

## **BABIERGE INDEPENDENT TRUSTED PARTNER AGREEMENT**

August 1, 2016 V.1.1

This Independent Trusted Partner Agreement (“Agreement”) constitutes a legally binding agreement between You (“You”) and Babierge, Inc. (“Company” or “Babierge”), a Delaware corporation, governing Your use of the application, website, content, product, and services located at URL [www.babierge.com](http://www.babierge.com) (collectively, the “Service Platform”).

**IMPORTANT: PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. BY USING THE SERVICE PLATFORM, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT BUSINESS DECISION.**

BY SIGNING UP TO BE A BABIERGE INDEPENDENT TRUSTED PARTNER AND CLICKING THAT YOU “HAVE READ AND ACCEPT THE TRUSTED PARTNER AGREEMENT” RADIO BUTTON BELOW, YOU ARE AGREEING TO BE BOUND BY, AND ARE BECOMING A PARTY TO, THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT CLICK THE RADIO BUTTON BELOW AND DISCONTINUE THE SIGN-UP PROCESS. SELECTING “I HAVE READ AND ACCEPT THE TRUSTED PARTNER AGREEMENT” WILL BE THE LEGAL EQUIVALENT OF YOUR SIGNATURE ON A WRITTEN CONTRACT, AND EQUALLY BINDING. YOU MUST AGREE TO THIS AGREEMENT IN ORDER TO BE AN INDEPENDENT TRUSTED PARTNER.

Company may amend this Agreement from time to time. The most current version will always be available on the Independent Trusted Partner wiki at <http://www.babierge.com>. Amendments will be effective upon Company’s posting of such updated Agreement at this location. Your continued access or use of the Service Platform after such posting constitutes Your consent to be bound by the Agreement, as amended.

Company provides lead generation and payment services through an online platform to independent baby equipment rental providers who service baby equipment rental requests. The Service Platform enables an independent baby equipment rental provider to seek, receive, and fulfill requests for baby equipment rentals from Customers. COMPANY EXERCISES NO CONTROL OVER YOUR PROVISION OF BABY EQUIPMENT RENTAL SERVICES TO CUSTOMERS AND YOU ARE SOLELY RESPONSIBLE FOR ALL CONSEQUENCES OF YOUR SERVICES.

### **1. Definitions**

- 1.1 “Equipment”** means any baby equipment items that You make available to Customers for rental or purchase on the Service Platform.
- 1.2 “Baby Equipment Rental Services”** means Your provision of baby equipment rental services to Customers via the Service Platform using Your own Equipment and vehicle, or other means, as determined by You, the independent provider.
- 1.3 “Customer”** means an end user who wishes to use the Service Platform for the purpose of obtaining Baby Equipment Rental Services offered by You, the independent provider.
- 1.4 “Customer Information”** means information about a Customer made available to You in connection with such Customer’s request for and use of Baby Equipment Rental Services, which may include the Customer’s name, delivery location, and contact information.
- 1.5 “Company Data”** means all data related to the access and use of the Service Platform, including all data related to Customers (including Customer Information), all data related to the provision of Baby Equipment Rental Services via the Service Platform, and Your Partner ID.
- 1.6 “Service Area”** means the city or metro areas in the United States in which You maintain an inventory of Equipment and a continuous physical presence as required to directly provide Baby Equipment Rental Services.

### **2. Use of the Service Platform**

## **2.1 Partner IDs.**

Company will assign to You an identification and password (the “Partner ID”) that enables You to use and access the Service Platform in accordance with this Agreement. You shall be fully responsible for all activity conducted through Your account. You agree to maintain Your Partner ID in confidence and to not share Your Partner ID with any third party. You will immediately notify Company of any actual or suspected breach or improper use or disclosure of Your Partner ID or the Service Platform. COMPANY DOES NOT PROTECT YOU FROM UNAUTHORIZED USE OF YOUR PARTNER ID.

## **2.2 Email and Calendar Access.**

Company will provide a babierge.com email address (@babierge.com) and access to the calendar hosted on the Service Platform. Your use of the babierge.com email address and calendar are only permitted during the term of this Agreement and only in compliance with all provisions herein. Upon termination of this Agreement, You will no longer be able to access your babierge.com email or calendar data.

## **2.3 Provision of Baby Equipment Rental Services.**

Customer requests for Baby Equipment Rental Services will be sent by the Service Platform to You via email to the email address associated with Your Partner ID. The Service Platform will provide You with certain Customer Information via the Service Platform, including the information the Customer entered into the Service Platform. It is Your responsibility to service Customer requests for Baby Equipment Rental Services. You shall be solely responsible for determining the most effective, efficient and safe manner to perform each instance of Baby Equipment Rental Services. You shall provide all necessary Equipment, other equipment, tools and other materials, at Your own expense, necessary to perform Baby Equipment Rental Services.

