



Improving health, wellbeing and productivity of office workers

# Wellnomics License Terms and Conditions



This document contains the WorkPace and Wellnomics Wellbeing software license terms and conditions



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## WELNOMICS SOFTWARE LICENSE TERMS AND CONDITIONS

Registration Name:		Licenses:	
Registration Key:		Expiry Date:	

Acceptance of the terms contained in the Wellnomics Software License below is a pre-condition to installing and using the Wellnomics Software. Please scroll through the terms of this Wellnomics Software License and read the terms and conditions before installing the Wellnomics Software. By installing and thereafter using Wellnomics Software, the Customer agrees to be bound by the terms of this Wellnomics Software License. The terms of this Wellnomics Software License shall apply not only to the Wellnomics Software that the Customer is presently installing but to all prior versions of the Wellnomics Software that the Customer has previously installed.

### 1. DEFINITIONS

- 1.1. "Administrator" means the person, or persons, authorized by the Customer to communicate with Wellnomics on matters relating to the implementation and use of WorkPace and Wellnomics Wellbeing software. The Administrator will be Wellnomics primary point of contact in respect to implementation, use, support and maintenance issues. The Administrator may be an employee or an agent or consultant of the Customer. The Administrator will have access privileges to the Wellnomics Server Software. The Customer may appoint as many Administrators as it reasonably requires.
- 1.2. "Agreement" means the Wellnomics Software Agreement.
- 1.3. "Customer" means the person that is licensing the Wellnomics Software.
- 1.4. "Data" means all information, communications, answers to questionnaires and other data about a User that the Wellnomics Software collects, monitors, interprets, tabulates or discloses to the Customer.
- 1.5. "License" means a license to use the Wellnomics software and/or to have an active account on the Wellnomics Server.
- 1.6. "Wellnomics" means Wellnomics B.V., a corporation whose principal place of business is at 198 1e Hogeweg, Zeist the Netherlands.
- 1.7. "RSI" is an acronym for repetitive stress injury, but in this Agreement, RSI shall refer to the wider category of work related musculoskeletal disorders and the risk factors that contribute to work related musculoskeletal disorders such as high stress levels and heavy workloads.
- 1.8. "User" means a member of the Customer's staff who has an active account, thereby enabling such User to use Wellnomics WorkPace or Wellnomics Wellbeing at the User's workstation.
- 1.9. "Wellnomics WorkPace software" and "Wellnomics Wellbeing app" means the client version of the Software residing on the local drive of each User's workstation computer. Among other features, the Wellnomics software (a) logs keyboard and mouse inputs and outputs, (b) provides break alerts and monitors the User's compliance with such alerts (c) monitors usage and (d) Wellbeing app collects and transmits Data to, and communicates with, the Wellnomics Server Software.
- 1.10. "Wellnomics Wellbeing software" means the integrated system by which the Software collects, distributes, stores and reports Data to the Customer.
- 1.11. "License Period" means the period during which the license is valid. This will normally be 1 year and renewed annually.
- 1.12. "Maintenance Period" means the period during which maintenance and support services are available. This will normally be 1 year and renewed annually.
- 1.13. "Wellnomics Server" means the hardware platform that will run the Wellnomics Wellbeing software. The Wellnomics Server Software shall reside on the Wellnomics Server.
  - 1.13.1. "Wellnomics Server Software" means the server version of the Wellnomics Software residing on the Wellnomics Server.
- 1.14. Among other features, the Wellnomics Server Software (a) provides a database management and storage system, (b) enables an Administrator to prepare reports and analyses of the Data collected on computer use and RSI risks and (c) in general, administers the Wellnomics Wellbeing software in a safe and secure environment.
- 1.15. "Wellnomics Software" means, collectively, the Wellnomics WorkPace software and the Wellnomics Wellbeing software, as the context may require

