

ABLE PLANET DISTRIBUTION AGREEMENT AUDIOLOGY PRACTICE

By clicking on the “I Agree” button below, the entity identified on the Distributor Enrollment Page (the “Distributor”) understands that it is applying to become an Able Planet, Inc. (“API”) distributor as described below. You also acknowledge that you have the authority to bind Distributor to the terms and conditions of this Distribution Agreement (this “Agreement”), you have read it, understand it, and, if accepted into the program, Distributor agrees to be bound by the terms set forth in it.

API has rights to market, sell and distribute, the certain products (the “Products”). This Agreement sets forth the terms and conditions under which API grants Distributor a right and license to distribute such Products as furnished by API. API and Distributor agree as follows:

AGREEMENT

1. GRANT OF RIGHTS

1.1 Grant of Distributorship. API hereby grants to Distributor the non-exclusive right during the term of this Agreement, to market, sell, and/or otherwise distribute products produced, distributed or otherwise offered by API (“Products”) to patients of Distributor’s audiology practice.

1.2 Grant of License to Trademarks. API hereby grants to Distributor the non-exclusive right during the term of this Agreement, within the Territory, to use the trademarks, service marks, trade names, domain names, logos or other designations placed on the Products or otherwise used in connection with the Products by API (“Trademarks”) solely for purposes of advertising and promoting the Products hereunder and in compliance with API’s usage guidelines.

1.3 Distributor shall ensure that the nature and quality of any services it provides in connection with its marketing and distribution of the Products hereunder shall conform to reasonable standards set by API. Distributor understands and agrees that its use of any Trademark in connection with this Agreement shall not create any right, title or interest in or to such Trademark, and that all such use and goodwill associated therewith shall inure solely to the benefit of API.

2. ORDERS; SHIPPING; CANCELLATION

2.1 Orders. The terms and conditions of this Agreement shall apply to any and all orders submitted to API. Orders for API products will be entered by Distributor via secure API website using a unique Distributor code provided by API. This code must be entered accurately to ensure access. All orders must be placed using a valid Distributor credit card. Checks and other forms of payment are not acceptable. API will generate a receipt for each transaction with Distributor reflecting the charges to Distributor for such order. Distributor shall be solely responsible for generating and issuing receipts to Distributor’s patients in connection with sales of the Products. Distributor shall be responsible for payment for each order from API irrespective of whether Distributor is able to sell any of the Products from such order to its patients.

2.2 Stock & Shipping: Distributor is not required to stock API Products. API shall drop ship Products directly to Distributor, or an end user location, as a blind shipment on behalf of Distributor. Distributor will select shipping method at time of order. Distributor shall pay all shipping costs. Title and risk of loss or damage to the Products shall pass, upon shipment of the Products, to Distributor.

2.3 Packaging. Each Product shall be shipped in retail packaging as supplied by API, and shall include information that is customarily provided by API with the Products.

2.4 Product Returns. API will accept the return of any Product for any reason, if returned within 30 days of shipment from API in its original unopened retail packaging. Distributor will pay for return shipment of non-defective Products. Upon receipt of return, Able Planet will issue a full credit to the Distributor credit card account number on file with API. Distributor shall be responsible for all reimbursements to its patients.

2.5 Defective Returns. After 30 days from shipment, API will only accept damaged or defective devices in accordance with warranty terms and conditions stated on API packaging. Damaged or defective devices may be repaired, or replaced, at the sole discretion of API. API shall pay all costs of transportation for Defective Products.

3. PRICE; TAXES; PAYMENTS

3.1 Price. The Distributor will be provided a “Product Catalog” (Addendum A, Able Planet Products & Pricing) specifying Suggested Retail Prices, Promotional Pricing, and Distributor Pricing by product. All prices may change without notice. Distributor must confirm pricing prior to entering an order.

3.2 Taxes. Distributor is responsible for all taxes on the sale of products made to or by Distributor.

3.3 Payments. All orders must be placed using Distributor Credit Card. Checks and other forms of payment are not acceptable.

4. API SUPPORT OBLIGATIONS

4.1 New Products. API shall notify Distributor of any new Product via fax or email, and accompany a revised Addendum A, Able Planet Products & Pricing for all Authorized Products.

4.2 API Support. Distributor may request from time to time that API provide Distributor a reasonable amount of support (“**Support**”), which requests shall be subject to approval of API and mutual agreement of the parties to the times, fees and other details for such Support. Support shall include providing (a) training for sales and technical personnel (and end-users, where appropriate) concerning Product use and features; (b) price schedules, data sheets, brochures, point-of-sale aids, technical information, instructional and other materials, online reviews, and other information concerning Products; and (c) where appropriate, reasonable Product technical support by telephone or email.

