

## Path to Apple Card Terms of Use

The Path to Apple Card program (the “Program” or your “Path”) is being offered to you by Goldman Sachs Bank USA, Salt Lake City Branch (“Bank,” “we,” or “us”). By enrolling and participating in the Program, you agree to the following terms of use along with your personalized Steps and Completion Date (the “Agreement”).

Your Path is designed to help you get approved for Apple Card. If you successfully complete your Path by satisfying each of your Steps on your Completion Date, you will receive an invitation from the Bank to re-apply for Apple Card. Each application for Apple Card is subject to review by the Bank pursuant to applicable laws and its credit policies and criteria in effect at the time of application. Completion of your Path does not necessarily guarantee that any future application for Apple Card will be approved. If you are approved, your account will be subject to the terms, features, and rates of Apple Card effective at the time of approval.

Participation in the Program does not prohibit you from applying for Apple Card at any time. If you re-apply before completing the Program, we may approve or decline you and your Path may change or be updated.

### Contacting Us

You can contact the Bank with questions or other matters about the Program by:

- Calling us toll-free at 877-255-5923;
- Chatting with the Bank using the Messages app by clicking ‘ask a Specialist’ in your Program emails; or
- Writing to us at Lockbox 6112, P.O. Box 7247, Philadelphia, PA 19170-6112.

If you attempt to contact the Bank by other means, we may not receive your message and may not be able to respond.

### Questions About Consumer Report Information

The Program uses information about you in consumer credit reports (or “consumer reports”) prepared by one or more credit bureaus chosen by the Bank (the “Credit Bureau”). That Credit Bureau is currently TransUnion. If you have questions about the contents of your TransUnion consumer reports, or if you think any information in those reports may be inaccurate or incomplete, contact TransUnion at [www.transunion.com](http://www.transunion.com) or 800-916-8800. The contact information for TransUnion was accurate as of the date of this Agreement.

### 1. ELIGIBILITY

To be eligible for the Program, you must have received an invitation to participate from the Bank following a declined application. Other Program eligibility requirements are consistent with Apple Card’s eligibility requirements, which are:

- Be at least 18 years of age (or older depending on your place of residence);
- Be a citizen or lawful resident of the United States;
- Have an Apple ID associated with an iCloud account that is in good standing with Apple and has not been used by another person for participation in the Program, as well as a valid email address associated with your Apple ID;
- Have Apple’s two-factor authentication turned on for your Apple ID that is associated with your iCloud account; and
- Have an Apple device that has a version of iOS or iPadOS that supports the use of Apple Card, has internet access, has a passcode enabled, and is associated with your Apple ID, or have a device capable of accessing HTML websites to view and retain documents in commonly used electronic formats, including by downloading or emailing documents to an email account to which you have access.

### 2. AUTHORIZATION FOR CONSUMER REPORTS

By participating in the Program, you authorize the Bank to obtain credit bureau reports (also known as consumer reports), including credit scores, and other information about you from TransUnion, other credit bureaus, and other third party sources for use in (1) providing the Program to you; (2) evaluating your eligibility for credit; (3) offering other products and services; and (4) other purposes permitted by law. Upon your request, we will inform you whether or not a credit bureau report was obtained and the name and address of the credit bureau that furnished the report.

You further agree that, by participating in the Program, you authorize TransUnion and other credit bureaus chosen by the Bank to access consumer reports and other information about you and to provide such consumer reports and information to the Bank for use according to your instructions as described in this Agreement. You understand that the Bank is obtaining this information to consider your eligibility for Apple Card and that, after evaluating a complete application and checking your reports, the Bank may decide not to offer Apple Card to you.

You also understand and agree that, because we must obtain consumer reports about you on a recurring basis in order to provide the Program and determine whether you have completed your Steps, you are authorizing and instructing the Bank, TransUnion and credit bureaus to access, obtain, and provide that information about you pursuant to this section for up to two months after your Completion Date (including any extended Completion Date). This is to account for credit reporting practices that may not reflect payment(s) you actually made, but were not identified on your consumer reports provided to the Bank at the time of your Completion Date. The Bank does this to determine if it can extend you an invitation to reapply for Apple Card.