The Service Platform will provide certain information about You to the Customer, including Your name, contact information, and business location if published.

## **2.4 Your Relationship with Customers.**

Your provision of Baby Equipment Rental Services to a Customer creates a direct business relationship between You and the Customer. Company is not responsible for the actions or inactions of a Customer in relation to Your activities or Your Equipment nor for Your actions or inactions incident to Baby Equipment Rental Services or otherwise. You have the sole responsibility for any obligations or liabilities to Customers or third parties that arise from Your provision of Baby Equipment Rental Services. You are solely responsible for taking such precautions as may be reasonable and proper (including maintaining adequate product records that meet the requirements of all applicable laws) regarding any acts or omissions of a Customer or third party.

## **2.5 Your Relationship with Company.**

Notwithstanding Your access to and use of the Service Platform, You and the Company are independent contractors and Company does not, and shall not be deemed to, direct or control You generally or in Your performance under this Agreement specifically, including in connection with Your provision of Baby Equipment Rental Services, Your acts or omissions, or Your operation and maintenance of Your Equipment.

For the sake of clarity, You understand that You retain the complete right to; (i) use other software application services in addition to the Service Platform to facilitate Your provision of services, including Baby Equipment Rental Services, to others; and (ii) to engage in any other occupation or business.

## **2.6 Ratings.**

- 2.6.1 You acknowledge that after receiving Baby Equipment Rental Services, a Customer will be prompted by the Service Platform to provide a rating of You and Your provision of Baby Equipment Rental Services and, optionally, to provide comments or feedback about You and Your provision of Baby Equipment Rental Services. The Service Platform will also maintain and make publicly available averages of Customer ratings of You and Your provision of Baby Equipment Rental Services. Such comments, feedback, and averages will be visible to the public on the Service Platform and will not be reviewed or edited by Company, subject to Section 2.5.3 below. We do not control the reviews and ratings provided by Customers and it is Your responsibility to contact a Customer if you feel that a review submitted by such Customer does not reflect your experience or the quality of the Baby Equipment Rental Services.

2.6.2 You acknowledge that the success of the Service Platform is in large part depending on Customers being able to access high-end quality, personal customer service via the Service Platform. Accordingly, Company has decided to uniformly apply a minimum average acceptable rating for all Service Areas, as may be updated from time to time by Company in its sole discretion (“Minimum Average Rating”). In the event Your average rating falls below the Minimum Average Rating, Company will notify You and shall provide You with sixty (60) days to raise Your average rating above the Minimum Average Rating. Company shall terminate this Agreement if You do not maintain an average rating above the Minimum Average Rating and are unable to raise Your average above the Minimum Average Rating following Company’s notice pursuant to this Section.

2.6.3 Company reserves the right to use, share and display Your and Customer ratings and comments in any manner in connection with the business of Company without attribution to You or Your approval. You agree that Company is a distributor (without any obligation to verify) and not a publisher of Your and Customer ratings and comments, provided that Company reserves the right to remove comments which in the event that such comments include obscenities or other objectionable content, or violate any privacy laws, other applicable laws, or Company’s content policies.

## **2.7 The Service Platform.**

The Service Platform is always evolving and the form and nature of the Service Platform may change from time to time without prior notice to You. Company may change, suspend, or discontinue the Service Platform at any time, including the availability of any feature, database, or content. Company may also impose limits on certain features or restrict Your access to parts or all of the Service Platform without notice or liability.

## **3. You and Your Equipment**

### **3.1 Equipment Safety.**

You are solely responsible for all Equipment safety and use. You shall purchase all Equipment in new or like new condition. Company may, from time to time, provide a list of in demand baby equipment but the choice of Equipment is left to You in Your sole discretion as an independent provider, provided that you must maintain at least a sufficient inventory of Equipment in each Service Area You service so as to be able to effectively provide the Baby Equipment Rental Services in such Service Area.

You shall provide the Consumer with all manufacture documentation and manuals applicable to the Equipment and provide instruction on the proper usage of the Equipment and highlight to the Consumer any safety warnings or other placards affixed to the Equipment or in the Equipment documentation.

You shall use all Equipment in strict compliance with all applicable manufacturer documentation and shall register all Equipment with the appropriate manufacturer. You shall maintain a continuing compliance and quality assurance plan to monitor and timely address all recalls on any existing Equipment, including, but not limited to, subscribing to third party consumer safety monitoring services. Should any of Your Equipment be covered by a recall should shall timely either implement the manufacturer recommended safety fix or discontinue the use of the recalled Equipment from any further Baby Equipment Rental Services. You are solely responsible for all consequences of Your failure to adhere to the above safety requirements.

