

## ZERO TO THREE

### HEALTHYSTEPS WELLY TERMS OF SERVICE

**Last Updated:** November 9, 2021

These Terms of Service (this “**Agreement**”) set forth the terms and conditions upon which ZERO TO THREE: National Center for Infants, Toddlers and Families, a District of Columbia nonprofit corporation with a business address at 1255 23rd Street, NW, Washington, D.C. 20037 (“**ZTT**”, “**we**”, “**us**”, or “**our**”) offers third party users (“**you**” or “**your**”) access to ZTT’s proprietary web-based application, currently entitled Welly, and the services provided through such application, each as further described herein, along with any updates, additions or expansions thereto (collectively referred to herein as “**Welly**”). This Agreement govern your access to and use of Welly and any content, output or services provided via Welly (collectively, including Welly, the “**Service**”).

**By accessing or using Welly, you agree to be bound by these Terms and by our Privacy Policy, found at <https://www.zerotothree.org/privacy> (the “Privacy Policy”). The Privacy Policy is incorporated herein by reference.**

**Please read this Agreement carefully. This is a legally enforceable contract. If you do not agree to this Agreement, do not access or use the Service.**

#### **1. ACCEPTANCE; LICENSE; ACCESS**

**1.1. Acceptance and Modifications.** By clicking "I Agree" below or by accessing or otherwise using Welly, you assert that you have read and understand this Agreement and agree to be bound by it. A copy of this Agreement can be found at the ZTT web site located at Uniform Resource Locator [●] (the "**ZTT Website**"). We reserve the right, in our sole discretion, to modify and update this Agreement or change, suspend, or discontinue the Service (including without limitation, the availability of any feature, functionality, or content) at any time. We may also impose limits or restrictions on certain features, functionality or content of the Service without notice or liability. Notice of such modifications, updates, changes, and limits or restrictions will be communicated by e-mail, the ZTT Website, or other method as determined by ZTT in its reasonable discretion. Any such modifications or updates are effective and enforceable against you upon publication. If you do not agree to any modification or update to this Agreement or changes to the Service, please cancel your Welly account ("**Account**") and cease using the Service.

**1.2. License to Access the Service.** Subject to this Agreement, we hereby grant to you a limited, terminable, non-exclusive, non-transferable, royalty-free license, to access and use the Service during the term of this Agreement for your internal business purpose consistent with the specifications and other documentation relating to Welly made available on the ZTT Website and as set forth herein. For the avoidance of doubt, references to “provision” or “license” or similar terms in relation to the Service refer to making available to you the use of the Service, and not any provision of any software code or on-premise installed software.

**1.3. License to Use a Client Application.** You may be permitted to access Welly in a variety of manners such as through a web portal or through a client application distributed by ZTT (a "**Client Application**"). Subject to this Agreement, we hereby grant to you a limited, terminable, non-exclusive, non-transferable, royalty-free license, to access and use the Client Application solely for the purposes of accessing and using the Service as set forth herein.

**1.4. Requirements.** In order to use Welly, you 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 us) that permits such devices to access Welly, and (e) be a recognized HealthySteps Site (as defined below) in compliance with its agreement with ZTT. As Welly will continuously evolve over time, we reserve the right to modify these requirements in our sole discretion. By clicking "I Agree" below or by accessing or otherwise using Welly, you represent that you meet all of these requirements. For purposes of this Agreement, the following terms shall be defined as follows: (i) “**HealthySteps Program**” means the evidence-based pediatric primary care program

committed to healthy early childhood development and effective parenting developed and owned by ZTT, and (ii) “**HealthySteps Site**” means a pediatric medical practice that has entered into an agreement with ZTT or one of its Affiliates, partners, or licensees to operate the HealthySteps Program to implement team-based, family-centered, developmentally-focused pediatric primary care for children from birth to age three (3) years and their families, in compliance with ZTT’s requirements.