You may revoke the authority you have given us or credit bureaus at any time by contacting the Bank. If you do, your Program will end.

### 3. DESCRIPTION OF PROGRAM

We are providing the Program to show what you can do to help you get approved for Apple Card. This Program is not an application for Apple Card or any other credit product. If you successfully complete the Program, you will be invited to re-apply for Apple Card. The Program is not a product or service of any kind and does not involve representation to you of any kind. The information that you receive through the Program is not financial advice or a substitute for a financial advisor. Although the Bank will review consumer reports about you, the Bank will not provide the reports themselves nor any service related to them, including monitoring, analysis, or change notification. Apple, Inc. ("Apple") does not receive or review any consumer reports.

You understand that the Bank has no control over and will not verify the information contained in your consumer reports. You further understand that, because we are providing information directly to you based on your consumer reports, we do not guarantee that it is accurate or complete.

### 4. COMPLETING YOUR PATH

To finish your Path, you will need to complete each of your Steps. Your Steps are based on your consumer reports and the information you provided in your application for Apple Card, such as your income. During your Path, we assume the information that you provided remains the same and use the most recent information in consumer reports to show your current progress on your Steps. At your Completion Date, the Bank will use a current consumer report to determine if you have completed each of your Steps to finish your Path. Please also see the section entitled Information About You to better understand how consumer reports affect your Path.

Here's how the Bank determines whether you have successfully completed your Steps.

#### ***Make all your remaining required payments on time.***

This Step requires you to pay at least the minimum amount due on each of the accounts listed on your consumer report. You must make these payments on time every month (or when required by your creditor) until your Completion Date. This Step also includes monitoring that the minimum amount due is made on any account listed on your consumer report for which you are an authorized user.

This Step does not require you to pay any amounts for which applicable law or an agreement with your creditor permits you to withhold or defer payment, even if those amounts would otherwise be due as part of your minimum payment. This includes amounts you have disputed with the creditor or any payments that your creditor permits you to skip or pay later (for example, in connection with a hardship or disaster relief program).

We will consider this Step complete if the consumer reports obtained by us during your Path and at your Completion Date do not identify any missed payments (other than missed payments that we waive by extending or updating your Path).

#### ***Resolve your past due balances.***

If a consumer report identifies a past due amount on one of your accounts (including accounts listed on your consumer report for which you are an authorized user) when you enroll or at any time during your Path, this Step will require you to resolve the past due amount. Your email updates will show the total amount currently reported as past due in your most recent consumer report. If your creditor has not yet reported current information about you to the credit bureaus regarding a past due amount, that information may be included in a future update email and this Step would then apply to that amount.

We will consider this Step complete if the consumer reports obtained by us at your Completion Date do not identify any past due amount owed.

#### ***Manage or lower your credit card and personal loan debt.***

This Step requires the sum of the outstanding balances of credit card accounts and unsecured personal loans reported on your consumer reports to total your target amount or less on or before your Completion Date. Your target amount is provided upon enrollment in the Program and shown in each Progress Update.

This Step only covers your credit card and unsecured personal loan debt. This Step does not apply to secured debt (like a home mortgage loan or auto finance loan), student loans, or debt separately incurred with medical services providers.

We will consider this Step complete if the consumer reports obtained by us at your Completion Date show that the total balance of your credit card and personal loan accounts are equal to or less than your target amount.

### 5. PROGRAM EMAILS

To help you stay on track, the Bank sends update emails ("Progress Updates") to show you your progress towards your Steps. Your Progress Updates are based on the information reported to the Bank each month by the Credit Bureau in your most recent consumer report. If we are not able to obtain a current consumer report for you in any month for any reason, we may not be able to send a Progress Update.