### **3.2 Equipment Maintenance.**

You shall maintain Your Equipment in full compliance with all applicable manufacturer documentation and requirements and shall ensure that the Equipment remains clean and in working order. The maintenance of Your Equipment is left to You in Your sole discretion as an independent provider. You are solely responsible for all consequences of Your failure to properly maintain the Equipment.

## **4. Payment**

### **4.1 Payment Service.**

As an accommodation to You and Customers and to facilitate transactions through the Service Platform, Company provides a mechanism for Customers to directly pay for Equipment using their credit cards through the Service Platform. This payment service does not make Company a seller or otherwise a party to any Equipment rental or sale.

#### **4.2 Customer Payment Collection.**

You can configure a daily rental price or a purchase price for each item of Equipment You make available on the Service Platform. In addition, You may configure delivery fees to each serviced location(s) as well as set the tax percent through the Service Platform admin area.

Based on the fees You have configured, the Service Platform will calculate the price to Your Customer ("Customer Payment"). Upon payment by the Customer through the Service Platform of the full amount of the Customer Payment, You will be notified of the request.

#### **4.3 Appointment of Company as Limited Collection Agent.**

You: (i) appoint Company as Your limited payment collection agent solely for the purpose of accepting the Customer Payment, applicable fees, applicable taxes from the Customer on Your behalf via the payment processing functionality facilitated by the Service Platform; and (ii) agree that Payment made by Customer to Company shall be considered the same as Payment made directly by Customer to You.

You understand that Company only acts as a facilitator by accepting Customer Payment and paying You the funds, less applicable Transaction Fees and other fees due to us per this Agreement. You acknowledge that (i) Company is not a bank and that the payment processing functionality facilitated by the Service Platform is a payment service rather than a banking service; (ii) with respect to Your rental or sales of Equipment, Company is not acting as a trustee, fiduciary or escrow with respect to any funds, but is acting only as an agent to facilitate the transaction; and (iii) until the Customer is delivered the Equipment requested through the Service Platform, the Customer remains the owner of such funds and is entitled to full return for all funds paid.

#### **4.4 Transaction Fee.**

In consideration of Company's provision of the Service Platform for Your use and benefit hereunder, You agree to pay Company a transaction fee on each Baby Equipment Rental Service transaction (the "Transaction Fee"). The Transaction Fee shall be calculated as set forth on the Independent Trusted Partner Fee Schedule on the Service Platform and will be retained by Company from the Customer Payment. In the event regulations applicable to Your Service Area require taxes to be imputed in the Payment, Company shall calculate the Transaction Fee based on the Payment net of such taxes. Company reserves the right to change the Transaction Fee at any time based upon market factors. Following payment by the Customer of the Customer Payment, the Service Platform will transfer to Your designated account the Customer Payment minus the Transaction Fee and any other fees due hereunder to Company.

#### **4.5 Insurance and Other Participation Fees.**

The Company may from time to time, maintain a liability insurance policy to cover Company and its independent trusted partners ("Liability Insurance"). In such event, You will be added as an additional insured on such policy and will be required to pay an insurance origination fees as well as a monthly contribution towards the premiums (collectively, "Insurance Fees"). Company may additionally collect an administrative fee to conduct and manage background checks when You initially apply to be an Independent Trusted Partner ("Administrative Fees"). Company will notify You in advance of any activation of a Liability Insurance and of Your corresponding Insurance Fees and of any Administrative Fees by posting a notice on the Service Platform. Company will notify You in advance of any additional services and corresponding fees by posting a notice on the Service Platform and/or on the Independent Trusted Partner Wiki. Applicable Insurance Fees, Administrative Fees and other fees corresponding to services You approve will be charged to Your credit card or other payment method which You authorize us to use. In the event that we are unable to collect the charges from Your designated payment method, You shall immediately pay us the amount due on demand.

#### **4.6 Refunds.**

In the event that you elect to refund any Customer Payment (or a portion thereof) for a specific transaction, you will be able to process and manage the refund request using the Service Platform administrative function. More information on the refund process is found on the Independent Trusted Partner wiki.

#### **4.7 Payment Adjustment.**

Company reserves the right to: (i) adjust the Customer Payment for a particular instance of Baby Equipment Rental Services (e.g., You delivered unclean items, You fail to show up properly for a particular instance of Baby Equipment Rental Services in the Service Platform, technical error in the Service Platform,

etc.); or (ii) cancel the Payment for a particular instance of Baby Equipment Rental Services (e.g., Customer is charged for Baby Equipment Rental Services that were not provided, in the event of a Customer complaint, fraud, etc.). Company's decision to reduce or cancel the Payment in any such manner shall be exercised in a reasonable manner.

