

**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 Dave Inc. (Company). (The Department and Company collectively are referred herein as the Parties.)

**Recitals**

- A. Company is a California-based company with the principal place of business at 1265 S. Cochran Avenue, Los Angeles, CA 90019 and in the business of building new financial products and services, some of which involve providing money to consumers based, in part, 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 advance product or service. The funds Company provides to the consumer through this advance product does not exceed the expected amount of the consumer's wages to be paid out the following payday, and currently is an amount not greater than \$200.
- B. Company and consumers enter into agreements for the advance product. Pursuant to the agreement, the consumer may pay an optional \$1 monthly fee for use of Company services in conjunction with the advance product. The consumer may also be charged an optional per transaction fee of \$1.99/\$2.49/\$2.99/\$3.99/\$4.99/\$5.99, depending on the size of the advance, to expedite the transfer of funds, in order to receive the funds within 8 hours. The consumer may pay Company back through electronic funds transfer (EFT) directly from the consumer's bank account within a short period of time, usually within two weeks. The consumer also has the option to pay a "tip" to Company for the advance product. Access to the advance product is not conditioned on the payment of any fee or tip. The Company does not report advance product transactions to credit bureaus, nor does it engage in debt collection, and these transactions are non-recourse to the consumer.
- 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 offers a consumer financial product or service through its advance 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 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. Beginning on the date of signing, Company agrees to provide the following information and data to the Department, and on a quarterly basis thereafter, as available to Company and in a form and manner acceptable to the Department including:
  - a. Advance payment volumes and material changes to any advance product agreement between Company and consumers, including information describing advance amounts, number of advances per month, and average duration before consumer’s payback during the relevant pay periods.
  - b. Repayment, delinquency and default information and rates, and number of consumers making no repayments, partial repayments or requesting cancellations or deferrals.
  - c. Information on a macro and micro level regarding the ratio of money advance to paycheck, if known, and frequency of consumers’ use of the advance product.
  - d. Information relating to the number, frequency and amount of consumer “rollover” of advance to next pay period, if any.
  - 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 aggregate 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, voluntary gratuities and transaction fees for expedited delivery of advance pay are not considered “finance charges” for purpose of TILA and thus are not included in an APR calculation.

- g. Other fees that may be assessed to or paid by consumers but not included in an APR calculation, such as subscription fees, voluntary gratuities, and/or transaction fees for expedited 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 product 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 related to the Company's activities in California and which relate to the Company's advance product offered to consumers in California.
  - b. Company agrees to make its best effort to respond to questions in connection to 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 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. Limiting APR calculated pursuant to TILA methodology to 36% on the advance of funds.
  - e. 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).
  - f. The funds advanced to the consumer shall not be greater than the consumer's next anticipated paycheck, and shall not exceed \$350.

- g. Allow consumer to delay EFT transfer up to 30 days for repayment to Company.
- 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)(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 or law/policy development related to California residents; 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 within 30 days, it will, in its advance 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 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 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 product offered by Company to California consumers requires licensure or registration with the Department. 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 this Memorandum shall be interpreted to restrict the Department from asserting any provision of law including the CCFPL. 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 advance products to California consumers, or as an admission by Company of any violation of 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 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 governing advance products, (iv) the date of Company's licensure under legislation adopted by the California State Legislature regarding advance products; or (iv) 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:**

CLOTHILDE V. HEWLETT  
Commissioner of Financial  
Protection and Innovation

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

Date: December 8, 2021

Dave, Inc.

Sign: \_\_\_\_\_  
John C. Ricci

Title: General Counsel\_\_\_\_\_

Date: December 7, 2021\_\_\_\_\_