



## **AFFILIATE AGREEMENT**

This Agreement, made and entered as of the day of the approval of the form (the "**Agreement**"), by and between Sonovia Ltd., a company organized under the laws of the State of Israel, with its principal offices at 14 Izhak Sade St., Nahariya, 223050, Israel (the "**Company**"), and the affiliate, as per the information added into the form (hereinafter called "**Affiliate**") (hereinafter separately referred to as a "**Party**" and together referred to as the "**Parties**").

**WHEREAS**, the Company is engaged in developing technologies to be applied to a wide range of products (the "**Products**");

**WHEREAS** the Company is currently marketing Products on-line through diverse channels;

**WHEREAS**, Affiliate represents that it has the necessary skills, expertise, personnel, know-how, resources and business contacts to efficiently market the Products; and

**WHEREAS**, Company desires to appoint the Affiliate as an affiliate of the Company's website and the Affiliate would like to become an affiliate of the Company;

NOW, THEREFORE, the parties agree as follows:

### **1. Appointment of Affiliate and Non-Exclusivity**

- 1.1. Subject to the terms of this Agreement, Company hereby appoints Affiliate for the term of this Agreement, and Affiliate hereby agrees to act for Company, as an affiliate of the Company's website.
- 1.2. The Affiliate acknowledges that the Company may enter into affiliate agreements or other similar arrangements with other parties and nothing in this Agreement shall be considered as a granting of exclusivity to the Affiliate of the Company's services and obligations under this Agreement.

### **2. Representations and Warranties of Affiliate**

Affiliate represents and warrants as follows:

- 2.1. The execution of this Agreement and the performance of its binding obligations and duties do not and will not violate any agreement and/or any applicable law and do not require the approval of any third party, and that the Affiliate's business is not violating any applicable law.
- 2.2. Affiliate is a corporation or private person and has full corporate power and authority to operate its business as now being operated and as proposed to be operated.



- 2.3. Affiliate is financially stable and has prepared and filed all necessary financial statements and corporate filings with the relevant authority and otherwise complied with the reporting and filing requirements of the relevant jurisdiction.
- 2.4. No action, proceeding or governmental inquiry or investigation is pending or, to Affiliate's knowledge, threatened against the Affiliate or any of its officers, directors, or employees (in their capacity as such), or against any of the Affiliate's properties, or with regard to its business, before any court, arbitration board or tribunal or administrative or other governmental agency, nor is there is any basis for the foregoing.
- 2.5. The Affiliate and its business do not infringe any third party intellectual property, and the Affiliate owns and has developed, or has the right to use, free and clear of all liens, charges, claims and restrictions, all of its intellectual property rights without infringing upon or otherwise acting adversely to the right or claimed right of any other person or entity.
- 2.6. The Affiliate's website and business are not engaged and do not include any content which is offensive, infringing proprietary rights including content which infringes copyrights or trademarks, pornographic content, content which is illegal to publish due to gag orders issued by a competent court, content which is defaming and/or violating one's privacy, containing computer software and/or computer code containing viruses, malicious software and harmful applications, passwords, usernames and other identifying data enabling the use of computer software, digital files, applications and services requiring registration of payment, freeware of registration, any information containing harmful, unlawful, obscene, libelous and/or racist content, information which may mislead third parties and/or any information which harms any acceptable norms of using the internet and which may harm its users.
- 2.7. Affiliate will remain solely responsible for the operation of its website, and Affiliate acknowledges that the Company's website may be subject to temporary downtime due to causes beyond the Company's reasonable control and the Company may not be held liable any errors and faults for such downtime including, but not only, faults which may result in failure to identify a user generated from the Affiliates efforts (a "**Referred User**") which may result in not receiving Consideration (as defined hereinafter) from such user.
- 2.8. Affiliate understands that the Company is entering this Agreement based on the Affiliate's warrants and that the Company will be entitled to terminate this Agreement in case of a breach of the Affiliate's representations and warranties.

### **3. Promotion and Publishing of Links and Forbidden Acts**

- 3.1. Company shall provide the Affiliate with website tracking URLs ("**URL**") which will be used to refer users from the Affiliate's website to the Company's website. It is clarified that determining the location and the displaying type of the URLs will be made by the Company and at the Company's sole discretion. The URL will navigate directly to a page on the Company's website designated by the Company via a special tagged link format and should add a "No Follow" html tag.



