

Business Bill Payment Agreement

1. Definitions. "We," "Our," "Us" or the "Service" means SAFE Credit Union. "You" or "Your" means each person authorized to use the Service on behalf of the business "Service" or "Bill Pay" means the Business Bill Payment Service offered by SAFE Credit Union, through CheckFree Services Corporation. "Agreement" means these Terms and Conditions of the Business Bill Payment Service. "Payee" is the person or entity to which you wish a bill payment to be directed or is the person or entity from which you receive electronic bills, as the case may be. "Payment Instructions" are information provided by you to the Service for a bill payment to be made to the Payee (such as, but not limited to, Payee name, Payee account number, and Scheduled Payment Date). "Payment Account" is the checking account from which bill payments will be debited. "Billing Account" is the checking account from which all Service fees will be automatically debited. "Business Day" is Monday through Friday, excluding Federal Reserve holidays. "Scheduled Payment Date" is the day you want your Payee to receive your bill payment and is also the day your Payment Account will be debited, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the previous Business Day. "Due Date" is the date reflected on your Payee statement for which the payment is due. It is not the late date or grace period. "Scheduled Payment" is a payment that has been scheduled through the Service but has not begun processing. "New Account" is an account opened 30 days or less after the first deposit is made.

2. Services Available. SAFE's Business Bill Pay Service allows you to:

- Pay bills in minutes to almost any business or person, anywhere in the United States - no checks, stamps, or mail.
- Manage payments from any computer at any time, setup recurring payments, and view payment history.
- Receive bills online through SAFE's eBill Service.

3. Payment Scheduling. Transactions begin processing four (4) Business Days prior to your Scheduled Payment Date. Therefore, the application will not permit you to select a Scheduled Payment Date less than four (4) Business Days from the current date. When scheduling payments, you must select a Scheduled Payment Date that is no later than the actual Due Date reflected on your Payee statement unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, you must select a Scheduled Payment Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates should be prior to any late date or grace period.

4. The Service Guarantee. Due to circumstances beyond the control of the Service, particularly delays in handling and posting payments by Payees or financial institutions, some transactions may take longer to be credited to your account. The Service will bear responsibility for any late payment related charges up to \$50.00 should a payment post after its Due Date as long as the payment was scheduled in accordance with the guidelines described under "Payment Scheduling" in this Agreement.

5. Payment Authorization and Payment Remittance. By providing the Service with names and account information of Payees to whom you wish to direct payments, you authorize the Service to follow the Payment Instructions received through the payment system. In order to process payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Payee directives. When the Service receives Payment Instructions, you authorize the Service to debit your Payment Account and remit funds on your behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by you. You also authorize the Service to credit your Payment Account for payments returned to the Service by the United States Postal Service or Payee, or payments remitted to you on behalf of another authorized user of the Service.

We will use commercially reasonable efforts to post your transaction/instruction properly to the account indicated when you use the Service properly and comply with these Terms and Conditions. If we do not complete a transfer to or from your account, on time or in the correct amount according to our agreement with you, we will be liable for your related losses or damages. However, we shall incur no liability if we are unable to complete a transaction/instruction initiated by you through the Service due to one or more of the following circumstances:

- Your error.
- Your failure to comply with these Terms and Conditions or the underlying account agreement and disclosure.
- If the Service equipment or software was not working properly and you knew about the malfunction when you started the transaction.
- You have not provided complete or correct information.
- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- The transfer would go over the amount in your Payment Account, or any credit limit on your line of credit loan.
- Circumstances beyond our control (such as fire or flood) prevent the transfer.

Despite reasonable precautions that we have taken, there may be other exceptions stated in our agreement with you. Provided none of the foregoing exceptions are applicable, if the Service causes an incorrect amount of funds to be removed from your Payment Account or causes funds from your Payment Account to be directed to a Payee which does not comply with your Payment Instructions, the Service shall be responsible for returning the improperly transferred funds to your Payment Account, and for directing to the proper Payee any previously misdirected transactions, and, if applicable, for any late payment related charges.

6. Payment Methods. The Service reserves the right to select the method in which to remit funds on your behalf to your Payee. These payment methods may include, but may not be limited to, an electronic payment, an electronic check payment, or a laser draft payment.

