

Memorandum of Understanding
Even Responsible Finance, Inc.

Memorandum of Understanding

This Memorandum of Understanding (Memorandum) is entered into and effective as of the last signature date below, by and between the California Department of Financial Protection and Innovation (Department) and Even Responsible Finance, Inc. (Company). (The Department and Company collectively are referred to herein as the Parties.)

Recitals

- A. Company is a Delaware corporation with the principal place of business at 1440 Broadway, Floor 5, Oakland, CA 94612 and in the business of providing funds to consumers based on the consumer's earned but not yet paid wages from their employer during a particular pay period. Company markets this as an advance pay product and service, also referred to as Earned Wage Access (EWA). The funds Company provides to the consumer through this advance pay product is not the full amount of the consumer's earned but unpaid wages, but rather limited to a portion thereof.
- B. Company and consumers, and Company and consumers' employers enter into agreements for the advance pay product. Pursuant to the agreement, the consumer pays a monthly fee for the product. Depending on the state of residence of the consumer and the integration chosen by the consumer's employer, the consumer pays Company back through either (i) payroll deduction directly from the consumer's employer or (ii) electronic funds transfer (EFT) directly from the consumer's bank account, in either case, at the end of the consumer's pay period.
- C. On January 1, 2021, the California Consumer Financial Protection Law (CCFPL), Financial Code section 90000, et seq. will become effective. The CCFPL provides the Department with authority to regulate and investigate certain consumer financial providers such as the Company. Company offers a consumer financial product or service through its advance pay product as defined in the CCFPL and thus is a "covered person" as defined in Financial Code section 90005(f).
- D. Pursuant to the CCFPL, Financial Code section 90009(f)(2), the "department may require any covered persons and service providers participating in consumer financial services markets to file with the department, under oath or otherwise, in the form and within a reasonable period of time as the department may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, as necessary for the department to fulfill its monitoring, assessment, and reporting responsibilities."
- E. The Department acknowledges that Company has been and intends to continue doing business in the State of California. The Department desires to obtain regular reports

concerning Company's business activities to allow it to evaluate the benefits and risks that Company and the advance pay product pose to California consumers, whether the Company's advance pay product is a loan, and whether the advance pay product subjects Company to the California Financing Law or any other provision of California law.

- F. Subject to Financial Code section 90009(f)(2), Company will provide true and accurate information under oath and subject itself to regular periodic onsite examinations as requested by the Department pursuant to the terms to this Memorandum.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. With initial reporting commencing for the calendar quarter ending March 31, 2021 (and thus, to be provided to the Department by April 30, 2021), Company agrees to provide the following information and data to the Department relating to the previous calendar quarter, on a quarterly basis, no later than thirty (30) days after the end of the calendar quarter, in a form and manner reasonably acceptable to the Department including:
 - a. Advance pay payment volumes and material changes to any advance pay product agreement between Company and consumers, information describing advance amounts, average number of advances per month, duration before consumer's payback, and consumer's wages with employer during the relevant pay periods.
 - b. Repayment, delinquency and default information and rates, and number of consumers making no repayment, partial repayments, or requesting cancellations or deferrals.
 - c. Information regarding the ratio of money advanced to paycheck and frequency of consumers use of the advance pay product.
 - d. Information relating to the number, frequency, and amount of consumer "rollover" of advance repayment to next pay period.
 - e. If applicable, information relating to any "tips" received including the amount if tips, number of tips, ratio of tips to amount borrowed, and ratio of tips to amount advanced both on an aggregated and granular basis.
 - f. The Annual Percentage Rate (APR) for the advance pay product offered, if any, as calculated pursuant to Truth In Lending Act (TILA), 15 U.S.C. §§ 1601-1667f methodology. For the avoidance of doubt, subscription fees are not considered "finance charges" for purposes of TILA and thus are not included in an APR calculation.
 - g. Other fees that may be assessed to consumers but not included in an APR calculation, such as subscription fees, voluntary gratuities, and/or fees for faster

delivery of advance pay.

