

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF CONSUMER FRAUDS & PROTECTION

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In the Matter of the

Assurance No. 24-031

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

PATHWARD, N.A.,

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The New York State Office of the Attorney General (the “OAG”) commenced an investigation under Executive Law § 63(12) and General Business Law §§ 349 into the handling of restraining notices, levies, and other legal process served under Article 52 of New York’s Civil Practice Law and Rules by Pathward, National Association (“Pathward” or “Respondent”). This Assurance of Discontinuance (the “Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Pathward (together, the “Parties”).

**OAG FINDINGS**

1. Pathward is a nationally chartered bank with its principal place of business located at 5501 S. Broadband Lane, Sioux Falls, South Dakota 57108. Until July 13, 2022, Pathward was named and operated as MetaBank, N.A. Pathward is a wholly owned subsidiary of Pathward Financial, Inc., a registered bank holding company incorporated in Delaware its principal place of business also at 5501 S. Broadband Lane, Sioux Falls, South Dakota 57108.

2. Pathward is not a typical “brick-and-mortar” bank that maintains local branches, employs bank tellers, and provides access to a network of Pathward-branded ATMs. Pathward’s main office is located in Sioux Falls, South Dakota.

3. Pathward primarily utilizes the services of certain third-party service providers, referred to herein as “Servicers,” to offer banking products to consumers. Such Servicers market card products, such as debit cards, prepaid cards, payroll cards, or gift cards, directly to consumers. Consumers who sign up for such card products load funds onto the card products. Funds loaded onto the products are then held in an account maintained by Pathward.

4. As the bank, Pathward is the issuer of the card products marketed by Servicers and used by consumers. Upon signing up for a card product, consumers will enter into account agreements with Pathward, and Pathward will maintain the bank accounts that hold consumers’ deposited funds. Servicers will otherwise administer the program and interact with consumers, while Pathward will oversee and monitor the program and the Servicer’s actions.

5. For example, one of Pathward’s Servicers markets prepaid reloadable debit cards, which are available for purchase at retail locations or online, and payroll cards, which are offered directly through employers. While Pathward is the issuer of the cards and holds funds associated with the cards in Pathward bank accounts, the names, brands, and logos of the Servicer appear prominently on the cards, on their packaging, and in advertisements for the card products, while Pathward’s name will appear as required with the by-laws, rules, and regulations of the card brand network. The Servicer is responsible for marketing the cards, and for authorizing, processing, and clearing transactions through the retention of a network processor approved by Pathward. The Servicer also generally handles transaction disputes and prepares account statements. When consumers have questions or complaints, the publicized telephone numbers, email addresses, and online portals direct consumers to the Servicer rather than to Pathward.

6. Tens of thousands of New York residents have opened bank accounts with Pathward by signing up for products marketed by one or more Servicers. Several Pathward

Servicers market the products to unbanked or underbanked communities who may otherwise have no or no readily available access to banking products, including younger consumers, low-income and gig workers, and communities of color. As a result, millions of dollars from these New York communities have been and currently are held in Pathward bank accounts.

**I. NEW YORK'S EXEMPT INCOME PROTECTION ACT REQUIRES BANKS TO SHIELD SPECIFIED CONSUMER FUNDS FROM LEGAL RESTRAINT**

7. New York's Exempt Income Protection Act (the "EIPA"), A.B. 8572A, was signed into law on September 25, 2008 and became effective on January 1, 2009.

8. The purpose of the EIPA is to ensure that New York residents maintain reliable access to money that is needed to pay for basic needs, such as housing, food, and medicine. Its target beneficiaries are populations that receive social security and other state and federal subsistence payments, including the elderly, disabled individuals, and veterans, as well as low-income workers and individuals living on limited budgets or paycheck-to-paycheck.

9. To accomplish its goals, the EIPA provides that banks, upon receipt of account restraints, levies, or other legal process related to enforcement of judgments under Article 52 of the CPLR (collectively, "Legal Process"), must not restrain consumers' use of statutorily exempt funds, such as social security benefits, veterans benefits, and disability insurance (the "Exempt Funds") in consumers' bank accounts up to an amount set every three years by New York's Department of Financial Services ("DFS"). As of April 1, 2024, the amount of Exempt Funds that banks must not restrain in consumers' bank accounts is \$3,425.

