

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 Payactiv, Inc. (Company). (The Department and Company collectively are referred to herein as the Parties.)

Recitals

- A. Company is a Delaware Public Benefit Corporation with its principal place of business at 4880 Stevens Creek Blvd., Suite 102, San Jose, CA 95129. Company is in the business of providing money to consumers based on the consumers' income that has been earned from their employment but not yet paid out by the consumers' employers during a particular pay period. Company markets this as an on-demand pay product or service, also referred to as Earned Wage Access (EWA). The Company asserts that the funds it provides to the consumer through this EWA product are not a wage payment, and do not represent the full amount of the consumer's wages earned but not yet paid out, but rather is limited to a portion thereof.
- B. Company and consumers (and consumers' employers) entered into agreements for the EWA product. Pursuant to the Company's agreement with consumers, the consumer pays a \$1 fee for the product (and other services through Company's app), which services are made available for the entire day based on the \$1 program fee. Consumers who direct deposit their wages onto the Company's payroll or GPR card obtain the EWA product and other services for free. There are no recurring, automatic, hidden or late charges, no interest charges, and no installment payment plans or credit features. The Company does not report transactions to credit bureaus nor does it engage in debt collection. The Company uses factoring transactions to purchase future receivables from consumers, and these transactions are non-recourse to the consumer.¹
- C. For consumers in California, the EWA transactions are settled through a payroll deduction processed by the consumer's employer on the consumer's next scheduled payday. The deduction includes the amount of any EWA payment during that pay period, plus any applicable program fees. This process does not allow for a consumer to incur any overdraft charges.

¹ On December 30, 2020, the federal Consumer Financial Protection Bureau (CFPB) approved Payactiv's application to the CFPB's Compliance Assistance Sandbox for an approval confirming that Payactiv's EWA Program is not "credit" as defined under the Truth in Lending Act (TILA), 15 U.S.C. §§ 1602(f), 1640(f), and Regulation Z rules governing creditors, 12 C.F.R. § 1026.2(a)(14). The duration of the Payactiv's Approval Order from the CFPB is two years. The approval is available at: https://www.consumerfinance.gov/documents/9440/cfpb_payactiv_approval-order_2020-12.pdf.

- D. On January 1, 2021, the California Consumer Financial Protection Law (CCFPL), Financial Code section 90000, et seq. became 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 on-demand pay product as defined in the CCFPL and thus is a "covered person" as defined in Financial Code section 90005(f).
- E. 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."
- F. 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 in California to allow it to evaluate the benefits and risks, if any, that Company and the EWA product pose to California consumers, whether the Company's EWA product is a loan, and whether the product subjects Company to the California Financing Law or any other provision of California law.
- G. 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. Beginning on April 1, 2021, Company agrees to provide the following information and data to the Department, to the extent such data exists, is available to Company, and the Company is not restricted from disclosing it, relating to the previous calendar quarter, on a quarterly and confidential basis and in a form and manner reasonably acceptable to the Department including, as applicable:
 - a. EWA payment volumes and summary of key contract terms and characteristics, including any material changes to the EWA product's agreement between Company, consumer (and consumer's employer), information describing payment amounts, number of payments, duration before consumer's payback and consumers' gross wages with employer during the consumer's contract term.
 - b. Settlement (delinquency and default if applicable) information and rates, including number of unsuccessful settlements, partial settlements, cancellation or deferral requests.

- c. The ratio of EWA money disbursed to EWA funds Company makes available to consumers, any consumer protection guardrails in place (such as percentage or dollar caps, fee caps, and allowances for estimated withholdings) and frequency of use.
 - d. If applicable, information relating to the number, frequency and amount of consumer "rollover" of EWA payments 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 a aggregated and granular basis.
 - f. If applicable, the Annual Percentage Rate (APR) for the EWA 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 or program fees for use of the EWA product 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 for access to EWA such as subscription fees, voluntary gratuities, and/or fees for faster delivery of the earned wage product.
 - h. The cost in fees and charges for EWA will not exceed \$3 per pay period for employees who have a one-week pay period and \$5 per pay period for employees who have a two-week or bi-weekly pay period. For the avoidance of doubt, additional service fees consumers may choose voluntarily to pay to receive EWA funds in alternate channels (such as VISA Direct, or Walmart Direct2Cash) are excluded from calculations in this paragraph.
 - i. 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 to the extent Company is in possession of such information.
 - j. Information about written 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.
 - k. The information as required in this 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 EWA product specific to California by the Department.

- a. In connection with the examination Company will use commercially reasonable efforts to produce documents and information as requested by the Department which are related to Company's activities in California, and which relate to the Company's EWA 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 EWA product:
- a. Company shall not make the offering of its financial products, either in the amount of EWA 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. In accordance with EFTA, the CCFPL and applicable law, disclose all electronic fund transfers, deductions, fees and charges on a per transaction basis before the consumer authorizes the transaction.
 - d. Limit cost of EWA in a one week pay period to \$3 and in a two week or bi-monthly pay period to \$5.
 - e. Disclose any other 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 EWA payment.
 - f. If applicable, notify consumer before EWA is offered, that in the event of lack of adequate funds to repay the EWA in the consumer's account at the time of repayment, consumer's financial institution may assess the consumer overdraft charge(s).
 - g. The funds paid to the consumer shall not be greater than 60% of the consumer's gross pay as reported to Company.
 - h. 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.

4. Unless and until Company is licensed by the Department, Company agrees that it will, in its EWA terms and conditions provided to California consumers disclose:
 - a. "Company is not currently licensed by the California Department of Financial Protection and Innovation ("the Department")."
 - b. "If the Department does decide in the future to license Company, and/or require Company make modifications to its EWA 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 the same font (size, weight, and style) as the largest font appearing on the first page of the EWA product agreement or terms and conditions.

5. Company agrees to refrain from representing to its customers that it is supervised, approved, or endorsed by the Department in any way.
6. This Memorandum does not apply to consumers who do not work in California.
7. Nothing in this Memorandum shall prevent the Department from asserting at any time in the future that the EWA 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. Nothing in this Memorandum shall be interpreted to restrict the Department from asserting any provision of law including the CCFPL.
8. Nothing in the terms of this 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 an admission by Company of the applicability of, or violation of any California law or regulation.

9. Nothing in the terms of this Memorandum, nor the existence of this Memorandum, shall be used as evidence for or against the proposition that EWA 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-day written notice by the Company, (iii) the effective date of regulations adopted by the Department governing EWA, or (iv) the effective date of legislation adopted by the California State Legislature regarding EWA products or 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

Date: January 14, 2021

Sign: _____

Mary Ann Smith
Deputy Commissioner
Enforcement Division

Payactiv, Inc.

Date: January 13, 2021

Sign: _____

David S. Reidy
Chief Legal Officer