## **2. ACCOUNTS AND SECURITY**

**2.1.Account.** To use the Service, you must create an Account by completing the registration process. You will be guided through the registration process when you access Welly through the ZTT Website. You must provide us with current, complete and accurate information (including your email address) as prompted by the applicable registration form. You hereby represent that all information that you submit during the registration process is true and accurate.

**2.2.Account Security.** You are responsible for maintaining the confidentiality of your Account username and password. You agree to notify us immediately of any unauthorized use or theft of your Account or any other breach of security (and to provide properly documented evidence as reasonably requested by us). As the Account holder, you are responsible for any and all actions taken by any person who accesses your Account.

**2.3.Suspension of Access.** ZTT may in its discretion suspend your access to, or reasonably restrict any use of, the Service temporarily, in whole or in part, if, and so long as, in ZTT’s reasonable judgment, there is a security risk that may interfere with the proper continued provision of the Service or you are using the Service other than as expressly permitted under this Agreement, or you are or may be engaged in illegal activity. ZTT will use commercially reasonable efforts under the circumstances to provide you with notice and an opportunity to remedy such violation or threat.

### **2.4.Termination of Accounts**

(a) **Termination by Us.** You expressly acknowledge and agree that the Service is provided by us solely upon the terms and conditions in this Agreement. We may terminate your Account or the Service at any time. In the event that you breach the terms and conditions of this Agreement, ZTT may terminate your Account or otherwise suspend or terminate your access to the Service.

(b) **Cancellation by You.** You have the right to cancel your Account at any time. You can cancel your Account by following the procedures made available through the Service or notifying ZTT.

(c) **Effect of Account Termination or Cancellation.** In the event that your Account is terminated, suspended or canceled, you will no longer have access to your Account or to the Service. In such event, this Agreement and the licenses granted under this Agreement shall automatically terminate. Sections 2.4, 3, 4, 5, 6, 7 and 8 of this Agreement shall survive the termination or cancellation of any Accounts for any reason.

## **3. INTELLECTUAL PROPERTY RIGHTS**

**3.1.Ownership of the Service.** Welly, any Client Applications and all other components of the Service are copyrighted works or otherwise protected works owned or licensed by us. All right, title and interest, including all copyrights, in and to such items (including but not limited to any images, photographs, animations, video, audio, music, text, formulas and functionality), any accompanying printed materials, and any copies of all or any portion of the source code contained in Welly, any Client Applications and all other components of the Service, are owned by us. All rights not expressly granted to you through this Agreement are reserved by us.

**3.2.User Content.** You may be permitted to upload files, documents or other content via Welly in various forms (collectively, “**User Content**”). By providing any User Content, you agree 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, you hereby

represent and warrant that you have all rights, title, authority, licenses and consents necessary to provide to ZTT all User Content that you provide to ZTT in connection with the Service and to authorize ZTT to access, process and use such User Content as contemplated by this Agreement. You must not upload or otherwise provide ZTT access to any User Content without first obtaining sufficient rights to do so. You agree that you will maintain a copy of all User Content outside of Welly.

**3.3. License to User Content.** You hereby grant to ZTT a fully-paid up, 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 the Service to you and performance of ZTT's other obligations in accordance with the terms of this Agreement, in each case subject to the Privacy Policy and BAA, as applicable. To the extent that ZTT has access to your User Content, ZTT will treat such User Content as confidential in accordance with the requirements of this Agreement and the BAA (as defined below), if applicable. Further, you acknowledge and agree that, subject to the Privacy Policy and BAA, as applicable, ZTT may collect usage data and other technical or operational data relating to access and use of the Services 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 you 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 you or any of your authorized users as the source of such data and shall in no event include any Protected Health Information (as such term is defined in in 45 C.F.R. § 160.103) ("**Protected Health Information**" or "**PHI**") or individually identifiable health information subject to regulation under state medical privacy laws ("**Medical Information**").

**3.4. Feedback.** You are encouraged to provide feedback to us regarding the Service, 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 us. You hereby assign and convey to us any rights and interests in any such Feedback you may have, create or provide during the term of this Agreement. To the extent that such assignment is held to be invalid or unenforceable, you hereby grant to us a perpetual, exclusive, transferable, royalty-free license to use any Feedback.

