

## TERMS OF SERVICE

### EFFECTIVE DAY 25 MAY 2023

This NovaTalks Subscription Terms of Service ("**Agreement**") is entered into by and between the Smartnova entity set forth below ("**Smartnova**") and the entity or person placing an order for or accessing any Services ("**Customer**" or "**you**"). If you are accessing or using the Services on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company, and all references to "**you**" or "**Customer**" reference your company.

This Agreement permits Customer to purchase subscriptions to online software-as-a-service products from Smartnova pursuant to any Smartnova ordering documents, online registration, order descriptions or order confirmations referencing this Agreement and sets forth the basic terms and conditions under which those products and services will be delivered.

The "**Effective Date**" of this Agreement is the date which is the earlier of:

- (a) Customer's initial access to any Service (as defined below) through any online provisioning, registration or order process  
or
- (b) the effective date of the first invoice referencing this Agreement.

As used in this Agreement, "**Smartnova**" means Smartnova Limited a Cyprus based legal entity with office at Avlonos, 1 Maria House 1075, Nicosia, Cyprus.

**Modifications to this Agreement:** From time to time, Smartnova may modify this Agreement. Unless otherwise specified by Smartnova, changes become effective for Customer upon renewal of Customer's current Subscription Term (as defined below). Smartnova will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a Subscription Term or renewal of current Subscription Term, and in any event continued use of the Services after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING ANY SERVICES, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE ANY SERVICES. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT. THIS AGREEMENT CONTAINS MANDATORY ARBITRATION PROVISIONS THAT REQUIRE THE USE OF ARBITRATION.

#### 1. Definitions

"**Affiliate**" means any entity under the control of Customer where "control" means ownership of or the right to control greater than 50% of the voting securities of such entity.

"**AUP**" means Smartnova's Acceptable Use Policy as defined below.

"**Contractor**" means an independent contractor or consultant who is not a competitor of Smartnova.

"**Customer Data**" means any data of any type that is submitted to the Services by or on behalf of Customer, including without limitation: (a) data submitted, uploaded or imported to the Services by Customer (including from Third Party Platforms) and (b) data provided by or about People (including chat and message logs) that are collected from the Customer Properties using the Services.

"**Documentation**" means the technical user documentation provided with the Services.

"**Intellectual Property Rights**" include all valid patents, trademarks, copyrights, trade secrets, moral rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof, and all improvements to any of the foregoing, regardless of whether any of such rights arise under the laws of any state, country or other jurisdiction.

"**Laws**" means all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data.

"**Order Form**" means a written or electronic form to order the Services or an online order completed through Smartnova's website. Upon execution by the parties (or, in the case of electronic orders, confirmation and placement of the order), each Order Form will be subject to the terms and conditions of this Agreement.

"**People**" (in the singular, "**Person**") means Customer's end user customers, potential end user customers, and other users which communicate with the Customer via the Services.

"**Permitted User**" means an employee or Contractor of Customer or its Affiliate who is authorized to access the Service.

"**Sensitive Personal Information**" means credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards ("**PCI DSS**") or any personal data of an EU citizen deemed to be in a "special category" (as identified in EU General Data Protection Regulation or any successor directive or regulation).

"**Services**" means Smartnova's proprietary software-as-a-service solution(s) including Smartnova application programming interfaces (APIs) as described in the applicable Order Form.

"**Taxes**" means any sales, use, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Smartnova.

"**Third Party Messaging App(s)**"- third-party (owned and managed by third parties) services and/or instant messaging software interacting with the Services, such as: WhatsApp Business API (WhatsApp) messengers, WhatsApp, Telegram, Viber, Facebook, WeChat (ViChat), Online chat (Online chat), Line (Line) and others similar.

"**Third-Party Platform(s)**" means any software, software-as-a-service, data sources or other products or services not provided by Smartnova that are integrated with or otherwise accessible through the Services.

