

BabyQuip Affiliate Program Terms

Updated Dec 2020

Please read these BabyQuip Affiliate Program Terms (these "Terms") carefully. They govern our relationship and contain important information about your legal rights, remedies, and obligations. By becoming a BabyQuip Affiliate, you agree to comply with and be bound by these Terms.

We may change these Terms from time to time to reflect changes in the way we do business or changes in the law. If you continue to use the Affiliate Link (defined below) after changes to these Terms go into effect, you will be deemed to have agreed to those changes. If we make any material changes to these Terms, we will notify you of those changes at least 30 days before they go into effect.

1. Links to BabyQuip Site

- 1.1 **BabyQuip Assets.** BabyQuip will provide you with the BabyQuip logo, service descriptions, offers, taglines, and other artwork and marketing assets (the "BabyQuip Assets"). You may include the BabyQuip Assets on the websites, mobile websites, mobile applications or other online services that you own or operate (the "**Affiliate Sites**").
- 1.2 **Affiliate Link.** You will be given a unique tracking url (the "**Affiliate Link**") directing users to the BabyQuip website located at www.BabyQuip.com, www.Cleaning.BabyQuip.com or any successor website (the "**BabyQuip Site**"). The Affiliate Link will include tracking technology necessary for BabyQuip to identify you as the origin of any sale of BabyQuip services to users of the Affiliate Sites for revenue sharing purposes.
- 1.3 **Updates.** If BabyQuip updates the BabyQuip Assets, we will promptly provide the updated BabyQuip Assets to you and you will promptly replace the BabyQuip Assets on the Affiliate Sites.
- 1.4 **Limitations.** You will not: (a) in any way suggest that BabyQuip is endorsing any products or services other than BabyQuip's own products and services; (b) misrepresent the relationship between us or present any false information about BabyQuip; (c) except as specifically provided in these Terms, use any BabyQuip trade names, trademarks, or service marks without the prior written approval from BabyQuip; (d) link to the BabyQuip Site through any non-Affiliate Site or mirrored website; or (e) bid on any search engine keyword or term containing the word "BabyQuip", "BabyQuip Cleaning", "Babierge", "baby gear rental", "crib rental", "car seat rental", "stroller rental", "toy rental", "high chair rental", "pack n play rental", including any misspellings, variations, combinations or derivatives thereof, or any future brand names BabyQuip may use.
- 1.5 **Affiliate Dashboard.** You will have access to an affiliate dashboard on the BabyQuip Site where you will find your Affiliate Link, the BabyQuip Assets, a link to a PayPal account to be used for revenue sharing purposes, various reports and more. You will set up a user ID and password that enables you to access and use the Affiliate Dashboard in accordance with these Terms. You may access and use the Affiliate Dashboard solely for purposes of participating in the BabyQuip Affiliate Program and only so long as you are participating in the BabyQuip Affiliate Program. You will be fully responsible for all activity conducted through your Affiliate Dashboard account. You agree to maintain your user ID and password in confidence and to immediately notify us of any actual or suspected improper use of your user ID and password. We

may suspend your ability to access and use the Affiliate Platform, without notice and without liability to you, if we believe you are not in compliance with these Terms.

2. Revenue Share

- 2.1 **Revenue Share.** For each Affiliate Site user who clicks through to a BabyQuip Site via your Affiliate Link and subsequently makes a baby gear rental reservation or a cleaning appointment, BabyQuip will pay you 10% of the Order Revenue (the "**Revenue Share**") so long as (a) the user makes a baby gear rental reservation or cleaning appointment within 30 days after the latest click through and (b) the user has not clicked through from any other BabyQuip affiliate site more recently than the latest click through from the Affiliate Site. For purposes of the Revenue Share, the "Order Revenue" means the amount actually received by us from the user in connection with the completed order, not including any taxes or tips. We may, from time to time, offer special incentives, like increased Revenue Share or promotional codes, to some or all of our affiliates.
- 2.2 **Reporting and Payment.** Within 7 days after the end of a reservation or appointment, BabyQuip will make your Revenue Share available via withdrawal to a PayPal account in the Affiliate Dashboard. Revenue Shares will be determined by us based upon the conversions recorded on the BabyQuip system via your Affiliate Link.
- 2.3 **Taxes.** You are responsible for any applicable sales, use, duty, VAT, or excise tax arising from the transactions contemplated by these Terms, except for taxes based on BabyQuip's income.
- 2.4 **No Guarantee.** BabyQuip makes no guarantee to you that inclusion of the BabyQuip Assets on the Affiliate Sites will result in click-throughs to the BabyQuip Site or generate Order Revenue.

3. Marketing of Relationship

BabyQuip may include your name, logo, trade names, trademarks and service marks ("**Affiliate Marks**") on the BabyQuip Sites and on BabyQuip marketing materials.