Because any consumer report only includes the information already reported by your creditors, your Progress Update based on that report may not reflect the most current information on all of your accounts, such as payments you made or missed after a creditor provided information to the Credit Bureau. It is important for you to review your Progress Updates to make sure that information is accurate and complete. If you think any information in your consumer reports may be inaccurate or incomplete, contact the creditor and the Credit Bureau.

Progress Updates may include links to articles and other written materials prepared and maintained by the Bank or Apple that explain generally agreed upon financial health practices and concepts related to the Program. These materials are provided to help you complete your Steps and get Apple Card, but they are not specific to your situation, your application(s) for Apple Card, or your consumer reports, and should not be taken as advice of any kind.

### 6. PATH EXTENSIONS

If the Bank determines that you will not be able to complete a Step, but that we could still approve you for Apple Card in the future if you completed a modified Path, the Bank may extend your Completion Date. If this happens, we will notify you in your next Progress Update and tell you your new Completion Date. All other terms of this Agreement will continue to apply.

## 7. REAPPLYING FOR APPLE CARD

If the Bank determines you have completed your Program, you will receive an invitation to reapply for Apple Card. Unless we tell you otherwise, your invitation will expire after 14 days. You may still apply for Apple Card after that date and your application will be approved or denied based on the Bank's existing credit policies and criteria.

**Approval Odds:** We will authenticate your application and evaluate your ability to pay when you reapply for Apple Card after completing the program. Your excellent approval odds are derived from past users' approval rates who have also completed the program and share a similar credit profile.

Terms, rates, and features of Apple Card may have changed since your original application. That means if you reapply and are approved, your account will be subject to the terms, rates, and features effective at the time of approval. Initial credit limits and annual percentage rates (APR) are determined based on creditworthiness. **YOUR INITIAL CREDIT LIMIT MAY BE SIGNIFICANTLY LOWER AND YOUR APR MAY BE HIGHER THAN THE TERMS THAT APPLY TO THE EXISTING ACCOUNTS THAT YOU PAY DOWN ON YOUR PATH.**

You are free to reapply for Apple Card at any time, including while participating in the Program and after leaving the Program, regardless of whether you completed your Steps.

## 8. INFORMATION ABOUT YOU

### Consumer Reports

We will not report any information about your participation in the Program to any credit bureau.

We rely on information from consumer reports to create your Steps, update you on your progress, and determine whether you have successfully completed your Steps and Path. We use this information for the Program because it will be used to approve or deny any application you make for Apple Card in the future. The consumer reports that we obtain in connection with the Program are known as "soft pulls" and do not negatively impact your credit score.

If, after reasonable efforts, we cannot obtain a current consumer report about you from the Credit Bureau we may: (i) be unable to send you an update, (ii) be unable to determine Path completion, (iii) contact you for assistance, or (iv) have to end your Program.

We will not make or change a decision about whether you have completed a Step on information from any source other than a consumer report, including personal financial records or documents of any kind.

### Inaccurate or Incomplete Information in your Consumer Reports

Consumer reports combine information that other banks, lenders, and other creditors have reported about you to credit bureaus. Depending on how information about you is provided to credit bureaus, it may take some time for your payment activity to appear on your consumer reports.

You can contact your bank, lender or any other party that reports information about you to a credit bureau to ask about their consumer credit reporting practices and timelines, which may help understand how that may affect your Path.

Because we cannot verify information in your reports and cannot control or know when third parties report, we will accept the contents of each consumer report as accurate and complete as of the time we first receive it. Contact us if your current consumer report has changed or shows that a Program decision was not based on accurate or complete information. If incomplete or inaccurate information about you in an earlier consumer report caused a Program decision that would not have occurred, we will consider the new information effective as of the date we obtained the incorrect report. If possible, we will update your status in the Program consistent with that information.

