

# Supplementary Agreement to the Cooperation Contract

for App Development Partners  
for the Sale, Rental and Marketing of  
the Development Partner's paid Apps (Apps subject to payment)

between

**innovaphone AG**

Umberto-Nobile-Str. 15  
D-71063 Sindelfingen

– hereinafter referred to as “*innovaphone*” –

and

**Name App Development Partner**

**Street**

**Zip Code City**

– hereinafter referred to as “*Development Partner*” –

– together hereinafter referred to as “*Parties*” and/or “*Contracting Parties*” –

## Preamble

The Parties have concluded a Cooperation Contract concerning the development of software applications (hereinafter all referred to as “**Apps**”) by the Development Partner and the promotion thereof in the innovaphone App Store, among other stores. This Cooperation Contract exclusively governs the use of the innovaphone SDK for developing the Apps and the inclusion of the Apps in the App Store as well as the presentation of the Development Partner's Apps in the innovaphone App Store.

The following supplementary agreement to the Cooperation Contract is entered into by the Parties to govern the promotion and sale or rental of the Development Partner's paid App (app that is subject to payment) by innovaphone as an App that is licensed by innovaphone. The promotion and sale or rental (hereinafter “**Sale/Rental**”) of the Development Partner's Apps or App licenses (hereinafter all referred to as “**Apps**”) to customers is exclusively directed at business customers and is usually carried out via a partner network across the globe. The Apps are generally sold or rented out to end customers through innovaphone as the contracting party with the involvement of authorized innovaphone partners, such as distributors and resellers, that sell the Apps to end customers (innovaphone distribution channel). innovaphone is authorized by this supplementary agreement to conclude contracts for the use of the Development Partner's App (sale or rental, possibly granting free or temporary use of the App for

promotion campaigns or for testing) with customers in the partner network (usually through distributors) and to sell it or rent it out in its own name and on its own account. With regard to the technical set-up of the innovaphone App Store, the Development Partner subjects to innovaphone's licensing mechanism and payment processing practice for software and apps. The licensing mechanisms are described in the innovaphone Wiki ([http://wiki.innovaphone.com/index.php?title=Main\\_Page](http://wiki.innovaphone.com/index.php?title=Main_Page)) and the SDK (current URL: <https://sdk.innovaphone.com/>).

NOW THEREFORE, the Parties agree on the following:

### **1. Effectiveness of the Supplementary Agreement to the Cooperation Contract**

- 1.1. By signing and submitting the supplementary agreement to the Cooperation Contract (hereinafter, simply "**Supplementary Agreement**"), the Development Partner submits an offer to conclude a Supplementary Agreement. It is possible to submit the signed Agreement in writing or by means of an e-signing program provided by innovaphone. If innovaphone makes the Cooperation Contract available for electronic legal transactions (e.g. via a website/platform), the Development Partner submits its offer (legally binding declaration) electronically by clicking on the respective button.
- 1.2. The Development Partner is bound to its offer for 4 [four] weeks from the date innovaphone receives the signed Supplementary Agreement.
- 1.3. innovaphone is not obliged to accept the offer. innovaphone shall inform the Development Partner in case of rejection.
- 1.4. The Supplementary Agreement is concluded if and as soon as innovaphone countersigns the Supplementary Agreement within the aforementioned period. innovaphone shall send the Development Partner a copy of the countersigned Supplementary Agreement. When concluding the Agreement by means of an electronic legal transaction (e.g. via a website or portal), the Agreement is concluded upon receipt of innovaphone's order acceptance (acceptance of the contract offer). Mere acknowledgement of having received the Supplementary Agreement by e-mail does not constitute acceptance of the contract.

### **2. Subject Matter of the Contract**

- 2.1. The subject matter of this Supplementary Agreement is the Sale/Rental through innovaphone of a paid App developed by the Development Partner that is specified in Annex 1 to this Agreement and forms an integral part of the Agreement. In addition to the App specified in the Annex, the subject matter of this Agreement also includes all future updates and new versions of the App (upgrades) specified in Annex 1 as well as the support and maintenance of the App in the partner network.
- 2.2. If the innovaphone software service option in Annex 1 of this Agreement has been selected, the software service for the Development Partner's App is also the subject of this agreement.
- 2.3. The App is sold or rented out only to commercial 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.

