



HealthySteps® Welly Terms of Service

ZTT offers the Organization access to ZTT's proprietary web-based application, Welly ("Welly"). By accessing or using Welly, the Organization agrees to be bound by these Terms and by ZTT's Privacy Policy, found at <https://www.zerotothree.org/privacy> (the "Privacy Policy").

1. Acceptance, license, access

- a. **Acceptance and modifications.** ZTT reserves the right, in its sole discretion, to modify and update this Agreement or change, suspend, or discontinue Welly (including without limitation, the availability of any feature, functionality, or content) at any time. ZTT may also impose limits or restrictions on certain features, functionality, or content of Welly without notice or liability. Any such modifications or updates are effective and enforceable against the Organization upon release of such updates.
- b. **License to access and use Welly.** Subject to this Agreement, ZTT hereby grants to the Organization a limited, terminable, non-exclusive, non-transferable, royalty-free license, to access and use Welly during the term of this Agreement for the Organization's internal business purpose consistent with the specifications set forth herein. For the avoidance of doubt, references to "provision" or "license" or similar terms in relation to Welly refer to making available to the Organization the use of Welly, and not any provision of any software code or on-premise installed software.
- c. **Requirements.** In order to use Welly, the Organization and its users must: (a) be age 18 or older, (b) agree to this Agreement, (c) create a valid Account, (d) have a suitable connection to the Internet (which is not provided by ZTT) that permits such devices to access Welly, and (e) be a member of the Network in compliance with this Agreement. As Welly will continuously evolve over time, ZTT reserves the right to modify these requirements in its sole discretion.

2. Accounts and security

- a. **Account.** To use Welly, the Organization's users must create an account by completing the registration process ("Account"). Users will be guided through the registration process when they access Welly. The Organization must provide ZTT with current, complete, and accurate information (including email addresses) as prompted by the applicable registration form. The Organization hereby represents that all information submitted during the registration process is true and accurate.
- b. **Account security.** The Organization is responsible for maintaining the confidentiality of Account usernames and passwords. The Organization agrees to notify ZTT immediately of any unauthorized use or theft of Accounts or any other breach of security (and to provide properly documented evidence as reasonably requested by ZTT). The Organization is responsible for any and all actions taken by any person who accesses Welly.
- c. **Suspension of access.** ZTT may in its discretion suspend the Organization's access to, or reasonably restrict any use of, Welly temporarily, in whole or in part, if, and so long as, in ZTT's sole judgment, there is a security risk that may interfere with the proper continued provision of Welly or the Organization is using Welly other than as expressly permitted under this Agreement, or the Organization is or may be engaged in illegal activity. ZTT will use commercially reasonable efforts under the circumstances to provide the Organization with notice and an opportunity to remedy such violation or threat.
- d. **Termination of Welly Accounts**
 - i. **Welly termination by ZTT.** The Organization expressly acknowledges and agrees that Welly is provided by ZTT solely upon the terms and conditions in this Agreement. ZTT may terminate access to Welly at any time. In the event that the Organization breaches the terms and conditions of this Agreement, ZTT may terminate the Organization's access to Welly immediately.
 - ii. **Welly cancellation by the Organization.** The Organization has the right to cancel Welly license(s) at any time. The Organization can cancel by following the procedures made available through Welly or notifying ZTT.
 - iii. **Effect of account termination or cancellation.** In the event that the Organization's Welly access is terminated, suspended, or canceled, this Agreement and the licenses granted under this Agreement shall automatically terminate. Sections 2d, 3, 4, 5 and 6 of these HealthySteps® Welly Terms of Service shall survive the termination or cancellation of Welly access for any reason.