### 2. MEDICAL AND ERGONOMIC ADVICE DISCLAIMER

- 2.1 The Customer acknowledges that the Wellnomics Software cannot give medical advice. The Wellnomics Software creates a risk profile for each User based upon statistical norms. The Wellnomics Software cannot know a User's full medical history. The Wellnomics Software is a Data collection and analysis tool. Wellnomics cannot give assurances that the Wellnomics Software's recommendations for preventing or reducing the risk of RSI will be effective for any particular User or group of Users. Only the Customer can make that determination in consultation with professional health advisors. Wellnomics cannot give assurance that what the Wellnomics Software identifies as a risk for Users as a group constitutes a risk for a particular User in that group. The Wellnomics Software measures a User's personal computer usage but evaluates a given User's risk profile based on statistical norms applicable to a larger sample of Users. The same methodology applies to the Wellnomics Software's assessment of improvements in a User's personal risk profile resulting from changes in the User's computer usage. What the Wellnomics Software cannot do is measure a given User's personal risk profile against such User's unique characteristics. Only a trained health professional working personally with such User could



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do that with reliable results. Wellnomics is a software company that applies computer technology to extract and tabulate information, which it then interprets by reference to commonly known RSI risk prevention and treatment strategies. The Wellnomics Software may recommend a range of professional interventions for a User or a group of Users that the Wellnomics Software has identified as being “at risk” of acquiring RSI. Such professional interventions might include, for example, training, postural adjustments, ergonomic advice, medical referrals, counseling and adjustments to work practices. However, the Wellnomics Software’s recommendations are not intended to exhaust the possible professional interventions that are appropriate for a User or a group of Users, which may also include nutritional advice, behavioral therapy and exercise appropriate to such User’s age, fitness level and medical history. Wellnomics expressly disclaims any warranty that the Wellnomics Software will reduce the risk of RSI for any given User or group of Users. The Customer acknowledges that the Wellnomics Software is not capable of accurately predicting which User will get RSI. The Wellnomics Software can only identify which specific User is “at risk” of acquiring RSI based upon a comparison of such User with statistical norms, scientifically published data on risk factors and recommendations by third party expert advisors. Wellnomics shall not be liable for any personal injuries that a User may sustain as a consequence of following any recommendations

- 2.2 The Wellnomics Software may provide advice on ergonomic issues, such as the height of a User’s desk and chair, the position of the User’s desk lamp, and other such factors. Similarly, the Wellnomics Software may recommend various exercises designed to reduce the risk of RSI or at least reduce its symptoms or prevent a pre-existent condition from worsening. Wellnomics obtains this information from professional research organizations and other sources that Wellnomics believes are reliable. However, Wellnomics primary expertise is with software, not with RSI. Wellnomics is not accredited to practice medicine or any of the allied health professions. Therefore, Wellnomics relies upon advice from recognized sources in the field. Wellnomics provides this information in good faith and with the belief that it is true and correct. Wellnomics exercises all due care to provide accurate, complete and timely information. However, Wellnomics accepts no liability for any errors or omissions in such information. The Customer may use the Wellnomics Software’s ergonomics and exercise advice as an aid in formulating the Customer’s own strategies and tactics for a healthy workplace environment. However, Wellnomics cannot represent that its ergonomic and exercise advice address all relevant factors upon which the Customer should base its decisions. The Customer should consider many other factors. Some are personal to a given User while others relate to the workplace environment. Such factors include without limitation workstation design, keyboard design, posture, chair design, time worked without rest breaks, type of work, past medical history, stress, activities outside the workplace and individual User physiology. Wellnomics has no control over these factors. It is the Customer’s responsibility to evaluate all factors that could influence its decisions, or the decisions of Users, on ergonomic issues and exercise regimes. The Customer is responsible for making an

independent judgment and assessment of these factors. The Customer may not rely upon any advice, opinions, interpretations, statements, assurances, representations, recommendations, comments and communications that the Wellnomics Software may give.