## **2. Smartnova Services**

**2.1. Services Overview.** Smartnova's Services are a suite of messaging software-as-a-service solutions offered through a single channel, which, according to its purpose, is a chat service with advanced functionality that aggregates messages for the following channels (messengers): Viber,

Telegram, Facebook, LiveChat, Instagram and others. The service supports the reception and transmission of text, photos, documents, video, the transfer of chats between Permitted users, the ability to connect chatbots, as well as other functions. The Services are designed to enable Customer to manage communications with People through the entire lifecycle of their relationship with Customer.

**2.2. Provision of Services.** Each Service is provided on a subscription basis for a set term designated on the Order Form (each, a "**Subscription Term**"). Customer will purchase and Smartnova will provide the specific Services as specified in the applicable Order Form.

**2.3. Access to Services.** The Access to Services shall be provided via Customer's email address, which must be provided to Smartnova in order to provide the Customer with access and generate the first password. After providing information about the Customer's e-mail address, Smartnova generates for him the first password for accessing the Services. The first access password provided to the Customer by the Smartnova can be independently changed by the Customer. Customer may access and use the Services solely for its own benefit and in accordance with the terms and conditions of this Agreement, the Documentation and any scope of use restrictions designated in the applicable Order Form. Use of and access to the Services is permitted only by Permitted Users. If Customer is given API keys or passwords to access the Services on Smartnova's systems, Customer will require that all Permitted Users keep API keys, user ID and password information strictly confidential and not share such information with any unauthorized person. User IDs are granted to individual, named persons and may not be shared. Customer will be responsible for any and all actions taken using Customer's accounts and passwords. If any Permitted User who has access to a user ID is no longer an employee (or Contractor, as set forth below) of Customer, then Customer will promptly delete such user ID and otherwise terminate such Permitted User's access to the Service.

**2.4. Contractors and Affiliates.** Customer may permit its Contractors and its Affiliates' employees and Contractors to serve as Permitted Users, provided Customer remains responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and any use of the Services by such individuals is for the sole benefit of Customer.

**2.5. General Restrictions.** Customer will not (and will not permit any third party to):

- (a) rent, lease, provide access to or sublicense the Services to a third party;
- (b) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to Smartnova);
- (c) copy or modify the Services or any Documentation, or create any derivative work from any of the foregoing;
- (d) remove or obscure any proprietary or other notices contained in the Services (including without limitation: (i) the "Powered by Smartnova" designation that may appear as part of the deployment of the Services on Customer Account and (ii) notices on any reports or data printed from the Services); or
- (e) publicly disseminate information regarding the performance of the Services.

**2.6. Smartnova APIs.** If Smartnova makes access to any APIs available as part of the Services, Smartnova reserves the right to place limits on access to such APIs (e.g., limits on numbers of calls or requests). Further, Smartnova may monitor Customer's usage of such APIs and limit the number

of calls or requests Customer may make if Smartnova believes that Customer's usage is in breach of this Agreement or may negatively affect the security, operability, or integrity of the Services (or otherwise impose liability on Smartnova).

**2.7. Trial Subscriptions.** If Customer receives free access or a trial or evaluation subscription to the Service (a "**Trial Subscription**"), then Customer may use the Services in accordance with the terms and conditions of this Agreement for a period of seven (7) days or such other period granted by Smartnova (the "**Trial Period**"). Trial Subscriptions are permitted solely for Customer's use to determine whether to purchase a paid subscription to the Services. Trial Subscriptions may not include all functionality and features accessible as part of a paid Subscription Term. If Customer does not enter into a paid Subscription Term, this Agreement and Customer's right to access and use the Services will terminate at the end of the Trial Period. Smartnova has the right to terminate a Trial Subscription at any time for any reason. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SMARTNOVA WILL HAVE NO WARRANTY, INDEMNITY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS.