10. The EIPA's protections apply to Exempt Funds that are deposited into bank accounts through direct deposit or other electronic payments reasonably identifiable as Exempt Funds. In most situations, the electronic transfer codes and information received by banks, such as Pathward, will demonstrate that deposits into accounts involve Exempt Funds.

11. The EIPA also provides that where bank accounts contain Exempt Funds and the account balances are below the limit set by DFS (the “Exempt Funds Threshold”), any Legal Process is deemed void by operation of law and banks must not restrain accounts at all.

12. In addition to Exempt Funds, the EIPA also provides that banks must not restrain funds in bank accounts up to an amount equal to 240 multiplied by the higher of the current state or federal minimum wage (the “Protected Wages”). The current state minimum wage is \$16.00 for New York City, Long Island, and Westchester County residents and \$15.00 for all other New York residents. Thus, the EIPA bars banks from restraining up to either \$3,840 or \$3,600 of Protected Wages in bank accounts, depending on where consumers live in New York.

13. The EIPA further provides that where bank account balances are less than ninety percent of the current Protected Wages (the “Wage Threshold”)—\$3,456 for New York City, Long Island, and Westchester County residents and \$3,240 for all other residents—the Legal Process is deemed void by operation of law and banks must not restrain accounts at all.

14. The EIPA imposes the above-described obligations directly upon banks. These obligations cannot be waived or bargained away by individual consumers.

## **II. PATHWARD ACCOUNT AGREEMENTS DID NOT ACCURATELY DESCRIBE CONSUMERS’ RIGHTS UNDER THE EXEMPT INCOME PROTECTION ACT**

15. Upon signing up for card products marketed by Servicers, consumers execute standard-form Pathward cardholder agreements or demand deposit account agreements. These agreements are not subject to negotiation between consumers and Pathward.

16. Pathward’s account agreements are lengthy. At the top of the document, the agreements name the Servicer and immediately thereunder provides customer service contact information that includes the address, email, and phone number for the Servicer. In the middle of

the page, after providing several “important notices,” the agreements state that “we” and “us” as used throughout the agreements means Pathward and not the Servicer.

17. Pathward’s template cardholder and demand deposit account agreements contain a paragraph entitled “Legal Process” that purports to govern Pathward’s handling of Legal Process seeking to restrain funds in Pathward bank accounts. That paragraph states, in part:

Regardless of where or how we are served, we may comply with any state or federal legal process, including, without limitation, any writ of attachment, adverse claim, execution, garnishment, tax levy, restraining order, subpoena or warrant relating to you or your Account which we believe to be valid. You agree that we may honor legal process . . . . You agree that we will have no liability to you for honoring any such legal process. You also agree that we will have no obligation to assert on your behalf any applicable exemptions to execution or attachment under any applicable state or federal law.

18. These provisions are deceptive. They purport to constitute agreements by consumers to waive liability that, as a matter of New York law, cannot be waived. They purport to constitute agreements by consumers that Pathward may honor legal process that, as a matter of New York law, is deemed void. They purport to constitute agreements by consumers that Pathward has no obligation to assert exemptions to Legal Process when, as a matter of New York law, banks such as Pathward are statutorily required to review for exemptions and assert them.

### **III. PATHWARD AND CERTAIN OF PATHWARD’S SERVICERS RESTRAINED ACCOUNTS AND PAID OUT FUNDS IN VIOLATION OF THE EIPA**

19. Pathward and its Servicers enter into servicing agreements that govern their relationship. Under those agreements, Pathward appoints each Servicer as its authorized and exclusive servicer for the prepaid, debit or other card product being offered. The agreements further clarify that Pathward, not the Servicer, is the issuer of the products offered to consumers, that Pathward retains full oversight and control of the products, and that the Servicer cannot alter the terms or conditions of the products without Pathward’s consent.

20. Debt collectors seeking to restrain funds loaded onto card products have historically served Legal Process directly on Pathward or directly on the Servicers.

21. On several occasions since 2016, Pathward, after being served with Legal Process, instructed its Servicers to place account restraints on bank accounts and pay over funds in those accounts to debt collectors, even when accounts contained Exempt Funds or when account balances were below the Exempt Funds Threshold or Wage Threshold.