### **3. Services Rendered by innovaphone**

- 3.1. innovaphone shall display and promote the Development Partner's App in the innovaphone App Store and sell or rent it out, generally through the innovaphone partner network, i.e. to authorized innovaphone partners (distributors, possibly resellers). The Sale/Rental refers exclusively to the paid App specified in Annex 1 to this Supplementary Agreement, which is to be released and made available in the innovaphone App Store by innovaphone. Only Apps that have been approved by innovaphone can be marketed and distributed under this Agreement.
- 3.2. The tasks of innovaphone under the provisions of this Supplementary Agreement are limited to

the promotion and Sale/Rental of contracts for paid Apps to customers, especially through the innovaphone partner network. In this respect, innovaphone acts as a dealer of contracts, i.e. innovaphone concludes contracts in its own name and for its own account.

- 3.3. innovaphone is not obliged under this Supplementary Agreement to include the Development Partner's App or to promote it in its App Store or to sell or rent out a certain amount of contracts for the use of the Development Partner's App or the App license. innovaphone only receives the right to sell or rent out a particular App (please also refer to item 4.1.).
- 3.4. innovaphone provides the technical and advertising framework required for selling or renting out the App. In this context, innovaphone shall also create the required App licenses and deliver the activation keys required for activating the Apps.

#### **4. innovaphone's Rights and Obligations**

- 4.1. The Development Partner grants innovaphone a non-exclusive, geographically unlimited right during the term of this Agreement a.) to promote the paid App or App licenses in the innovaphone App Store and b.) to sell or rent them out, especially through the innovaphone partner network and as a license licensed by innovaphone. **To this end, the Development Partner grants innovaphone all the rights that are required to sell and/or rent the App to customers. The Development Partner warrants that it holds the required rights to the software application or that it was granted such rights, meaning that it is possible for innovaphone to license the rights of use without any defects in title.**
- 4.2. innovaphone is entitled to conclude contracts with customers for making available the App or the use of the corresponding App license (hereinafter all referred to as "Contract for the Use of the App") either permanently (sale) or for temporary use (rental contract). When renting out the App, innovaphone can grant use of the App either on-premises or in the innovaphone myApps cloud. innovaphone further has the right when selling the App to confer on customers in the innovaphone partner network the right to grant third parties the right to use the App temporarily, e.g. by renting out or lending the purchased App (right to sublicense the purchased software), also after the termination of this Supplementary Agreement, i.e. without a time limit. innovaphone does not owe the Development Partner additional remuneration for sublicensing the purchased software. Item 4.7 of this Supplementary Agreement applies to granting temporary use of the App without charge, especially for testing purposes.
- 4.3. By selecting the innovaphone software service option in Annex 1, the Development Partner grants innovaphone all rights required for the distribution and marketing of software service for the Development Partner's App. In this case, innovaphone is entitled to conclude and invoice contracts for software service as per innovaphone's General Terms and Conditions, Special Provisions for Purchasing Software Service Credits (SSC) Part E.
- 4.4. The Sale/Rental shall always be accompanied by the information that the Development Partner is the manufacturer or rights holder of the App or software application and that it is sold as an App licensed by innovaphone in the name and on the account of innovaphone through the innovaphone partner network. Furthermore, innovaphone shall display the Development Partner as the manufacturer of the App in the innovaphone App Store and state the manufacturer as the point of contact for any support in connection with the respective App (please also refer to item 5.8.).
- 4.5. The licensing mechanisms of innovaphone (for the requirements, please refer to item 5.9. below) and the contractual provisions for purchasing and renting innovaphone software applications in conjunction with the General Terms and Conditions of innovaphone as amended, especially the special provisions for purchased and rental software as amended (at present: innovaphone GTC Part D Special Provisions for Purchasing Software and innovaphone GTC Part I Software Rental) and, if the software service option is selected in Annex 1, in particular also Part E Special Provisions for Purchasing Software Service Credits (SSC) apply to the conclusion of a Contract for the Use of the App. The Development Partner expressly agrees with respect to copyright law that innovaphone grants the customer the right to use the App and grants innovaphone all the