4. Close of the Affiliate Relationship

- 4.1 When you indicate your agreement to these BabyQuip Affiliate Program Terms, you agree to participate in the BabyQuip Affiliate Program as an affiliate. BabyQuip makes the affiliate program available to you at our discretion. We may discontinue your participation in the affiliate program, or the affiliate program altogether, at any time, for any reason, by providing written notice to you via the Affiliate Dashboard. Likewise, you may discontinue participation in the affiliate program at any time, for any reason, by providing written notice to us.
- 4.2 Upon termination of your participation in the affiliate program: (a) BabyQuip will pay any Revenue Share validly earned through and including the effective date of termination; (b) you will immediately remove the BabyQuip Assets and your Affiliate Link from all Affiliate Sites; and (c) each of the parties will return to the other party any Confidential Information of the other party then in its possession. Sections 8 (Confidentiality), 9 (Limitations on Liability and Indemnification), and 10 (Miscellaneous) and any other provisions that by their nature should survive will survive termination of your participation in the affiliate program.

5. Intellectual Property

- 5.1 **BabyQuip Assets and BabyQuip Site.** BabyQuip owns all right, title and interest in and to the BabyQuip Assets and the BabyQuip Site, including any intellectual property rights therein. BabyQuip grants to you a non-exclusive, non-transferable, non-sublicenseable, worldwide, fully-paid license to use and display the BabyQuip Assets as set forth in these Terms. You will comply with any written guidelines for use

of the BabyQuip Assets that we provide. All goodwill associated with the use of the BabyQuip Assets will inure to our benefit.

- 5.2 **Affiliate Marks and Affiliate Site.** You own all right, title and interest in and to the Affiliate Marks and the Affiliate Sites, including any intellectual property rights therein. You grant BabyQuip a non-exclusive, non-transferable (except as expressly set forth in these Terms), non-sublicenseable, worldwide, fully-paid license to use and display the Affiliate Marks as set forth in these Terms. We will comply with any written guidelines for use of the Affiliate Marks that you provide. All goodwill associated with the use of the Affiliate Marks will inure to your benefit.

6. Representations and Warranties

- 6.1 **Mutual Representations.** Each party represents and warrants to the other party that: (a) it has the full corporate right, power and authority to enter into these Terms and to perform its obligations hereunder; (b) the performance by it of its obligations hereunder do not and will not violate any agreement to which it is a party or by which it is otherwise bound; (c) these Terms constitute the legal, valid and binding obligation of it, enforceable against it in accordance with its terms; (d) it acknowledges that the other party makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in these Terms; and (e) it possesses all authorizations, approvals, consents, licenses, permits, certificates or other rights and permissions necessary to grant the rights granted by it under these Terms and to perform its obligations under these Terms.
- 6.2 **BabyQuip Representations.** BabyQuip represents and warrants to you that (a) neither the BabyQuip Assets nor your Affiliate Link violates or infringes the intellectual property rights of any third party; (b) the BabyQuip Site does not include any content that may reasonably be considered obscene, defamatory, harassing, offensive, malicious, or liable to incite violence, racial hatred or acts of terrorism; and (c) its activities pursuant to these Terms and the BabyQuip Site will comply with all applicable laws, rules, and regulations.
- 6.3 **Affiliate Representations.** You represent and warrant to BabyQuip that (a) neither the Affiliate Marks nor the Affiliate Sites violate or infringe the intellectual property rights of any third party; (b) the Affiliate Sites (i) do not include any content that may reasonably be considered obscene, defamatory, harassing, offensive, malicious, or liable to incite violence, racial hatred or acts of terrorism; (ii) each post a privacy policy that discloses that tracking technologies from third parties may be present on the Affiliate Sites and otherwise provides adequate notice of the activities contemplated by these Terms; and (iii) comply with all applicable laws, rules, and regulations.
- 6.4 **The BabyQuip Assets, Affiliate Link, and the Affiliate Dashboard are provided "as is" to the fullest extent permitted by law. Except as specifically set forth in these Terms, BabyQuip disclaims all express or implied warranties, including warranties of satisfactory quality and fitness for a particular purpose. The performance of the Affiliate Link and the Affiliate Dashboard rely on third parties beyond BabyQuip's control. BabyQuip specifically disclaims any warranty that the use or operation of the Affiliate Dashboard and Affiliate Link will be uninterrupted or error-free, the Affiliate Link accurately records click-throughs at all times, or the Affiliate Dashboard and Affiliate Link are free of viruses or malicious code.**

7. Confidentiality

- 7.1 **Confidential Information.** "Confidential Information" means any information relating to or disclosed in the course of our relationship, which is or should reasonably be understood to be confidential or proprietary to the disclosing party, including, but not limited to, the material terms of these Terms, information in any reporting,

technical processes and formulas, source codes, product designs, sales, cost and other financial information, product and business plans, projections, and marketing data.