- 3.2. The Affiliate will be responsible for integrating the URL into its website to properly enable user tracking, and the Company will not be responsible for the Affiliate's failure to do so, including to the extent such failure may result in any reductions of amounts that would otherwise be paid to the Affiliate under this Agreement.
- 3.3. Affiliate shall not, either directly or indirectly, act, encourage or require users to click on links to the Company's website and/or generate clicks and/or arrange any click-fraud or click-bait methods and/or cookie-stuffing methods through any means that could be reasonably interpreted as coercive, incentivized, misleading, malicious, or otherwise fraudulent.
- 3.4. Affiliate shall not use its own affiliate link in order to receive commissions on its own purchases.
- 3.5. Affiliate shall not hire or solicit the employment and/or engagement of any personnel of the Company and shall not solicit any customer or service provider of the Company to terminate or change its business terms with the Company without the Company's written consent.
- 3.6. The Affiliate agrees that it is not authorized to enter into any agreement or obligation for and on behalf of the Company. The Affiliate shall not give any advice or make any recommendation on behalf of the Company, shall not act as an agent or a representative of the Company or hold itself out as having any authority to do so or give or accept any commitment guarantee or obligation for or on behalf of the Company.
- 3.7. The Affiliate agrees not to create a website or social media pages using the Company's trademarks or words identified with the Company and its brands (i.e. SonoMask, Sonovia) without previous written approval by the Company. This includes websites, coupons, own-banners and E-shops. Furthermore, the Company keeps the right to demand Affiliate to stop any use of the Company's name, brand, images and product upon provision of written notice by email. After receipt of such notice, Affiliate has 48 hours to close/takedown/stop using the names, brands, images and products.
- 3.8. This agreement will be terminated without notice if, in its sole discretion, Company determines that the Affiliate has breached any or all of the above explicitly prohibited actions. The Affiliate will forfeit any accumulated earnings if the agreement is terminated under this provision.

#### **4. Referring of Users and Consideration**

- 4.1. For a user to be considered a "Referred User", such user must click the URL and complete a purchase via websites which the Company acts as their referral as long as such purchase shall be made using the URL and if such user will complete a purchase no later than the date of assigning a cookie which contains the Affiliate's identification to such user's device subject to the Company's reception of commission by websites which the Company acts as their referral. It is clarified that the expiration date of such cookie is determined by third parties which are not controlled by the Company. In consideration for any Referred User, the Affiliate shall be entitled to receive 10% (ten percent) of the gross income which the Company received from a Referred User (the



“**Consideration**”). For the purpose of this Agreement, “Income” means the actual and total amount of money received resulting from a single transaction made as a result of a Referred User buying a Product after any deductions including, but not only, deduction of other commissions and taxes excluding bonuses and/or other rewards that the Company may receive from third parties which are not related to any commissions. The Consideration is exclusive of VAT which shall be paid by the Company.

4.2. The Consideration shall be paid to the Affiliate in the month immediately following and no later than the 15th day of each calendar month following the receipt of the income by the Company (i.e. the Consideration for all June’s income shall be transferred by July 15<sup>th</sup>). The Consideration shall be wired via bank transfer to the Affiliate’s bank account or virtual wallet such as PayPal.

The Consideration will be based on the Company’s affiliate networks systems which monitor the amount of Referred Users. The information which appears in the Company’s systems shall be considered as conclusive evidence regarding the amount of Referred Users and the Affiliate shall have no claim regarding such information. It is clarified that the Company will deduct from the Consideration any fees and commissions which may occur resulting from the transferring of the Consideration including but not only bank transfer fees and currency conversion fees.

4.3. Despite the above, if the Consideration in a specific month is less than USD100, no payment shall be made or that month and the Consideration due will be transferred at the following month provided that the Consideration will exceed USD100.

4.4. It is clarified that in case of a fraudulent transaction which is defined, for the purpose of this Agreement, as a claim of a Referred User of a credit card fraud (a “**Fraud**”), the Affiliate shall not be entitled to a Consideration for such Fraud. In case a Consideration was already paid to the Affiliate regarding a Fraud, the Company may be entitled to deduct from its next payment the amount it transferred to the Affiliate which was originally received due to a Fraud.

4.5. Any income generated by a Referred User that is later refunded or charged-back shall be deducted from the Consideration.