rights to the software that are required for this purpose (please also refer to item 4.1 in this respect). innovaphone shall provide the Development Partner with the General Terms and Conditions as amended. With respect to the Contract for the Use of the App, the Development Partner shall assume all the contractual services and obligations that innovaphone owes to the customer resulting from the purchase and/or rental contract for the Development Partner's App in conjunction with the General Terms and Conditions of innovaphone as amended, in particular the special provisions for purchased and rental software as amended (at present: innovaphone GTC Part D Software Purchase and innovaphone GTC Part I Software Rental).

- 4.6. If the software service option in Annex 1 is chosen, the Development Partner assumes all contractual services and obligations, which innovaphone has to fulfil towards the customer, and which result from the software service contract for the Development Partner's App in connection with the innovaphone General Terms and Conditions as amended, in particular the Special Provisions for Purchasing Software Service Credits (SSC) as amended (currently: innovaphone GTC Part E). In particular, the Development Partner will promptly adapt its App to new innovaphone software versions and participate in the beta programme for new innovaphone software versions. Also, from time to time, the Development Partner will offer new, improved versions with new features that are included in the software service for software service customers and are paid for through the corresponding SSC.
- 4.7. Unless otherwise agreed in Annex 1, innovaphone is entitled to grant prospective buyers the temporary right to use the App specified in Annex 1 without charge for advertising purposes on a trial basis and the Development Partner grants innovaphone the corresponding rights to use the App or software application. This applies whenever innovaphone makes the App available to customers in the scope of promotional campaigns (e.g. myApps4U promotion) without charge; the Development Partner also agrees that innovaphone may make the software/software applications available to prospective customers free of charge under the conditions of use/licensing conditions for the innovaphone test mode and the innovaphone test license mode unless otherwise agreed upon in Annex 1 (please refer to GTC Part G Special Provisions for Granting Free Use of Software) and grants innovaphone the rights required for granting such use. In these cases innovaphone does not owe the Development Partner any remuneration for the App made available to such customer. The App is fully functional in trial mode and in trial license mode unless functional restrictions are agreed and described in detail in Annex 1.
- 4.8. As the customer's contract partner, innovaphone is entitled to determine the pricing and to set prices for the Contracts for the Use of Apps. Therefore, innovaphone is entitled at any time to include the App in its price list at the Development Partner's list price or another recommended retail price and is, in all other respects, entirely free to determine the pricing. The Development Partner's recommended retail price is, however, the basis for innovaphone's settling of accounts for the App licenses. In this respect, innovaphone is also entitled to grant discounts or rebates on its list prices.
- 4.9. innovaphone is free to temporarily or permanently remove or block a paid App from the innovaphone App Store that has already been released. In this respect, the provisions of the Cooperation Contract shall apply, according to which innovaphone is, inter alia, entitled to block Apps. The Sale/Rental of this App ends as soon as the App is permanently removed from the App Store; this constitutes a cause for terminating this Supplementary Agreement for cause.
- 4.10. The innovaphone price lists will include (net) prices in EUR for paid Apps (apps that can be purchased and are subject to payment) and iSC for rented Apps as well as SSC for software service where applicable. Apps are sold at a price in EUR and/or rented at an iSC value. The Development Partner expressly agrees that payments with the customer may be handled via iSC innovaphone Service Credits (iSC). If the software service option in Annex 1 is selected, the Development Partner expressly agrees to innovaphone software service credits (SSC) being used to process payment for the software service with the customer.
- 4.11. innovaphone is entitled to use the Development Partner's name and/or company name, and to use information on its brand or industrial property rights in connection with the App, without charge

and worldwide in the innovaphone App Store. This entitles innovaphone, in particular, to use and/or display the company name and brand names in the innovaphone App Store and to put them into circulation on the Internet in connection with the Sale/Rental of the App/s. The Development Partner also grants innovaphone the rights required to authorize subcontractors commissioned by innovaphone with the Sale/Rental of the Development Partner's Apps to use such Apps accordingly. The Development Partner shall ensure that it holds the rights to the names and/or company names, brands and industrial property rights information or that it is granted the corresponding rights that enable innovaphone and any subcontractors it might involve to use the App without any defects in title and the Development Partner hereby expressly warrants that this is the case.

