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8 Attorneys for Complainant

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11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA
13

14 In the Matter of:) SETTLEMENT AGREEMENT
15)
16 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
17)
Complainant,)
18 v.)
19 BM TECHNOLOGIES, INC.,)
20 Respondent.)
21)
22)
23)

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25 **I.**

26 **RECITALS**

27 A. The Commissioner of Financial Protection and Innovation (Commissioner) agrees to enter
28 into this Settlement Agreement (hereinafter referred to as the “Agreement”) with BM Technologies,
Inc. (“BMTX”). Together, the Commissioner and BMTX will be referred to as the “Parties”.

1 B. BMTX is a financial technology company that partners with bank sponsors to provide an
2 alternative experience to the traditional banking model. BMTX is incorporated in Delaware with
3 headquarters in Wayne, Pennsylvania. One of BMTX’s lines of business, partners with a certain
4 bank or banks (a “Bank Sponsor”) and universities to provide college students access to checking
5 accounts, savings accounts, and debit cards held at or issued by the Bank Sponsor in connection
6 with student’s federal student loan refunds.

7 C. While at one time, BMTX was a division of an FDIC insured bank, at all other relevant
8 times relative to this Settlement Agreement, BMTX was not licensed to operate as a bank in
9 California or in any other jurisdiction, nor was it exempt from such licensure.

10 D. The Commissioner issues licenses and regulates state-chartered banks (Cal. Fin. Code §§
11 300, 560) in the state of California through the Department of Financial Protection and Innovation.
12 Any person engaged in the business of banking in California must be licensed by the Commissioner
13 unless exempt from licensure, or an agent of a person licensed. (Cal. Fin. Code § 563). Furthermore,
14 Cal. Fin. Code § 561 prohibits any person from transacting “business in a way or manner as to lead
15 the public to believe that its business is that of a bank” without actual authority to engage in such
16 business.

17 E. In 2022, the Commissioner commenced an inquiry of BMTX for potential violations of Cal.
18 Fin. Code §§ 561, 562 and 563 concerning BMTX’s use of the term “bank,” or “banking” in the
19 course of one of its Bank Sponsor’s financial product(s) known as “BankMobileDisbursements” or
20 “BankMobile Vibe” (the “Inquiry”).

21 F. As a result of the Inquiry, the Commissioner finds:

- 22 1. That BMTX’s use of the URL address of “bankmobilevibe.com” is in violation of
23 Cal. Fin. Code § 561 in California.
- 24 2. That BMTX’s use of the URL address of “bankmobiledisbursements.com” is in
25 violation of Cal Fin. Code § 561 in California.
- 26 3. That BMTX’s usage of the words “bank” or “banking” in certain other aspects of its
27 Bank Sponsor’s product “BankMobile Vibe” violated Cal. Fin. Code § 561 in
28 California.

1 G. BMTX has cooperated with the Commissioner’s inquiry and represents that it is committed
2 to working with regulatory agencies for the benefit of its customers and the public; and that this
3 Agreement reflects BMTX’s willingness to work with regulatory agencies to ensure that its products
4 are transparently disclosed to its customers and the public. While neither admitting nor denying the
5 Commissioner’s findings, BMTX agrees to comply to this Agreement as outlined below under “II.
6 TERMS AND CONDITIONS”.

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8 **II.**

9 **TERMS AND CONDITIONS**

10 1. Purpose. This Agreement resolves the issues before the Commissioner in a manner
11 that avoids the business disruption and expense of a hearing and other possible court proceedings,
12 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
13 provisions of the applicable law.

14 2. Order to Cease and Desist. The Commissioner hereby orders BMTX and BMTX
15 agrees that in accordance with Cal. Fin. Code §§ 561, 562 and 563 in California, that BMTX will
16 cease and desist from using the name “bankmobilevibe.com, bankmobiledisbursement.com and
17 bankmobile” and similar names or references in its business when referring to itself or its own
18 product offerings unless and until it becomes licensed or otherwise authorized to engage in the
19 business of banking under the laws of California, another state or of the United States. This will in
20 no way restrict any Bank Sponsor to whom BMTX may from time-to-time license the use of the
21 name “BankMobile” from utilizing that name in association with that Bank Sponsor’s products
22 and/or services that are offered by a chartered bank. BMTX agrees that the Order to Cease and
23 Desist is hereby deemed a final order.

