acquiring services in the scope of the software service.

6. Implied Warranty and Liability

6. 1. Implied warranty obligations are governed by the statutory provisions. Warranty claims expire 12 months after the statutory period of limitation commences.

6. 2. Any claims on the part of the customer towards innovaphone for reimbursement and/or damages due to the expiry of SSC pursuant to item 5.4 are excluded.

6. 3. In all other respects, the liability of innovaphone in case of intent or gross negligence is unlimited. In case of ordinary negligence, liability is unlimited for injuries to life, limb or health. If innovaphone's performance is behind schedule or if performance has become impossible or if a material obligation has been violated, the liability for damage to property and pecuniary loss attributable to this is limited to the foreseeable damage typical for the contract. A material obligation is an obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Product liability is not excluded.

6. 4. Item 6.3. shall apply mutatis mutandis to claims for reimbursement of expenses and other liability claims.

6. 5. Whenever the SSC are resold, the customer must take account of the limitations of liability as per items 6.1 to 6.4 and must agree on identical limitations.

7. Import/Export Compliance

7. 1. The customer must comply with import and export regulations applicable to SSC deliveries or services, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service.

7. 2. Whenever the SSC are resold, the customer shall inform the purchaser of the export or import permits that might be required.

8. Applicable Law, Side Agreements and Place of Jurisdiction

8. 1. These Special Provisions for Purchasing SSC and the underlying contract are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

8. 2. Place of performance for deliveries and services in connection with purchasing SSC and the place of subsequent performance is Stuttgart.

8. 3. Side agreements, amendments or supplements to these Special Provisions for Purchasing SSC require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.

8. 4. The place of jurisdiction for all and any disputes arising from or in connection with purchasing SSC is Stuttgart. Any exclusive place of jurisdiction takes priority.

9. Contract Language; German Language Prevails

These Special Provisions for Purchasing SSC were prepared in German. If these provisions and the contract are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

10. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions for Purchasing SSC are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions for Purchasing SSC should fail to cover a specific aspect.

F. Special Provisions for Purchasing innovaphone Service Credits (iSC)

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Subject Matter of the Agreement

2. 1. In addition to the general provisions of innovaphone's General Terms and Conditions, these Special Provisions regulate the special provisions for the sale of innovaphone Service Credits (iSC) to the customer. The software or hardware rental contract that must be concluded separately with innovaphone and for which the iSC (rental) are used to pay the agreed fee are not governed by these provisions.

2. 2. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions.

2. 3. 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.

3. Prices

3. 1. The prices for iSC are stated as net prices in euro and are de-

- terminated by the applicable innovaphone price list as amended. The net prices are subject to statutory VAT and, in the case of exports, customs as well as duties and other public charges.
3. 2. The customer shall check whether and what type of taxes, such as for instance, sales or value added tax, are incurred when selling iSC credits. innovaphone is not responsible for reporting or withholding taxes resulting from the sale of iSC. If the legislation of a country prescribes that taxes be withheld, such taxes shall be charged additionally when purchasing iSC and shall be shown as statutory tax next to the iSC net sales price. innovaphone assumes no responsibility for additional incurred taxes that might be incurred.

4. Scope of Service and Delivery, Limitations and Expansion of the Scope of Services

4. 1. The iSC are delivered by means of an activation key that the customer receives via e-mail sent to the e-mail address provided by the customer. The customer shall ensure that it provides a valid e-mail address when placing the order. The customer is responsible for ensuring that the aforementioned e-mail is properly received and the activation key is acknowledged.
4. 2. The activation key enables the customer to receive services in connection with renting innovaphone hardware or software products or other innovaphone products if innovaphone has approved such products for iSC payment.
4. 3. In order to use iSC for payment, the customer must activate the respective key via its customer/user account on an innovaphone platform (e.g. my.innovaphone). Therefore, the customer must previously register on the respective platform. The customer/user account is additionally governed by the terms of use of the respective innovaphone platform.
4. 4. iSC may only be used to pay the remuneration for the services specified in item 4.2. (scope of service); iSC cannot be used for investments, speculation or other purposes. The activation key contains the ordered amount of iSC and only serves as proof of the credit balance on the respective innovaphone portals. It does not constitute a security, crypto currency or a financial instrument. innovaphone does not warrant a specific price (value in euro) or an inherent value and does not expressly guarantee that the iSC have a certain value.
4. 5. innovaphone may expand the range of options for using iSC and shall inform the customers thereof in its product documentation. In this case, the Special Provisions shall apply mutatis mutandis.
4. 6. **innovaphone is not obliged to take iSC back from the holder of an activation key and to reimburse the value in money or any other means of payment. Reimbursement and/or compensation claims is excluded in this respect.**

5. Customer's Special Obligations, Expiry of iSC

5. 1. Each activation key can be used once and can be bound to an innovaphone customer via a customer/user account. Activation keys are activated on the customer's customer/user account on an innovaphone platform that is provided to the customer by innovaphone. Unbound iSC can be stored in the so-called balance statement of this account and may be used for the purposes specified in item 4.2. (scope of service).
5. 2. **The customer is obliged to activate the activation key within 12 months after receipt. This can be done by uploading the iSC into the so-called balance statement on the customer/user account. After the end of this period, the iSC expire and can no longer be used by the customer and/or owner of the activation key (iSC expiry).**
5. 3. The customer's unbound and bound iSC available on its customer/user account may expire (iSC expiry). This is the case whenever:
- the rental contract for innovaphone hardware or software was terminated and a period of two (2) months has expired, in which the remaining iSC were not used for a new rental contract or new rental items;
 - the customer requests that its customer/user account be deleted or if the contract for the use of the innovaphone platform is terminated; in these cases, the iSC expire immediately.

The expiry cancels the entire credit; the value of the iSC is not reimbursed in euro or any other way. In addition to these Provisions, the contracts on renting software or hardware entered into between the customer and innovaphone and the terms of use for the innovaphone platforms might contain additional provisions on the expiry of iSC.

5. 4. When reselling iSC, the customer shall inform the purchaser of

these Special Provisions and shall point out in particular that

- iSC may only be used for software or hardware rented under a rental contract and that iSC can only be managed through a customer/user account or in the balance statement on an innovaphone platform and that the iSC are therefore useless and without value for any other purposes and/or if they are not managed in a customer account or in a balance statement on an innovaphone platform;
- iSC cannot be exchanged for money or any other means of payment;
- the activation key must be activated within a certain period of time and must be bound to a customer/user account and cannot be activated after such period has expired;
- the iSC expire once the conditions specified in item 5.3. are met.

Furthermore, the customer may not grant the purchaser more rights than the customer is entitled to under the agreement regarding the purchase of iSC and their use. iSC may only be used to receive services in connection with renting innovaphone hardware or software products or other innovaphone products or services if innovaphone has approved such products for iSC payment.

6. Implied Warranty and Liability

6. 1. Implied warranty obligations are governed by the statutory provisions. Warranty claims expire 12 months after the statutory period of limitation commences.
6. 2. Any claims on the part of the customer towards innovaphone for reimbursement and/or damages due to the expiry of iSC pursuant to item 5.3 are excluded.
6. 3. In all other respects, the liability of innovaphone in case of intent or gross negligence is unlimited. In case of ordinary negligence, liability is unlimited for injuries to life, limb or health. If innovaphone's performance is behind schedule or if performance has become impossible or if a material obligation has been violated, the liability for damage to property and pecuniary loss attributable to this is limited to the foreseeable damage typical for the contract. A material obligation is an obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Product liability is not excluded.
6. 4. Item 6.3. shall apply mutatis mutandis to claims for reimbursement of expenses and other liability claims.
6. 5. Whenever the iSC are resold, the customer must take account of the limitations of liability as per items 6.1 to 6.4 and must agree on identical limitations.

7. Import/Export Compliance

7. 1. The customer shall be responsible for observing the import and export compliance regulations applicable to iSC deliveries or services, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service.
7. 2. Whenever the iSC are resold, the customer shall inform the purchaser of the export or import permits that might be required.

8. Applicable Law, Side Agreements and Place of Jurisdiction

8. 1. These Special Provisions for Purchasing iSC and the underlying contract are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
8. 2. Place of performance for deliveries and services in connection with purchasing iSC and the place of subsequent performance is Stuttgart.
8. 3. Side agreements, amendments or supplements to these Special Provisions for Purchasing iSC require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.
8. 4. The place of jurisdiction for all and any disputes arising from or in connection with purchasing iSC is Stuttgart. Any exclusive place of jurisdiction takes priority.

9. Contract Language; German Language Prevails

These Special Provisions for Purchasing iSC were prepared in German. If these provisions and the contract are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

10. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions for Purchasing iSC are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions for Purchasing iSC should fail to cover a specific aspect.

G. Special Provisions for Granting Free Use of Software (Trial/Test and Beta Software Versions)

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Subject matter of the Agreement

2. 1. In addition to the general provisions of innovaphone's General Terms and Conditions, these Special Provisions regulate the use of software that innovaphone makes available to the customer
 - 1) in **test mode** as a trial version in a test environment for a maximum of 8 hours;
 - 2) as a **test license** in test or routine operation as one test version per device (gateway/ virtual appliance) for a maximum term of 90 days;
 - 3) as a **beta version in routine operation** with feedback from the customer concerning the quality and usability (innovaphone beta program);
 - 4) or for other trial/test purposes
 - 5) in another way free of charge
2. 2. When installing or using the software for the first time, the user automatically agrees to these provisions.
2. 3. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions.
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.

3. Scope of Service and Delivery

3. 1. The software is pre-installed on a customer device and made available to the customer (e.g. on hardware such as PBX/gateways) at the agreed delivery address (physical dispatch) and/or by making the object code available for the software to be downloaded.
3. 2. The customer can use the software offered by innovaphone for test and trial purposes, and can apply it in a specific laboratory and test environment either through test licenses or via a test mode (maximum 8 hours) with reset function. Software for test and trial purposes in routine operation (test licenses) enables the customer to use this software for each device for 90 days at the most (maximum term). Software provided for test and trial purposes as a beta version for use in routine operation may only be used in connection with the innovaphone beta program.

4. Customer Obligations and Duties

4. 1. innovaphone and its vicarious agents shall be indemnified against all third-party claims based on the customer's illegal use of the software made available by innovaphone for trial and test purposes (cf. item 3) and the associated services, or illegal use of the software and the associated services endorsed by

the customer, or claims resulting, in particular, from data privacy, copyright or other legal disputes associated with the use of the software. The customer shall immediately inform innovaphone in writing if third parties claim the violation of their rights. The customer shall not acknowledge any infringement of rights claimed by third parties and shall either leave any disputes to innovaphone or shall only conduct them in agreement with innovaphone.

