

## Memorandum of Understanding

### **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 Square, Inc. (“Company”). (The Department and Company collectively are referred to herein as the Parties.)

### **Recitals**

- A. Company is a Delaware corporation with its principal place of business in San Francisco, California. Company offers a variety of financial products and services to California business and consumers, including but not limited to, Square Payroll, a payroll service for business; Cash App, which allows consumers to receive, store and send money; and, On Demand Pay, an earned wage access service. The following is a brief summary of On Demand Pay’s core functionality as of the date of this Memorandum. On Demand Pay enables California consumers (eligible workers of Square Payroll employers) the option to transfer up to 50%, but no more than a maximum of \$200, of their earned wages between pay periods to Cash App for free. Later, when the Square Payroll employer runs payroll on its regular cadence, Square is reimbursed and routes the consumer’s funds, less the amount the consumer previously accessed, to the consumer’s linked depository account. The consumer receives the full net amount of their paycheck by their regularly scheduled payday. To use On Demand Pay, consumers must enter into an agreement with Company regarding the terms that govern the service.

Except as expressly stated to the contrary, nothing in this Memorandum shall in any way impose any obligation or restraint on Company whatsoever. This Memorandum constitutes the entire agreement between Department and Company and supersedes all prior or contemporaneous understandings regarding Company’s On Demand Pay service, also referred to herein as Company’s “EWA.” . No amendment to or modification of this Memorandum will be binding unless it is reduced to a writing and signed by both parties.

- B. 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 the 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).

- C. 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."
- D. The Department has not, as of the effective date of this Memorandum, promulgated regulations under the CCFPL governing "covered persons" or EWA products.
- E. 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 is a loan, and whether the EWA 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. No later than October 30, 2021 and on the thirtieth (30<sup>th</sup>) 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 advanced 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 of 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. If the EWA product 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. The parties agree that the Department may request other aggregated and granular information, whether on a per transaction basis or otherwise for its analysis. Square will not unreasonably deny such requests.
- 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 offer to consumers in California 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 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. If the EWA product becomes subject to the TILA, Company shall comply with the TILA.
  - c. If the EWA product 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. If the EWA product becomes subject to the 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 EWA, such as processing or technology fees.
  - f. Disclose any other fee that must be paid by the consumer to the Company before the Company advances funds to the consumer, regardless of whether fees are a condition a condition of accessing the EWA.



- a. "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 adverse impact on your then-existing obligations under this agreement."
  - b. "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/>."
6. Company shall make this disclosure in a font (size, weight, and style) no smaller than the font of the principal text appearing in the EWA product agreement:

"We maintain licenses with the Department of Financial Protection and Innovation for certain of our other products and services in keeping with the Department's requirements. The Department of Financial Protection and Innovation does not offer a license for earned wage access products so we don't have a license that pertains to On Demand Pay. We agree that the Department does not supervise, approve or endorse On Demand Pay or any other earned wage access product and will only make truthful representations concerning the Department's status regarding these matters.
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 as an admission by Company of any violation of California law or regulation. Nothing in this Memorandum should be construed in whole or in part to be an enforcement action, punitive action, or other adverse action against the Company.
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: August 4, 2021

Sign: \_\_\_\_\_  
Mary Ann Smith  
Deputy Commissioner  
Enforcement Division

Square, Inc.

Date: July 28, 2021

Sign: \_\_\_\_\_  
Name: Thomas Bell  
Title: Counsel