22. For example, on August 7, 2018, a Pathward (then MetaBank) employee emailed a Servicer a copy of Legal Process related to a Pathward bank account. The account balance was \$1.57 and the Legal Process was void by operation of law, but the employee improperly advised the Servicer that a one-year hold was required to be placed on the account. Similarly, on March 8, 2019, a Pathward employee emailed a Servicer asking if enough funds were in a Pathward bank account to satisfy a debt collector's demand for \$600, despite the account having a balance below the Wage Threshold and the Legal Process in question being void by operation of law.

23. In 2020, prior to the commencement of the investigation by the OAG, Pathward began to require domestication of out of state judgments into South Dakota. This, in effect, prevented violations of the EIPA in connection with Legal Process served directly on Pathward.

24. However, under the servicing agreements, Servicers independently have the operational ability to establish and remove restraints on Pathward bank accounts. Servicers also have the operational ability to cause funds to be paid to third parties out of Pathward bank accounts in response to Legal Process. As a result, Servicers have historically received Legal Process pursuing funds in Pathward bank accounts and caused consumers' money to be paid out of Pathward bank accounts, exercising operational abilities provided in the servicing agreements.

25. Despite its oversight and legal obligations, Pathward failed to direct its Servicers to comply with the domestication policy that Pathward adopted in 2020 or to otherwise ensure that its Servicers handled Legal Process in a manner that complied with the EIPA.

26. On at least 88 occasions since 2016, in response to Legal Process related to accounts of New York residents, certain of Pathward's Servicers operationally restrained Exempt Funds or Protected Wages in Pathward bank accounts and paid out amounts in those accounts to debt collectors. In September 2021, for example, a Servicer restrained a Pathward bank account in response to Legal Process despite recent direct deposits of New York State unemployment benefits that were readily discernable from account records. The Servicer restrained the entire account, and eventually paid out portions of these deposited benefits to a debt collector, despite the account balance being several hundred dollars below the Exempt Funds Threshold in the EIPA and the Legal Process being void by operation of law.

27. On more than 1,400 independent occasions since 2016, in response to Legal Process relating to accounts of New York residents, certain of Pathward's Servicers operationally restrained Pathward bank accounts with balances below the Exempt Funds Threshold or Wage Threshold. The majority of these accounts had \$0 balances and no consumer transactions of any kind during the six-month period prior to the restraint. However, the consumers, to the extent they intended to continue using their accounts, were deprived of use of the accounts as a result of the restraints, including some consumers who had been actively using the accounts or who had subsequent deposits into the accounts that were rendered inaccessible. And consumers with positive balances in their accounts were deprived of the use of their funds.

28. In April 2021, for example, a Servicer restrained a Pathward bank account in response to Legal Process. The account balance was less than \$800, which was several thousand

dollars below the Wage Threshold in the EIPA, and the Legal Process was void by operation of law. The illegal restraint remained in place for a full year. Such illegal account restraints deprive consumers of access to critical funds and risk the illegal turnover of funds to debt collectors. In addition, illegal restraints can result in the loss of future deposits.

29. Since 2016, in response to service of Legal Process, Pathward and its Servicers have caused tens of thousands of dollars held by New York residents in Pathward bank accounts with balances below the Exempt Funds Threshold or the Wage Threshold to be illegally paid out, much of which belonged to members of New York's most vulnerable communities.

30. Since 2016, in response to service of Legal Process, Pathward and its Servicers have restrained more than \$100,000 held by New York residents in Pathward bank accounts with balances below the Exempt Funds Threshold or the Wage Threshold to be illegally restrained.

#### **IV. PATHWARD FAILED TO PREVENT DECEPTIVE ACTS AND PRACTICES BY CERTAIN OF ITS SERVICERS WHEN HANDLING LEGAL PROCESS**

31. Pathward's Servicers adopted procedures for the handling of Legal Process that are contrary to the EIPA's requirements. For example, one Servicer adopted a policy requiring consumers to provide written documentation stating that the Servicer had no liability to debt collectors before account restraints could be released, even in circumstances where account balances were below the Exempt Funds Threshold or Wage Threshold in the EIPA and the Legal Process therefore was void by operation of law.

32. Pathward's Servicers also at times provided deceptive information to consumers about Legal Process. Servicers falsely described Legal Process as "court orders" rather than documents generated by debt collectors, incorrectly informed consumers that nothing could be done to remove restraints despite account balances that were below the Exempt Funds Threshold



or the Wage Threshold and thus void Legal Process, and fraudulently told consumers that only debt collectors had the authority to release restraints on Pathward bank accounts.