4. 2. Copyright notices, serial numbers and other features serving to identify the program may under no circumstances be removed or changed. The same applies to suppressing a similar notification on the screen, if applicable.
4. 3. **In test mode, the customer is not permitted to override the automatic reset by means of programming interventions.**
4. 4. **The customer may use test licenses for each device for a maximum of 90 days (maximum term) unless innovaphone has agreed in writing to a longer term.**
4. 5. **Whenever beta versions are made available to the customer, the customer shall provide feedback based on the innovaphone beta program. The beta program entitles innovaphone to request error reports, questionnaires, improvement suggestions, problem reports and/or support information ("Feedback").**

5. Rights of Use, Non-Contractual Use of the Trial/Test and Beta Software Versions/Contractual Penalty

5. 1. All the rights to the software that is provided to the customer are the property of innovaphone. The customer may only use the software for trial/test purposes determined by innovaphone and only for the term of the agreed trial/test phase. In this respect, the customer receives the non-exclusive, temporary, non-transferable (sub-licensable) right to use the software in the object code for the designated contractual purpose and in accordance with these Special Provisions for Granting Free Use of Software (trial/test and beta software versions). The customer's authorization to use a beta version ends at the latest when the software version has been completed and released (software release).
5. 2. Unless required by law, the customer is not permitted to copy, sell, modify, alter or change the software in any way. innovaphone only grants the customer the right to make one full copy of the software for backup purposes. The customer shall label this as a backup copy and include the copyright notice such as alphanumeric identifiers, trademarks and other copyright information. All further rights, in particular the right to distribute, translate, process, redesign and make the software publicly available, remain with innovaphone.
5. 3. With the exception of open source software (see further information under item 6), the customer may not decompile or disassemble the software, extract program parts, carry out reverse engineering or otherwise attempt to derive the source code from the object code.
5. 4. **The customer is obliged to pay a contractual penalty amounting to twice the purchase price of the software license for each culpable violation against the above items 5.1 to 5.3, in particular, by**
 - a. enabling third parties to use the software;
 - b. making an unauthorized copy or otherwise violating copyright laws in connection with using the software;
 - c. using the software outside of the contractually agreed scope (for test, trial purposes);
 - d. using beta versions despite the release of a new software version or software product.

Each individual act or overuse of the software is considered an individual infringement and triggers a separate contractual penalty. The customer has the right to prove that innovaphone has not incurred any damage or has incurred considerably lower damage due to the violation. innovaphone reserves the right to assert further claims for damages. If innovaphone is entitled to damages from the same facts, the contractual penalty shall be understood to be the minimum sum paid out for damages.

5. 5. Upon request, the customer shall provide innovaphone with all information necessary to assert claims against third parties, in particular their name and address; the customer shall furthermore inform innovaphone without delay about the type and extent of its claims against the said third party resulting from the use of the software being granted without authorization.

6. Open Source Software, Freeware and Third-party Software Components

If the innovaphone software contains open source software, freeware and third-party software components, rights of use other than those stated in item 5 may apply. These are either shown by innovaphone as part of the installation process or described in the documentation on the portal. The customer must observe these rights.

7. Term and Termination

7. 1. The customer may prematurely terminate the trial/test phase at any time. innovaphone is entitled to withdraw the software provided free of charge (trial/test and beta software versions) and the rights of use at any time. If the right of use is limited in time, it ends upon expiry. This means that all rights of use and all other rights granted to a user expire.
7. 2. In the event of a withdrawal or other termination of the rights of use, the user must delete the software including any back-up copies without delay. Upon request, the user must confirm to innovaphone in writing that no further copies exist.

8. Implied Warranty

8. 1. **innovaphone does not assume any warranty for software provided free of charge.** Software is used at your own risk to the extent permitted by applicable law.
8. 2. Software provided for trial and test purposes is deemed to be a software version that may be incomplete and may contain errors or inaccuracies that may result in errors, unusability and/or loss of data or information. Beta versions in particular are in the development stage. Software is used at your own risk to the extent permitted by applicable law.
8. 3. innovaphone is only liable for quality defects and defects in title in case of fraudulent concealment. The following item 9 applies to claims for damages.

9. Liability

innovaphone assumes no liability for software provided free of charge, in particular for damages to other software and/or hardware, damages caused by loss of use, loss of data and damages caused in connection with the functionality of the software. innovaphone is only liable for damages that are based on intent, gross negligence and fraudulent conduct. This limitation of liability does not apply to damages resulting from injury to life, body or health, for which innovaphone is liable without limitation. Product liability is not excluded.

10. Import/Export Compliance

The customer must comply with import and export regulations applicable to granting free use of software, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service..

11. Applicable Law, Place of Jurisdiction

11. 1. The contract for granting free use of software and these Special Provisions are subject to German law, excluding the UN 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 these Special Provisions for Granting Free Use of Software require the signature of both parties or their authorized 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 granting free use of software is Stuttgart. Any exclusive place of jurisdiction takes priority.

12. Contract Language; German Language Prevails

These Special Provisions were prepared in German. If these provisions and the contract are translated into other languages and provided to the customer, the German version shall prevail

if there are any discrepancies between the different language versions.

13. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions should fail to cover a specific aspect.

H. Special Provisions for Hardware Rental

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Scope of Application and Subject Matter of the Contract

2. 1. On the basis of the framework contract on renting hardware, the customer is entitled to conclude individual contracts for renting innovaphone hardware and hardware components. In addition to the general provisions of innovaphone's General Terms and Conditions, these Special Provisions regulate the special provisions for renting hardware and hardware components (hereinafter: Rental Item(s)). Individual or multiple Rental Items that are the subject of an individual rental contract are hereinafter collectively referred to as "Rental Object".
2. 2. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions. The provisions in the framework rental contract for hardware take precedence over the general provisions and the Special Provisions of innovaphone's General Terms and Conditions.
2. 3. 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.

3. Performance and Delivery, Restriction of Performance

3. 1. The scope of service and delivery of the Rental Item(s) is specified in the pertinent product specifications and, if applicable, in the manual and/or installation instructions, the CE datasheet and short user guides and/or assembly instructions in the manufacturer's language (German and English). The most recent documents are delivered with the hardware and/or are available on the innovaphone website.
3. 2. Replacing certain equipment (e.g. receiver cables, batteries, rechargeable batteries etc.) is not part of innovaphone's obligation to render services.
3. 3. The customer may only use resources and accessories for operating the hardware that were specified by innovaphone in the product specifications, otherwise the operability of the hardware cannot be guaranteed.
3. 4. A prerequisite for operating or deploying the Rental Item is that the customer registers on the corresponding innovaphone platform, creates a customer account and adds the amount of iSCs required for the rent to its customer account. iSCs can be purchased from authorized innovaphone partners and added to the customer's account via the activation key.
3. 5. In the event that the hardware delivery includes software that is absolutely essential to operating the hardware (e.g. operating software or firmware/configuration software), the customer receives a right of use for that software under the hardware rent that refers only to that specific unit. The software rental contract and the Special Provisions for Software Rental apply to innovaphone software products.
3. 6. Place of performance for the obligations of both parties arising from the contract on renting hardware is the registered office of innovaphone (Sindelfingen, Germany).
3. 7. innovaphone is entitled to deliver partial services, if partial delivery is possible and is deemed reasonable for the customer.
3. 8. The delivery is exw (Sindelfingen warehouse). The delivery of the Rental Item or Rental Object to a different delivery location

- must be ordered separately by the customer and is subject to a charge. The customer must pay in advance all shipping costs, including packaging costs. The amount stated in the order acceptance or in an invoice must be transferred to the account indicated by innovaphone within ten (10) calendar days upon receipt. The Rental Item(s) will only be shipped after the customer has paid the shipping costs as calculated by innovaphone. If the customer wishes to have insurance for the transport, the customer is responsible for taking out such insurance itself.
3. 9. Agreed delivery dates are deemed to have been met if the Rental Item(s) is/are made available at the Sindelfingen warehouse on the agreed delivery date or – in the case of sales shipment on behalf of the customer – have been handed over to the forwarding agent, the carrier or the person otherwise designated to carry out the carriage of goods.
3. 10. Delivery dates may be postponed to a reasonable extent in case of unforeseen circumstances and delivery difficulties which are not innovaphone's fault, irrespective of whether they occur at innovaphone or at a manufacturer or upstream supplier, such circumstances include force majeure, governmental measures, non-granting of official permits, labor disputes (strike, lockout), sabotage, shortage of raw materials. innovaphone shall immediately inform the customer about the occurrence of such circumstances and agree on a new delivery date. If the aforementioned circumstances lead to the delivery date being postponed by more than twelve (12) weeks, both contracting parties are entitled to withdraw from the contract with regard to the affected scope of performance (contractual right of rescission). The assertion of claims against innovaphone, especially the assertion of claims for damages, is excluded.

4. Acceptance of the Rental Item, Notification of Defects

4. 1. The customer is obliged to accept the Rental Item(s). In case they are shipped on behalf of the customer to a specific destination (place of delivery), the customer must ensure that the shipment is received at the agreed time at the agreed place of delivery.
4. 2. The customer is obliged to inspect the external condition of the Rental Object without delay upon receipt and the number of units (volume). This must be documented in writing by the customer on the receipt or consignment note directly upon receipt of the Rental Item or Rental Object. Any hardware that is to be installed must be checked before installation.
4. 3. Only significant defects that impair the functionality entitle the customer to refuse acceptance of the Rental Item(s).

5. Allocation of Risk

The risk (in terms of both payment and performance), in particular the risk of – also accidental – destruction, loss or theft as well as damage and premature wear and tear of the Rental Object, shall pass to the customer at the time the item is made available for collection from the warehouse (Sindelfingen); in the case of shipment on behalf of the customer, the risk shall pass to the customer when the item is handed over to the forwarding agent, the carrier or the person otherwise designated to carry out the shipment. This means that such events do not release the customer from its obligations under the individual rental contract, in particular not from the obligation to pay the rental rate. The customer shall inform innovaphone about such events without delay.

6. Mandatory Deployment and Connection to the PBX

6. 1. The customer may only set up the Rental Item(s) in the country of delivery (site) as specified in the order. Changing or transferring the location to another country requires the consent of innovaphone.
6. 2. The customer is responsible for setting up, installing, deploying and, if required, configuring the hardware on the PBX. The Customer shall deploy the Rental Item(s) within ten (10) calendar days after receipt.
6. 3. The customer shall make available at its own cost and in a timely manner all the technical requirements for setting up, installing and deploying the hardware, such as for instance the telephone, network and internet connections, as well as the required system equipment and environment.
6. 4. If deployment does not take place or does not take place within ten (10) calendar days after receipt of the Rental Item(s), innov-

vaphone may deactivate the login to the PBX and is entitled to finally reject the services under the rental contract and to declare to the customer in writing or by electronic means (e.g. by e-mail) that it is rescinding the rental contract (right of rescission). The customer is entitled to prove that it is not responsible for not deploying the hardware or not deploying it in due time

7. Rental Rate (iSC values), Due Date and Invoicing/Price Adjustment

7. 1. The customer shall pay a rent for the entire term of the contract as specified in this item. The rental rate (iSC value) is specified in innovaphone's price list for renting hardware as amended, in which an iSC value is stated for each item. iSC may be purchased at authorized innovaphone partners. The activation key, which the customer is given when it purchases iSCs, must be used to add iSCs to the customer's account on the myApps platform.
- Note: If the customer also rents software products from innovaphone, it should also take into account the amount of iSCs required for this and, if necessary, upload additional iSCs.**
7. 2. The customer shall pay the rental rate for the respective Rental Item when it is connected to the PBX, at the latest ten (10) calendar days after provision of the Rental Item at the Sindelfingen warehouse or, in the case of shipment to the customer, when the Rental Item is handed over to the transport company or forwarding agent. The rent is thus due for payment at the latest on the eleventh (11th) calendar day without requiring a payment request by innovaphone and irrespective of whether the Rental Item has been connected to the PBX.
7. 3. innovaphone is entitled to collect receivables that are due under individual rental contracts from the customer's account. Depending on the selection of Rental Items and amount (configuration of the PBX), the necessary amount of iSCs is automatically collected when the Rental Item(s) are connected. The rent is billed per second.
7. 4. If the customer does not have sufficient iSCs in its customer account to pay the rental rate, the customer shall pay the corresponding value either in iSCs or in money (EUR) to innovaphone, whichever innovaphone prefers; in this case, innovaphone is entitled to claim default costs and further claims for damages. Furthermore, innovaphone is entitled to block or deactivate access to the PBX and the myApps platform.
7. 5. If a unit is de-installed or deployed from the PBX during the rental period (e.g. because the PBX is reconfigured or moved to another site within the country of delivery, or because of a repair), the customer is generally still obliged to pay the rental rate for the entire time the unit is not connected to the PBX. Any other agreements require innovaphone's written consent (e.g. temporary shutdown and exemption from paying the rental rate when moving to another site within the country of delivery). Even if the hardware is de-installed, innovaphone is entitled to deduct the required number of iSCs from the customer account. If the customer does not have sufficient iSCs, the customer shall pay the rental rate due either in iSCs or in money (EUR) to innovaphone, whichever innovaphone prefers; in this case, innovaphone is entitled to additionally claim default costs and further claims for damages.
7. 6. The customer is always able to see in its customer account the current remaining time of use of the Rental Item(s) on the basis of the iSC credit balance in the installation available at that time. innovaphone shall also inform the customer in a timely manner about the amount of iSCs used or whether it is necessary to purchase or upload additional iSCs for its customer account, either in writing or by electronic declaration via e-mail, whichever innovaphone prefers.
7. 7. The price list (number of iSCs per product), which is valid at the time the iSCs are uploaded to the customer account, is decisive. This value is used by the system to calculate the rental amount. If this leads to a price change during the respective rental term, innovaphone shall adjust the prices at its own discretion on the basis of Section 315 of the German Civil Code (BGB); the change in price is either communicated to the customer by e-mail or displayed on the portal. **In the event of a price increase or for any other reason, the customer shall have the right to terminate the rental contract with immediate effect.**
8. **Use/Granting of Rights, Site and Maintenance of the Rental Object**
8. 1. innovaphone grants the customer the right to use the respective Rental Item in permanent operation during the term of the rent

