

# FAMILYPATH TERMS OF USE

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These Terms of Use apply to all visitors who use the FamilyPath<sup>SM</sup> site located at [FamilyPathBenefits.com](http://FamilyPathBenefits.com) (the "Site"). The Site provides an overview of a fertility benefit offering to clients and prospective clients of Express Scripts, Accredo Health Group, Inc. and its affiliates, and eviCore healthcare and the consultants of such clients. These Terms of Use are between a user of any portion of the Site ("you" or "your") and Express Scripts Holding Company ("Express Scripts", "we", "us" or "our").

## ASSENT

Access to and use of the Site is conditioned upon your assent to these Terms of Use. You are deemed to have assented to these Terms of Use when you use any publicly available page of the Site. You are deemed to have accepted these Terms of Use each time you access the Site. By accessing or using the Site, you acknowledge that you have read, understand, and agree to be legally bound by these Terms of Use.

## UPDATES

From time to time, we may, in our sole discretion, modify these Terms of Use, and the Privacy Policy, indicated by a new version number and revision date. The version number includes a major number, a decimal point, and a minor number. A change to the major number reflects a significant change to the policy, while a change to the minor number reflects a less significant change to the policy. Examples of significant changes include additional provisions that reflect new Site functionality, significant modifications to existing provisions, and more significant changes to Site functionality that cause provisions to be modified, added, or removed. Examples of less significant changes include additional provisions that clarify current Site functionality, minor modifications to existing provisions, and less significant changes to Site functionality that cause provisions to be modified, added, or removed.

We will provide an advance notice of a major change prior to your access of any portion of the Site for which registration is required. For example, we may (i) require that you reaccept the updated version of the web policies, (ii) send an electronic notification advising of the update to the web policies, (iii) include a notice on the Site viewable without login advising of the update to the web policies, and/or (iv) advise of the updated web policies during a phone call. We do not ordinarily provide advance notice of a minor change.

It is important that you check these Terms of Use every time you visit the Site. Your use of the Site and/or utilization of any Site benefits after the Terms of Use have been updated (and after advance notice of certain major changes), indicates your agreement and acceptance of the updated version of the Terms of Use and the Privacy Policy, including the modifications made as of the date of your use.

## USERS OBLIGATIONS

You are required to comply with all applicable laws in connection with your use of the Site and Site Content. You agree that you have appropriate procedures and safeguards with respect to your access and use of the Site and any Site Content obtained through the Site. As a condition of your use of the Site, you agree that you will not use the Site and Site Content for any purpose that is unlawful or prohibited by these Terms of Use. You agree that you will only provide information in connection with any and all uses of the Site that is

true and accurate, identifies only you, and is not false, misleading, or otherwise an impersonation of any person or entity. Certain portions of the Site may have additional terms and conditions. When these portions are used, you agree to be further bound by the associated additional terms and conditions.

## **SITE CONTENT AND INTELLECTUAL PROPERTY RIGHTS**

This Site may contain text, images, software (including images or files incorporated in or generated by the software or data accompanying such software), photographs, video, graphics, audio, features, data, designs, images, and other such similar content (collectively "**Site Content**"). Certain Site Content images may reflect people engaged in various activities. Unless otherwise specifically identified, images are for representative purposes only and do not depict an actual patient or member. Unless otherwise expressly identified, Site Content is owned by us or by our third-party licensors. The Site Content is protected by United States and international copyright, trademark, and other laws. You may browse the Site and download Site Content solely for your personal use, provided you keep intact all copyright and other proprietary notices. Except as expressly permitted, you may not modify, copy, reproduce, republish, upload, post, transmit, hyperlink to or from, or distribute in any way Site Content from this Site, including code and software underlying this Site, nor may you sell, transfer, or otherwise use the Site or the Site Content in commerce or for any public or commercial endeavor without our prior and express written consent. We may in our sole discretion make changes to the Site Content at any time without notice.

## **VIDEO USAGE**

The videos made available to you through the Site are licensed for your personal and noncommercial use only. We reserve all of our other rights with respect to these videos. You may not download or otherwise capture the videos, make commercial use of the videos, embed the videos within your site, or otherwise modify, copy, reproduce, republish, upload, post, transmit, hyperlink to or from, or distribute in any way the videos without our explicit written permission.

## **CALCULATIONS**

Calculators/calculations are provided for illustrative purposes only. You are responsible for verifying the accuracy and suitability of all assumptions and calculations. Do not rely solely on the calculators/calculations or information found on the Site.

## **USER EXPERIENCE**

We constantly make improvements to our Site by adding and modifying its features and functionality. To enhance your Site experience and improve Site effectiveness, we may monitor your Site usage, selectively provide or disable Site features and functionality, and contact you to solicit information that would assist us in improving the overall user experience through such features, functionality, or otherwise.