#### **4.8 Reservation Cancellation.**

A Customer may elect to cancel requests for Baby Equipment Rental Services that have been accepted by You via the Service Platform at any time prior to Your delivery of equipment to the Customer. In the event that a Customer cancels a request for Baby Equipment Rental Services, Company will collect from You any portion of the Customer Payment previously paid to You for such cancelled transaction. We will offset the amount of the Customer Payment paid to You for the cancelled transaction against amounts otherwise due to You until recouped in full. We may also request that You pay us such amount due for the cancelled transaction in which case You shall immediately pay us the balance due.

#### **4.9 Additional Customer Fees.**

You agree to invoice the customer on the Service Platform for any add-on item or fee charged after the reservation has been made and will not divert any transaction or amounts due for transactions away from the Service Platform. Any attempt or action in pursuit of such diversion is a material breach of this Agreement. You shall remain obligated to pay the Company for all such add-on items and fees associated with the reservation made and paid through the Service Platform.

#### **4.10 Taxes.**

You may configure tax percentages through the Service Platform. Any such tax percentages will be charged to the Customer and passed on to You. You are responsible for remitting all applicable gross receipts, sales and use, excise taxes or any other transaction tax on the provision of Baby Equipment Rental Services. You are solely liable for any penalties and consequences of your failure to timely pay all applicable gross receipts, sales and use, excise taxes.

### **5. Proprietary Rights; License**

#### **5.1 License Grant.**

Subject to the terms and conditions of this Agreement, Company hereby grants You a limited, personal, non-exclusive, non-transferable, non-sublicensable, non-assignable, terminable license, during the term of this Agreement, to access and use the Service Platform as provided herein solely for the purpose of providing Baby Equipment Rental Services to Customers and tracking resulting Payments and Fees. All rights not expressly granted to You are reserved by Company and its respective licensors.

#### **5.2 Restrictions.**

You shall not, and You shall not allow any other party to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise provide or make available to any other party the Service Platform in any way; (b) modify or make derivative works based upon the Service Platform; (c) improperly use the Service Platform, including creating Internet "links" to any part of the Service Platform, "framing" or "mirroring" any part of the Service Platform on any other websites or systems, or "scraping" or otherwise improperly obtaining data from the Service Platform; (d) reverse engineer, decompile, modify, or disassemble the Service Platform except as allowed under applicable law; or (e) send spam or otherwise duplicative or unsolicited messages. In addition, You shall not, and You shall not allow any other party to, access or use the Service Platform to: (i) design or develop a competitive or substantially similar product or service; (ii) copy or extract any features, functionality, or content thereof; (iii) launch or cause to be launched on or in connection with the Service Platform an automated program or script, including web spiders, crawlers, robots, indexers, bots, viruses or worms, or any program which may make multiple server requests per second, or unduly burden or hinder the operation and/or performance of the Service Platform; or (iv) attempt to gain unauthorized access to the Service Platform or its related systems or networks.

#### **5.3 Ownership.**

The Service Platform and Company Data, including all intellectual property rights are and shall remain (as between You and Company) the property of Company or its licensors. Neither this Agreement nor Your use of the Service Platform or Company Data conveys or grants to You any rights: (a) in or related to the Service Platform or Company Data, except for the limited license granted above; or (b) to use or reference in any manner Company's or its licensors' company names, logos, product and service names, trademarks, services marks or other indicia of ownership. Notwithstanding the foregoing, Company hereby grants You

the non-transferable, terminable, non-exclusive right to use the mark BABIERGE only during the term of this Agreement and only for the limited purpose of identifying Yourself as an Independent Trusted Partner. Your use of the BABIERGE mark shall at all times adhere to the Company's trademark guidelines, as posted on the Independent Trusted Partner wiki. Any violation of the Company's trademark guidelines shall be a material breach of this Agreement.

#### **5.4 Partner Data.**

The Service Platform permits You to submit, contribute, or make otherwise information available to other users of the Service Platform, including pictures, equipment inventory and pricing ("Partner Data"). Partner Data includes any data, information or material provided or submitted by You to Company in the course of using the Service Platform.

We do not claim any rights in any Partner Data You may submit or make available for inclusion on the Service Platform. You retain all rights, title and interest in Partner Data, and Company shall have no right, title, interest or responsibility in the same except as specified herein. By providing Partner Data to the Service Platform, You grant us a perpetual, irrevocable, worldwide, non-exclusive, transferable, sublicensable, fully paid-up and royalty-free license to use, copy, reproduce, process, adapt, modify, publish, transmit, display, and distribute such Partner Data in any and all media or distribution methods (now known or later developed) (collectively, "Content License"). The Content License continues even if You stop using the Service Platform. You warrant, represent, and agree that You have the right to grant to Company the Content License set forth above.

