

# **Terms of Service**

## **Amigo Baby Website and Mobile Application**

### **Acceptance of Terms**

By using the Amigo Baby Client Management System website (the "Website"), the related mobile application (the "Mobile Application"), and/or the Services you agree to be bound by these Terms of Service (this "Agreement").

Amigo Baby may modify this Agreement at anytime and such modification shall be effective upon the posting of the revised Agreement on the Website. You agree to be bound to any changes to this Agreement when you use the Website, Mobile Application or Service after any such modification is posted on the Website.

### **Description of Services**

Amigo Baby Inc. ("Amigo Baby") provides a web-based platform and mobile application related to Amigo Baby's infant and child development programs. The Amigo Baby Client Management System allows our administrative staff, licensed therapists, early interventionists, either employed or working as independent contractors, and service coordinators from referring government agencies to track, record, report and organize in real time the treatment plans, record keeping and governmental reporting necessary to provide Amigo Baby's infant and child development programs (the "Services").

### **Use of Services of Website and Mobile Application**

The Website and Mobile Application may not be used in connection with any commercial endeavors except those that are permitted by this Agreement or specifically endorsed or approved in writing by Amigo Baby. Illegal and/or unauthorized use of the Website or Mobile Application, including, but not limited to, collecting names, email addresses, or any other personally identifiable information for the purpose of sending unsolicited email or other solicitations, or unauthorized framing of or linking to the Website is prohibited and will be investigated. Commercial advertisements, affiliate links, and other forms of solicitation are also prohibited. Appropriate legal action will be taken by Amigo Baby for any illegal or unauthorized use of the Website or Mobile Application.

You must use the Website, Mobile Application and the Services in a manner consistent with any and all applicable laws and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPPA).

This Agreement includes Amigo Baby's Privacy Policy which is incorporated here by reference (the "Privacy Policy").

## **User Eligibility and Responsibility**

In order to use the Website, Mobile Application and Services, you will be required to create an account and become a registered user. Your user profile will include the following items: the type of user that you are (i.e., therapists, early interventionists, service coordinators and administrative staff), your name and password, license information (if applicable), telephone numbers, e-mail address, mailing address and other background information that we determine is necessary in our sole and absolute discretion.

The Website and Mobile Application is only available to (i) administrative staff, licensed therapists and early interventionists who are employees or independent consultants for Amigo Baby and (ii) representatives of the authorizing government agency. If applicable, you agree to provide Amigo Baby with proper documentation establishing your license within five (5) business days of any written request from Amigo Baby, and you further agree to contact Amigo Baby in writing should your license be revoked or suspended for any reason or should you become aware that you can no longer comply with the terms of this paragraph.

Use of the Website, Mobile Application and Services are solely for your approved use, and you shall not authorize others to use your account in any way. Amigo Baby will not be responsible for any losses that you may suffer as a result of any unauthorized use of your account or should your password become known to any third party, and you agree to indemnify and defend Amigo Baby, including reasonable attorney fees, from any claim or damage arising from your negligent or intentional disclosure of your password. You will immediately notify Amigo Baby should your password be compromised in any way.

Use of the Mobile Application includes the ability to use GPS tracking to determine the location and time that the Mobile Application is used. You agree to this tracking and will not make any attempt to circumvent or otherwise disable this feature of the Mobile Application.

## **No Unlawful or Prohibited Use**

As a condition of your use of the Services, you will not use the Services for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the Services in any manner that could damage, disable, overburden, or impair any Amigo Baby server, or the network(s) connected to any Amigo Baby server, or interfere with any other party's use and enjoyment of any Services. You may not attempt to gain unauthorized access to any Services, other accounts, computer systems or networks connected to any Amigo Baby server or to any of the Services, through hacking, password mining or any other means. You may not

obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services. You may not attempt to copy or change, alter, or otherwise attempt to modify the Services or this Agreement.

## **Term and Termination**

This Agreement shall remain in full force and effect while you use the Website, the Mobile Application, and/or the Services.

Amigo Baby, in its sole and absolute discretion, may terminate or otherwise restrict your use of the Website, Mobile Application or Services at any time and for any reason, effective upon sending notice to you at the email address you provide at the time of registration or such other email address as you may subsequently provide to Amigo Baby through an update to your profile.

## **Confidential Client Information**

You agree that your use of the Website, Mobile Application and Services will include your obtaining and/or having access to private personal and health related information regarding clients and their families who utilize the infant and child developmental programs offered by Amigo Baby. As such, you understand that information which you may come into contact with and/or be responsible for in relation to clients must remain confidential and is governed by the Health Insurance Portability and Accountability Act (HIPPA). Recognizing this responsibility, you agree to the following:

i. You will access client records only as required to perform your assigned duties.

ii. You will not access client information that is not necessary to carry out your job. This includes the records of your children, spouse, significant other, parents, other relatives, friends and acquaintances.

iii. You will store information that you gather or obtain using the Website, Mobile Application or Services, including your password for the Website and Mobile Application, under secure conditions and make every effort to ensure an individual's privacy.

iv. You will not divulge, copy, release, sell, loan, review, alter or destroy records except as properly authorized by the appropriate Amigo Baby official within the scope of applicable state or federal laws, record retention schedules and internal policies of Amigo Baby.

v. You will forward requests for information via an open records request to the Amigo Baby president for guidance. You will not release information covered by these requests until instructed to by Amigo Baby's president.