**IF YOU THINK ANY INFORMATION IN YOUR CONSUMER REPORTS MAY BE INACCURATE OR INCOMPLETE, CONTACT THE CREDIT BUREAU IMMEDIATELY.**

### Information you provided with your application

Your Path and Steps are based on information that you provided to the Bank in your application for Apple Card and your credit reports. If the information you provided has changed when you reapply, the changes might affect whether you can be approved. For example, we may not be able to approve your application if your ability to pay existing and future obligations decreases, either because you have more expenses or less income available to cover them.

### Use of information

We may access, use, preserve, transfer, share, or disclose information about you only as set forth in this Agreement and the "Apple Card Privacy Policy".

## 9. COMMUNICATIONS

You agree that we will contact you at the primary email address associated with your Apple ID that you provided with your application for Apple Card and you agree to receive all updates, notices, information, and other communications related to your Path there. You understand that we have no obligation to contact you by any other method. Please contact us if you cannot access that email address. Please refer to the "Electronic Communications Agreement" for more information.

The Program is designed primarily for electronic communication. However, in rare scenarios we may need to speak with you to provide important information. You agree that we may contact you at your telephone number, including by use of an automated telephone dialing system or other similar system to contact you by telephone call, text message, device-level notification, or other electronic notification method. We may use any telephone numbers (including wireless, landline and voice over IP numbers) that you give to us. You agree to notify us immediately if you change telephone numbers or are no longer the subscriber or usual user of any telephone number that you give to us, and we may not be able to contact you and your Path may end. You agree that we may monitor, record, retain and reproduce your telephone calls and other communications with us. At any time, you can withdraw your consent to receive text messages and calls to your telephone number. To revoke your consent, you must contact us in accordance with this Agreement.

You understand and agree that anyone with access to your email account or telephone may read or listen to the messages that we leave or send you. You agree that we will not be liable for any charges that you incur in connection with emails, text messages, telephone calls, device level notifications, or other communications that we or our agents and representatives send to you.

#### **Your Apple ID**

You understand and agree that your Path is linked to your Apple ID. We cannot change the Apple ID associated with your Path or permit multiple Paths to be associated with the same Apple ID.

#### **10. ENDING YOUR PATH TO APPLE CARD**

You may end your Path and leave the Program by contacting us at any time to opt-out of the Program. If you do, the Bank will stop obtaining your consumer reports and providing Progress Updates.

The Bank may end your participation in the Program at any time and for any reason permitted by law, including if we determine that:

- You cease to be eligible for the Program or for Apple Card;
- We are unable to send or you are unable to receive emails about the Program;
- Your Apple ID is used, by you or someone else, to enroll in another Path to Apple Card;
- Your Apple ID is used, by you or someone else, to apply for an Apple Card account and the application is approved;
- You use another Apple ID to apply for Apple Card and receive an offer to enroll in Path to Apple Card under that Apple ID;
- You breach any term of this Agreement;
- You provided false, incomplete, or misleading information;
- Information in your consumer reports shows you cannot complete all of your Steps;
- Information in your consumer reports would prevent us from approving you for Apple Card at your Completion Date (including changes in your consumer report, reported bankruptcies, foreclosures, charge-offs, and repossessions); or
- You revoke your authorization for us to obtain and review your consumer reports.

If we end your Program, we will notify you by email and will stop providing Progress Updates.

You may always apply for Apple Card at any time. If you choose to reapply and are declined again, you may be invited to enroll in the Program again.

#### **11. OTHER INFORMATION**

You also understand we do not promise or guarantee that participating in or completing your Program will result in your approval for any product or service, including Apple Card, affect your credit score, or have any other outcome or result.