33. Pathward’s Servicers also referred inquiring consumers directly to debt collectors. Debt collectors, in turn, attempted to negotiate deals in which they would agree to release accounts from restraints in exchange for a portion of the account balance. In many such cases, the account balances were below the Exempt Funds Threshold or the Wage Threshold in the EIPA and thus the restraints were void by operation of law.

34. On January 10, 2019, for example, a Servicer restrained a Pathward bank account containing \$1,008.52, despite a balance substantially below the Wage Threshold. When the consumer contacted the Servicer and told the Servicer that the account restraint was illegal under New York law, the Servicer falsely told him that the account had to remain blocked for a year “per the court order” and advised the consumer to contact the debt collector. Two months later, the debt collector submitted a stipulation in which the consumer agreed to pay over \$600 from the account to free up the remaining funds from the illegal restraint.

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35. The OAG finds that the acts and practices described above constitute repeated violations of the EIPA, including but not limited to Sections 5222 and 5232 of the CPLR, and thus constitute repeated illegal acts in violation of Executive Law § 63(12).

36. The OAG finds that the acts and practices described above constitute repeated fraudulent and deceptive acts in violation of Executive Law § 63(12) and General Business Law § 349, and thus also constitute repeated illegality in violation of Executive Law § 63(12).

37. Respondent neither admits nor denies the OAG’s findings.

38. The OAG finds that the relief and agreements contained in the Assurance is both appropriate and in the public interest. THEREFORE, the OAG is willing to accept the Assurance under Executive Law § 63(15) in lieu of commencing a statutory proceeding or other civil action for violations of Executive Law § 63(12) and General Business Law § 349 based on the conduct described above from 2016 to the present.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

***Changes to Business Practices***

39. Respondent will not engage, or attempt to engage, in conduct in violation of New York's Exempt Income Protection Act, including but not limited to CPLR §§ 5222 & 5232, New York Executive Law § 63(12), or New York General Business Law § 349.

40. Within fourteen (14) days of the Effective Date, Respondent will deliver guidance to each of its Servicers that instructs each Servicer as follows:

- a. the Servicer will respond to any Legal Process impacting one or more Pathward bank accounts belonging to a consumer with a New York address, including but not limited to any Information Subpoena and Restraining Notice or any Levy issued under the CPLR, by advising the sender of the Legal Process (i) that Pathward, N.A., and not the Servicer, maintains the consumer's bank account and (ii) that any Legal Process relating to the consumer's account must be directed to Pathward at its offices in Sioux Falls, South Dakota; and
- b. the Servicer will not restrain the Pathward bank accounts or pay out any amounts from the Pathward bank accounts unless compelled to do so by order of the court issuing the Legal Process.

41. Within one-hundred-and-eighty (180) days of the Effective Date, Respondent will ensure that each Servicer's policies and procedures have been revised in accordance with the guidance to be delivered by Respondent in the preceding paragraph 40.

42. Respondent will handle any Legal Process received at its offices in Sioux Falls, South Dakota, in accordance with its current practices and procedures. Respondent will ensure that the EIPA is followed in connection with honoring any Legal Process impacting one or more Pathward bank accounts belonging to a consumer with a New York address.

43. In the event that a Servicer demonstrates to Respondent that it has adopted and implemented procedures designed to ensure that Legal Process is handled in compliance with the EIPA, Respondent may approve an exception to the policy and procedure requirements for Servicers set forth in paragraphs 40 and 41 to allow the Servicer to handle Legal Process directly. For each such exception that it approves, Respondent will:

- a. for any exception approved by Respondent within six (6) months of the Effective Date, provide notice to the OAG of the exception;
- b. require the Servicer to provide ongoing monthly reporting to Pathward with details sufficient to identify each Legal Restraint received during the period reported on and allow Pathward to ensure that the Servicer is handling Legal Process in compliance with the EIPA;
- c. in the event any monthly reporting provided in subparagraph (b) reflects noncompliance with the EIPA, instruct the Servicer on all necessary changes to its policies and procedures to ensure EIPA compliance.