- as per the contract. It is not permitted for the customer to switch the configuration on and off on a regular basis, nor is it permitted to up or downgrade the configuration on a regular basis (e.g. "weekend downgrading", part-time or holiday downgrades) in order to optimize the amount of fees due for payment. The customer shall refrain from taking such actions. In case of violation of this obligation, innovaphone is entitled to block access to the PBX and the myApps platform or to block the use of the Rental Object(s) in any other way or to prohibit the use of the Rental Item(s); in all other respects, innovaphone always reserves the right to assert claims for damages.
8. 2. In the event that the hardware delivery includes software that is absolutely essential to operating the hardware (e.g. operating software or firmware/configuration software), the customer receives a right of use for that software under the hardware rent that refers only to that specific unit. The software rental contract and the Special Provisions for Software Rental apply to innovaphone software products.
8. 3. The customer may only set up the Rental Object in the country of delivery as specified in the order. Changing or transferring the location to another country requires the consent of innovaphone. If a country of delivery is not stated in the rental contract, the country in which the customer's registered office is located shall be deemed the agreed country of delivery. Changing the country of delivery (shipment) requires innovaphone's prior written consent.
8. 4. Using the Rental Object is no longer or temporarily not possible if the customer decommissions the Rental Item(s) (removes the device connection) or if the customer terminates the respective individual rental contract and innovaphone sets up a technical block.
- Note: Emergency calls cannot be made via IP Telephony if it is no longer possible or temporarily impossible to use the software because the system is shut down. The customer must always ensure that emergency calls can be made via other telephone networks.**
8. 5. The customer does not have the right to claim the ownership of the Rental Object be purchased or transferred.
8. 6. If the Rental Object is connected to another movable asset or building, this connection is only for a temporary purpose within the meaning of Section 95 of the German Civil Code (BGB) and it is intended that they will be separated upon termination of the rental contract.
8. 7. innovaphone grants the customer a non-exclusive right to use the Rental Item(s) as well as the software contained therein (e.g. operating system software) and hardware licences, limited to the rental term. If the software contains components from other manufacturers, separate license terms apply. This is particularly the case for open source software, freeware and third-party software components. The license conditions are either displayed by innovaphone during the installation process or are referred to in the documentation (currently available under <http://wiki.innovaphone.com/index.php?title=Reference:Opensource>).
9. **Special Obligations of the Customer when Renting Hardware**
9. 1. The customer
- 1) may only set up the Rental Object in the country of delivery as specified in the order. Changing or transferring the location to another country requires the consent of innovaphone,
 - 2) must handle the Rental Object with care and may only use it only in accordance with the contract terms,
 - 3) must observe the recommendations for use/operating manuals; specifically, the customer may only use resources and accessories for operating the hardware that were specified by innovaphone in the product specifications, otherwise the operability of the hardware cannot be guaranteed,
 - 4) may only place the Rental Object in suitable rooms,
 - 5) must provide the appropriate energy sources for the Rental Object,
 - 6) must refrain from making changes, adding further installations, making improvements to the Rental Object without prior consent of innovaphone, whereby the consent must be in writing but does not require a signature,
 - 7) must tolerate remote access to the Rental Object for the purpose of checking its functionality or in order to locate errors/defects in the Rental Object, provided the requirements of data protection law are complied with,
- 8) must inform innovaphone of any changes to the e-mail address without delay; the customer is responsible for ensuring that declarations/explanations can be conveyed to him by e-mail. The customer is responsible for receiving and acknowledging the contents of the e-mails.
9. 2. The customer must keep the Rental Object free from all rights of third parties. The customer must immediately oppose enforcement measures and claims asserted by third parties regarding the Rental Item(s) and shall inform innovaphone of such measures without delay. This also applies in particular to enforced auction claims and/or receivership of plots of real estate with regard to the property on which the Rental Item(s) is/are located. The customer shall bear the costs of all measures which are necessary to avert possible impairments of innovaphone's property rights to the Rental Item(s), including any legal fees required by innovaphone.
9. 3. In consultation with the customer, innovaphone is entitled to inspect the Rental Object; for this purpose, the customer shall inform innovaphone about the location immediately upon being requested to do so and, if necessary, shall grant innovaphone the required access rights. An inspection may also take place if there is good reason without prior notice during the customer's normal business hours.
- 10. Granting Third Parties Use of the Rental Object**
10. 1. It is generally not permitted to grant third parties use of the Rental Object without innovaphone's prior written consent.
10. 2. Customers that are authorized innovaphone partners have the right to grant third parties the right to use the Rental Object without written consent, whereby the following restrictions apply:
- 1) authorized innovaphone partners with the distributor status and in possession of a valid distributor contract are entitled to grant authorized resellers the right to use the Rental Object;
 - 2) authorized innovaphone partners with the reseller status and in possession of a valid reseller contract are entitled to grant end customers (entrepreneurs within the meaning of Section 14 German Civil Code (BGB)) the right to use the Rental Object.
10. 3. If the customer grants third parties use of the Rental Object, the customer is, in its capacity as the lessee, liable for the conduct of the third party in the same way as it is liable for its own conduct. Furthermore, the customer is strictly liable vis-à-vis innovaphone regardless of fault for all impairments sustained to the Rental Object, this especially applies to deterioration of condition or loss or theft of the respective Rental Object.
10. 4. If third parties are lawfully granted the right to use the Rental Object, the customer shall be entitled to transfer non-exclusive rights of use to software contained in hardware for the intended use of the respective Rental Item(s).
10. 5. End customers (entrepreneurs within the meaning of Section 14 German Civil Code (BGB)) are not entitled to grant third parties (outside of their business organization) the right to use the Rental Object.
10. 6. If third parties are lawfully granted the right to use the Rental Object, the customer shall ensure in particular that
- 1) innovaphone's property rights to the Rental Object under civil law are not affected or cancelled unless this refers to statutory liens that are not at the customer's disposal and the termination of which occurs at the latest by the end of the rental term;
 - 2) the Rental Object is returned immediately if the individual rental contract is terminated,
 - 3) the fulfilment of the contractual rights and duties under the framework rental contract for hardware and the respective individual contracts are not impacted to the detriment of innovaphone, such as
 - the duty to deploy and use the system in permanent operation,
 - the duty to use the Rental Object or to transport it exclusively within the agreed country of delivery,
 - the prohibition to transfer the use of the rented object to third parties without innovaphone's consent.
 - 4) the requirements for attributing the economic ownership of the Rental Object to innovaphone according to the requirements of German tax law are neither put at risk, impaired

- nor cancelled; transferring the Rental Object to a country other than the country of delivery stated in the contract requires the consent of innovaphone.
10. 7. Upon innovaphone's request, the customer is obliged to disclose all contracts granting third parties use of the Rental Object (e.g. sub-rental agreement) and shall provide innovaphone with a copy of the contractual agreements and inform innovaphone about the location of the Rental Object.
10. 8. The customer hereby assigns to innovaphone by way of security, and innovaphone accepts this assignment, any claims for fees, replacement and/or surrender it may have vis-à-vis third parties in connection with the Rental Item(s). Initially, this assignment is not disclosed to the claimants. If the third party falls behind with its duties as per the rental contract, innovaphone is entitled to disclose the assignment or to demand that the customer discloses the assignment. If innovaphone need the customer's support in order to enforce the assigned rights, this support must be provided without delay upon request at the customer's own expense unless the support would involve unreasonable effort for the customer.
- 11. Implied Warranty/RMA**
11. 1. The customer shall first contact its designated innovaphone partner whenever defects are identified or troubleshooting is required. If this is not successful and the defect cannot be remedied or if the customer is an innovaphone partner, the customer may contact innovaphone directly and report the defects.
11. 2. If the customer has the corresponding authorization rights, the customer may report defects in the so-called RMA procedure (Return Material Authorization) electronically via an innovaphone platform.
11. 3. innovaphone shall process incoming notification of defects by the customer within a reasonable period.
11. 4. In order to remedy defects, innovaphone is entitled to first carry out remote maintenance (repair) or other suitable measures (e.g. through a transitional/workaround solution) without requiring the consent of the customer. The customer shall thus grant innovaphone remote access and shall permit innovaphone to carry out an automatic configuration, including a firmware update, to the extent that such measures are technically feasible and required for repairing the defect.
11. 5. Instead of remedying defects, innovaphone may deliver an exchange/replacement unit to the customer with the customer's consent.
- 11. 6. The place of performance of the mutual obligations in connection with the maintenance of the Rental Item or the Rental Object and the implied warranty is the registered office of innovaphone (Sindelfingen warehouse).**
11. 7. If innovaphone provides an exchange/replacement unit, the customer is obliged to return the Rental Item to innovaphone without delay. The customer shall bear the cost incurred in shipping the Rental Item to the place of performance for the purpose of remedying the defect or making a replacement delivery (Sindelfingen warehouse), e.g. packaging and transport and insurance costs. The cost required for remedying the defect shall be borne by innovaphone, including in particular cost of labor and materials, including the packaging and transport costs required to return the hardware to the customer.
11. 8. In the event that innovaphone delivers a replacement unit to the customer, the customer shall connect it to the PBX without delay. If hardware-related software licenses are bound to the unit (e.g. gateways), the corresponding software license shall only be valid for the new unit/replacement. The customer can show the change of unit in its my.innovaphone portal. It is no longer permitted to use the software and the old unit.
11. 9. If, after notification of a defect, innovaphone has performed services for detecting defects and if no defect is found (e.g. the unit's defect has occurred due to overvoltage or due to improper handling of the device by the customer) and if the customer could have recognized this, the customer shall bear the costs arising from this. The calculation of costs is based on innovaphone's fee rates that apply at the time the service was provided.
- 11. 10. If the remedy of defects or a replacement delivery with an appropriate deadline fails, the customer may terminate the rental contract without notice. Item 14 applies to any claims for damages. Any strict liability of innovaphone for compensation for damages for defects existing at the time of contract conclusion as per Section 536 a (1) Alt. 1 German Civil Code (BGB) that applies irrespective of who is at fault is excluded.**
- 12. Termination of the Rental Contract**
12. 1. The customer may terminate an individual rental contract at any time with effect from the day following the termination. Notice of termination must be given electronically on the myApps platform and for each unit by clicking on ("Terminate rental"); sending the electronic notification is deemed to be termination for the following day.
12. 2. innovaphone is entitled to terminate an individual rental contract with a one month notice period to the end of the month. Termination for good cause by innovaphone remains unaffected by the above provision. Good cause for extraordinary termination by innovaphone is in particular deemed to exist if
- 1) the customer violates the essential contractual obligations that are incumbent upon it under the framework contract on renting hardware and does not refrain from such violation despite a written warning or does not immediately eliminate consequences of contract violations that have already occurred and thereby violates the rights of innovaphone to a more than insignificant extent;
 - 2) the customer disregards the requirement of permanent operation or violates the prohibition of downgrading or moves the Rental Item(s) to another location outside the agreed delivery country and does not refrain from this breach of contract despite a written warning by innovaphone;
 - 3) the customer uses the Rental Object in breach of the contract terms and does not refrain from doing so despite a written warning;
 - 4) the customer concealed facts or circumstances when concluding the contract, the knowledge of which would have prevented innovaphone from concluding the individual rental contract on the basis of an objectively appropriate assessment.
12. 3. Notice of termination may be given in writing and does not require a signature (e.g. by e-mail).
12. 4. The rental contract is not extended automatically if the customer continues to use the Rental Item(s) beyond the date of termination of the individual rental contract.
- 13. Returning the Rental Item/Rental Object**
13. 1. Upon termination of the individual rental contract, the customer shall immediately return, at the latest within ten (10) calendar days, the respective Rental Item or Rental Object to innovaphone (Sindelfingen warehouse) or to a third party named by innovaphone at its own expense and risk and insured for transport.
13. 2. Before returning the Rental Object, the customer shall ensure that any data stored on the device by the customer has been irretrievably deleted and storage media (e.g. SSD hard disks) have been removed. innovaphone does not assume liability for the loss of data and/or storage media in this context (cf. 14.2 and 14.3).
13. 3. If the customer terminates the rental contract immediately after its conclusion or immediately after the contract begins and if the customer has ordered the Rental Item(s) to be shipped and innovaphone has already carried out the shipping/packaging, the customer shall bear the shipping costs for the outward and return transport, including packaging costs.
13. 4. The customer shall enclose a written report on the condition of the respective Rental Item to record any existing damage. innovaphone shall check the condition report for correctness after receipt of the Rental Item and make any amendments as necessary. innovaphone shall then evaluate and inform the customer of the extent of any reduction in value of the Rental Item that exceeds normal use and invoice the customer for such above-average reduction in value.
13. 5. If the customer does not return the Rental Item or Rental Object within the agreed period of time, the customer still has to pay innovaphone the agreed rental rate until it is returned to innovaphone. innovaphone reserves the right to claim further damages.
13. 6. In case the customer is obliged to return the Rental Item(s), innovaphone has the right to take direct possession of the Rental Item(s) itself. The customer is obliged to disclose the location and the respective user if it has granted a third party use of the Rental Item(s).
13. 7. If, in the case of termination of the contract, the customer is objectively unable to return the Rental Item(s) in whole or in part, e.g. in case of loss or destruction, the customer shall reimburse innovaphone the current market value (dealer sales value) that would have been due for the Rental Item(s) in proper condition at the time of termination of the individual rental contract. If the Rental Object consists of several items, the above provision ap-