- 2.3 The conditions, limitations and disclaimers in this clause 2 applicable to the Wellnomics Software shall apply to the same extent in respect to any medical and ergonomic advice, opinions, interpretations, statements, assurances, representations, recommendations, comments and communications that Wellnomics or its officers, directors, employees, resellers, distributors, agents, representatives or consultants may give to the Customer or to Users through any other means.
- 2.4 Wellnomics’ independent distributors, resellers, agents, consultants and representatives have no authority to give any advice, opinions, suggestions or recommendations, or to make any representations, statements, warranties, conditions or agreements that conflict with the conditions in this Agreement. Any such advice, opinions, suggestions, recommendations, representations, statements, warranties, conditions or agreements given or made by an independent distributor, reseller, agent, consultant or representative shall not bind Wellnomics nor shall they be taken to form part of any contract between the Customer and Wellnomics.
- 2.5 The terms and conditions in this Agreement supersede any other terms and conditions in conflict therewith, including those in the Customer’s purchase order, if any.
- 2.6 Any contract in respect to the Wellnomics Software that the Customer may enter into with an independent distributor, reseller, agent, consultant or representative shall be subject to the terms and conditions of this Agreement, and such terms and conditions shall be deemed incorporated therein by this reference. In the event of a conflict between a term or condition in this Agreement and a term or condition in any such contract, the term or condition in this Agreement shall govern.

### 3. NEW DEVELOPMENTS

- 3.1. Scientific breakthroughs involving the treatment and prevention of RSI are occurring at a rapid pace. Wellnomics shall reasonably endeavor to stay on top of such developments. However, it may not be possible to respond, rapidly, to all developments in terms of modifying any advice and recommendations given by either Wellnomics or the Wellnomics Software, particularly if the developments involve Data in respect to which Wellnomics has not designed the Wellnomics Software to monitor or interpret. Wellnomics is not responsible for advice that turns out to be false, incomplete or inaccurate as a consequence of a new discovery or development occurring after the date of this Agreement.

### 4. INDEPENDENT EVALUATION

- 4.1. The Customer acknowledges that it has examined the Wellnomics Software and is satisfied that the Wellnomics Software is suitable for its purpose and use. The Customer is responsible for determining that the Wellnomics Software is suitable for its purpose and use. The Customer must make

its own independent judgment and assessment and should not rely upon any opinions, interpretations, statements, assurances or representations of Wellnomics, including any descriptions, illustrations or specifications contained in any documents, catalogues or publicity materials produced by Wellnomics.

## **5. EXPLANATION TO USERS**

- 5.1. Wellnomics encourages the Customer to fully explain to Users (and to any employee or union official representing such Users) that the Wellnomics Software will be collecting Data about their computer usage for the purpose of identifying potential risks of RSI. Wellnomics further encourages the Customer to explain what Data is being collected, why it is being collected, how it is being collected, how it will be used and who will have access to it.

## **6. USE OF DATA**

- 6.1. The Customer acknowledges that Wellnomics designed the Wellnomics Wellbeing software for health and safety risk management purposes. It is recommended that the Customer not use the Software for any other purpose than health and safety risk management.

## **7. PRIVACY LAWS**

- 7.1. The Customer represents and warrants that it will at all times comply with applicable privacy laws, data transfer laws, data protection laws and other legal requirements relating to the collection, protection, use, analysis, distribution and disclosure of data. If required by such laws, the Customer shall obtain informed consents and waivers from Users, free of coercion, for the collection, protection, use, analysis, distribution and disclosure of Data.

## **8. LIMITATION OF LIABILITY**

- 8.1. To the extent allowed by law, Wellnomics disclaims all liability, whether in contract or tort, for any loss or damage arising from the use of the Wellnomics Software by the Customer, its Administrators and Users, including the suspension or interruption of such use, or the termination of such use pursuant to this Agreement. Such disclaimer applies to direct, indirect, special, incidental and consequential losses or damages including: Loss of profit, business revenue or goodwill; loss or corruption of Data and the restoration thereof; losses from the inability to use the Wellnomics Software through system failure or downtime; or failure to achieve the benefits or cost savings anticipated. Such disclaimer applies in circumstances where the Customer may have advised Wellnomics, in advance, of the possibility of such losses or damages, or the possibility of a claim by any other person.
- 8.2. Wellnomics further disclaims all liability for errors or omissions in, or the corruption of, Data provided, entered or exchanged. The Customer agrees to use the Wellnomics Software entirely at its own risk. The Customer indemnifies Wellnomics against any damages, costs, and liability that may result from its use of the Wellnomics Software or any use by its Administrators or Users. The Customer further indemnifies, and holds harmless Wellnomics and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and

expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by: (a) any breach by the Customer of its obligations under this Agreement; or (b) any wilful, unlawful or negligent act or omission of the Customer, its Administrators or Users.