## **5. Development Partner's Rights and Obligations**

- 5.1. The name, description (purpose and features), first version number, license type, licensing category, any special licensing conditions that might apply and the list price are specified in Annex 1 to this Supplementary Agreement.
- 5.2. The Development Partner shall disclose in the App that it is the manufacturer of the App and shall provide all the required manufacturer information. In this context, the Development Partner shall ensure, in particular, that it discloses the mandatory legal manufacturer information and the general legal information on the company in the innovaphone App Store (e.g. pursuant to Section 5 German Telemedia Act (TMG), Section 4 German Teleservices Data Protection Act (TDDSG), Section 6 (1) German Product Safety Act (ProdSG)). The Development Partner further undertakes to post data protection information in accordance with Art. 13 , 14 GDPR in the App Store to the extent that the customer's use of the App leads to data processing (e.g. by transmission) by the Development Partner (e.g. for instance whenever the App user is connected to the Development Partner's server).
- 5.3. The Development Partner makes the App available for the innovaphone App Store. This does not require the Development Partner to submit the source code.
- 5.4. This Supplementary Agreement obliges the Development Partner to deliver the App specified in **Annex 1** to this Agreement and that was confirmed or released by innovaphone to be included in the App Store. **The delivery obligation also covers the delivery of updates, i.e. as the manufacturer of the App, the Development Partner is obliged to regularly update the Apps, especially with regard to functionality and security.** In the case of App rentals, the Development Partner's obligation to update the App remains in force during the entire contract term (for which innovaphone is obliged to let the customer use the App); when the App is sold, the Development Partner shall deliver updates for the App over a period of time that the customer can reasonably expect. The obligation to update remains in force irrespective of the validity of this Supplementary Agreement, possibly even beyond its termination.
- 5.5. The Development Partner is not obliged to upgrade the Apps. It is possible to include a paid upgrade, i.e. a new version of the App, in the innovaphone price list if the Parties agree on the conditions for promoting and selling/renting out the upgrade under this Supplementary Agreement, in particular the price of the upgrade.
- 5.6. Alternatively to 5.5, the Development Partner can choose in Annex 1 to participate in the innovaphone software service. In this case, the Development Partner is also obliged to provide regular upgrades of its App, which are provided free of charge for software service customers. See also 4.6. When participating in innovaphone's software service, the Development Partner undertakes to regularly extend the App by adding new functions, at the very least to adapt it to new innovaphone software versions and to make this adapted App available to the software service customers free of charge.
- 5.7. The Development Partner shall inform innovaphone of the list price for the App in Annex 1 (e.g. price for purchasing or renting the App) that is then determined as the binding basis for calculating the remuneration of the Development Partner (please also refer to item 6) between the Parties. The Development Partner must inform innovaphone of any changes to the list prices no less than

12 (twelve) weeks in advance. Such price changes, however, do not enter into effect as long as innovaphone has agreed fixed prices for a certain term with its customers in writing (e.g. in case of rebates as per item 4.8).

