

**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 ML Plus LLC (Company). (The Department and Company collectively are referred to herein as the Parties.)

**Recitals**

- A. Company is a Delaware limited liability company with its principal place of business at 8610 South Sandy Parkway, Sandy, UT 84070. Company is in the business of providing to consumers a suite of financial products and services, directly or through its affiliates. The suite of products includes an advance product called “Instacash” that advances money to consumers based on income that will be paid to the consumer from their employment or other income sources, but which has not yet been paid to the consumers during a particular deposit period. Company markets the advance product as a cash advance product or service allowing consumers to access their income prior to receiving it (sometimes referred to as Earned Wage Access (EWA)). The funds Company provides to the consumer through this advance product are not the full amount of the consumer’s wages or other income earned but not yet paid out, but rather are limited to a portion thereof.
- B. Company and consumers enter into agreements for the suite of products and services which include terms and conditions for the advance product. Pursuant to the agreement, the consumer pays no fee for individual advances. The consumer may elect to receive the advance more quickly in exchange for an optional per-transaction fee of \$3.99 or \$4.99, depending on the speed of transfer. The consumer pays Company back through electronic funds transfer (EFT) directly from the consumer’s bank account or associated debit card within a short period of time, usually within two weeks. The consumer has the option to pay a “tip” to Company for the advance product.
- C. 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 currently offers a consumer financial product or service through its advance product as defined in the CCFPL and thus is currently 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 product pose to California consumers, whether the Company’s advance product is a loan, and whether the advance 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. By April 30, 2021 for the calendar quarter ending March 31, 2021, Company agrees to provide the following information and data to the Department relating to California consumers, and on a quarterly basis thereafter within thirty (30) days of the end of each quarter, to the extent such data is available to the Company and in a form and manner reasonably acceptable to the Department including:
  - a. Advance payment volumes and a summary of key advance product terms and conditions, including information describing advance amounts, number of advances per month, duration before consumer’s payback, and the consumers’ relevant deposited wages or other income detected by the Company during the relevant deposit 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 advance to deposited wages or other income detected by the Company and frequency of consumers’ use of the advance product.

- d. Information relating to the number, frequency, and amount of consumer “rollover,” if any, of advance repayment to next pay period.
  - e. If applicable, information relating to any “tips” received including the amount of tips, number of tips, ratio of tips to amount advanced, and ratio of tips to amount advanced both on an aggregated and granular basis.
  - f. The Annual Percentage Rate (APR) for the advance 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, optional fees for expedited delivery of an advance, and any voluntary tips 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 that directly relate to the advance product but not included in an APR calculation, such as subscription fees, voluntary gratuities, and/or fees for faster delivery of an advance.
  - 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 relating to the advance service, 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 product by the Department during regular business hours and upon at least ten (10) 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 advance product offered to consumers in California.
  - b. Company agrees to use commercially reasonable efforts to respond to

questions in connection with such examination.

3. Company agrees to the following best practices with regard to its advance product:
  - a. If consumer “tips” are part of the advance model, that company shall not make the offering of its financial products, either in the amount of advance 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 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 before advancing the funds, regardless of whether such fees are a condition of accessing the advance.
  - f. Disclose to the consumer before the advance 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 or other recurring income, as reasonably anticipated by the Company.
  - h. Allow the 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 aggregate 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 agreements with California consumers covering the advance product among other products and services, disclose:
  - a. "ML Plus LLC is not currently licensed to provide its advance product by the Department of Financial Protection and Innovation."
  - b. "If the Department does decide in the future to license ML Plus LLC, and/or require ML Plus LLC make modifications to the terms and conditions for the advance product, such developments may have no impact on your obligations under this agreement."
  - c. "Although ML Plus LLC is not licensed by the Department to provide its advance product, any consumer is invited to share any comment and concerns about ML Plus LLC 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 agreement containing the terms and conditions for the advance product.

6. Company agrees to refrain from representing to its customers that it is supervised, approved, or endorsed by the Department in any way in connection with its advance service.
7. Nothing in this Memorandum shall prevent the Department from asserting at any time in the future that the advance 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. Furthermore, nothing in this Memorandum shall prevent the Company from contesting the jurisdiction of the Department over the Company at a future date.

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 the advance product 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 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 that regulate the Company's advance service, or (iv) the effective date of legislation adopted by the California State Legislature that governs the Company's advance service 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

By: \_\_\_\_\_

Mary Ann Smith  
Deputy Commissioner  
Enforcement Division

Date: February 23, 2021

ML Plus LLC

By: \_\_\_\_\_

Adam VanWagner  
General Counsel

Date: February 18, 2021