- h. Other aggregated and granular information, whether on a per transaction basis or otherwise, as requested by the Department that the Department seeks for its analysis.
 - i. Information about consumer complaints from California consumers received by Company including the identity of the complainants, number of complaints, the nature of the complaints and Company's resolution thereof.
 - j. The information required by section 1 shall be provided in a form to be developed by the Department.
- 2. Company agrees to regular periodic onsite examination of its books and records in relation to the advance pay product by the Department during regular business hours and upon at least ten (10) business days prior written notice to Company.
 - a. In connection with the examination, Company will use commercially reasonable efforts to produce documents and information as requested by the Department related to the Company's activities in California and which relate to the Company's advance pay product offered to consumers in California.
 - b. Company agrees to use commercially reasonable efforts to respond to questions in connection to such examination.
- 3. Company agrees to the following best practices with regard to its advance pay product:
 - a. If consumer "tips" are part of the advance pay model, that company shall not make the offering of its financial products, either in the amount of advance pay offered or suite of products offered, contingent on any tips the consumer chooses to make or does not make.
 - b. Comply with the TILA, if applicable.
 - c. Disclose the APR, if any, calculated pursuant to TILA methodology, on the advance pay to the consumer before advancing the funds.
 - d. Limit APR calculated pursuant to TILA methodology to 36% on the advance of funds.
 - e. Disclose any potential fees that may be assessed to consumers to the consumer before advancing the funds, regardless of whether such fees are a condition of accessing the advance pay.

- f. Disclose to the consumer before the advance pay is offered, that in the event of lack of adequate funds to repay the advance in the consumer's account at the time of repayment, consumer's financial institution may assess the consumer overdraft charge(s).
 - g. The funds advanced to the consumer shall not be greater than 50% of the consumer's next anticipated paycheck.
 - h. Allow consumer to revoke EFT authorization up to three days prior to scheduled repayment date.
- 4. The Department agrees to withhold the information that Company provides from public disclosure to the extent permitted by Government Code section 6254, subdivision (d)(2), (d)(4) and (f). However, nothing herein prevents the Department from using, sharing, or releasing the information provided by Company for law enforcement, licensing, law/policy development, and/or with sharing or publishing data in furtherance of regulatory or legislative purposes, provided that the Department anonymizes and de-identifies any personally identifiable information regarding consumers. If the Department receives a public records request or court order to share Company's data, Department agrees to notify Company within five (5) business days of receiving such request in order to allow Company to intervene if necessary. In the event that such information must be disclosed, the Department agrees to anonymize and de-identify any personally identifiable information regarding consumers as the law and/or court order allows.
- 5. Company agrees that it will, in its advance pay product agreements with California consumers disclose:
 - a. "Company is not currently licensed by the Department of Financial Protection and Innovation."
 - b. "If the Department does decide in the future to license Company, and/or require Company make modifications to its advance pay product agreement, such developments may have no impact on your obligations under this agreement."
 - c. "Although Company is not licensed by the Department, any consumer is invited to share any comment and concerns about Company or its product and practices with the Department of Financial Protection and Innovation at (866) 275-2677 (toll-free) or at the following URL: <https://dfpi.ca.gov/file-a-complaint/>."

Company shall make this disclosure in a font (size, weight, and style) that is larger than the font of the principal text appearing on the first page of the

advance pay product agreement.

6. Company agrees to refrain from representing to its customers that it is supervised, approved, or endorsed by the Department in any way.
7. Nothing in this Memorandum shall prevent the Department from asserting at any time in the future that the advance pay product offered by Company to California consumers requires licensure or registration with the Department under any law under the Department's jurisdiction. Nothing in this Memorandum shall be interpreted as the Department's approval of Company's business model or conclusion that the model complies with state or federal law.
8. Nothing in the terms of the Memorandum involves or is a result of a finding by the Department that the Company has violated or is in violation of any law, including but not limited to the CCFPL, in connection with its offering of EWA products to California consumers, or as an admission by Company of any violation of California law or regulation.
9. Nothing in this Memorandum shall be interpreted to restrict the Department from asserting any provision of any law under the Department's jurisdiction that applies to EWA products. Nothing in the terms of this Memorandum, nor the existence of this Memorandum, shall be used as evidence for or against the proposition that advance pay products are subject to the licensure under the laws in this state in any legal or administrative proceeding, whether or not the Department is a party to the proceeding. Furthermore, the terms of this Memorandum shall not be used as evidence in any legal proceeding between the Parties, except to enforce the provisions of this Memorandum.
10. This Memorandum shall terminate upon (i) 60-days written notice by the Department, (ii) 60-days written notice by Company, (iii) the effective date of regulations adopted by the Department governing EWA, (iv) the date of Company's licensure under legislation adopted by the California State Legislature regarding EWA products; or (v) the effective date of legislation adopted by the California State Legislature that repeals the CCFPL.
11. This Memorandum is governed under the laws of the State of California.
12. An electronic signature, or a faxed, photocopied, or scanned copy of an original signature, shall be deemed the same as an original signature.

13. This Memorandum is a public record.

AGREED AND ACCEPTED

MANUEL P. ALVAREZ
Commissioner of Financial
Protection and Innovation

By: _____

Mary Ann Smith
Deputy Commissioner
Enforcement Division

Date: January 8, 2021

Even Responsible Finance, Inc.

Jon Schlossberg
CEO

Date: January 6, 2021