#### **12. LIMITATION OF LIABILITY**

YOU AGREE THAT THE PROGRAM IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE." NEITHER THE BANK NOR APPLE, INC. ("APPLE") MAKES ANY REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, ABOUT THE PROGRAM. THIS DISCLAIMER BY THE BANK AND APPLE INCLUDES, BUT IS NOT LIMITED TO, ANY WARRANTY AS TO TITLE, AGAINST INTERFERENCE OF ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND INFORMATIONAL CONTENT WITH REGARD TO THE PROGRAM. NEITHER APPLE NOR THE BANK ARE RESPONSIBLE FOR YOUR ACCESS TO THE PROGRAM, ANY ELECTRONIC COMMUNICATIONS SENT IN CONNECTION WITH THE PROGRAM, OR ANY RELATED WEBSITE OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY SERVICE INTERRUPTIONS, VIRUSES, OR OTHER HARMFUL CONTENT THAT YOU MAY ENCOUNTER ON THE INTERNET BY PARTICIPATING IN THE PROGRAM.

NEITHER APPLE NOR THE BANK ARE LIABLE TO YOU FOR ANY DIRECT OR INDIRECT LOSSES OR INJURY ARISING OUT OF, RELATING TO OR CAUSED BY, IN WHOLE OR IN PART, ANY ACT OR OMISSION RELATING TO THE PROGRAM, INCLUDING, BUT NOT LIMITED TO, DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EMOTIONAL DISTRESS DAMAGES INCURRED BY YOU OR ANY THIRD PARTY. BY PARTICIPATING IN THE PROGRAM, YOU AGREE THAT YOU ARE ACCEPTING THE RISK OF ANY HARM YOU MAY INCUR IN CONNECTION WITH YOUR PARTICIPATION IN THE PROGRAM OR YOUR USE OR RELIANCE UPON INFORMATION MADE AVAILABLE TO YOU THROUGH THE PROGRAM BY THE BANK OR APPLE. WE WILL TAKE APPROPRIATE MEASURES TO PROTECT THE PRIVACY, INTEGRITY, AVAILABILITY, CONFIDENTIALITY AND SECURITY OF THE DATA COLLECTED, MAINTAINED, USED OR DISCLOSED IN CONNECTION WITH THE PROGRAM. HOWEVER, THESE SAFEGUARDS DO NOT GUARANTEE ABSOLUTE PROTECTION OF THE DATA, AND NEITHER THE BANK NOR APPLE ARE LIABLE TO YOU FOR ANY CLAIMS ARISING OUT OF, RELATING TO OR CAUSED BY THE ACQUISITION OF, ACCESS TO, OR USE OF INFORMATION OR DATA IN CONNECTION WITH THE PROGRAM.

SOME JURISDICTIONS EITHER DO NOT ALLOW LIMITATIONS OF LIABILITY OR PLACE RESTRICTIONS UPON THE EXCLUSION OR LIMITATION OF DAMAGES IN CERTAIN TYPES OF AGREEMENTS, SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU. FOR EXAMPLE, THIS SECTION DOES NOT APPLY TO NEW JERSEY RESIDENTS. FOR ANY SUCH JURISDICTIONS WHERE LIMITATIONS OF LIABILITY MAY NOT BE PERMISSIBLE, THIS SECTION WILL BE ENFORCEABLE TO THE MAXIMUM DEGREE PERMITTED BY APPLICABLE LAW, AND YOU AGREE THAT OUR TOTAL LIABILITY TO YOU FOR ANY OR ALL OF YOUR LOSSES OR INJURIES FROM OUR ACTS OR OMISSIONS WILL NOT EXCEED THE MINIMUM AMOUNT PERMITTED BY SUCH LAW.

NEITHER THE BANK NOR APPLE PROVIDES CREDIT REPAIR ADVICE AND NEITHER ENTITY IS A CREDIT REPAIR OR CREDIT SERVICES ORGANIZATION OR ANY TYPE OF ORGANIZATION SIMILARLY REGULATED UNDER OTHER APPLICABLE LAWS.