3. Intellectual property rights

- a. **Ownership of Welly.** All right, title, and interest, including all copyrights, any accompanying printed materials, and any copies of all or any portion of the source code contained in Welly are owned and copyrighted by ZTT. All rights not expressly granted to the Organization through this Agreement are reserved by ZTT.
- b. **User content.** The Organization may be permitted to upload files, documents, or other content via Welly in various forms (collectively, "User Content"). By providing any User Content, the Organization agrees that it will not: (a) infringe any copyright, trademark, patent, trade secret, or other proprietary right of any party; (b) be profane, obscene, indecent or violate any law or regulation; (c) defame, abuse, harass, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others; or (d) be an electronic original of any document. Further, the Organization hereby represents and warrants that it has all rights, title, authority, licenses and consents necessary to provide to ZTT all User Content that the Organization provides to ZTT in connection with Welly and to authorize ZTT to access, process and use such User Content as contemplated by this Agreement. The Organization must not upload or otherwise provide ZTT access to any User Content without first obtaining sufficient rights to do so. The Organization agrees that it will maintain a copy of all User Content outside of Welly.
- c. **License to User Content.** The Organization hereby grants to ZTT a fully-paid, nonexclusive, irrevocable, transferrable, worldwide license to process, reproduce, store, display, translate, make available and otherwise use User Content during the term of this Agreement solely as reasonably necessary in connection with the provision of Welly to the Organization and performance of ZTT's other obligations in accordance with the terms of this Agreement, in each case subject to the Privacy Policy, as applicable. To the extent that ZTT has access to the Organization User Content, ZTT will treat such User Content as confidential in accordance with the requirements of this Agreement. Further, the Organization acknowledges and agrees that, subject to the Privacy Policy, as applicable, ZTT may collect usage data and other technical or operational data relating to access and use of Welly and use such data during the term and after any expiration or termination of this Agreement for purposes of marketing, developing, maintaining, improving, offering and delivering ZTT's current and future products and services as they may be provided to the Organization or other customers of ZTT; provided, however, that all such data will be aggregated, de-identified and anonymized in a manner that does not designate or identify the Organization or any authorized users as the source of such data and shall in no event include any PHI or individually identifiable health information subject to regulation under state medical privacy laws.
- d. **Feedback.** The Organization is encouraged to provide feedback to ZTT regarding Welly, including but not limited to usability, bug reports and functionality (collectively "Feedback"). It is expressly agreed that all rights, title, and interest, including all copyrights, to all Feedback is owned by ZTT. The Organization hereby assigns and conveys to ZTT any rights and interests in any such Feedback that the Organization may have, create, or provide during the term of this Agreement. To the extent that such assignment is held to be invalid or unenforceable, the Organization hereby grants to ZTT a perpetual, exclusive, transferable, royalty-free license to use any Feedback.



4. **Restrictions and conditions of use**

- a. **No Welly attacks.** The Organization may not institute, assist, or become involved in any type of attack, including without limitation denial of service attacks, upon Welly or otherwise attempt to disrupt Welly or any other person's use of Welly. Any such attempt is a violation of criminal and civil laws. In the event that the Organization makes or assists in such an attempt, ZTT reserves the right to seek damages or criminal prosecution to the maximum extent permitted by law.
- b. **No unauthorized access.** The Organization may not attempt to gain unauthorized access to Welly or others' User Content whether through hacking, password mining, false key creation, or any other means.
- c. **No reverse engineering.** The Organization may not obtain or attempt to mine any information from Welly or any other components of Welly through any means not intentionally made available by ZTT through Welly. The Organization may not reverse engineer, decompile or disassemble Welly or any other components of Welly or other software.
- d. **No emulators.** Only ZTT may host Welly. The Organization may not establish an emulated Welly environment, regardless of the method used to do so. Such prohibited methods may include, but are not limited to, protocol emulation, reverse engineering, modifying Welly, adding components to Welly, or using any utility program to host Welly in any manner.
- e. **Proprietary notices.** The Organization may not remove, modify, or obscure any copyright, patent, trademark or other proprietary or restrictive notice or legend contained or included in the user interfaces of Welly and all other components of Welly, and the Organization shall reproduce and copy all such notices and legends on all copies of the output from Welly that are permitted to be made hereunder.
- f. **Federal Government end use provisions.** ZTT provides Welly for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to Welly include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with ZTT to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.
- g. **Underlying hardware.** The Organization acknowledges and agrees that it retains sole and exclusive responsibility for any equipment, hardware or other devices used by the Organization in connection with Welly ("Underlying Hardware"), and that the Underlying Hardware is solely within the Organization's control and ZTT is not responsible for and hereby disclaims all responsibility and liability for the Underlying Hardware or for any loss, damage, injury, malfunction, interruption, or claim arising therefrom or related thereto.