7. Recurring Payments. When a recurring payment is processed, it is automatically rescheduled by the system. Based upon your selected frequency settings for the payment, a processing date is calculated for the next occurrence of the payment. If the calculated processing date is a non-Business Day, it is adjusted based upon the following rules:

- If the recurring payment's "Pay Before" option is selected, the processing date for the new occurrence of the payment is adjusted to the first Business Day prior to the calculated processing date.
- If your frequency settings for the recurring payment specify the 29th, 30th, or 31st as a particular day of the month for processing, and that day does not exist in the month of the calculated processing date, then the last calendar business day of that month is used as the calculated processing date.
- If these recurring payments may vary in amount SAFE will tell you, 10 days before each payment, when the payment will be made and the amount of the payment.

8. Payment Cancellation Requests. You may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within the application. There is no charge for canceling or editing a Scheduled Payment. Once the Service has begun processing a payment, it cannot be cancelled or edited; therefore, a stop payment request must be submitted.

9. Stop Payment Requests. The Service's ability to process a stop payment request will depend on the payment method and whether or not a check has cleared. The Service may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any payment that has already been processed, you must contact SAFE's Call Center. Although the Service will make every effort to accommodate your request, the Service will have no liability for failing to do so. The Service may also require you to present your request in writing within fourteen (14) days. The charge for each stop payment request will be the current charge for such service as set out in the applicable fee schedule. Refer to [SAFE's Fee Schedule](#) for current stop payment fees.

If you told us in advance to make regular payments out of your account, you can stop any of these payments by calling **(916) 979-7233** or **(800) SEE-SAFE** or writing us at 2295 Iron Point Road, Suite 100, Folsom CA 95630-8765. SAFE must receive your request at least three Business Days before the payment is scheduled to be made. If you call, SAFE may also require you to put your request in writing within 14 days after you call. If you order us to stop one of these regular payments three Business Days or more before the transfer is scheduled and we do not do so, we will be liable for your losses or damages.

10. Prohibited Payments. Payments to Payees outside of the United States or its territories are prohibited through the Service.

11. Exception Payments. Tax payments and court ordered payments may be scheduled through the Service; however, such payments are discouraged and must be scheduled at your own risk. In no event shall the Service be liable for any claims or damages resulting from your scheduling of these types of payments. The Service Guarantee as it applies to any late payment related changes is void when these types of payments are scheduled and/or processed by the Service. The Service has no obligation to research or resolve any claim resulting from an exception payment. All research and resolution for any misapplied, misposted or misdirected payments will be the sole responsibility of you and not of the Service.

12. Bill Delivery and Presentment. This feature is for the presentment of electronic bills only and it is your sole responsibility to contact your Payees directly if you do not receive your statements. In addition, if you elect to activate one of the Service's electronic bill options, you also agree to the following:

- **Information Provided to Payee** – The Service is unable to update or change your personal information such as, but not limited to, name, address, phone numbers, and email addresses, with the electronic Payee. Any changes must be made by contacting the Payee directly. Additionally, it is your responsibility to maintain all usernames and passwords for all electronic Payee sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill.
- **Activation** – Upon activation of the electronic bill feature, the Service may notify the Payee of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Payee to Payee and may take up to sixty (60) days, depending on the billing cycle of each Payee. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Payee. While your electronic bill feature is being activated, it is your responsibility to keep your accounts current. Each electronic Payee reserves the right to accept or deny your request to receive electronic bills.
- **Notification** – The Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the Service, the Service may send an email notification to the email address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically log on to the Service and check on the delivery of new electronic bills. The time for notification may vary from Payee to Payee. You are responsible for ensuring timely payment of all bills.

- **Cancellation of Electronic Bill Notification** – The electronic Payee reserves the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The timeframe for cancellation of your electronic bill presentment may vary from Payee to Payee. It may take up to sixty (60) days, depending on the billing cycle of each Payee. The Service will notify your electronic Payee(s) as to the change in status of your account, and it is your sole responsibility to make arrangements for an alternative form of bill delivery. The Service will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.
- **Non-Delivery of Electronic Bill(s)** – You agree to hold the Service harmless should the Payee fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Payee directly.
- **Accuracy and Dispute of Electronic Bill(s)** – The Service is not responsible for the accuracy of your electronic bill(s). The Service is only responsible for presenting the information we receive from the Payee. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Payee directly.

This Agreement does not alter your liability or obligations that currently exist between you and your Payees.

13. Exclusions of Warranties. THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF MERCHANTABILITY OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DISCLAIM 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).