- 5.8. **The Development Partner further undertakes to provide App maintenance and support. As such, the Development Partner is obliged to provide first level and second level support to all customers who have procured the Development Partner's App through innovaphone and the Partner must ensure that customer service is provided to the customers (especially those in the partner network and thus also the end customers). This includes, in particular, the duty to answer user questions and to rectify any disruptions (if applicable, removal of defects under the implied warranty) and to regularly provide updates (please also refer to item 5.4.). The Development Partner shall provide a means of contact and suitable customer support or availability during normal business hours and shall make available the technical capacity and staff required for this purpose.** In addition to its contact details as the manufacturer, the Development Partner shall also provide customer support information in the App Store. innovaphone does not owe the Development Partner additional remuneration for support and maintenance. innovaphone provides no help whatsoever to customers with regard to the App/s and does not offer software maintenance/support.
- 5.9. The Development Partner further undertakes to use innovaphone's licensing mechanism/s for software; this licensing mechanism is a prerequisite for the App being sold or rented out by innovaphone. The Development Partner will be provided with the description of and information on the licensing mechanism in the scope of the SDK; the provisions of the Cooperation Contract concluded between the Parties shall apply in this respect (please also refer to the App Development Guide in the innovaphone SDK, currently available at <https://sdk.innovaphone.com/>). The Development Partner must implement the innovaphone licensing mechanisms as amended in the application or the software code (hereinafter App License) **Subject to consultation with innovaphone in Annex 1, special licensing conditions of the Development Partner may be taken into account by innovaphone in the licensing mechanism. The type of App licenses that can be technically implemented and checked is determined by innovaphone's technical possibilities (licensing mechanisms) that are described and determined in the scope of the SDK.**
- 5.10. innovaphone grants the Development Partner the right to inspect the books with regard to the contracts for Apps (amount) and the data relevant for remuneration and settling of accounts (see also item 6) in the innovaphone App Store, subject to the following provisos (Right to Inspect the Books):
- The inspection is announced in due time, no less than four weeks in advance, and takes place during innovaphone's usual business hours. innovaphone is then obliged to let the relevant documents or the books for the innovaphone App Store be inspected at request on the appointed date.
  - The right to inspect the books can be exercised once per year.
  - The inspection must be carried out by a sworn auditor or accountant who has undertaken vis-à-vis innovaphone to maintain secrecy.
- The Development Partner exercising this right shall bear all the costs and expenses, including, in particular, the cost of the sworn auditor or accountant incurred in connection with such an inspection.
- 5.11. innovaphone shall inform the Development Partner without delay if it becomes aware of any breach of the licensing conditions of the Development Partner's App by third parties. innovaphone shall provide all possible and necessary support to clarify the breach (Right to Information).
- 6. Remuneration and Settlement of Accounts**
- 6.1. The Contract for the Use of the App entered into between the Development Partner and innovaphone, which is the basis of resale or sub-renting to customers, is subject to the condition precedent that a contract between innovaphone and a customer (purchase or rental or, if applicable, software service) has been concluded regarding the use of the App. innovaphone shall



pay 45% of the set list price for each of the Development Partner's Apps that is delivered to the customer and paid by the customer to innovaphone, (recommended end customer price of the Developer) as remuneration ; as the authorized dealer innovaphone is entitled to payments of the customers exceeding this amount ( $\geq 45\%$  of the list price). For purchase contracts, the basis for calculating the Development Partner's remuneration is the list price and the one-off payment made by the customer. For rental contracts, the calculation basis is the number of iSC consumed in relation to the rented App (rental item) over the duration of the rental term. The iSC are also paid to the Development Partner at 45% of the list price. Unless otherwise agreed upon in Annex 1, the multiplier for converting the iSC values for rented Apps is the multiplier used by innovaphone to determine the rental price for its on-premises software rental. If the rented App is to be operated in the innovaphone myApps cloud, the same multipliers as those applied to on-premises software rental (list price on-premises rental) are used to calculate the Development Partner's remuneration. For software service contracts, the basis of calculation is the consumption of SSC related to the purchase of the App over the duration of the software service term. The SSC are also paid to the Development Partner at 45% of the list price. Unless otherwise agreed in Annex 1, the multiplier for the SSC values concerning the software service for apps is the factor applied by innovaphone to determine the price for its software service. The same multiplier or discount rates are applied to Auto-SSA discount contracts as for innovaphone's own products in the respective project.