#### **13. ARBITRATION OF DISPUTES**

**This section is an arbitration provision and contains important information that affects your legal rights. PLEASE READ IT CAREFULLY.**

This arbitration provision does not apply to service members and their dependents who are entitled to protection under the Military Lending Act (10 U.S.C. § 987). If you would like more information about whether you are entitled to protection under the Military Lending Act and whether this section applies to you, please call us toll-free at 877-255-5923.

This arbitration provision shall also apply to any Claims (as defined below) brought by or against Apple Inc. or any of its affiliates (“Apple”).

Please note that if you do not want this arbitration provision to apply to you, you must reject it as provided below. Even if you have previously rejected arbitration for a different product or service offered by Goldman Sachs Bank USA, you must separately reject this arbitration provision if you do not want it to apply to you because Goldman Sachs Bank USA manages your rejection of arbitration at the product or service level. However, if you reject this arbitration provision for the Path to Apple Card Program, that decision to reject arbitration will also apply to your Apple Card account if you are approved for Apple Card (and accept Apple Card) following an invitation to re-apply for Apple Card you receive as a part of this Program.

#### **ACKNOWLEDGMENT OF ARBITRATION**

You are being provided access to and use of the Program on the basis of the inclusion of the following arbitration provision. By accepting this Agreement or using the Program, unless you reject arbitration as provided below, you acknowledge that **YOU ARE GIVING UP THE RIGHT TO LITIGATE CLAIMS (AS DEFINED BELOW) AND THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION**. You hereby knowingly and voluntarily **WAIVE THE RIGHT TO BE HEARD IN COURT OR HAVE A JURY TRIAL** on all Claims subject to this Agreement. You further acknowledge that you have read this arbitration provision carefully, agree to its terms, and are entering into this Agreement voluntarily and not in reliance on any promises or representations whatsoever except those contained in this Agreement.

#### **HOW TO REJECT THIS ARBITRATION PROVISION**

YOU MAY REJECT THIS ARBITRATION PROVISION BY CONTACTING US USING MESSAGES, CALLING US, OR WRITING TO US, AND STATING THE FOLLOWING: (I) YOUR NAME; (II) THE EMAIL ADDRESS ASSOCIATED WITH YOUR PATH; (III) THE ADDRESS ASSOCIATED WITH YOUR PATH; AND (IV) THAT YOU ARE EXERCISING YOUR RIGHT TO REJECT THIS ARBITRATION PROVISION (A “**REJECTION NOTICE**”). **YOUR REJECTION NOTICE MUST BE RECEIVED WITHIN 90 DAYS AFTER THE OPENING OF YOUR PATH**. IF YOUR REJECTION NOTICE COMPLIES WITH THESE REQUIREMENTS, THIS ARBITRATION PROVISION WILL NOT APPLY TO YOU, EXCEPT FOR ANY CLAIMS SUBJECT TO PENDING LITIGATION OR ARBITRATION AT THE TIME YOU SEND YOUR REJECTION NOTICE. ANY REJECTION NOTICE THAT COMPLIES WITH THIS PROVISION WILL APPLY TO BOTH US AND APPLE. REJECTION OF THE ARBITRATION PROVISION WILL NOT AFFECT YOUR OTHER RIGHTS OR RESPONSIBILITIES UNDER THIS ARBITRATION PROVISION OR THIS AGREEMENT.

#### **DEFINITIONS**

For purposes of this arbitration provision, the following definitions apply:

- “**Claim**” means any claim, dispute, or controversy (whether based upon contract; tort, intentional or otherwise; constitution; statute; common law; or equity and whether pre-existing, present or future), including initial claims, counter-claims, cross-claims, and third-party claims, arising from or relating to: (i) this Agreement, the Program or your relationship with us; (ii) any participation in the Program by our agents or service providers; (iii) advertisements, promotions or statements related to this Agreement or the Program; (iv) your application for credit; (v) credit bureau reporting or debt collection related to your participation in the Program; and (vi) your access to and use of the Program from or using any products or services provided by Apple Inc. and its affiliates.
- “**You**” and “**your**” mean each and every person who is granted, accepts or uses the Program.