You shall indemnify, defend (at Company's option) and hold harmless Company from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, social contributions and taxes arising out of or related to the Content License or the Partner Data, including but not limited to its accuracy, quality, integrity, legality, reliability, appropriateness, and infringement of third party rights. Company reserves the right to withhold, remove and/or discard Partner Data, with or without reason, without any liability to You and without notice to You. Upon termination for cause, Your right to access or use the Service Platform, including any Partner Data as may be stored or displayed therein, shall immediately cease, and Company shall have no obligation to maintain, release, send or forward any Partner Data that may be stored or displayed on the Service Platform to You.

#### **6. Confidentiality**

- 6.1** Each party acknowledges that in the performance of this Agreement it may have access to or may be exposed to, directly or indirectly, confidential information of the other party ("Confidential Information"). Confidential Information includes the following which are acknowledged as being Company's Confidential Information: Company Data, Partner IDs, Customer Information and Transaction Fee percentages. Confidential Information also includes the transaction volume, marketing and business plans, business, financial, technical, operational and such other nonpublic information of each party that such party designates as being proprietary or confidential or of which the other party should reasonably know that it should be treated as confidential.
- 6.2** Each party acknowledges and agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party; (b) it shall not use Confidential Information of the other party for any purpose except in furtherance of this Agreement; (c) it shall not disclose Confidential Information of the other party to any third party, except to its employees, officers, contractors, agents and service providers ("Permitted Persons") as necessary to perform under this Agreement, provided Permitted Persons are bound in writing to obligations of confidentiality and non-use no less protective than the terms hereof; and (d) it shall return or destroy all Confidential Information of the disclosing party, upon the termination of this Agreement or at the request of the other party (subject to applicable law and, with respect to Company, its internal record-keeping requirements).
- 6.3** Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (a) is or becomes part of the public domain through no act or omission on the part of the receiving party; (b) was possessed by the receiving party prior to the date of this Agreement without an obligation of confidentiality; (c) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto; or (d) is required to be disclosed pursuant to law, court order, subpoena or governmental authority, provided the receiving party notifies the disclosing party thereof and provides the disclosing party a reasonable opportunity to contest or limit such required disclosure.

## **7. Privacy**

### **7.1 Disclosure of Your Information.**

Subject to applicable law and regulation, Company may, but shall not be required to, provide to You, a Customer, an insurance company and/or relevant authorities and/or regulatory agencies any information (including personal information such as information obtained about You through any background check, and any Company Data relating to You) about You or any Baby Equipment Rental Services provided hereunder if: (a) there is a complaint, dispute or conflict, including an accident, between You and a Customer; (b) it is necessary to enforce the terms of this Agreement; (c) it is required, in Company's sole discretion, by applicable law or regulatory requirements (e.g., Company receives a subpoena, warrant, or other legal process for information); or (d) it is necessary, in Company's sole discretion, to protect the safety, rights, property or security of Company, the Service Platform or any third party; to protect the safety of the public for any reason; to detect, prevent or otherwise address fraud, security or technical issues; and/or to prevent or stop activity Company, in its sole discretion, may consider to be, or to pose a risk of being, an illegal, unethical, or legally actionable activity).

### **7.2 Use of Personal Data.**

Company may collect Your personal data during the course of Your registering for, and use of, the Service Platform, which information may be stored, processed, and accessed by Company for business purposes, including for marketing, lead generation, service development and improvement, analytics, industry and market research, and such other purposes consistent with Company's legitimate business needs. By using the Service Platform, You agree that Company can collect and use such data in accordance with its Privacy Policy. The current version of Company's Privacy Policy may always be found at <http://www.babierge.com/privacypolicy>.

## **8. Representations and Warranties; Disclaimers**

### **8.1 By You.**

You hereby represent and warrant that: (a) You have full power and authority to enter into this Agreement and perform Your obligations hereunder; (b) You have not entered into, and during the term of this Agreement will not enter into, any agreement that would prevent You from complying with this Agreement; (c) You will comply with all applicable laws in Your performance of this Agreement, including holding and complying with all permits, licenses, registrations and other governmental authorizations necessary to provide Baby Equipment Rental Services; and (d) You will comply with all Equipment manufacturer documentation, safety and recall instructions and instructions for continued compliance with safety guidelines and laws.

If You are using the Service Platform on behalf of a company, You represent and warrant that:

(1) You have authority to bind the company, and (2) the company accepts the Terms of this Agreement.