- plies mutatis mutandis to those items that objectively cannot be returned by the customer.
13. 8. If the customer does not remove storage media contained in the hardware or does not delete the data properly, innovaphone shall carry out irretrievable deletion and/or disposal compliant with data protection laws. Regarding innovaphone's liability for loss of data, the provisions stated in 14.2 and 14.3 shall apply (exclusion of liability).
13. 9. The above provisions shall apply mutatis mutandis in the event that the customer has an obligation to return the goods within the scope of the delivery of an exchange/replacement unit in conjunction with the notification of defects

14. Liability, Liability Limitations

- 14. 1. General Liability Limitation:** innovaphone is liable to an unlimited extent for deliberate acts or gross negligence in the case of injuries to life, limb or health as well as if a promised feature is missing. If innovaphone's performance is behind schedule or if performance has become impossible or if a material obligation has been violated, the liability for damage to property and pecuniary loss attributable to this is limited to the foreseeable damage typical for the contract. A material obligation is an obligation, the fulfilment of which is essential to implementing the rental contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Product liability is not excluded.
- 14. 2. Liability upon Loss of Data:** The customer is aware that storage media (e.g. SSD hard disks in the case of gateways) may have been installed in the hardware and that data is stored. The customer bears the risk of loss of data. The customer shall ensure that the data is backed up properly and shall make backup copies and copies of the data at regular intervals. The customer may not use the hardware and its integrated software as the only storage medium for important data. **In the case of loss of data, innovaphone shall be liable to the extent that the damage would have occurred if the customer had carried out proper data backup; the liability is thus limited to the reconstruction efforts that would be required assuming the customer had carried out proper data backup. In the case of ordinary negligence by innovaphone, this liability shall only apply if the customer carried out data backup immediately before the measure leading to the data loss.** The limitation of liability shall not apply in the event of deliberate acts or gross negligence, in the absence of a warranted characteristic and if the German Product Liability Act (ProdHaftG) applies.
Note: Before returning/delivering a unit to innovaphone (even if it is sent for repair purposes), the customer must delete stored data or remove the hard disk and destroy it in accordance with data protection regulations.
14. 3. Exemption from liability in case of data loss: The customer indemnifies innovaphone against all claims arising from and in connection with a data loss within the meaning of item 14.2, also vis-à-vis third parties, who assert these claims against innovaphone due to data loss on rental hardware.
14. 4. Items 14.1 to 14.2 shall apply mutatis mutandis to claims for reimbursement of expenses and other liability claims.
14. 5. Any and all contractual claims for damages shall become statute-barred twelve (12) months after the beginning of the statutory period of limitation.

15. Import/Export Compliance

The customer shall be responsible for observing the import and export regulations applicable to deliveries or services in connection with rental hardware products, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service.

16. Applicable Law, Place of Jurisdiction

16. 1. These Special Provisions for Hardware Rental and the underlying contract on renting hardware are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
16. 2. The place of performance for deliveries and services and the place of subsequent performance is Stuttgart.
16. 3. Side agreements, amendments or supplements to these Special Provisions for Hardware Rental require the signature of both

parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.

16. 4. The place of jurisdiction for all and any disputes arising from or in connection with renting hardware is Stuttgart. Any exclusive place of jurisdiction takes priority.

17. Contract Language; German Language Prevails

These Special Provisions for Hardware Rental and the contract on renting hardware have been drawn up in German. If the GTC and the contract on renting hardware are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

18. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions for Hardware Rental or the contract on renting hardware are or become invalid, void or unenforceable, the validity of the remaining provisions in these general terms and conditions remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions for Hardware Rental or the contract on renting hardware should fail to cover a specific aspect.

I. Special Provisions for Software Rental

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Scope of Application and Subject Matter of the Contract

2. 1. In addition to the general provisions of innovaphone's General Terms and Conditions, these Special Provisions regulate the special provisions for software rental. The software products that are available for rental (Rental Items) are listed in the innovaphone **licensing guidelines** as amended, which can be accessed from the Downloads section of the innovaphone website. The customer determines the scope of the Rental Items by selecting the software rental products via the PBX configuration or by making a change to configuration in the Devices app of the respective installation in the "Software rental" menu item.
2. 2. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions.
2. 3. 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.

3. Offer and Contract Conclusion

3. 1. By displaying the proposed software rental contract, innovaphone makes a legally binding offer. The offer is directed exclusively at companies (natural and legal persons or partnerships with legal capacity), not at consumers within the meaning of Section 13 German Civil Code (BGB).
3. 2. By clicking on a button, an entry in a text field and/or a check box, the customer declares electronically that it accepts the offer to conclude a software rental contract (legally valid declaration to enter into a contract) and furthermore accepts these Special Provisions for Software Rental.
3. 3. The customer receives the electronically concluded rental contract from innovaphone either by e-mail to the e-mail address specified by the customer or via its customer account in the portal.

4. Performance and Delivery, Registration and Restriction of Services

4. 1. A prerequisite for operating or deploying the Rental Item is that the customer registers on the corresponding innovaphone platform, creates a customer account and adds the amount of iSC required for the rent to its customer account. iSC can be purchased from authorized innovaphone partners and added to the customer's account via the activation key.
4. 2. innovaphone shall deliver the selected Rental Item(s) upon payment of the iSC as per the current price list for software rental products (Rental Items). The amount of iSC is amended at the time the Rental Items are selected via the configuration of the PBX or at the time when the configuration is changed. To do this, the customer must click on a button, a text field and/or a check box in its customer account to select which and how many (quantity) software rental products are required.
4. 3. The respective number of iSC required (price per average month) is shown to the customer on the portal before the (new) configuration is selected or confirmed.
4. 4. innovaphone grants the customer a time-limited, non-exclusive usage right for the innovaphone software (Rental Item), which the customer obtains under the software rental contract to operate the PBX and myApps communications platform (hereinafter "myApps platform"). If the customer allows third parties to use the Rental Items in accordance with item 8.2. below (admissible granting of use), the customer is authorized to transfer non-exclusive rights of use.
4. 5. The software is delivered by way of download as an object code or it is already pre-installed on the hardware. The customer shall install and configure the Rental Items itself or through an authorized innovaphone partner. The customer can use the software immediately after configuration and once the iSC have been uploaded.
4. 6. **The right to use the Rental Items expires or is restricted if and to the extent that the customer does not have sufficient iSC credit for the number of software products selected, which are necessary for the operation of the PBX configured by the customer.** The customer is always able to see in its customer account the current remaining time of use of the configured software on the basis of the iSC credit balance in the installation available at that time. innovaphone shall also inform the customer in a timely manner about the amount of iSC used or whether it is necessary to purchase or upload additional iSC for its customer account, either in writing or by electronic declaration via e-mail.
Note: Emergency calls cannot be made via IP Telephony if it is no longer possible or is temporarily impossible to use the software because the iSC have all been used. The customer must always ensure that emergency calls can be made via other telephone networks.
4. 7. **The rented software must be used in permanent operation. It is not permitted for the customer to switch the configuration on and off on a regular basis, nor is it permitted to up or downgrade the configuration on a regular basis (e.g. "weekend downgrading" in order to optimize the amount of fees due for payment).**
4. 8. If the software supplied by innovaphone does not work and/or malfunctions, the customer shall inform its designated innovaphone partner without delay so that the malfunction can be remedied. If the customer itself is the innovaphone partner, it can, depending on its partner status, contact innovaphone directly.
4. 9. When granting the customer the right to use the Rental Item(s), innovaphone shall provide the customer with new versions of the rented software in order to keep it up-to-date and to remedy any defects. innovaphone shall provide the customer with updates with technical modifications and improvements and/or patches with corrective software. This does not cover material expansions to the functionalities and partial or full reprogramming. The customer must rent these for a fee by selecting the newer version and changing the configuration.

5. Rental Rate and Due Date/Price Adjustments

5. 1. The prices for the individual rented software products (Rental Item) are specified in the innovaphone price list. A distinction is made between rental prices for operating the PBX or Rental Items on the customer's servers (on-premise installation or third-party cloud services) and rental rates for software in the innovaphone cloud when the customer uses innovaphone's myApps cloud service.
5. 2. The calculation of the prices is based on the price list that is valid at the time the Rental Items are selected; the prices are stated in iSC. iSC can be purchased via authorized innovaphone partners.
5. 3. The respective number of iSC/rental rate required depends on the software rental products selected via configuration of the

PBX or a configuration change and the number of iSC is shown to the customer before the (new) configuration is selected or confirmed.