14. Password and Security. You agree not to give or make available your password or other means to access your account to any unauthorized individuals. You are responsible for all payments you authorize using the Service. If you permit other persons to use the Service or your password or other means to access your account, you are responsible for any transactions they authorize. If you believe that your password or other means to access your account has been lost or stolen or that someone may attempt to use the Service without your consent or has transferred money without your permission, you must notify the Service at once by calling **(916) 979-7233** or **(800) SEE-SAFE** during [business hours](#).

15. Account Reconciliation. You will receive monthly account statements. You may elect to receive your monthly statements electronically through our eStatements service. With eStatements, your monthly account statements will be available for you to view and print within Online Banking. We will send you an email message monthly to notify you when your statements are available.

You will verify and reconcile any out-of-balance condition, and promptly notify us of any errors within 60 days after receipt of your statement from us. If notified within such period, we shall correct and resubmit all erroneous files, reports, and other data at our then standard charges, or at no charge, if the erroneous report or other data directly resulted from our error.

The Service is offered as a convenience to you and is included within our Internet Banking services. We are entitled to act upon instructions we receive under your User Name and Password and you are liable for all transactions made or authorized with the use of your User Name and Password. We have no responsibility for establishing the identity of any person who uses your User Name and Password.

By directing us in conjunction with your User Name and Password, you authorize us to complete the transaction. Any requests or instructions we receive from you through the Service 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.

Your access to Service will be blocked in the event your User Name and Password are entered incorrectly on three consecutive attempts. If this happens, please call us at **(916) 979-7233** or **(800) SEE-SAFE** during [business hours](#).

You understand the importance of your role in preventing misuse of your accounts through the Service and you agree to promptly examine your statement for each of your 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 the Service 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 Service or email transmitted to and from us, will not be monitored or read by others.

You should review and follow usage instructions provided on our website. You agree to accept responsibility for learning how to use the Service in accordance with the instructions. We may modify The Service and any related services at any time. In the event of a modification, you are responsible for making sure that you understand how to use the Service. We are not liable to you for any losses caused by your failure to properly use the Service.

Your Failure to comply with these Terms and Conditions will result in you no longer being allowed to use the Service.

16. Termination. You may terminate this Agreement upon not less than ten (10) days prior notice to us by mail or secure email. Notwithstanding any such notice of termination, this Agreement shall remain in effect for any transaction occurring prior to such termination. Upon any termination of this Agreement: (i) You will immediately cease using the Service, and (ii) you shall promptly remit all unpaid monies due under this Agreement. We may immediately suspend or terminate your access to the Service in the event that we reasonably determine such suspension or termination is necessary in order to protect the Service or us from harm or compromise of integrity, security, reputation, or operation.

17. Financial Responsibility. You are, and shall remain, solely and exclusively responsible for any and all financial risks, including, without limitation, insufficient funds, associated with using the Service. We shall not be liable in any manner for such risk unless we fail to follow the procedures described in materials for use of the Service. You assume exclusive responsibility for the consequences of any instructions you may give to us, for your failure to access the Service properly in a manner prescribed by us, and for your failure to supply accurate input information, including, without limitation, any information contained in an application.

18. Indemnification. You agree to indemnify, defend, and hold SAFE and our employees harmless (by counsel of our choosing) from and against every claim, demand, action, cost, loss, liability, cause of action of third parties, and expenses (including, without limitation, attorney fees) relating to our provision of or your use of any of the Service which we incur by: (a) acting in accordance with this Agreement or as a result of your failure to abide by its terms; (b) your breach of any representation or warranty herein; (c) the willful misconduct, fraud, criminal activity, intentional tort or negligence of you or any of your representatives involving use of the Service; (d) the actions, omissions or commissions of you; and (e) any transmission or instruction, whether or not authorized, acted upon by us in good faith. This paragraph shall survive termination of this Agreement.

You agree not to use the Service or the content or information delivered through the Service in any way that would: (a) infringe any third party copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve gambling, involve the sale of counterfeit or stolen items, or use the Service to impersonate another person or entity; (c) violate any law, statute, ordinance, or regulation; (d) be false, misleading, or inaccurate; (e) create liability for us or our affiliates or cause us to lose (in whole or in part) the services of any third party providers; (f) be defamatory, trade libelous, threatening, or harassing; (g) potentially be perceived as obscene or pornographic or contain child pornography or racially, ethnically, or otherwise objectionable; (h) interfere with or disrupt computer networks or infect the computer networks with viruses; (i) interfere with or disrupt the use of the Service by any other party; (j) allow you to gain unauthorized entry or access into our computer systems; or (k) resell or make any commercial use of the Service.