5. **Disclaimers**

- a. **Not medical advice.** The Organization understands and agrees that ZTT does not give medical advice. Welly is designed to allow authorized users to (a) share information and communicate with care providers and other authorized providers to organize a child's health and development records, (b) keep track of appointments with care providers and other authorized providers, (c) organize parenting and other non-healthcare family and child services, and (d) provide helpful content and other information for families relating to the Program. Any information and materials available from ZTT are for informational and educational purposes only and are not intended to constitute professional advice, diagnosis, or treatment, or to substitute for the judgment of applicable professionals. Welly is not a substitute for professional medical treatment and developmental services. ZTT partners with HealthySteps® Organizations to provide Welly but does not recommend or endorse any provider of health care or health-related products, items, or services, and does not recommend or endorse any specific tests, procedures, treatments, opinions, products, or other health related services.
- b. **Disclaimer of warranties.** ZTT makes no representations or warranties to any person or entity with respect to Welly or this Agreement. Further, ZTT does not warrant, guarantee, or make any representations regarding the use, or the results of the use, of Welly or any information contained therein or otherwise provided pursuant to this Agreement, in terms of correctness, accuracy, reliability or otherwise, or that Welly will meet the Organization's requirements or that the use of Welly will be uninterrupted or error free or identify or block every transmission or file that should be identified or blocked. Without limiting the foregoing, the Organization expressly agrees that the use of Welly is at the Organization's sole risk and that Welly is provided on an "as is" and "as available" basis for the Organization's use, without warranties or conditions of any kind, either express or implied, including without limitation the warranties of merchantability, fitness for a particular purpose, title, non-infringement, accuracy, completeness, and those arising from course of dealing or usage of trade, and all such warranties are hereby expressly disclaimed by ZTT. No ZTT agent or employee is authorized to make any expansion, modification or addition to this limitation and exclusion of warranties in this Agreement.
- c. **Disclaimer of claims and damages.** In no event will ZTT be liable to the Organization or to any third party for any claims asserting or based on the use, inability to use, loss, interruption, or delay of Welly. Further, in no event will ZTT be liable to the Organization or to any third party for claims or losses asserted or based on or arising from loss of use of facility or equipment, lost business, revenues or profits, loss of goodwill, failure to achieve cost savings, failure or increased cost of operations, loss, damage or corruption of data, loss resulting from system or service failure, malfunction, downtime, shutdown, service incompatibility or provision of incorrect compatibility information, failure to accurately transfer, read or transmit information, failure to update or provide correct information or breaches in system security.

6. **General**

- a. **Subcontracting.** ZTT reserves the right to use third parties (who are under a covenant of confidentiality with ZTT) to assist ZTT with the provision of Welly provided that ZTT shall remain responsible for such third parties' performance under this Agreement to the same extent as if ZTT performed such activities itself.
- b. **Invalidity.** If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in effect.
- c. **Injunctive relief/collection.** ZTT and the Organization acknowledge that any use or disclosure of confidential information or the use of a party's intellectual property rights in a manner inconsistent with this Agreement may cause irreparable damage for which remedies other than injunctive relief are inadequate. Therefore, in addition to other relief available to it, each party may seek injunctive relief without having to post bond.