5. 4. The rent is billed per second.
5. 5. The rent is invoiced via the customer account where the customer has to ensure that sufficient iSC are available. The rental rate (iSC value) is deducted from the customer account. innovaphone is entitled to deduct any receivables that are due under this contract from the account.
- Note: If the customer also rents hardware products from innovaphone, it should also take into account the amount of iSC required for this and, if necessary, upload additional iSC.**
5. 6. innovaphone shall adjust the prices if, during the term of the rental contract, the customer changes from operating a PBX or Rental Items via the innovaphone cloud to the customer's server (on-premise installation or third-party cloud services) or vice versa; when making the technical change (e.g. from on-premise installation or third-party cloud services to innovaphone's cloud or vice versa) the prices for the software rental are calculated based on innovaphone's price list as valid at that point in time. Otherwise, item 5.2 shall apply (calculating the prices).
5. 7. innovaphone is entitled to adjust the iSC due for the software rental at its own discretion on the basis of Section 315 of the German Civil Code (BGB) and to replace the prices with an updated price list; the new prices shall be shown to the customer once the respective Rental Item has been selected. innovaphone shall inform the customer of price (iSC) adjustments in writing by e-mail or in the customer account on the portal at least four (4) weeks before the planned change takes effect. Otherwise Section 315 German Civil Code (BGB) remains unaffected.
5. 8. Despite the new prices becoming effective, the old iSC calculation prices which are available on the account remain valid until a configuration change (connection to the innovaphone server) takes place. Once the new configuration has been confirmed, the new prices shall apply to the entire system, whereby the new amount of iSC is displayed before the final configuration change is made.
5. 9. **In the event of a price increase or for any other reason, the customer shall have the right to terminate the rental contract with immediate effect. In this case, item 6.5 (expiry of iSC) shall apply. This needs to be observed by the customer if the contract is terminated.**

6. Term of Contract and Termination, iSC Expiry after the End of a Contract/Deletion of Customer Account

6. 1. The contract is entered into for an indefinite period of time and begins with the conclusion of the software rental contract (i.e. by clicking a button or a check box), but at the latest at the point in time when the services are made available (selection of the first Rental Item and upon payment of the iSC).
6. 2. The customer may terminate the contract at any time by giving notice with immediate effect to the day following the notice of termination.
6. 3. innovaphone is entitled to terminate the contract with two months' notice to the end of the month. This does not affect the right to terminate for good cause. Good cause for extraordinary termination by innovaphone is in particular deemed to exist if
- the customer violates the essential contractual obligations that are incumbent upon him or her under the software rental contract and does not refrain from violating these contractual obligations despite a written warning or does not immediately eliminate consequences of contract violations that have already occurred and thereby violates the rights of innovaphone to a more than insignificant extent;
 - the customer disregards the requirement of permanent operation or violates the prohibition of downgrading or moves the Rental Item(s) to another location outside the agreed delivery country and does not refrain from this breach of contract despite a written warning by innovaphone;
 - the customer uses the Rental Items in breach of the contract terms and does not refrain from doing so despite a written warning;
 - the customer concealed facts or circumstances when concluding the contract, the knowledge of which would have prevented innovaphone from concluding the rental contract on the basis of an objectively appropriate assessment.

6. 4. Notice of termination may be given in writing (e.g. by letter or e-mail).
6. 5. **The customer's existing iSC on the customer account may be kept for a period of two (2) months after termination of the rental contract. During this period, the customer may use iSC for rental innovaphone software or hardware products when concluding a new contract for renting software or hardware. The iSC expire at the end of the abovementioned period of time. If the customer requests that its customer account is deleted, iSC expire with immediate effect. It is not possible to claim reimbursement of and/or compensation for expired iSC from innovaphone.**
7. **Software Usage Rights (Licensing Rights), the Customer's Special Software Rental-Specific Obligations**
7. 1. innovaphone grants the Customer the non-exclusive, non-transferable right, limited in time to the term of the software rental contract, to use the software in the object code for the designated contractual purpose and in accordance with these Special Provisions for Software Rental (Licensing right). Sub-licensing is permissible pursuant to item 8.
7. 2. As far as the software contains open source software, freeware and third-party software components or if it is software from a third party, other rights of use or licensing provisions may apply in addition to those granted to the customer by innovaphone according to the contract regarding the rental of software and these Special provisions. These are either shown by innovaphone as part of the installation process or described in the documentation on the portal or provided in any other suitable way. The customer must comply with the rights of use and/or licensing provisions of the respective manufacturer. If software from third-party manufacturers provides for a transfer of the source code, the source code is available on innovaphone's website.
7. 3. The customer is in particular obliged
- 1) to use the software carefully and only in accordance with the contract,
 - 2) to observe the relevant product-specific restrictions on the use of the software to which innovaphone refers separately (e.g. in the applicable licensing guidelines as amended); if the software is bound to hardware, the customer is entitled to use the software on one device only. Otherwise, the customer may use the software according to the number of licenses purchased (usually per user).
 - 3) to ensure sufficient iSC credit is in its customer account so that unrestricted use of the Rental Items for the operation of the PBX is possible during the term of the software rental contract. If there are not sufficient iSC available, it is not permitted and temporarily not possible to use the software (in particular emergency calls are not possible),
 - 4) to inform innovaphone of any changes to the e-mail address immediately; the customer is responsible for ensuring that declarations/explanations can be conveyed to it by e-mail. The customer is responsible for receiving and acknowledging the contents of the e-mails.
7. 4. The customer is also obliged to additionally store any data stored on the software elsewhere outside the systems and to ensure adequate data backup.
7. 5. The customer may make a full copy of the software for backup purposes. The customer shall label this as a backup copy and include the copyright notice such as alphanumeric identifiers, trademarks and other copyright information. All further rights, in particular the right to distribute, translate, process, redesign and make the software publicly available, remain with innovaphone. With the exception of open source software or freeware, the customer may not decompile or disassemble the software, extract program parts, carry out reverse engineering or otherwise attempt to derive the source code from the object code. This does not affect the customer's right to reverse engineer or decompile the software in accordance with mandatory legal provisions of the German Act on Copyright and Related Rights (UrhG), in particular if this is necessary to enable the contractual functionality or interoperability of the software with other computer programs. The customer shall request innovaphone beforehand in writing and with a reasonable period of time to provide the information and documents necessary to enable the contractual functionality or interoperability with other computer programs. Only after the fruitless expiry of this period is the customer entitled to carry out reverse engineering or to decompile the software within the scope of the legally binding regulations.
7. 6. By terminating the software rental contract, the right to use the software rental products expires. It is not permissible to use the software once the rental contract has ended.
7. 7. The customer's right to use the software expires, is temporarily restricted or restricted until the required amount of iSC is uploaded (cf. item 4.6.).
8. **Allowing Third Parties to Use the Software/Indemnification Right**
8. 1. In its position as lessee, the customer is not entitled to transfer the rented software to third parties for use without innovaphone's written consent. It is specifically prohibited to sublet the software rental products. The customer's employees may use the software within the scope of the intended use and their work.
8. 2. Customers that are authorized innovaphone partners have the right to grant third parties the right to use the software without written consent, whereby the following restrictions apply:
- 1) authorized innovaphone partners with the distributor status and in possession of a valid distributor contract are entitled to grant authorized resellers the right to use the Rental Item(s);
 - 2) authorized innovaphone partners with the reseller status and in possession of a valid reseller contract are entitled to grant end customers (entrepreneurs within the meaning of Section 14 German Civil Code (BGB)) the right to use the Rental Item(s).
 - 3) End customers (entrepreneurs within the meaning of Section 14 German Civil Code (BGB)) are not entitled to grant third parties (outside of their business organization) the right to use the Rental Item(s).
8. 3. In the event that the authorized use of the software is granted to a third party, the customer must ensure that the fulfilment of the contractual obligations under this agreement on software rental is not impaired. In the contract that grants the right to use the software, the customer shall ensure that it is granted an extraordinary right to terminate the contract in the event that innovaphone terminates this contract and the use of the software is no longer permitted. Furthermore, it must take any legal measures that may be necessary to prevent or prohibit the software being used by third parties.
8. 4. When uploading iSC, e.g. by authorized third parties, it must be ensured that these iSC are uploaded to the customer's customer account. If the rental contract ends and the customer account is deleted, any existing iSC, including any iSC purchased by sub-licensees expire. The customer is also responsible for informing the third party accordingly.
8. 5. **If the customer grants third parties use of the software, the customer is, in its capacity as the lessee, liable for the conduct of the third party in the same way as it is liable for its own conduct. Furthermore, the customer is liable vis-à-vis innovaphone for all impairments which the Rental Item(s) suffers regardless of fault. The customer alone is responsible vis-à-vis innovaphone for the customer account and the rights and obligations arising from the rental contract when third parties are granted use of the software. The customer is fully liable for all and any use and activity that is carried out under its login to the customer account or sub-account and to the respective platform or PBX.**
8. 6. At innovaphone's legitimate request, the customer is obliged to disclose all subletting and contracts granting third parties use of the software rental products.
8. 7. **If the software is legitimately provided to a third party, the customer shall indemnify innovaphone against all claims, in particular claims for damages and/or reimbursement of costs (in particular also lawyer's fees) that third parties may assert against innovaphone due to the use of sub-licensed rental software.**
9. **Warranty**
9. 1. **Defects in Quality**
9. 1.1. The software is of the contractually agreed quality and is suitable for the contractually required or usual use (functionality). The software quality is of a standard that is common for this kind of software, but it is not error-free. The customer must notify innovaphone of defects without delay and must take the necessary measures to determine the defects and their causes. Defects must be determined in order for the implied warranty claim to be valid.
9. 1.2. Concerning remedying defects, the customer shall first contact its respective innovaphone partner. If it is not successful and the defect cannot be remedied, the customer may contact innova-