24 3. BMTX’s Review of its Webpage and Advertising. BMTX agrees to perform the
25 following review and make enhancements to its webpage and advertising by November 31, 2023.
26 The Commissioner acknowledges and agrees that BMTX will perform quality control and testing
27 of such enhancements by December 31, 2023 and promptly thereafter make further enhancements
28 to address any exceptions identified. BMTX agrees as follows:

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- a. BMTX shall distance itself from use of the term “banking” and derivatives by clarifying statements on its website, on its mobile app, and in advertising to address the following, in the following manner:
 - i. Where “banking” terminology is used specific to the products and services offered by their Bank Sponsor(s), BMTX shall place a disclosure stating that BMTX is not a bank and banking products and services are provided by its Bank Sponsor(s). The disclosure shall be in bold and/or increased font size in a clear and conspicuous manner proximate to the use of the banking terminology.
 - ii. BMTX shall clarify or annotate in all testimonials it publishes, or causes to be published, that use “banking” terminology, that BMTX is a financial technology company not a bank and banking services are provided by BMTX’s Bank Sponsor(s). Further, BMTX shall monitor affiliates (as defined by the Bank Holding Company Act 12 U.S. Code § 1841) and contractual agents who publish other testimonials and provide clarifying information that BMTX is not a bank in response to such testimonials that use “banking” terminology. BMTX shall not be responsible for third-party references to the company where BMTX is not in a contractual relationship with the company/party who either published directly or caused publication of any content that may, could, or does, violate this Agreement.
 - iii. In paid Google search results, BMTX shall place a statement on Google and other ads that banking services are provided by its Bank Sponsor(s), which it will identify by name. BMTX shall be able to utilize as few words as possible to clearly state that its banking services are provided by its Bank Sponsor(s) and preserve the integrity of their marketing/advertising capacity and strategy in a paid Google search, etc.
 - iv. BMTX shall include in its website Frequently Asked Questions (FAQ), an answer that clearly explains that the banking products (i.e. “BankMobile Vibe Checking”) and bank accounts are offered by and held at its Bank Sponsor(s), which it will identify by name and that BMTX is a technology company, not a bank.
 - v. BMTX shall provide a clear and prominent disclaimer during the account set up process to inform the customer that BMTX is a financial technology company not a bank and banking services are provided by BMTX’s Bank Sponsor(s).
 - vi. BMTX shall remove “bankmobilevibe, bankmobiledisbursement and bankmobile” from the URL of the domains where these phrases are currently utilized.

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vii. BMTX will include a disclosure/disclaimer in the footer of the website(s) that are specifically referenced in this Inquiry’s landing page(s) that will clarify the use of the name “BankMobile” or references to BankMobile branded products or services, are references to products or services being provided by their Bank Sponsor, not BMTX.

- b. In it’s FAQs, BMTX shall make clear BMTX’s role as a technology, business processor, and marketing service provider to its Bank Sponsor(s) and make clear that banking products and services are provided by BMTX’s Bank Sponsor(s).
- c. With regard to print materials containing “Bankmobile” or Bankmobile Vibe” advertising, language or logo provided to universities and students, BMTX will have up to and including January 31, 2024 to add a clarification, annotation, or similar disclaimer to the one found on their website(s), to denote that the “BankMobile” name or product(s) is/are being provided by their Bank Sponsor(s), not BMTX..
- d. Compliance and Reporting. BMTX shall establish, implement, enhance, and maintain testing policies, procedures, and standards reasonably designed to, at a minimum, ensure compliance with the provisions of this Agreement and with Cal. Fin. Code § 561. Furthermore, by January 31, 2024, and again one year after the effective date of this Agreement, BMTX shall submit to the Commissioner an accurate written compliance progress report, which, at a minimum describes in detail the manner in which BMTX has complied with this Agreement.

4. Waiver of Hearing Rights. BMTX hereby waives its right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law or any other rights to hearing, reconsideration, appeal, or other action in this matter. By waiving such rights, BMTX effectively consents to the Agreement becoming final and unappealable. Nothing in this Agreement shall waive BMTX’s right to defend itself in the event of a dispute about compliance with its terms.

5. Full and Final Settlement. BMTX hereby acknowledges and agrees that the Agreement is intended to constitute a full, final, and complete resolution of the Inquiry concerning BMTX’s alleged violations as set forth in the Recitals (“Violations”), and that no further proceedings or actions will be brought by the Commissioner against BMTX based on the Violations alleged in the Inquiry, excepting any proceeding to enforce compliance with the terms of this Agreement or if such proceeding is based upon discovery of new and further violations of

1 the law or regulation that do not form the basis for the Agreement and which BMTX knowingly
2 concealed from the State.

3 6. Information Willfully Withheld. This Agreement may be revoked if the
4 Commissioner later finds out that BMTX knowingly or willfully withheld information relied upon in
5 the creation and execution of this Agreement.

6 7. Assisting Other Agencies. The Parties further acknowledge and agree that nothing in
7 the Agreement shall limit the Commissioner’s ability to assist any other agency (city, county, state,
8 or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency
9 against BMTX or any other person based upon any of the activities alleged in this matter or
10 otherwise.

11 8. Headings. The headings to the paragraphs of this Agreement are inserted for
12 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
13 the provisions hereof.

14 9. Binding. The Agreement is binding on all heirs, assigns, or successors in interest.

15 10. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
16 Agreement, he/she/it has relied solely on the statements set forth herein and the advice of their own
17 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Agreement
18 it has placed no reliance on any statement, representation, or promise of any other party, or any other
19 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
20 entity to make any statement, representation, or disclosure of anything whatsoever. The Parties have
21 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
22 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
23 supplement, or contradict the terms of this Agreement.

24 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
25 this Agreement will be valid or binding unless it is in writing and signed by each of the Parties. The
26 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No
27 waiver by each of the Parties of any breach of, or of compliance with, any condition or provision of
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1 this Agreement by another party will be considered a waiver of any other condition or provision or
2 of the same condition or provision at another time.

3 12. Full Integration. This Agreement is the final written expression and the complete and
4 exclusive statement of all the agreements, conditions, promises, representations, and covenant
5 among the Parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the Parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

9 13. Governing Law. This Agreement will be governed by and construed in accordance
10 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
11 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
12 the maintenance of such action or proceeding in such court.

13 14. Counterparts. This Agreement may be executed in one or more separate counterparts,
14 each of which when so executed, shall be deemed an original. Such counterparts shall together
15 constitute a single document.

16 15. Effect Upon Future Proceedings. If BMTX applies for any license, permit or
17 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any future
18 action by such agency to enforce this Agreement, then the subject matter hereof shall be admissible
19 for the purpose of such application(s) or enforcement proceedings(s).

20 16. Voluntary Agreement. BMTX enters into the Agreement voluntarily and without
21 coercion and acknowledges that no promises, threats, or assurances have been made by the State, or
22 any officer or agent thereof, about the Agreement other than as reflected herein.

23 17. Notice. Any notices required under the Agreement shall be provided to
24 each party at the following addresses:

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26 If to BM Technologies, Inc.: Louis Adimando, Esq.
27 General Counsel
28 BM Technologies, Inc.
201 King of Prussia Rd. Suite 650

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IN WITNESS WHEREOF, the Parties hereto have approved and executed the Agreement on the dates set forth opposite their respective signatures.

Dated: July 12, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: July 11, 2023

BM TECHNOLOGIES, INC.

By _____
LOUIS ADIMANDO
General Counsel