19. Your Liability for Unauthorized Transfers. If you tell us within two (2) Business Days after you discover your password or other means to access your account has been lost or stolen, your liability is no more than \$50.00 should someone access your account without your permission. If you do not tell us within two (2) Business Days after you learn of such loss or theft, and we can prove that we could have prevented the unauthorized use of your password or other means to access your account if you had told us, you could be liable for as much as \$500.00. If your monthly financial institution statement contains transfers that you did not authorize, you must tell us at once. If you do not tell us within sixty (60) days after the statement was sent to you, you may lose any amount transferred without your authorization after the sixty (60) days if we can prove that we could have stopped someone from taking the money had you told us in time. If a good reason (such as a long trip or a hospital stay) prevented you from telling us, we may extend the period.

20. Errors and Questions. In case of errors or questions about your transactions, you should notify SAFE as soon as possible via one of the following methods:

- a. Telephone us at **(916) 979-7233** or **(800) SEE-SAFE** during [business hours](#).
- b. Contact us by using the application's e-messaging feature.
- c. Write us at:

SAFE Credit Union
Bill Payment Service
2295 Iron Point Road, Suite 100
Folsom CA 95630-8765

If you think your statement is incorrect or you need more information about a Service transaction listed on the statement, we must hear from you no later than sixty (60) days after the FIRST statement was sent to you on which the problem or error appears. You must:

- a. Tell us your name and account number;
- b. Describe the error or the transaction in question, and explain as clearly as possible why you believe it is an error or why you need more information; and,
- c. Tell us the dollar amount of the suspected error.

If you tell us verbally, we may require that you send your complaint in writing within ten (10) Business Days after your verbal notification. We will tell you the results of our investigation within ten (10) Business Days (20 Business Days if the transfer involved a new account) after we hear from you, and will correct any error promptly. However, if we require more time to confirm the nature of your complaint or question, we reserve the right to take up to forty-five (45) days (90 days if the transfer involved a new account) to complete our investigation. If we decide to do this, we will provisionally credit your Payment Account within ten (10)

Business Days (20 Business Days if the transfer involved a New Account) for the amount you think is in error. If we ask you to submit your complaint or question in writing and we do not receive it within ten (10) Business Days, we may not provisionally credit your Payment Account. If it is determined there was no error, we will mail you a written explanation within three (3) Business Days after completion of our investigation. You may ask for copies of documents used in our investigation. The Service may revoke any provisional credit provided to you if we find an error did not occur.

21. Disclosure of Account Information to Third Parties. It is our general policy to treat your account information as confidential. However, we will disclose information to third parties about your account or the transactions you make ONLY in the following situations:

- a. Where it is necessary for completing transactions;
- b. Where it is necessary for activating additional services;
- c. In order to verify the existence and condition of your account to a third party, such as a credit bureau or Payee;
- d. To a consumer reporting agency for research purposes only;
- e. In order to comply with a governmental agency or court orders; or,
- f. If you give us your written permission.

22. Service Fees and Additional Charges. Any financial fees associated with your standard deposit accounts will continue to apply. You are responsible for any and all telephone access fees and/or Internet service fees that may be assessed by your telephone and/or Internet service provider.

23. Failed or Returned Transactions. In using the Service, you are requesting the Service to make payments for you from your Payment Account. If we are unable to complete the transaction for any reason associated with your Payment Account (for example, there are insufficient funds in your Payment Account to cover the transaction), the transaction will not be completed. In some instances, you will receive a return notice from the Service. In such case, you agree that:

- a. You will reimburse the Service immediately, upon demand, the transaction amount that has been returned to the Service.
- b. For any amount not reimbursed to the Service within fifteen (15) days of the initial notification, a late charge equal to 1.5% monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed.
- c. You will reimburse the Service for any fees imposed by your financial institution as a result of the return.
- d. You will reimburse the Service for any fees it incurs in attempting to collect the amount of the return from you.
- e. The Service is authorized to report the facts concerning the return to any credit reporting agency.

24. Alterations and Amendments. This Business Bill Payment Agreement, applicable fees, and service charges may be altered or amended by the Service from time to time. In such event, the Service shall provide notice to you. Any use of the Service after the Service provides you a notice of change will constitute your agreement to such change(s). Further, the Service may, from time to time, revise or update the applications, services, and/or related material, which may render all such prior versions obsolete. Consequently, the Service reserves the right to terminate this Agreement as to all such prior versions of the applications, services, and/or related material and limit access to only the Service's more recent revisions and updates.