- 8.3. Wellnomics shall not be responsible for any failure, delay or interruption in the Customer's use of the Wellnomics Software or its use by Administrators or Users, including without limitation: System crashes; computer malfunctions; hardware or software faults; system errors; security breaches; theft; incompatibility issues; telecommunications problems; fire, flood, civil disturbance or any other event commonly referred to as an "Act of God".

- 8.4. Wellnomics maximum liability for damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) will (a) not exceed the actual dollar amount the Customer paid during the 12-month period prior to the date of the event giving rise to such liability, and (b) not include any incidental, consequential, exemplary or punitive damages, including without limitation, the value of lost Data, files, profit, goodwill, time, savings or revenue.

## **9. NO WARRANTY**

- 9.1. Wellnomics has used its best efforts to develop software that is stable and reliable. Wellnomics cannot warrant that the Wellnomics Software will be compatible with every server, computer and operating environment. It is the Customer's responsibility to ascertain whether the Wellnomics Software is compatible with its server, computers and operating environment.
- 9.2. Wellnomics does not warrant that the Wellnomics Software is free of "bugs", errors or defects. Wellnomics shall not be responsible to the Customer for costs or damages incurred because of any such "bugs", errors or defects.
- 9.3. Wellnomics does not warrant that the Wellnomics Software is error free and the existence of such errors shall not give rise to a warranty claim.
- 9.4. Wellnomics cannot warrant that the Wellnomics Software will meet the Customer's requirements.
- 9.5. Wellnomics licenses the Wellnomics Software "as is" without warranties of any kind, whether express or implied, including warranties of merchantability, fitness for a particular purpose or non-infringement of intellectual property.
- 9.6. Wellnomics cannot warrant that the Wellnomics Software will reduce the Customer's costs or reduce the number of claims for compensation or the number of people with RSI symptoms.
- 9.7. Wellnomics shall not be liable for any delay, damage, loss, injury, failure or breakdown that the Customer may suffer as a consequence of any defect or deficiency in the Wellnomics Software, including any delay, damage, loss, injury, failure or breakdown to the Customer's other programs and equipment.

## **10. NUMBER OF USERS**

- 10.1. The Wellnomics software may only be used up to the number of Licenses purchased. The Customer may not set up



active accounts for Users in excess of the number of Licenses purchased.

- 10.2. The Customer shall have the right to deactivate the accounts of Users. The Customer would normally exercise such right in respect to Users whom it no longer employs. For the avoidance of doubt, the parties shall not count a deactivated account in determining whether the Customer has exceeded the number of Licenses purchased. When the Customer deactivates the account of a User (a) the Wellnomics software will not operate for such User, (b) no new Data can be recorded for such User, (c) old Data relating to such User cannot be changed, and (d) the Customer may still access such old Data but without full reporting functionality.
- 10.3. The Customer shall still have access to Data in respect to deactivated Users. There is no limit to the number of deactivated accounts that the Customer may maintain on the Wellnomics Server Software.

## 11. CONDITIONS OF USE

- 11.1. From time to time, Wellnomics may adopt Conditions of Use in respect to the Wellnomics Software. Wellnomics may include such Conditions of Use in its on-line documentation or Wellnomics may post such Conditions of Use on its web site. In either case, Wellnomics shall notify the Customer whenever it adopts or amends such Conditions of Use. The Customer shall ensure that each User understands and complies with such Conditions of Use.

