STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL & PROFESSIONAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS

In the Matter of: ) ) ) ) ) ) ) ) ) ) Case # 20CC111
TEMPOE Financial, LLC dba FlexPay

CONSENT ORDER

Recitals

WHEREAS, the Illinois Department of Financial and Professional Regulation, ("Department") administers and regulates the Sales Finance Agency Act, 205 ILCS § 660/1 and its implementing regulations.

WHEREAS, the Sales Finance Agency Act, 205 ILCS § 660/1 et seq. provides in part:

Section 2 . . . "Sales finance agency" means a person, irrespective of his or her state of domicile or place of business, engaged in this State, in whole or in part, in the business of purchasing, or making loans secured by, retail installment contracts, retail charge agreements or the outstanding balances under such contracts or agreements entered into in this State . . . .

Section 3. No person may engage in the business of a sales finance agency in this State without first obtaining a license as provided in this Act. A licensee under the Consumer Installment Loan Act may engage in the business of a sales finance agency without securing a license under this Act. A Consumer Installment Loan Act licensee engaged in the business of a sales finance agency is required to comply with this Act and violations of this Act may result in penalties, revocation of the licensee's authority to engage in sales finance agency activity, or revocation or suspension of the Consumer Installment Loan Act license.

Section 8.4. Except for an honest mistake, purchase of any retail contract, retail charge agreement, or evidence of indebtedness thereunder, that on its face violates this Act, the Retail Installment Sales Act, or the Motor Vehicle Retail Installment Sales Act.

WHEREAS, TEMPOE Financial, LLC dba FlexPay ("FlexPay") is not licensed under the Sales Finance Agency Act, 205 ILCS § 660/1 et seq.

WHEREAS, FlexPay is not exempt from licensure under the Sales Finance Agency Act.
WHEREAS, between on or about April 18, 2018, and on or about June 19, 2020, FlexPay violated the Sales Finance Agency Act, 205 ILCS § 660/1 et seq. by engaging in the State of Illinois, in whole or in part, in the business of purchasing, or making loans secured by, retail installment contracts, retail charge agreements or the outstanding balances under such contracts or agreements entered into in the State of Illinois without the required license.

WHEREAS, Flexpay violated the Sales Finance Agency Act, 205 ILCS § 660/8.4 by purchasing retail installment contracts which improperly disclosed the security taken in violation of the Retail Installment Sales Act, 815 ILCS § 405/1 et seq.

WHEREAS, FlexPay, having been advised of its right to a hearing on the charges that it violated the Sales Finance Agency Act, 205 ILCS § 660/1 et seq. and implementing regulations has waived those rights and entered into an Agreement and Stipulation to Entry of a Consent Order attached hereto as Exhibit A.

Order

The Department hereby orders FlexPay as follows:

1. Within ten business days of the Effective Date, FlexPay shall pay the sum of $7,500 (Seven Thousand Five Hundred Dollars) to the Department by check. The check shall be payable to the “Illinois Department of Financial and Professional Regulation” and mailed via Fed Ex or UPS to:

   Illinois Department of Financial and Professional Regulation  
   Attn: Cash Unit/Christina Smith  
   320 W. Washington St., Rm. 338  
   Springfield, Illinois 62786

2. FlexPay shall not engage in the State of Illinois, in whole or in part, in the business of purchasing, or making loans secured by, retail installment contracts, retail charge agreements or the outstanding balances under such contracts or agreements entered into in the State of Illinois without the required license or engage in any other conduct requiring licensing by the Department unless and until it receives licensure the Department. Nothing herein shall be construed as entitling FlexPay to licensure by the Department.

3. FlexPay shall edit its standard retail installment contracts to properly disclose the security taken, in compliance with the Retail Installment Sales Act and the Motor Vehicle Retail Installment Sales Act.

The Effective Date of this Consent Order shall be the date it is signed by the Department and FlexPay. If the Consent Order is signed on different dates, the Effective Date shall be the date of the last signature.

The provisions of this Consent Order shall be binding upon FlexPay and the Department, and their successors and assigns, legatees, heirs, and personal representatives.
The provisions of this Consent Order shall remain effective and enforceable except to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside by the Department.

This Consent Order may be executed by physical signatures or electronic signature in counterparts and by email, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with each of the other signed counterparts, shall constitute one Consent Order, which shall be binding and effective as to the Parties. Signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties as if they were originals.

FRANCISCO MENCHACA  
DIRECTOR, DIVISION OF FINANCIAL INSTITUTIONS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Francisco Menchaca  
as Director  
Digitally signed by Francisco  
Menchaca as Director  
Date: 2020.09.15 T11:37:07.0500

 Date: ______________

TEMPOE FINANCIAL, LLC D/B/A FLEXPAY

By, 

C./F.O.  

Date: 9/16/2020
AGREEMENT AND STIPULATION FOR ENTRY OF CONSENT ORDER

This agreement and stipulation for entry of consent order (the “Agreement”) is between the State of Illinois, Department of Financial & Professional Regulation, (“Department”) and TEMPOE Financial, LLC d/b/a FlexPay (“FlexPay”).

DEFINITIONS

“Effective Date” shall mean the date this agreement is signed by the Department and FlexPay. If the Department and FlexPay sign this Agreement on different dates, the Effective Date shall be the date of last signature.

RECITALS

WHEREAS, the Sales Finance Agency Act, 205 ILCS § 660/1 et seq provides in relevant part:

Section 2 . . . "Sales finance agency" means a person, irrespective of his or her state of domicile or place of business, engaged in this State, in whole or in part, in the business of purchasing, or making loans secured by, retail installment contracts, retail charge agreements or the outstanding balances under such contracts or agreements entered into in this State . . . .

Section 3. No person may engage in the business of a sales finance agency in this State without first obtaining a license as provided in this Act. A licensee under the Consumer Installment Loan Act may engage in the business of a sales finance agency without securing a license under this Act. A Consumer Installment Loan Act licensee engaged in the business of a sales finance agency is required to comply with this Act and violations of this Act may result in penalties, revocation of the licensee's authority to engage in sales finance agency activity, or revocation or suspension of the Consumer Installment Loan Act license.

Section 8.4. Except for an honest mistake, purchase of any retail contract, retail charge agreement, or evidence of indebtedness thereunder, that on its face violates this Act, the Retail Installment Sales Act, or the Motor Vehicle Retail Installment Sales Act.

WHEREAS, the Department has jurisdiction to administer the Sales Finance Agency Act, 205 ILCS § 660/1 et seq.
WHEREAS, FlexPay is not licensed under the Sales Finance Agency Act, 205 ILCS § 660/1 et seq.

WHEREAS, FlexPay is not exempt from licensure under the Sales Finance Agency Act, 205 ILCS § 660/1 et seq.

WHEREAS, between on or about April 18, 2018, and on or about June 19, 2020, FlexPay violated the Sales Finance Agency Act, 205 ILCS § 660/1 et seq. by engaging in the State of Illinois, in whole or in part, in the business of purchasing, or making loans secured by, retail installment contracts, retail charge agreements or the outstanding balances under such contracts or agreements entered into in the State of Illinois without the required license.

WHEREAS, FlexPay violated the Sales Finance Agency Act, 205 ILCS § 660/8.4 by purchasing retail installment contracts which improperly disclosed the security taken in violation of the Retail Installment Sales Act, 815 ILCS § 405/1 et seq.

NOW, THEREFORE, in consideration of the recitals above and the mutual promises, covenants and statements set forth below the Department and FlexPay agree as follows:

AGREEMENT TERMS

1. FlexPay agrees to the entry of the Consent Order attached hereto as “Exhibit 1.” FlexPay agrees that the Consent Order will become a final order, effective upon issuance, and will be fully enforceable by the Department.

2. FlexPay agrees that the Department has jurisdiction over FlexPay and the subject matter of this action. FlexPay waives any right to service of the Consent Order and agrees the issuance of the Consent Order will constitute notice to FlexPay of its terms and conditions.

3. FlexPay expressly waives its right to a hearing, any right to seek any administrative or judicial review of the Consent Order, or to otherwise challenge or contest the validity of the Consent Order.
4. FlexPay within ten business days of the Effective Date, agrees to pay the sum of $7,500 (Seven Thousand and Five Hundred Dollars) to the Department by check. The check shall be payable to the “Illinois Department of Financial and Professional Regulation” and mailed via UPS or Fed Ex to:

Illinois Department of Financial and Professional Regulation
Attn: Cash Unit/Christina Smith
320 W. Washington St., Rm. 338
Springfield, Illinois 62786

5. FlexPay agrees that it shall not engage in the State of Illinois, in whole or in part, in the business of purchasing, or making loans secured by, retail installment contracts, retail charge agreements or the outstanding balances under such contracts or agreements entered into in the State of Illinois without the required license, or any other conduct requiring licensure by the Department unless and until it receives licensure from the Department. Nothing herein shall be construed as entitling FlexPay to licensure by the Department.

6. This Agreement and the Consent Order only resolves FlexPay potential liability to the Department for law violations that the Department has asserted or might have asserted based on the conduct specifically described in the recitals above, to the extent such conduct occurred before the Effective Date, and the Department has knowledge of them as of the Effective Date. FlexPay acknowledges that no promise or representation has been by the Department or any employee, agent, or representative of the Department, limiting liability outside of this action that may arise from the facts underlying this action.

7. The Recitals set forth above are incorporated into and form a part of this Agreement. FlexPay agrees that the recitals described above and included in the Consent Order will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding before
the Department, or any subsequent civil litigation by the Department, including to enforce any provision of this Agreement or the Consent Order.

8. The Department, in its sole discretion, may rescind this Agreement and the Consent Order and subject FlexPay to further regulatory action if FlexPay fails to comply with any provision in this Agreement and the Consent Order, including but not limited to the timely payment of any fee, fine, or other payment to be made to the Department.

9. This Agreement consists of five pages and embodies all the terms and conditions of this Agreement and constitutes the complete agreement and understanding among the parties.

10. Except for the payment required by Paragraph 4 of this Agreement and as further described in this paragraph, each of the parties hereby expressly waives any and all rights to costs, expenses and attorneys’ fees from the other. Notwithstanding any other provision of this Agreement, the Department and its agents may recover costs, expenses, and attorneys’ fees from FlexPay in any matter to enforce the Agreement and Consent Order.

11. This Agreement binds the parties and their respective successors, assigns, legatees, heirs, and personal representatives.

12. Neither this Agreement, nor any settlement terms that may have been discussed, is in force or has any effect until the Effective Date of this Agreement.

13. The signatories to this Agreement represent that they have had the opportunity to seek the advice of counsel, they are entering into this Agreement freely and voluntarily, and they have all necessary authority to execute this Agreement.

14. This Agreement may be executed by physical or electronic signature in counterparts and by email, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with each of the other
signed counterparts, shall constitute one Agreement, which shall be binding and effective as to the parties. Signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the parties as if they were originals.

15. Neither FlexPay nor the Department shall be considered the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

FRANCISCO MENCHACA  
DIRECTOR, DIVISION OF FINANCIAL INSTITUTIONS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

[Signature]  
By: [Name]  
Dated: [Date]  

[Signature]  
By: [Name]  
Dated: [Date]

TEMPOE FINANCIAL, LLC D/B/A FLEXPAY

[Signature]  
By: [Name]  
Dated: [Date]

[Lt's: [Name]  
Chief Financial Officer  
Dated: [Date]