**2.8. Additional Services.** Additional services - expanding the functionality by customizing the Service in accordance with the Customer's needs, taking into account the capabilities of the Service and Smartnova. Functionality extensions of the Service are carried out at the Customer's separate request sent to the [support@novatalks.ai](mailto:support@novatalks.ai) in accordance with the following procedure:

- i. The Customer must provide the following data:
  - a. Customer's name;
  - b. Permitted User's name;
  - c. Short description of the request.
- ii. After receiving the Request, Smartnova performs an analysis of each Request, within which each Request is assigned a unique number and type of Request.
- iii. In case of impossibility of fulfilling the Request, Smartnova informs the Permitted User about it, and the activity on the Request ends thereon.
- iv. If Smartnova is ready to fulfill the Request, Smartnova informs the Customer and provides the latter with the Order Form and Invoice.
- v. Upon the execution of the Order Form and payment of the Invoice, Smartnova shall render Additional Services within the terms and conditions indicated in the applicable Order Form.

### **3. Customer Data and Customer Obligations**

**3.1. Data Processing by Smartnova.** All data processing activities by the Service will be governed by the Data Processing Addendum ("DPA") incorporated by reference herein.

**3.2. Rights in Customer Data.** As between the parties, Customer will retain all right, title and interest (including any and all Intellectual Property Rights) in and to the Customer Data as provided to Smartnova. Subject to the terms of this Agreement, Customer hereby grants to Smartnova a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and display the Customer Data solely to the extent necessary to provide the Services to Customer.

**3.3. Storage of Customer Data.** Smartnova does not provide an archiving service. Smartnova agrees only that it will not intentionally delete any Customer Data from any Service prior to termination of Customer's applicable Subscription Term and expressly disclaims all other obligations with respect to storage.

### 3.4. Customer Obligations.

a) In General. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants to Smartnova that Customer has all necessary rights, consents and permissions to collect, share and use all Customer Data as contemplated in this Agreement (including granting Smartnova the rights in Section 3.2 (Rights in Customer Data)) and that no Customer Data will violate or infringe (i) any third party Intellectual Property Rights or, publicity, privacy, or other rights, (ii) any Laws, or (iii) any terms of service, privacy policies or other agreements governing the Customer Properties or Customer's accounts with any Third-Party Platforms. Customer further represents and warrants that all Customer Data complies with the AUP (Section 11). Customer will be fully responsible for any Customer Data submitted to the Services by any Person as if it was submitted by Customer.

b) No Sensitive Personal Information. Except as otherwise expressly agreed between the Parties in writing by entering into a separate agreement, Customer specifically agrees not to use the Services to collect, store, process or transmit any Sensitive Personal Information. Customer acknowledges that Smartnova is not a payment card processor and that the Services are not PCI DSS compliant. Except for Smartnova's obligations as a business associate pursuant to this Agreement, Customer shall be responsible for any Sensitive Personal Information it submits to the Service, and Smartnova will treat such submissions as Customer Data as defined in this Agreement such that Smartnova is not subject to any additional obligations that apply to Sensitive Personal Information.

c) Compliance with Laws. Customer agrees to comply with all applicable Laws in its use of the Services. Without limiting the generality of the foregoing, Customer will not engage in any unsolicited advertising, marketing, or other activities using the Services, including without limitation any activities that violate the Telephone Consumer Protection Act of 1991, CAN-SPAM Act of 2003 or any other anti-spam laws and regulations.

d) Disclosures on Customer Account. Customer must provide People with clear and comprehensive information about the storing and accessing of cookies or other information on the Peoples' devices where such activity occurs in connection with the Services and as required by applicable Laws. For clarity, as between Customer and Smartnova, Customer will be solely responsible for obtaining the necessary clearances, consents and approvals from People under all applicable Laws.

**3.5. Indemnification by Customer.** Customer will indemnify, defend and hold harmless Smartnova from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to any Customer Data, Customer's use of a Third Party Messaging App, or breach or alleged breach by Customer of Section 3.4 (Customer Obligations). This indemnification obligation is subject to Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all necessary cooperation of Smartnova at Customer's expense. Notwithstanding the foregoing sentence, (a) Smartnova may participate in the defense of any claim by counsel of its own choosing, at its cost and expense and (b) Customer will not settle any claim without Smartnova's prior written consent, unless the settlement fully and unconditionally releases Smartnova and does not require Smartnova to pay any amount, take any action, or admit any liability.