## **4. RESTRICTIONS AND CONDITIONS OF USE**

**4.1. No Violation of Laws.** You may not, whether intentionally or unintentionally, violate any applicable local, state, national or international law or regulation in connection with your use of the Service, including, without limitation, making available any material or information that infringes any copyright, trademark, patent, trade secret, or other right of any party (including rights of privacy or publicity).

**4.2. Business Associate Agreement.** As a prerequisite for the provision and use of the Services, the Parties acknowledge and agree that they shall, prior to or concurrently with entering into this Agreement, enter into a Business Associate Agreement ("**BAA**"), which is hereby incorporated by reference. In the event of any conflict among the terms of the BAA and any other terms in this Agreement, the terms and conditions that are more protective of the personal data shall govern to the extent of that conflict. Notwithstanding any provision to the contrary, the BAA shall have legal superiority and control over any conflicting or limiting provision of any contract or agreement between the Parties, whether entered into before, simultaneous, or after the BAA.

**4.3. No Service Attacks.** You may not institute, assist, or become involved in any type of attack, including without limitation denial of service attacks, upon the Service or otherwise attempt to disrupt the Service or any other person's use of the Service. Any such attempt is a violation of criminal and civil laws. In the event that you make or assist in such an attempt, we reserve the right to seek damages or criminal prosecution to the maximum extent permitted by law.

**4.4. No Unauthorized Access.** You may not attempt to gain unauthorized access to the Service, or others' Accounts or User Content, whether through hacking, password mining, false key creation, or any other means.

**4.5.No Reverse Engineering.** You may not obtain or attempt to mine any information from Welly, any Client Applications or any other components of the Service through any means not intentionally made available by us through Welly. You may not reverse engineer, decompile or disassemble Welly, any Client Applications or any other components of the Service or other software.

**4.6.No Emulators.** Only we may host the Service. You 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 the Client Application, adding components to the Client Application, or using any utility program to host the Service in any manner.

**4.7.Proprietary Notices.** You 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, any Client Applications and all other components of the Service, and you shall reproduce and copy all such notices and legends on all copies of the output from the Service that are permitted to be made hereunder.

**4.8.Federal Government End Use Provisions.** ZTT provides the Service for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service 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.

**4.9.Underlying Hardware.** You acknowledge and agree that you retain sole and exclusive responsibility for any equipment, hardware or other devices used by you in connection with the Service (“**Underlying Hardware**”), and that the Underlying Hardware is solely within your 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. CONFIDENTIALITY AND NONDISCLOSURE**

**5.1. Confidential Information.** Each party (“**Receiving Party**”) shall safeguard all information (whether in written or oral form) and materials provided by the other party (“**Disclosing Party**”) that is marked as confidential or proprietary or that the Receiving Party should reasonably recognize as such due to its contents and/or the circumstances surrounding its disclosure (“**Confidential Information**”) as required under this Section 5. Without limitation of the foregoing, you acknowledge and agree that the non-public features and functionality of the Service, as well as any information regarding planned modifications or updates thereto or future ZTT products and services constitutes Confidential Information of ZTT. The Receiving Party shall keep and instruct its employees, contractors and agents to keep Confidential Information confidential by using at least the same care and discretion as used with the Receiving Party's own confidential information, but in no case less than a prudent and reasonable standard of care. The Receiving Party shall only disclose Confidential Information to those of its employees, contractors and agents who have a reasonable need to know under this Agreement where such employees, contractors and agents are bound by a written confidentiality agreement or binding company policies with the Receiving Party not materially less protective than the terms of this Agreement and shall not disclose the Confidential Information of the Disclosing Party to any third party except in accordance with the foregoing. Subject to the terms and conditions of this Agreement, the Receiving Party shall be responsible for any breach of this Section by its employees, contractors and agents. The Receiving Party shall not use Confidential Information other than for purposes of performing its obligations or exercising its rights hereunder or as otherwise authorized by the Disclosing Party in writing.