## **FEEDBACK AND OTHER SUBMITTED CONTENT**

Certain portions of the Site may provide mechanism(s) for you to communicate and share information and/or materials with us. By submitting us your feedback, comments, reviews, ideas, testimonials, opinions, photos, and/or other submitted content (any, a "Submission") through the Site, electronic communications, or otherwise, you agree as follows:

1) Your Submissions must: (i) be original and solely written or created by you, (ii) not feature any intellectual property unless owned by you or us, or anything illegal, obscene, threatening, defamatory or otherwise objectionable, in our sole discretion, (iii) not feature

any identifiable person(s), other than you or those on whose behalf you are authorized to feature in your Submission; and (iv) be accurate, truthful, and not misleading.

2) By sending us a Submission, to the fullest extent and for the maximum duration permitted by applicable law, you also grant to us a royalty-free, irrevocable, perpetual, non-exclusive license to use, reproduce, modify, publish, create derivative works from, and display your Submission, in whole or in part, including the right to use your name, image, likeness, and biographical information (as provided by you) in conjunction with the Submission, on a worldwide basis, in any form, media or technology now known or later developed, including without limitation for our promotional or marketing purposes, and you waive all moral and similar rights. If requested, you will agree to sign any documents to confirm the above.

3) By sending a Submission, you also waive and release, and agree to hold us harmless, and our parents, subsidiaries, affiliates, advertising and promotion agencies, from and against any and all rights claims and causes of action whatsoever, including but not limited to claims relating to rights of privacy, publicity, libel or infringement, or otherwise relating to injury, loss or damage, whether direct, compensatory, incidental or consequential, arising in whole or in part from the Submission or our use of same. You warrant that your Submission is being provided voluntarily, does not incorporate or embody any confidential or proprietary information of third parties, and does not violate any applicable laws or regulations or infringe any third party's copyrights, patent rights, trademarks, or other intellectual property rights.

With certain submission mechanisms, we may post or otherwise contemporaneously provide you with terms that restrict our use of your Submission received through a particular submission mechanism and/or at a particular time. Some of the submission mechanisms available through the Site may provide you with options to enable or limit how we may use a Submission. When such terms are provided or options are available and specified, our use of such Submissions pursuant to this section is subject to such limitations.

We may contact you regarding your Submission through any known electronic communication channel.

## **SOCIAL MEDIA**

The Site may include opportunities to view information and communicate with us through social media services such as LinkedIn®, Twitter®, Facebook®, Glassdoor®, and blogging. You should use common sense and good judgment in communicating with us through these services. We are not responsible for the terms of use and privacy policies that govern these third-party sites.

## **NO PROFESSIONAL ADVICE**

The information provided on the Site is for informational purposes or general guidance only, and does not constitute medical, legal, financial, accounting, tax, or other professional advice. We do not warrant or guarantee the accuracy, completeness, adequacy, or currency of the provided information, nor do we endorse any views or opinions that may be included therein. The provided information does not constitute the rendering by us of any type of opinion, certification, or guarantee. The provided information is not a substitute for medical or other professional advice and it is important that no medical or other professional decisions should be made without first consulting a personal physician or other applicable professional. The receipt of any questions or feedback you submit to us does not create a professional relationship and does not create any privacy interests other than those described in our Privacy Policy.

## **LINKING POLICY**

Our Site may contain hyperlinks allowing our users to connect to other websites owned by us and our affiliated companies and websites owned by our third-party vendors, distributors, and providers ("**Linked Sites**"). You may also access our Site through a hyperlink embedded in a Linked Site. We provide hyperlinks to the Linked Sites to enable you to conveniently access websites that may be of interest to you. Please note that once you click on a hyperlink that transfers you from our Site to a Linked Site, you have left our Site, and this Terms of Use will immediately cease to apply to any subsequent activity on the Linked Site. We are under no obligation to notify you when you have left our Site and have accessed a Linked Site. Use of any Linked Site will be governed by the privacy policy, terms of use, and/or other policies (if any) on the Linked Site.

