

**1. Definitions.** This Mobile MyDeposit Service Agreement ("Agreement") is the contract that covers your and our rights and responsibilities concerning the Mobile MyDeposit Service ("Service") offered to you by SAFE Credit Union ("Credit Union"). The words "Credit Union," "we," "us," and "our" mean SAFE Credit Union. The word "account" means any one or more savings, checking, or money market accounts you have with the Credit Union. The words "Member," "you," and "your" mean member, joint member, joint owner, or authorized signer. The words "Mobile MyDeposit" mean the remote deposit capture service offered by the Credit Union. The word "Entry" means a transaction conducted through the Mobile MyDeposit Service.

**2. Mobile MyDeposit Service.** Mobile MyDeposit Service is offered for the purpose of converting original checks to substitute checks, as such term is defined in the Check Clearing for the 21st Century Act ("Check 21"), found in subpart D of the Federal Reserve Board Regulation CC (Expedited Funds Availability Act), for deposit with the Credit Union and for processing and presentment to a collecting or paying financial institution. The Mobile MyDeposit Service is subject to the following terms and conditions listed in this Agreement. By using the Mobile MyDeposit Service or clicking the electronic signature "acceptance" below, members and any joint owners or authorized users, jointly and severally, agree to the terms and conditions in this Agreement and any amendments.

**3. Mobile MyDeposit Capture Process.** Mobile MyDeposit is designed to allow you to make deposits of checks ("original checks") to your accounts from an iPhone, Android, or other applicable mobile device ("Mobile Device") by taking a picture of the original check(s) and delivering the digital images and associated deposit information ("images") to us or our processor with your Mobile Device. The Credit Union's processing agent shall perform an image quality assessment of scanned checks or items and shall convert items meeting the Credit Union's required standards into substitute checks to facilitate the deposit and collection of such items. Member agrees that the manner in which items (e.g. substitute check, image exchange, ACH) are cleared or presented for payment shall be determined by the Credit Union, at its sole discretion. The Credit Union reserves the right to select the clearing agents through which the Credit Union clears items. Member agrees to be bound by any clearinghouse agreements, operating circulars, and image exchange agreements to which the Credit Union is a party.

**4. Funds Availability.** Funds from deposited items will be available according to the Credit Union's Funds Availability Policy previously provided to you, as amended from time to time, which is incorporated herein by reference. Member agrees that the imaging and transmitting of checks does not constitute receipt by the Credit Union. For purposes of determining availability of funds, checks successfully scanned and transmitted via Mobile MyDeposit by 3:00 p.m. Pacific Time (PT) on a business day that we are open will be considered received by the Credit Union on the first business day following the day of deposit. Acknowledgment of receipt or delivery does not constitute an acknowledgment by the Credit Union that the transmission of a check or items does not contain errors. Checks successfully scanned and transmitted via Mobile MyDeposit after 3:00 p.m. PT, or on a day that we are not open, will be considered received by the Credit Union on the next business day we are open.

**5. Deposit Acceptance.** Member agrees that the Credit Union may at any time, at its sole discretion, refuse to accept deposits of checks from Member via a Mobile MyDeposit session. In the event that Mobile MyDeposit Services are interrupted or otherwise unavailable, Member may, at his/her option, deposit checks in person at a Credit Union branch, CU Service Center, ATM, via night drop or mail, or other contractually acceptable method.

**6. Daily Deposit Limits.** The aggregate daily deposit limit includes deposits made through MyDeposit and Mobile MyDeposit Services and is subject to change at any time, with or without notice.

**7. Member Account.** Member will designate a Credit Union savings and/or checking account as the account to be used for the purposes of settling, in aggregate, the financial transactions requested in connection with Mobile MyDeposit Service. The Credit Union shall provide the Member with details of the specific transactions, reported similarly as other transactions may be done, that were a result of access to the service. Member shall be responsible for auditing and balancing of any account.

**8. Responsibility for Imaging.** Member is solely responsible for capturing images of the deposited items, accessing the service from the Credit Union, and maintaining Member's Mobile Device. Member is responsible for the payment of all telecommunications expenses associated with the service. The Credit Union shall not be responsible for providing or servicing any device for the Member. Member will be responsible for performing initial installation procedures in accordance with the Credit Union's Mobile MyDeposit guidelines. Member will also be responsible for installing and implementing any changes and upgrades to Mobile MyDeposit as required by the Credit Union, within a reasonable time period, to ensure compliance with regulatory changes or developments or to protect the integrity and security of Mobile MyDeposit. Member understands it is his/her responsibility to maintain the proper device to obtain images of checks as listed below:

- i. SAFE iPhone App
- ii. SAFE Android App

**9. Deposit Requirements.** Member agrees that he/she will only use the Mobile MyDeposit Service to deposit checks drawn on financial institutions within the United States (U.S.) and its territories. Member will deposit checks not falling within this requirement in person, using a night drop facility or by U.S. mail. Member agrees that each check submitted for deposit through the Mobile MyDeposit Service must meet the image quality standards established in American National Standards Institute's (ANSI) standard X9.37. Member agrees to write "For Mobile Deposit Only" on the back of all checks before depositing. Business Member agrees to use Mobile MyDeposit only for internal business purposes. Member is responsible for inspecting and verifying the quality of images, thus ensuring that digital images of the front and back of original checks (defined as a check for any amount in U.S. dollars drawn on or payable through a U.S. financial institution that has not been previously presented and paid) are legible for all posting and clearing purposes by the Credit Union. Specifically, you are representing and warranting that:

- i. The check image is an accurate representation of all information on the front and back of the original check at the time the original check was converted to a digital check image, and the check image contains all endorsements from the original check;
- ii. Each check image (or related electronic data file) contains a record of all MICR line information required for a substitute check and otherwise satisfies all of the requirements of Check 21 and Regulation CC for the creation and/or transferring of a substitute check created from that check image.

In addition, your account(s) will be charged for any deposited check that is later returned to the Credit Union owing to an actual or alleged breach of any such representation or warranty.

**10. Check Retention & Destruction.** The Member agrees that all items belong to the Member and not to the Credit Union and that those items shall be handled in accordance with this Agreement. After receipt by the Credit Union of any transmission by the Member of imaged items for deposit to the Member's account, the Credit Union will acknowledge by electronic means, its receipt of such electronic transmission. The Member's electronic transmission is subject to proof and verification. The Member shall retain the original of all imaged items that have been deposited via Mobile MyDeposit for a reasonable period of time in order to verify settlement and credit or to balance periodic statements, but in no case beyond ninety (90) days from the date processed, and shall properly destroy and dispose of such original checks after such time. During the period that the Member maintains the original checks, the Member understands and agrees that he/she must use a high degree of care to protect these original checks against security risks. These risks include, without limitation, (i) theft or reproduction of the original checks (including Member's own

employees or agents) for purposes of presentment for deposit (i.e. after the original checks have already been presented for deposit via the Mobile MyDeposit Service) and (ii) unauthorized use of information derived from the original checks. When the Member destroys and disposes of the original checks pursuant to the requirements of this Agreement, the Member understands and agrees that he/she must use a high degree of care when selecting and implementing destruction and disposal procedures. Among other things, these procedures must be designed to ensure that the original checks are not accessed by unauthorized persons during the destruction and disposal process, and, once destroyed, the original checks are no longer readable or capable of being reconstructed (i.e. through the use of competent shredding equipment).

**11. Presentment Prohibitions.** The Member shall not present, or attempt to present, or allow others, either directly or indirectly, to present, or attempt to present, for deposit by any means (i) any Substitute Check that has already been presented for deposit via Mobile MyDeposit Service or (ii) any original check, the Substitute Check of which has already been presented for deposit via Mobile MyDeposit. Member agrees that the aggregate amount of any items that are deposited more than once will be debited from the Member's account, and to the extent funds in the Member's account are insufficient to cover such amount, any balance shall be debited by the Credit Union from any other accounts with the Credit Union in its sole discretion. Member further acknowledges that the Member, not the Credit Union, is responsible for the processing and handling of any original items that are imaged and deposited utilizing the service, and the Member assumes all liability to the drawer of any item imaged using the service or liability arising from the Credit Union's printing of any substitute check from those images.

**12. Member Representations and Warranties.** Member represents and warrants that:

- i. Member will comply with all federal and state laws, and rules and regulations applicable to online transactions, including, but not limited to, those of the National Automated Clearing House for ACH transactions and Regulation CC's warranty provisions for substitute checks;
- ii. All checks scanned through image transport are made payable to the Member, issued within the United States of America and its territories, and in U.S. Currency;
- iii. All signatures on each check are authentic and authorized;
- iv. Each check has not been altered;
- v. Images meet quality Federal Reserve Bank and/or American National Standards Institute (ANSI) standards;
- vi. Member will not deposit the original item;
- vii. Credit union will not sustain a loss because the Member deposited an image;
- viii. Member will maintain a valid email address on file with the Credit Union.
- ix. Member will comply with all security procedures established by the Credit Union and agrees to not bypass, override, or disable any security mechanisms in the software or processing device; and
- x. Business Member will train employees in the overall use of Mobile MyDeposit Service, including the supervision and auditing of employees' use of Mobile MyDeposit.

**13. Financial Responsibility.** Member is, and shall remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds associated with accessing the service. The Credit Union shall not be liable in any manner for such risk unless the Credit Union fails to follow the procedures described in this Agreement. Member assumes exclusive responsibility for the consequences of any instructions he/she may give to the Credit Union for Member's failures to access the service properly in a manner prescribed by the Credit Union, and for Member's failure to supply accurate input information, including, without limitation, any information contained in an application.

**14. Account Reconciliation.** Member will verify and reconcile any out-of-balance condition, and promptly notify the Credit Union of any errors within the time periods established in SAFE's Account Disclosure and Agreement of which the Member has been previously provided after receipt of the applicable detail report from the Credit Union. If notified within such period, the Credit Union shall correct and resubmit all erroneous files, reports, and other data at the Credit Union's then standard charges, or at no charge, if the erroneous report or other data directly resulted from the Credit Union's error.

## 15. Credit Union Obligations.

**15.1 Financial Data.** The Credit Union agrees to transmit all financial data under its control required to utilize the service selected by the Member and to act on appropriate instructions received from the Member in connection with such service. The Credit Union shall exercise reasonable due care in seeking both to preserve the confidentiality of the user number, password, test key, or other code or identifier and to prevent the use of the service by unauthorized persons, but shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by Member by reason or in consequence of any unauthorized person gaining access to or otherwise making use of the service. In this regard it is understood and agreed that implementation by the Credit Union of its normal procedures for maintaining the confidentiality of information relating to its Members, and where practicable the obtaining by the Credit Union from any third parties engaged in the installation, maintenance, and operation of the system of similar undertakings, shall constitute fulfillment of its obligation so to exercise reasonable due care. Member assumes full responsibility for the consequences of any misuse or unauthorized use of or access to the service or disclosure of any confidential information or instructions of the Member by the Member's employees, agents, or other third parties.

**15.2. Service Availability.** Member understands that service availability is at all times conditioned upon the corresponding operation and availability of those computer services and systems used in communicating the Member's instructions and requests to the Credit Union and the Credit Union's response. The Credit Union shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the Member in the event of any failure or interruption of such services or any part thereof, resulting from the act or omission of any third party, or from any other cause not reasonably within the control of the Credit Union.

**15.3. Exception Items.** When the Credit Union reviews and processes the Member's electronic file, the Credit Union may reject any digital image that the Credit Union, in its sole discretion, determines to be ineligible for the service ("Exception Item") including, without limitation, digital images of items drawn on banks located outside the U.S. and its territories, items drawn on U.S. Banks in foreign currency, digital images that are illegible (due to poor image quality or otherwise), digital images of items previously processed, digital images previously converted to substitute checks, and digital images with unreadable MICR information. The Credit Union will notify the Member via email of any Exception Items. Should the email be returned as undeliverable, SAFE will have completed its obligation to alert me of Exception Items and is under no obligation to attempt any redelivery of the email. Member agrees that if he/she wishes to attempt to deposit any Exception Item to any of the Member's accounts with the Credit Union, the Member shall only do so by depositing the original item on which the Exception Item is based. Member acknowledges and agrees that even if the Credit Union does not initially identify a digital image as an Exception Item, the substitute check created by the Credit Union may nevertheless be returned to the Credit Union because, among other reasons, the digital image is deemed illegible by a paying bank. The Credit Union's failure to identify an Exception Item shall not preclude or limit the obligation of the Member to the Credit Union. The Member agrees and understands that it is his/her full responsibility to keep SAFE informed of his/her most current email address to ensure notification of Exception Item.

**15.4. Transaction History.** Credit Union shall provide transaction history to the Member via Online Banking service detailing items processed, returned items, and deposit adjustments.

**15.5. Retention of Check Images.** Credit Union will retain any substitute checks it generates for seven (7) years.

**15.6. Services Fees.** Currently there is no monthly fee for the Mobile MyDeposit Service. Member agrees to pay all fees and charges for deposit services as set forth on SAFE's Fee Schedule. All service fees are subject to change by the Credit Union.

**15.7. Returned Items.** If a deposited check is dishonored, the member will receive an image of the original check or "substitute check" as the charged back item. With respect to any item that you transmit to us for remote deposit that we credit to your account, in the event such item is dishonored, you authorize us to debit the amount of such item from your account.

## **16. Warranties; Disclaimer of Liabilities.**

**16.1. Service Warranty.** Member performs the function of converting an original check to a substitute check. Therefore, the Member understands and agrees that he/she is responsible, to the extent permitted by law, for all warranties and indemnifications set forth in Check 21 applying to any Reconverting Credit Union and Truncating Credit Union, as such terms are defined by Check 21, including, without limitation, the obligation to only convert an original check that allows for the creation of a substitute check that clearly and accurately represents the information on the front and back of the original check. Credit Union and its agents may, but shall have no obligation, to screen items or Substitute Checks for legal compliance. The Member agrees to defend, indemnify, and hold the Credit Union and its agents harmless from and against all liability, damage, and loss arising out of any claims, suits, or demands brought by third parties with respect to any such substitute checks.

**16.2. Disclaimer of Liability.** MEMBER ACKNOWLEDGES THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE CREDIT UNION IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM MEMBER'S USE OF THE SERVICE. THE CREDIT UNION MAKES NO AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICE INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CREDIT UNION DISCLAIMS ANY WARRANTIES REGARDING THE OPERATION, PERFORMANCE, OR FUNCTIONALITY OF THE SERVICE (INCLUDING, WITHOUT LIMITATION, THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE). MEMBER FURTHER ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, CORRUPTION, TRANSMISSION ERROR AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING OPEN NETWORKS SUCH AS THE INTERNET AND/OR TELECOMMUNICATION LINES OR CIRCUITS. MEMBER HEREBY ASSUMES ALL RISKS RELATING TO THE FOREGOING.

## **17. Credit Union's Liabilities.**

**17.1. Direct Damages.** THE CREDIT UNION'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY THE MEMBER AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF THE CREDIT UNION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVIDED THAT THE MAXIMUM AGGREGATE LIABILITY OF THE CREDIT UNION RESULTING FROM ANY SUCH CLAIMS SHALL NOT EXCEED THE TOTAL FEES PAID BY THE MEMBER TO THE CREDIT UNION IN THE TWO (2) MONTH PERIOD PRECEDING THE DATE THE CLAIM ACCRUED. IN NO EVENT SHALL THE CREDIT UNION BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING LOST PROFITS, WHETHER OR NOT THE CREDIT UNION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE CREDIT UNION'S LICENSORS OR SUPPLIERS WILL NOT BE SUBJECT TO ANY LIABILITY TO THE MEMBER IN CONNECTION WITH ANY MATTER.

**17.2. Member's Duty to Report Errors.** Member shall notify the Credit Union of any errors, omissions, or interruptions in, or delay or unavailability of, the Services as promptly as practicable, and in any event within one business day after the earliest of discovery thereof, or the date discovery should have occurred through the exercise of reasonable care, and, in the case of any error, within sixty (60) days of the date of the earliest notice to the Member that reflects the error. The Member agrees to examine his/her monthly statement and report errors/discrepancies in a timely manner to the Credit Union. Failure of the Member to notify the Credit Union of any error, omission, or other discrepancy within sixty (60) days from the date the error first appears on the account statement shall relieve the Credit Union of any liability for such error, omission, or discrepancy.

**17.3. Credit Union's Performance.** Member acknowledges and agrees that the Credit Union shall not be liable for any damages or loss of any kind resulting from any unintentional error or omission by the Credit Union in performing the Services, in accordance with or unintentional deviation from the terms and conditions of this Agreement, including exhibits or addenda. Member acknowledges that the Credit Union's systems and procedures established for providing the Services are commercially reasonable.

**17.4. Limitations.** Credit Union shall have no liability to the Member, or any other person or entity for any loss, damage, cost, or expense arising out of this Agreement or the Services, regardless of the form in which asserted, whether in contract, tort (including negligence), warranty, or any other legal or equitable grounds, and regardless of whether the remedies available fail of their essential purpose, except as provided by applicable law for any error or delay in performing the Services provided for in this Agreement, and shall have no liability for not effecting an Entry, if:

- i. The Credit Union receives actual notice or has reason to believe that the Member has filed or commenced a petition or proceeding for relief under any bankruptcy or similar law;
- ii. The ownership of funds involving an Entry or the Authorized Representative's authority to transmit an Entry is in question;
- iii. Credit Union suspects a breach of the Security procedures;
- iv. Credit Union suspects that the Member account has been used for illegal or fraudulent purposes; or
- v. Credit Union reasonably believes that an Entry is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

Credit Union will also be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in it exceeding any limitation imposed on it by any governmental or regulatory body.

In particular, the Credit Union will not be responsible for your acts or omissions and none of your employees or agents shall be considered agents of the Credit Union.

The Credit Union will not be liable to you for any of the following, unless liability or loss is a result of the Credit Union's breach of this Agreement or the gross negligence or willful misconduct of the Credit Union or its employees or agents:

- i. Any damages, costs or other consequences caused by or related to the Credit Union's actions that are based on information or instructions that you provide to the Credit Union;
- ii. Any unauthorized actions initiated or caused by you or its employees or agents;
- iii. The failure of third persons or vendors to perform satisfactorily, other than persons to whom the Credit Union has delegated the performance of specific obligations provided in this Agreement;
- iv. Any refusal of a payor Financial Institution to pay an electronic item or substitute check for any reason, including without limitation that the check, electronic item or substitute check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature;
- v. Any other party's lack of access to the Internet or inability to transmit or receive data;

- vi. Failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems;
- vii. Actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of the digital image of your check to the Credit Union;
- viii. Modification of Mobile MyDeposit by anyone other than the Credit Union without the express prior written consent of the Credit Union, if liability for infringement would not have arisen but for such modification;
- ix. Combination or use of Mobile MyDeposit with any software or hardware not provided by the Credit Union, if liability for infringement would not have arisen but for such combination or use with such software or hardware;
- x. Use of Mobile MyDeposit in any way not authorized by this Agreement, if liability for infringement would not have arisen but for such unauthorized use;
- xi. Transmission of digital images to any other computer, system or media, other than, transmission to the Credit Union for the purpose of processing such digital images as contemplated herein, if liability for infringement would not have arisen but for such transmission; or
- xii. Use of other than the most current release of Mobile MyDeposit provided to you, if liability for infringement would not have arisen if the most current release had been in use.

The Credit Union's liability for errors or omissions with respect to the data transmitted or printed by the Credit Union will be limited to correcting the errors or omissions. Correction will be limited to reprinting and/or representing substitute checks or electronic items to the payor Financial Institution.

**18. Force Majeure.** Credit Union shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder that is caused by earthquakes, fires, natural disasters, civil or foreign disturbances, power outages, acts of government, labor disputes, failures in either communication or computer networks, legal constraints, or any other event beyond its control.

**19. Termination.** Either party may terminate this Agreement and the Mobile MyDeposit Service without prior notice. Notwithstanding any such notice of termination, this Agreement shall remain effective in respect of any transaction occurring prior to such termination. Upon any termination of this Agreement, (i) Member will immediately cease using the service, and (ii) Member shall promptly remit all unpaid monies due under this Agreement. Member may terminate Mobile MyDeposit Service in Online Banking or by contacting the Credit Union at any time by calling us at **(916) 979-7233** or **(800) SEE-SAFE**, writing us at SAFE Credit Union, 2295 Iron Point Road, Suite 100, Folsom CA 95630-8765, or via Live Chat on [safecu.org](http://safecu.org). Upon Member request, the Credit Union will terminate service within 10 business days of notification. The Credit Union reserves the right to terminate this Agreement or limit your use of My Deposit at any time and for any reason at our discretion, with or without cause and without prior notice. Examples of when we may terminate this Agreement and the use of Mobile MyDeposit without prior notice include, but are not limited to:

- i. If you breach this or any other agreement we may have with you;
- ii. If we have reason to believe that there has been or may be an unauthorized use of your User ID, Password and Authentication Method or account(s);
- iii. If there are conflicting claims as to the funds in any of your account(s);
- iv. If you request us to do so;
- v. If you do not access My Deposit for a period of 30 days or longer; or
- vi. If you have insufficient funds in any one of your Credit Union accounts.

Termination will not affect your liability or obligations under this Agreement for transactions that have been processed on your behalf. You will remain responsible for all outstanding fees and charges incurred prior to the date of termination. Termination will apply only to Mobile MyDeposit and does not terminate your other relationships with us.

Any termination will not affect obligations arising prior to termination, such as the obligation to process any checks and electronic items (including returned digital items) that were in the process of being transmitted or collected prior to the termination date.

In addition, you will keep your account(s) at the Credit Union open until final payment with respect to all processing fees, and will maintain funds in such account(s) in amounts and for a period of time determined by the Credit Union in its reasonable discretion to cover any outstanding checks and your obligations for returns of checks, warranty claims, fees and other obligations.

If any such liabilities exceed the amount in the applicable account, the Credit Union may charge such excess against any of your other accounts at the Credit Union, and you will pay immediately upon demand to the Credit Union any amount remaining unpaid. You will also continue to retain checks and forward checks to the Credit Union.

The Credit Union may immediately suspend or terminate the Member's access to the service in the event that the Credit Union reasonably determines such suspension or termination is necessary in order to protect the service or the Credit Union from harm or compromise of integrity, security, reputation, or operation.

**20. Indemnification.** Member agrees to indemnify, defend and hold harmless the Credit Union and its shareholders, directors, officers, employees and agents (the "Indemnified Parties") from and against any and all losses, costs, expenses, fees (including, but not limited to, reasonable attorney fees and disbursements), claims, damages, liabilities and causes of actions of third parties resulting or arising from: (a) Member's failure to abide by or perform any obligation imposed upon the Member under this Agreement, (b) the willful misconduct, fraud, criminal activity, intentional tort or negligence of the Member or any of his/her representatives involving use of the service; (c) the actions, omissions or commissions of the Member, his/her employees, consultants and/or agents relating to the service; and (d) any transmission or instruction, whether or not authorized, acted upon by the Credit Union in good faith. Member shall be provided with prompt notice of any claims and given full authority and assistance (at Member's expense) for the defense of any such claims; provided that the Credit Union may participate in such defense and settlement with counsel of the Credit Union's own choosing at the Credit Union's own expense; provided, further, however, Member shall have no authority to settle any claim against any Indemnified Party without the prior written consent of such Indemnified Party (which consent shall not be unreasonably withheld). Member further authorizes the Credit Union to charge the account for the amount of any such demand, claim, or suit that constitutes a breach of warranty claim under the provisions of the Uniform Commercial Code.

**21. Modification of Services.** Credit Union reserves the right to modify the Mobile MyDeposit Service from time to time without making prior notice to the Member. The Credit Union may give the Member thirty (30) days' notice, or as required by law, prior to making any modifications to the Mobile MyDeposit Service that would materially alter its functionality.

**22. Notices.** Except as otherwise expressly provided herein, the Credit Union shall not be required to act upon any notice or instruction received from Member or any other person, or to provide any notice or advice to Member or any other person with respect to any matter.

**23. Enforcement.** You agree to be liable to the Credit Union for any liability, loss, or expense as provided in this Agreement that the Credit Union incurs as a result of any dispute involving your accounts or services. You authorize the Credit Union to deduct any such liability, loss, or expense from your account without prior notice to you. This Agreement shall be governed by and construed under the laws of the State of California as applied to contracts entered into solely between residents of, and to be performed entirely in, such state. In the event either party brings a legal action to enforce the Agreement or collect any overdrawn funds on accounts accessed under this Agreement, the prevailing party shall be entitled, subject to California law, to payment by the other party of the prevailing party's reasonable attorney's fees and costs, including fees on



any appeal, bankruptcy proceedings, and any post-judgment collection actions, if applicable. Should any one or more provisions of this Agreement be determined illegal or unenforceable in any relevant jurisdiction, then such provision may be modified by the proper court, if possible, but only to the extent necessary to make the provision enforceable and such modification shall not affect any other provision of this Agreement.

**24. Communications in Writing.** All Communications in either electronic or paper format from us to you will be considered "in writing." You should print or download for your records a copy of this Agreement, and any other communication that is important to you.

**25. Your Responsibility When the User ID, Password and Authentication Method are Used.** We are entitled to act upon instructions we receive with respect to Mobile MyDeposit under your Online Banking User ID, Password, and Authentication Method. You are liable for all transactions made or authorized with the use of your User ID, Password, and Authentication Method. We have no responsibility for establishing the identity of any person who uses your User ID, Password, and Authentication Method. You agree that if you give your User ID, Password, and Authentication Method to anyone or fail to safeguard its secrecy, you would be in violation of your obligations under SAFE's Electronic Funds Transfer Disclosure.

You agree to take appropriate steps to ensure that all User ID's, Passwords, Authentication Methods and any other applicable security procedure issued to its agents, representatives, employees or officers are protected and kept confidential.

You agree that we shall not be responsible for any loss, property damage or bodily injury arising out of or resulting from the failure of any person to provide you with access to Mobile MyDeposit, whether caused by the device, software, the Credit Union, Internet services providers, Internet browsers, or the parties providing communication services to or from us to you.

We are not liable for war, acts of government that may restrict or impair use of MyDeposit, hurricanes, floods, or other disasters, nor shall we be responsible for any direct, indirect, special or consequential, economic or other damages relating in any way to the foregoing.

By directing us, Mobile MyDeposit used in conjunction with your User ID, Password and Authentication Method, you authorize the Credit Union to complete the transaction. Any requests or instructions we receive from you through Mobile MyDeposit using your User ID, Password and Authentication Method shall constitute writings with your signature as provided under all applicable law, and shall have the same force and effect as a writing signed by you. This includes, but is not limited to, inquiries, deposit transactions, items deposited, check images, changes to accounts or services or any other communication you provide us through Mobile MyDeposit using your User ID, Password and Authentication Method.

**26. Data Protection.** You understand the importance of your role in preventing misuse of your accounts through Mobile MyDeposit, and you agree to promptly examine your paper statement for each of your Credit Union accounts as soon as you receive it. You agree to protect the confidentiality of your account and account number, and your personal identification information. Notwithstanding our efforts to insure that Mobile MyDeposit is secure, you acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail, occur openly on the Internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing Mobile MyDeposit or email transmitted to and from us, will not be monitored or read by others.

**27. Contact in Event of Unauthorized Access.** If you believe that your User ID, Password or Authentication Method has been lost or stolen, or that someone has accessed Mobile MyDeposit without your permission, call us at **(916) 979-7233** or **(800) SEE-SAFE**.

**28. License and Intellectual Property.** License: The Credit Union, subject to the terms and conditions of this Agreement, hereby grants you a non-exclusive, non-transferable license to use Mobile MyDeposit solely for processing checks in connection with your own business operations, in accordance with the Credit

Union guidelines and solely on authorized device. Ownership: You acknowledge and agree that all right, title, and interest in and to Mobile MyDeposit and any Mobile MyDeposit guidelines, together with modifications, enhancements and derivative works, and all intellectual property rights such as copyrights, patents, and trade secrets, pertaining to Mobile MyDeposit and any Mobile MyDeposit guidelines are:

- i. Owned exclusively by the Credit Union and its licensors;
- ii. Represented or contain valuable rights of the Credit Union and its licensors; and
- iii. Protected under U.S. patent, copyright, trademark and trade secret laws of general applicability.

No other license or interest in Mobile MyDeposit or Mobile MyDeposit guidelines, either express or implied, is granted under this Agreement other than the license set forth in this Agreement. In addition, you agree not to at any time either directly or indirectly:

- i. Put to issue the scope, validity or ownership of the Credit Union's (or its licensors') intellectual property rights in Mobile MyDeposit and Mobile MyDeposit guidelines;
- ii. Perform any act that could reasonably be expected to impair the scope, validity or ownership of such intellectual property rights;
- iii. Assert any ownership rights to Mobile MyDeposit and Mobile MyDeposit guidelines; or
- iv. Remove or alter any copyright, trademark, or other intellectual property or proprietary right notices, legends, symbols or labels appearing on or in Mobile MyDeposit and Mobile MyDeposit guidelines or any packaging, and shall include any copy of Mobile MyDeposit and Mobile MyDeposit guidelines any copyright, trademark, or other intellectual property or proprietary right notices contained on the original.

You acknowledge and agree that this Agreement does not grant or convey to you an interest in or to Mobile MyDeposit and Mobile MyDeposit guidelines, or any right, title, interest or license in or to any trademark of the Credit Union or its licensors, but only a limited right of use (revocable in accordance with the terms hereof).

You hereby assign to the Credit Union and/or its licensors, as directed by the Credit Union, any rights, including any patent, copyright, trademarks, and trade secrets, that you may now have or may acquire at any time in the future to Mobile MyDeposit or the intellectual property rights to Mobile MyDeposit, and any other computer code using any of Mobile MyDeposit.

You agree to:

- i. Cooperate with the Credit Union and its licensors to protect Mobile MyDeposit, including in connection with any lawsuits or disputes involving Mobile MyDeposit;
- ii. Promptly notify the Credit Union and provide relevant information and facts upon becoming aware of any actual or potential claim made by a third party regarding infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof, by the Mobile MyDeposit; and
- iii. In the event of any actual or potential infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof of the Mobile MyDeposit by others:
  - a. Grant to the Credit Union and its licensors the sole right to determine the course of action with respect to such infringement and to bring any proceeding with respect thereto, and to settle, and collect any settlement amount or judgment for any such proceeding; and
  - b. Agree that such licensors shall be solely entitled to any proceeds of any such proceeding, including without limitation any settlement proceeds, insurance proceeds, arbitration award, judgment, or other consideration in any form.

### **Electronic Signature**

I agree to all terms and conditions of the Mobile MyDeposit Service Agreement and agree to proceed with the Mobile MyDeposit Service electronic registration and confirmation process.