- 9.1.3 phone directly.
- 9.1.3 If the software has a defect and the defect cannot be remedied as per item 9.1.2, the customer has the right for the defect to be remedied or for new delivery (subsequent performance), whichever innovaphone prefers. In order to remedy a defect, innovaphone may choose to remove or circumvent the defect or to deliver a new product (make available a new software version or update). The Customer may only refuse a new delivery if it is unreasonable to expect the Customer to accept a new version because the new software is considerably different from the contractually agreed quality of the software.
- 9.1.4 The duty to remedy a defect refers to the latest, most recent and highest version number of the respective software.
- 9.1.5 Place of fulfilment for the remedy of defects is Sindelfingen.**
- 9.1.6 Subsequent performance may be effected by electronic transmission (e.g. e-mail) unless this is not reasonable for the customer (e.g. for reasons of IT security). The customer shall grant innovaphone remote access and shall permit innovaphone to carry out an automatic configuration, including a firmware update, to the extent that such measures are technically feasible and required for remediying the defect.
- 9.1.7 If the customer has set innovaphone a reasonable time limit for remediying the defects and innovaphone refuses subsequent performance or if the subsequent performance fails, the customer has the right to demand that the contract is terminated or the fee is reduced (reduction of the agreed fee). Subsequent fulfilment is not considered to have failed definitely after the second unsuccessful attempt to remedy the defect, rather there is no limitation as to the number of attempts innovaphone may undertake to meet its obligations during the period set by the customer, as far as this is reasonable for the customer.
- 9.1.8 If there is an insignificant deviation from the contractually agreed quality of the software which does not restrict the functionality, or if the usability of the software is only impaired to an insignificant degree and this was not explicitly provided for in the contract, the customer may only demand the fee to be reduced (reduction of the agreed fee).
- 9.1.9 innovaphone does not assume any liability for defects existing at the time of contract conclusion irrespective of who is at fault as per Section 536 a (1) Alt. 1 German Civil Code (BGB). Liability for defects caused by innovaphone as well as liability for missing warranted features remains unaffected.**
- 9.1.10 If innovaphone has provided services to search for a defect after having received notification of a malfunction and there is no defect in quality and if the customer could have recognised this, then the customer shall bear the costs incurred. The calculation of costs is based on innovaphone's fee rates that apply at the time the service was provided.
- 9.2 Defects in Title**
- 9.2.1 A defect in title is deemed to exist if the rights required for the contractually intended use have not been effectively granted once use of the software has been granted.
- 9.2.2 In case of defects in title, innovaphone warrants that it shall provide the customer either with a legally sound possibility to use the software or take back the software at the invoice price less reasonable compensation for the use of the service, whatever innovaphone prefers. The latter is only permissible if innovaphone cannot reasonably be expected to find a remedy.
- 10. Liability**
10. 1. innovaphone shall always be liable for
- damages caused intentionally or by gross negligence by innovaphone and its legal representatives or vicarious agents,
 - claims under the German Product Liability Act (ProdHaftG), and
 - damages on the grounds of injury to life, limb or health caused by innovaphone, its legal representatives or vicarious agents.
10. 2. innovaphone shall not be liable in case of ordinary negligence unless innovaphone violates a material contractual obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Such liability is, in the case of property and economic damage, limited to the foreseeable damage typical of such type of contract. This also applies to loss of earnings or savings.
10. 3. innovaphone is only liable for paying damages under an express warranty if this is specified in the express warranty. In the event of ordinary negligence, this liability is subject to the restrictions set out in item 10.2.
10. 4. In the event of data loss, innovaphone shall only be liable for those expenses that are required to restore the data on the basis that the customer performed proper backups. In the case of ordinary negligence, this liability shall only apply if the customer carried out a proper data backup immediately before the measure leading to the data loss was implemented.
10. 5. Items 10.1. to 10.4. apply mutatis mutandis to customer claims vis-à-vis innovaphone for reimbursement of expenses and other liability claims.
- 11. Force Majeure**
11. 1. innovaphone is not liable for events of force majeure, which considerably complicate innovaphone's contractual performance, temporarily hinder the proper execution of the contract or make it impossible. All circumstances independent of the will and influence of the contracting parties, such as natural disasters, decisions by authorities, military conflicts, strike, lockout and other labor unrest, confiscation, embargo or other circumstances which are unforeseeable, serious or are not the fault of the contracting parties and which occur after the conclusion of the purchase contract, shall be deemed to be force majeure.
11. 2. If a force majeure event prevents the parties from fulfilling their contractual obligations, this shall not be deemed a breach of contract, and the periods stipulated in or pursuant to the contract shall be reasonably extended in accordance with the duration of the event. The same applies if innovaphone requires prior input by third parties and such prior input is delayed due to force majeure.
11. 3. The party affected by the force majeure event shall immediately notify the other party in writing at the beginning and end of the event, respectively.
- 12. Import/Export Compliance**
- The customer shall be responsible for observing the import and export regulations applicable to deliveries or services in connection with software rental products, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service.
- 13. Applicable Law, Place of Jurisdiction**
13. 1. These Special Provisions and the underlying contract for rental software are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
13. 2. Place of performance for deliveries and services in connection with rental software and the place of subsequent performance is Stuttgart.
13. 3. Side agreements, amendments or supplements to these Special Provisions for renting software require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.
13. 4. The place of jurisdiction for all and any disputes arising from or in connection with renting software is Stuttgart. Any exclusive place of jurisdiction takes priority.
- 14. Non-Assignability**
- The customer requires prior written consent to transfer the rights and obligations arising from the rental contract with innovaphone to a third party (non-assignability).
- 15. Applicable Law, Side Agreements and Place of Jurisdiction**
15. 1. These Special Provisions for Software Rental are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
15. 2. Side agreements, amendments or supplements to these Special Provisions for Software Rental require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.

15. 3. The place of jurisdiction for all and any disputes arising from or in connection with renting software is Stuttgart. Any exclusive place of jurisdiction takes priority.

16. Contract Language; German Language Prevails

These Special Conditions for Software Rental and the contract on renting software have been drafted in German. If the general terms and conditions are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

17. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions for Software Rental or the respective contract on renting software are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions for Software Rental or the respective contract on renting software shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions for Software Rental or the respective contract on renting software should fail to cover a specific aspect.

J. Special Provisions for the myApps Cloud Service

1. Contracting Parties

The contracting parties are innovaphone AG (hereinafter referred to as "innovaphone") and the customer, which is not a consumer within the meaning of Section 13 German Civil Code (BGB).

2. Scope of Application and Subject Matter of the Contract

2. 1. In addition to the general provisions of innovaphone's General Terms and Conditions, these Special Provisions regulate the special provisions for innovaphone's myApps cloud service (hereinafter: "myApps Cloud Service").
2. 2. In case of contradictions, these Special Provisions take precedence over the general provisions in innovaphone's General Terms and Conditions.
2. 3. 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.

3. Offer and Contract Conclusion

3. 1. The mere presentation of innovaphone's myApps Cloud Service offering does not constitute a legally binding offer; instead, it only constitutes a non-binding invitation to make innovaphone an offer, i.e. it constitutes an invitation to place an order (invitatio ad offendum). The invitation to the customer with regard to the myApps Cloud Service is only addressed to companies (natural or legal persons or partnerships with legal capacity) and not to consumers within the meaning of Section 13 German Civil Code (BGB).
3. 2. The use of the myApps Cloud Service is only offered to customers that rental software products from innovaphone and operate such products in the innovaphone cloud with a minimum number of iSCs being consumed per month (condition for being admitted to the service); the minimum consumption is specified in the contract for the myApps Cloud Service.
3. 3. The customer makes its legally binding declarations in connection with the myApps Cloud Service electronically, either by clicking a button or by making an entry in a text field and/or by clicking a check box.
3. 4. innovaphone is entitled to reject the customer's order (offer to conclude a contract) without stating a reason.
3. 5. The order placement confirmation sent by innovaphone via e-mail does not constitute the acceptance of the offer.
3. 6. The contract is deemed to have been accepted as soon as the installation URL is sent to the customer via e-mail.
3. 7. The customer receives the electronically concluded contract from innovaphone either by e-mail to the e-mail address specified by the customer or via his/her customer account in the portal.

4. Requirements for Using the myApps Cloud Service and Minimum Amount of iSCs to be Consumed

4. 1. The myApps Cloud Service can only be used if the customer concludes a rental contract for innovaphone software products (also referred to as "Software Rental Licenses"). The rental fees are billed and settled by means of innovaphone Service Credits (iSCs), which are managed in a customer account created for this purpose on the innovaphone myApps platform. iSCs can be purchased from authorized innovaphone partners.
4. 2. The customer is obliged to ensure that it consumes a minimum amount of iSCs when using the myApps Cloud Service. This means the customer must activate Software Rental Licenses in the installation that cover the agreed minimum amount of iSCs to be consumed.

5. Service and Delivery/Deployment Obligation and Right of Rescission

5. 1. Delivery is effected by making available the installation URL via e-mail to the customer, i.e. to the e-mail address provided by the customer in its customer account on the portal. The customer is responsible for providing a valid e-mail address and being able to retrieve the e-mails there. The e-mail is deemed to have been received as soon as it has arrived in the post box of the e-mail account provided by the customer. The delivery is deemed to have been effected as soon as the e-mail with the installation URL has arrived in the post box, but no later than upon installation and deployment.
5. 2. The customer itself shall carry out the installation and deployment as well as the connection of hardware and software products in the cloud or have it carried out by an authorized innovaphone partner at its own cost. innovaphone is not obliged to install and deploy or connect the customer's hardware or software products.
5. 3. The customer must deploy the myApps Cloud Service within a period of 10 days after receiving the e-mail with the installation URL. If the installation and deployment is not performed within this period, innovaphone may deactivate the installation URL (login to the cloud) and is entitled to conclusively refuse delivery or to declare its rescission of the contract (right of rescission) vis-à-vis the customer in writing or by means of an electronic declaration (e.g. e-mail).

6. Availability of the myApps Cloud Service/Modifications and Payment of the Service

6. 1. No separate fee is charged for the myApps Cloud Service: the payment of the fee (iSC) for the rented innovaphone software products (Rental Items) as agreed in the software rental contract also covers the services in connection with the myApps Cloud Service. The amount (quantity) of iSCs required for renting the innovaphone software is specified in the innovaphone price list applicable at the time the Rental Items are chosen
6. 2. The cloud service covers services that are specified in the contract for the myApps Cloud Service and excludes services that are not expressly mentioned in the myApps Cloud Service contract or the specifications of services and/or the special notes on the myApps Cloud Service, in particular
 - transferring data or software to and from the network of the computer centres used by innovaphone for the myApps Cloud Service,
 - installing, deploying and connecting the customer's software and/or hardware,
 - securing and maintaining the internet connection at the customer's location,
 - providing advice and support with regard to the customer's own IT and network infrastructure and/or implementing, operating or debugging in such IT and network infrastructure.

The customer may have such services carried out by an IT service provider and/or an authorized innovaphone partner.
The rental of the innovaphone software products and the user/license rights are not covered by the scope of service under the innovaphone myApps Cloud Service.
innovaphone endeavours to enable troublefree use of the myApps Cloud Service and shall take into account technical developments to an economically and technically appropriate extent and in accordance with the operational possibilities of innovaphone. The annual availability of the myApps Cloud Service stands at 99.9%. The availability refers to the system uptime of the cloud service. The system uptime or availability is reduced by the planned downtimes as per item 8.1. (Maintenance & Care) of