#### **ARBITRATION**

You or we may elect, without the other's consent, to resolve any Claim by individual binding arbitration unless the Claim has been filed in court and trial has begun or final judgment has been entered. Even if a Claim is litigated in court, you or we may elect arbitration of any Claim made by a new party or any Claim later asserted by a party in that or any related or unrelated lawsuit. You or we may also elect arbitration of a Claim that the parties initially opted to litigate in court if that Claim is later modified (including to be asserted on a class, representative or multi-party basis or to seek different or additional relief).

Notwithstanding the foregoing, only a court and not an arbitrator may decide any dispute or controversy about the validity, enforceability, coverage or scope of this arbitration provision, all of which are for a court and not an arbitrator to decide. However, disputes or controversies about the validity or enforceability of this Agreement as a whole are for the arbitrator and not a court to decide.

JAMS (1-800-352-5267, jamsadr.com) will serve as the default arbitration administrator. Claims may also be referred to the American Arbitration Association (“AAA”) (1-800-778-7879, adr.org). You may obtain copies of the current rules, forms, and instructions for initiating an arbitration directly from JAMS or the AAA. Claims may also be referred to another arbitration administrator, if you and we agree in writing, or to an arbitrator appointed pursuant to Section 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the “**FAA**”). You and we agree that any arbitration proceedings initiated hereunder shall be kept confidential.

#### **OTHER CLAIMS SUBJECT TO ARBITRATION**

In addition to Claims made by or against either you or us, Claims made by or against anyone connected with you or us or claiming through you or us (including any employee, agent, representative, affiliated company, predecessor or successor, heir, assignee or trustee in bankruptcy) are subject to arbitration as described herein.

#### **EXCEPTIONS**

We agree not to invoke our right to arbitrate any individual Claim you bring in small claims court or an equivalent court with jurisdiction so long as the Claim is pending only in that court.

## **INDIVIDUAL CLAIMS ONLY**

Claims may be submitted to arbitration on an individual basis only. **Claims subject to this arbitration provision may not be joined or consolidated in arbitration with any Claim of any other person or be arbitrated on a class basis, in a representative capacity on behalf of the general public, or on behalf of any other person, unless otherwise agreed to by the parties in writing.** Claims by or against corporate affiliates will be considered a single claim. The arbitrator has no authority to award any relief not available in an individual action in court or award any declaratory, injunctive or other relief primarily for the benefit of the general public. Further, unless you and we both otherwise agree in writing, the arbitrator may award relief only in favor of your individual Claim. The arbitrator may not award relief for or against any other person, whether directly or indirectly.

## **PROCEDURE**

A single arbitrator will resolve the Claims. The arbitrator will be a lawyer with at least ten years of experience who is a former or retired judge and will be selected by the parties; provided, however, that if the parties are unable to agree upon an arbitrator within seven (7) days after delivery of the Demand for Arbitration, then the arbitrator will be appointed by the arbitration administrator. The arbitration shall comply with the arbitration administrator's rules (the Streamlined Arbitration Rules for JAMS and the Consumer Arbitration Rules for AAA) in effect on the date the arbitration is filed, except where there is a conflict or inconsistency between the arbitration administrator's rules and procedures and this arbitration provision, in which case this arbitration provision will govern. The arbitration will be conducted in English unless the parties otherwise agree in writing. Any in-person arbitration hearing for a Claim will take place within the federal judicial district in which you live or at such other reasonably convenient location as agreed by the parties. The arbitrator will apply applicable substantive law consistent with the FAA and will honor all claims of privilege and confidentiality recognized at law. All statutes of limitations that would otherwise be applicable will apply to any arbitration proceeding. The arbitrator will not apply any federal or state rules of civil procedure or evidence in matters relating to evidence or discovery. Except as otherwise provided in this arbitration provision, the arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any appropriate court may enter judgment upon the arbitrator's award. This arbitration provision is made pursuant to a transaction involving interstate commerce and is governed by the FAA.