44. Within thirty (30) days of the Effective Date, Respondent will provide the OAG with proposed revisions to the "Legal Process" section of all standard-form account agreements

used by Servicers in which funds loaded onto the cards are consumer-owned and legally subject to Legal Process (“Impacted Programs”) that: (i) eliminate provisions authorizing Pathward to honor all Legal Process without regard to the EIPA; (ii) eliminate provisions relieving Pathward of any obligation to assert exemptions protected by the EIPA; (iii) eliminate provisions authorizing the charging of fees to consumers in connection with Legal Process that is void by operation of the EIPA; and otherwise (iv) revise each of the agreements to remove any deceptive provisions regarding Legal Process. The Parties will endeavor in good faith to agree upon revisions within thirty (30) days of receipt by the OAG of proposed revisions from Respondent. If the Parties are unable to agree upon revisions within the thirty (30) day period despite good faith efforts, the Parties shall in good faith negotiate an appropriate extension to the deadline set forth in Section 45 below. Should the Parties be unable to agree upon the revisions, the OAG may in its sole discretion take action to void the Assurance.

45. Within one-hundred-and-eighty (180) days of the Effective Date, Respondent will incorporate the agreed-upon revisions described in the preceding paragraph into all cardholder or demand deposit account agreements for all new Impacted Programs.

46. For all Impacted Programs, both new and existing, and notwithstanding the printed language in any existing cardholder or demand deposit account agreement accompanying any product in any Impacted Program, Respondent agrees to apply the agreed-upon revisions described in paragraph 44 above to its handling of any Legal Process.

#### ***Monetary Relief***

47. Within thirty (30) days of the Effective Date, Respondent will pay to the State of New York \$79,664.67 in restitution. The OAG will distribute restitution to affected consumers in a fair and equitable manner as determined in its sole discretion.

48. Within thirty (30) days of the Effective Date, Respondent will pay to the State of New York \$627,000 in penalties and costs.

49. Payment of the relief identified in paragraphs 47 and 48 will be made by wire transfer pursuant to instructions provided by the OAG to Respondent.

***Ongoing Monitoring & Compliance***

50. Six (6) months after the Effective Date, Respondent will provide a report to the OAG sufficient to show, for each Legal Process served on Respondent or a Servicer during the six months following the Effective Date related to a Pathward bank account belonging to a New York resident: (i) the date of service of the Legal Process; (ii) whether any Exempt Funds were held in the account; (iii) the account balance on the date of service; (iv) the current account balance; (v) whether any restraint was put in place; (vi) the date any such restraint was put in place; (vii) the date any such restraint was removed; (viii) whether any funds were paid out to a debt collector; (ix) the date any funds were paid out; and (x) the amount of funds paid out (a “Six-Month Report”). In the event that Respondent responds to a Legal Process by rejecting the Legal Process as invalid based on the debt collector’s failure to domesticate the judgment into South Dakota or any other procedural deficiency, and no restraint is placed on or funds are paid out of the Pathward bank account, no line item shall be required in the Six-Month Report for such Legal Process. Respondent will provide similar Six-Month Reports to the OAG that cover Legal Process served between six and twelve months after the Effective Date and between twelve and eighteen months after the Effective Date. For each Six-Month Report that the OAG determines reflects continuing noncompliance with the EIPA, the OAG may, in its sole discretion, require Respondent to provide to the OAG an additional Six-Month Report that covers subsequent periods, up to a maximum period of three (3) years in aggregate.

51. In connection with each Six-Month Report provided under the preceding paragraph, Respondent will voluntarily cooperate with any OAG requests for supplemental information, documents, or data related to the handling of any Legal Process described in a Six-Month Report that the OAG reasonably demonstrates was not in compliance with the EIPA or the Assurance. Respondent otherwise will consider in good faith any request for information by the OAG for information, documents, or data beyond the scope of the Assurance.

**MISCELLANEOUS**

***Subsequent Proceedings***

52. Respondent expressly agrees and acknowledges: that a default in the performance of any obligation under paragraphs 39 to 51 is a violation of the Assurance; that thereafter the OAG may commence the special proceeding or civil action contemplated in paragraph 38, in addition to any other appropriate investigation, action, or proceeding; and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraphs 35 to 36, as provided by Executive Law § 63(15).

53. In any subsequent investigation, action, or proceeding by the OAG to enforce the Assurance, for violations of the Assurance, or if the Assurance is voided under paragraph 60, Respondent expressly agrees and acknowledges that:

- a. any statute of limitations or other time-related defenses are tolled from and after the Effective Date of the Assurance;
- b. the OAG may use statements, documents, or other materials provided by the Respondent prior to or after the Effective Date of the Assurance; and
- c. any action or proceeding will be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, forum, or venue.