5. WARRANTY

5.1 Warranties made by Distributor. Distributor represents, warrants and covenants to API that: (a) Distributor has the right to sell the Products without the need for any licenses, releases, consents, approvals or immunities not yet granted; (b) all advertising and marketing material not provided by API, but used by Distributor in connection with the Products and any services comply with all applicable laws, and shall be submitted to API for approval; (c) Distributor has not made and shall not make any commitments inconsistent with API’s rights under this Agreement; (d) Distributor will not make or publish any representations, warranties or guarantees on behalf of API concerning the features, performance or functionality of the Products other than presenting current information that has been published by API or approved in advance by API in writing; (e) Distributor will not use deceptive, misleading, illegal or unethical practices in marketing, selling, distributing or representing the Products to end users; and (f) Distributor will keep API informed of any problems and resolutions with the Products.

5.2 Warranties by Both Parties. Each party warrants that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on such party’s behalf has been duly authorized and empowered to enter into this Agreement.

5.3 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES (AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS) ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

6. CONSEQUENTIAL DAMAGES WAIVER

IN NO EVENT SHALL API BE LIABLE TO DISTRIBUTOR OR ANY THIRD PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOSS OF PROFITS, REVENUE OR BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, API’S AGGREGATE LIABILITY TO DISTRIBUTOR OR ANY THIRD PARTY FOR CLAIMS RELATING TO THIS AGREEMENT, WHETHER FOR BREACH, NEGLIGENCE, INFRINGEMENT, IN TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL PAYMENTS MADE BY DISTRIBUTOR TO API IN THE MOST RECENT FULL CALENDAR YEAR PRECEDING EITHER PARTY’S INITIAL NOTICE TO THE OTHER PARTY OF ANY

CLAIM OR POTENTIAL CLAIM HEREUNDER. The limitations set forth in this Section 7 shall not apply to (a) the indemnity obligations of Distributor set forth in Section 8, (b) breaches by Distributor of API trademark use policies, (c) breaches by Distributor of confidentiality obligations hereunder, and (d) all representations, warranties and covenants regarding the Products made by Distributor in violation of this Agreement.

8. INDEMNITY

(a) API shall defend, indemnify and hold Distributor harmless from and against all claims, suits, losses, damages, costs, liabilities and expenses (including reasonable attorneys' fees) incurred in connection with any suit, claim or action by a third party based upon a claim that the Products, when used in accordance with this Agreement, infringes any recognized U.S. patents issued as of the date hereof or copyrights or misappropriates any trade secrets or that the API trademarks, when used in accordance with this Agreement, infringe any recognized U.S. trademark rights. Notwithstanding the foregoing, API will have no obligation under this Section 8(a) or otherwise with respect to any infringement claim based upon: (i) any unauthorized use, reproduction, or distribution of the Products by Distributor or any of its patients and other end users of the Products, (ii) any use of the Products in combination with other products, equipment or software, or data not supplied by API, if such alleged infringement would have been avoided by the combination with such other products, equipment or software or data, or (iii) any modification of the Products by any person other than API or its authorized agents or contractors. THIS SECTION STATES API'S ENTIRE LIABILITY AND DISTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

(b) Distributor shall defend, indemnify and hold API harmless from and against all claims, suits, losses, damages, costs, liabilities and expenses (including reasonable attorneys' fees) incurred in connection with any suit, claim or action by any third party (including any patient or other end user of a Product) that arises out of any acts or omissions on the part of Distributor in marketing or distributing the Products or any breach of this Agreement by Distributor.

(c) The party seeking indemnification shall: (i) notify the other promptly in writing of any such action; (ii) give the other sole control of the defense thereof and any related settlement negotiations, provided, however, that (A) the indemnifying party shall not have any authority to enter into any settlement that materially adversely affects the other party's rights of obligations without the indemnified party's prior written approval and (B) the indemnified party shall have the right to participate at its own expense; and (iii) cooperate and, at the indemnifying party's request and expense, assist in such defense.

9. TERM AND TERMINATION

9.1 Term. The term of this Agreement shall commence as of the Effective Date and continue for one (1) year thereafter. Subsequently, this Agreement shall automatically renew for successive one (1) year renewal terms, unless, at least fifteen (15) days prior to the beginning of any renewal term, either party gives the other party written notice of its intent not to renew this Agreement.

9.2 Termination.

Each party may terminate this Agreement for any reasons upon thirty (30) days written notice to the other party.

9.3 Effect of Termination.

(a) Neither API nor Distributor shall be liable to the other, because of such expiration or termination, for compensation, reimbursement or damages: (i) for the loss of prospective profits, anticipated sales or goodwill; (ii) on account of any expenditures, investments or commitments made by either; or (iii) for any other reason whatsoever based upon the result of such expiration or termination.

(b) The provisions of the following Sections shall survive any expiration or termination of this Agreement: 2 ("Orders; Shipping; Cancellation"), 3 ("Price; Taxes; Payment"), 5 ("Warranty"), 6 ("Consequential Damages Waiver"), 7 ("Limitation of Liability"), 8 ("Indemnity"), 9.3 ("Effect of Termination") and 10 ("Miscellaneous Terms").

10. MISCELLANEOUS TERMS

10.1 Relationship of the Parties. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties, and the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in

writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

10.2 Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, U.S.A., without reference to its conflicts of law provisions. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of the state courts in and for Denver, Colorado, U.S.A., and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts.