### **8.2 Disclaimer of Warranties.**

COMPANY PROVIDES, AND YOU ACCEPT, THE SERVICE PLATFORM, INCLUDING, BUT NOT LIMITED TO, ALL FUNCTIONALITY, COMPANY DATA AND THE PAYMENT SERVICE THEREIN, ON AN "AS IS" AND "AS AVAILABLE" BASIS AND COMPANY HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES REGARDING THE SERVICE PLATFORM, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PURPOSE, NON-INFRINGEMENT OR OTHERWISE. COMPANY DOES NOT REPRESENT, WARRANT OR GUARANTEE THAT YOUR ACCESS TO OR USE OF THE SERVICE PLATFORM: (A) WILL BE UNINTERRUPTED OR ERROR FREE; OR (B) WILL RESULT IN ANY REQUESTS FOR BABY EQUIPMENT RENTAL SERVICES. COMPANY FUNCTIONS AS A LEAD GENERATION TOOL AND MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF THE USERS WHO MAY REQUEST OR RECEIVE BABY EQUIPMENT RENTAL SERVICES FROM YOU, AND COMPANY DOES NOT SCREEN OR OTHERWISE EVALUATE CUSTOMERS. BY USING THE SERVICE PLATFORM, YOU ACKNOWLEDGE AND AGREE THAT YOU MAY BE INTRODUCED TO A THIRD PARTY THAT MAY POSE HARM OR RISK TO YOU OR OTHER THIRD PARTIES. YOU ARE ADVISED TO TAKE REASONABLE PRECAUTIONS WITH RESPECT TO INTERACTIONS WITH THIRD PARTIES ENCOUNTERED IN CONNECTION WITH THE USE OF THE SERVICE PLATFORM. NOTWITHSTANDING COMPANY'S APPOINTMENT AS THE LIMITED PAYMENT COLLECTION AGENT OF YOU FOR THE PURPOSE OF ACCEPTING PAYMENT FROM CUSTOMERS ON YOUR BEHALF, COMPANY EXPRESSLY DISCLAIMS ALL LIABILITY FOR ANY ACT OR OMISSION OF YOU, ANY CUSTOMER OR OTHER THIRD PARTY.

### **8.3 No Service Guarantee.**

COMPANY DOES NOT GUARANTEE THE AVAILABILITY OR UPTIME OF THE SERVICE PLATFORM. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE PLATFORM MAY BE UNAVAILABLE AT ANY TIME AND FOR ANY REASON (E.G., DUE TO SCHEDULED MAINTENANCE OR NETWORK FAILURE). FURTHER, THE SERVICE PLATFORM MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES, LIABILITIES OR LOSSES RESULTING FROM SUCH PROBLEMS.

### **9. Indemnification.**

You shall indemnify, defend (at Company's option) and hold harmless Company and its respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, social contributions and taxes arising out of or related to: (a) Your breach of Your representations, warranties or obligations under this Agreement; (b) Your violation of any law or regulation; (c) a claim by a third party (including Customers, regulators and governmental authorities) directly or indirectly related to Your provision of Baby Equipment Rental Services or Your use of the Service Platform; or (d) the negligent act or omission, fraud or willful conduct of You, Your employees or agents or any third party representing Your interests or otherwise acting with Your approval or knowledge.

### **10. Limits of Liability.**

IN NO EVENT SHALL COMPANY BE LIABLE TO YOU FOR ANY OF THE FOLLOWING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (i) ANY INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND; OR (ii) YOUR OR ANY THIRD PARTY'S PROPERTY DAMAGE, OR LOSS OR INACCURACY OF DATA, OR LOSS OF BUSINESS, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE. EXCEPT FOR COMPANY'S OBLIGATIONS TO PAY AMOUNTS DUE TO YOU, BUT SUBJECT TO ANY LIMITATIONS OR OTHER PROVISIONS CONTAINED IN THIS AGREEMENT WHICH ARE APPLICABLE THERETO, IN NO EVENT SHALL THE LIABILITY OF COMPANY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF APPLICATION FEES ACTUALLY PAID TO OR DUE TO COMPANY HEREUNDER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

### **11. Term and Termination**

#### **11.1 Term.**

This Agreement shall commence on the date You first use the Service Platform and shall continue until terminated as set forth herein.

#### **11.2 Termination.**

Either party may terminate this Agreement: (a) without cause at any time upon thirty (30) days prior written notice to the other party; (b) immediately, without notice, for the other party's breach of this Agreement; (c) immediately, without notice, if You have not fulfilled a request for Baby Equipment Rental Services using the Service Platform within the past 30 days, (d) immediately, without notice, in the event of Your disparagement of Company, Your act or omission that causes harm to Company's brand, reputation or business as determined by Company in its sole discretion, or (d) immediately, without notice, in the event of the insolvency or bankruptcy of the other party, or upon the other party's filing or submission of request for suspension of payment (or similar action or event) against the terminating party. In addition, Company may terminate this Agreement, without notice, in the event You no longer qualify, under applicable law or the standards and policies of Company, to provide Baby Equipment Rental Services, or as otherwise set forth in this Agreement.