## 12. THE WELLNOMICS SOFTWARE LICENSE

- 12.1. Wellnomics grants the Customer a non-exclusive, non-transferable license to use the Wellnomics Software only for the purposes stated in this Agreement and for so long as the Customer pays the annual license fees.
- 12.2. Wellnomics shall retain ownership of the Wellnomics Software at all times. Wellnomics retains exclusive ownership of all copyright and other intellectual property rights in the Wellnomics Software and related documentation. The Customer shall not, during or at any time after the expiry or termination of this Agreement, commit, suffer or permit any act that infringes Wellnomics copyright and intellectual property rights in the Software.
- 12.3. The Customer shall not: (a) translate, adapt, vary or modify the Wellnomics Software; (b) disassemble, decompile or "unlock", reverse engineer, merge or in any manner decode the Wellnomics Software for any reason whatsoever; (c) provide or otherwise make available the Wellnomics Software in any form to any person outside the Customer's organization without the express written consent of Wellnomics; (d) rent, lend, lease or license the Wellnomics Software; (e) transfer or assign the Wellnomics Software to any other person under any circumstances without the express written consent of Wellnomics; (f) attempt to bypass or circumvent any security procedures applicable to the Wellnomics Software; and (g) take any action that would cause injury to Wellnomics rights in the Wellnomics Software or that would deprive Wellnomics of the fees to which it is entitled under this Agreement.
- 12.4. The Customer shall supervise and control the use of the Wellnomics Software in accordance with the terms of this Agreement. The Customer shall ensure that Administrators

and Users who have authorized access to the Wellnomics Software are made aware of the terms of this Agreement, and in particular this clause 12, and comply with such terms. The Customer shall maintain safe custody of the Wellnomics Software. The Customer shall use all reasonable efforts to protect the Wellnomics Software and related documentation from unauthorized use, reproduction, distribution, or publication.

- 12.5. The Wellnomics Software contains confidential, unpublished information protected by copyright, trade secret and other intellectual property laws. The Customer may not disclose the Wellnomics Software to others, or remove or alter any copyright notices from the media or documentation. The Customer shall prevent any unauthorized use, copying or disclosure of the Wellnomics Software.
- 12.6. The Customer shall indemnify Wellnomics against all liabilities, costs, losses, damages and expenses that Wellnomics may incur or suffer because of the Customer's breach of Wellnomics copyright and other intellectual property rights in the Wellnomics Software and related documentation.
- 12.7. The Customer shall only use the Wellnomics Software during the period for which it has paid license fees. At the end of such period, or any renewal period, if applicable, the Customer's right to use the Wellnomics Software terminates. The Customer shall procure all Administrators and Users to stop using the Wellnomics Software and to uninstall the Wellnomics Software from their workstation computers.
- 12.8. The following clauses shall survive the termination of this Agreement: Clause 2 (Medical and Ergonomic Advice); clause 3 (New Developments); clause 7 (Privacy Laws); clause 8 (Limitation of Liability); clause 9 (No Warranty); sub-clauses 12.3, 12.4, 12.5, 12.6, 12.7 and 12.8 of this clause 12 (The Wellnomics Software License); clause 16 (Governing Law and Venue); clause 17 (Non-Waiver); clause 18 (Invalidity of a Clause); and clause 19 (Entire Agreement).

## 13. SUPPORT AND MAINTENANCE

- 13.1. Definitions.
- 13.1.1. "Correction" means replacement distribution media or corrective code or documentation that rectifies a Discrepancy (as hereinafter defined) and includes, but is not limited to, workarounds, support releases, Update disks, immediate correction disks, component replacements and patches. Wellnomics may use its website as a delivery mechanism for a Correction.
- 13.1.2. "Critical Error" means an error, defect, or omission, which causes the Wellnomics Software to be completely unusable by all Users.
- 13.1.3. "Discrepancy" means an error or defect in the distribution media or material difference between the operation of the Wellnomics Software and the description of the operation of the Wellnomics Software as contained in the documentation provided for the Wellnomics Software by Wellnomics.