## **USE RESTRICTIONS**

You agree that you will not (and will not attempt to): (a) access or use the Site or any component thereof in any manner or for any purpose not expressly authorized by these Terms of Use; (b) distribute, sublicense, lease, rent, loan, or otherwise use or make any component of the Site available for use by third parties, including as part of a service bureau, outsourcing, or external consulting arrangement; (c) access any component available through the Site via remote access through interfaces or automated means not approved in writing by us; (d) collect, compile, or otherwise attempt to "screen scrape," "data mine" or "harvest" any component of the Site, including through the creation of any duplicate or derivative data store; (e) deactivate, bypass, or circumvent any access controls or security measures for the Site; (f) gain unauthorized access to the Site or another site user's network, systems, or data; (g) engage in any activity or use any device, software, or routine, or introduce any virus, Trojan horse, spyware, adware, or other malicious code, that interferes with a user's access to the Site or the proper operation of this Site; (h) engage in any activity that disrupts or impairs the performance of the Site; (i) access or use the Site in violation of any applicable laws or regulations, the intellectual property or other rights of any third party, or any contractual or legal duty or obligation including in a manner prohibited by these Terms of Use; (j) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or underlying programming, models, databases, or database structures for the Site; or (k) remove or obscure any copyright, trademark, confidentiality, or other Site notices, terms, or disclosures. We reserve the right to suspend or terminate Site access to address non-compliance with these Terms of Use.

## **OFF-LABEL USE**

Certain uses of products discussed on the Site may not have been approved by the Food and Drug Administration.

## **PRIVACY POLICY**

You agree to the FamilyPath Website Privacy Policy ("**Privacy Policy**"), which is incorporated by reference in these Terms of Use.

## **DISCLAIMER OF WARRANTIES**

THE SITE AND THE SITE CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS, AND ALL USE OF THE SITE AND THE SITE CONTENT IS AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE SITE, THE SITE CONTENT, OR YOUR ACCESS TO OR USE THEREOF. WE HEREBY DISCLAIM ANY AND ALL IMPLIED AND STATUTORY WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, TITLE, QUIET ENJOYMENT, NON-INFRINGEMENT,

CUSTOM, AND USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, WE DO NOT REPRESENT OR WARRANT THAT THE SITE OR THE SITE CONTENT WILL BE ACCURATE, COMPLETE, UP-TO-DATE, OR RELIABLE; THAT ACCESS TO OR USE OF THE SITE WILL BE UNINTERRUPTED, SECURE, OR ERROR-FREE; THAT THE SITE, THE SITE CONTENT, OR ANY PORTION THEREOF WILL NOT CHANGE OR BE DISCONTINUED; THAT ERRORS OR DEFECTS WILL BE CORRECTED; THAT THE SITE OR THE SITE CONTENT WILL BE FREE FROM COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS; OR THAT ACCESS TO OR USE OF THE SITE OR THE SITE CONTENT IS LAWFUL IN ANY PARTICULAR JURISDICTION. NO SUPPLIER TO US HAS ANY WARRANTY, SUPPORT, OR OTHER OBLIGATIONS TO YOU IN CONNECTION WITH YOUR USE OF THIS SITE. YOU ASSUME THE ENTIRE OBLIGATION AND COST OF ANY AND ALL NECESSARY COMPUTER, MOBILE DEVICE, AND NETWORK SERVICING, REPAIR, AND CORRECTION. IF YOU ARE DISSATISFIED WITH THE SITE OR THE SITE CONTENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR CERTAIN OTHER WARRANTIES, SO THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU TO THE EXTENT SUCH A JURISDICTION'S LAW APPLIES AND LIMITS SUCH DISCLAIMERS.

### **LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES OR LOSSES OF ANY KIND ARISING OUT OF OR DIRECTLY OR INDIRECTLY RELATED TO THE SITE, THE SITE CONTENT, YOUR ACCESS TO OR USE THEREOF, OUR PERFORMANCE, NON-PERFORMANCE, ACTS, OR OMISSIONS IN CONNECTION THEREWITH, THE PRIVACY POLICY, OR THESE TERMS OF USE, EVEN IF FORESEEABLE, AND EVEN IF WE HAVE BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, UNDER NO CIRCUMSTANCES SHALL OUR TOTAL, CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL DAMAGES, LOSSES, CLAIMS, AND CAUSES OF ACTION EXCEED FIVE UNITED STATES DOLLARS (\$5.00). IN NO WAY LIMITING THE FOREGOING, WE ASSUME NO OBLIGATION AND SHALL HAVE NO LIABILITY ARISING OUT OF OR DIRECTLY OR INDIRECTLY RELATED TO ANY COMMUNICATION ERRORS, SERVICE INTERRUPTIONS, OR SITE MALFUNCTIONS; THE CONDUCT OR CONTENT OF ANY SITE USER; COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS; LOSS OR CORRUPTION OF DATA; DAMAGE TO YOUR COMPUTER, MOBILE DEVICE, OR NETWORK; MALICIOUS ACTS OF THIRD PARTIES; FORCE MAJEURE EVENTS; BUSINESS INTERRUPTION OR DOWNTIME; LOSS OF BUSINESS, PROFITS, OR GOODWILL; OR ACTIONS TAKEN OR NOT TAKEN IN CONNECTION WITH INVESTIGATIONS, DEMANDS, OR CLAIMS BY US, INTELLECTUAL PROPERTY OWNERS, LAW ENFORCEMENT, GOVERNMENTAL AUTHORITIES, OR THIRD PARTIES. THE LIMITATIONS ON LIABILITY IN THIS SECTION SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, REGARDLESS OF THE NUMBER OF INCIDENTS OR CLAIMS, AND REGARDLESS OF THE NATURE OF THE DAMAGE, LOSS, CLAIM, OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE). THE LIMITATIONS ON LIABILITY IN THIS SECTION ARE AN ESSENTIAL PART OF THESE TERMS OF USE, AND SHALL BE VALID AND BINDING EVEN IF ANY REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL, CONSEQUENTIAL, OR CERTAIN OTHER DAMAGES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU TO THE EXTENT SUCH A JURISDICTION'S LAW APPLIES AND LIMITS SUCH EXCLUSIONS.