**5.2. Permitted Disclosure.** Except with respect to Protected Health Information and Medical Information, the confidentiality obligations under Section 5.1 shall not limit disclosure with respect to information that the Receiving Party can document: (a) is or has become readily publicly available without restriction through no fault

of such party or its personnel; (b) is received, without restriction, from a third party lawfully in possession of such information and lawfully empowered to disclose such information; or (c) was rightfully in such party's possession without restriction prior to its disclosure by the other party. Nothing in this Agreement will prohibit the Receiving Party from disclosing Confidential Information of the Disclosing Party if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding ("**Required Disclosure**"); provided that Receiving Party shall, to the extent legally allowed: (i) give Disclosing Party reasonable notice of such Required Disclosure prior to disclosure; (ii) cooperate with Disclosing Party in the event that it elects to contest such disclosure or seek a protective order with respect thereto; and (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

## **6. DISCLAIMERS**

**6.1. Not Medical Advice.** You understand and agree that ZTT does not give medical advice. The Service 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 HealthySteps 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. The Service is not a substitute for professional medical treatment and developmental services. ZTT partners with HealthySteps Sites to provide the Service 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.

**6.2. Disclaimer of Warranties.** ZTT MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO WELLY, ANY CLIENT APPLICATIONS AND THE OTHER COMPONENTS OF THE SERVICE OR THIS AGREEMENT. FURTHER, ZTT DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SERVICE OR ANY INFORMATION CONTAINED THEREIN OR OTHERWISE PROVIDED PURSUANT TO THIS AGREEMENT, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE, OR THAT THE SERVICE WILL MEET YOUR REQUIREMENTS OR THAT THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR IDENTIFY OR BLOCK EVERY TRANSMISSION OR FILE THAT SHOULD BE IDENTIFIED OR BLOCKED. WITHOUT LIMITING THE FOREGOING, YOU EXPRESSLY AGREE THAT THE USE OF WELLY, ANY CLIENT APPLICATION AND THE OTHER COMPONENTS OF THE SERVICE ARE AT YOUR SOLE RISK AND THAT WELLY, ANY CLIENT APPLICATION AND THE OTHER COMPONENTS OF THE SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR 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 WELLY. NO ZTT AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT. FOR CLARITY, NOTHING IN THIS SECTION SHALL MODIFY OR LIMIT THE EXPRESS TERMS OF THE BAA.

## **7. INDEMNIFICATION; LIMITATION OF LIABILITY**

**7.1. Indemnification.** To the fullest extent permitted under applicable law, You agree to indemnify, defend and hold ZTT and its affiliates and each of their respective directors, officers, subsidiaries, independent contractors, designees and assignees harmless from any claims, demands, actions, suits or proceedings asserted by any third party (including any governmental entity) against ZTT or such parties, and all liabilities, judgments, fines, penalties, costs, expenses (including reasonable attorneys' fees) and other losses incurred by ZTT or such parties in connection therewith, due to or arising out of: (a) any breach of this Agreement by you, (b) access to or use of

Welly, any Client Application or any other component of the Service by you or through your Account other than as expressly authorized under this Agreement, or (c) your gross negligence, willful misconduct or fraud.

**7.2. Disclaimer of Claims and Damages.** IN NO EVENT WILL ZTT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY CLAIMS ASSERTING OR BASED ON THE USE, INABILITY TO USE, LOSS, INTERRUPTION OR DELAY OF WELLY, ANY CLIENT APPLICATIONS OR ANY OTHER COMPONENT OF THE SERVICE. FURTHER, IN NO EVENT WILL ZTT BE LIABLE TO YOU 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.

**7.3. Limitations of Liability.** IN NO EVENT WILL ZTT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER. FURTHER, EXCEPT TO THE EXTENT EXPRESSLY MODIFIED PURSUANT TO THE TERMS OF THE BAA, IN NO EVENT WILL ZTT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE GREATER OF (A) THE TOTAL AMOUNT OF FEES PAID BY YOU HEREUNDER DURING THE SIX (6) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY, OR (B) FIVE HUNDRED DOLLARS (\$500). THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT. THE LIMITATIONS IN THIS ARTICLE 7 WILL APPLY EVEN IF ZTT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE OTHERWISE FORESEEABLE, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions the liability of ZTT shall be limited to the fullest extent permitted by law.