#### **11.3 Effect of Termination.**

Upon termination, Your right to use the Service Platform will immediately cease and Your Partner ID will be deactivated. All provisions of this agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability. Termination of Your access to and use of the Service Platform shall not relieve You of any obligations arising or accruing prior to such termination or limit any liability which You otherwise may have to Company, including without limitation any indemnification obligations contained herein.



#### **11.4 Suspension**

Company may, in its sole discretion, suspend your ability to use the Service Platform by suspending your Partner ID, without notice, in the event You no longer qualify, under applicable law or the standards and policies of Company, to provide Baby Equipment Rental Services, or as otherwise set forth in this Agreement. Company may, once it is satisfied that the default has been cured, restore your ability to use the Service Platform by reactivating your Partner ID. You may be required to provide Company with written assurances and correspondence from the applicable authorities to demonstrate that the default has been cured.

#### **12. Relationship of the Parties**

**12.1** Except as otherwise expressly provided herein with respect to Company acting as the limited payment collection agent solely for the purpose of collecting payment from Customers on Your behalf, the relationship between the parties under this Agreement is solely that of independent providers. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship, between Company and You; and (b) no joint venture, partnership, or agency relationship exists between Company and You.

**12.2** You have no authority to bind Company, nor may You hold yourself out as an employee, agent or authorized representative of Company. Where, by implication of mandatory law or otherwise, You may be deemed an agent or representative of Company, You agree to indemnify, defend (at Company's option) and hold Company harmless from and against any claims by any person or entity based on such implied agency or representative relationship.

**12.3** You are required to identify yourself as an independent provider of Baby Equipment Rental Services and as an unaffiliated user of the Service Platform.

#### **13. Miscellaneous Terms**

**13.1** Severability.

If any provision of this Agreement is or becomes invalid or non-binding, the parties shall remain bound by all other provisions hereof. In that event, the parties shall replace the invalid or non-binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.

**13.2** **Assignment.**

You shall not assign or transfer this Agreement or any of Your rights or obligations hereunder, in whole or in part, without the prior written consent of Company; provided that You may assign or transfer this Agreement in its entirety to an acquirer of all or substantially all of Your business, equity or assets provided that (i) You notify the Company in advance and provide all reasonable information requested by the Company regarding your intended assignee; (ii) Company, in its sole discretion, approves the assignee as an independent trusted partner; and (iii) the assignee and the Company enter into a written agreement substantially in the form as this Agreement.

**13.3** **Entire Agreement.**

This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter. In this Agreement, the words "including" and "include" mean "including, but not limited to."

**13.4** **No Third Party Beneficiaries.**

There are no third party beneficiaries to this Agreement. Nothing contained in this Agreement is intended to or shall be interpreted to create any third party beneficiary claims.

**13.5** **Notices.**

Any notice delivered by Company to You under this Agreement will be delivered by email to the email address associated with Your Partner ID or by posting on the portal available to You on the Service Platform. Any notice delivered by You to Company under this Agreement will be delivered by contacting Company by email at [kcouillard@babierge.com](mailto:kcouillard@babierge.com).

### **13.6 No Waiver**

The failure of Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Company in writing.

## **15. Governing Law; Arbitration**

### **15.1 Choice of Law.**

This Agreement shall be governed by the laws of the State of California, without regard to the choice of law or conflicts of law provisions of any jurisdiction. Both parties submit to the exclusive jurisdiction of the state and federal courts located in the State of California for enforcement of arbitral awards or for temporary or preliminary injunctive relief for the limited purpose of avoiding immediate and irreparable harm.

### **15.2 Dispute Resolution.**

In the event of any dispute or disagreement arising out of, relating to or in connection with this Agreement or Your use of the Service (a "Dispute"), the parties shall use their best efforts to resolve the Dispute by good faith negotiation and mutual agreement. The parties shall meet at a mutually convenient time and place to attempt to resolve any such Dispute.

In the event that the parties are unable to resolve any Dispute through negotiation, such parties shall first attempt to settle such Dispute through a non-binding mediation proceeding. In the event any party to such mediation proceeding is not satisfied with the results thereof, then any unresolved disputes shall be finally settled in accordance with a binding arbitration proceeding. In no event shall the results of any mediation proceeding be admissible in any arbitration or judicial proceeding.

- (a) Mediation. Mediation proceedings shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA") in effect on the date the notice of mediation was served, other than as specifically modified herein, and shall be non-binding on the parties thereto.

Any party may commence a mediation proceeding by serving written notice thereof to the other parties, by mail or otherwise, designating the issue(s) to be mediated and the specific provisions of this Agreement under which such issue(s) and dispute arose. The initiating party shall simultaneously file two copies of the notice with the AAA, along with a copy of this Agreement. A party may withdraw from the Dispute by signing an agreement to be bound by the results of the mediation, to the extent the mediation results are accepted by the other parties as provided herein. A party who withdraws shall have no further right to participate in the Dispute.

