

ZERO TO THREE

HEALTHYSTEPS ROI CALCULATOR TERMS OF SERVICE

Last Updated: August 10, 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 ROI Calculator, as further described herein, along with any updates, additions or expansions thereto (collectively referred to herein as the “**Tool**”). This Agreement governs your access to and use of the Tool and any content, output or services provided via the Tool (collectively, including the Tool, the “**Service**”).

By accessing or using the Service, 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; FEES

1.1. Acceptance. By clicking "I Agree" or by accessing or otherwise using the Service, 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 website located at <https://roi.healthysteps.org/?request-access=true> (the "**ZTT Website**"). We reserve the right to modify and update this Agreement at any time. Notice of such modifications and updates will be communicated by e-mail, the ZTT Website, or other commercially reasonable method. 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, please cancel your HealthySteps ROI Calculator account ("**Account**") by emailing healthysteps@zerotothree.org and cease using the Service.

1.2. License to Use a Client Application. You may be permitted to access the Services in a variety of manners such as through a web portal or through a client application distributed by ZTT (a "**Client Application**").

1.3. 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 Tool solely for the purposes of using the Service as set forth herein.

1.4. Requirements. In order to use the Service, you must: (i) be age 18 or older, (ii) agree to this Agreement, (iii) create a valid Account, and (iv) have a suitable connection to the Internet (which is not provided by us) that permits such devices to access the Service. As the Service 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 the Service, you represent that you meet all of these requirements.

2. ACCOUNTS AND SECURITY

2.1. Account. To use the Tool, you must create an Account by completing the registration process. You will be guided through the registration process when you access the Service through the Tool. 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. 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 emailing healthysteps@zerotothree.org.

(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, the licenses granted under this Agreement shall automatically terminate. Sections 2.3, 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.** The Tool, the Service and any Client Applications are copyrighted works or otherwise protected works owned 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 the Tool, the Service and any Client Application, 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 content via the Service 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; (d) contain any highly-sensitive information, including but not limited to any personal health records or credit card information; or (e) be an electronic original of any document. You agree that you will maintain a copy of all User Content outside of the Service. We have no obligation to monitor User Content. However, we reserve the right to review User Content and take any action we deem necessary as to such User Content, including but not limited to editing or removing your User Content and/or suspending or terminating your access to the Service based on your violation of the rules specified here.

3.3. **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. **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.

4.3. 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.

4.4. No Reverse Engineering. You may not obtain or attempt to mine any information from the Service, Tool or any Client Application through any means not intentionally made available by us through the Service. You may not reverse engineer, decompile or disassemble the Service, Tool, any Client Application or other software.

4.5. No Emulators. Only we may host Service. You may not establish an emulated Service 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.

4.6. No Legal, Tax, Compliance or Accounting Advice. The Client Application and the Services are for personal use for purposes of developing estimates only, and do not offer and are not intended to be a substitute for professional legal, tax, compliance, or accounting advice or planning and you are encouraged to consult with experts and professionals of your choice.

5. CONFIDENTIALITY AND NONDISCLOSURE

5.1. Generally. The Service (including the Tool and any Client Application) including its features, and related information are proprietary and confidential information to us. You agree not to disclose any information whatsoever regarding Service, documentation, or any information related to or derived from this Agreement (including but not limited to features, results of use or testing, or discussions on any beta forums) to any third party, or to any party subject to this Agreement other than on the official forums provided by us.

5.2. Content. You agree to (a) protect and safeguard your username, password and other Account information and avoid sharing such information with anyone; (b) review all security and privacy policies provided to you, including the Privacy Policy, which can be access through the ZTT Website; and (c) use good security practices for use of technology whether you access the Service via computer, tablet, smart phone or other electronic means.

6. DISCLAIMER OF WARRANTIES

ZTT IS NOT PROVIDING ADVICE IN CONNECTION WITH THE SERVICES, INCLUDING, WITHOUT LIMITATION, ACCOUNTING, LEGAL, TAX, COMPLIANCE, INVESTMENT, OR INSURANCE ADVICE. WE ACCEPT NO RESPONSIBILITY FOR THE USER CONTENT WHICH YOU UPLOAD OR FOR YOUR FAILURE TO UTILIZE ACCURATE, COMPLETE AND CURRENT USER CONTENT. PLEASE CONSULT WITH YOUR FINANCE PROFESSIONALS, LEGAL COUNSEL, HEALTHCARE PROVIDER, TAX ADVISOR OR INSURANCE BROKER FOR SUCH ADVICE. YOU EXPRESSLY AGREE THAT THE USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE, THE TOOL AND ANY CLIENT APPLICATION 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. WE DO NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE THE SERVICE AT TIMES OR LOCATIONS OF YOUR CHOOSING. WE DO NOT WARRANT THAT THE SERVICE WILL BE ERROR-FREE, FREE FROM HACKING OR OTHER SECURITY INTRUSION. NO ZTT AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT.

7. INDEMNIFICATION; LIMITATION OF LIABILITY

7.1. 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 liabilities, costs, claims, demands, or damages, including reasonable attorneys' fees, asserted by any third party due to or arising out of: (a) any breach by you of this Agreement, (b) your use or access of the Tool, Service or any Client Application, or (c) your gross negligence, willful misconduct or fraud.

7.2. 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 THE SERVICE, THE TOOL OR ANY CLIENT APPLICATION. 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. 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, 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) ONE HUNDRED DOLLARS (\$100). 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.

7.4. 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.** We reserve the right to use third parties (who are under a covenant of confidentiality with ZTT), including, but not limited to, offshore subcontractors to assist with the Service.

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, all notices under this Agreement must be in writing, and will be deemed given when personally delivered (with written confirmation of receipt), when mailed by prepaid certified or registered U.S. mail (return receipt requested, postage prepaid), or when sent by commercial overnight courier service with tracking capabilities (receipt requested), to the respective addressee of each Party at the address set forth below (with respect to ZTT) or set forth in the Order Form (with respect to Customer), or such other address or email as such Party last provided to the other Party by written notice.

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 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 (ii) 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 the Service, and such Agreement supersedes all prior or contemporaneous communications, whether electronic, oral, or written, between you and us with respect to the Service.

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”).