- 7.2 **Obligations with Respect to Confidential Information.** Each party agrees: (a) to protect and safeguard the other party's Confidential Information against unauthorized use, publication or disclosure with the same degree of care that it uses to protect the confidentiality of its own Confidential Information and, in any event, not less than reasonable care; (b) to restrict access to the other party's Confidential Information to those of its officers, directors, employees, agents, attorneys, accountants, investment advisors, and contractors who have a need to know and who have confidentiality obligations that afford the Confidential Information a substantially similar level of protection as is afforded by these Terms; and (c) not to use, or permit others to use, the other party's Confidential Information except as is reasonably necessary to perform its obligations or exercise its rights under these Terms.
- 7.3 **Limitations on Obligations.** The obligations set forth above do not apply to information that: (a) is already known to the receiving party without restriction on use or disclosure at the time of communication to the receiving party; (b) is or becomes publicly known through no wrongful act or inaction of the receiving party; (c) has been rightfully received from a third party authorized to make such communication, without restriction on use or disclosure; or (d) has been independently developed by the receiving party without use of the Confidential Information of the other party. Notwithstanding any other provision of these Terms, a party may disclose Confidential Information of the other party if such disclosure is required by an order of a court or other governmental authority, law or regulation, but only to the extent that any such disclosure is necessary and after notice to the other if practicable. In such case, the party required to make the disclosure will, at the other party's expense, assist the other party in obtaining an order protecting the Confidential Information from public disclosure, or in otherwise minimizing and limiting the breadth and scope of such disclosure.
- 7.4 **Equitable Relief.** Each of us understands and acknowledges that any disclosure or misappropriation of any of the other's Confidential Information in violation of these Terms may cause irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the disclosing party will have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the disclosing party deems appropriate. Such right of the disclosing party will be in addition to the remedies otherwise available to the disclosing party at law or in equity.

8. Limitations on Liability and Indemnification

- 8.1 **No Indirect Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS, LOST DATA, OR LOSS OF GOODWILL, OR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THESE TERMS. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- 8.2 **Cap on Liability.** EXCEPT IN CONNECTION WITH (A) BREACH OF A PARTY'S OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION, (B) A PARTY'S OBLIGATION TO INDEMNIFY THE OTHER PARTY UNDER THESE TERMS OR (C) A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, IN NO EVENT WILL EITHER PARTY'S LIABILITY UNDER THESE TERMS EXCEED THE AMOUNT PAID BY BABYQUIP TO YOU IN THE SIX MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION RELATING TO THE LIABILITY AROSE.

- 8.3 **Indemnification.** Each party will indemnify, defend, and hold the other party, and its affiliates, employees, representatives, agents, directors, officers, managers, and shareholders, harmless from and against any damages, losses, costs, settlements, judgments, awards, fines, penalties, interest, liabilities, or expenses (including without limitation, reasonable attorneys' fees and disbursements and court costs) (collectively, "Liability") incurred in connection with any third-party claim, demand, or action (collectively, "Claim") arising out of or relating to: (a) any actual or alleged breach of these Terms by that party; (b) any actual or alleged fraud, misrepresentation, or violation of applicable laws, rules or regulations by that party; (c) in the case of BabyQuip, the offering or provision of its services or the BabyQuip Site; (d) in the case of you, the offering or provision of any product or service or the Affiliate Sites. If a party becomes aware of a Claim for which it is indemnified by the other party, it will promptly notify the indemnifying party of the Claim (provided that failure to promptly notify the indemnifying party will relieve it of its indemnification obligations only to the extent that such failure has materially prejudiced its defense of the Claim). The indemnified party may, at its own expense, retain counsel to participate in the defense and disposition of the Claim. The indemnifying party may not settle, compromise, or in any other manner dispose of any Claim without the consent of the indemnified party, which will not be unreasonably withheld or delayed.