The parties shall select one neutral third party AAA mediator (the "Mediator") with expertise in the area that is in dispute. If a Mediator has not been selected within five (5) business days thereafter, then a Mediator shall be selected by the AAA in accordance with the Commercial Mediation Rules of the AAA.

The Mediator shall schedule sessions, as necessary, for the presentation by all parties of their respective positions, which, at the option of the Mediator, may be heard by the Mediator jointly or in private, without any other members present. The mediation proceeding shall be held in San Francisco, California or such other place as agreed by the Mediator and all of the parties. The parties may submit to the Mediator, no later than ten (10) business days prior to the first scheduled session, a brief memorandum in support of their position.

The Mediator shall make written recommendations for settlement in respect of the Dispute, including apportionment of the mediator's fee, within ten (10) business days of the last scheduled session. If any party involved is not satisfied with the recommendation for settlement, he may commence an arbitration proceeding.

- (b) Arbitration. Binding arbitration proceedings shall be conducted under the Rules of Commercial Arbitration of the AAA (the "Rules"). A party may withdraw from the Dispute by signing an agreement to be bound by the results of the arbitration. A party who withdraws shall have no further right to participate in the Dispute.

The arbitration panel shall consist of one arbitrator. The parties shall select one neutral third party AAA arbitrator (the "Arbitrator") with expertise in the area that is in dispute. If an Arbitrator has not been selected within five (5) business days thereafter, then an Arbitrator shall be selected by the AAA in accordance with the Commercial Arbitration Rules of the AAA. The arbitration proceeding shall be held in San Francisco,

California or such other place as agreed by the Arbitrator and all of the Members. Any arbitrator who is selected shall disclose promptly to the AAA and to both parties any financial or personal interest the arbitrator may have in the result of the arbitration and/or any other prior or current relationship, or expected or discussed future relationship, with the parties or their representatives. The arbitrator shall promptly conduct proceedings to resolve the dispute in question pursuant to the then existing Rules. To the extent any provisions of the Rules conflict with any provision of this Section, the provisions of this Section shall control.

In any final award and/or order, the arbitrator shall apportion all the costs (other than attorney's fees which shall be borne by the party incurring such fees) incurred in conducting the arbitration in accordance with what the arbitrator deems just and equitable under the circumstances. The parties agree that the results of the arbitration shall be binding and non-appealable.

Discovery shall not be permitted in such arbitration except as allowed by the rules of arbitration, or as otherwise agreed to by all the parties of the Dispute. Notwithstanding, the parties agree to make available to one another and to the arbitrator, for inspection and photocopying, all documents, books and records, if determined by the arbitration panel to be relevant to the Dispute, and by making available to one another and to the arbitration panel personnel directly or indirectly under their control, for testimony during hearings if determined by the arbitration panel to be relevant to the Dispute. The parties agree, unless undue hardship exists, to conduct arbitration hearings to the greatest extent possible on consecutive business days and to strictly observe time periods established by the Rules or by the Arbitrator for the submission of evidence and of briefs. Unless otherwise agreed to by the parties, a stenographic record of the arbitration proceedings shall be made and a transcript thereof shall be ordered for each party, with each party paying an equal portion of the total cost of such recording and transcription.

The Arbitrator shall have all powers of law and equity, which it can lawfully assume, necessary to resolve the issues in dispute including, without limiting the generality of the foregoing, making awards of compensatory damages, issuing both prohibitory and mandatory orders in the nature of injunctions and compelling the production of documents and witnesses for presentation at the arbitration hearings on the merits of the case. The arbitration panel shall neither have nor exercise any power to act as amiable compositeur or ex aequo et bono; or to award special, indirect, consequential or punitive damages. The decision of the arbitration panel shall be final and in written form and state the reasons upon which it is based. The statutory, case law and common law of the State of California shall govern in interpreting their respective rights, obligations and liabilities arising out of or related to the transactions provided for or contemplated by this Agreement, including without limitation, the validity, construction and performance of all or any portion of this Agreement, and the applicable remedy for any liability established thereunder, and the amount or method of computation of damages which may be awarded, but such governing law shall not include the law pertaining to conflicts or choice of laws of California.

Any action or proceeding subsequent to enforce an Award rendered by the arbitrator in the Dispute shall be filed in a court of competent jurisdiction in the same county where the arbitration of the Dispute was conducted, and California law shall apply in any such subsequent action or proceeding.

The parties agree to participate in the arbitration in good faith. This Section applies equally to requests for temporary, preliminary or permanent injunctive relief, except that in the case of temporary or preliminary injunctive relief any party may proceed in court without prior arbitration for the limited purpose of avoiding immediate and irreparable harm.