- 13.1.4. "Significant Error" means an error, defect or omission that causes the Wellnomics Software to be unusable in large part by Users.
- 13.1.5. "Update" means a minor software release whose primary purpose is to remove incompatibilities, fix "bugs", enhance the stability or remedy technical faults in the Wellnomics Software.
- 13.1.6. "Upgrade" means a major software release whose primary purpose is to add new functionality or to enhance the performance of the Wellnomics Software. Notwithstanding the foregoing, an "Upgrade" does not include new software or modules (whether or not branded Wellnomics) that Wellnomics develops, markets and prices separately.
- 13.2. Wellnomics's Responsibilities:  
Wellnomics agrees to:
- 13.2.1. Maintain the Wellnomics Software so that it operates substantially in conformity with applicable specifications, including but not limited to, the specifications in any documentation;
- 13.2.2. Correct all critical and significant software errors that Wellnomics discovers or that are brought to Wellnomics's attention;
- 13.2.3. Promptly provide the Customer with all Upgrades, Updates, modifications, refinements, Corrections, and enhancements which Wellnomics incorporates into, and makes a part of, the Wellnomics Software;
- 13.2.4. Furnish telephone and/or email support to Administrators in the form of advice and counsel on the use of the Wellnomics Software and the maintenance of the Wellnomics software;
- 13.2.5. Provide an error and defect reporting service by which the Customer can be assured that Wellnomics will promptly investigate and correct in a future release of the Wellnomics Software any errors, defects, or omissions made known to Wellnomics. Wellnomics may implement such error and defect reporting service on its website;
- 13.3. The Customer's Responsibilities:  
The Customer shall procure its Administrators to:
- 13.3.1. Report all suspected Discrepancies to the Wellnomics Product Support staff;
- 13.3.2. Use reasonable efforts to assist Wellnomics in its efforts to find Corrections to confirmed Discrepancies;
- 13.3.3. Use the newest release or modification to the Wellnomics Software as soon as reasonably possible after it becomes available;
- 13.3.4. Provide such information to Wellnomics as will enable Wellnomics to respond to the Administrator's problem or question in an efficient manner; and
- 13.3.5. Comply with Wellnomics's error and defect reporting procedures.
- 13.4. Wellnomics reserves the right to discontinue maintenance services without notice on a past workaround, support release, replacement, patch or other form of Correction after a subsequent major Upgrade release, support release.
- 13.5. If WorkPace stops working properly for instance after a major Windows update, no further product development will be undertaken. It is recommended that users switch to Wellbeing software.
- 13.6. Wellnomics is not obligated to provide any Correction or Update in respect of:
- 13.6.1. Any combination of the Wellnomics Software and other software not covered by this Agreement;
- 13.6.2. A release of the Wellnomics software for which maintenance services have been discontinued pursuant to clause 13.4;
- 13.6.3. Discrepancies caused by the negligence or fault of the Customer, its Administrators or Users;
- 13.6.4. Discrepancies resulting from a malfunction of the Customer's computer system, including workstation malfunctions;
- 13.6.5. Discrepancies that do not significantly impair or affect the operation of the Wellnomics Software; or
- 13.6.6. The Wellnomics software used on a computer or operating system other than that specified by the Customer and accepted by Wellnomics.
- 13.7. Under this arrangement, Wellnomics shall provide support and maintenance services to the Administrators and the Administrators shall provide support and maintenance services to the Users.
- 13.7.1. Administrators may contact Wellnomics for advice and support on the use of the Wellnomics Software and any maintenance issues in respect to the Wellnomics software.
- 13.7.2. Administrators may contact Wellnomics by logging on to the help desk on Wellnomics's web site. Otherwise, Administrators may contact Wellnomics by email or telephone.
- 13.8. Administrators shall adopt a procedure for Users to report their issues and questions about the Wellnomics software to the Administrators. The Administrators shall endeavor to resolve such issues and answer such questions before referring them to Wellnomics technical support. If the Administrators are not able to resolve an issue or answer a question from a User, they shall seek further assistance from Wellnomics technical support.
14. **PRICING AND PAYMENT**
- 14.1. The pricing for the software will be agreed at the time a purchase takes place and will normally involve an annual fee
- 14.2. Unless otherwise agreed all License Fees and Maintenance Fees will be paid annually and in advance.
15. **TERMINATION AND RENEWAL**
- 15.1. This agreement will remain in effect until Expiry Date unless
- 15.1.1. terminated upon at least fifteen (15) days prior written notice by either party by reason of any violation of the terms and conditions of this Agreement.

15.2. Wellnomics has no obligation to notify you of the expiry date of the License or Maintenance Period. It is your responsibility to give notice of cancellation if you do not wish to renew a License or Maintenance, prior to the expiry of the License or Maintenance Period.

15.3. Your License and Maintenance will automatically be renewed renew for a further 1 year period on the same terms and conditions unless cancelled with ninety (90) days notice or unless specifically agreed otherwise under a separate terms of agreement.

15.4. In the event of termination of this Agreement for any reason, no part of the License or Maintenance Fees shall be refundable.

## **15. DOCUMENTATION**

15.1. The Wellnomics Software includes standard documentation for online reference. The documentation shall comprise electronic help files and other usage, training, installation and configuration materials. The Customer may reproduce paper copies of such online documentation if the Customer so desires.

15.2. At its discretion, Wellnomics may modify the documentation to (a) remove inaccuracies in the documentation, or (b) describe changes, modifications or improvements made to the Wellnomics Software.

## **16. CHANGES**

16.1. Wellnomics may change the Wellnomics Software and relevant documentation at any time without notice.

## **17. GOVERNING LAW AND VENUE**

17.1. The law of The Netherlands shall govern.

## **18. NON-WAIVER**

18.1. If either party delays enforcing an obligation or remedy under this Agreement, such delay shall not result in a waiver or variation of such obligation or remedy.

18.2. No failure by either party to insist upon strict performance of any term or condition in this Agreement shall constitute a waiver or variation of such term or condition.

18.3. Such failure shall not constitute an estoppel against a party claiming a default or seeking a remedy under this Agreement.

## **19. INVALIDITY OF A CLAUSE**

19.1. The parties have entered into this Agreement believing in good faith that it fully complies with all applicable laws. Each clause in this Agreement is severable in whole or in part. If any clause is determined to be illegal or unenforceable for any reason, the parties shall modify such clause, but only to the extent necessary to make it legal and enforceable. If modification is not possible without materially altering the intent of the clause, the parties shall sever such clause from this Agreement and renegotiate in good faith such other means to reflect their original intent. Notwithstanding such severance, the parties shall enforce the balance of this Agreement as if such severed clause was never a part thereof.

19.2. Where there is any conflict between this Agreement and any mandatory provision of a statute, such statute shall prevail.

19.3. Where there is any conflict between this Agreement and any provision in a statute, which expressly states that it is subject to any contractual provision to the contrary, or which may be altered or overridden by a contract, this Agreement shall prevail.

19.4. Certain jurisdictions have adopted laws expressly permitting reverse engineering, decoding, decompiling and other uses of the Software prohibited in clause 12. In respect to such jurisdictions, the prohibitions in clause 12 shall be deemed modified but only to the extent necessary to comply with the laws of such jurisdictions.

19.5. Certain jurisdictions limit the right of a supplier of software to disclaim liability for loss or damage arising from the use of software. In respect to such jurisdictions, the disclaimers in clause 2, and elsewhere in this Agreement, shall be deemed modified but only to the extent necessary to comply with the laws of such jurisdictions.

19.6. Some jurisdictions do not allow the exclusion of certain warranties or the imposition of certain warranty conditions, so the warranty exclusions and conditions in clause 9 may not apply to a Customer in such jurisdictions. This Agreement does not exclude any warranties or impose any conditions that may not, under applicable law, be excluded or imposed. Clause 9 does not limit any other legal rights that the Customer may have under relevant law, except where such relevant law expressly allows such limitations as contained in this Agreement.

## **20. ENTIRE AGREEMENT**

20.1. This Agreement represents the entire agreement concerning the conditions upon which the Customer may use the Wellnomics Software. As such, it supersedes all previous agreements or understandings, whether verbal or written, pertaining to the same subject matter, including without limitation, any proposals that Wellnomics may have furnished to the Customer.

20.2. Any changes or modifications to this Agreement shall be valid only if put in writing and signed by both parties.

*- end of standard terms and conditions -*



Improving health, wellbeing and productivity of office workers

## Appendix

### Service Level Agreement - Hosted Server

#### 1. SOFTWARE

2. Pursuant to this Agreement, Wellnomics will host the Wellnomics server. Wellnomics shall install, set up and configure the Wellnomics Software on the Wellnomics Server. Upon the Customer's request, Wellnomics shall provide details concerning its procedures for managing the Wellnomics Server to ensure Data safety and security.
- 2.1. Wellnomics shall install on the Wellnomics Server the latest version of the Wellnomics Software available for general release, including all Upgrades and Updates, and migrate the Customer to such latest version. As to any new software or modules that Wellnomics develops, markets and prices separately, Wellnomics shall provide access to the Customer at a price and terms to be agreed.
- 2.2. Wellnomics shall set up the Wellnomics Server and the Wellnomics Server Software so that an Administrator can (a) set up active accounts for Users, or deactivate User accounts, as the case may be (b) change User settings, (c) access Data, and (d) generate reports from such Data, all by means of a web browser on the Administrator's workstation computer.
- 2.3. Wellnomics shall provide the Customer with a copy of the latest version of the Wellnomics WorkPace or Wellbeing software. The Customer shall install, set up and configure the Wellnomics WorkPace or Wellbeing software on each User's workstation computer in accordance with the on-line documentation, guidelines and advice provided by Wellnomics. The Customer shall follow Wellnomics' implementation advice, recommendations and procedures. If agreed, Wellnomics shall provide support and assistance during the initial set up and implementation stage at a cost that will be agreed beforehand.
- 2.4. Wellnomics shall support and maintain the Wellnomics Server and the Wellnomics Server Software.

#### 3. USER ACCESS TO THE WELLNOMICS SERVER

- 3.1. If the Customer selects this functionality, Users will be able to log on to the Wellnomics Server, retrieve personal reports and monitor their own progress. For security purposes, the Wellnomics Server will issue a User name and password to each User. The Customer shall encourage each of its Users to select a User name and password that is not easy to copy and to maintain the secrecy of such User name and password at all times. Wellnomics shall not be responsible for unauthorized access resulting from a third party using a User name and password.
- 3.2. Wellnomics shall use its reasonable endeavors to provide access to the Wellnomics Server on a 24/7 basis. However, Wellnomics shall not be responsible if a User attempts to log on to the Wellnomics Server when it is down, either because of (a) scheduled maintenance shutdowns, (b) unscheduled shutdowns to correct a fault or bug, (c) unscheduled shutdowns due to crashes, Internet outages or ISP problems or (d) power outages and other "acts of God".

#### 4. DATA SECURITY

- 4.1. Wellnomics acknowledges that the Data is confidential and shall use its best efforts to protect the Data from unauthorized use or disclosure. Without limiting the generality of the foregoing, Wellnomics shall restrict access to the Data to trusted staff who require access for a legitimate purpose and who recognize the importance of maintaining strict confidentiality.
- 4.2. Wellnomics employs standard industry protocols for protecting secure and confidential information, such as the Data, from unauthorized access. Wellnomics shall use all reasonable efforts to ensure a secure environment for the transmission and storage of the Data. Wellnomics will take normal precautions to protect the Wellnomics Server from security breaches, including without limitation, security breaches resulting from computer hackers, denial of service attacks, unlawful entry, unauthorized access, theft, disgruntled employees and other fraudulent acts. However, Wellnomics cannot accept liability for any such security breaches that may occur despite all reasonable efforts to prevent. Without limiting the generality of the foregoing, it is the Customer's responsibility to deny access to the Wellnomics Server to any person that severs his or her relationship with the Customer and this should be done in a timely fashion.
- 4.3. Wellnomics shall perform regular backups of the Data on the Wellnomics Server and shall store such backups in secure offsite locations. Wellnomics shall follow industry best practice with regard to Data backup. Wellnomics will use all reasonable efforts to ensure that Data is backed up and secure but ultimately cannot accept responsibility for lost or



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corrupted Data, regardless of the cause. It should be noted that the Wellnomics WorkPace or Wellbeing software normally stores on each User's computer backup copies of each User's Data on computer usage, which can be used to reconstruct such Data in the event that such Data is lost from the Wellnomics Server. Wellnomics will additionally provide the Customer with the means to download its Data from the Wellnomics Server on a regular basis for the purpose of creating its own backups.



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