- 6.2. innovaphone is entitled to offer the Development Partner's App for rent (on-premise or in the innovaphone myApps cloud) (please also refer to item 4.2.); iSC are used as the means of paying the rental price. iSC are initially ordered and purchased without allocation to a specific rental item or a specific Contract for the Use of an App through the partner network and uploaded to the customer account. When an App of the Development Partner is used, the iSC are allocated to that App through the customer's account and taken into account in the statement of accounts (please also refer to item 6.6. below) via the number of iSC consumed for the Development Partner's App (iSC consumption); the Development Partner can then bill innovaphone for its remuneration (45% of the iSC list price).
- 6.3. If the software service option in Annex 1 is selected, innovaphone is entitled to offer software service for the Development Partner's App (please refer to item 4.2.); in this case, SSCs are used as means of paying the software service. SSCs are initially ordered, purchased and uploaded by the customer into the customer's account without being assigned specifically to the App or to a software service contract. In order to use the software service, the SSC must be bound to the App's software license via the customer account. When the SSC is bound to the license via the customer's account, the SSC are allocated to the Development Partner's App and taken into account in the statement of accounts (please also refer to item 6.6. below) via the number of SSC consumed for the Development Partner's App (SSC consumption); the Development Partner can then bill innovaphone for its remuneration (45% of the SSC list price).
- 6.4. innovaphone is free to determine the pricing offered to its customers (please also refer to item 4.8. below). In the event that innovaphone agrees on a special price with the customer that is below the list price, the Development Partner is entitled to at least 45% of the fixed list price (refer to item 4.8) unless the Parties mutually agree on a lower remuneration.
- 6.5. With respect to the due date for paying the paid App that innovaphone procures or has procured from the Development Partner, the Development Partner subjects to innovaphone's payment conditions and any special payment conditions that might apply to the purchase and rental of Apps in the innovaphone partner network and that are agreed between innovaphone and the respective innovaphone partner (distributor or, if applicable, reseller), for instance with regard to the payment terms.
- 6.6. innovaphone shall prepare quarterly accounts on the basis of the payments received by its customers. At the end of a quarter no later than the 10th of the following month, innovaphone shall prepare a list of incoming payments made by customers to innovaphone with respect to Contracts for the Purchase of Apps ("App Licenses") and the consumption of iSC for Contracts

for the Rental of Apps and, if applicable, the consumption of SSC for the software service for Apps. This means that only Apps that have been paid for by the customers are included in the accounts. After having received the accounts and on the basis of the list prepared by innovaphone, the Development Partner shall invoice innovaphone with the remuneration it is entitled to (please also refer to item 6.7.).

- 6.7. The remuneration to be received from innovaphone only falls due if innovaphone has, in turn, received remuneration from the customer for an App or App License that was ordered and delivered and the Development Partner has prepared an invoice for such remuneration on the basis of the quarterly accounts prepared by innovaphone. The Development Partner thus bears the economic risk of the costs it has incurred by developing the App as well as the risk that the remuneration is paid by the customer to innovaphone to the extent that innovaphone is unsuccessful in collecting receivables from the customers (please also refer to item 6.8.).
- 6.8. The Development Partner shall prepare an invoice for the amount (up to 45% of the list price) resulting from the statement of accounts (please refer also to item 6.6.), if applicable plus statutory VAT (if required under tax law) and innovaphone shall pay the resulting amount to the Development Partner within thirty (30) days by transferring the amount to an account to be specified by the Development Partner.
- 6.9. As the party offering the App, innovaphone is responsible for deciding whether to assert due and open payments against the customer in court. innovaphone will, however, carry out its usual dunning procedure (1st and 2nd payment reminder) for any invoices that refer to the Development Partner's App in order to ensure that the best possible ratio of paid invoices is achieved. The Development Partner waives its right to claim remuneration from innovaphone for any bad debts that might become uncollectible in the future and for which the dunning procedure was unsuccessful; innovaphone expressly accepts such waiver. As an alternative to granting such waiver, the Development Partner may request that innovaphone assign the receivables innovaphone is entitled to with regard to the Development Partner's App, assert such receivables in its own name and request that (partial) payment be made to the Development Partner; in terms of amount, the assignment is limited to the remuneration that is owed by innovaphone to the Development Partner (45% of the list price, please refer also to items 6.1. and 6.2.).
- 6.10. innovaphone shall inform the Development Partner of the respective Contracts for the Use of the Apps and any payments received in this respect as well as bad debts in a statistic that is updated every quarter.