## **User Representation and Warranties**

By using the Website, Mobile Application and the Services you represent and warrant that all registration information you submit is truthful and accurate, that you agree to maintain the accuracy of such information, and that any client information or other information obtained by you and provided by you through the Website, Mobile Application or Services is truthful and accurate and that any such information is submitted/provided by you under penalty of perjury.

You represent and warrant that you will only use the Website, Mobile Application and Services in conformance with the terms of service set forth herein.

You represent and warrant that you will have obtained the necessary HIPPA or other legal authorizations from any client or guardian before providing or otherwise using any personally identifiable information or health records of a client with the Website, Mobile Application or Services, and that you are otherwise in compliance with HIPPA and other applicable laws.

You represent and warrant that all services provided by you are offered and provided without discrimination based on race, religion, color, national or ethnic origin, sex, sexual orientation, age or physical or mental disability.

You acknowledge that payment for services provided through the Website or Mobile Application will be from federal and/or state funds and any falsification or concealment of a material fact may be prosecuted under federal and/or state laws.

## **Amigo Baby Ownership and Proprietary Rights**

Amigo Baby owns and retains all proprietary rights in the Website, Mobile Application and the Services. The Website, Mobile Application, and Services contain copyrighted material, trademarks, and other proprietary information of Amigo Baby and its licensors. Except for that information which is in the public domain or for which you have been given written permission to use, you may not use, copy, modify, publish, transmit, distribute, perform, display, reverse engineer or sell any such proprietary information in anyway.

You agree that any information you obtain, upload or store on the Amigo Baby servers in connection with your use of the Website, Mobile Application or Services

shall be retained, owned and controlled by Amigo Baby, subject to all applicable laws and regulations.

You acknowledge that Amigo Baby: (1) permits access to content that is protected by copyrights, trademarks, patents and other intellectual and proprietary rights (“Intellectual Property Rights”) and; (2) this Agreement and applicable copyright, trademark and other laws govern your use of such content. The Website, Mobile Application, and Services and all Intellectual Property Rights related thereto are the exclusive property of Amigo Baby and its licensors. Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publish, adapt, edit or create derivative works from any Amigo Baby Website, Mobile Application, or Services. Use of the Amigo Baby Website, Mobile Application, or Services for any purpose not expressly permitted by this Agreement is strictly prohibited.

## **Disclaimer**

Amigo Baby is not responsible for any incorrect or inaccurate content posted on the Website or provided in connection with the Services or use of the Mobile Application, whether caused by users of the Website or Mobile Application or by any of the equipment or programming associated with or utilized in the Website, Mobile Application or Services. Amigo Baby assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, any user communication, information or posting of content to the Website. Amigo Baby is not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of any email or players or at any Website or combination thereof, including any injury or damage to users and/or clients or to any person's computer related to or resulting from participation or downloading materials in connection with the Website, the Mobile Application and/or in connection with the Services. Under no circumstances shall Amigo Baby be responsible for any loss or damage, including personal injury or death, resulting from use of the Website, the Mobile Application or the Services or from any Content posted on the Website. The Website and the Service are provided "AS-IS" and Amigo Baby expressly disclaims any warranty of fitness for a particular purpose or non-infringement. Amigo Baby cannot guaranty and does not promise any specific results from use of the Website, the Mobile Application and/or the Services.

## **Discontinuance or Modifications to Our Website, Mobile Application, and Services**

At any time without liability to you or any third party, we may discontinue, terminate, suspend change, or make modifications to the Website, Mobile Application, Services, or any portion thereof and/or otherwise restrict access to our Website, Mobile Application, or Services.

## **Limitation of Liability**

IN NO EVENT SHALL AMIGO BABY, ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE WEBSITE, THE MOBILE APPLICATION OR THE SERVICES, EVEN IF AMIGO BABY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL AMIGO BABY, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, SERVANTS, CONTRACTORS, AFFILIATES, LICENSORS, PARENTS, SUBSIDIARIES, SHAREHOLDERS, OWNERS, MEMBERS OR ANY OTHER AFFILIATED COMPANIES, ENTITIES OR PERSONS BE LIABLE UNDER ANY THEORY OF LIABILITY, INCLUDING UNDER CONTRACT, TORT, NEGLIGENCE OR OTHERWISE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, OUR WEBSITE, APPLICATION, SERVICES, OR ANY INFORMATION, MATERIALS, GOODS AND SERVICES PROVIDED BY OUR AFFILIATES, LICENSORS, USERS OR OTHER THIRD PARTIES, EVEN IF WE ARE ADVISED BEFORE HAND OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL AMIGO BABY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF OUR WEBSITE, APPLICATION, OR SERVICES OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