- which the customer is informed as far as this is objectively possible in the circumstances and provided the notification does not delay the clearance of interruptions that have already occurred.
6. 5. The myApps Cloud Service might not be available in all countries or access to the innovaphone cloud platforms might not be possible from all countries or a customer's specific location. The customer shall check the availability or possibility to access the cloud service before using it.
6. 6. The myApps Cloud Service is provided in a multiuser environment ("Cloud"). innovaphone is therefore entitled to further develop and expand its services and to replace them with state-of-the-art services with equal functions. In this respect, changes may be made to individual functions/functionalities of the myApps Cloud Service at any time. Such changes shall not negatively impact the security of the cloud service and its core services. innovaphone also reserves the right to change characteristics and functions of the myApps Cloud Service and/or all associated services, including deactivating functions, if this is necessary for compliance with locally applicable laws or for operational and economic reasons. In some cases, the customer might therefore have to use a separate instance of the myApps Cloud Service.
- ## 7. Customer's Obligations
7. 1. The customer is obliged to provide true information with regard to its identity and contact details. Specifically, the customer shall provide a real name rather than an alias or name of a department and shall provide a valid e-mail address with the company domain and shall not use any non-existent or private e-mail addresses. The customer shall immediately notify any changes in its e-mail address. The customer is thus responsible for ensuring that declarations can be sent to the customer via e-mail. The customer is responsible for receiving and acknowledging the contents of the e-mails. The customer must ensure that it takes note of the contents of the e-mail and, if necessary, takes suitable organizational measures, particularly if an authorized person/legal representative (e.g. authorized innovaphone partner) has been tasked with managing such customer account.
7. 2. The use of the myApps Cloud Service requires a certain technical environment and the fulfilment of obligations on the part of the customer to provide certain conditions and cooperate (customer-related requirements for using the myApps Cloud Service). Specifically, the customer has the following obligations to provide certain conditions and to cooperate:
- making an internet connection with sufficient bandwidth available;
 - ensuring that the level of security is state-of-the-art and adequate (e.g. firewall, virus protection); the customer shall simultaneously ensure that the data flow required by innovaphone to render the myApps Cloud Service is not impeded by the customer's security systems. When using its own firewall, the customer shall ensure that its firewall settings allow the traffic required to use the myApps Cloud Service (ports/logs),
 - when using a SIP trunk, the customer shall ensure that the level of IT security is state-of-the-art and adequate,
 - installing, deploying and connecting software and/or hardware, if required, with the help of an authorized innovaphone partner at its own cost (cf. item 5.2.).
- The customer shall carefully review the aforementioned requirements to be met by the customer and shall make them available to a sufficient extent and in accordance with the statutory and official provisions and the state of the art. The customer shall ensure that innovaphone does not suffer any adverse effects from the customer's use of individual functionalities and, in particular, due to the specific configuration.
7. 3. The customer is responsible for complying with all the applicable laws in its own state or country. The customer is prohibited from using the myApps Cloud Service if this would violate local applicable law. The customer must therefore check the applicable statutory provisions and official requirements accordingly.
7. 4. The use of the myApps Cloud Service is subject to concluding a data processing contract pursuant to Art. 28 (3) General Data Protection Regulation (GDPR).
7. 5. The customer may only use the services provided by innovaphone under the myApps Cloud Service for the contractually agreed purposes and in the contractually agreed scope. Specifically, the computer and storage capacities that are provided may only be used to operate rented innovaphone software products or software licenses and may not be used as storage medium for third-party products.
7. 6. The customer shall export the data collected on the cloud plat-
- form, including the configuration data, at regular intervals, in particular for data backup purposes. If the data on the innovaphone systems needs to be restored, the customer shall transfer the affected data again at no cost.
7. 7. When installing and deploying the cloud platform, the customer must, for IT security reasons (login and access control), activate passwords without delay and the customer is responsible for choosing and using secure passwords. The customer shall manage passwords carefully and keep them secret. Personal login details must be changed without delay if the customer suspects that unauthorized individuals know the login details.
7. 8. For security reasons and in order to implement technical improvements and keep up the myApps Cloud Service, innovaphone maintains permanent access to the customer's platform. The customer may not remove this access.
- ## 8. Planned Downtimes, Temporary and Permanent Suspension of the myApps Cloud Service, Right to Terminate for Cause
8. 1. Maintenance work and software support required to ensure the security of network operations, the maintenance of network integrity, the interoperability of cloud services and data protection (the security, confidentiality, availability, integrity and resilience of the systems, networks, programmes, applications and data) is carried out on a regular basis. Usually this does not lead to impairment of the availability of the myApps Cloud Service or the use of the services, but this cannot be excluded entirely. If longer temporary suspensions or limitations of services are required, innovaphone shall inform the customer of the type, extent and duration of such impairment in advance (planned downtimes) to the extent that this is reasonably possible and such notification does not delay the removal of interruptions that have already occurred. Any unavailability of the myApps Cloud Service due to maintenance reduces the availability of the system uptime stated by innovaphone accordingly (cf. item 6).
8. 2. The myApps Cloud Service might be temporarily suspended if the customer does not meet the minimum contractually agreed amount of iSCs to be consumed per month for the rental of software products or software licenses. innovaphone shall inform the customer of the expected end of the term of the software rental contract and the amount of iSCs consumed in the installation (PBX) and shall inform the customer in due time in writing or by electronic communication via e-mail of not meeting the agreed minimum amount of iSCs to be consumed. The customer thus has the opportunity to activate the required amount of Software Rental Licenses in the PBX. If the customer refuses to active software products or Software Rental Licenses in the contractually agreed minimum amount of iSCs consumed, innovaphone is entitled to temporarily suspend or block the myApps Cloud Service or, if the circumstances in the individual case allow, to terminate the entire myApps Cloud Service contract without notice for cause.
8. 3. The myApps Cloud Service might further be temporarily suspended if the customer culpably breaches any of its obligations pursuant to item 7 or other obligations under the contract for the myApps Cloud Service and/or violates or has violated these Special Provisions and/or applicable law, in particular by not enabling innovaphone's permanent access to the cloud platform (item 7.8.). If the customer makes the services available to third parties or grants third parties access to the myApps Cloud Service using its own customer account, the customer shall be liable for such third parties' breaches of obligations as if it had committed such breaches itself.
8. 4. The myApps Cloud Service might be permanently suspended if
- a. the customer fails to activate the installation URL within a period of 10 days after receipt thereof in its e-mail post box pursuant to item 5.3.,
 - b. this is required due to legal or official requirements (e.g. in case of violations of local laws),
 - c. this is required due to material changes to IT services by innovaphone's subcontractors, e.g. innovaphone's cloud provider, and continuation of the myApps Cloud Service is thus not possible or cannot be reasonably expected of innovaphone (product phase-out),
 - d. the contractual relationship to one of innovaphone's subcontractors, e.g. cloud providers, that are used by innovaphone to render the myApps Cloud Service (hosting) and are of material significance to rendering these services, is terminated,
 - e. the myApps Cloud Service poses material security risks,
 - f. the customer fails to meet the agreed minimum amount of iSCs to be consumed for the rental of software products or Software Rental Licenses and continues to do so despite an

- e-mail reminder and a second request by innovaphone,
- g. the customer culpably violates or has culpably violated obligations pursuant to item 7 or other obligations under the myApps Cloud Service contract and/or these Special Provisions and/or applicable law and does not refrain from such violation despite having received a corresponding written request by in writing.
8. 5. innovaphone shall inform the customer of any suspension of the cloud service as per items 8.2. to 8.4. without delay.
8. 6. The reasons stated in item 8.4. for the permanent suspension of the myApps Cloud Service also constitute justified grounds for terminating the contract without notice for cause.
8. 7. Any other provisions for blocking the myApps Cloud Service as stipulated in these general terms and conditions shall remain unaffected by the provisions above.
- 9. Rights of Use/Intellectual Property of Cloud Services**
9. 1. Based on these Special Provisions for the myApps Cloud Service and subject to the limitations stipulated in these general terms and conditions, innovaphone grants the customer the non-exclusive and generally non-transferable right, limited in time to the term of the contract for the myApps Cloud Service, to access the myApps Cloud Service via the login details provided by innovaphone and to use this service.
9. 2. Save for the rights of use granted above, all (intellectual) property rights to the myApps Cloud Service, including any and all modifications and expansions, remain the sole (intellectual) property of innovaphone and may only be used by the customer on the basis of the contract for the myApps Cloud Service in the manner described in these Special Provisions.
9. 3. The rights to innovaphone software products and the granting thereof is governed by the software rental contract and the Special Provisions for Software Rental.
- 10. Granting Third Parties Use of the myApps Cloud Service or the Cloud**
10. 1. The use of the myApps Cloud Service (through, for instance, subletting or the temporary granting of use) by third parties (e.g. the customer's contract partners) is generally prohibited unless a separate agreement was concluded with innovaphone in this respect and such use constitutes admissible use of the cloud by third parties (cf. the following item 10.2.).
10. 2. It is admissible to grant third parties the use of the myApps Cloud Service if the customer is an authorized innovaphone partner, i.e. a certified distributor or certified reseller. As such, authorized innovaphone partners may grant third parties use of the myApps Cloud Service, including the authorization to make the myApps Cloud Service available to commercial end customers within the meaning of Section 14 German Civil Code (BGB) and grant such customers nonexclusive rights of use for the myApps Cloud Service (admissible use of the cloud by third parties).
10. 3. In case of admissible use of the cloud by third parties, the customer must ensure that
- 1) the fulfilment of the contractual obligations under the myApps Cloud contract and these Special Provisions for the myApps Cloud Service are not compromised; in this context, the customer shall ensure in particular that the required minimum amount of iSCs to be consumed for the rental of software products or Software Rental Licenses is reached and that the customer is able to enforce necessary rights vis-à-vis its end customer like the temporary or permanent blocking of the myApps Cloud Service as well as even termination of the myApps Cloud Service contract.
 - 2) a data processing agreement pursuant to Art. 28 GDPR is concluded with the third party whenever personal data is processed on the controller's instructions (e.g. in case of remote access/maintenance work by the customer or innovaphone).
10. 4. At innovaphone's legitimate request, the customer is obliged to disclose all contracts granting third parties use of the myApps Cloud Service (Nutzungsüberlassungsvereinbarung).
- 11. Customer's Responsibility for User Content/Exemption from Liability**
11. 1. The customer is responsible for all the activities that are carried out on the cloud platform under its customer account (including sub-accounts) and for all and any use of the myApps Cloud Service by users such as employees or third parties to whom the customer has made its access to the service available or has granted access and for all liabilities and other consequences resulting from such activities or types of use as if they were the customer's own activities.
11. 2. The customer is further responsible for all the user content that is posted via its customer account (including sub-accounts). The customer is, in particular, solely responsible for the data it stores on the platform. The customer is, in this respect, responsible for managing the access by users and all the data-related settings in the cloud.
11. 3. It is the customer's responsibility to take the necessary measures to ensure the security of the platform's contents as well as compliance with the laws and to protect the rights of third parties. **Note: The customer is liable for all use/activities carried out under its access to the myApps Cloud Service.**
11. 4. The customer shall indemnify innovaphone against all and any claims by third parties as well as against claims for damages and/or reimbursement of costs (including, in particular, legal fees) asserted against innovaphone by the customer or by third parties to whom the customer granted use or access and which were asserted on the grounds of the use of the myApps Cloud Service, in particular on the basis of unlawful user content posted on the cloud platform.
- 12. Disruptions to the myApps Cloud Service and Customer's Warranty Rights/Reimbursement of iSCs**
12. 1. If the customer cannot use the myApps Cloud Service during planned downtimes (cf. item 8.1. Maintenance & Care) and the myApps Cloud Service services are limited or suspended, the customer has no warranty claim.
12. 2. **Implied warranty for paid services:** Defects are removed by means of appropriate measures to be chosen by innovaphone. The customer shall report disruptions and/or errors without delay by initially contacting its innovaphone partner in charge. If the troubleshooting is not successful and the defect cannot be remedied or if the customer is an innovaphone partner, the customer may contact innovaphone directly. If the use of the myApps Cloud Service is not possible during times other than the maximum admissible downtimes less maintenance and service times (item 8) (e.g. because access to the myApps platform fails for reasons for which innovaphone is responsible) innovaphone shall reimburse the customer for the iSCs used for the Software Rental during the disruption or shall issue a credit note. By doing so, innovaphone fulfils the claim for unilateral reduction of the agreed fee pursuant to Section 536 German Civil Code (BGB). innovaphone assumes no liability for any further claims and consequential costs beyond this scope.
12. 3. **Implied warranty for free services:** All and any warranty claims for free cloud services are excluded unless innovaphone fraudulently concealed the defect.
- 13. Liability/Liability Limitations**
13. 1. **General liability limitation:** In case of intent or gross negligence, innovaphone's liability is unlimited. In case of ordinary negligence, liability is unlimited for injuries to life, limb or health. If innovaphone's performance is behind schedule or if performance has become impossible or if a material obligation has been violated, the liability for damage to property and pecuniary loss attributable to this is limited to the foreseeable damage typical for the contract. A material obligation is an obligation, the fulfilment of which is essential to implementing the contract, the violation of which endangers reaching the purpose of the contract and on the observance of which the customer may regularly rely. Product liability is not excluded.
13. 2. **Liability upon loss of data:** The customer bears the risk of loss of data. The customer shall ensure that the data is backed up properly and shall make backup copies and copies of the data at regular intervals (cf. item 7.6.). The customer may not use the myApps Cloud Service as the only storage medium for important data. In the case of loss of data, innovaphone shall be liable to the extent that the damage would have occurred if the customer had carried out proper data backup; the liability is thus limited to the reconstruction efforts that would be required assuming the customer had carried out proper data backup. The limitation to the damage that would have occurred if the customer had carried out proper data backup no longer applies to cases of ordinary negligence if the customer cannot prove that it performed a proper data backup immediately before the measure leading to the data loss was implemented.
13. 3. Items 13.1 and 13.2. shall apply mutatis mutandis to claims for