25. Address or Banking Changes. It is your sole responsibility to ensure that the contact information in your user profile is current and accurate. This includes, but is not limited to, name, address, phone numbers, and email addresses. Changes can be made either within the application or by contacting SAFE's Call Center. Any changes in your Payment Account should also be made in accordance with the procedures outlined within the application's Help files. All changes made are effective immediately for scheduled and future payments paid from the updated Payment Account information. The Service is not responsible for any payment processing errors or fees incurred if you do not provide accurate Payment Account or contact information.

26. Service Termination, Cancellation, or Suspension. In the event you wish to cancel the Service, you may have the ability to do so through the product, or you may contact SAFE's Call Center via one of the following methods:

- a. Telephone us at **(916) 979-7233** or **(800) SEE-SAFE** during [business hours](#).
- b. Contact us by using the application's e-messaging feature.
- c. Write us at:

SAFE Credit Union
Bill Payment Service
2295 Iron Point Road, Suite 100
Folsom CA 95630-8765

Any payment(s) scheduled to occur within 10 days following the cancellation notice or any payment(s) the Service has already processed before the requested cancellation date will be completed by the Service. All Scheduled Payments including recurring payments will not be processed once the Service is cancelled.

We reserve the right to cancel the Service in whole or in part, at any time with or without cause and without prior written notice. We also reserve the right to temporarily suspend Service access, at our sole and absolute discretion, including when we believe a breach of system security has occurred or is being attempted. Cancellation of the Service does not affect your obligations under this Agreement for transactions that have been or will be processed on your behalf. You will remain responsible for all outstanding fees and charges incurred prior to the date of cancellation. Cancellation will apply only to the Service and does not terminate your other relationships with us. In addition, you will keep your account(s) with us open until final payment with respect to all outstanding items is received and will maintain funds in such account(s) in amounts and for a period of time determined by us in our 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, we may charge such excess against any of your other accounts with us, and you will pay immediately upon demand to us any amount remaining unpaid.

27. Payee Limitation. The Service reserves the right to refuse to pay any Payee to whom you may direct a payment. The Service will notify you promptly if it decides to refuse to pay a Payee designated by you. This notification is not required if you attempt to make a prohibited payment or an exception payment under this Agreement.

28. Returned Payments. In using the Service, you understand that Payees and/or the United States Postal Service may return payments to the Service for various reasons such as, but not limited to, Payee's

forwarding address expired; Payee account number is not valid; Payee is unable to locate account; or Payee account is paid in full. The Service will use its best efforts to research and correct the returned payment and return it to your Payee, or void the payment and credit your Payment Account. You may receive notification from the Service.

29. Information Authorization. Your enrollment in the Service may not be fulfilled if the Service cannot verify your identity or other necessary information. Through your enrollment in the Service, you agree that the Service reserves the right to request a review of your credit rating at its own expense through an authorized bureau. In addition, you agree that the Service reserves the right to obtain financial information regarding your account from a Payee or your financial institution (for example, to resolve payment posting problems or for verification).

30. Disputes. In the event of a dispute regarding the Service, you and the Service agree to resolve the dispute by looking to this Agreement. You agree that this Agreement is the complete and exclusive statement of the agreement between you and the Service which supersedes any proposal or prior agreement, oral or written, and any other communications between you and the Service relating to the subject matter of this Agreement. If there is a conflict between what an employee of the Service or SAFE says and the terms of this Agreement, the terms of this Agreement will prevail.

31. Assignment. You may not assign this Agreement to any other party. The Service may assign this Agreement to any future, directly or indirectly, affiliated company. The Service may also assign or delegate certain rights and responsibilities under this Agreement to independent contractors or other third parties.

32. No Waiver. The Service shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Service. No delay or omission on the part of the Service in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

33. Captions. The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

34. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws or provisions.

UNLESS OTHERWISE REQUIRED BY LAW, WE SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE CAUSED BY THE SERVICE. NOR SHALL WE BE RESPONSIBLE FOR ANY LATE FEES OR INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OR MAINTENANCE OF THE SERVICE. OUR LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES SUSTAINED BY YOU AND ONLY TO THE EXTENT SUCH DAMAGES ARE A DIRECT RESULT OF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.