4.6. The Consideration constitutes the full and final consideration for the Affiliate, and the Affiliate shall not be entitled to any additional consideration or reimbursement, of any form for performing its duties in this Agreement.

## **5. Auditing**

Company shall have the right to inspect the necessary Affiliate’s books and records and all other documents and material in the possession of or under the control of the Affiliate for the purpose of calculating the Consideration. The Company shall have reasonable access to such records and shall be permitted to make copies of them for the purpose of confirming whether the Affiliate is in compliance with the terms of this Agreement.

## **6. Relationship of the Parties, Indemnification and Limitation of Liability**



- 6.1. The sole relationship between the Affiliate and the Company shall be that of independent contractors, and neither Party shall not be deemed to be an employee or employer of the other Party.
- 6.2. The Affiliate will take all necessary precautions to prevent injury to any persons and any other damage or claim in performing its obligations under this Agreement, and the Affiliate will defend, indemnify and hold the Company and its employees, agents and directors harmless against all claims, losses, liabilities, costs, damages and expenses (including attorneys' fees) resulting from any act, omission or negligence on the part of Affiliate or its agents in the performance or failure to perform its obligations under this Agreement.
- 6.3. COMPANY WILL NOT BE LIABLE UNDER ANY SECTION OR SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL THE COMPANY BE LIABLE TO AFFILIATE OR ANY OTHER PERSON OR ENTITY ON THE AFFILIATE'S BEHALF FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES) ARISING OUT OF THE REFERRING OF USERS FROM THE AFFILIATE TO THE COMPANY. THE COMPANY'S MAXIMUM LIABILITY FOR ANY AND ALL CAUSES OF ACTIONS, CLAIMS AND DAMAGES, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO THE ACTUAL AMOUNT PAID BY THE COMPANY TO THE AFFILIATE UNDER THIS AGREEMENT.

## **7. Term and Termination**

- 7.1. This Agreement shall be effective as of the date first written above until terminated by either Party upon providing 14 days prior written notice to the other party (the "**Notice Period**"). During the Notice Period the Affiliate may continue to refer Referred Users and the Company shall make all payments to the Affiliate as required in this Agreement.
- 7.2. Without derogating from the above, this Agreement may be terminated by Company immediately upon the occurrence of any of the following events:
- (a) If Affiliate ceases to do business, or otherwise terminates its business operations or if there is a material change in control of Affiliate; or
  - (b) If Affiliate breaches any provision of this Agreement and fails to fully cure such breach within 7 days or any other time as is provided herein of written notice from Company describing the breach; or



(c) If Affiliate shall seek protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against Affiliate.

7.3. Upon termination of this Agreement, all rights and obligations of Company shall terminate. Furthermore, the Affiliate shall return to the Company any documents and/or materials which were handed to the Affiliate as part of this Agreement.

## **8. Use of Trademarks and Confidentiality**

8.1. For the purposes of displaying to the Company's website marketing material provided by the Company and any link redirecting to the Company's website including the URLs, the Company grants to Affiliate, a nonexclusive, non-transferable, non-sub licensable limited license to display such material in its website, which has been previously approved by the Company. The Affiliate is not entitled to use any of the Company's trademarks without the Company's prior and written consent.

8.2. The terms of this Agreement and any information transferred between the Parties shall remain confidential information, and neither Party may disclose this Agreement to any third party except the party's employees and any person and/or entity on the party's behalf subject to written agreements containing non-disclosure and non-use obligations.

## **9. Miscellaneous**

9.1. Neither this Agreement nor any right or obligation hereunder is capable of being assigned by Affiliate without the prior written consent of the Company and any purported transfer or assignment will be void. Company may assign its rights and duties hereunder. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns (whether by operation of law, merger, change of control or otherwise) of the parties.

9.2. If any provision of this Agreement is held to be illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

9.3. Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the written consent of Company and the Affiliate.

9.4. This Agreement shall be governed by and construed under the laws of the State of Israel. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the competent courts located in the city of Tel Aviv, Israel.

9.5. Any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the parties to be notified or upon deposit with the postal authority, by registered or certified mail and/or email.



9.6. This Agreement is the sole agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements or discussions between the Parties.

9.7. Termination of this Agreement shall not be an exclusive remedy for breach of this Agreement and, whether or not termination is affected, all other remedies will remain available.

**IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date as per the form.**