10.3 Force Majeure. Neither party shall be liable under this Agreement because of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities or any other cause beyond its reasonable control; provided, however, such party gives the other party prompt written notice of the failure to perform and the reason therefor and uses its reasonable efforts to limit the resulting delay in its performance.

10.4 Notices. Unless expressly provided otherwise, any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address set forth in the first paragraph of this Agreement and to the notice of the person executing this Agreement (or to such other address or person as may be designated by a party by giving written notice to the other party pursuant to this Section).

10.5 Assignment. Distributor shall not assign, transfer, delegate or otherwise dispose of this Agreement or any right or obligation hereunder (whether by express transfer, operation of law or otherwise) without the prior written consent of API. API shall be entitled to assign, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement and any of its rights or obligations under this Agreement. Any attempted or purported assignment or other transfer not complying with the foregoing shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of and bind the successors and assigns of the parties.

10.6 Confidentiality and Trade Secrets. Distributor acknowledges that API's development of products and related materials and applications have required substantial research, development and capital investment. Distributor further acknowledges that API products made available hereunder contain API designs, inventions, and know-how, which to the extent that they are not generally known or available to the trade or public by lawful means, are and shall remain the sole and exclusive proprietary property of API, whether or not such designs, inventions, equipment, materials, programs and know-how are covered by patents or copyrights and whether or not they are patentable or copyrightable. Additionally, by virtue of this agreement, Distributor will acquire from API certain "proprietary" or "confidential" business and marketing information which is, and shall remain the sole and exclusive proprietary property of API. All of the foregoing as well as any information that Distributor receives from API and knew or reasonably should have known under the circumstances was considered proprietary or confidential by API will be considered "Confidential Information" hereunder.

In order to protect such rights of API, identified above, Distributor agrees to:

(a) Maintain any and all such Confidential Information in strict confidence and make no use or disclosure thereof except those uses and limited disclosures which are consistent with the object and spirit of this agreement;

(b) Control the reproduction and distribution of any and all documents, prints, drawings and writings containing such Confidential Information; limit access to such Confidential Information to those agents and employees of Distributor who have a need for such information; take all reasonable precautions to protect and safeguard such proprietary information from unauthorized access, use of disclosures and at a minimum take the same precautions as API takes to protect its own highly valuable proprietary and confidential information; and

(c) Ensure that its employees do not breach Distributor's obligations herein, and cause its employees to execute a confidentiality agreement that is at least as stringent as this Section 10.6. Whether or not Distributor's employees enter into such a confidentiality agreement, Distributor agrees that it will be liable for its employees' actions and conduct which results in direct or indirect breach of the provisions of this Section 10.6 or

damage to API; and will cooperate fully with API in any and all legal actions taken by API to protect its rights in such Confidential Information.

(d) Distributor shall return to API or destroy all Confidential Information in its possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of API or upon the expiration or termination of this Agreement. Distributor will certify in writing signed by an officer of Distributor that it has fully complied with its obligations under this Section 9.3(b).

(e) Distributor shall not disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors except as required by law or pursuant to a mutually agreeable press release.

10.7 Affiliates. This Agreement shall extend to any corporation, partnership or other entity controlling, controlled by or under common control with API and shall continue to extend to such entity during the term of this Agreement, regardless of whether such control continues. For purposes of this Section 10.7, “control” of an entity means ownership, directly or indirectly, of at least fifty percent (50%) of the voting rights in such entity (or, in the case of a noncorporate entity, equivalent rights).

10.8 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute a single agreement.

10.9 Headings. The various section headings are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any section thereof.

10.10 Severability. If any term, provision, covenant or condition of this Agreement is held by a court or arbitral panel of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.11 Construction. This Agreement shall be deemed to have been drafted by all parties and, in the event of a dispute, no party hereto shall be entitled to claim that any provision should be construed against any other party by reason of the fact that it was drafted by one particular party.

10.12 Dispute Resolution. While API hopes in each instance that its distribution relationships will be free of controversy, we are aware that disputes sometimes do arise. In the event any dispute arises between Distributor and API or any employee of API, then, to the extent permitted by law, it will be settled exclusively by binding arbitration before a single arbitrator in accordance with ADR Rules of the American Arbitration Association. The arbitrator’s decision shall be final and binding upon the parties, and may be entered and enforced in any court of competent jurisdiction by either of the parties. The arbitrator shall have the power to grant temporary, preliminary and permanent relief, including, without limitation, injunctive relief and specific performance. API and Distributor will share equally the direct costs and expenses of arbitration. Distributor and API are responsible for their respective attorney’s fees incurred in connection with enforcing this agreement, provided that, except as may be prohibited by law, the arbitrator may, in his or her discretion, award reasonable attorney’s fees to the prevailing party.

10.13 Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter of this Agreement and merges and supersedes all prior and contemporaneous agreements and understandings between the parties, whether oral or written, with respect to the subject matter of this Agreement. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the authorized representatives of both parties.

Agree	Disagree
-------	----------