



## MyDeposit Business Service Agreement

**1. Definitions.** This MyDeposit Business Service Agreement ("Agreement") is the contract that covers your and our rights and responsibilities concerning the remote deposit capture MyDeposit Business ("Service") offered to you by SAFE Credit Union. The words "Credit Union," "SAFE," "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 SAFE. The words "Member" "you," and "your," mean member, business member, or authorized signer. The word "Entry" means a transaction conducted through the Service.

**2. MyDeposit Business Service.** The Service is offered for the purpose of converting original checks to substitute checks, as such term is defined in Check Clearing for the 21st Century Act and Federal Reserve Board Regulation CC ("Check 21"), for deposit with SAFE and for processing and presentment to a collecting or paying financial institution. The Service is subject to the following terms and conditions and to the instructions, rules, and terms contained in MyDeposit Business Help File provided to you via a link within the Service and incorporated by reference herein. By using the Service, business members, and any authorized signers jointly and severally, agree to the terms and conditions in this Agreement and any amendments. The first time the Service is accessed, you agree to be bound by all terms and conditions of this Agreement and member acknowledges receipt and understanding of this Agreement.

**3. MyDeposit Business Capture Process.** Member will scan checks or deposit items ("items") with an image capture device ("scanner") creating an electronic image and Member will transmit an electronic file of such electronic images that SAFE will deposit to the designated SAFE business account. SAFE's processing agent shall perform an image quality assessment of scanned checks or items and shall convert items meeting SAFE'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 SAFE, at its sole discretion. SAFE reserves the right to select the clearing agents through which SAFE clears items. Member agrees to be bound by any clearinghouse agreements, operating circulars, and image exchange agreements to which SAFE 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 deposited via the Service 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 deposited via the Service 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 SAFE may at any time, at its sole discretion, refuse to accept deposits of checks from Member via the Service. In the event that the Service is interrupted or are otherwise unavailable, Member may, at his/her option, deposit checks in-person at a SAFE branch, ATM, night drop, U.S. mail, or other contractually acceptable method.

**6. Member Account.** Member will designate a SAFE savings and checking account as the accounts to be used for the purposes of settling, in aggregate, the financial transactions requested in connection with the Service. SAFE 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 agrees to monitor account balances and transaction history, and promptly notify SAFE of any transaction received that is grossly

greater or less than the Member's expectation of the information, and to refrain from acting on information he/she has reason to believe is erroneous.

Member shall provide written notice to SAFE of any changes to the information provided by Member to SAFE, including but not limited to additional locations, any change in business, any new business, the identity of principals and/or owners, the form of business organization, type of goods and services provided, and method of conducting sales. Such notice must be in writing and received by SAFE within five (5) business days of the change. Further, upon SAFE's request, the Member shall provide updated information within five (5) days of such request.

The Credit Union retains the right to:

- i. Periodically review the Member's business activity to confirm the Member is conducting business as stated by the Member at the time of the execution of this Agreement.
- ii. Request copies of Audited Financial Statements.
- iii. Perform an on-site inspection.
- iv. Request and obtain copies of internal Information Security Audits.
- v. Perform periodic credit reviews.

**7. Responsibility for Scanning.** Member is solely responsible for scanning deposit items, accessing the Service and for maintaining Member's scanning equipment. Member will be responsible for the payment of all telecommunications expenses associated with the Service. SAFE shall not be responsible for providing or servicing any equipment for the Member. Member may be using special scanning equipment, services or software provided by a third party to assist in capturing and processing items hereunder ("Third Party"). Member: (i) agrees that any Third Party is acting as the Member's agent in the delivery of equipment, and (ii) assumes full responsibility and liability for any failure of that Third Party to comply with the laws, rules, or this Agreement. SAFE will not be liable for any losses or additional costs incurred by the Member as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party. Member is solely responsible for maintaining compliance with the requirements of any Third Party, including obtaining any software updates, installations, equipment warranties, and conducting periodic equipment maintenance. SAFE shall not have any responsibility for any equipment, software, or services handled by a Third Party. Member understands it is his/her responsibility to maintain the proper equipment/software requirements to scan checks as listed below:

- i. Enrollment in SAFE Online Banking
- ii. Connection to the Internet using a compatible browser
- iii. Compatible scanner

SAFE will maintain current system/software requirements at [www.safecu.org/systemreq](http://www.safecu.org/systemreq).

**8. Deposit Requirements.** Member agrees that he/she will only use the Service to deposit checks drawn on financial institutions within the United States, excluding its territories. Member agrees that each check he/she submits for deposit through the Service must meet the image quality standards established in the American National Standards Institute (ANSI) standard X9.37.

**9. Check Retention & Destruction.** Member agrees to the following check retention and destruction responsibilities:

- All items belong to the Member and not to SAFE and those items shall be handled in accordance with this Agreement.

- After receipt by SAFE of any transmission by the Member of imaged items for deposit to the Member's account, SAFE will acknowledge by electronic means its receipt of such electronic transmission. The Member's electronic transmission is subject to proof and verification.
- Member shall retain the original of all imaged items that have been deposited via the Service 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 by employees or unauthorized parties) for purposes of presentment for deposit of these original checks (i.e., after the original checks have already been presented for deposit via the Service).
  - 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.
- Retention and destruction 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 (e.g., through the use of competent shredding equipment).

**10. Presentment Prohibitions.** 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 the Service or (ii) any original check, the Substitute Check of which has already been presented for deposit via the Service. If the Member, or any third party, presents, or attempts to present, a deposit in violation of this Subsection, the Member agrees to defend, indemnify, and hold SAFE 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 Check or original check. Member agrees that the aggregate amount of any items deposited more than once will be debited from the Member's account, even if such deduction causes an overdraft to the Account, and to the extent funds in the Member's account are insufficient to cover such amount, any balance shall be debited by SAFE from any other accounts with SAFE in its sole discretion. Member further acknowledges that the Member, not SAFE, is responsible for the processing and handling of any original items which 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 SAFE's printing of any substitute check from those images.

**11. Member Representations and Warranties.** Member represents and warrants all of the following:

- 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 (NACHA) transactions.
- ii. All checks scanned through the Service are made payable to the designated Business name and drawn on a financial institution within the United States of America.
- iii. All payee signatures and endorsements are authentic and authorized.
- iv. Each check has not been altered.
- v. Images meet quality Federal Reserve Bank (FRB) and or American National Standards Institute (ANSI) standards X9.37.
- vi. Member will not re-deposit the original check or item after using the Service.
- vii. Credit Union will not sustain a loss because the Member deposited an image of the check and not the original check or item (for example, photocopy of a check).
- viii. Member indemnifies SAFE from any loss for breach of Regulation CC's warranty provisions for substitute checks.
- ix. Member agrees to indemnify the Credit Union for any loss or breach of the warranty provisions.
- x. Member will maintain a valid email address on file with SAFE.

In the event the Member breaches any of these representations or warranties, the Member agrees to defend, indemnify and hold SAFE and its agents harmless from and against all liability, damages, and loss arising out of any claims, suits, or demands brought by third parties with respect to any such breach. Member further authorizes SAFE 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.

**12. 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. SAFE shall not be liable in any manner for such risk unless SAFE fails to follow the procedures described in this Agreement. Member assumes exclusive responsibility for the consequences of any instructions he/she may give to SAFE for Member's failures to access the Service properly in a manner prescribed by SAFE, and for Member's failure to supply accurate input information, including, without limitation, any information contained in an application.

**13. Account Reconciliation.** Member will verify and reconcile any out-of-balance condition, and promptly notify SAFE of any errors within the time periods established in this Agreement. The terms and conditions of this Agreement shall control if any terms and conditions in Account Disclosure and Agreement are in conflict or inconsistent. If notified within such period, SAFE shall correct and resubmit all erroneous files, reports, and other data at SAFE's standard charges, or at no charge, if the erroneous report or other data directly resulted from SAFE error.

**14. Credit Union Obligations.**

**14.1 Financial Data.** SAFE agrees to transmit all the 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. SAFE 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 the 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 SAFE of its normal procedures for maintaining the

confidentiality of information relating to its Members, and where practicable the obtaining by SAFE from any third parties engaged in the installation, maintenance, and operation of the system of similar undertakings, shall constitute fulfillment of its obligation 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.

**14.2. 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 SAFE and SAFE's response. SAFE 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 SAFE.

**14.3. Exception Items.** When SAFE reviews and processes the Member's electronic file, SAFE may reject any electronic image that, in its sole discretion, determines to be ineligible for the Service ("Exception Item") including, without limitation, electronic images of items drawn on banks located outside the United States, items drawn on U.S. Banks in foreign currency, electronic images that are illegible (due to poor image quality ), electronic images of items previously processed, electronic images previously converted to substitute checks, and electronic images with unreadable MICR information. SAFE 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 Member 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 SAFE, 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 SAFE does not initially identify an electronic image as an Exception Item, the substitute check created by SAFE may nevertheless be returned to SAFE because, among other reasons, the electronic image is deemed illegible by a paying bank. SAFE's failure to identify an Exception Item shall not preclude or limit the obligation of the Member to SAFE. 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 Items.

**14.4. Transaction History.** SAFE shall provide transaction history to the Member via Online Banking service detailing the total deposits processed, returned items, and deposit adjustments. When multiple checks are deposited, the transaction will reflect the total deposit transaction amount. Member is responsible for maintaining the detail of the deposited items and may request an itemization of the deposit detail from SAFE for a charge as stated in SAFE's Fee Schedule.

**14.5. Retention of Check Images.** SAFE converts check images to substitute checks and retains substitute checks for seven (7) years.

**14.6. Services Fees.** Member agrees to pay applicable fees and charges for the Service as set forth on SAFE's Fee Schedule. Fees include but not limited to the following:

- Monthly Service
- Additional Scanner
- Early Termination (if Service cancelled within 2 years)
- Research
- Legal Process

Member authorizes SAFE to deduct any fees and charges from the designated Account, even if such deduction causes an overdraft to the Account. Should the Member fail or refuse to pay any fees and charges under this Agreement, the Member agrees to pay any collection costs (including reasonable attorney fees) which may be incurred by SAFE.

In addition to any fees and charges, the Member agrees to pay for all taxes, tariffs, and assessments levied or imposed by any government agency in connection with the Service, this Agreement, and/or the software or equipment made available to the Member. Member is also responsible for the costs of any communication lines and any data processing charges payable to third parties.

We reserve the right to supplement and change the fees by providing notice to you, by email or by an online posting on our website. However, when increases are made to any fees we will notify you online, or send a notice to you at the address shown on our records, or send you an electronic mail message (email). The notice will be posted or sent in advance of the effective date of any additional fees for the Service.

**14.7. Returned Items.** If a deposited check is dishonored, member will receive an image of the original check or "substitute check" that has been charged back to the member's account.

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

**15.1. 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. SAFE and its agents may, but shall have no obligation to, screen items or substitute checks for legal compliance. Member agrees to defend, indemnify, and hold SAFE 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.

**15.2. 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. SAFE 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, SAFE 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 RELATED TO THE FOREGOING.

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

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

**16.2. Member's Duty to Report Errors.** Member shall notify SAFE of any errors, omissions, or interruptions in, or delay or unavailability of, the Service as promptly as practicable, and in any event within one (1) 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 fourteen (14) days of the date of the earliest notice to the Member which reflects the error. Member agrees to examine his/her periodic statement and report errors/discrepancies in a timely manner to SAFE. Failure of the Member to notify SAFE of any error, omission, or other discrepancy within seven (7) days from the date of a loss shall relieve SAFE of any liability for such error, omission, or discrepancy.

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

**16.4. Limitations.** SAFE 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 Service, 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 Service provided for in this Agreement, and shall have no liability for not effecting an Entry, if:

- i. SAFE 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. SAFE suspects a breach of the Security procedures.
- iv. SAFE suspects that the Member account has been used for illegal or fraudulent purposes.
- v. SAFE reasonably believes that an Entry is prohibited by federal law or regulation, or otherwise so provided in the Agreement.

SAFE will not be liable if Member fails to report timely any error or discrepancy reflected in a periodic statement prepared by SAFE, or if the Member fails to report a breach of a security procedure. If SAFE fails to perform under this Agreement in accordance with the standards set herein, SAFE's liability for damages, losses, and other compensation owing to the Member shall be limited to the total fees paid by the Member to SAFE for its failure to perform resulting in such liability in the two (2) month period preceding the date the claim. Under no circumstances will SAFE be liable for any indirect, consequential, punitive, or special damages. SAFE 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.

SAFE will not be responsible for your acts or omissions and none of your employees or agents shall be considered agents of SAFE.

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

- i. Any damages, costs, or other consequences caused by or related to SAFE's actions that are based on information or instructions that you provide to SAFE.
- 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 SAFE 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 an electronic item to SAFE.
- viii. Modification of the Service by anyone other than SAFE without the express prior written consent of SAFE, if liability for infringement would not have arisen but for such modification.
- ix. Combination or use of the Service with any software or hardware not provided by SAFE, if liability for infringement would not have arisen but for such combination or use with such software or hardware.
- x. Use of the Service in any way not authorized by this Agreement, if liability for infringement would not have arisen but for such unauthorized use.
- xi. Transmission of electronic images to any other computer, system or media, other than, transmission to SAFE for the purpose of processing such electronic images as contemplated herein, if liability for infringement would not have arisen but for such transmission.
- xii. Use of other than the most current release of MyDeposit Business provided to you, if liability for infringement would not have arisen if the most current release had been in use.

SAFE's liability for errors or omissions with respect to the data transmitted or printed by SAFE 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.

**17. Force Majeure.** SAFE shall not be liable for any loss, damage, liability, or claim arising directly or indirectly from any error, delay, or failure to perform hereunder which 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.

**18. Termination.** SAFE reserves the right to terminate this Agreement or limit your use of the Service at any time and for any reason at our discretion, with or without cause and 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 the Service by contacting SAFE at any time by writing us at: SAFE Credit Union, 2295 Iron Point Road, Suite 100, Folsom CA 95630-8765. Upon Member request, SAFE will terminate Service within ten (10) business days of notification.

Examples of reasons for SAFE to terminate this agreement may include, but are not limited to, the following:

- i. You breach any agreement with SAFE.
- ii. The confidentiality of your user ID, password, or other authentication method is compromised.
- iii. We have reason to believe that an unauthorized transaction has taken or may take place involving any of your accounts or the Service.
- iv. You become insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding.
- v. We are uncertain as to any person's authority to give us instructions regarding your accounts.
- vi. SAFE has any cause to believe that you or any Authorized Agent is committing or attempting to commit an illegal or otherwise improper act, whether by means of communications covered by this Agreement or by any other means.



- vii. The volume or type of your transactions presents undesirable risks to SAFE at the Credit Union's sole discretion. SAFE's election to terminate this Agreement is in addition to other remedies that may be available to SAFE, and will not affect any obligation the Member may have to SAFE arising prior to such termination. Any reinstatement of Service under this Agreement will be at SAFE's sole discretion and must be agreed upon in writing by an authorized representative of SAFE. The termination of this Agreement shall not affect the rights or obligations of the parties existing prior to termination. All provisions in this Agreement relating to indemnification of SAFE, limitations on liability, judicial reference, choice of law, venue, jurisdiction, severability, the recoverability of attorney fees and this termination section will all survive termination of this Agreement, in whole or in part.
- viii. You fail to meet Service eligibility requirements.
- ix. If there is conflicting claims as to the funds in any of your account(s).
- x. If you have insufficient funds in any one of your SAFE 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 the Service and does not terminate your other relationships with SAFE.

Any termination will not affect obligations arising prior to termination, such as the obligation to process any checks and electronic items (including returned electronic 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 SAFE open until final payment with respect to all processing fees and maintain funds in such account(s) in amounts and for a period of time determined by SAFE 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, SAFE may charge such excess against any of your other accounts at SAFE, and you will pay immediately upon demand to SAFE any amount remaining unpaid. You will also continue to retain checks in accordance with this Agreement.

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

**19. Indemnification.** Member agrees to indemnify, defend, and hold harmless SAFE 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; (d) Member's failure to report required changes, transmission, or incorrect data; (e) SAFE's action or inaction in accordance with or reliance upon any instructions or information received from any person reasonably believed by SAFE to be an Authorized Agent of the Member or Authorized Signer; (f) Member's breach of applicable laws, rules, or regulations; and/or (g) any transmission or instruction, whether or not authorized, acted upon by SAFE 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 SAFE's own choosing at SAFE'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).

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

**21. Notices.** Except as otherwise expressly provided herein, SAFE 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 the Member or any other person with respect to any matter.

**22. Enforcement.** You agree to be liable to SAFE for any liability, loss, or expense as provided in this Agreement that SAFE incurs as a result of any dispute involving your accounts or services. You authorize SAFE to deduct and/or offset any such liability, loss, or expense from your account without prior notice to you, even if the deduction or offset results in your account having a negative balance. 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 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.

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

**24. Your Responsibility When the User ID, Password, and Authentication Method are Used.** We are entitled to act upon instructions we receive with respect to the Service 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 IDs, passwords, authentication methods and any other applicable security procedure issued to agents, representatives, employees, or officers are protected and kept confidential.

You agree to indemnify and release SAFE Credit Union from any and all liability, and agree not to make any claim against SAFE or bring any action against SAFE, relating to its honoring or allowing any actions or transactions that were conducted under your user ID, password, and authentication method or acting upon messages or authorizations provided to us using your user ID, password, and authentication method.

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 MyDeposit Business, whether caused by the equipment, software, SAFE, Internet services providers, Internet browsers, or the parties providing communication services to or from SAFE to you.

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

By directing us, MyDeposit Business used in conjunction with your user ID, password, and authentication method, you authorize SAFE to complete the transaction. Any requests or instructions we receive from you through the Service 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 the Service using your user ID, password, and authentication method.

**25. Data Protection.** You understand the importance of your role in preventing misuse of your accounts through the Service, and you agree to promptly examine your transaction history for each of your SAFE accounts as soon it is available. You agree to protect the confidentiality of your account and account number, and your personal identification information. Notwithstanding our efforts to ensure that MyDeposit Business 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 the MyDeposit Business or email transmitted to and from us, will not be monitored or read by others.

**26. Your Operational Responsibilities.** You are responsible for providing and maintaining at your own expense, all equipment necessary in connection with the Service. This includes, but is not limited to, telephones, terminals, modems, Internet connectivity, computers, printers, and scanners. SAFE assumes no responsibility for any errors, failures, or malfunctions of your computer or software, or for any computer virus or related problems that may occur with your use of the Service.

It is solely the responsibility of the Member to ensure that his/her computers, network, servers, firewalls, telephone lines, passwords, identification numbers, and all other items and facilities needed by the Member to transmit a transaction request to SAFE and to receive confirmations thereof from SAFE (collectively, the "Member's Systems") are secure and have not been compromised. Member represents and warrants that he/she has established and maintains physical and electronic security and controls to protect against fraud perpetrated by insiders and outsiders, including fraud perpetrated by means of physical or electronic intrusion, insider complicity and by means of impersonation of Member's Authorized Agents and other personnel. If SAFE receives any transaction request purporting to be made on behalf of Member and request was able to be sent to SAFE due to any failure or deficiency in Member's Systems, then SAFE will have no liability to the Member for honoring such transaction request and the Member must indemnify SAFE from any and all losses arising from SAFE acting on that transaction request. Member represents and warrants that he/she considered the size, type, value, and frequency of the transactions and related communications that he/she anticipates making in connection with this Agreement and agrees that SAFE's security procedures are commercially reasonable in light of those anticipated transactions.

Your responsibilities include:

- i. Maintaining at least one or more accounts at SAFE eligible for the receipt of deposits of digitized images of checks.
- ii. Performing initial installation procedures in accordance with SAFE's MyDeposit Business Service Agreement.
- iii. Using MyDeposit Business only for your internal business purposes.
- iv. Exercising due care in preserving the confidentiality of any User ID, password, test key, or other code or authentication method provided by SAFE and to prevent the use of MyDeposit Business by unauthorized persons, in addition to assuming full responsibility for the consequences of any missing or unauthorized use of or access to MyDeposit Business or disclosure of any confidential information or instructions by the member, its employees, and agents.
- v. Installing and implementing any changes and upgrades to MyDeposit Business as required by SAFE within a reasonable time period to ensure compliance with regulatory changes or developments, or to protect the integrity and security of MyDeposit Business.

- vi. Using only equipment authorized in accordance with this agreement.
- vii. Ensuring equipment is clean and operating properly at all times.
- viii. Inspecting and verifying the quality of images, thus ensuring that the digitized 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 SAFE. Specifically, you are representing and warranting that:
  - a. 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 check image, and the check image contains all endorsements from the original check.
  - b. 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.
  - c. The original check, a duplicate check image, or any copy of the original check or check image will not be deposited by you with SAFE (unless SAFE instructs you to do so) or under any circumstances with any other financial institutions.
  - d. The original check, a duplicate check image, or any copy of the original check or check image will not be presented, transferred, or returned such that SAFE or any other person (such as the drawer of the check) will be asked to make payment based on a check or check image that SAFE or the other person already paid.

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

- ix. Complying with all security procedures established by SAFE and agreeing not to bypass, override, or disable any security mechanisms in the software or processing equipment.
- x. Training authorized signers on the overall use of MyDeposit Business, including the supervision and auditing authorized signers' use of MyDeposit Business.
- xi. Verifying SAFE's receipt of your transmission(s) by verifying that deposits have been posted to the appropriate accounts, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with SAFE; Retaining all information regarding your digitizing of checks as created by MyDeposit Business for at least ninety (90) days.
- xii. Using commercially reasonable method(s) to destroy checks after the required retention period has expired.

**27. Contact in Event of Unauthorized Access.** If you believe your user ID, password, or authentication method has been lost or stolen, or that someone has accessed MyDeposit Business without your permission, call us at: **(916) 979-7233** or **(800) SEE-SAFE**.

**28. License and Intellectual Property.** License: SAFE Credit Union, subject to the terms and conditions of this Agreement, hereby grants you a non-exclusive, non-transferable license to use the Service solely for processing checks in connection with your own business operations, in accordance with SAFE's guidelines and solely on authorized equipment. Ownership: You acknowledge and agree that all rights, title, and interest in and to MyDeposit Business and any MyDeposit Business guidelines, together with modifications, enhancements, and derivative works, and all intellectual property rights such as copyrights, patents, and trade secrets, pertaining to MyDeposit Business and any MyDeposit Business guidelines are:

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

No other license or interest in MyDeposit Business or MyDeposit Business 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 SAFE Credit Union's (or its licensors') intellectual property rights in MyDeposit Business and MyDeposit Business guidelines.
- ii. Perform any act which could reasonably be expected to impair the scope, validity, or ownership of such intellectual property rights.
- iii. Assert any ownership rights to MyDeposit Business and MyDeposit Business guidelines.
- iv. Remove or alter any copyright, trademark, or other intellectual property or proprietary right notices, legends, symbols, or labels appearing on or in MyDeposit Business and MyDeposit Business guidelines or any packaging, and shall include any copy of MyDeposit Business and MyDeposit Business 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 MyDeposit Business and MyDeposit Business guidelines, or any right, title, interest, or license in or to any trademark of SAFE or its licensors, but only a limited right of use (revocable in accordance with the terms hereof).

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

You agree to:

- i. Cooperate with SAFE and its licensors to protect MyDeposit Business, including in connection with any lawsuits or disputes involving MyDeposit Business.
- ii. Promptly notify SAFE 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 MyDeposit Business.
- iii. In the event of any actual or potential infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof of the Service by others, you:
  - a. Grant to SAFE 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.
  - 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.

**29. Daily Deposit Limits.** The aggregate daily deposit limit using the Service is established by the Credit Union and subject to change at any time, with or without notice. The maximum aggregate daily deposit limit for the Service per business day is referenced on the MyDeposit Business Enrollment Confirmation letter provided to you upon approval of the Service. Based on your account relationships with SAFE, you may qualify for immediate access to a portion of your deposits per business day. Refer to Funds Availability section within this Agreement for additional details.

**30. Acknowledgement of Receipt of MyDeposit Business Service Agreement.** I agree to all terms and conditions of the Agreement and agree to proceed with the Service registration and confirmation process. All authorized signers on the business account must acknowledge and agree to the MyDeposit Business Service Agreement terms and conditions by signing below.

Agreement			
Business Name		Account Number	
Authorized Signer Name	Signature	Title	Date
Authorized Signer Name	Signature	Title	Date
Authorized Signer Name	Signature	Title	Date
Authorized Signer Name	Signature	Title	Date
Authorized Signer Name	Signature	Title	Date
Authorized Signer Name	Signature	Title	Date