### **INDEMNIFICATION**

You agree to indemnify and hold Express Scripts Holding Company, its affiliates, and their respective directors, officers, employees, and agents harmless from and against any and all claims, demands, actions, damages, liabilities, losses, fines, penalties, judgments, awards, settlements, costs and expenses (including reasonable attorneys' fees and court costs)

arising out of or resulting in whole or in part from your violation of these Terms of Use, your misuse of the Site, or your violation of the rights of another person or entity.

## **NOTICE OF COPYRIGHT INFRINGEMENT**

If you believe that your work has been copied and is accessible on this Site in a way that constitutes copyright infringement, please provide our designated Copyright Agent identified below with the following information:

- a. identification of the copyrighted work claimed to have been infringed;
- b. identification of the allegedly infringing material on the Site that is requested to be removed;
- c. your name, address and daytime telephone number, and an e-mail address if available, so that we may contact you if necessary;
- d. a statement that you have a good faith belief that the use of the copyrighted work is not authorized by the copyright owner, its agent, or the law;
- e. a statement that the information in the notification is accurate, and under penalty of perjury, that the signatory is authorized to act on behalf of the owner of an exclusive copyright right that is allegedly infringed; and
- f. a physical or electronic signature of the copyright owner or the person authorized on the owner's behalf to assert infringement of copyright and to submit the statement.

Contact Information for Our Copyright Agent:  
Legal Department, Intellectual Property  
Express Scripts Holding Company  
One Express Way, Hq1-2e03, St. Louis, MO 63121  
e-mail: uspto@express-scripts.com

We will remove any content that infringes the copyright of any person under the laws of the United States upon receipt of information as set forth in Subsections (a) - (f) above, and may, in our sole discretion if we deem it appropriate, terminate access rights of any user who we reasonably believe violates any United States copyright laws.

## **GOVERNING LAW**

These Terms of Use shall be governed by and construed in accordance with the laws of the State of Missouri, excluding its conflict of law rules. The Site is intended for use by individuals residing in the United States of America. No laws of any foreign jurisdiction shall apply to these Terms of Use or be binding on us.

## **JURISDICTION; VENUE**

Any dispute, claim, action or proceeding arising out of or related to the Site, the Site Content, the Privacy Policy, or these Terms of Use, or the interpretation or enforcement hereof, whether at law or in equity, shall be brought only in the state courts located in St. Louis County, Missouri or, if proper and exclusive federal subject matter jurisdiction exists, the United States District Court for the Eastern District of Missouri. Each party hereby submits to the personal jurisdiction and consents to the exclusive venue of such courts, and waives any objections thereto, including based on *forum non conveniens*. Notwithstanding the foregoing, in connection with asserting or protecting our intellectual property or other legal rights or business interests, we retain the right to seek temporary or permanent injunctive or other non-monetary equitable relief against you in any court of competent jurisdiction.

**NO WAIVER**

Any waiver by us must be express and in writing, must be directed specifically by us to you, and must be signed by our duly authorized representative. Our failure to enforce any provision of these Terms of Use or to respond to a breach by you or third parties shall not in any way limit or waive our right to do so, including without limitation our right to enforce subsequently any provision of these Terms of Use, or to assert our rights with respect to the same or similar breaches.

**ENTIRE AGREEMENT**

Unless otherwise specified herein, these Terms of Use and the Privacy Policy incorporated herein constitute the entire agreement between you and us with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, whether written or oral, concerning the subject matter hereof. Any conflicting or supplementary terms proposed by you in any e-mail or other communication shall not be binding on us, and are hereby objected to and expressly rejected.

**SEVERABILITY**

If any portion of these Terms of Use or the Privacy Policy is held invalid or unenforceable under applicable law, that portion shall be construed in a manner consistent with applicable law to accomplish, as nearly as possible, the objective thereof, or severed from the document if and solely to the limited extent such construction is not possible, and the remaining portion of these Terms of Use and the Privacy Policy shall remain in full force and effect.