## **7. Confidentiality and Data Protection**

- 7.1. None of the Parties may use or disclose to third parties any trade or business secrets or other confidential information or documents, in particular prices, of the respective other Party that become known during the term of this Agreement without the respective other Party granting its consent in writing to such use or disclosure. In all other respects, the conditions of the cooperation contract shall apply.
- 7.2. In connection with the sale and rental of Apps, it is possible that the Development Partner processes personal data as per Art. 28 (3) General Data Protection Regulation (GDPR) for innovaphone on behalf and on the instructions of innovaphone (for instance, in connection with support and maintenance). The Parties therefore conclude a data processing agreement pursuant to Art. 28 (3) GDPR.

## **8. Development Partner's Liability**

- 8.1. The Development Partner is liable vis-à-vis innovaphone and third parties for all and any damage caused by its Apps. This refers, in particular, to damage from a breach of the obligation to observe the security requirements according to the current state-of-the-art for software applications.
- 8.2. The Development Partner is further liable for defects in quality and title in accordance with the contract for Apps and/or other damage due to or in connection with the production and



functionality of its paid Apps that are sold or rented out by innovaphone. The App must, in particular, comply with all the requirements under data protection law (Privacy by Default & Privacy by Design); defects may be classified as defects in quality. The Development Partner warrants vis-à-vis innovaphone that it will support innovaphone in rectifying any defects in the App that might have occurred at the customer within a reasonable time frame. Defects shall be rectified by providing an update or patch or workaround in the App Store. With regard to the Development Partner's duty to check the implementation of the respective App License (please also refer to item 5.9.), the Development Partner shall also be liable for damage resulting from a defective or lacking license check by the Development Partner's App (please also refer to item 10).

- 8.3. The Development Partner is obliged in its capacity as the manufacturer of the App to take out liability insurance with sufficient coverage to cover any liability under the Cooperation Contract and this Supplementary Agreement. At innovaphone's request, the Development Partner shall produce evidence of having taken out such liability insurance.**

## **9. Measures in Case of Infringement of Industrial Property Rights**

- 9.1. In the event that a third party claims a breach of industrial property rights vis-à-vis innovaphone for use of the App in connection with its Sale/Rental, innovaphone shall inform the Development Partner thereof (please also refer to item 5.11). innovaphone shall provide the Development Partner with all the information required for reviewing the accusations or claims and defending itself against them. If the industrial property rights of third parties (holders of rights of disposal, usually author/creator) are infringed upon, the Development Partner may, at its own choice, render subsequent performance by
- obtaining the necessary right of use (licensing right) for innovaphone with regard to the purpose of this Supplementary Agreement from the person holding the rights of disposal for the infringed property right, or
  - running the infringing App without the software or protected elements of the person holding the rights of disposal or by exchanging such elements (provided this does not affect the functionality of the App), or
  - delivering a new version of the App that does not infringe on any third-party rights.
- 9.2. The Development Partner shall furthermore defend and indemnify innovaphone against third-party claims as follows (Indemnification against Claims for Infringement of Third-Party Rights): The Development Partner shall bear the costs that innovaphone incurs for defending itself against such third-party claims. The Development Partner shall also reimburse innovaphone for the expenses incurred by innovaphone due to a legally effective judgment. The Development Partner shall support innovaphone to a reasonable extent in preparing and carrying out legal defence or settlement negotiations.
- 9.3. Infringements of industrial property rights, which are caused by innovaphone within the scope of the SDK and not the Development Partner, are excluded from this.

