

**ORGANIZATION OR STUDY NAME**

## **Data and Evaluation Tool Confidentiality Agreement**

A. **RESEARCHER OR ORGANIZATION NAME** (“Recipient”) and AMIkids, Inc. (“Discloser”) desire to share certain confidential information in order to permit Recipient to use Discloser’s Evaluation Tools and Data for **DATA OR STUDY PURPOSE** (the “Authorized Purpose”).

B. The parties desire to maintain the confidentiality of the information disclosed to each other and would not disclose such information without this Confidentiality Agreement (“Agreement”).

THEREFORE, the parties agree to the following terms, covenants and conditions:

### **1. Confidential Information.**

For purposes of this Agreement, Confidential Information means any proprietary, confidential, and nonpublic information, technical tools, technical data, trade-secrets or know-how of any kind disclosed before or after the date of this Agreement, including, but not limited to, AMIkids, Inc. evaluation tools; research; business, strategic, or service plans; patents or patent applications; computer object or source code; data; algorithms; inventions, processes, designs, or drawings; specifications; standards; testing; customer lists; databases; processes, formulas, improvements, or techniques; marketing plans and strategies; inventions; data; and other trade secrets and confidential information not generally known to others, whether in paper, electronic or other format. Confidential Information does not include information that (a) is rightfully known by Recipient at the time it receives the information; (b) is in the public domain through no wrongful act of Recipient; (c) is rightfully received by Recipient from a third party who was free to disclose it; (d) is developed independently by Recipient without use of, or reference to, Discloser’s Confidential Information, or (e) has been approved for release by written authorization of the Discloser.

### **2. Limited Use.**

Any evaluation tools obtained from Discloser will be used only for the Authorized Purpose. Use of the evaluation tools or other information for purposes other than those described will not be undertaken until a separate application form for the project has been submitted to, and approved by, Discloser.

### **3. No Disclosure.**

Without first obtaining Discloser’s written consent, Recipient shall not disclose the Confidential Information to any person or entity other than as necessary to carry out the Authorized Purpose. The parties shall protect the confidentiality of each other’s Confidential Information in at least the same manner they protect the confidentiality of their own proprietary and confidential information of like kind, but in any case with no less than a reasonable degree of care. Recipient will, at all times, comply with applicable professional standards with respect to the Confidential Information. The Confidential Information may only be disclosed to employees on a “needs to know” basis and, even then, such disclosure may occur only if each such employee has previously signed a copy of

this Agreement or another written agreement under which the Confidential Information is protected in equivalence with this Agreement.

**4. No Use, Copying or Transfer.**

Without first obtaining Discloser's written consent, Recipient shall not use, copy or transfer Confidential Information other than as necessary to carry out the Authorized Purpose. Recipient shall take all reasonable precautions to prevent inadvertent use, copying or transfer of the Confidential Information.

**5. Term.**

The obligations set forth in this Agreement will continue for a term of five years after the last disclosure of the Confidential Information hereunder, or five years after the end of any and all business relationships that develop between the parties to this Agreement, whichever is longer.

**6. Ownership, Return and Destruction.**

All materials delivered under this Agreement shall remain the property of Discloser. Upon completion of the Authorized Purpose, or at any time upon request of Discloser, Recipient shall promptly return to Discloser all original materials and copies containing Confidential Information, including any copies of records, computer listings, or electronic files abstracted from records obtained from Discloser. Recipient will not retain any copies of any Confidential Information in any form without the prior written consent of the Discloser.

**7. No Licenses.**

No licenses by contract, implication, estoppel, or otherwise under any invention, patent, copyright, mask work, trade secret, trademark, or other intellectual property right is granted to either party under this Agreement. No other rights or obligations other than those expressly stated herein are to be implied from this Agreement or from the disclosure of information in accordance with the terms of this Agreement.

**8. Anonymity.**

Discloser reserves the right to remain anonymous in any research that results from the use of the Confidential Information. Whether and how Discloser will be credited is to be determined upon completion of any final products but before dissemination or publication of them.

**9. Limited Warranty.**

Discloser warrants only that it has the right to make the disclosures under this Agreement. Discloser will not have any liability or responsibility for errors or omissions in, or any business decisions made by Recipient in reliance on, any Confidential Information disclosed under this Agreement. Recipient assumes all risk, known or unknown, incident to its use of Confidential Information, and Discloser shall have no liability of any kind to Recipient or any third party arising out of such use. DISCLOSER DISCLAIMS ALL WARRANTIES INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OF NON-INFRINGEMENT OF THE

RIGHTS OF THIRD PARTIES (INCLUDING WITHOUT LIMITATION, RIGHTS UNDER PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS) WITH RESPECT TO THE CONFIDENTIAL INFORMATION PROVIDED BY DISCLOSER. RECIPIENT ACCEPTS THE CONFIDENTIAL INFORMATION IN “AS-IS” CONDITION. Recipient shall indemnify and hold harmless Discloser against all losses and expenses incurred by Discloser, including without limitation attorney’s fees, which result from the breach of any part of this agreement by Recipient.

**10. Notification of Release of Confidential Information.**

In the event Recipient receives a subpoena or other validly issued administrative or judicial process requesting the Confidential Information, Recipient shall promptly notify Discloser and tender to it the defense of such demand. Unless the demand shall have been timely limited, quashed or extended, Recipient shall thereafter be entitled to comply with such demand to the extent permitted by law. If requested by Discloser, Recipient shall cooperate (at the expense of Discloser) in the defense of a demand.

**11. Breach of Agreement.**

Recipient acknowledges that failure to comply with the terms and conditions in this Agreement will result in the following: (a) the immediate termination of access to Discloser’s Confidential Information for any existing project and all other previously approved projects conducted by Recipient or Recipient’s organization; and (b) prohibition from access to Discloser Confidential Information for all future projects conducted by Recipient or Recipient’s organization.

**12. Injunctive Relief.**

Notwithstanding anything in this Agreement, it is hereby understood and agreed that (a) disclosure or use of the Confidential Information, except as permitted by this Agreement, will constitute a misappropriation under the Uniform Trade Secret Act; (b) damages may be an inadequate remedy in the event of a breach of this Agreement; and (c) that any breach will cause Discloser irreparable harm and damage. Accordingly, the parties agree that Discloser will be entitled to injunctive and other equitable relief, without waiving any additional rights or remedies available at law or in equity or by statute.

**13. Notice.**

Any notice or other communication required or permitted herein shall be given in writing to the other party at such address as shall be given by either party to the other in writing. Such notice shall be deemed to have been given when (a) delivered personally, (b) sent via certified mail (return receipt requested), (c) sent via electronic mail or fax (all with confirmation of receipt), or (d) by recognized air courier service.

**14. Miscellaneous.**

This Agreement (a) imposes no obligation on either party to purchase, transfer or otherwise dispose of any technology, services or products; (b) does not create any agency, partnership, or other business relationship; (c) embodies the entire understanding between the parties pertaining to the

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subject matter hereof; and any additions or modifications to this Agreement must be made in writing and signed by both parties; (d) is not assignable or delegable in whole or in part without the written consent of the parties; (e) shall inure to the benefit of and be binding upon the parties, their successors, and assigns; (f) cannot be waived by failure to enforce any provision hereof, except in writing; (g) may be signed in counterparts; and (h) shall be construed according to the laws of the State of Florida, without giving effect to its conflict of laws provisions.

**ORGANIZATION OR RESEARCHER**

**AMIKIDS, INC.  
5915 BENJAMIN CENTER DRIVE  
TAMPA, FL 33634**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_