**3.6. Aggregated Anonymous Data.** Notwithstanding anything to the contrary herein, Customer agrees that Smartnova may obtain and aggregate technical and other data about Customer's use of the Services that is non-personally identifiable with respect to Customer ("Aggregated Anonymous Data"), and Smartnova may use the Aggregated Anonymous Data to analyze, improve, support and operate the Services and otherwise for any business purpose during and after the term of this Agreement, including without limitation to generate industry benchmark or best practice guidance, recommendations or similar reports for distribution to and consumption by Customer and other Smartnova customers. For clarity, this Section 3.6 does not give Smartnova the right to identify Customer as the source of any Aggregated Anonymous Data.

#### **4. Security**

Smartnova agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of any Service or Customer Data, as further described in Smartnova's Security Policy (Technical and Organizational Security Measures) attached as Exhibit B to the DPA. However Avlonos, 1 Maria House 1075, Nicosia, Cyprus, Smartnova will have no responsibility for errors in transmission, unauthorized third-party access or other causes beyond Smartnova's control.

#### **5. Third-Party Platforms and Third Party Messaging Apps**

**5.1 Integration with Third Party Platforms.** The Services may support integrations with certain Third-Party Platforms. In order for the Services to communicate with such Third-Party Platforms, Customer may be required to input credentials in order for the Services to access and receive relevant information from such Third-Party Platforms. By enabling use of the Services with any Third-Party Platform, Customer authorizes Smartnova to access Customer's accounts with such Third-Party Platform for the purposes described in this Agreement. Customer is solely responsible for complying with any relevant terms and conditions of the Third-Party Platforms and maintaining appropriate accounts in good standing with the providers of the Third-Party Platforms. Customer acknowledges and agrees that Smartnova has no responsibility or liability for any Third-Party Platform or Messenger App, or how a Third-Party Platform (including Messenger Apps) uses or processes Customer Data after such is exported to a Third-Party Platform or Messenger App. Smartnova does not guarantee that the Services will maintain integrations with any Third-Party Platform, and Smartnova may disable integrations of the Services with any Third-Party Platform at any time with or without notice to Customer. For clarity, this Agreement governs Customer's use of and access to the Services, even if accessed through an integration with a Third-Party Platform.

**5.2 Third Party Messaging Apps.** Customer represents and warrants that Customer has agreed to the terms of service associated with any Third Party Messaging App(s) and has created, or has authorized Smartnova to create on Customer's behalf, a Third Party Messaging App account in accordance with such terms and conditions, which govern Customer's use of such Third Party Messaging App account. Smartnova will have no liability for and the Third Party Messaging App provider is solely responsible for the Third Party Messaging App's network, functionality, clients, and APIs.

#### **6. Ownership**

**6.1. Smartnova Technology.** This is a subscription agreement for access to and use of the Services. Customer acknowledges that it is obtaining only a limited right to the Services and that irrespective

of any use of the words "purchase", "sale" or like terms in this Agreement no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that Smartnova or its suppliers retain all right, title and interest (including all Intellectual Property Rights) in and to the Services and all Documentation, integrations with the Services, and any and all related and underlying technology and documentation and any derivative works, modifications or improvements of any of the foregoing, including as may incorporate Feedback (collectively, "Smartnova Technology"). Except as expressly set forth in this Agreement, no rights in any Smartnova Technology are granted to Customer. Further, Customer acknowledges that the Services are offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of any of the Services.

## **7. Subscription Term, Fees & Payment**

**7.1. Subscription Term and Renewals.** Unless otherwise specified on the applicable Order Form, each Subscription Term will automatically renew for additional one month period unless either party gives the other written notice of termination at least thirty (10) days prior to expiration of the then-current Subscription Term.

**7.2. Fees and Payment.** All fees are as set forth in the applicable Order Form and will be paid by Customer within thirty (3) days of invoice, unless otherwise specified in the applicable Order Form. Except as expressly set forth in Section 9 (Limited Warranty) and Section 13 (Indemnification), all fees are non-refundable. Customer is responsible for paying all Taxes, and all Taxes are excluded from any fees set forth in the applicable Order Form. If Customer is required by Law to withhold any Taxes from Customer's payment, the fees payable by Customer will be increased as necessary so that after making any required withholdings, Smartnova receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such withholdings been made. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

**7.3. Suspension of Service.** If Customer's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Smartnova reserves the right to suspend Customer's access to the applicable Service (and any related services) without liability to Customer until such amounts are paid in full. Smartnova also reserves the right to suspend Customer's access to the Services without liability to Customer if Customer's use of the Services is in violation of the AUP.

## **8. Term and Termination**

**8.1. Term.** This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Subscription Terms.

**8.2. Termination for Cause.** Either party may terminate this Agreement (including all related Order Forms) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within ten (10) calendar days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

**8.3. Effect of Termination.** Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to all Services (including any and all related

Smartnova Technology) and delete (or, at Smartnova's request, return) any and all copies of the Documentation, any Smartnova passwords or access codes and any other Smartnova Confidential Information in its possession. Customer acknowledges that following termination, it will have no further access to any Customer Data input into any Service, and that Smartnova may delete any such data as may have been stored by Smartnova at any time. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

8.4. **Survival.** The following Sections will survive any expiration or termination of this Agreement: 2.7 (General Restrictions), 2.9 (Trial Subscriptions), 3.2 (Storage of Customer Data), 3.5 (Indemnification by Customer), 3.6 (Aggregated Anonymous Data), 6 (Ownership), 7.2 (Fees and Payment), 8 (Term and Termination), 9.2 (Warranty Disclaimer), 12 (Limitation of Remedies and Damages), 13 (Indemnification), 14 (Confidential Information) and 16 (General Terms).

## 9. Limited Warranty

9.1. **Limited Warranty.** Smartnova warrants, for Customer's benefit only, that each Service will operate in substantial conformity with the applicable Documentation. Smartnova's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for Smartnova to use commercially reasonable efforts to correct the reported non-conformity. The limited warranty set forth in this Section 9.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services, or (iii) to use provided on a no-charge, trial or evaluation basis.

9.2. **Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 9.1, ALL SERVICES ARE PROVIDED "AS IS". NEITHER SMARTNOVA NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SMARTNOVA DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES SMARTNOVA WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA WITHOUT LOSS OR CORRUPTION. SMARTNOVA SHALL NOT BE LIABLE FOR THE RESULTS OF ANY COMMUNICATIONS SENT OR ANY COMMUNICATIONS THAT WERE FAILED TO BE SENT USING THE SERVICES. SMARTNOVA SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, THIRD-PARTY PLATFORMS, THIRD PARTY MESSAGING APPS, OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF SMARTNOVA. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

## 10. Support

During the entire period of access to the Service, Smartnova guarantees the provision of technical support to the Customer regarding the Service in the manner and under the conditions determined

by Smartnova at its sole discretion, unless otherwise agreed between the Parties in a applicable Order Form. Smartnova will make all necessary efforts to eliminate identified deficiencies in the Service in a short period of time, but does not guarantee that all errors can be eliminated. The Customer's requests for technical support are accepted by Smartnova at the following e-mail address: support@novatalks.ai

11. AUP. This Section applies to Smartnova's (a) websites (including without limitation www.smartnova.world, www.novatalks.ai and any successor URLs, mobile or localized versions and related domains and subdomains) and (b) communications and messaging products and services. To keep the Services running safely and smoothly, the Customer agrees not to misuse them. Specifically, you agree not to:

- i. probe, scan, or test the vulnerability of any system or network used with the Services;
- ii. tamper with, reverse engineer or hack the Services, circumvent any security or authentication measures of the Services or attempt to gain unauthorized access to the Services (or any portion thereof) or related systems, networks or data;
- iii. modify or disable the Services or use the Services in any manner that interferes with or disrupts the integrity or performance of the Services or related systems, network or data;
- iv. access or search the Services by any means other than our publicly supported interfaces, or copy, distribute, or disclose any part of the Service in any medium, including without limitation by any automated or non-automated "scraping";
- v. overwhelm or attempt to overwhelm our infrastructure by imposing an unreasonably large load on the Services that consume extraordinary resources, such as by: (i) using "robots," "spiders," "offline readers" or other automated systems to send more request messages to our servers than a human could reasonably send in the same period of time using a normal browser; or (ii) going far beyond the use parameters for any given Service as described in its corresponding documentation;
- vi. solicit any users of our Services for commercial purposes;
- vii. use the Services to generate or send unsolicited communications, advertising or spam, or otherwise cause Smartnova to become impaired in its ability to send communications on its own or on its customers' behalf (e.g., by causing Smartnova to become registered on any Email DNS blocked list or otherwise be denied services by any other third party communications service provider);
- viii. misrepresent yourself or disguise the origin of any data, content or other information you submit (including by "spoofing", "phishing", manipulating headers or other identifiers, impersonating anyone else, or falsely implying any sponsorship or association with Intercom or any third party) or access the Services via another user's account without their permission;

- ix. use the Services for any illegal purpose or in violation of any laws (including without limitation data, privacy and export control laws);
- x. use the Services to violate the privacy of others, or to collect or gather other users' personal information (including account information) from our Services;
- xi. use the Services to stalk, harass, bully or post threats of violence against others;
- xii. submit (or post, upload, share or otherwise provide) data, content or other information that (a) infringes Smartnova's or a third party's intellectual property, privacy or other rights or that you don't have the right to submit (including confidential or personal information you are not authorized to disclose); (b) that is deceptive, fraudulent, illegal, obscene, defamatory, libelous, threatening, harmful to minors, pornographic, indecent, harassing, hateful, religiously, racially or ethnically offensive, that encourages illegal or tortious conduct or that is otherwise inappropriate in Intercom's discretion; (c) contains viruses, bots, worms, scripting exploits or other similar materials; or (d) that could otherwise cause damage to Intercom or any third party;
- xiii. promote or advertise products or services other than your own without appropriate authorization;
- xiv. use meta tags or any other "hidden text" including Smartnova's or our suppliers' product names or trademarks; or
- xv. permit or encourage anyone else to commit any of the actions above.

## 12. Limitation of Remedies and Damages

**12.1. Consequential Damages Waiver.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) SHALL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**12.2. Liability Cap.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), EACH PARTY'S ENTIRE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER TO SMARTNOVA DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT.

**12.3. Excluded Claims.** "Excluded Claims" means any claim arising (a) from Customer's breach of Section 2.7 (General Restrictions); (b) under Section 3.3 (Customer Obligations) or 3.4 (Indemnification by Customer); or (c) from a party's breach of its obligations in Section 14 (Confidential Information) (but excluding claims arising from operation or non-operation of any Service or relating to Customer Data).

**12.4. Nature of Claims and Failure of Essential Purpose.** The parties agree that the waivers and limitations specified in this Section 11 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

### **13. Indemnification**

Smartnova will defend Customer from and against any claim by a third party alleging that a Service when used as authorized under this Agreement infringes any Intellectual Property Rights and will indemnify and hold harmless Customer from and against any damages and costs finally awarded against Customer or agreed in settlement by Smartnova (including reasonable attorneys' fees) resulting from such claim, provided that Smartnova will have received from Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time for Smartnova to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer. If Customer's use of a Service is (or in Smartnova's opinion is likely to be) enjoined, if required by settlement or if Smartnova determines such actions are reasonably necessary to avoid material liability, Smartnova may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using such Service; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement and refund to Customer the fees paid by Customer for the portion of the Subscription Term that was paid by Customer but not rendered by Smartnova. The foregoing indemnification obligation of Smartnova will not apply: (1) if such Service is modified by any party other than Smartnova, but solely to the extent the alleged infringement is caused by such modification; (2) if such Service is combined with products or processes not provided by Smartnova, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of such Service; (4) to any action arising as a result of Customer Data or any third-party deliverables or components contained within such Service; (5) to the extent the alleged infringement is not caused by the particular technology or implementation of the Service but instead by features common to any similar product or service; (6) to any action arising from Customer's use of Third Party Messaging Apps; or (7) if Customer settles or makes any admissions with respect to a claim without Smartnova's prior written consent. THIS SECTION 13 SETS FORTH SMARTNOVA'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

### **14. Confidential Information**

Each party (as "**Receiving Party**") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Smartnova Technology, performance information relating to any Service, and the terms and conditions of this Agreement will be deemed Confidential Information of Smartnova without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than

fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Smartnova, the subcontractors referenced in Section 16.8 (Subcontractors)), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 14 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 14. The Receiving Party's confidentiality obligations will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

## 15. Publicity

Smartnova may use Customer's name to identify Customer as an Smartnova customer of the Service, including on Smartnova's public website. Smartnova agrees that any such use shall be subject to Smartnova complying with any written guidelines that Customer may deliver to Smartnova regarding the use of its name and shall not be deemed Customer's endorsement of the Service.

## 16. General Terms

16.1. **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 16.1 will be null and void.

16.2. **Severability.** If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

### 16.3. Governing Law; Dispute Resolution.

a) Direct Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, whether arising in contract, tort or otherwise, ("**Dispute**"), the parties shall first use their best efforts to resolve the Dispute. If a Dispute arises, the complaining party shall provide written notice to the other party in a document specifically entitled "**Initial Notice of Dispute**," specifically setting forth the precise nature of the dispute ("**Initial Notice of Dispute**"). If an Initial Notice of Dispute is being sent to Smartnova it must be emailed to [sales@novatalks.ai](mailto:sales@novatalks.ai) and sent via mail to:

Attn: Legal Department, Smartnova Limited, Avlonos, 1 Maria House 1075, Nicosia, Cyprus.

Following receipt of the Initial Notice of Dispute, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution of the Dispute that is satisfactory to both parties ("**Direct Dispute Resolution**"). If the parties are unable to reach a resolution of the Dispute through Direct Dispute Resolution within thirty (30) days of the receipt of the Initial Notice of Dispute, then the Dispute may subsequently be resolved in a court of law as set forth below.

b) Choice of Law and Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the Cyprus. To resolve any dispute, controversy or claim between them arising out of or relating to this Agreement, or the breach thereof, the Parties agree irrevocably and unconditionally submit the respective claim to the binding arbitration with the Rules of Arbitration of International Chamber of Commerce. The claim is to be reviewed by one or more arbitrators appointed in accordance with the said rules. Except for any disputes, claims, suits, actions, causes of action, demands or proceedings in which either Party seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, including, without limitation, copyrights, trademarks, trade names, logos, trade secrets or patents, You and Smartnova (a) waive Your and Smartnova's respective rights to have any and all disputes arising from or related to these Terms resolved in a court, and (b) waive Your and Smartnova's respective rights to a jury trial. The substantive law shall be the Applicable Law (including all other operating rules, policies, and procedures that may be issued by the Smartnova and published from time to time on the Website), without regard to conflict of law rules or principles. The language of the arbitration shall be English.

16.4. **Notice.** Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth on the **Order Form** or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

16.5. **Amendments; Waivers.** Except as provided under "Modifications to this Agreement" and otherwise provided herein, no supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

16.6. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Customer acknowledges that the Services are on-line, subscription-based products, and that in order to provide improved customer experience Smartnova may make changes to the Services, and Smartnova will update the applicable Documentation accordingly.

16.7. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

16.8. **Subcontractors.** Smartnova may use the services of subcontractors and permit them to exercise the rights granted to Smartnova in order to provide the Services under this Agreement, provided that Smartnova remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement, (ii) for the overall performance of the Services as required under this Agreement, and (iii) compliance with the terms of the DPA.

16.9. **Subpoenas.** Nothing in this Agreement prevents Smartnova from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but Smartnova will use commercially reasonable efforts to notify Customer where permitted to do so.

16.10. **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent