

**Please note our Mobile Banking Agreement has changed. In order to access the mobile banking application, you must agree to the terms and conditions herein.**

Mobile Banking Agreement:  
January 29, 2015

#### I. Introduction

EVERGREEN CREDIT UNION endeavors to provide you with the highest quality Mobile Banking (the "Service") available. By enrolling in the Service, you agree to all the terms and conditions contained in this Agreement and Disclosure (the "Agreement").

We may offer additional Mobile Banking services and features in the future. Any such added Mobile Banking services and features will be governed by this Agreement and by any terms and conditions provided to you at the time the new Mobile Banking service or feature is added and/or at the time of enrollment for the feature or service, if applicable. From time to time, we may amend these terms and modify or cancel the Mobile Banking services we offer without notice, except as may be required by Law.

#### II. Definitions

As used in this Agreement and Mobile Banking services, the following words have the meanings given below:

"Account(s)" means your eligible EVERGREEN CREDIT UNION checking, savings, loan, certificate of deposit or safe deposit box information and other EVERGREEN CREDIT UNION products that can be accessed through Mobile Banking.

"Device" means a supportable mobile device including a cellular phone or other mobile device that is web-enabled and allows secure SSL traffic which is also capable of receiving text messages. Your wireless carrier may assess you fees for data or text messaging services. Please consult your wireless plan or provider for details.

"Mobile Banking" means the banking services accessible from the Device you have registered with us for Mobile Banking.

"You" and "Your(s)," mean each person with authorized access to your Account(s) who applies and uses the Mobile Banking service.

#### III. Mobile Banking Service

- A. Description of Service. Mobile Banking is offered as a convenience and supplemental service to our Online Banking services. It is not intended to replace access to Online Banking from your personal computer or other methods you use for managing your accounts and services with us. Mobile Banking allows you to access your EVERGREEN CREDIT UNION account information, transfer funds and conduct other banking transactions.

Mobile Banking may not be accessible or may have limited utility over some network carriers. In addition, the Service may not be supportable for all Devices. EVERGREEN CREDIT UNION cannot guarantee and is not responsible for the availability of data services provided by your mobile carrier, such as data outages or "out of range" issues.

- B. Use of Service. You agree to accept responsibility for learning how to use Mobile Banking in accordance with the online instructions and agree that you will contact us directly if you have any problems with Mobile Banking. We may modify the Service from time to time at our sole discretion. In the event of any modifications, you are responsible for making sure you understand how to use Mobile Banking as modified. You also accept responsibility for making sure that you know how to properly use your Device and we will not be liable to you for any losses caused by your failure to properly use the Service or your Device.
- C. Other Agreements. You agree that, when you use Mobile Banking, you remain subject to the terms and conditions of your existing agreements the Credit Union except as expressly otherwise stated herein; and with any unaffiliated service providers, including, but not limited to, your mobile service provider and that this Agreement does not amend or supersede any of those agreements. You understand that those agreements may provide for fees, limitations and restrictions which might impact your use of Mobile Banking (such as data usage or text messaging charges imposed on you by your mobile service provider for your use of or interaction with Mobile Banking), and you agree to be solely responsible for all such fees, limitations and restrictions. You agree that only your mobile service provider is responsible for its products and services. Accordingly, you agree to resolve any problems with your provider directly without involving us. Any deposit account, loan or other banking product accessed through this Service is also subject to the Account Agreements and Disclosures provided at the time of Account opening. You should review the Account disclosures carefully, as they may include transaction limitations and fees which might apply to your use of Mobile Banking.

#### IV. Permitted Mobile Banking Transfers

- A. You may use the Service to transfer funds between your eligible EVERGREEN CREDIT UNION accounts ("Internal Transfer"). You may not transfer to or from an Account at another financial institution using Mobile Banking.

You must have sufficient funds available in the selected account at the time the transfer request is received, including any available overdraft protection. We may process transfers that exceed your available balance at our sole discretion. If we process the transfer and unless your overdraft protection is provided via an Overdraft Line of Credit, you agree to cover any overdraft amount plus any applicable fees.

Federal regulations require financial institutions to limit the way withdrawals may be made from a savings or money market account. Each transfer from a savings or money market account using Mobile Banking is counted as one of the six limited transactions permitted each monthly statement cycle period, as described in the Member Account Agreement. You may be subject to fees or account conversion if you exceed the transactions limits of your Account using Mobile Banking or any other methods outlined in your Member Account Agreement.

We may also limit the type, frequency and amount of transfers for security purposes and may change or impose the limits without notice, at our option.

- B. You agree to confirm the completion of each transfer in your account balance and transaction history before withdrawing transferred funds.

#### V. Remote Deposit Services

- A. The remote deposit capture services ("Mobile Deposit" or "Services") are designed to allow you to make deposits to your checking, money market checking or savings accounts from your camera-enabled mobile device capable of capturing check images and information and electronically delivering the items and associated deposit information to the Credit Union or the Credit Union's designated processor. The device must capture an image of the front and back of each check to be deposited in accordance with the Procedures; must read and capture the magnetic ink character recognition ("MICR") line on each check; and must read and capture all such other data and information as is required by this Agreement or Federal Reserve regulations for the processing of these checks for payment. The Credit Union offers the benefits and convenience of the Services to you free. The Credit Union reserves the right to charge fees for the Services in the future.
- B. Eligible Items. You agree to scan and deposit only checks as that term is defined in Federal Reserve Regulation CC ("Reg CC"). You agree that the image of the check transmitted to the Credit Union (each such check a "Check" and, if more than one, "Checks") shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code as adopted in Maine (such scanned Check image transmitted to the Credit Union for credit to your account, a "Remote Item"). You agree that you will not use the Services to scan and deposit checks or items that: (a) are payable to any person or entity other than you; (b) are drawn or otherwise issued by you or any other person on any of your accounts or any account on which you are an authorized signer or joint account holder; (c) contain obvious alteration to any of the fields on the front of the check or item, or which you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn; (d) were previously converted to a substitute check as defined in Reg CC without the Credit Union's prior written consent; (e) were previously converted to an image replacement document as defined in Reg CC without the Credit Union's prior written consent; (f) are drawn on a financial institution located outside the United States; (g) are remotely created checks, as defined in Reg CC; (h) are not payable in United States currency; (i) are dated more than six (6) months prior to the date of deposit; (j) are prohibited by the Credit Union's current procedures relating to the Services (the "Procedures"); (k) are in violation of any federal or state law, rule, or regulation; or (l) are otherwise not acceptable under the terms of your Credit Union account.
- C. Image Quality. The image of an item transmitted to the Credit Union using the Services must be legible and contain images of the front and back of the Check. The image quality of the items must comply with the requirements established from time to time by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association. These requirements include, but are not limited to, ensuring the following information can clearly be read and understood by sight review of the Check image: the amount of the Check (both written and numeric); the payee; the signature of the drawer (maker); the date; the Check number; the information identifying the drawer and the paying financial institution that is preprinted on the Check including the MICR line; and all other information placed on the Check prior to the time of an image of the Check is

captured (such as any required identification written on the front of the Check and any endorsements applied to the back of the Check).

- D. Endorsements and Procedures. You agree to restrictively endorse any item transmitted through the Services as "FOR MOBILE DEPOSIT ONLY, EGCU Account #\_\_\_\_\_" or as otherwise instructed by the Credit Union. You agree to follow any and all other procedures and instructions for use of the Services as the Credit Union may establish from time to time. Endorsements must be made on the back of the share draft or check within 1½ inches from the top edge, although we may accept endorsements outside this space. Any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility. For a check payable to you and any joint owner(s) of your Credit Union account, the check must be endorsed by all such payees and you may only use Mobile Deposit to deposit such check into a Credit Union account jointly owned by all such payees. If the check is payable to you or your joint owner, either of you can endorse it. If the check is made payable to you and any non-joint owner, you may not deposit the check into your Credit Union account using the Services.
- E. Receipt of Items. We reserve the right to reject any item transmitted through the Services, at our discretion, without liability to you. We are not responsible for items we do not receive or for images that are dropped during transmission. An image of an item shall be deemed received when you receive a confirmation from the Credit Union that we have received the image. Receipt of such confirmation does not mean the transmission was error free or complete. Following receipt of such confirmation, the Credit Union will process the image by preparing a "substitute check" or clearing the item as an image.
- F. Availability of Funds. You agree that items transmitted through the Services are subject to the funds availability requirements of Federal Reserve Board Regulation CC. And as defined in Evergreen Credit Union's Member Account Agreement.
- G. Disposal of Transmitted Items. After you receive confirmation that we have received an image, you must securely store the original Check for 14 days after transmission to us and make the original Check accessible to us at our request. Upon our request from time to time, you will deliver to us within two Business Days, at your expense, the requested original Check in your possession. If not provided in a timely manner, such amount will be reversed from your account. Promptly after the 14-day retention period expires, you must destroy the original Check by first marking it "VOID" and then destroying it by cross-cut shredding or another commercially acceptable means of destruction. After destruction of the original Check, the image will be the sole evidence of the original Check. You agree that you will never re-present the original Check. You understand that you are responsible if anyone is asked to make a payment based on an original check that has already been paid. For purposes of this Agreement, a "Business Day" means any weekday, excluding the following days: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, or any other federal banking holiday observed by the Federal Reserve.
- H. Returned Deposits. Any credit to your account for Checks deposited using Mobile Deposit is provisional. If original Checks deposited through Mobile Deposit are dishonored, rejected or otherwise returned unpaid by the drawee Credit Union, or are rejected or returned by a clearing agent or collecting Credit Union, for any reason, including, but not limited to, issues relating to

the quality of the image, you agree that an original Check will not be returned to you, but that we may charge back the amount of the original Check and provide you with an image of the original Check, a paper reproduction of the original Check or a substitute check. You will reimburse us for all loss, cost, damage or expense caused by or relating to the processing of the returned item. Without our approval, you shall not attempt to deposit or otherwise negotiate an original check if it has been charged back to you.

- I. Mobile Deposit Security. You will complete each deposit promptly. If you are unable to complete your deposit promptly, you will ensure that your mobile device remains securely in your possession until the deposit has been completed. It is your responsibility to establish and maintain procedures to safeguard against unauthorized deposits. You will notify us immediately by telephone at 207-221-5000 X: 332 and with written notice at Evergreen Credit Union, Attn: Mobile Check Deposit Dept., P.O. Box 1038, Portland, Me 04104-1038 if you learn of any loss or theft of original checks. You will ensure the safety and integrity of original Checks from the time of receipt until the time of destruction. If warranted in our reasonable judgment, we may audit and monitor you, and you agree to cooperate with us to permit such monitoring, to confirm that you have satisfied your obligations under this Agreement.
- J. Deposit Limits. We reserve the right to impose limits on the amount(s) and/or number of deposits that you transmit using the Services and to modify such limits from time to time. Unless otherwise specified by the Credit Union, changes to such limits shall be effective immediately upon notice to you via email, the Credit Union's website, or via the Mobile Banking application.
- K. Contingency Plan. In the event you are unable to capture, balance, process, produce or transmit a file to the Credit Union, or otherwise comply with the terms or the Procedures for any reason, including but not limited to, communications, equipment or software outages, interruptions or failures, you will transport or mail the originals of all checks to the closest Credit Union location. The deposit of original checks at an office of the Credit Union shall be governed by the terms and conditions of the Member Account Agreement and not by the terms of this Agreement.
- L. Errors. You agree to notify the Credit Union of any suspected errors regarding items deposited through the Services right away, and in no event later than thirty (30) days after the applicable Credit Union account statement is sent. Unless you notify the Credit Union within thirty (30) days, such statement regarding all deposits made through the Services shall be deemed correct, and you are prohibited from bringing a claim against the Credit Union for such alleged error.

## VI. Mobile Bill Payment Services

The Mobile Bill Payment Service allows you to use a mobile device such as a cell phone, PDA, or any other wireless device to direct payments to payees that you wish to pay, subject to the terms and conditions of your online banking agreement with Evergreen Credit Union.

- A. You agree that payments made using the Mobile Bill Payment Service are the same as those made using paper checks, drafts, transfers, or online payments and are bound by the same rules, regulations, state, and federal laws.

- B. Payees must be set up using your online banking account before you are able to make a payment using the Mobile Bill Payment Service.
- C. If you permit other persons to use your Mobile Bill Payment Service User ID and Password to access this service, you are responsible for any transaction they authorize from your Payment Account.
- D. If you believe that your Mobile Bill Payment Service logon information is known to someone who is not an Authorized User, report it immediately to Evergreen Credit Union

## VII. Your Responsibilities

You represent and agree to the following by enrolling for Mobile Banking or by using the Service:

- A. **Account Ownership/Accurate Information.** You represent that you are the legal owner of the Accounts and other financial information which may be accessed via Mobile Banking. You represent and agree that all information you provide to us in connection with Mobile Banking is accurate, current and complete, and that you have the right to provide such information to us for the purpose of using Mobile Banking. You agree not to misrepresent your identity or your account information. You agree to keep your account information up to date and accurate. You represent that you are an authorized user of the Device you will use to access Mobile Banking.
- B. You are solely responsible for the quality, completeness, accuracy, validity and integrity of the image. You are solely responsible if you, intentionally or unintentionally, submit fraudulent, incorrect or illegible images to us or if Mobile Deposit is used, by authorized or unauthorized persons, to submit fraudulent, unauthorized, inaccurate, incorrect or otherwise improper or unusable images to us.
- C. **User Security.** You agree to take every precaution to ensure the safety, security and integrity of your account and transactions when using Mobile Banking. You agree not to leave your Device unattended while logged into Mobile Banking and to log off immediately at the completion of each access by you. You agree not to provide your username, password or other access information to any unauthorized person. If you permit other persons to use your Device, login information, or other means to access Mobile Banking, you are responsible for any transactions they authorize and we will not be liable for any damages resulting to you. You agree not to use any personally identifiable information when creating shortcuts to your Account.

We make no representation that any content or use of Mobile Banking is available for use in locations outside of the United States. Accessing Mobile Banking from locations outside of the United States is at your own risk.

- D. **User Conduct.** You agree not to use Mobile Banking or the content or information delivered through Mobile Banking in any way that would: (a) infringe any third-party copyright, patent, trademark, trade secret or other proprietary rights or rights of privacy, including any rights in the Software; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of Mobile Banking to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export

control, consumer protection, unfair competition, anti-discrimination or false advertising); (d) be false, misleading or inaccurate; (e) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt computer networks connected to Mobile Banking; (i) interfere with or disrupt the use of Mobile Banking by any other user; or (j) use Mobile Banking in such a manner as to gain unauthorized entry or access to the computer systems of others.

- E. No Commercial Use or Re-Sale. You agree that the Service is only for the personal or business use of individuals authorized to access your account information. You agree not to make any commercial use of Mobile Banking or resell, lease, rent or distribute access to Mobile Banking.
- F. **DISCLAIMER OF WARRANTIES. YOU AGREE THAT YOUR USE OF MOBILE BANKING AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF ANY REMOTE CREDIT UNIONING SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT ANY REMOTE CREDIT UNIONING SERVICE (TO INCLUDING WITHOUT LIMITATION MOBILE DEPOSIT) WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN ANY REMOTE CREDIT UNIONING SERVICE OR TECHNOLOGY WILL BE CORRECTED.**
- G. **LIMITATION OF LIABILITY. YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE, OR THE TERMINATION OF THE USE OF ANY REMOTE CREDIT UNIONING SERVICE (INCLUDING WITHOUT LIMITATION MOBILE DEPOSIT), REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, EXCEPT AS OTHERWISE REQUIRED BY LAW.**
- H. **User Warranties. With respect to each and every Check you use to create an image using the Services and every Remote Item you transmit to the Credit Union, you represent and warrant to the Credit Union that: (a) you assume responsibility for any Check that is transmitted which for any reason is not paid; (b) you are a person entitled to enforce the Check; (c) neither the Check nor the Remote Item is counterfeit; (d) neither the Check nor the Remote Item has been altered; (e) neither the Check nor any image of the Check has been paid; (f) no depository Credit Union, drawee, drawer, or endorser will receive presentment or return of, of otherwise be charged for, an item transmitted as a Remote Item, or any check or item derived from such Remote Item, such that said person will be asked to make a payment based on an item that it has already paid; (g) the Customer shall properly endorse each Check and deposit said Check to an account at Credit Union that matches the name of the Customer, in accordance with Section 8; (h) the Customer shall deposit only checks made payable to the Customer, unless otherwise allowed under Section 8 of this Agreement; (i) neither the Check nor the Image is subject to a defense or claim in recoupment that can be asserted against the Customer; (j) the Customer has no**

knowledge of any insolvency proceeding commenced with respect to the Customer or in the case of an unaccepted check, the drawer; (k) all information provided by the Customer to the Credit Union is accurate and true; (l) files submitted by the Customer to the Credit Union do not contain computer viruses or malware; (m) the Remote Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Customer converted the Check to a Remote Item; (n) if the Remote Item is being deposited into a Credit Union account designated by the Credit Union as a sole proprietor account, the Customer has retained supporting documentation regarding the Remote Item that shows the item is payable and authorizes the payee to charge and collect the monies owed; (o) the Remote Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; (p) each of the Checks were duly authorized in the amount stated on the corresponding Remote Item and to the payee stated on such Remote Item; (q) the Credit Union will not suffer any loss as a result of Customer's retention or destruction of the paper originals of Remote Items; and (r) the Customer has performed and will perform all of its obligations under this Agreement. The Customer shall be deemed to repeat and reaffirm each of the foregoing representations and warranties at the time any Check and/or Remote Item is delivered to the Credit Union through the Services.

- I. Accountholder's Indemnification Obligation. You understand and agree that you are required to indemnify and hold us and our technology partners harmless against any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses arising from your use of the Services and/or breach of this Disclosure and Agreement (including, but not limited to, any breach of the warranties, representations, or obligations contained in this Agreement). You understand and agree that this paragraph shall survive the termination of this Agreement.

#### General Terms and Conditions.

- A. Assignment. You may not assign this Agreement.
- B. Governing Law. This Agreement is governed by, and shall be construed in accordance with, the laws of the State of Maine, except that any conflict of laws rule of that jurisdiction that may require reference to the laws of some other jurisdiction shall be disregarded. Any lawsuit brought to enforce any provision of this Agreement shall only be brought in a state court in Cumberland County, Maine, or the nearest federal court to said County.
- C. Severability. If one or more provision(s) of this Agreement is or are held to be invalid, illegal or unenforceable under applicable law, the offending portions of such provisions, or such provisions in their entirety, to the extent necessary, shall be severed from this Agreement, and the balance of this Agreement shall be enforceable in accordance with its terms.
- D. Security Interest. You grant the Credit Union a security interest in all accounts or other deposits (whether general or special) you have with the Credit Union, and in all funds in such accounts or other deposits, to secure your obligations to the Credit Union under this Agreement. This security interest will survive termination of this Agreement. In addition to any other rights we may have under other agreements with you, we may hold any funds on deposit with us by you after termination of this Agreement for up to 14 calendar days following the expiration of any



return or chargeback rights regarding any Remote Item processed by the Credit Union using the Services or, if later, until any other claims to such funds have expired.

With this agreement, you do the following:

1. You represent to the Credit Union that the device you intend to use in connection with Services meets the requirements above;
2. You agree to receipt of this Agreement and all updates to this Agreement in electronic form;
3. You represent that you have read this Agreement and understand its terms and conditions; and
4. You agree to the terms and conditions in this Agreement (Note: clicking "Accept" is just as binding as manually signing the Agreement).