## **10. innovaphone's Liability and Liability Limitations**

- 10.1. Any liability on the part of innovaphone, its representatives and vicarious agents is limited to breach of duty caused with intent or gross negligence.
- 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. Term and Termination**

- 11.1. In accordance with the provision in item 1.4, this Supplementary Agreement comes into force as soon as it is signed by innovaphone and it is concluded for an indefinite period of time.
- 11.2. The Supplementary Agreement may be terminated in writing (signed letter) by either Party subject to a notice period of six (6) months to the end of any calendar month 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.
- 11.3. **Termination of the Cooperation Contract automatically entails the termination of this Supplementary Agreement.** In case of a termination for cause, a termination without adhering to a notice period also constitutes cause for terminating this Supplementary Agreement. Ordinary termination is subject to a notice period of 6 (six) months to the end of any calendar month, starting from the date the Development Partner receives the notice of termination for the Cooperation Contract.
- 11.4. The right to terminate the contract for cause shall remain unaffected thereby. The causes for termination stated in the Cooperation Contract in force between the Parties shall also be deemed causes for immediate termination of this Supplementary Agreement.

## **12. Consequences of Termination**

- 12.1. As soon as this Supplementary Agreement ends, innovaphone shall draw up accounts for the ongoing relationship with the Development Partner (please also refer to item 6).
- 12.2. innovaphone will neither sell nor rent out the Development Partner's App after this Supplementary Agreement has ended and it will be removed from the App Store as an App licensed by innovaphone (promotion, Sale and Rental). If the App is to be marketed beyond this date (for instance, through the Development Partner itself), it may remain in the App Store as an App that is not licensed by innovaphone to the extent and as long as the Cooperation Contract is in force.
- 12.3. Between giving notice of termination and the end of the Supplementary Agreement, innovaphone remains entitled to conclude Contracts for the Use of the App and to fulfil ongoing contracts or contractual obligations that apply vis-à-vis customers with regard to App contracts and to continue such in accordance with the respective contract. Following termination of the Supplementary Agreement, innovaphone is entitled and obliged to continue fulfilling ongoing contracts with customers for App rentals, but shall terminate the obligations it has towards the customers as early as possible under the contractual agreements with the customer and wind up the contracts unless otherwise agreed in this Supplementary Agreement.
- 12.4. With regard to verifying that the provisions of this Supplementary Agreement are complied with after termination of the Supplementary Agreement and the Cooperation Contract for App Development Partners, innovaphone shall disclose to the Development Partner which Apps or licenses are still being rented out beyond the end of the Agreement (until the end of the respective contract with the end customer). Here, innovaphone shall provide information, in particular concerning the
  - amount of (volume) Apps/software/licenses,
  - type (license type),
  - term/agreed duration of the right to use the App (if for a limited time period),
  - if applicable, notice period for termination,
  - expected end of the rental (date),
  - if applicable, expected end of the software service. The information shall be imparted in writing within 30 calendar days after this Supplementary Agreement has ended.
- 12.5. The App Development Partner is bound to its contractual duties hereunder beyond the end of the contract if and insofar as this is required to meet or continue innovaphone's duties as per this Supplementary Agreement as described under 12.3.
- 12.6. The duties to provide maintenance and support pursuant to 5.8 arising from this Agreement shall apply for at least 24 months after the end of the contract in the event of ordinary termination and

30 months after the end of the contract in the event of extraordinary termination.

### 13. Others

- 13.1. All legal relationships arising from this Supplementary Agreement, 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).
- 13.2. The place of jurisdiction for any legal disputes arising from and in connection with this Supplementary Agreement is Stuttgart (Germany). innovaphone is also entitled to take legal action before the competent court at the customer's registered office.
- 13.3. Side agreements, amendments or supplements to this Supplementary Agreement 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. The parties accept signatures on side agreements, amendments or supplements of contracts transmitted via e-mail or facsimile as binding.

### 14. Partial Invalidity/Severability Clause

If one or several provisions in this Supplementary Agreement are or become void, invalid or unenforceable, the legal validity of the remaining provisions herein 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 this Supplementary Agreement should fail to cover a specific aspect.

### Annexes:

Annex 1 – Development Partner's App/App License

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Place, date

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Place, date

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Signature and company stamp

innovaphone

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Signature and company stamp

Development partner

Name:

Name:

Position:

Position:

