

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 DailyPay. (The Department and Company collectively are referred herein as the Parties.)

Recitals

- A. Company is a Delaware corporation with a place of business at 55 Broad Street, New York, NY 10004. As described further in this Memorandum, Company is in the business of providing employers with systems to enable their employees to have verified access to their earned but unpaid net pay without the creation of any employee repayment obligation or reliance on debiting employee's bank accounts for repayment, such systems collectively also referred to as Earned Wage Access (EWA). Company asserts that under its program, following EWA requirements, employees using Company's EWA product are not obligated to repay to Company funds it has provided to them, that its EWA product is not credit, and that the provisions in this Memorandum applicable to credit, such as those related to the Truth in Lending Act and annual percentage rates, do not apply to Company's current EWA product.
- B. Company is in the business of providing employers with certain employer-integrated software that enables employers to help their employees to track verified earned but unpaid net pay on a continuous basis and to permit such employees to access, before their scheduled payroll date, their earned but unpaid net pay. Company and participating employees of employers (and also Company and such employers) enter into agreements for the EWA product. Pursuant to such an agreement, an employee may access a variety of free financial wellness tools and may, if the employee chooses, access the employee's earned but unpaid net pay for a nominal processing or technology fee, the amount of which fee depends upon the method of funds selected by the employee for the employee's own convenience. The employee has no obligation to repay Company and does not do so, and Company also neither obtains post-dated checks nor debits an employee's account at a financial institution for repayment; rather, Company is paid by the employer when it runs payroll.
- 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. For purposes of this Memorandum, Company acknowledges that it offers

a consumer financial product or service through its EWA 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 has not, as of the effective date of this Memorandum, promulgated regulations under the CCFPL governing “covered persons” or EWA products.
- F. The Department has investigated various providers of EWA products, and it 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 monitor Company’s activities in California and evaluate the benefits and risks that Company and the EWA product pose to California consumers, whether the Company’s EWA product is a loan, and whether the EWA 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. On or before July 30, 2021 for the calendar quarters ending on March 31, 2021 and June 30, 2021, and on the thirtieth (30th) day after the end of each subsequent calendar quarter, Company agrees to provide the following information and data to the Department relating to the previous calendar quarter, with respect to California consumers, on a quarterly basis, in a form and manner reasonably acceptable to the Department including:
 - a. EWA payment volumes and material changes to any EWA product agreement between Company and consumers, information describing advance amounts, number of advances per month, duration before consumer's payback (if applicable), and consumer's net wages with employer during the relevant pay periods (as reported to Company by the employer at the time of Company’s payment to employee).

- b. If applicable, 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 paycheck (as reported to Company by the employer at the time of Company's payment to employee) and frequency of consumers use of the EWA product.
- d. If applicable, 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. For any EWA product that becomes subject to the Truth In Lending Act (TILA), 15 U.S.C. §§ 1601-1667f, the Annual Percentage Rate (APR), if any, as calculated pursuant to TILA methodology. For the avoidance of doubt, presently TILA does not apply to non-credit products, such as where a consumer does not incur debt. For the further avoidance of doubt, certain other products are also not considered credit subject to TILA, including (i) investment plans in which the party extending capital to the consumer risks the loss of the capital advanced and (ii) borrowing against the accrued cash value of an insurance policy or a pension account if there is no independent obligation to repay. For the further avoidance of doubt, subscription fees, voluntary gratuities, and/or fees for faster delivery of EWA 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 by Company to consumers but not included in an APR calculation, such as subscription fees, voluntary gratuities, fees for faster delivery of EWA, and/or fees for EWA products that are not credit.
- h. Other aggregated and granular information, whether on a per transaction basis or otherwise, as reasonably 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 EWA product Company offers to consumers in California 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 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 offered to consumers in California:
 - a. If consumer "tips" are part of the EWA model, that 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. For any EWA product that becomes subject to the TILA, Company shall comply with the TILA.

 - c. For any EWA product that becomes subject to the TILA, disclose the APR, if any, calculated pursuant to TILA methodology, on the EWA to the consumer before advancing the funds.

 - d. For any EWA product that becomes subject to TILA and while this MOU is still in effect, limit APR on the advance of funds as required by applicable California law.

 - e. Company shall provide a schedule of fees that may be assessed to consumers relating to the advance pay product, such as processing or technology fees.

- f. Disclose any other potential fees that may be assessed by Company to consumers to the consumer before advancing the funds, regardless of whether such fees are a condition of accessing the EWA.
 - g. Continue to disclose to the consumer before advancing funds to the consumer the amount of fees to be assessed to the consumer in connection with an EWA product transaction regardless of whether such fees are a condition of accessing the advance.
 - h. Disclose to the consumer in Company's agreement with the consumer for the EWA product that the consumer's financial institution may assess overdraft charges to consumer if the consumer's account at the financial institution lacks adequate funds to correct EWA product transactions.
 - i. If a preauthorized electronic fund transfer from a consumer account, as defined in 12 C.F.R. § 1005.2, is used in the EWA transaction, allow consumer to revoke the authorization up to three days prior to scheduled repayment date. For the avoidance of doubt, the term "preauthorized electronic fund transfer" does not include any actions the Company may take to correct erroneous payments, including debiting when consumers receive funds erroneously.
4. The Department agrees to treat the information that Company provides as confidential and to withhold it 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 or court 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 include a disclosure in its EWA product agreements with California consumers in substantially the following form:

- 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 to make modifications to its EWA product agreement, such developments may have no adverse impact on your then-existing 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) no smaller than the font of the principal text appearing of the EWA product agreement.

- 6. Company agrees to continue to refrain from representing to California consumers that it is supervised, approved, or endorsed by the Department in any way. For clarity, Company may acknowledge the existence and contents of this Memorandum.
- 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.
- 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 or regulation, including but not limited to the CCFPL, and the California Financing Law, Financial Code section 22000 et seq., in connection with its offering of EWA products to California consumers, or is 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 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 or administrative 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, 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:

Commissioner of Financial Protection and
Innovation

Date: May 12, 2021

Sign: _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division

DailyPay, Inc.

Date: May 10, 2021

Sign: _____

Scot Parnell

Chief Financial Officer