9. Miscellaneous

- 9.1 **Force Majeure.** No failure or omission by either party to carry out or observe any term of these Terms will give rise to any claim against the other party, or be deemed a breach of these Terms, if the failure or omission arises from causes beyond the that party's reasonable control, including without limitation, earthquake, flood, fire, or other natural disasters, acts of God, acts of civil or military authority, government priorities, labor controversy, civil disturbance, terrorism, epidemics, quarantine, energy crises, war, riots.
- 9.2 **Independent Contractors.** The parties are independent contractors. Neither party is an agent, representative or employee of the other party. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party.
- 9.3 **Expenses.** Each party will be responsible for any expenses incurred by it in connection with the performance of its obligations under these Terms.
- 9.4 **Feedback.** You may provide us with comments, suggestions, enhancement requests, recommendations or other feedback arising out of your experience (collectively "Feedback"). If you do provide Feedback, you assign to us all right, title, and interest, including any intellectual property rights therein, and agree not to assert any "moral rights", in and to the Feedback. Further, you understand and acknowledge that we will own all right, title and interest, including intellectual property rights therein, in and to any enhancements to the Service Platform or other services offered by us or any of our affiliates, or any new services developed by us or any of our affiliates, based upon or otherwise incorporating your Feedback
- 9.5 **Notice.** Notices will be considered given upon the date of delivery by email if receipt is confirmed electronically or in writing. Notices can also be sent by an overnight delivery service (confirmed by a signed receipt), by certified mail (return receipt requested), or by personal delivery (confirmed in writing by the deliverer), in which case, notice will be considered given as of the date on which confirmation of receipt is made.
- 9.6 **Entire Agreement; Amendment; No Waiver.** These Terms set forth the entire agreement and supersedes any and all prior agreements of the parties with respect to the transactions set forth herein. The failure of either party to insist upon or enforce strict performance by the other party of any provision of these Terms or to exercise any right under these Terms will not be construed as a waiver or relinquishment to

any extent of such party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same will be and remain in full force and effect.

- 9.7 **Assignment.** Neither party may assign its rights or obligations, in whole or in part, under these Terms without the other party's prior written consent, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, BabyQuip may assign its rights and obligations hereunder, without your consent, to a third party in the event of any sale, assignment, transfer or other conveyance to such third party of all or substantially all of the business or assets of BabyQuip. These Terms will be fully binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assigns.
- 9.8 **Construction; Severability.** In the event that any provision of these Terms conflicts with the law under which these Terms are to be construed or if any such provision is held invalid by a court with jurisdiction over the parties (a) the provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms will remain in full force and effect.
- 9.9 **Applicable Law; Venue.** Except as otherwise expressly provided herein, these Terms will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California, except for its conflicts of laws principles. All controversies and claims arising out of these Terms will be resolved as set forth in Section 10, with all proceedings conducted in Santa Fe County, New Mexico.

10. Dispute Resolution

Step 1: Amicable Resolution

In the event of any dispute or disagreement arising out of, relating to or in connection with these Terms or your participation in the BabyQuip Affiliate Program, the parties will use their best efforts to resolve the dispute by good faith negotiation and mutual agreement. If the parties are unable to resolve any dispute through negotiation, the parties will first attempt to settle the dispute through a nonbinding mediation proceeding. In the event any party to such mediation proceeding is not satisfied with the results thereof, then any unresolved disputes will be finally settled in accordance with a binding arbitration proceeding. In no event will the results of any mediation proceeding be admissible in any arbitration or judicial proceeding.

Step 2: Non-binding Mediation

Mediation proceedings will 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 will be nonbinding 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 issues to be mediated and the specific provisions of these Terms under which the issues and dispute arose. The initiating party will simultaneously file two copies of the notice with the AAA, along with a copy of these Terms. 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 will have no further right to participate in the dispute.

The parties will select one neutral third party AAA mediator with expertise in the area that is in dispute. If a mediator has not been selected within ten (10) business days after receipt by the non-initiating party of the notice of mediation, then a mediator will be selected by the AAA in accordance with the Commercial Mediation Rules of the AAA.

The mediator will 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 will be held in San Francisco, California, or such other place as agreed by the mediator and all of the parties. Each of 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 will 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, that party may commence an arbitration proceeding.

Step 3: Binding Arbitration

Binding arbitration proceedings will 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 will have no further right to participate in the dispute.

The arbitration panel will consist of one arbitrator. The parties will 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 ten (10) business days after receipt by the non-initiating party of the notice of arbitration, then an Arbitrator will be selected by the AAA in accordance with the Commercial Arbitration Rules of the AAA. The arbitration proceeding will be held in San Francisco, California or such other place as agreed by the arbitrator and all of the parties. Any arbitrator who is selected will 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 will 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 10, the provisions of this Section 10 will control.

In any final award and/or order, the arbitrator will apportion all the costs (other than attorney's fees which will 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 will be binding and non-appealable.

Discovery will not be permitted in such arbitration except as allowed by the Rules, or as otherwise agreed to by all the parties. 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 will be made and a transcript thereof will be ordered for each party, with each party paying an equal portion of the total cost of such recording and transcription.

The arbitrator will 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 arbitrator will 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 arbitrator will be final and in written form and state the reasons upon which it is based. The parties agree to participate in the arbitration in good faith.

Step 4: Enforcement of Award

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