- reimbursement of expenses and other liability claims.
- 13. 4.** Liability based on innovaphone's fault as per Section 536 a German Civil Code (BGB) for defects existing at the time of contract conclusion is excluded. Otherwise, the provisions in item 13.1. remain unaffected hereby.
- 13. 5.** **Liability for content:** innovaphone assumes no liability for content posted by the customer on the cloud platform or the installation. innovaphone does not review any contents.
- 13. 6.** **Customer's liability for security gaps when using SIP trunks:** The customer is liable for impairments to the myApps Cloud Service and/or damages caused by security gaps in the IT security of the SIP trunk suffered by either the customer itself, third parties or innovaphone (e.g. in case of hacking attacks); the customer is responsible for proving that it is not responsible for the impairment and/or the damage (reversal of the burden of proof).
- 14. Confidentiality, Data Protection and Data Security**
- 14. 1.** innovaphone does not acquire any rights to the data of the customer or users (third parties) to whom the customer granted access stores in connection with using the myApps Cloud Service. innovaphone is obliged to keep the customer's data in connection with the myApps Cloud Service confidential, even after the termination of the contract, and undertakes to comply with the applicable data privacy legislation, in particular the GDPR and the German Federal Data Protection Act (BDSG). innovaphone is entitled during the term of the myApps Cloud Service to use the data on the customer's instructions in accordance with the contract. Following termination of the contract, innovaphone is no longer entitled to use the data and the data will thus be erased in accordance with the provision in item 15.6.
- 14. 2.** innovaphone shall ensure that the technical and organizational measures as per Art. 32 GDPR are in place. The cloud providers that innovaphone subcontracts to render IT services for the myApps Cloud Service are contractually obliged to implement state-of-the-art security measures in the cloud.
- 14. 3.** In case of significant security risks, innovaphone may temporarily or permanently suspend access to the myApps platform (blocking). innovaphone shall inform the customer without delay about any such suspension. The permanent suspension of the service constitutes grounds for terminating the myApps Cloud Service for cause.
- 14. 4.** The customer is considered the controller under data privacy law with respect to the processing of personal data. It is at the sole discretion and responsibility of the customer whether and to what extent third parties input or access data.
- 14. 5.** If the customer processes personal data when using the myApps Cloud Service (e.g. in case of data export from the myApps cloud platform for backup purposes) outside of the EU/European Economic Area (EEA), for example in the USA, the customer must ensure that such transmission of data is admissible at the place where the service is used or where subscribers to a myApps Cloud Service session are located (data transfer to third countries).
- 14. 6.** The customer must observe legal and regulatory provisions regarding the recording of calls, for instance when using rented software products; if applicable, the customer must inform subscribers to a recorded call or a video session that such session is recorded and, if required, must obtain the subscribers' consent.
- 14. 7.** A data processing contract pursuant to Art. 28 (3) GDPR must be concluded to cover innovaphone's processing of personal data on the customer's instructions (e.g. in connection with maintenance of the myApps Cloud Service).
- Note: The use of the myApps Cloud Service cannot be activated unless a legally valid data processing agreement has been concluded.**
- 14. 8.** In the event that the customer is acting on the basis of a power of attorney (e.g. representing a customer), such power of attorney must include the authorization to conclude a data processing contract pursuant to Art. 28 (3) GDPR. Otherwise it is not possible to conclude a legally valid data processing contract.
- 14. 9.** If the use of the myApps Cloud Service is granted to third parties in an admissible way (cf. item 10) the customer must conclude a data processing contract pursuant to Art. 28 (3) GDPR with the users and must disclose that, as the cloud service provider, innovaphone processes data on behalf of the controller.
- 14. 10.** In the event that the parties have already concluded a data processing contract before concluding the aforementioned data processing contract (e.g. in the partner contract or as an annex to a support agreement), such older data processing contract shall be (ex nunc) replaced with the new data processing contract as soon as the latter comes into effect (thereby cancelling all contracts with an older date).
- 15. Term of the Contract and Termination**
- 15. 1.** The contract is concluded for an indefinite period of time and commences as soon as innovaphone makes the services available.
- 15. 2.** The customer may terminate the myApps Cloud Service contract at any time by giving notice, with such termination taking effect on the following day.
- 15. 3.** innovaphone is entitled to terminate the myApps Cloud Service contract with a notice period of two (2) months to the end of the month.
- 15. 4.** Termination for cause is also possible at any time in accordance with the statutory provisions. Good cause for extraordinary termination by innovaphone is in particular deemed to exist if
- the customer violates the essential contractual obligations that are incumbent upon it under the myApps Cloud Service contract and does not refrain from such violation despite a written warning or does not immediately eliminate consequences of contract violations that have already occurred and thereby violates the rights of innovaphone to a more than insignificant extent;
 - permanent suspension of the myApps Cloud Service is required for the reasons stated in these Special Provisions for the myApps Cloud Service and, in particular, if the customer has, despite an e-mail reminder, not ensured that the agreed minimum amount of iSCs to be consumed for renting software products or licenses is met.
- 15. 5.** Notice of termination can be given in writing (e.g. by letter or e-mail).
- 15. 6.** After terminating the myApps Cloud Service, the customer has the opportunity to download its data. This option to download data is available to the customer for up to five (5) days after the termination becomes effective. After the end of this period, innovaphone is entitled to delete the installation with all the data the customer or third parties (e.g. in case of admissible use of the cloud by third parties) has (still) stored on the cloud platform.
- 15. 7.** The rights to use the platform or the myApps Cloud Service and any other services (e.g. client software) end upon contract termination. The customer must ensure at its own cost that it provides sufficient memory/storage capacities (e.g. on its own servers or via third party providers) for operating the PBX with rented innovaphone software products, if applicable. The customer account, which serves in particular to manage the customer's iSCs, remains unaffected by the deletion of the cloud installation. However, the iSCs cannot be transferred to another customer account. The same applies to the software rental contract that remains unaffected by the termination of the myApps Cloud Service contract.
- 16. Import/Export Compliance**
- The customer shall be responsible for observing the import and export regulations applicable to deliveries or services, in particular those of the United States of America. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges incurred. The customer shall be responsible for handling legal or official procedures in connection with the cross-border delivery or service under the myApps Cloud Service.
- 17. Applicable Law, Place of Jurisdiction**
- 17. 1.** These Special Provisions for the myApps Cloud Service and the underlying contract are subject to German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 17. 2.** Place of performance for deliveries and services in connection with the myApps Cloud Service and the place of subsequent performance is Stuttgart.
- 17. 3.** Side agreements, amendments or supplements to these Special Provisions for the myApps Cloud Service require the signature of both parties or their authorized legal representatives to be effective. The same applies to any modification of this written form requirement.
- 17. 4.** The place of jurisdiction for all and any disputes arising from or in connection with the myApps Cloud Service is Stuttgart. Any exclusive place of jurisdiction takes priority.
- 18. Contract Language; German Language Prevails**
- These Special Provisions and the contract for the myApps Cloud

Service were prepared in German. If the Special Provisions and the contract for the myApps Cloud Service are translated into other languages and provided to the customer, the German version shall prevail if there are any discrepancies between the different language versions.

19. Partial Invalidity/Severability Clause

If individual provisions in these Special Provisions or the contract for the myApps Cloud Service are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions or the contract for the myApps Cloud Service shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions or the contract for the myApps Cloud Service should fail to cover a specific aspect.

K. Special Provisions for Data Processing as per Article 28 GDPR

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) GDPR.

2. Scope of Application and Subject Matter of the Contract

2. 1. These Special Provisions for Data Processing and its **Annex** are applicable to the contracts between innovaphone and the Customer and become an integral part thereof if and to the extent that innovaphone processes the Customer's personal data when rendering the services (e.g. in case of services under the myApps Cloud Service or maintenance and/or support services or services in connection with training courses and online training) and if the GDPR and, if applicable, additional data privacy laws are applicable.
2. 2. The subject matter of the contract is to specify the rights and obligation 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 the 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 legal grounds, subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects are set out in the respective contract and the GTC (Special Provisions for the myApps Cloud-Service) and these Special Provisions for Data Processing.
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 shall 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 these Special Provisions for Data Processing.
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. Contract Duration/Term of the Data Processing Agreement

The term of the data processing agreement is governed by the duration of the underlying contract (e.g. contract concerning the myApps Cloud-Service) and ends at the latest when innovaphone actually ceases rendering 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 laws, 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 shall ensure 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 shall inform 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 Customer's documented instructions. innovaphone shall inform 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 shall organize 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 shall implement 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 shall implement 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 these Special Provisions for Data Processing. 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 adequate level of protection in place at the time the contract 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 shall use 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/secrecy obligation shall continue 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 shall take 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 shall take place only if the special conditions laid down in Art. 44 et seqq. GDPR are complied with. 44 et seq.
5. 7. innovaphone shall designate 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. innovaphone shall use reasonable endeavours to support the Customer in refuting such claims.
5. 9. 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 shall rectify or erase any personal data that is no

- longer needed if the Customer instructs it do so and this is covered by the scope of instructions.
6. 2. Personal data shall 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 shall furthermore export 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 shall refer such data subjects to the Customer. innovaphone shall pass on the requests of data subjects to the Customer without delay and shall use 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 shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in Art. 28 GDPR and shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
8. 2. innovaphone shall inform 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 shall take the necessary measures to secure the data and to mitigate the potential damage suffered by the data subjects and shall consult 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 shall 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 Art. 28 (4) Sentence 1 GDPR shall apply whenever subcontractors are involved as another processor. In this case, the same data protection obligations as set out in the data processing agreement or these Special Provisions for Data Processing shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law.
9. 2. The **Annex** to these Special Provisions for Data Processing includes a list of other processors involved by innovaphone.
9. 3. The Customer grants innovaphone its general consent to involving other processors. innovaphone shall inform 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 shall bear all the cost, including legal costs, i.e. the cost of defense in extrajudicial proceedings, a legal dispute and/or administrative proceedings and shall indemnify 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) shall remain unaffected thereby.
- 11. Applicable Law, Place of Jurisdiction**
11. 1. These Special Provisions for Data Processing and the underlying data processing agreements are subject to German law, excluding the UN 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 these Special Provisions for Data Processing require the signature of both parties or their authorized 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**
- These Special Provisions for Data Processing were prepared in German. If the Special Provisions for Data Processing are translated into other languages and provided to the Customer, the German version shall prevail if there are any discrepancies between the different language versions.
- 13. Partial Invalidity/Severability Clause**
- If individual provisions in these Special Provisions for Data Processing are or become invalid, void or unenforceable, the validity of the remaining provisions in these Special Provisions for Data Processing shall remain unaffected. The parties agree that in such a case, the provision shall apply that is closest to expressing the intended economic purpose of the invalid, void or unenforceable provision. The above provision shall apply mutatis mutandis if these Special Provisions for Data Processing should fail to cover a specific aspect.

Annex to 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 shall inform the controller of upcoming inspections and maintenance before the work commences.
- Upon the controller's request, innovaphone shall inform the controller which work will be performed when and by which employees and what identification and authentication these persons will present to the controller.
- innovaphone shall use the access rights it has been granted in such a way, also with respect to the time line, as is required to properly carry out the maintenance and inspections it has been mandated to do.

3. Services/Contract Purpose

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 processor's collection and/or processing of personal data on the controller's behalf:

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. This information is available [on the innovaphone website](#).