## **ADDITIONAL ARBITRATION AWARD; ATTORNEYS' FEES**

If we make a final written settlement offer before the arbitrator is selected and the arbitrator rules in your favor for an amount greater than that final offer, or if we do not make a final written settlement offer before the arbitrator is selected and the arbitrator rules in your favor on the merits of your Claim, the arbitrator's award will include: (1) any money to which you are entitled, but in no case less than \$10,000; (2) twice the amount of your reasonable attorneys' fees, or the amount of attorneys' fees to which you are entitled under applicable law, whichever is greater; and (3) your costs and expert and other witness fees. If we prevail in arbitration, we will not be entitled to recover our attorneys' fees even when permitted to do so under applicable law.

## **ARBITRATION FEES**

We will pay any arbitration fees (including the arbitrator's fees and any filing, administrative, hearing or other fees charged by the arbitration administrator) in connection with any Claims. You will be responsible for any other costs that you incur in connection with any Claim unless applicable law provides otherwise. Any arbitration award will apply only to the specific case and cannot be used in any other case except to enforce the award.

## **SURVIVAL**

This arbitration provision shall survive payment of all amounts due pursuant to this Agreement, termination of your Path, any legal proceeding to collect amounts due, any bankruptcy and any assignment or sale of this Agreement, your Path or any and all rights thereunder. In the case of an assignment or sale of this Agreement, your Path or any and all rights thereunder, the buyer will be bound by and may enforce the terms of this arbitration provision. If any portion of this arbitration provision is deemed invalid or unenforceable, it will not invalidate the remaining provisions of this arbitration provision or this Agreement, except that if any part of the "Individual Claims Only" provision is found in a court proceeding to be invalid or otherwise unenforceable with respect to a Claim (and that determination becomes final after all appeals have been exhausted), then this arbitration provision (except for this sentence) will not apply to that Claim.

## **14. GOVERNING LAW**

This Agreement is entered into between you and us in the State of Utah and we provide the Program to you from Utah. This Agreement will be governed by and construed in accordance with federal law and any applicable laws of the State of Utah without regard to rules concerning conflicts of law or choice of law.

## **15. LANGUAGE**

You agree that you can understand English-language communications and agree that the English-language version of all communications will be binding. The section headings and descriptions in this Agreement are for convenience only and do not in any way limit or define your or our rights or obligations in this Agreement. As used in this Agreement, the term "including" means "including, but not limited to."

## **16. SERVICE PROVIDERS**

We may also use service providers in connection with providing the Program. In doing so, we may permit one or more of our service providers to exercise any of our rights, rely on any consents or permissions that you have granted to us, and enforce any of your obligations on our behalf.

## **17. SEVERABILITY**

This Agreement is the complete and final expression of the agreement between us and you with respect to the Program, and this Agreement may not be contradicted by any alleged oral agreement. Subject to the special rule in the Arbitration section, if any provision of this Agreement is found to be invalid or otherwise unenforceable, or declared invalid or otherwise unenforceable by order of court, change in applicable law, or regulatory authority, that provision will continue to be enforceable to the extent permitted by that court, law or agency, and the remainder of that provision will no longer be considered part of this Agreement. All other provisions of this Agreement will remain in full force and effect.

**18. CHANGES TO THIS AGREEMENT**

Subject to applicable law, we may change any term of this Agreement, or add new provisions, at any time in our sole discretion. If we are required by law to provide you with notice of any changes to this Agreement, we will do so in accordance with the "Electronic Communications Agreement" we have already provided to you. Following such notice, your continued participation in the Program, including accessing the contents of Progress Updates, shall be deemed to be your acceptance of such modified version of this Agreement, subject to applicable law. Please contact us if you do not agree to this Agreement or any revised version of this Agreement.