WITH RESPECT TO OUR WEBSITE, APPLICATION, SERVICES, AND ANY INFORMATION, MATERIALS, GOODS AND SERVICES PROVIDED BY OUR

AFFILIATES, LICENSORS, USERS OR OTHER THIRD PARTIES AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AMIGO BABY, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, SERVANTS, CONTRACTORS, AFFILIATES, LICENSORS, PARENTS, SUBSIDIARIES, SHAREHOLDERS, OWNERS, MEMBERS OR ANY OTHER AFFILIATED COMPANIES, ENTITIES OR PERSONS SHALL NOT BE LIABLE FOR ANY (I) ERRORS, MISTAKES, OMISSIONS OR INACCURACIES ; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR WEBSITE, APPLICATION, SERVICES, OR ANY INFORMATION, MATERIALS, GOODS AND SERVICES PROVIDED BY OUR AFFILIATES, LICENSORS, USERS OR OTHER THIRD PARTIES; (III) UNAUTHORIZED ACCESS TO OR USE OF SERVERS WE USE AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVERS WE USE; (V) BUGS, VIRUSES, TROJAN HORSES, SPYWARE OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SERVERS WE USE BY ANY THIRD PARTY; (VI) LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF OUR WEBSITE, APPLICATION, SERVICES, OR ANY INFORMATION, MATERIALS, GOODS AND SERVICES PROVIDED BY OUR AFFILIATES, LICENSORS, USERS OR OTHER THIRD PARTIES AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL AMIGO BABY, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, SERVANTS, CONTRACTORS, AFFILIATES, LICENSORS, PARENTS, SUBSIDIARIES, SHAREHOLDERS, OWNERS, MEMBERS OR ANY OTHER AFFILIATED COMPANIES, ENTITIES OR PERSONS BE LIABLE TO YOU FOR ANY CLAIMS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO AMIGO BABY HEREUNDER OR \$100.00, WHICHEVER IS GREATER. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **Indemnity**

In addition to any other obligation set forth herein, you agree to indemnify, defend and hold Amigo Baby, its subsidiaries, affiliates, officers, directors, agents, and other partners and employees, harmless from any and all, claims, actions, suits, demands, damages, obligations, losses, liabilities, costs or debts, and expenses, including but not limited to attorney's fees and costs (collectively "Claims"), made by any third party, due to or arising out of your use of the Website, the Mobile Application or the Services in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth in this Agreement.

This is including, but not limited to Claims arising out of or relating to your use of and access to our Website, Mobile Applications, or Services, including any data, content or material provided or received by you; your violation of any term of this Agreement, including without limitation your breach of any representations and warranties herein; your violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; your violation of any applicable law, rule or regulation; any Claim that arises as a result of any of your User information or any that is submitted via your account; any other party's access and use of our Website, Mobile Application, or Services with your unique username, password or other appropriate security code.

## **Applicable Law, Jurisdiction, and Dispute Resolution**

You agree that: (a) the Website and the use of the Mobile Application shall be deemed solely based in California; and (b) the Website shall be deemed a passive website that does not give rise to personal jurisdiction over Amigo Baby, either specific or general, in jurisdictions other than California.

This Agreement shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. Any claim or dispute between you and Amigo Baby that arises in whole or in part from your use of the Website or the Mobile Application shall be decided exclusively by a court of competent jurisdiction located in the Superior Court of California, County of Ventura.

This Agreement, together with the Privacy Policy, any other legal notices published by Amigo Baby on the Website, and any other separate written agreement between you and Amigo Baby shall constitute the entire agreement between you and Amigo Baby concerning the Website, the Mobile Application and the Services. If any provision of this Agreement or the Privacy Policy are deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the



validity of the remaining provisions of this Agreement and Privacy Policy, which shall remain in full force and effect.

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Amigo Baby's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

This Agreement may not be assigned by you, but may be assigned by Amigo Baby without restriction. In the event of any dispute between you and Amigo Baby, the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs incurred.

ALL CLAIMS MUST BE BROUGHT IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND, UNLESS WE EACH AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU ARE WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

## **Miscellaneous**

In the event that any provision (or part thereof) of this Agreement conflicts with the law under which this Agreement is to be construed or if any provision (or part thereof) is held invalid by a court or arbitrator with jurisdiction over the parties to the Agreement, such provision (or part thereof) will be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect. Section headings are for convenience only and shall not be part of the terms and condition of this Agreement.

If either party fails to insist upon or enforce strict performance by the other party of any provision of the Agreement, or to exercise any right under the Agreement, such a failure 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. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Baby Sparks' failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

This Agreement constitutes the entire understanding between the parties as to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter.