

Terms of Use

These Terms of Use ("Terms") govern your use of the Track and Pay service ("Service") provided by Fidelity Workplace Services LLC or its affiliates ("Fidelity"). The Service includes an application that:

- can retrieve your and your dependents' healthcare information from third party web sites ("Third Party Sites"), display information about your Fidelity HSA® ("Fidelity Account Information") and certain workplace benefit accounts (hereafter, "Workplace Account Information", such as a HSA-compatible health flexible spending account, if authorized by your employer);
- allows you to upload and store images of receipts for healthcare expenses; and
- organizes such information in a user-friendly interface to assist you in understanding and paying healthcare expenses from your Fidelity HSA®, workplace or other designated personal accounts.

1. Acceptance of Terms.

You represent that you are of legal age to enter into an agreement in your state of residence. By using the Service, you acknowledge that you consent to receive this agreement in electronic form and that you have read and agree to be bound by these Terms. If you do not accept these Terms, you will not be entitled to use the Service. These Terms may be updated from time to time without prior notice to you. If you continue to use the Service thereafter, your continued use of the Service constitutes acceptance of the changes and an agreement to be bound by this agreement, as amended. If you do not agree to the changes, you agree to discontinue your use of the Service. You can review the most current version of these Terms at any time on Fidelity.com.

2. The Service.

A. Information Services. The Service allows you to retrieve healthcare information from your health plan carriers or administrators, which may require you to enter your login credentials for a Third Party Site. Fidelity makes no effort to review the content or terms of use of any Third Party Sites, including, but not limited to, the accuracy, validity, legality, copyright compliance, or decency of the content contained on these sites or provided to Fidelity. You acknowledge that Fidelity does not pre-screen content. Reliance on any information that may be accessible to you through the Service is solely at your own risk. In addition to the Terms herein, your use of the Service is governed by the terms of use posted on Third Party Sites and may differ from those described on a Fidelity site, including, without limitation, Fidelity.com and NetBenefits@.com, or your employer's site.

B. Payment Services.

a. **Payments generally.** The Service allows you to request that payments be sent to certain healthcare providers based on information received from Third Parties or Third Party Sites, and as authorized and confirmed by you through the Service. You must designate an eligible source for making payments to such providers through the Service, which may include your Fidelity HSA, certain workplace accounts if permitted by your plan sponsor ("Workplace Accounts") or other personal accounts designated by you ("Personal Accounts"). You are responsible for reviewing and confirming all payment details for accuracy and for manually updating the payee's address information before you initiate any payment if the address shown through the Service is inaccurate. Payments sent by mail will include your address of record as the returned mail address, and you acknowledge that you are responsible for ensuring that this is accurate at all times. You authorize Fidelity, your employer, or any other third party to process payment transactions from your accounts initiated by you through the Service, and agree that you are fully responsible for any such transactions.

You are solely responsible for ensuring that your accounts have sufficient funds to pay expenses. The Service is provided as a convenience and should not be considered a substitute or replacement for account statements or other documentation, including those provided by Fidelity, Third Party Sites, your Workplace Accounts or Personal Account service providers. Please consult your official account statements for information regarding your applicable account balances, positions and transactions, as applicable. You acknowledge and agree that, notwithstanding any other agreement to the contrary, (1) use of the Service is at your own risk, (2) Fidelity is not responsible for any payments, returned mail, delay of a payee from cashing a check, acceptance of draft checks by your financial institution, or for fees or penalties that your provider may charge for late payments, and (3) you are responsible for complying with any other terms and conditions applicable to your payment requests (e.g., by your financial institution for payments from Personal Accounts).

b. **Payments made by your Fidelity HSA.** You authorize Fidelity to make payments from your Fidelity HSA via a paper draft drawn on the account or other available means to the payee or payees confirmed by you through the Service. If payment is made via a paper draft, Fidelity will print these drafts with your name in place of your signature and mail them to the provider's address as confirmed by you. By accepting these terms and/or choosing to pay an expense from your Fidelity HSA through the Service, including but not limited to amounts and payee information to whom you wish to direct payments, you hereby (1) direct Fidelity and the processing bank (UMB Bank, N.A., which is not affiliated with Fidelity) to act on all instructions submitted by you, and to honor any drafts presented unless an effective stop payment is in effect on the Bank's system with respect to such a check (since such checks will not contain your manual signature, the Bank shall not perform any signature verification and the checks will not be considered questionable solely for having an insufficient (or no) signature); (2) authorize and instruct Fidelity to debit your Fidelity HSA and remit funds on your behalf; (3) agree to be bound by all applicable rules and agreements, in their current or future state which you acknowledge having read, understood and agreed to, including these Terms of Use, the [Checkwriting Terms and Conditions](#) (provided that the terms "Checks" as defined therein shall be deemed to include drafts issued through this Service), the Uniform Commercial Code as enacted in Missouri, your Fidelity HSA Custodial Agreement and your Fidelity Brokerage HSA Customer Account Agreement; (4) agree not to write, or cause any drafts to be written via the Service, on the account that exceed the available balance; and (5) acknowledge that any drafts written on this account will be reported to the IRS as distributions, and that any part of a distribution not used to pay qualified medical expenses is counted as gross income and is also subject to a 20% penalty (unless an exception applies).

c. **Payments made by your Workplace Accounts.** If you wish to pay an expense through your Workplace Accounts (to the extent this feature is made available to you), you authorize Fidelity to disclose your claim and benefit information to your plan or its service providers for payment and processing, including any information retrieved from Third Party Sites, as authorized by you through the Service. You authorize your plan or its third party administrator or other service providers of your Workplace Account to process all requests for payment made through the Service as if you had submitted the payment request to them directly, including the amount to be paid, and the payee's name and address. You agree to comply with all plan provisions applicable to your Workplace Accounts, including but not limited to your requests to pay a provider from such accounts through the Service. You must contact the applicable service provider to request a stop payment on a draft check issued by Workplace Accounts.

d. **Payments made by your Personal Accounts.** By requesting to make a payment to a provider from your Personal Accounts, you authorize and direct Fidelity to print and mail a paper draft drawn on the account to the payee or payees confirmed by you through the Service. Fidelity will print these drafts with your printed name in place of your signature and then mail the draft to the provider's address as identified to and confirmed by you through the Service. You must contact your financial institution to request a stop payment on a draft check issued from your Personal Accounts. By accepting these terms and/or choosing to pay an expense from your Personal Accounts through the Service, including but not limited to amounts and payee information to whom you wish to direct payments, you hereby (1) authorize Fidelity and the processing bank (which is not affiliated with Fidelity) to act on all instructions submitted by you, including presentment of the draft check by the processing bank to your financial institution for payment; (2) direct your financial institution to honor any drafts presented unless an effective stop payment is in effect on the bank's system with respect to such a check (since such checks will not contain your manual signature, the bank shall not perform any signature verification and the checks will not be considered questionable solely for having an insufficient (or no) signature); (3) certify to Fidelity, the processing bank and your financial institution that you are the authorized account holder for the designated checking account and have verified that the account information provided via the Service is correct; (4) authorize and instruct your financial institution to debit your Personal Account and remit funds on your behalf; (5) agree to be bound by all applicable rules and agreements, in their current or future state which you acknowledge having read, understood and agreed to, including these Terms of Use, the terms applicable to your Personal Account, the Uniform Commercial Code as applicable, your Fidelity HSA Custodial Agreement and your Fidelity Brokerage HSA Customer Account Agreement; and (6) agree not to write, or cause any drafts to be written via the Service, on Personal Accounts that exceed the available balance.

e. **Qualified Medical Expenses.** You agree to only request payments from your Fidelity HSA or Workplace Accounts through the Service for Qualified Medical Expenses ("QMEs") as defined by the IRS and as applicable to such accounts. Fidelity is not liable for loss of tax benefits or any tax penalties imposed on you.

C. Third Party Information. Other than the Fidelity Account Information or Workplace Account Information maintained by or on behalf of Fidelity (if applicable), all other account information available through the Service is provided by third parties. Fidelity is not responsible for, nor does it recommend, endorse or validate in any way, the information, products and services on or available through the Service or Third Party Sites or any issues you may have related to your access to or use of the Service or Third Party Sites via the Service or otherwise.

The information and content provided via the Service is for informational purposes only and should not be construed as an offer to sell, a solicitation to buy or a recommendation of any security or other investment by Fidelity. You acknowledge that you must perform your own evaluation of any investment based on your investment objectives, financial resources and risk tolerance.

D. Service Limitations. Fidelity will try to make your experience a productive one. However, Fidelity cannot always foresee or anticipate technical or other difficulties that may arise through the Service. These difficulties may result in loss of data, personalization settings or other service interruptions. Fidelity is not responsible for the timeliness, accuracy, deletion, misdelivery or failure to store any user data, communications or personalization settings.

For example, when displayed through the Service, information received via the Service is only as fresh as the time shown. Such information may be more up-to-date when obtained directly from the relevant sites.

E. Right to Change or Cancel. Fidelity reserves the right to modify, change or cease providing access to the Service or any of the content or Third Party Sites that may be available through the Service, including cancellation of your enrollment, at any time for any reason and without prior notice.

F. Privacy. Fidelity is committed to maintaining the privacy and security of its customers' personal information. Fidelity's commitment to privacy is reflected in Fidelity's Privacy Policy available at Fidelity.com/privacy. The privacy policies of Third Party Sites may differ.

3. Your Use of the Service

A. Access Credentials. Access to the Service may be made available using your NetBenefits.com or Fidelity.com login credentials. You are solely responsible for maintaining the confidentiality of any username, password or other access credential necessary to access or use the Service, including your access credentials for Fidelity.com or NetBenefits.com, or the login credential you may enter via the Service to import information from Third Parties. Further, you are responsible for all activities that occur in connection with such access credentials, including use of the Service, all instructions electronically transmitted, financial transactions initiated through the Service, or any data or information obtained using your access credentials. Fidelity shall not be under any duty to inquire as to the authority or propriety of any instructions given to Fidelity by you or via your access credentials and shall be entitled to act upon any such instructions, and Fidelity shall not be liable for any loss, cost, expense or other liability arising out of any such instructions. Accordingly, you should take steps to protect the confidentiality of your access credentials. As an authorized user of the Service, you accept full responsibility for the monitoring of your accounts. You must notify Fidelity and/or Third Party Sites immediately if you become aware of any unauthorized activity, disclosure, loss, theft or other unauthorized use of your access credentials. You agree to cooperate with Fidelity in any investigation and agree to take corrective measures to protect your accounts from further fraudulent activity.

B. Provide Accurate Information. Accurate records enable Fidelity to provide you access to the Service. You must provide true, accurate, current and complete information about yourself and your accounts maintained at Fidelity or Third Party Sites, and you may not misrepresent your identity or your account information. In order for the Service to function effectively, you must also keep your registration and account information up to date and accurate.

C. Obey the Law. You may not use the Service for illegal purposes or for the transmission of material that is unlawful, harassing, libelous (untrue and damaging to others), invasive of another's privacy, abusive, threatening, or obscene, or that infringes the rights of others.

D. Restrictions on Commercial Use or Resale. Your right to use the Service is personal to you; therefore, you may not resell or make any commercial use of the Service.

E. Proprietary Rights. You acknowledge and agree that all trademarks and service marks displayed on the Service screens belong to FMR LLC or an affiliate, except third party trademarks and service marks if applicable, which are the property of their respective owners. You are only permitted to use the content as displayed on the site as expressly authorized by the Service. You may not copy, reproduce, distribute, or create derivative works from this content. Further, you may not reverse engineer or reverse compile any of Fidelity's technology, including but not limited to, any Java applets associated with the Service.

4. Rights You Grant to Us.

A. Authorization. You authorize Fidelity and its affiliates to use and disclose your information in connection with the Service. You agree to provide any such other authorizations as may be required by Fidelity to provide the Service, such as a HIPAA authorization for your workplace health plans or their business associates to disclose your healthcare claim information to Fidelity.

B. Content You Provide. Subject to the privacy restrictions set forth in Section 2.F. above, you are licensing to Fidelity any information, data, passwords, usernames, other log-in information, materials or other content (collectively, "Content") you provide through the Service, and Fidelity may use, modify, display, distribute and create new material using such Content. By submitting Content, you represent that you are entitled to submit it to Fidelity, and that Fidelity may use it in accordance with the privacy restrictions set forth in Section 2.F. above without the payment of any fees and without any time limitation.

C. Account Information From Third Parties and Third Party Sites. By using the Service, you expressly authorize Fidelity to access Third Party Sites, on your behalf as your agent, to retrieve account information requested by you; and you further authorize Third Party Site providers to disclose account information to Fidelity through any other available means. You hereby authorize and permit Fidelity to use information submitted by you to the Service (such as account passwords and user names) to accomplish the foregoing and to configure the Service. For all purposes hereof, you hereby grant Fidelity a limited power of attorney, and you hereby appoint Fidelity as your true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for you and in your name, place and stead, in any and all capacities, to access Third Party websites, retrieve information, and use your information, all as described above, with the full power and authority to do

and perform each and every act and thing requisite and necessary to be done in connection with such activities, as fully to all intents and purposes as you might or could do in person. YOU ACKNOWLEDGE AND AGREE THAT WHEN FIDELITY ACCESSES AND RETRIEVES INFORMATION FROM THIRD PARTY WEBSITES, OR OTHERWISE RECEIVES INFORMATION FROM THIRD PARTY WEBSITE PROVIDERS, IT IS ACTING AS YOUR AGENT, AND NOT AS THE AGENT OF OR ON BEHALF OF THE THIRD PARTY ACCOUNT PROVIDER. You agree that the third party account providers shall be entitled to rely on the foregoing authorization, agency and power of attorney granted by you. You understand and agree that the Service is not sponsored or endorsed by any third party account providers accessible through the Service.

5. Other Important Legal Matters.

A. DISCLAIMER OF WARRANTIES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT: YOUR USE OF THE SERVICE AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THAT OF THIRD PARTIES) INCLUDED IN OR ACCESSIBLE FROM THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. FIDELITY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

FIDELITY MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY THIRD PARTY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE TECHNOLOGY WILL BE CORRECTED.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS OF DATA THAT RESULTS FROM THE UPLOAD OR DOWNLOAD OF ANY SUCH MATERIAL. NO INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FIDELITY THROUGH OR FROM THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

Some jurisdictions do not allow the exclusion of certain warranties. Accordingly, some of the above limitations may not apply to you.

TO THE EXTENT THAT ANY PART OF THIS SECTION IS NOT CONSISTENT WITH ANY OTHER PART OF THESE TERMS, THEN THIS SECTION WILL CONTROL.

B. LIMITATION OF LIABILITY. YOU AGREE THAT NEITHER FIDELITY, NOR YOUR EMPLOYER OR PLAN SPONSOR (IF YOUR RELATIONSHIP WITH FIDELITY ARISES THROUGH WORKPLACE SERVICES PROVIDED BY YOUR EMPLOYER) NOR ANY OF THEIR AFFILIATES WILL BE LIABLE FOR ANY HARMS, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR TRADING LOSSES, PERSONAL INJURY, WRONGFUL DEATH, LOSS OF WAGES OR LIVELIHOOD, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, OR DAMAGES RELATED TO THE CONTENT, INFORMATION, OR SERVICES PROVIDED ON THIRD PARTY SITES, EVEN IF FIDELITY OR YOUR EMPLOYER OR PLAN SPONSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF GETTING SUBSTITUTE GOODS AND SERVICES; (iii) ANY PRODUCTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM THE SERVICE; (iv) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (v) STATEMENTS OR CONDUCT OF ANYONE ON THE SERVICE; (vi) THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE OR NON-PERFORMANCE OF ANY THIRD PARTY SITE; OR (vii) ANY OTHER MATTER RELATING TO THE SERVICE.

Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations may not apply to you. You agree that your employer or plan sponsor is a third party beneficiary of the above provisions, with all rights to enforce such provisions as if they were a party to this agreement.

C. Indemnification. You agree to protect and fully compensate Fidelity and their respective affiliates from any and all third party claims, liability, damages, expenses and costs (including, but not limited to, reasonable attorney fees) caused by or arising from your use of the Service, your violation of the Terms, or willful infringement by you or infringement by any other user of your Service access credentials or of any intellectual property or other rights of anyone.

D. Other. If any provision of these Terms is held to be unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. The laws of the Commonwealth of Massachusetts govern the interpretation and performance of this agreement, except with respect to conflicts of laws or as otherwise required by applicable law.

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