## **8. GENERAL**

**8.1. Subcontracting.** Subject to the terms of the BAA, as applicable, we reserve the right to use third parties (who are under a covenant of confidentiality with ZTT) to assist ZTT with the provision of the Service provided that we shall remain responsible for such third parties' performance under this Agreement to the same extent as if ZTT performed such activities itself.

**8.2. Assignment.** We may assign this Agreement, in whole or in part, at any time. You may not assign (including by operation of law), transfer, or sublicense any obligations or benefit under this Agreement without the prior written consent of ZTT. Except as otherwise provided herein, this Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the parties. Any attempted assignment in violation of this Agreement will be void and without effect.

**8.3. Attorney's Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and necessary disbursements, in addition to any other relief to which the Party may be entitled.

**8.4. Notices.** Except to the extent otherwise expressly contemplated under this Agreement, any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight courier service (e.g., Federal Express), or by first class mail (certified or registered), to the other party addressed as set forth below (with respect to notice to ZTT) or to the address you

provided when registering your Account (with respect to notice to you) or to such other address of which a party provides notice to the other party in accordance with this Section. In addition, ZTT may provide any such notices under this Agreement to you by email to the address you provided when registering your Account (or to such other address of which you provide notice to ZTT in accordance with this Section). Notices will be effective upon receipt. You hereby acknowledge and agree that all agreements, notices, disclosures, and other communications that we provide to you electronically as permitted under this Agreement satisfy any legal requirement that such communications be in writing.

**Notice Contact for ZTT:**

ZERO TO THREE: National Center for Infants, Toddlers and Families  
Attn.: Chief Financial & Administrative Officer  
1255 23rd Street, NW  
Washington, D.C. 20037

**8.5. No Waiver.** Our failure to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by us of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**8.6. 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.

**8.7. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the District of Columbia without regard to the conflicts of laws provisions thereof. The sole jurisdiction and venue for actions related to the subject matter of this Agreement will be United States District Court for the District of Columbia. Notwithstanding the foregoing, either party will at all times have the right to seek interim injunctive relief in any court of competent jurisdiction. The parties agree that, to the extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods, or similar consumer protection legislation worldwide, do not apply in any respect to this Agreement.

**8.8. Arbitration.** Any dispute relating to this Agreement that are not resolved by the dispute resolution process above may be resolved by binding arbitration to be held in the District of Columbia, in accordance with the rules then in effect of the American Arbitration Association. The parties will mutually agree on a single arbitrator. If the parties cannot mutually agree, the arbitrator will be appointed by the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The party that does not prevail shall pay all of the costs and expenses of such arbitration, and each party shall separately pay its respective counsel fees and expenses.

**8.9. Injunctive Relief/Collection.** Each party acknowledges 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.

**8.10. Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

**8.11. Independent Contractor.** The relationship of ZTT and you established by this Agreement is that of independent contractor, and nothing contained in this Agreement will be construed (a) to give either party the power to direct or control the day-to-day activities of the other; or (b) to constitute the parties as partners, franchisee-franchiser, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or otherwise give rise to fiduciary obligations between the parties.

**8.12. Entire Agreement.** This Agreement constitutes the entire agreement between you and us with respect to Welly, and such Agreement supersedes all prior or contemporaneous communications, whether electronic, oral or written, between you and us with respect to Welly.

**8.13. Certain Conventions.** Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender; (b) words such as “herein”, “hereof”, and “hereunder” refer to this Agreement as a whole and not merely to the particular provision in which such words appear; (c) words using the singular shall include the plural, and vice versa; and (d) whenever any provision of this Agreement uses the term “including” (or “includes” or words of similar import), such term shall not be limiting and such term shall be deemed to mean “including without limitation” (or “includes without limitation”).