54. If a court of competent jurisdiction determines that Respondent has violated the Assurance, Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing the Assurance, including without limitation legal fees, expenses, and court costs.

### *Effects of Assurance*

55. Except for the agreed-upon revisions to Pathward's cardholder and demand deposit account agreements described in paragraph 44 above, acceptance of the Assurance by the OAG is not an approval or endorsement by the OAG of any of Respondent's policies, practices, or procedures, and Respondent shall make no representation to the contrary.

56. All terms and conditions of the Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondent. Respondent shall cause the Assurance to apply to any successor, assignee, or transferee in any transfer, assignment, or other change-of-control transaction. The rights and obligations under the Assurance shall not be assigned, delegated, or otherwise transferred without the prior written consent of the OAG.

57. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

58. Any failure by the OAG to insist upon the strict performance by Respondent of any provision of the Assurance shall not be deemed a waiver of any provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any provision of the Assurance to be performed by Respondent.

### *Communications*

59. All notices, reports, requests, and other communications related to the Assurance shall reference Assurance No. 24-031, shall be in writing, and shall, unless expressly provided

otherwise herein, be addressed as follows and given by (i) hand delivery, (ii) express courier, or (iii) electronic mail, with such electronic mail to be followed by postage prepaid mail.

If to Respondent:

Pathward, National Association  
Attn: Chief Legal Officer  
5501 S. Broadband Lane  
Sioux Falls, SD 57108  
Email: legalnotice@pathward.com

With a copy (which shall not constitute notice) to:

Davenport, Evans, Hurwitz & Smith, L.L.P.  
Attn: Keith A. Gauer  
206 West 14th Street, P.O. Box 1030  
Sioux Falls, SD 57101-1030  
Email: kgauer@dehs.com

If to the OAG:

New York State Office of the Attorney General  
Bureau of Consumer Frauds and Protection  
Attn: Christopher L. Filburn, Assistant Attorney General  
28 Liberty Street, 20th Floor  
New York, NY 10005  
Phone: 212.416.8303  
Email: christopher.filburn@ag.ny.gov

or in his absence, to the person holding the title of Bureau Chief, Bureau of Consumer Frauds and Protection.

### ***Representations & Warranties***

60. The OAG has agreed to the terms of the Assurance based on, among other things, representations made by Respondent and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1 to 34 above. Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, the OAG may in its sole discretion take action to void the Assurance.



61. No representation, inducement, promise, understanding, condition, or warranty not set forth in the Assurance has been made to or relied upon by Respondent in agreeing to the Assurance.

62. Respondent represents and warrants, through the signatures below, that the terms and conditions of the Assurance are duly approved. Nothing in this paragraph affects Respondent's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

63. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

64. The OAG acknowledges that Respondent has not consented to the exercise of visitorial or examination authority by the OAG and that Respondent has cooperated voluntarily with the OAG's investigation. Subject to paragraph 51 above, Respondent has not agreed that the OAG has the power to subpoena records or information of Respondent.

### ***General Principles***

65. Nothing in the Assurance shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation, or other applicable law.

66. Nothing in the Assurance shall be construed to limit the remedies available to the OAG in the event that Respondent violates the Assurance after the Effective Date.

67. The Assurance may not be amended except by an instrument in writing (which may be electronic) signed on behalf of the Parties to the Assurance.

68. In the event that any one or more of the provisions contained in the Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or

unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of the Assurance.

69. Respondent acknowledges that it has entered the Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

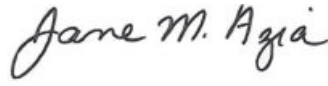
70. The Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

71. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

72. The Assurance may be executed in multiple counterparts by the Parties, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. For purposes of the Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, or transmitted electronically, and electronic signatures, shall be deemed original signatures for purposes of the Assurance.

74. The effective date of the Assurance shall be the date upon which it has been fully executed by all of the signatories hereto (the “Effective Date”).

LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, NY 10005

By:   
Date: 4 / 17 / 24

Jane M. Azia  
Bureau Chief, Bureau of Consumer Frauds and  
Protection

PATHWARD, NATIONAL ASSOCIATION

By:   
Date: 4/4/2024

Brett Pharr  
Chief Executive Officer